

**PINOLE CITY COUNCIL
PINOLE REDEVELOPMENT AGENCY
MINUTES
AUGUST 18, 2009**

1. CALL TO ORDER & PLEDGE OF ALLEGIANCE IN HONOR OF THE US MILITARY TROOPS

The Regular Pinole City Council / Redevelopment Agency Board of Directors meeting was held at the Pinole Council Chambers located at 2131 Pear Street, Pinole, California. Mayor Fujita called the meeting to order at 6:00 PM. Girl Scout Troop 33072 led the Pledge of Allegiance and the Flag Salute.

2. ROLL CALL, CITY CLERK/SECRETARY'S REPORT & STATEMENT OF CONFLICT

A. COUNCIL MEMBERS PRESENT

Roy V. Swearingen, Council Member
Peter Murray, Council Member was absent / excused
Debbie Long, Mayor Pro Tem
Virginia Fujita, Mayor

B. STAFF PRESENT

Belinda Espinosa, City Manager / Executive Director
Benjamin Reyes, City Attorney
Inga Lintvedt, Assistant City Attorney
Michelle Fitzer, Human Resources Director/Asst to the City Manager
Dean Allison, Public Works Director
Paul Clancy, Police Chief
Mary Drazba, Economic Development Director
Leslie Carbahal, Redevelopment Analyst
Francine Kuykendall, Redevelopment Project Manager
Patricia Athenour, City Clerk/Agency Secretary

City Clerk Athenour announced that the agenda was posted on Friday, August 14, 2009 at 10:00 A.M. All legally required notice was provided. She asked the Council and Redevelopment Board of Directors whether there were any conflicts with any items on the agenda. None were reported.

3. CONVENE TO A CLOSED SESSION

At 6:04 p.m., Mayor Fujita convened the Noticed Closed Session as follows:

- A. Pursuant To Government Code Government Code §54956.8, The edevelopment Agency Board of Directors Will Meet To Confer With Real Property Negotiator, Mary Drazba, Regarding Property Known As The Pinole Vista Shopping Center, Located on 1400-1500 Fitzgerald Drive, Pinole

- B. Pursuant To Government Code Government Code §54957, the Pinole City Council Will Confer With City Attorney Benjamin Reyes Regarding a Public Employee Discipline (“one matter”)

4. RECONVENE IN OPEN SESSION TO ANNOUNCE RESULTS OF CLOSED SESSION

At 6:57 PM., Mayor Fujita reconvened the meeting in open session. She announced there were no reportable actions from Closed Session.

5. RECOGNITIONS / SPECIAL ITEMS

- A. Council Vacancy Appointment [**Council Discretion**]
Administer Oath of Office [(**City Clerk**)

The Mayor provided a brief report on the interviews held at a Special Council meeting on August 13, 2009. Six applicants were interviewed in an open public forum. Mayor Fujita asked each Council member to name their top candidate.

Council Member Murray selected Tim Banuelos, based on his experience on the Planning Commission.

Council Member Swearingen’s top choice was Phil Green, based on his past experience on City Council, his involvement in the planning of the Pinole Senior Center, and his position on restricting a prior parolee from moving to Pinole. He spoke to Mr. Green’s integrity.

Mayor Pro Tem Long determined there was no substitution for current experience and forwarded the name of Tim Banuelos.

Mayor Fujita looked for a person to bring a different perspective to the Council and her recommendation was Norma Martinez Rubin.

Mayor Fujita asked for a motion.

ACTION: Motion by Council Members Murray/Long to nominate Tim Banuelos to the City Council.

Vote: Ayes: Murray, Long
Noes: Fujita Swearingen

The motion failed for lack of a majority vote.

ACTION: Motion by Council Members Swearingen/Long to nominate Tim Banuelos as the replacement candidate to the City Council.

Vote Passed 4-0.

City Clerk Athenour administered the Oath of Office to Council Member Banuelos and he took his seat at the dais.

B. Presentations

1. Certificate of Appreciation - Daniel Prast

Mayor Fujita recognized Daniel Prast for his work on the San Pablo Bay Tire Clean Up project. The Mayor provided a brief project summary, and noted he received assistance from Boy Scout Troop 146 and donations from local businesses and residents. A Certificate of Appreciation would be mailed to Daniel who was not in attendance..

Council Member Murray announced the date of the upcoming annual Coastal Cleanup Project on September 19, 2009.

6. CITIZENS TO BE HEARD (Public Comments – Agency Board and City Council)

The following citizens addressed the Agency Board / City Council:

Rich Voisey, Contra Costa Fire Fighter's IAFF Local 1230, reported on their current retirement benefits of which they negotiated six years prior. He said that any additional costs for benefits are shared 50-50% with the City and he noted that the negotiations this year were a positive experience.

Bob Kopp, Pinole resident, reported on the upcoming Motorcycles and Car Show at Fernandez Park on August 29th which supports our troops and provides funding to assist the Blue Star Moms with the costs of mailing packages and food.

Cindy Trego, Pinole resident, congratulated Tim Banuelos. She reported:

1. An East Bay Roundup article regarding San Ramon approving a 45-day moratorium on massage therapy licenses, and inquired whether the City was reviewing whether our ordinances were still lawful
2. Spoke with the Oakland Raiders office about sponsorship of the Swim Center and said that the grass roots group supporting the center would be sending a letter of request
3. Provided a brief update on the Business Expo

Norma Martinez Rubin, Pinole resident, reminded the community that a meeting would be held in the Council Chambers on August 19 regarding increasing the speed in Old Town. She said it was important to receive public input. Part of the effects of an increased speed limit would increase risk of accidents, but the flip side was better traffic flow. She asked Council to recognize both sides and consider the ways people sometimes increase their speeds above the posted limit.

Jeff Rubin, Pinole Historical Society member, reported on the book signing event. Four hundred ten books had been sold and there will be three more book signing events. Two hundred more books have been ordered. He individually recognized and thanked the musicians and the caterers, and the City for funding the book signing event.

Mary Horton, Pinole resident, congratulated Tim Banuelos. She asked the Mayor to include Eunice Kennedy Shriver in the meeting adjournment, as the founder of the Special Olympics.

7. CONSENT CALENDAR

Mayor Pro Tem Long removed Item 7G.

Council Member Swearingen removed Item 7O.

Mayor Fujita removed Items 7I, J, K, L and M.

ACTIONS: Motion by Board / Council Members Murray / Long, the City Council / Agency Board of Directors Approved the Consent Calendar, With the Exception of Items 7G, I, J, K, L, M, and O

Vote: Passed 4-0-1 (Abstention-Banuelos)

- A. Approved the Minutes of the July 29, 2009 and August 4, 2009 Meetings
- B. Received the August 1-7 and August 8-14, 2009 Lists of Warrants and Receive the August 7, 2009 Payroll in the Amount of \$459,835.11.
- C. Adopted **Resolution 2009-82** Supporting The WCCUSD Adult Education Program [**Council Report No. 2009-121; Action: Council Discretion (Fujita)**]
- D. Approved the Quarterly Treasurer's Report [**Agency/Council Report No. 2009-122; Action: Approve Per Staff Recommendation (Lee/Lucken)**]
- E. Approved the City and Agency 4th Quarter FY 09/10 Quarterly Vendor Payment Report [**Agency/Council Report No. 2009-123; Action: Approve Per Staff Recommendation (Johnson/Lucken)**]
- F. Approved The Agency Loan Delinquency Report [**Agency Report No. 2009-53; Action: Approve Per Staff Recommendation (Lucken)**]
- G. Adopt Council Resolution Approving An Agreement And Authorize The City Manager To Enter Into An Agreement With West Contra Costa County Unified School District For The Funding Of School Resource Officers At Pinole Valley High School And Pinole Middle School. [**Council Report No. 2009-124; Action: Adopt Council Resolution Per Staff Recommendation (Clancy)**] **REMOVED FROM CONSENT CALENDAR**
- H. Adopted **Resolution No. 2009-84**, Create A Special Law Enforcement Operations Fund [**Council Report No. 2009-125; Action: Adopt Council Resolution Per Staff Recommendation (Clancy)**]
- I. Report on the Labor Concessions Made by Management, Mid-management and Unrepresented Employees [**Council Report No. 2009-126; Action: Receive Report (Fitzer)**] **REMOVED FROM CONSENT CALENDAR**
- J. Adopt City Resolution Approving A Memorandum of Understanding For July 1, 2009 – June 30, 2010 with International Association of Firefighters Local 1230 (IAFF) [**Council Report No. 2009-127; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)**] **REMOVED FROM CONSENT CALENDAR**

- K. Adopt City Resolution Approving an Amendment to the 2005-2010 Memorandum of Understanding with Public Employees Union Local One (Local 1) **[Council Report No. 2009-128; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)] REMOVED FROM CONSENT CALENDAR**
- L. Adopt City Resolution Approving an Amendment to the 2007-2010 Memorandum of Understanding with Pinole Police Employees Association (PPEA) **[Council Report No. 2009-129; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)] REMOVED FROM CONSENT CALENDAR**
- M. Adopt City Resolution Approving an Amendment to the 2005-2010 Memorandum of Understanding with AFSCME Local 512 **[Council Report No. 2009-138; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)] REMOVED FROM CONSENT CALENDAR**
- N. Adopted **Joint Resolution No. 2009-89/53-2009** Authorizing The City Manager/Executive Director To Award And Execute A Construction Contract With C.F. Archibald Paving, Inc. In The Amount Of \$660,611.75 With A Construction Contingency Of \$66,061.18 For The Appian Way Phase II Rehabilitation Project. **[Agency/Council Report No. 2009-133; Action: Adopt Joint Board Resolution Per Staff Recommendation (Allison)]**
- O. Adopt Joint Agency and Council Resolutions Rejecting All Bids And Re-advertise the San Pablo Avenue Crosswalk Improvement Project **[Agency/Council Report No. 2009-134; Action: Adopt Joint Board Resolution Per Staff Recommendation (Allison)] REMOVED FROM CONSENT CALENDAR**

Items Removed From the Consent Calendar

- 7G. Approve Agreement And Authorize The City Manager To Enter Into An Agreement With West Contra Costa County Unified School District For The Funding Of School Resource Officers At Pinole Valley High School And Pinole Middle School. **[Council Report No. 2009-124; Action: Adopt Council Resolution Per Staff Recommendation (Clancy)]**

Mayor Pro Tem Long clarified that the District funded two officers (one at Pinole Middle and one at Pinole Valley High) and the City the additional officer at the high school. The officer will be on site at the school ninety percent of the time, leaving only one hour that they can be off site (per the contract) and she requested language to allow the officers to patrol in surrounding neighborhoods and the adjacent shopping centers. Additionally, she wanted language when School was not in session to address how the officers would be deployed which should be the Chief's discretion and language to describe the site as surrounding areas as well.

Paul Clancy, Police Chief, responded to Mayor Pro Tem Long's comments. The contract wording was the same and past practice has defined the site to include the surrounding areas, as well. During summer, if summer school is in session, the officers continue to be active on the campus. He explained that the City is reimbursed through the District for \$160,000, of which the City invoices monthly.

Mayor Pro Tem Long noted that the cost does not include vehicles, and was concerned if the City was short an officer on the street that the City would be unable to use discretion placing officers on the street.

Council comments followed. Council Member Swearingen was not sure whether an officer would have time to go off site during school hours, but was supportive if it worked. Council Member Murray concurred and felt the language was acceptable. Council Member Banuelos agreed also, but said he wanted to find out how far off site into the neighborhood they would reach.

Mayor Pro Tem Long deferred to the Chief to set the parameters.

Chief Clancy clarified that the officers would go offsite in conjunction with school activities, in emergency situations involving SRO type of activities, but not responding to details off site.

The following citizens addressed the Council

Cindy Trego, Pinole citizen, asked if the chief had a set of the school rules, and asked that they be disseminated to citizens upon request. She also raised questions regarding the contract relative to controlled illegal substances (pg 9), and said that the SROs should be kept advised regarding all investigations on the campus. She supported more transparency in the future.

Marcia Kalapus, Pinole resident, also supported transparency and that the District had been guilty of non-reporting to keep information out of the paper.

Chief Clancy said the Police Department oversees any Penal Code violation.

ACTIONS: Motion by Council Members Long/ Murray, the City Council adopted Resolution 2009-83, adding language to the contract that the onsite officers would include patrolling local neighborhoods for truancy and other student related crimes per Chief Clancy's discretion.

Council comments included whether an SRO officer seeing a crime in progress off site would be able to respond and asked Chief Clancy to respond.

Chief Clancy said any officer could respond to a crime in progress. This contract is for an officer to be at the school and he would include more generic terminology to include "any duties pertaining to the school and school related affairs" to address their concerns.

Vote: Passed 5-0

- 7I. Report on the Labor Concessions Made by Management, Mid-management and Unrepresented Employees [**Council Report No. 2009-126; Action: Receive Report (Fitzer)**] **REMOVED FROM CONSENT CALENDAR**
- 7J. Adopted **Resolution No. 2009-85** To Approve Memorandum of Understanding For July 1, 2009 – June 30, 2010 with International Association of Firefighters Local 1230 (IAFF) [**Council Report No. 2009-127; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)**] **REMOVED FROM CONSENT CALENDAR**
- 7K. Adopted **Resolution No. 2009-86** To Approve an Amendment to the 2005-2010 Memorandum of Understanding with Public Employees Union Local One (Local

1) [Council Report No. 2009-128; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)] REMOVED FROM CONSENT CALENDAR

7L. Adopted **Resolution No. 2009-87** To Approve an Amendment to the 2007-2010 Memorandum of Understanding with Pinole Police Employees Association (PPEA) [Council Report No. 2009-129; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)] REMOVED FROM CONSENT CALENDAR

7M. Adopted **Resolution No. 2009-88** To Approve an Amendment to the 2005-2010 Memorandum of Understanding with AFSCME Local 512 [Council Report No. 2009-138; Action: Adopt Council Resolution Per Staff Recommendation (Fitzer)] REMOVED FROM CONSENT CALENDAR

Mayor Fujita removed the items to thank the staff, Ms. Fitzer, and the business representatives for approving a new MOU for Local 1230, and agreeing to concessions by Local One, Pinole Police Employees and AFSCME Local 512, Management, Mid-Management and Unrepresented Employees.

Mayor Pro Tem Long echoed her comments and congratulated everyone for their hard work.

ACTIONS: Motion by Council Members Fujita/Swearingen, the City Council adopted Resolutions 2009-85 to Resolution 2009-88, accepting Item 7I and Approving 7J-7M.

Vote: Passed 5-0.

Council Member Swearingen noted that he removed Item 7O in error; he actually had a question on Item 7N, asking if we were able to keep the money. Ms. Espinosa said the City had to return it.

ACTIONS: Motion by Council /Agency Board Members Swearingen/Murray, the Council Adopted Joint Resolution No. 2009-90/54-2009 Rejecting All Bids And Re-advertise the San Pablo Avenue Crosswalk Improvement Project

Vote: Passed: 4-1 (Banuelos Abstention)

8. REGULAR BUSINESS

A. Conduct A Public Hearing And Adopt City And Agency Resolutions Approving Entering Into A Sublease And Development Agreement With Surinder Pal Sroa, dba Okrah Restaurant For 2300 San Pablo Avenue And Approving A Reuse Report Required By Health And Safety Code Section 33433 [Agency/Council Report No. 2009-130; Action: Request Motion for Continuance to September 1, 2009 (Kuykendall)]

Staff requested a motion for continuance to September 1, 2009.

ACTION: Motion by Board Members Swearingen/Murray, the Agency Board of Directors continued the Public Hearing to September 1, 2009.

Vote: Passed 5-0

- B. Conduct A Public Hearing And Adopt a City Resolution to Perform the Annual Review of the Utility Users Tax [Council Report No. 2009-131; Action: **Request Motion for Continuance to September 1, 2009 (Loomis)**]

ACTION: Motion by Council Members Swearingen/Long, the City Council continued the Public Hearing to September 1, 2009.

Vote: Passed 5-0

- C. Conduct A Public Hearing And Adopt City and Agency Resolutions Approving Purchase and Sale Agreement Between The Agency And Andrew And Lisa Alva (The "Buyer") Pertaining To The Disposition Of Property Located At 609 Maiden Lane [Agency/Council Report No. 2009-132; Action: **Adopt Per Staff Recommendation (Carbahal)**]

Leslie Carbahal, Redevelopment Analyst, presented Agency/Council Report No. 2009-182 into the record, including a summary history of the property acquisition in 2008, revisions to the Redevelopment Agency First Time Home Buyers and Below Market Rate Housing Programs policies, and the terms of the sale agreement. The approved Moderate Income purchase price offer was \$370,000. The buyer qualified for three priority points that reflect their involvement in our community. Escrow is anticipated to close in mid-September. Ms. Carbahal recommended adoption of the resolutions approving the purchase and sale agreement and disposition of the agency property.

Ms. Carbahal responded to questions from Council stating that there was only one offer on the property, and said that the purchaser would speak to the priority points. She also noted in response to Council Member Banuelos, that the Agency is selling the property "as is" and purchaser has elected to purchase a one-year property warranty.

At 8:12 pm, Mayor Fujita opened the Public Hearing.

Andrew Alva, purchaser, addressed Council and expressed their desire to live in Pinole; they work in the area, have both been students in Pinole schools growing up and his parents also live in Pinole.

At 8:15 p.m., Mayor Fujita closed the Public Hearing.

Council Member Banuelos said this was a good example why Pinole has a redevelopment agency.

ACTION: Motion By Council / Board Members Murray/ Banuelos, The City Council / Agency Board Of Directors Adopted Council Resolution 2009- 91 And Agency Resolution 55-2009 Authorizing The Execution Of Purchase And Sale Agreement To 609 Maiden Lane And The And Approval Of The Reuse Report Required By Health & Safety Code Section 33433, And Further Authorizes The Sale Of Real Property As A Below Market Rate Single-Family Residence.

Vote: Passed 5-0.

- D. Review The Final Comments To Be Submitted to the Contra Costa County Conservation and Development Department Regarding the PraxAir Pipeline Draft Environmental Impact Report [**Council Report No. 2009-135; Action: Minute Order To Approve & Authorize Mayor To Execute Letter (Allison/Rhodes)**]

Dean Allison, Public Works Director, introduced **Council Report No. 2009-135** into the record and updated the Council on actions since July 17. He submitted a revised DEIR comment letter for submission to Contra Costa County, under the Mayor's signature. The comment filing deadline is August 27, 2009. Mr. Allison requested comments and/or approval from Council to send the letter as drafted. He explained the EIR process was the first step in a three-step process. Step 2 is the City Use Permit review and Step 3 is consideration of a Franchise Agreement whereby the City would grant use of public right of way to Praxair. Allison showed the haul route access along Pinole Shores Drive and described the trenching and drilling operations. New information provided from the County and Praxair proposed a 24-hour/day construction, for which the City has requested additional information.

Winston Rhodes, Planning Manager, discussed the eight impact categories and focused on the recently added comments:

1. Valve at John Street and other areas. Request that valve be vaulted (underground), which addressed aesthetics and safety, with an automatic shutoff in an emergency.
2. 24-hour construction. Request more information to justify the necessity and address the noise impacts.
3. Why is the existing pipeline not used?
4. How will the Bay Trail be impacted by construction traffic?
5. Can PraxAir obtain adequate ROW from East Bay Regional Park District, Railroad.
6. Document to provide more detail on construction related traffic (routes and noise).
7. Excavated Material shall be tested for contamination.
8. Request for 30 days to review County responses to comments.
9. Notify Pinole property owners/residents within 300' of project on all County meetings on the project.
10. Include a warning system in Pinole.

Council Members provided the following individual list of comments to be addressed in the letter:

Mayor Pro Tem Long:

1. Language to specify the vaults are underground.
2. Could the railroad be held responsible for damages as the property owner?
3. Perhaps a bonding mechanism is necessary.
4. Status of easements vs. ownership of property.
5. Ongoing training for city personnel.
6. Noise not adequately addressed.
7. Disruptions to WestCAT bus service on Walter Avenue not addressed.

She noted there has been negligence with notification.

Mr. Rhodes said at this time the City does not have any ownership or leasehold information between the railroad and Praxair. He said it will be important to know if the railroad has fee title and whether there were legal issues with the easements or entitlements, and will be reviewed in the later stages. He said monitoring the long term effects on the environment may result in bonding, which could be addressed through the franchise agreement.

Council Member Murray:

1. Included specific language to comply with “Pinole’s standards,” such as with 300’ property notifications.
2. Change the word “alternative” – describe differently.
3. Traffic/circulation plan causes significant impacts.
4. Establish a cost recovery plan for City inspections.
5. Add language to cover “repair and replacement” of roadway and trails (pg 11).
6. Provide appropriate mitigation upfront.
7. “Laydown” areas to be repaired to the original condition of the ecology in the area.

Mr. Rhodes said that the Use Permit could be conditioned for full cost recovery, and he confirmed that traditional excavation would be used along Tennant Avenue, with a jacking operation under the creek.

Council Member Banuelos asked if staff was aware of Praxair constructing any similar project in other cities. Mr. Rhodes said they mainly work in the Gulf Coast area.

Council Member Banuelos:

1. Concerned with secondary construction damage given the age of the adjacent infrastructure at Pinole Shores, to require immediate repair and no out of pocket expenses for inspections.
2. Provide opportunity to the City to access areas they have been unable to do previously

Mr. Allison said that bonds would be a good mechanism to address item #1 and that they would require installation of a new street to be built on Walter Avenue.

Mayor Fujita:

1. Concern with 24-hour / day construction.
2. Address the access for WestCat on Walter Avenue.
3. Address heavy equipment on Bay Front Trail.
4. Assurance that future problems would be properly addressed.

Mr. Allison said that the heavy equipment load can be addressed with a report from a certified geologist.

The following speakers addressed the City Council:

John Fultz, Pinole citizen, addressed Council to speak in opposition to the pipeline based on concerns related to safety, railroad activity, leakage detection, and conflict with the land use and the General Plan.

Cindy Trego, Pinole resident and Pinole Shores HOA board member, addressed Council in opposition to the project based on:

1. Noise related to a 24-hour construction period.
2. Lack of adequate trip/load information on Pinole Shores Drive.
3. Lack of information on the valve operation. (i.e., operations in the event of an earthquake; are they run by electricity, how would the community be assured they would be turned off; concern there is no burn unit in West County; leakage of an odorless gas; potential of criminal activity and tampering with the valves).

4. Future access of the park for pipe maintenance was not covered.
5. Questioned notification of residences at Walthus Court regarding disclosures regarding radioactivity. She thanked the City staff for working with her neighborhood community, and stated they would be submitting a comment letter also.

Maya Machnicova, Harbor Cove homeowner, addressed Council, and submitted a 26-page comment letter to Council. She said the DEIR has missing and erroneous information, such as the decibel level of the drilling. Seventy to eighty decibels is similar to the sound of a train coming through the chamber. She suggested access through the vacant Pinole Shores Business Park. She said the refineries are capped for emissions and if allowed to continue to operate they will go past their cap rates and this project would allow them to continue to work without maintenance, and they do not have the required air quality permits.

Anastasia Dodson, Pinole resident, forwarded several comment letters. She cited concerns with safety, air quality, noise, stability of the Bay Trail, insufficient analysis of the mitigation as well as the alternatives. She requested a 30-day review of the EIR and a seat at the table.

Julie Vantillurg, Pinole resident adjacent to the proposed pipeline, said that the path was not wide enough for the construction vehicles and if widened would be a street against their backyards. Surface cracks were a concern, due to the instability of the hillside. She asked the Council to use the use permit process to our advantage, hold firm on the ordinances in place and make Praxair comply.

Jack Meehan, Pinole citizen, said he was the project manager for the Pinole Shores project and that right-of-way does not mean ownership. He said the BNSF railroad has an easement (right of way) for the purpose of running a railroad and necessary operations. He said staff needed to examine the title for fee ownership. Per Mr. Meehan, Union Pacific owns fee title. He said the City should have/obtain a copy of valuation map (with row, crossings, and pipelines) of BNRR. He said to add Pinole Shores Drive to the franchise list. Per Mr. Meehan, access over the park staging area was granted as a ROW/easement to EBRPD for recreational purposes and fee title may still reside with original owner, O.C. Jones. The trail was built to specifications as a multi-use trail for walking and riding use only.

Lorene Scalora, Pinole resident, addressed Council in opposition to the project that would destroy the park trail and reduce the value of the homes. She said she had contacted an environmental lawyer to fight this project.

No further speakers addressed Council and the public comment portion was closed. Council comments followed.

Council Member Swearingen said the project was poorly conceived, done with little research, and little opportunity for input from the community. He agreed that the proposed route was poor. Citizens appear to oppose the project and Council should consider denial of the project in its entirety, unless mitigations are implemented to appease the community.

City Attorney Lintvedt cautioned the Council to limit the consideration to the EIR comments, there was no application before the Council and recommended they preserve the due process for future applications that may come before the Council.

Council Member Swearingen continued that the comment letter can proceed with the comments this evening.

Mayor Pro Tem Long agreed with Council Member Swearingen regarding standing firm. She asked the City Attorney to research right of way conveyances and believed there this to be a land use issue. Full research and review of all documents should be accomplished by the City Attorney. Mayor Pro Tem Long had a meeting scheduled with Supervisor Uilkema on August 20th, and offered to present the citizens letters to her. She encouraged the citizens to attend the County meetings.

Council Member Murray said all the questions posed were good questions and would welcome the County's response. He informed the Council that the EBRPD Bay Trail JPA meeting was scheduled on August 25th at 2 PM and the Praxair pipeline and trail issue will be discussed.

Ms. Espinosa said that EBRPD staff cited quite a few concerns, but when the Supervisor brought it up to the administration, the concerns were minimized. She suggested citizens express their concerns to the EBRPD JPA Board.

Mr. Rhodes said that both EBRPD and WestCat had been notified and that the County would appreciate their input.

Council Member Murray suggested that Praxair should look at access through the Pinole Shores Business Park.

Council Member Banuelos said it was time for the Planning Commission to weigh in on this project

Mayor Fujita asked that the alternate route through Pinole Shores Business Park be incorporated into the comment letter.

It was determined that Council Members Swearingen and Murray review the letter prior to the Mayor's signature.

ACTION: Motion by Council Members Murray/Swearingen, the City Council Approved by Minute Order, to Authorize the Mayor To Execute An Amended Letter of Comments to CCC Regarding the Regarding the PraxAir Pipeline Draft Environmental Impact Report, As Amended to Include Direction Provided by the Council.

Vote: Passed 5-0

Mayor Pro Tem Long asked to direct the City Attorney to begin reviewing the public documents once staff provides the research.

At 9:59 p.m., Mayor Fujita called a brief recess and reconvened the meeting at 10:09 p.m.

- E. East Bluff Apartment Update [**Agency Report 2009-54; Action: Receive Report and Provide Direction (Kuykendall)**] **CONTINUED FROM JULY 7, 2009**

Francine Kuykendall, Redevelopment Project Manager introduced Agency Report 2009-54 into the record. The issues presented to the Agency Board for decision were whether the Agency should consider funding a safety gate; and whether the Agency should pursue a safety agreement fee or amend through a mathematical calculation.

Ms. Kuykendall discussed the City's goals to expand the supply of low and moderate-income housing, and preserve and improve the existing units. The Agency is not the East Bluff Apartment property manager but does have the responsibility to monitor the Agency loans and monitor the affordable housing requirements. She summarized the outstanding Agency housing fund loan of \$975,000 – due in 2053 at 7.5% interest. Loan terms require repayment \$63,375 annually, provided that there was cash available from surplus cash flow after payment of the security fee. Total interest paid since 1997/98 is \$214,610. The loan balance, as of June 30, 2009 was \$1,862,677 (includes unpaid, accrued interest). All unpaid interest is due and payable at end of term, or upon sale of the property.

East Bluff Apartments are in compliance with the Agency's affordable housing restrictions. The agreement states a minimum requirement of 29 very low, 42 low, and 73 moderate income residents. They meet the Agency's requirements and Tax Credit Allocation Committee requirements by providing 29 very low, 113 low and 2 moderate units. Ms. Kuykendall explained the layering funding and the restrictions. She noted that the Agency spent \$7,000 for each affordable unit, which is the least expensive in the entire City.

Al Chavarria, Safety and Community Preservation team, presented the security aspects on the property, including the site improvements, crime free multi housing program, crime statistics, public safety services fee agreement and on-site security. On-going programs include: tenant screening, gates, signage, tenant removal, landscaping, towing program, maintenance staff responsibilities and employees identified by distinctive dress. Completed improvements include: \$20,000 of lighting work, tenant code of conduct, laundry room security improved, addressing clearly visible, storage areas with properly locking hardware, employee background checks, entry door, windows, parking agreement for assigned stalls, new roofs on three buildings, and landscaping.

Pat Pava, Safety and Community Preservation team member, manages the Crime Free Multi-Housing Program, and outlined the process for reaching the Crime Free certification, which East Bluff received after nearly a year of continued work.

Ms. Kuykendall explained the public services safety fee, which is due upon available surplus cash flow and it does not accrue. Based on CMC reporting, there was only three years when Agency did not receive any fees. An annual \$15,000 fee was paid from FY 1999/2000 and 2004/05. Fees have not been paid since. The Agency's method of calculation yields a billable amount of \$74,036 of which \$32,015 was paid. Kuykendall said our Finance Director said the difference came down to an interest reserve, which CMC was not calculating, and the agreement does not allow it based on our definition of surplus cash flow.

No health and safety code violations exist on site. The audit required in connection with monitoring the affordable housing, reported that all corrections have been made. The only remaining site improvements will be normal repairs. Due to budget conditions, CMC cannot continue the on-site security or finance improvements, such as the security gate.

Kuykendall said the Agency may need to amend the agreement to allow for new credit terms imposed by the bank. She asked the Agency Board whether:

1. Shall the Agency pursue installation of security cameras and gate by funding through the housing fund and provide a benefit to the General Fund by reducing calls for service.

2. Shall the Agency pursue collection of the security fee or allow interest reserves to be factored into the surplus cash flow calculation (amend loan agreements) as long as East Bluff remains a Crime Free Housing ?

She reported that the Agency had spent \$9,000 on this project to date, and sought direction regarding whether to direct our attorneys to analyze the calculation of the Security Fee?

Executive Director Espinosa addressed the current ownership. All notifications are sent to East Bluff Housing Inc., the general partner. She also discussed former Interim Executive Director Long's report about deferring the safety fee to allow the owners to work on the property enhancements, and said the owners had been very cooperative to date and work collaboratively. She also addressed Ms. Rupert's inquiry why the Agency does not mandate CHC to provide records to the public, and she explained that we have no authority under which to require that.

The Agency Board raised questions related to whether other projects had required security gates and whether there was a means to collect the security fee, and the number of calls for service.

There are no other gated communities but Ms. Espinosa recommended it here to control the site. The December 2008 report noted that calls for service had dropped and the police department removed the self-initiated activity. Several years ago back, one-third of all calls for service came from East Bluff. The types of calls have now changed, and are mostly noise and disagreements among tenants. Regarding the security fee, the Finance Director recommends imposition of the fee based on the agreement and not subtract a management reserve fee; that is the only legal issue outstanding. The decision is whether to revise the calculations or waive their safety fee in light of all the improvements made.

Agency Board Member Swearingen said Agency funds were not being spent effectively, and that it should be equally distributed among the community.

ACTIONS: At 11:18 P.M., Motion By Swearingen/Long, The Council Extended The Meeting To The End Of The Agenda.

Vote: Passed 5-0.

Vice Chair Long directed questions to legal staff regarding the owner's ability to take out money and add additional encumbrances to the property, and asked what would constitute a sale. She asked if the operating expenses had been audited. She said she walked the site and noted many expired registrations. She raised further issues regarding visitor parking, reporting loud noises which should be handled by their staff, and she was concerned that calls may rise with the elimination of on-site security and believe the owner should be responsible for the property.

Assistant City Attorney Lintvedt said would provide research and that there should not be any additional encumbrances.

Agency Board Member Murray raised the following issues/questions:

1. Requested break down of the operational costs.
2. Asked staff to address whether they could call the note and the pros and cons.

Agency Board Member Banuelos raised the following issues:

1. Concern that the Housing Fund would be reduced to offset funds from the State.
2. Is the investment in East Bluff minimizing crime from growing in the surrounding area?

Chief Clancy said that the crime had been reduced in the immediate area.

Chair Fujita asked if the gate installation was proposed to eliminate the need for onsite security.

Ms. Espinosa responded that it might free up CHC cash so they could possibly pay the security fee. CHC was not collecting sufficient funds to meet obligations since more units are rented as VLI to meet requirements of other limited partnership tax credits. The Agency has no legal method to force on-site security. She said staff could provide justification to call the note, if that was the Council's desire.

Chair Fujita opened the floor for citizen comments.

Cindy Trego, Pinole resident, said this was a public safety issue and the core issue was crime. An electronic gate is a huge annual cost, and asked if CHC would have the money to maintain the gate. She said that the department initiated calls are not included in the statistics and that was an issue. CHC should address the safety issues to attract tenants. She referred to complaints from residents who stated they cannot access on-site staff, and safety was an issue.

Irma Rupert, Pinole resident and former Adhoc Safety Committee member, reported meeting with Mr. Buckley, CHC several months ago and he refused to provide 2009 statistics. She asked the attorney whether withholding information was illegal.

Assistant City Attorney Lintvedt responded that there was no requirement in our agreement to require release of the statistics to the Agency.

Ms. Rupert continued addressing Council reporting that she had PD statistics indicating 135 calls in the first six months of 2009. She read excerpts from the December 2008 Security Plan, and said the Agency erred when Mr. Buckley was not required to sign the agreement. She asked that the agreement be litigated to the fullest extent, stating that she attended the Agency Board meetings twelve years ago, had a copy of the reports, and there had been no discussion that the security fee was only payable when there was a surplus.

James Buckley, CHC, suggested conducting a workshop session to explain the ownership and the goals of an affordable housing project, discuss finances, the surplus cash calculation, and the third party audit. He discussed the investment and repairs they have made to the property and the effort to implement all the items on the list created in January 2009. He said CHC did not request the gate or the cameras, and they will continue to do work with the Agency to make attain a secure environment. The calls for service reported now are generally domestic violations and noise, and tenants are being removed if they have lease violation agreements. Mr. Buckley said the letter of credit backed the loan and the lenders required the reserve account.

Vice Chair Long asked if the agreement made provisions for entities to buy-in and alter the housing mix, referring to the increased number of VLI unit numbers in exchange for tax credits.

Chair Fujita entertained a motion.

ACTION: Motion by Board Members Long /Swearingen, the Agency Board denied funding for the cameras and security gate and directed the City Attorney to pursue the collection of the Public Safety Security Fee - \$32,015.

Vote: Passed 5-0.

9. OTHER POLICY ITEMS

10. ROUTINE REPORTS & COMMUNICATIONS

A. Mayor / Chair Report

1. Announcements included:
 - a. August 20th Business Expo at Pinole Shores Business Park
 - b. August 22nd – Pinole Historical Society Book Signing
 - c. August 25th EBRPD JPA Meeting
 - d. August 29th Blue Star Moms Motorcycle Show at Fernandez Park
 - e. September 19th Coastal Cleanup
2. Mayor's Task Force on Education

B. Council Appointments

1. Appointment of Alternate Delegate to the Library Commission [**Council Report No. 2009-137; Action: Council Discretion (Athenour)**]

Mayor Fujita requested a motion for the appointment.

ACTION: Motion by Council Members Murray/Swearingen, the City Council Appointed Charlene O'Rourke As the Alternate Delegate on the Contra Costa County Library Commission

Vote: Passed 5-0

C. City Council / Agency Board Committee Reports

Mayor Pro Tem Long reported on the August Mayors Conference. Gus Kramer, Tax Assessor said the tax rolls have rolled back to 1999 valuations and does not anticipate much increase in tax revenue until 2013. She said she would discuss the WCCUSD report at the next meeting.

- D. Council Requests For Future Agenda Items
- E. City Manager / Executive Director Report
- F. City Attorney Report

There were no future agenda items, no City Manager or City Attorney reports.

11. ADJOURNMENT

At 12:14 p.m., Mayor Fujita adjourned the Regular Meeting to the September 1, 2009 and in memory of the fallen US Armed Service members and Pinole citizens Amber Swartz, Helen A. Owens, Lucille Keith and Florice Key, and Eunice Kennedy Shriver.

Submitted by:

Patricia Athenour, MMC
City Clerk

APPROVED BY CITY COUNCIL / AGENCY BOARD: