

**CITY COUNCIL MEETING MINUTES
REGULAR MEETING OF THE CITY COUNCIL**

April 23, 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 Pastor Dave Broyles, Ceres Christian Church.

PLEDGE OF ALLEGIANCE to the flag led by Mayor Cannella.

PRESENTATIONS

A. Report by the Ceres Youth Commission

Orhi Amino gave a report to Council on the current activities of the Ceres Youth Commission including a park beautification project prior to the Street Faire. The Youth Commission will also have a booth at the Street Faire. The commission is also planning a Dodge Ball tournament which will be held on May 26th at Central Valley High School.

B. Proclamation Proclaiming May as Older Americans Month in the City of Ceres

Mayor Cannella presented Mr. Richard Gibson, representing the Area Agency on Aging with the proclamation. Mr. Gibson thanked Mayor Cannella and the City Council for recognizing the older citizens of Ceres.

C. Chamber of Commerce Quarterly Report. Wanda Malik, Ceres Chamber of Commerce

Wanda Malik, President, Ceres Chamber of Commerce addressed Council and introduced Victor Martinez, the Chamber's new member liaison. Ms. Malik stated that the Chamber is on-track with their business plan but has fallen a little short with membership numbers this quarter but felt that the Chamber would meet its membership numbers next quarter.

D. Nolte Quarterly Update

Chris Metzger, representing Nolte and Associates presented an update for the Mitchell Road/SR 99 Interchange project. Among the items discussed by Mr. Metzger were the executive summary, engineering and environmental progress review, survey update and current schedule. Currently the project is running behind schedule for three primary reasons:

1. Additional environments work
2. Caltrans concerns regarding a contractor's ability to construct the project
3. Finalizing the geometrics and design exceptions.

Q&A with Mr. Metzger:

Mayor Cannella: "Your report lists three reasons the project is running behind schedule. Reason No. 2 states that 'Caltrans has concerns regarding a contractor's ability to construct the project.' Why would Caltrans have that concern?"

Mr. Metzger: "It is my understanding that District 10 got caught on a project that they designed internally that they had problems constructing. So now they are doubling up their efforts to make sure they have no more surprises."

Mayor Cannella: "Are they identifying specific areas of concern or is it just a carte blanche 'we don't think this can be constructed'?"

Mr. Metzger: "There is one tricky area for the Mitchell Road confluence where we have three different levels of structures and the sequencing of them is such that you would need to drive piles for one of the last structures prior to actually being able to build the superstructure. This is not an uncommon event. We do that routinely in complicated areas, but it is not something you do in District 10 all the time. We did talk to the structural reps and they are feeling much more comfortable with the project."

Mayor Cannella: "Does your team believe that this is constructible? Are your engineers are saying, 'yes we can do it'?"

Mr. Metzger: "Yes."

Mayor Cannella: "Executive Summary Item: 'NEPA approval: Caltrans seeking FHWA approval to act as Federal Lead Agency. If FHWA does not delegate Caltrans this authority, final approval could slip from November 2007 to March 2008', when was this on the schedule to be approved?"

Mr. Metzger: "Originally near the end of spring or early summer 2007."

Mayor Cannella: "Why are we off on the schedule?"

Mr. Metzger: "There are multiple reasons for the slippage. An early constructability review that is uncommon and we were not expecting. Constructability reviews normally occur at 35%. We did not factor that into our schedule. As soon as we were alerted to it in February, we have tried to hold the meeting with Caltrans. May 15, 2007 is the earliest Caltrans will meet with us."

Mayor Cannella: "That's a legitimate reason for a delay. What was the other reason for the delay?"

Mr. Metzger: "We still have not received back verification from the Core (ACOE) on the Wetlands on the environmental side. I was speaking with the environmental specialist today and her best guess is 'within three months from now', they hope to get ACOE to validate wetland delineation and that is required before Caltrans can approve the document and the FHWA will approve the document."

Council had no further questions of Mr. Metzger.

APPROVAL OF THE MINUTES of the regular meeting of March 26 and April 9, 2007.

MOTION: Approve the minutes of the regular meeting of March 26 and April 9, 2007 as recommended by staff.

MOVED: Moved by Lane/seconded by Phipps

VOTE: Motion passed unanimously. (5/0)

CITIZEN COMMUNICATIONS to the Council on matters not included on the agenda.

- Len Shepherd, resident, expressed his appreciation for our Public Safety Employees.

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

MOTION: Approve the agenda as posted (or amended) and certification of posting.

MOVED: Moved by Vierra/seconded by Ochoa

VOTE: Motion passed unanimously. (5/0)

CONFLICT OF INTEREST DECLARATION – Mayor Cannella declared a conflict with Item No. 9, North Star Engineering has done work with the contractor in the past 12 months.

CONSENT CALENDAR

1. General Correspondence – **Information Only**
 - a. Human Resources Monthly Report for March, 2007.
 - b. Quarterly Grant Update for 3rd Quarter FY 06/07.
 - c. 2007 Bulletproof Vest Partnership Grant Application.
 - d. Status of City's Community Development Block Grant Programs.
 - e. Parks, Recreation and Facilities Monthly Report for February, 2007.
 - f. Municipal Utilities Monthly Report for March, 2007.
 - g. Nolte and Associates Quarterly Council Update.
2. Register of Audited Demands dated April 4, April 16 & April 17, 2007.
3. **Resolution No. 2007-80** upgrading the compensation range for the position of Swim Instructor (WSI) which falls below new State minimum wage laws. ***Pulled for further discussion.***
4. **Resolution No. 2007-81** approving the Lot Line Adjustment for Jose & Elvia Diaz at 1808 and 1816 Herndon Road.
5. **Resolution No. 2007-82** approving the application to the 2007 Assistance to Firefighters Grant (AFG) Program.
6. **Resolution No. 2007-83** amending Resolution 2007-69 to modify the allocation amount of HOME funds towards the rehabilitation of 54 units at the Ceres Farm Labor Center from \$300,000 to \$240,000.
7. **Resolution No. 2007-84** accepting the City Parks Irrigation Well Project as complete, approve the Balancing Contract Change Order and authorize the filing of the Notice of Completion.

8. **Resolution No. 2007-85** accepting the City Parks Irrigation Well Project – Phase II as complete, approve the Balancing Contract Change Order and authorize the filing of the Notice of Completion.
 9. **Resolution No. 2007-86** accepting the North County Area Sewer Improvement Project as complete, approving the Balancing Contract change Order, authorizing the filing of the Notice of Completion and payment to contractor. ***Pulled due to conflict of interest.***
 10. **Resolution No. 2007-87** approving the Cooperative Agreement with the State of California for the Interchange Reconstruction at SR99/Whitmore Avenue amending the FY 2006/07 Budget to appropriate funds. ***Pulled for further discussion.***
- 10-A. Council concurrence of Mayor Cannella's recommendation to Appoint Orhi Amino to the Ceres Planning Commission as a Student Commissioner.

MOTION: Approve Consent Calendar Items 1a-1g, 2, 4-8 and 10A as recommended by staff.

MOVED: Moved by Lane/seconded by Phipps

VOTE: Motion passed unanimously. (5/0)

ITEMS PULLED FROM THE CONSENT CALENDAR

3. **Resolution No. 2007-80** upgrading the compensation range for the position of Swim Instructor (WSI) which falls below new State minimum wage laws.

After a brief clarification by staff regarding the need for this adjustment, Council took the following action:

MOTION: Approve **Resolution No. 2007-80** upgrading the compensation range for the position of Swim Instructor (WSI) which falls below new State minimum wage laws.

MOVED: Moved by Phipps/seconded by Ochoa

VOTE: Motion passed unanimously. (5/0)

9. **Resolution No. 2007-86** accepting the North County Area Sewer Improvement Project as complete, approving the Balancing Contract change Order, authorizing the filing of the Notice of Completion and payment to contractor.

MOTION: Approve **Resolution No. 2007-86** accepting the North County Area Sewer Improvement Project as complete, approving the Balancing Contract change Order, authorizing the filing of the Notice of Completion and payment to contractor.

MOVED: Moved by Vierra/seconded by Lane

VOTE: Motion passed with Mayor Cannella abstaining. (4/0/1)

10. **Resolution No. 2007-87** approving the Cooperative Agreement with the State of California for the Interchange Reconstruction at SR99/Whitmore Avenue amending the FY 2006/07 Budget to appropriate funds.

Joe Hollstein, consultant, introduced the item explaining Caltrans requires the City to enter into a Cooperative Agreement with the State of California. The Cooperative Agreement establishes the responsibilities of the City and the State. The agreement is required prior to bidding out the Whitmore Avenue Interchange Reconstruction Project and the issuance of the basic right-of-way certificate.

The Interchange Reconstruction at SR99/Whitmore Avenue is to have a basic right-of-way certificate by May 1, 2007. The certificate indicates that the land has been acquired or eminent domain procedures have begun. It also indicates that the utilities, including the City's are ready to relocate.

The City had concerns the project was not progressing, so we offered \$3.5 million towards right-of-way, to expedite the building of the project. At the time of the Council action, it was hoped that the City could negotiate to make these funds a loan that would be repaid by the State when the Mitchell/Service/SR99 project was built. The State made it clear however that if the City wished to see the project built, the money must be contributed. The funds are available in the Street Expansion Fund Reserve (developer fees).

Q&A From Council:

MAYOR CANNELLA: "What is balance of the Street Expansion Fund Reserve after the \$3.2 million is dispersed?"

MR. HOLLSTEIN: "The fund balance would be \$1.7 million."

MAYOR CANNELLA: "Is our \$3.2 million in jeopardy if the bids come in higher than the Engineer's Estimate?"

MR. HOLLSTEIN: "If the lowest responsible bid is more than 10% over the Engineer's Estimate, the State will contact the City. If the State decides not to proceed with the project, they will have to return the \$3.2 million. "

MAYOR CANNELLA: "Why does the State require the payment before they get the bids for the project."

MR. HOLLSTEIN: "It is a normal operating procedure for the State to ensure that they have total funding available for the project."

MAYOR CANNELLA: "Is this our total contribution?"

MR. HOLLSTEIN: "We may have to make an additional contribution but if we do, it will be small. "

MIKE EVANHOE, representing StanCOG, explained the approval process for the project.

BRAD KILGER, City Manager: "After the bids come back, the City does need additional funding, we would be looking at the StanCOG 2008 STIP (State Transportation Improvement Program). Because this project is so far along, we are in a very good position to acquire some of the STIP funds."

MAYOR CANNELLA: "When will we go out to bid?"

MR. HOLLSTEIN: "It is scheduled for November, 2007, to start construction in early 2008."

Council, having no further questions made the following motion:

MOTION: Resolution No. 2007-87 approving the Cooperative Agreement with the State of California for the Interchange Reconstruction at SR99/Whitmore Avenue amending the FY 2006/07 Budget to appropriate funds.

MOVED: Moved by Lane/seconded by Vierra

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

7:40 p.m. Mayor Cannella adjourned the City Council Meeting to the Redevelopment Agency Meeting.

7:43 p.m. Mayor Cannella reconvened to the City Council Meeting.

NEW BUSINESS

- 11. Ordinance No. 2007-972** containing a description of the Ceres Redevelopment Agency's program to acquire real property by eminent domain in the Ceres Redevelopment Project. **First Reading and Introduction.**

MIKE LYIONS, City Attorney, introduced the ordinance stating that SB53 added Section 33342.7 to the Health and Safety Code to require that the legislative bodies of agencies with redevelopment plans adopted prior to January 1, 2007, adopt an ordinance that contains a description of the agency's program to acquire real property by eminent domain. The ordinance must be adopted prior to July 1, 2007. Once adopted the program and policies relating to the use of eminent domain by the Redevelopment Agency can only be changed by a formal amendment of the Redevelopment Plan. This ordinance only affects the properties located within the area added to the Agency's redevelopment project area by Amendment No. 1, adopted on July 8, 2002. The Agency's right to use eminent domain in the original project area, adopted on July 15, 1991, expired on July 14, 2003.

COUNCILMEMBER OCHOA: "Is this different from the Eminent Domain used for public utilities?"

MR. LYIONS: "This is different and applies only to the eminent domain used by the Redevelopment Agency."

BRAD KILGER, City Manager: "The Redevelopment Agency generally uses eminent domain for the removal of blight. The concept is to take a parcel that is under utilized and of less value and use the power of Redevelopment to add value and benefit the community as a whole. It is different than where the power of eminent domain is used to acquire a public works in the process of acquiring right-of-way for public health and safety issues. "

MAYOR CANNELLA opened the item for public comments.

LEN SHEPHERD, Ceres resident: "If a property is not being maintained and the City has ordinances in place requiring the maintenance of property, why wouldn't the City just require the property owner to maintain it? Why would the Redevelopment Agency buy it from the owner?"

MAYOR CANNELLA: "The City has no plans for condemning any property. We are simply reserving our right to do so."

MR. KILGER: "Eminent Domain is definitely the tool of last resort. Studies have shown that it is used very rarely across the State. Property owners are required to receive a fair return on their property. In the case of a business, the City is required to assist in the relocation of that business and also assist with any good-will loss in that particular case. Notwithstanding basic social and political philosophies, an example of when the use of eminent domain does serve as an advantage:

- When you're dealing with three substandard parcels whereby you have two land owners who are willing to leave;
- You have a project that can come in and provide either affordable housing or economic development to the community, upgrade the community as a whole, provide additional revenue for police and fire.
- Essentially one property owner could hold the whole project up and the entire area would remain in blight.

That's the circumstances in which I've seen it used, if used at all."

KEN GROVES, Ceres resident: "What agency makes the determination that a property is blighted? Is the determination made by a County agency or the City Redevelopment Agency or both? Is it complaint driven?"

MAYOR CANNELLA: "If the property is located within the City limits, then it would be the City's Redevelopment Agency that would make that determination. The determination of blight is not necessarily complaint driven, it could be project driven."

MR. KILGER: "When the use of eminent domain is tied to a project, it has to go through a full Public Hearing process. All property owners and adjacent property owners are notified long before any discussion of eminent domain is taken, to have an opportunity to participate and understand the circumstances."

Council, having no further questions took the following action:

MOTION: Waive full reading and have **Ordinance No. 2007-972** read by title and number only.

MOVED: Moved by Vierra /seconded by Phipps

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

Mayor Cannella directed the City Clerk to read Ordinance 2007-972 by number and title only.

MOTION: Approve **Ordinance No. 2007-972** containing a description of the Ceres Redevelopment Agency's program to acquire real property by eminent domain in the Ceres Redevelopment Project for first reading and introduction.

MOVED: Moved by Vierra/seconded by Phipps

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

12. **Resolution No. 2007-88** approving additional work and compensation for Nolte Associates to prepare the design of Phase 1 of the Mitchell Road/Service Road/SR99 Interchange Project to the 65 percent level and amending the FY 2006/07 Budget to appropriate funds.

JOE HOLLSTEIN, Consultant, introduced the item stating that with the passage of the transportation bond measures, the City is in a good position to receive State funding for the Mitchell Rd/Service Rd/SR99 Interchange Project. The State awards funding to those projects that are farthest along. City staff has been talking to representatives from Gray Bowen and California Strategies and Advocacy, to determine when and how much money the City could receive for this project. Both these firms are experts in transportation funding. They have connections with Caltrans and the California Transportation Commission. Their recommendation is that the City seek funding from the April 2008 funding cycle. To be eligible for funding from that cycle the City must have Caltrans approved plans and specifications that are 65% complete. To meet that schedule we need to start design work now. Because of their familiarity with the project, Nolte and Associates is the only firm that could get this project done within the time frame necessary.

Q & A with Mr. Metzger

COUNCILMEMBER VIERRA: "Is this project being treated as a two phase project with the Service Road portion first and the Mitchell Road portion later on?"

MR. HOLLSTEIN: "Yes. The traffic analysis shows that the traffic projected for the next 20 years could be handled by the first portion of this project. The second portion would not be needed until later, but we wanted to have the entire package so we know what the right-of-way is going to be and we know that the higher project will work."

COUNCILMEMBER VIERRA: "Did the environmental work cover the complete build-out?"

MR. METZGER: "Yes."

COUNCILMEMBER VIERRA: "The design for this project is for Phase 1 only and not Phase 2. Can we be sure that the design will work with Phase 2?"

MR. HOLLSTEIN: "Yes."

COUNCILMEMBER VIERRA: "Why are landscaping improvements not included in this scope?"

MR. METZGER: "We did not have time to include landscaping improvements in this scope. A common approach is to get the interchange in place, leave sleeves and so on for irrigation and come back and do the landscaping as a second follow-up."

MAYOR CANNELLA: "Caltrans will allow the construction to move forward without landscaping?"

MR. METZGER: "Yes."

MAYOR CANNELLA: "What about the hydro seeding for slope stability?"

MR. METZGER: "That is included in the erosion control plan which is part of our design."

COUNCILMEMBER VIERRA: "The plans are going to be developed in AutoCAD format. StanCOG requires that the documents be converted to MicroStation. There is no provision in this scope to convert them into MicroStation. I would like to see the conversion added in this scope or at least have an idea of the cost. "

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COUNCILMEMBER VIERRA: "The plans are going to be developed in AutoCAD format. Caltrans requires that the documents be converted to MicroStation. There is no provision in this scope to convert them into MicroStation. I would like to see the conversion added in this scope or at least have an idea of the cost. "

MR. HOLLSTEIN: "We are not required to convert project to MicroStation until we hand the entire project over to Caltrans. That is why it is not included in this Scope. It is included in the 100% portion of the project."

MAYOR CANNELLA: "What could happen during this process that could cause you to miss the deadline?"

MR. METZGER: "We are not in lock-step with City and Caltrans yet. Positive steps are being taken towards that goal. One of those steps is the assembly of a team that includes Nolte, City staff, Gray Bowen and Mike Evanhoe to help us navigate through the Caltrans process and help us keep a clear understanding of what needs to be accomplished. If we have to resubmit the 65% submittal that could slow us down."

BRAD KILGER: "Staff and Nolte work well together. Unfortunately, you have to do a "dance" with Caltrans and it has to be a well orchestrated dance. Smaller communities have a lot of challenges in that regard. This opportunity to proceed quickly with the Service/Mitchell project has forced us to step-up and hire additional help to get us through the Caltrans process. The "Team" will be meeting on a weekly or bi-weekly basis to touch base and make sure we stay on track."

MAYOR CANNELLA: "What provisions are built in to the Contract to stay on track?"

MR. HOLLSTEIN: "We have a liquidated damages clause in the contract which is \$500/per calendar day."

MAYOR CANNELLA: "Is this contract time and materials not-to-exceed?"

MR. HOLLSTEIN: "Yes."

MAYOR CANNELLA: "Do you believe that Nolte can make this happen?"

MR. MEZTGER: "Yes, I believe that "we" can make it happen. Our sphere of influence is not complete without the City, Caltrans and StanCOG. Everybody has to jointly bring this together."

BRAD KILGER: "If the Council approves this tonight, this is going to absorb a lot of our time. If we are going to make this happen, we are going to have to look hard at where our staff time is going, particularly in the Engineering area. There may be some lesser projects that may have to be put on the back burner."

MAYOR CANNELLA: "I would like to see a chart or schedule that shows all the critical steps so we can be in the loop."

MR. METZGER: "We will create a very detailed schedule for this. Through the summer we will be positioning basically to get the base geometrics and so on. We won't really hit the major expenditures until fall, so, you will have a check-in point when we get to 35% to make sure we are still on track."

COUNCILMEMBER LANE: "As far as City personnel working on this project, we are down to a part-time Engineer, Len, and I think we are contracting out at this point, are they going to be involved in this project?"

MR. KILGER: "We are recruiting for Joe's replacement, but we, most likely, are retaining Joe after that, for this project."

KENNETH CRAIG: "We want Joe, because of his experience and his knowledge of the project, to really focus on this project. Our strategy at this time, is to replace those personnel we have lost in the department. You are correct, we are on the cusp of hiring a private engineering firm to assist us in being able to keep projects moving forward."

COUNCILMEMBER LANE: "So this project will be Joe's baby?"

MAYOR CANNELLA: "This and Whitmore"

COUNCILMEMBER LANE; "Will you be able to handle both of those projects Joe?"

JOE HOLLSTEIN: "Yes, one of my biggest problems has been all of the different projects I have been working on. We are working down the list and some of them are dropping off. When my replacement is hired, it will free up the time I need to really focus and work on this project. I will be able to closely monitor what is happening, make sure we are meeting our deadlines and if not, why not."

COUNCILMEMBER LANE: "I hear us taking a lot of accountability on our part, I hope that Nolte and the other agencies will take on the same amount of accountability and at the end, this results in a project in April, 2008."

MR. METZGER: "We are on-board."

MR. KILGER: "For those of you who do not work in Government day-to-day, we have Department Heads, Managers, front line staff, and everyone has their certain responsibilities. As the City Manager, I am responsible for the overall administration of the City and I don't usually get involved in individual projects. This particular project, I am going to be involved in and so is Ken. We will be held accountable, as is Joe, for the day-to-day operations. Because this project is that important to the future of our City."

MAYOR CANNELLA: "Mr. Kilger, will you explain what this interchange will do for the City?"

MR. KILGER: From a quality of life stand point the City is going to continue to grow and just to meet our normal growth needs, we are going to have to improve the configuration of the interchange. From an economic development stand point, the future of the City is the Service/Mitchell area. If we do not improve our ingress and egress it will not reach its maximum capability in terms of Economic Development.

Council having no further questions took the following action:

MOTION: Approve **Resolution No. 2007-88** approving additional work and compensation for Nolte Associates to prepare the design of Phase 1 of the Mitchell Road/Service Road/SR99 Interchange Project to the 65 percent level and amending the FY 2006/07 Budget to appropriate funds.

MOVED: Moved by Vierra /seconded by Lane

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

REPORTS

Councilmembers and City Staff reported on various recent activities including the StanCOG Blueprint meeting held at City Hall on April 12, 2007. Councilmember Phipps reported that he went on a ride-along with Public Safety.

8:34 p.m. – Mayor Cannella convened the Council Meeting to Closed Session.

CLOSED SESSION

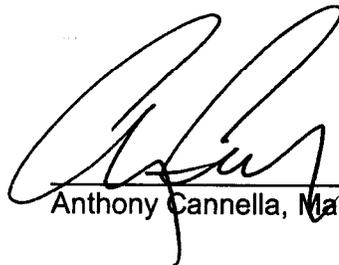
CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Government Code Section 54956.9(a)

Name of Case: Randleman v. Decker and City of Ceres, Stanislaus County Superior Court
Case No. 613210

8:50 p.m. – The meeting reconvened in open session with nothing to report.

There being no further business, Mayor Cannella adjourned to the City Council Study Session to be held on May 10, 2007 at 5:30 p.m. in the City Council Chambers, 2210 Magnolia St.



Anthony Cannella, Mayor

ATTEST:



Cindy Heidorn, CMC
Deputy City Clerk