

## CITY COUNCIL REGULAR MEETING MINUTES

February 26, 2007

The regular meeting was called to order at 7:00 p.m. by Mayor Cannella with the following in attendance:

**ROLL CALL** Council Members Lane, Ochoa, Phipps, Vierra, Mayor Cannella

**INVOCATION** by Mayor Cannella.

**PLEDGE OF ALLEGIANCE** to the flag led by Mayor Cannella.

### PRESENTATIONS

- A. Ceres Rotary Club donation to the City of Ceres for improvements at Rotary Grove. Presented by Scott Siegel.

Scott Siegel and several members of the Ceres Rotary Club presented a check in the amount of \$10,000.00 to the City of Ceres for renovations at the Rotary Grove. Mr. Siegel commented that the Rotary intends to donate a total of \$40,000 for the project.

**APPROVAL OF THE MINUTES** of the regular meetings of October 9 and November 13, 2006 and January 22, 2007.

**MOTION:** Approve the minutes of the regular meetings of October 9 and November 13, 2006 and January 22, 2007 as recommended by staff.

**MOVED:** Moved by Lane/seconded by Phipps

**VOTE:** Motion passed unanimously. (5/0)

**APPROVAL OF THE MINUTES** of the City Council Study Sessions of November 30, 2006 and January 18, 2007.

**MOTION:** Approve the minutes of the City Council Study Sessions of November 30, 2006 and January 18, 2007 as recommended by staff.

**MOVED:** Moved by Lane/seconded by Phipps

**VOTE:** Motion passed unanimously. (5/0)

### CITIZEN COMMUNICATIONS

- Len Shepherd, Ceres resident, expressed his dissatisfaction with the process the City is using to determine the feasibility of a Public Safety Ballot Measure.

**APPROVAL OF AGENDA AS POSTED (OR AMENDED) AND CERTIFICATION OF POSTING**

Brad Kilger, City Manager, stated that staff has requested Item 16, Resolution 2007-\_\_\_\_\_ establishing policy and procedures relating to the use of eminent domain by the City of Ceres, be continued to March 12, 2007.

- MOTION:** Continue Item #16 to the meeting of March 12, 2007 and approve the remainder of the agenda and certification of posting as recommended by staff.
- MOVED:** Moved by Phipps/seconded by Ochoa
- VOTE:** Motion passed unanimously. **(5/0)**

**CONFLICT OF INTEREST DECLARATION** – Councilmember Phipps declared a conflict with Item #17, stating that he owns property within 500 feet of the subject property.

**CONSENT CALENDAR**

1. General Correspondence – **Information Only**
  - a. Municipal Utilities Dept. Monthly Report for January, 2007.
  - b. Public Works Division Monthly Report for January, 2007.
2. Register of Audited Demands for period covering February 5 – 16, 2007. (P. Kolf)
3. **Resolution No. 2007-34** accepting the Dow Ranch Unit No. 1 Subdivision approving the land division improvement agreement and rejecting the offer of dedication of street right-of-way.
4. **Resolution No. 2007-35** stating its intent and ordering the annexation of the Dow Ranch Unit No. 1 Subdivision to the Landscape and Lighting District.
5. **Resolution No. 2007-36** accepting the Eastgate Roundabout Project as complete and authorizing the filing of the Notice of Completion.
6. **Resolution No. 2007-37** nominating Mayor Cannella to represent the City of Ceres on the Stanislaus County Economic Development Action Committee (EDAC).
7. **Resolution No. 2007-38** approving addendum No. 1 to the contract with West/Yost for Water Modeling for the Hollister Well and amending the 2006/07 Budget to appropriate funds.
8. **Resolution No. 2007-39** approving additional work and compensation for Nolte Associates to prepare photogrammetric mapping for the design of Phase 1 of the Mitchell Rd/Service Rd/SR99 Interchange project.
9. **Resolution No. 2007-40** approving the frequency reconfiguration agreement with Nextel of California, Inc. for relocation of Ceres Public Safety Radio frequencies.
10. **Resolution No. 2007-41** renewing the MOU between the City of Ceres and the City of Turlock for 800 MHz Communication and H.T.E. Records Management Systems.

11. **Resolution No. 2007-42** authorizing repair of backflow devices in parks and landscape right-of-ways and amending the 2006/07 Budget to appropriate funds. ***Pulled for further discussion.***
12. **Resolution No. 2007-43** establishing classification, description and compensation range for the position of Redevelopment and Housing Project Coordinator, authorizing the hiring of an Associate Planner and amending the FY 2006/07 Budget to appropriate funds and estimate revenues. (B. Kilger)
13. **Resolution No. 2007-44** approving a resolution to establish classification, description and compensation range for the positions of City Engineer and Planning Manager and amending the FY 2006/07 Budget to appropriate funds.
14. **Resolution No. 2007-45** approving an agreement with the County of Stanislaus for the provision of Animal Control Services. ***Pulled for further comment.***

MOTION: Approve Consent Calendar Items 1a, 1b, 2 – 10, 12 and 13 as recommended by staff.

MOVED: Moved by Phipps/seconded by Lane

VOTE: Motion passed unanimously. (5/0)

#### **ITEMS PULLED FROM CONSENT CALENDAR**

11. **Resolution No. 2007-42** authorizing repair of backflow devices in parks and landscape right-of-ways and amending the 2006/07 Budget to appropriate funds. ***Pulled for further discussion***

Councilmember Phipps asked staff if the monies requested included insulation for the pipes to prevent them from freezing again.

Doug Lemcke, Parks, Recreation and Facilities Director responded that no insulation costs were included in the Budget Amendment but would be included in the 2007/08 Budget.

MOTION: Approve Resolution No. 2007-42 authorizing repair of backflow devices in parks and landscape right-of-ways and amending the 2006/07 Budget to appropriate funds as recommended by staff.

MOVED: Moved by Phipps/seconded by Ochoa

VOTE: Motion passed unanimously. (5/0)

14. **Resolution No. 2007-45** approving an agreement with the County of Stanislaus for the provision of Animal Control Services.

Councilmember Phipps asked if the City could negotiate a multi-year contract or was it necessary to renew the contract annually.

Art de Werk, Public Safety Director responded that County Animal Control Services is going through so many changes that it probably would not be in the City's best interest to enter into a long-term contract at this time.

- MOTION: Approve **Resolution No. 2007-45** approving an agreement with the County of Stanislaus for the provision of Animal Control Services as recommended by staff.  
MOVED: Moved by Phipps/seconded by Ochoa  
VOTE: Motion passed unanimously. **(5/0)**

## **OLD BUSINESS**

15. TID Regional Surface Water Supply Project, Project Status Update.

Steve Wilson, Municipal Utilities Director, presented a Project Status Update for the TID Regional Surface Water Supply Project. The update included the project schedule, EIR, key decisions made, raw water system, water quality monitoring program, pilot study, preliminary design and project costs.

16. **Resolution No. 2007-XXX** establishing policy and procedures relating to the use of eminent domain by the City of Ceres. ***Continued to March 12, 2007.***

**7:40 p.m. Mayor Cannella adjourned the meeting to the Ceres Redevelopment Agency.**

**7:42 p.m. Mayor Cannella reconvened the City Council Meeting.**

## **PUBLIC HEARING**

17. Appeal of Planning Commission decision to deny Conditional Use Permit Amendment 04-36, a proposal to modify elevation treatment for buildings within a previously approved business center, located in the 1300 block of Mitchell Road. Applicant is Ceres Commerce Center, LLC.

Councilmember Phipps recused himself from the dais.

Kenneth Craig, Community Development Director, introduced the staff report and explained to Council that on December 6, 2004 the Planning Commission approved a CUP and Vesting Tentative Subdivision Map for the Ceres Commerce Center. Building permits were issued and construction commenced. In December 2006, staff was contacted by the applicant and was asked to evaluate the first few buildings for compliance with the approved Planning Commission conditions. The buildings and the site generally conformed to the approval but one key architectural element originally approved was absent, even though the architectural element was shown on the approved set of building plans. When the applicant was notified about the absence of the required architectural element they indicated that they had no plans of providing that approved element to the building. Staff then informed the applicant that the buildings could not be finalized without compliance to the approved conditions and if they did not intend to construct the buildings as approved, they would need to request an amendment of the CUP from the Planning Commission. The applicant did submit the necessary fees and development application for the CUP amendment, which was heard by the Planning Commission on January 16, 2007, and subsequently the modification to amend the previously approved elevations was denied. Staff does not support the proposed change submitted by the applicant because the original design feature provides better building articulation consistent with the Mitchell Road Corridor Specific Plan. The newly proposed feature is an "add on" that is not architecturally integrated into the building.

**7:46 p.m. Mayor Cannella opened the Public Hearing.**

Jim Daniels, Innovative Structures (applicant), addressed Council stating that they did not realize they were violating the approval process by changing the outside décor. They hired a design consultant who recommended the new "wall sconces" and decided the sconces would look better on the building. Now that the sconces are installed, to change the building back to the original design would be costly.

Mr. Daniels further stated that his firm regularly makes facade modifications without getting prior approval.

Mayor Cannella asked Mr. Daniels which Cities he has worked with that allow for such changes without prior approval.

Mr. Daniels could not provide the name of any City which allows such changes, but stated the County did not require additional approval to alter exterior designs.

Councilmember Lane stated that he was serving as a Planning Commissioner when this project was approved and the Planning Commission was very clear on the importance of the popouts on the building facade

David Harter, representing the applicant, stated that he felt the sconces bring art work to the building exterior and felt that they would be more lasting than the popouts originally designed for the façade.

David Yonan, Ceres resident, spoke in support of the sconces on the exterior of the buildings.

**8:02 p.m. There being no one else wishing to speak, the Public Hearing was closed.**

Councilmember Vierra voiced his concern that the developer went to a design consultant without first consulting with the City. He further stated that there was not a lot of detail put into the submittal of the design plans.

Councilmember Lane stated that he would uphold the Planning Commissions denial of the Conditional Use Permit Amendment.

Councilmember Ochoa stated that he felt that even though Innovative Structures went about the changes in the wrong way, he liked the sconces.

Mayor Cannella asked staff why the design changes weren't noticed during any of the building inspections.

Mr. Craig responded that typically building inspectors focus on building code compliance and since the design changes were not a violation of any building code, the building inspectors did not notice them. It was not until planning staff did their inspection that the change was detected.

Mayor Cannella asked staff if the buildings, as they are currently constructed, are consistent with the Mitchell Road Corridor Specific Plan.

Mr. Craig responded that the buildings as currently constructed are not consistent with the Mitchell Road Corridor Specific Plan.

Mayor Cannella stated that because the current façade does not comply with the Mitchell Road Corridor Specific Plan, he could not support the appeal.

Councilmember Vierra asked if the construction drawings showed the popouts on the building façade.

Staff responded that the construction drawings did show the popouts on the building façade.

**MOTION:** Deny the appeal of applicant, Innovative Structures, of the Planning Commission decision to deny Conditional Use Permit Amendment 04-36, a proposal to modify elevation treatment for buildings within a previously approved business center, located in the 1300 block of Mitchell Road as recommended by staff.

**MOVED:** Moved by Lane/seconded by Vierra

**VOTE:** Motion passed with Councilmember Ochoa voting no and Councilmember Phipps abstaining. (3/1/1)

18. **Ordinance No. 2007 - 971** amending Title 18, Chapter 18.04 to add a definition for medical marijuana dispensaries and amending Chapter 18.46, Section 18.46.020 to prohibit uses relating to the distribution and/or cultivation of medical marijuana in all zoning districts. **First Reading and Introduction.**

Mike Lyons, City Attorney, addressed Council explaining that the interim urgency ordinance banning the establishment of medical marijuana dispensaries within the City of Ceres is expiring on March 25, 2007. The intent of the ordinance is to prohibit the activities of persons or groups who establish locations or facilities to engage in the activity of cultivating, or distributing medical marijuana to persons identified under the California Compassionate Use Act as permissible cultivators, possessors, or users of marijuana for medical purposes.

**8:29 p.m. Mayor Cannella opened the Public Hearing.**

**8:30 p.m. There being no one wishing to speak, the public hearing was closed.**

**MOTION:** Waive full reading and have **Ordinance No. 2007-971** read by title and number only.

**MOVED:** Moved by Phipps/seconded by Lane

**VOTE:** Motion passed unanimously. (5/0)

Mayor Cannella directed the City Clerk to read Ordinance 2007-971 by number and title only.

**MOTION:** Adopt **Ordinance No. 2007-971** amending Title 18, Chapter 18.04 to add a definition for medical marijuana dispensaries and amending Chapter 18.46, Section 18.46.020 to prohibit uses relating to the distribution and/or cultivation of medical marijuana in all zoning districts.

MOVED: Moved by Phipps/seconded by Lane  
VOTE: Motion passed unanimously. **(5/0)**

**NEW BUSINESS**

19. **Resolution No. 2007-46** amending the final budget for the City of Ceres for FY 2006/07 to provide for Mid-Year Budget adjustments.

Brad Kilger, City Attorney, gave a brief overview of the item explaining that all City departments have reviewed their budgets and determined if any adjustments to appropriations are needed to complete the fiscal year ending June 30, 2006. Appropriation adjustments affecting General Fund Reserves are required in Public Safety because of overtime requirements in the Police and Fire Departments.

**MOTION:** Approve **Resolution No. 2007-46** amending the final budget for the City of Ceres for FY 2006/07 to provide for Mid-Year Budget adjustments as recommended by staff.

**MOVED:** Moved by Phipps/seconded by Ochoa

**VOTE:** Motion passed unanimously. (5/0)

**8:50 p.m. Mayor Cannella adjourned the meeting for a short recess.**

**8:56 p.m. Mayor Cannella reconvened the City Council Meeting.**

20. **Resolution No. 2007-47** approving the Joint Exercise of Power Agreement between the Industrial Fire District, The City of Modesto and the City of Ceres.

Mike Lyons, City Attorney, introduced the item stating the City of Ceres and the City of Modesto have been providing fire protection, emergency medical and other related services to those portions of the Industrial Fire Protection District which lie within each City's respective Sphere of Influence. The Industrial Fire Protection District exists for the purpose of collecting the revenues of the District and distributing those revenues to Ceres and Modesto as compensation for fire protection services. Due to an increasing lack of ability to find and retain active board members, the Industrial Fire Protection District Board has expressed a desire to dissolve the District. In order to maintain the ability to collect the revenue assessments made on properties within the Industrial Fire Protection District, the City wishes to implement a Joint Exercise of Power Agreement (JPA) with the City of Modesto and the Industrial Fire Protection District.

**MOTION:** Approve **Resolution No. 2007-47** approving the Joint Exercise of Power Agreement between the Industrial Fire District, The City of Modesto and the City of Ceres as recommended by staff.

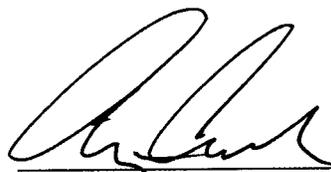
**MOVED:** Moved by Phipps/seconded by Lane

**VOTE:** Motion passed unanimously. (5/0)

**REPORTS**

Art de Werk, Public Safety Director, reported on the Live ID program which allows police officers to fingerprint suspects in the field and transmit the data for identification confirmation. Chief de Werk also reported that the each police car is now equipped with electronic booking photos to aid in the identification process.

There being no further business, Mayor Cannella adjourned the City Council Meeting at 9:15 p.m. to the next regularly scheduled City Council Meeting on March 12, 2007.

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Anthony Cannella, Mayor

ATTEST:

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Cindy Heidorn, CMC, Deputy City Clerk

