

NOTE: These minutes are subject to Council approval and are not verbatim; however, tapes are available for public review.

**MINUTES OF THE ALBANY CITY COUNCIL**  
**IN REGULAR SESSION, 1000 SAN PABLO AVENUE**  
**TUESDAY, APRIL 6, 2004**

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**6:40 p.m.**

Executive Session pursuant to Government Code Section 54956.9 to discuss existing litigation:

City of Albany v. Don Domer, et al (Childcare Center)  
City of Albany v. Dickman Norse, et al (Community Center)

**7:00 p.m.**

Work session to review and discuss options for the Measure F Police & Fire Stations & City Hall Renovation Project.

**8:00 p.m.**

Mayor Ely who led the Pledge of Allegiance to the Flag called the regular meeting of the Albany City Council to order on the above date.

**ROLL CALL**

Present: Council Members Good, Maris, Okawachi, Thomsen & Mayor Ely  
Absent: None

**STAFF PRESENT**

Beth Pollard, City Administrator; Jacqueline Bucholz, City Clerk; Ann Chaney, Community Development Director; Melinda Chinn, Recreation & Community Services Director; Dave Dowsell, Planning Manager; John Medlock, Maintenance Supervisor.

**3. ANNOUNCEMENT OF EXECUTIVE SESSION ACTION**

Mayor Ely announced that direction was given to staff regarding the Executive Session.

**4. CONSENT CALENDAR**

(Consent Calendar items are considered to be routine by the City Council and will be enacted by one motion. By approval of the Consent Calendar, the staff recommendations will be adopted. There will be no separate discussion on these items unless a Council Member or a member of the audience requests removal of the items from the Consent Calendar.)

**4-1.** City Council minutes, March 15, 2004.

Staff recommendation: Approve.

**4-2.** a. Ratification of City of Albany net payroll in the amount of \$152,307.66; taxes, benefits & withholdings in the amount of \$151,123.06. Total payroll in the amount of \$303,430.72. Payroll period. 03/19/04.

b. Ratification of Albany Municipal Services JPA net payroll in the amount of \$34,980.25; taxes, benefits & withholdings in the amount of \$33,406.28. Total payroll in the amount of \$68,386.53; Payroll period: 03/19/04.

Staff recommendation: Ratify.

**4-3.** a. Ratification of bills, claims & demands against the City of Albany in the amount of \$262,618.83. Period: March 26, 2004.

b. Ratification of bills, claims & demands against the City of Albany in the amount of \$1,320.02. Period: March 26, 2004.

c. Ratification of bills, claims & demands against the City of Albany in the amount of \$130,611.75. Period: April 2, 2004.  
(File #300-40)

Staff recommendation: Ratify.

**4-4.** Ratification of pension payments in the amount of \$105,622.89 for the month of March, 2004.

Staff recommendation: Ratify.

**4-5.** Consideration of Claim #AL474; Rhetta Moise v. City.  
(File #170-60)

Staff recommendation: Reject Claim #AL474 and authorize the City Clerk to send out the appropriate rejection letter.

**4. CONSENT CALENDAR**

- 4-6.** Resolution #04-12 – A Resolution of the Albany City Council Authorizing the City Administrator to Enter into a Contract with Design, Community & Environment (DC&E) to Prepare an Environmental Document for Marin Avenue Reconfiguration Project.  
(File #600-30)

Staff recommendation: Approve Resolution #04-12 and approve the contract with DC&E in an amount not to exceed \$34,487.

- 4-7.** a. Resolution #04-13 – A Resolution of the Albany City Council Directing the Filing of the Landscaping & Lighting Assessment District Annual Report (Assessment District No. 1988-1)  
(File #360-20)

b. Resolution #04-14 – A Resolution of the Albany City Council Directing the Filing of the Landscaping & Lighting Assessment District Annual Report (Assessment District No. 1996-1)  
(File #360-60)

Staff recommendation: Approve Resolutions Nos. 04-13 & 04-14.

- 4-8.** Proclamation proclaiming May 22<sup>nd</sup> & 23<sup>rd</sup>, 2004, as “Relay for Life Weekend” in the City of Albany.  
(File #610-50)

Staff recommendation: Information.

- 4-9.** Award of Contract #04-01 for 2004 Traffic Calming Projects.  
(File #600-30)

Staff recommendation: Authorize the City Administrator to execute Contract #04-01 with AJW Construction in the amount of \$145,699.50 for the 2004 Traffic Calming Project.

- 4-10.** Ordinance #04-01 – An Ordinance of the Albany City Council Amending Chapter 15 of the Code of the City of Albany Entitled “Sewers and Sanitation” Pertaining to Solid Waste and Recycling. Second Reading.  
(File #100-95)

Staff recommendation: Approve Ordinance #04-01 for Second Reading-Pass-to-Print.

- 4-11.** Call for bids and award of Contract for Interior Repainting of the Albany Community Center.  
(File #600-10)

Staff recommendation: Authorize the City Clerk to invite bids, and authorize the City Administrator to award a contract for repainting of specific areas of the Albany Community Center interior.

Mayor Ely asked if anyone would like to remove an item from the Consent Calendar. Council Member Maris removed Items 4-8 and 4-9 for discussion.

Ms. Joanne Manson asked to speak on the March 1<sup>st</sup> Council Minutes and was informed that this should be discussed under Good of the City/Public Forum. Mayor Ely stated that he would move the order of Good of the City/Public Forum to be after the Consent Calendar so that she would not have to wait all evening, as she had her children with her.

**4-8. Relay for Life Proclamation**

Council Member Maris noted that he has been the Captain for Relay for Life for the past 5 years and would welcome a co-captain. Council Member Maris stated this is a great opportunity to meet citizens and other elected officials. Council Maris reported that last year \$80,000 was raised and would encourage everyone to participate in this worthwhile event.

**4-9 Award of Contract #04-01**

Council Member Maris asked a question regarding Manor Way and the Project Manager responded that the signs need to be relocated and the driveways be ADA compliant.

Council Member Maris noted that the work at the intersection of Pomona/Washington is very effective and thanked staff for getting the work done.

**MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Maris to approve the Consent Calendar as submitted.

AYES: Council Members Good, Maris, Okawachi, Thomsen & Mayor Ely

NOES: None

ABSENT: None

Motion carried and so ordered.

**9. GOOD OF THE CITY/PUBLIC FORUM**

For persons desiring to address the City Council on an item that is not on the agenda please note that City policy limits each speaker to five (5) minutes. The Brown Act limits the Council's ability to take and/or discuss items that are not on the agenda; therefore, such items are normally referred to staff for comment or to a future agenda.

Mayor Ely opened the Good of the City/Public Forum and asked if anyone would like to speak.

## 9. GOOD OF THE CITY/PUBLIC FORUM

Ms. Joanne Manson stated that she would like to correct the minutes of March 1<sup>st</sup> and have her comments included, as follows: That she was representing the Village Residents Association, and spoke on the affordability issues in concert with what staff raised and also submitted comments to the University in concert with staff's comments.

The City Clerk noted that the March 1<sup>st</sup> minutes couldn't be corrected, as they have already been approved; however, the comments would be noted in this week's minutes.

There being no one else wishing to speak Mayor Ely closed the Good of the City/Public Forum.

## 5. UNFINISHED BUSINESS

### 5-1. Use of Recycled Water for Irrigation at Ocean View Park

The City Clerk noted that this item was continued to the April 19<sup>th</sup> Council meeting.

### 5-2. Key Route Blvd. Median (File #820-20)

The Recreation & Community (R&CS) Director stated that the Albany Rotary Club submitted conceptual drawings for a proposed Rotary Centennial Project to the Park & Recreation Commission. This project is part of a collaborative effort between the Albany Foundation and the Albany Rotary Club to beautify the Key Route Median Strip. This project will be constructed on the southern end of the median strip between Thousand Oaks and Brighton, which is owned by the Albany Unified School District.

If this project is approved, the Albany Rotary Club plans to complete the project during the summer of 2004 and members of the Club would do all construction work on a volunteer basis. As with other volunteer projects of this type, workers would sign a hold harmless agreement.

The financial impact includes the time that City staff may spend working with the Rotary Club during the planning and construction. The estimated construction costs for the project are \$3,000 and will be the responsibility of the Rotary Club.

The median strip on which this project will be located is owned by the Albany Unified School District and have indicated that they wish to maintain any improvements on District property. This will be formalized in discussions with the District.

Mr. Robert Wolf, Rotary Club, stated that the Rotary Club wants to leave their mark on the town and will be meeting with City officials to go over the plans. Mr. Wolf commented that this will be a nice visual interest and will have a plaque at the area.

Council Member Maris asked what would happen to the existing sidewalks and Mr. Wolf responded that there are no sidewalks at this median and is a planted area.

### **MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Maris to approve the recommendation made by the Albany Park & Recreation Commission to

## **5-2. Key Route Blvd. Median**

approve, in concept, the Rotary Centennial Project on the Key Route Boulevard Median Strip at Thousand Oaks, as proposed by the Albany Rotary Club. Directed staff to work with the Rotary Club to complete any necessary requirements, as specified in the policies for volunteer capital projects or gifts to the City, as adopted by the Albany City Council on March 1, 2004.

AYES: Council Members Good, Maris, Okawachi, Thomsen & Mayor Ely

NOES: None

ABSENT: None

Motion carried and so ordered.

## **6. PUBLIC HEARING**

### **6-1. Appeal of Planning & Zoning Commission Approval of Two (2) New Single-Family Residences on Vacant Lots at 701 & 703 Hillside Avenue**

(File #820-20)

The Associate Planner reported that an application has been filed requesting approval to build two new residences, approximately 5,290 square foot each, on two currently vacant lots at the northern end of Hillside Avenue on the west side of Albany Hill. The applicant also requested a Conditional Use Permit to allow a reduction in the front yard setback from 15 feet to 5 feet, which is allowed in the Hillside Combining District.

The Planning & Zoning (P&Z) Commission heard this item and after a public hearing voted to approve the Mitigated Negative Declaration and the application for Design Review and Conditional Use Permit, subject to the findings and conditions of approval as listed in the January 22, 2004 Notice of Action.

On February 9, 2004, an appeal was filed on the basis of: Insufficient consideration of the lack of turn-around space for service vehicles (specifically Waste Management vehicles) and lack of consideration of the impacts on adjacent properties from removing large existing trees on the site.

The Associate Planner noted that staff acknowledges that a turn-around would be beneficial at the end of Hillside Avenue. However, does not believe that the turning movements of the Waste Management trucks and other large vehicles and the negative impacts that occur because of the dead-end street are items that can be solved by this development proposal.

The second basis for the appeal deals with the removal of trees and staff recommends that the City Council amend the P&Z Commission's approval to include the following Condition of Approval: F-19: Prior to the issuance of a building permit, the applicant shall provide the report of a certified arborist, subject to the approval of Planning staff and the City Engineer. The arborist's report shall review the existing trees and provide recommendations to ensure that the removal of the trees will not impact adjoining lots. The applicant shall be required to adhere to the recommendations of the arborist during the removal process.

**6-1. Appeal of Planning & Zoning Commission's Approval of Two (2) New Single-Family Residences on Vacant Lots at 701 & 703 Hillside Avenue.**

The Associate Planner stated that staff believes with the additional Condition of Approval the second appeal basis would be adequately addressed.

Mayor Ely opened the public hearing.

Mr. Mike Wallace, 715 Hillside Avenue, appellant, stated that the appeal is based on 1) Insufficient consideration of the lack of turn-around space for service vehicles (specifically Waste Management of Alameda County vehicles). 2) Lack of consideration of the impacts on adjacent properties from removing large existing trees on the site.

Mr. Wallace noted that he just completed a landscaping project on his property at the vacant lot and does not want any damage due to the turn-around problem. Mr. Wallace commented that Mr. Fredericks plans show that the garage door will be where the existing hillside is now and does not think the damage will be confined to just hitting the garage door.

Mr. Wallace stated that he has heard that in some cities the garbage company uses smaller trucks, but as he understands it Albany has just negotiated a new contract with Waste Management and they will probably be using larger trucks, which will further exacerbate the problem.

Mr. Wallace pointed out that many residents of Hillside do not use their off street parking space.

Mr. Frederick, applicant, stated it is clear that there is no turn around space in this area, but does not believe that his application should be denied because of this problem. Mr. Fredericks noted that 5 out of the 7 residents all have smaller setbacks and is common on this street.

Mr. Frederick noted that City staff told him that it is preferable to go for a small setback to keep the cut low in the hillside. The Planning Commission told him that his plan is no worse and maybe a little better than what is there now.

Mr. Frederick reiterated that if he changes his plan he will be providing the turn around for the entire street and that is not right, as he should not have to bear the brunt of this problem.

Mr. Frederick commented on the issue of the removal of the trees and noted that he has had several arborists look at the project and all have said there is absolutely no problem with removing the trees.

Mr. Frederick stated that he has met with most of the neighbors regarding this project and believes he has a compromise that is agreed upon by most of the neighbors.

Mr. Frederick introduced his structural engineer who went over the plans and noted that there will be a better condition in this area once the structures are built.

The structural engineer noted that cutting the trees should not be a problem and he has had experience in other cities and the trees were successfully removed.

At this time, the City Council asked many questions regarding the plans with particular attention to the grade line that the plans show. Council Member Thomsen asked what the difference would be if the building was moved back 5' and the engineer stated that the retaining wall would be taller.

**6-1. Appeal of Planning & Zoning Commission's Approval of Two (2) New Single-Family Residences on Vacant Lots at 701 & 703 Hillside Avenue**

Council Member Okawachi noted that she believes a lot of thought has been given to this project and would like to know if Waste Management could use smaller trucks in this area.

Mayor Ely stated that he would like to take each issue of the appeal separately and have Council vote on it.

1: Issue of the removal of trees. Council Member Thomsen stated that she did not believe there would be a problem, as the applicant has had three arborist look at the situation.

Council Member Good indicated he had no problem with this portion of the appeal

Mayor Ely noted that the City does not have a tree ordinance regarding trees on private property.

Council did state that they agreed with staff that an arborist report does need to be filed with the City.

Council consensus: No problem with this portion of the appeal.

2. Turn Around: Council Member Good stated that he does not want to make a decision on a grade line that might be wrong. Council Member Good noted that he believes a structure should be an improvement and not make the situation worse.

Council Member Maris stated that the grade line looks smaller on the drawing and that the garage door will be further back. The Associate Planner stated the setback is 5' from the property line.

Council Member Thomsen stated that moving the structure back 5' is not that significant and would allow for extra room to turn around. Council Member Thomsen expressed concern about liability to the City and Waste Management if damage is done.

Council Member Good agreed noting that he believes this is a sensible thing to do to setback the structure to give more room.

The applicant's engineer asked if this would be applicable to both lots or just one and noted this will be costly to the applicant. The engineer stated that when a cut is made into a hillside it must conform to the property line and there will still be a retaining wall at the sides of the property.

**MOTION:**

Moved by Council Member Thomsen, seconded by Council Member Good to approve the application to build a single-family residence at 703 Hillside with the condition of staff to provide a written letter from a certified arborist that the removal of trees will not present a problem. The single-family residence at 701 Hillside will have an additional 5' set back

**ON THE QUESTION:**

Mr. Frederick stated that he does not have a problem with the first part of the motion; however, on the second part there is no request that the driveway be used as a turn around. Mr. Frederick noted that the Planning Department does not have a solution to this problem right now, but believes they will. Also, when more development is built this property will be in the middle of the road.

**5-2. Appeal of Planning & Zoning Commission's Approval of Two (2) New Single-Family Residences on Vacant Lots at 701 & 703 Hillside Avenue**

Mr. Frederick again reiterated his concern that he should not have to bear the burden of this problem.

Mayor Ely reminded Mr. Frederick that most of the residents of Albany have to conform to a 15' setback and that the Council is not trying to penalize him but trying to solve this problem.

The Engineer noted that when the building is moved back there will be a visible retaining wall and the more you move back the structure the bigger the retaining wall becomes.

The Planning Manager noted that the applicant is not being asked to move back the structure but to cut 5' off the existing garage.

Mr. Wallace stated that if this is done his property now becomes the focus of the turn around and noted that his property does not have a structure but landscaping and believes it would get a lot of damage.

Ms. Alyssa Fontelli stated that by changing the garage it makes it ok to use the driveway and is confused.

Council Member Good noted that he uses driveways to turn around all the time as do most people.

Council Member Thomsen stated that the Council is not saying this is a turn around on the property and is being very generous with the setback.

Mayor Ely stated that the City does not want to be facing a problem with future owners of the property and then it becomes the City's fault because it allowed the situation to occur. Mayor Ely noted that the Council is using due diligence in this matter.

Council Member Okawachi noted that she prefers to uphold the decision of the Planning & Zoning Commission.

Council Member Maris stated he does not know what is magic about the extra 5' setback and noted this application has been through the Planning Commission.

Mr. Wallace stated that it was not his intent to push the project back and would like to see smaller garbage trucks in this area or use the other vacant lot for the turn around and believes the City should purchase the vacant lot for this use.

Mayor Ely responded the City had an opportunity to purchase that land but the price was too excessive.

**VOTE ON THE MOTION:**

AYES: Council Members Good & Thomsen

NOES: Council Members Maris, Okawachi & Mayor Ely ABSENT: None

Motion Died

**MOTION:**

Moved by Council Member Okawachi, seconded by Council Member Maris to uphold the decision of the Planning & Zoning Commission and to add a condition that a written report be submitted by a certified arborist regarding the removal of the trees.

**6-1. Appeal of Planning & Zoning Commission’s Approval of Two (2) New Single-Family Residences on Vacant Lots at 701 & 703 Hillside Avenue**

**VOTE ON THE MOTION:**

AYES: Council Members Maris, Okawachi & Mayor Ely

NOES: Council Members Good & Thomsen                      ABSENT: None

Motion carried and so ordered.

10:35 p.m. – Council Member Good left the meeting.

**7. UNFINISHED BUSINESS**

**7-1. 2004 Work Plan and Status Report**

The City Administrator reported that submitted for Council review is the first quarter status report on the 2004 Work Plan and significant items completed or underway include: Essential completion of the Memorial Park Phase I Improvement Project. Creation of a Parks, Recreation and Open Space Master Plan, scheduled to be presented to the Council in June, to prioritize needs, facilities and funding. Consideration of allocation of funds for Measure F capital improvement projects, scheduled for Council in July 2004. Prior to that decision, presentation of Commission and staff recommended priorities for Council review, questions and comment. General Plan designations and zoning for San Pablo Avenue, Kains and Adams Streets. Expansion of information on City web site.

The City Administrator stated that there are significant City projects, which staff recommends be added to the work plan, as follows: Substantial changes in solid waste and recycling collection services starting in May 2004. Monitor and review proposed El Cerrito Plaza (southeast parking lot area) project.

Council Member Maris stated that regarding revenues, page 5, he would like to report that Albany has exceeded the ballot signatures needed for the League of California Cities ballot measure.

The City Administrator commented on the Park & Recreation Master Plan process and noted that the City needs to make sure that enough time is spent on the Master Plan and allocation of funds for Measure F.

Council Member Maris stated that he appreciates staff work on this project. Mayor Ely spoke on the City Hall remodel and getting a building with a good working environment.

**8. OTHER BUSINESS/ANNOUNCEMENT OF EVENTS**

**9. GOOD OF THE CITY/PUBLIC FORUM**

Mayor Ely noted that Good of the City/Public Forum was held earlier in the evening.

**10. ADJOURNMENT**

10:40 p.m. – There being no further business before the City Council it was moved and seconded to adjourn the meeting.

Minutes submitted by Jacqueline L. Bucholz, CMC, City Clerk.

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JON ELY  
MAYOR

ATTEST:

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JACQUELINE L. BUCHOLZ, CMC  
CITY CLERK