

Jackson City Council
Minutes
Regular Meeting of November 14, 2005

COUNCIL MEMBERS PRESENT:

Al Nunes
RosaLee Pryor Escamilla, Mayor
Marilyn Lewis
Drew Stidger
Andrew Rodriguez, Vice-Mayor

CITY STAFF PRESENT:

Michael Daly, City Manager
Tom Gibson, City Attorney
Scott Morrison, Police Chief
Mark Morton, Police Chief
Gisele Cangelosi, City Clerk

COUNCIL MEMBERS ABSENT:

None

Mayor Pryor Escamilla called the meeting to order at 7:00 p.m.

1. APPROVAL OF AGENDA.

Mayor Pryor amended tonight's agenda to remove the following two agenda items:

1. Agenda Item #7 Request from Bud Lewis and Ken Berry to Intervene in City of Jackson v. Amador Water Agency (No. 05CV03793).
2. Agenda Item #9 Closed Session. Conference with Legal Counsel – Existing Litigation. Pursuant to Government Code 54956.9(a): City of Jackson v. Amador Water Agency.

Mayor Pryor explained the City of Jackson has filed a dismissal of its lawsuit against the Amador Water Agency relating to the August 29, 2005 Certification of the Final Environmental Impact Report Amador for the Amador Transmission Project. She stated both agencies signed a settlement agreement and a mutual release this morning following the signing of an amendment to the City's Agreement with Amador Water Agency concerning water delivery and service and the Intergovernmental Collaborative Agreement respecting Water Supply, Wastewater Treatment and Disposal and Other Related Issues. She stated all three of these documents are now public information and are available.

**Moved by Councilmember Nunes, seconded by Councilmember Stidger, and
unanimously carried to approve the City Council Agenda dated November 14, 2005 as
amended.**

2. PUBLIC MATTERS NOT ON THE AGENDA.

Bill Condrashoff, Jackson, stated his concerns for the record:

1. The contracts have been kept secret and that the public wanted to comment on that matter tonight because there were still a lot of unanswered questions.
2. Why that meeting regarding litigation held in closed session not in the open session.
3. Why the City Manager told him the next morning there was no reportable action, especially since the Water Agency signed the two agreements, he inquired if there was something they were hiding. He felt there was nothing the City Council would lose if the City Manager had reported the information and or action to the public.
4. The public tried to keep the City Council informed, provided the best information available on what was going on with the creek. Their group provided information to the City, they got the City

to act and the City had the cards in their hand and it was his opinion the City used the information to renegotiate a water contract with AWA and completely dropped the ball on keeping water in the creeks.

Mayor Pryor stated the City Council relies on the advice from legal counsel and the City was advised until the Water Agency had actually ratified the settlement agreement that the information was confidential under the guidelines of the Government Code for meeting conduct. She stated the City Council did not want the Water Agency to make their decisions based on hearsay information. The information needed to be submitted through the right channels legally to let the Water Agency make their decision and go forward.

City Attorney Gibson stated under the Brown Act, the discussion and action taken in the closed session at the last City Council meeting was not a reportable action, however, the City Council could have collectively chose to report the action before the conditions were met and the final documents signed by the parties. Therefore it did not actually become a reportable action until the final documents were signed. The action taken would be considered confidential information unless the City Council had decided to make it public. Legally in terms as to why it would not be reported would be, if the City agreed to dismiss the litigation on certain conditions it would affect the bargaining position if those conditions were not met and it could adversely affect litigation if still litigating.

Ken Berry, Jackson, stated in the actual dismissal filed with the court, there was no other party mentioned and was dismissed entirely by the City Attorney. He inquired why there was a settlement since the City dismissed lawsuit. He stated the settlement agreement mentions the Brown Act and inquired if the City was concerned about being sued by the Water Agency for a Brown Act violation.

Mayor Pryor stated the Brown Act was not discussed. Councilmember Lewis stated it was discussed, it was one of the reason it was dismissed. She stated there were two violations of the Brown Act filed against the City by the Water Agency's attorney. She stated for the record she has since filed a violation of the Brown Act against this Council for not disclosing that to the public.

City Attorney Gibson reminded the City Council that there has been a threat of litigation against the City with regards to the action taken at the last City Council meeting. He requested the Council bear that in mind and requested comments be kept at a minimum. He stated there was a signed settlement agreement and available at City Hall. One of the terms in the settlement agreement said the filing of the dismissal arose from the settlement agreement.

Mr. Berry inquired how the Brown Act got into the settlement agreement. City Attorney Gibson stated it was specifically referenced as part of the Water Agency's release of claims and a mutual release of claims as part of the agreement. Mr. Berry thanked the City Attorney for establishing there was a connection, because on September 28 immediately before the City Council adjourned into closed session, City Attorney Siprelle stated that it was not necessary since everything has been aired publicly at this point. So the entire discussion about a Brown Act violation charge from the Water Agency was just a sham, which the City may or may not have been in on.

David Evitt, Sutter Creek, reiterated Mr. Condrashoff's concerns. He made mention of the signed petition that was displayed at the October 24 City Council meeting requesting the City Council not do

what they've done. He did not understand how the City Council would change their minds about keeping water in our creeks and become supporters of the Amador Transmission Project.

Councilmember Stidger stated his opinion has not changed and that some point in time everyone has to look at the data and determine that they have to trust in that data. Bottom line PHAW trusts Bill Condrashoff's data, the Water Agency trusts their data and the City had to make a determination on which way to go forward and he chose to trust in the Water Agency's data and the FEIR.

Vice-Mayor Rodriguez stated since the last City Council meeting he talked to many of the citizens of Jackson and found out the pipeline was by far not the most popular project every done. There are people for and against the project, but what he found out was that support of the lawsuit was virtually nonexistent. He stated it was his opinion that the majority of the citizens that are in favor of the lawsuit are at this meeting and he virtually met no one in favor of continuing the lawsuit. He felt the Water Agency's numbers were more accurate than PHAW numbers and the City Council does not have to be experts, they have to rely on the Water Agency because they are the experts and not some outside corporation.

Councilmember Lewis stated she did not have a clue why the City Council dismissed the lawsuit, the City did not get anything and lost what they got in 1992 regarding water service area. Mayor Pryor stated that was not accurate information.

Councilmember Lewis stated for the record she did not see a copy of the settlement agreement until today, the Mayor signed it and nobody on this Council saw that agreement, unless there was a secret meeting and she was not invited. As was stated there was no reportable action at both the meetings held by the City Council and the Water Agency and suddenly today the settlement was signed today. She filed her Brown Act violation last Thursday against this Council because she felt the City had violated the Brown Act at the last four meetings. She wanted to know when the City Council read the settlement agreement, she wanted to see the signatures or a vote on the settlement agreement and where was the public record for the discussion the settlement. She felt there was a misconception by the news media that the City's suit was against the pipeline. Where in fact, it was to mitigate the water being taken from our creeks, not put back in our creeks as stated by the City Attorney. The mitigation was nowhere to be found in the settlement agreement.

Mayor Pryor stated that was correct, it was not in the settlement agreement because the way the motion was made, it was not required of the Water Agency. She stated in order for the City to settle, the settlement offer was contingent on their signing the City's version of the Water Delivery and Service Agreement and the Intergovernmental Collaborative Agreement. Those were the only requirements put upon them by this City Council, the way the motion was stated, seconded and approved.

Bill Orescan, 315 Court Street, stated his concern was that the cities in this county are pushing development, which pushes the other agencies to supply more water, more wastewater treatment and highways.

City Manager Daly explained the City implemented a growth limitation ordinance last year that evaluates existing resources and any developer interested in developing in the City must go through an application process to actually submit an application for a project based on the number of available

capacity remaining in our infrastructure.

Jack Georgette, Jackson, inquired if it was not for the leak in the canal, would the City of Jackson have water in the creeks.

Councilmember Nunes stated it was his personal opinion there would not be water in the creeks in July through September if the canal was not leaking.

Vice-Mayor Rodriguez stated he spoke with a gentlemen that has lived in Jackson for 80 years and as told the creeks have always gone dry during the summer, after all this is California.

Shirley Dajnowski, Jackson, stated it was her understanding the City of Jackson sued the Amador Water Agency to keep the water in the creek. So the City has now signed an agreement that does not state in plain language that they will guarantee water in the creek, so what has the City accomplished. She felt the City has spent a lot of money raising the ire of the entire town.

Mayor Pryor and Vice-Mayor both agreed they did not want to sue in the first place and that the City did not accomplish anything. Mayor Pryor did however feel it was a positive thing the there now is a signed Water Delivery and Service Agreement and the Intergovernmental Collaborative Agreement.

Suzanne Plasse, Jackson, stated part of the lawsuit was because the AWA was violating CEQA by not providing mitigations in their EIR. She inquired if the AWA changed that and provided mitigation in their EIR that helped the City Council to change their vote.

Mayor Pryor stated the City Council had legal advice saying it would be very difficult to prevail in a legal action because of the way AWA had responded in their response to the EIR concerns.

Sandi Soracco, Jackson, stated she was disappointed in the action taken by the City Council and that this would destroy our county.

Illus Ball, 20 French Bar Road, stated he has lived at that location for 53 years and for the first 25 years the creek went dry every summer.

3. CONSENT CALENDAR

- a. Approval of Minutes of May 9, 2005, meeting.
- b. Approval of Expenditure Report for the period of November.
- c. Approval of Salary related items for October in the amount of \$ 259,660.40.
- d. Accept August 2005 and September, 2005 Treasurer's Report and Sales Tax Report.
- e. Receive Jackson Police Department Monthly Report.
- f. Receive Jackson Fire Department Monthly Report.
- g. Receive Building Department Monthly Reports for October 2005.
- h. Adopt Resolution – Acceptance of Lots A, B and #72 from Woodside Goldridge, Inc.
- i. Adopt Resolution – Kennedy Meadows Development, Irrevocable Offers of Dedication.
- j. Approve of Claim for Damage – Holler.

Moved by Councilmember Lewis, seconded by Councilmember Nunes, and unanimously carried to approve the Consent Calendar as presented except for:

1. **Councilmember Lewis dissenting on the approval of Check 223812 in the amount of \$122,853.99 for Amador Water Agency.**
2. **Councilmember Stidger abstained on the approval of Check 223813 in the amount of \$21,309.22 for Amador County Sheriff Office and Check 223916 in the amount of \$10.00 for Christy Stidger.**

4. ADMINISTRATIVE REPORTS.

Fire Chief Morton reported on the following items:

1. In the month of October 2005 the Jackson Fire Department responded to 45 calls. A total of 12 days out of 31 days with no calls. There were 18 calls outside the City limits with is the Automatic Aid to Amador Fire Protection District of which 4 were medical aid, 10 were vehicle accidents and 4 were mutual aid fire calls that are reimbursed by AFPD.
2. Earlier this month he and Assistant Chief Fishback and Assistant Chief Tremaine took a field trip down to Westates in Woodland for the prebuild meeting for the 2005 OES Type 1 Fire Engine. The new engine should be ready for delivery around June or July 2006.

Police Chief Morrison reported on the following items:

1. The Jackson Lions Annual Halloween Parade went well.
2. Staff executed a drug arrest under the Safeway Bridge after three of the officers conducted a stakeout on three know drug offenders.
3. Community Service Officer Collins observed two individuals in the parking garage trying to steal a vehicle and both suspects were arrested.
4. Vandalism in the Catholic Cemetery, six tombs stones were knocked over and a couple were totally destroyed.
5. An auto and pedestrian collision at Broadway and Highway 88 resulting in minor injuries.

City Manager Daly reported on the following items:

1. Contractor on Court and Water paving project is finishing up.
2. Will be attending a League of Cities legislative briefing this Wednesday to hear about all the new bills passed and going into effect on January 1, 2006 and a preview of the next year's State Budget.
3. The Planning Commission at the next meeting should be finishing their discussion Zoning Ordinance amendments they been working on. Their recommendations should be presented to the City Council in December.

DISCUSSION CALENDAR

5. Request from Amador Tuolumne Community Action Agency for Emergency Grant for Transitional Shelter.

City Manager Daly reported the Amador-Tuolumne Community Action Agency (ATCAA) owns and operates the transitional shelter located on Broadway in Jackson. In 1999, the City of Jackson secured a Community Development Block Grant to assist ATCAA with the purchase and rehabilitation of this facility. The shelter provides a much needed service for the area and is well managed, ensuring that some of the issues that can be associated with shelters do not occur at this location.

A significant portion of the shelter's annual operating expenses are ordinarily funded by the Federal

Emergency Shelter Grant program. This year, ATCAA was not selected for this grant. They have succeeded in securing funding for staffing, however, they still face a budget shortfall and have requested an emergency grant from the City for \$10,000. The attached letter from Shelly Hance details the funding predicament for the shelter this year.

In the past decade, the City has received three grants from the CDBG program to provide housing rehabilitation loans to low and moderate income residents. When these loans are re-paid, the funds are placed in a "program income" account that can only be used for CDBG eligible activities. The shelter services provided by ATCAA qualify as an eligible program as a public service activity. The City has a balance of approximately \$305,000 in the CDBG Program Income fund.

CDBG regulations have changed since the City provided a similar emergency grant to Operation Care in 2001. These new regulations will require the City to formally amend its Program Income Reuse Plan to accommodate this grant request. In the meantime, ATCAA is asking for a commitment from the City for this funding in order to leverage the City's grant to secure other outside funding.

Moved by Vice-Mayor Rodriguez, seconded by Councilmember Lewis, and unanimously carried to approve conceptually approving a grant of \$10,000 to the Amador-Tuolumne Community Action Agency from the City's Community Development Block Grant (CDBG) Program Income fund to meet an emergency shortfall in operational funding for the transitional shelter in Jackson.

6. Public Hearing – Application for Rezone from Public/Institutional (P) to Light Commercial (C-1) with a Planned Development (PD) Overlay, 975 Broadway (APN 020-410-012).
City Manager Daly stated the applicants are requesting a rezone of the property located at 975 Broadway from Institutional to Limited Commercial (C-1) to accommodate more variety of uses. The subject property is currently utilized as a church.

There are a number of properties within the City of Jackson that are designated on the existing Zoning Map as Public/Institutional. However, the City of Jackson Municipal Code has no description for allowable uses in the Public/Institutional zone. To date staff has interpreted Public/Institutional as allowing uses such as churches, government offices, libraries, museums, and schools.

The proposed Draft Development Code, which the Planning Commission is currently reviewing, allows for churches to locate in the Historic Commercial (HC), Commercial (C), and Public (P) zones. Until a new zoning/development code is in place, it is difficult to advise the Emmanuel Baptist Church as to what additional uses are allowed on the site.

Additionally, the church property is in the process of being sold and it is difficult for staff to advise the potential buyer as to allowed uses since a description of Public/Institutional does not exist in the current Zoning Code. Rezoning the property to Limited Commercial (C-1) would not cause the existing church use to be non-conforming. Municipal Code Section 17.020.020, Permitted Uses in the Limited Commercial Zone, allows for any permitted use in the residential zones (R-1 through R-4). Section 17.018.020, Permitted Uses in the R-4 zone, expressly allows for churches.

The Planning Commission reviewed this item at their October 17, 2005, meeting and recommended the City Council approve the rezone request with the addition of the Planned Unit Development

(PUD) overlay. The PUD overlay would require Planning Commission discretionary review to change the existing use. The Church is currently in escrow with a local physician who intends to develop the site with medical offices. This change in use from a church to medical offices would require a PUD amendment.

The Planning Commission has recommended that the City Council take the following actions on the proposed rezone:

1. Approve a Negative Declaration and instruct Staff to file a Notice of Determination;
2. Determine that the project will have a de minimus effect on fish and wildlife and instruct Staff to file a Certificate of Fee Exemption; and
3. Adopt Resolution No. 2005-52 approving a rezone from Institutional to Limited Commercial (C-1) with a Planned Unit Development Overlay for Assessors Parcel Number 20-410-012 based on the Findings in this report.

Mayor Pryor opened the public hearing. Hearing no comment from the public, Mayor Pryor closed the public hearing.

Mayor Pryor inquired if the applicant was advised that there was to be continued public access along the creek for the future envisioned trail system and wanted to know if that provision was protected. City Manager Daly stated staff would make note of that concern and put something in their file so that when this property comes up for a public hearing for any use, it would be included in the conditions of approval.

Councilmember Nunes stated a sewer line run along the creek and the City has always had access to that line and inquired if the deed would state the City need adequate access to take care of the sewer line. City Manager Daly stated it would be reviewed by the Site Review Committee during any review of proposed development at that site. The committee looks for City easements that might be required or making sure existing easements are protected.

Councilmember Rodriguez inquired if there had been any objections to this rezone request. City Manager Daly was not aware of any objections.

Moved by Councilmember Nunes, seconded by Councilmember Rodriguez, and unanimously carried to approve Adopt Resolution No. 2005-52 approving a Rezone from Institutional to Limited Commercial (C-1) with a Planned Unit Development Overlay for Assessors Parcel Number 20-410-012 based on the Findings in this report.

- 1. Approve a Negative Declaration and instruct Staff to file a Notice of Determination;**
- 2. Determine that the project will have a de minimus effect on fish and wildlife and instruct Staff to file a Certificate of Fee Exemption.**

8. COUNCIL REPORTS.

Councilmember Stidger reported he would be attending the League of Cities legislative briefing this Wednesday with the City Manager.

Councilmember Lewis reported she had attended Amador County Air District Board meeting. In the

last four years the Board has used \$112,000.46 to balance their budget and now the Board has approved the purchase of \$9,000 hybrid vehicle and \$15,000 to Enterprise Rent-A-Car for the 2 vans for the Van Pool Program for the employees of Kirkwood from Sacramento to Kirkwood. She stated Director Jim Harris requested a salary increase from \$55,000 to \$75,000 effective November 1.

Councilmember Nunes reported on the following items:

1. At the last CSRC&D meeting he informed the committee his tenure as Secretary was up and requested they assign that position to another committee member. He stated in the interim he would still serving as Secretary.
2. The two Watershed Coordinators are busy assessing the different watersheds and there have been several meetings. They had a meeting with the Land Trust Conservancy for the four counties within the two watersheds.
3. The Cemetery Committee has been discussing a clean up day.
4. Attended the Amador County Solid Waste Management Regional Agency Local Task Force meeting.

City Manager Daly reminded the City Council that selection of Mayor and Vice Mayor would be held at the second City Council meeting in November.

Mayor Pryor reported on the following items:

1. She and City Manager Daly had a meeting with Jim Harris from Amador County Air District and present conceptually the plans for the walkway project in hopes to get the District to approve some funds to study this project. Councilmember Lewis stated being the City's representative; she would have liked to have been at that meeting. Christmas Delights will be Thanksgiving weekend.

10. ADJOURNMENT

Adjourn: 8:30 p.m.

ATTEST:

Gisele L. Cangelosi, City Clerk

Date Approved: May 8, 2006