

**NOTICE IS HEREBY GIVEN**, that the City Council of the City of Twentynine Palms will hold a CLOSED SESSION on Tuesday, August 12, 2008 at 5:00 p.m. at City Hall, 6136 Adobe Road, Twentynine Palms, to consider the following:

Conference with Legal Counsel-Potential Litigation-Government Code  
Section 54956.9, 3 (three) cases

Conference with Legal Counsel, Existing Litigation  
Dorothea B. Erbacher vs.  
City of Twentynine Palms Planning Commission, Twentynine Palms City Council

Closed Session Pursuant to Government Code Section 54956.8  
Property Acquisition – Conference with Real Property Negotiator  
APN 618-221-01, APN 618-221-04

The City Council adjourned to Closed Session at 5:03 p.m. following roll call. All members were present and following the closed session it was announced there was no action taken.

**REGULAR MEETING  
6136 Adobe Road  
Twentynine Palms, CA 92277  
www.ci.twentynine-palms.ca.us  
Tuesday, August 12, 2008  
6:00 P.M.**

### **MINUTES**

- 1.0 CALL TO ORDER** – Mayor Bernal called the meeting to order at 6:00 p.m.  
**PLEDGE OF ALLEGIANCE** – Councilmember Flock led the Pledge of Allegiance to the Flag.  
**INVOCATION** – Pastor Chris Wagner of Joshua Springs Calvary Church gave the Invocation.  
**ROLL CALL** – The following Councilmember’s were present: Flock, Harris, Klink, Spear and Mayor Bernal.

**Mayor Bernal announced that Item 10.1 would be placed before Item 8.1 on the Agenda.**

### **2.0 SPECIAL RECOGNITION AND PRESENTATIONS**

Mayor Bernal, assisted by Councilmember Klink presented Proclamations to those who assisted in the August 4, 2008 storm events. Proclamations were presented to the Twentynine Palms Public Works Department, Citizen Patrol, Twentynine Palms Fire Department, Town of Yucca Valley Public Works Department, MCAGCC Marines, Clark Construction, San Bernardino County Sheriffs Department, Art Parkers Tractor Service, and Mark Clemons.

### **3.0 ANNOUNCEMENTS**

- 3.1 Mayor Bernal announced that these proceedings will be televised on Cable T.V., Channel 10, as follows: Saturday, August 16, 2008 at 7:00 p.m. and Friday, August 22, 2008 at 5:00 p.m.

### **4.0 PUBLIC COMMENTS**

- 4.1 Paul Smith, Twentynine Palms spoke to the City Council about the Twentynine Palms Band of Mission Indians. He said it would be worthwhile to request correspondence or request that if they do mitigate by acquiring mitigated lands, that those lands be local in the Morongo Basin so that it would preserve the biological diversity of the plant and animal species in the basin. He said a resolution has already been adopted by the Joshua Tree MAC who recommended to the County that they make a local provision for mitigation and prohibit out of area transfers. Mr. Smith also said the Open Space Group will have a meeting on August 13, 2008 to discuss what open space is available in the basin and receive community input to prepare for a program in October to prioritize those areas of land to be preserved.

Mr. Anonymous, Twentynine Palms, talked about the loose sand surface in the City, and he said the Casino is foolhardy.

Nicole Panter, Twentynine Palms, said that she was driving through town at about 1 a.m. and she saw a blinking neon sign and an open building advertising oriental massage. She said that she does not think massage and tattoo parlors, scantily clothed lady barbers and a casino project are going to turn the City into a family friendly gateway City to a National Park. She asked the Council to look at shifting to become the kind of City she believes it can become.

### **5.0 COUNCIL COMMENTS**

Councilmember Klink thanked all of the agencies that helped with the flooding. He said he attended a League of California Cities Desert Mountain meeting in Mammoth Lakes and they talked about housing and building. He said that Jessica's Law was passed and each City needs to look into passing an Ordinance or Resolution. Councilmember Klink sent his condolences to the Swigart Family for the passing of Former City Manager Michael Swigart. Councilmember Klink wished a happy birthday to family members and everyone having a birthday in August.

Mayor Pro Tem Spear said that issues would be addressed regarding Mr. Smith's comments as well as Ms. Panter's concerns.

Councilmember Flock said thank you to all of the agencies who assisted in the cleanup from the flooding, as well as the individuals who contributed, as well as the contributions of the City Manager.

Councilmember Harris also thanked everyone who assisted in the cleanup. He thanked the Marines who helped pull vehicles out of the mud near Smith's Ranch.

Mayor Bernal said that neighbors should always help each other. She thanked everyone for coming out and helping people. She said her heart goes out to those people who cannot live in their house right now due to damage from the storm. Mayor Bernal said that Michael Swigart's memorial service will be on Saturday, August 16, 2008 at 11:00 a.m. at Blessed Sacrament Church. She said that the Mojave Air Quality Management District will be holding a public workshop on August 19-21 and flyers will be available at the reception desk. She said comment cards are available to transmit good and bad comments. She encouraged the public to fill one out and return it to City Hall. Mayor Bernal said that everyone should mark Pioneer Days on their calendars. She said the Desert Trail and the Chamber of Commerce will be providing information about Pioneer Days.

## **6.0 CITY COUNCIL/REDEVELOPMENT AGENCY CONSENT CALENDAR**

All matters listed under the Consent Calendar are to be considered routine by the City Council/Redevelopment Agency and will be enacted by one motion in the form listed. Any item may be removed from the Consent Calendar and considered separately by the City Council under item number 7.0 on the agenda. The public will be given an opportunity to comment on Consent Calendar items prior to the City Council action (roll call vote).

- 6.1 Waive the Reading of Ordinance and Approve the Reading by Title Only  
RECOMMENDATION: The City Council approve the reading by title only of all ordinances and that further reading of such ordinances be waived.
- 6.2 Warrant Register  
RECOMMENDATION: Receive and file register totaling \$307,416.81.
- 6.3 Approval of Minutes  
RECOMMENDATION: The City Council approve the minutes of the July 22, 2008, City Council meeting.
- 6.4 Chamber of Commerce Report- July 2008  
RECOMMENDATION: Receive and file.
- 6.5 Law Enforcement Report - July 2008  
RECOMMENDATION: Receive and file.
- 6.6 Treasurer's Report – June 30, 2008  
RECOMMENDATION: Receive and file.
- 6.7 Approval to Award Contract to D. Webb, in the Amount of \$36,799.00 for the Installation of Tile in Patriotic Hall.  
RECOMMENDATION: The City Council award the Patriotic Hall Tile Project to D. Webb Inc. in the amount of \$36,799.00.
- 6.8 Designation of a Voting and Alternate Delegate for Annual League of California Cities Annual Conference  
RECOMMENDATION: The City Council designates a voting delegate and

an alternate for the League of California Cities Annual Conference September 24-27, 2008, in Long Beach, CA.

6.9 Termination of Flood Emergency  
RECOMMENDATION: The City Council adopt Resolution No. 08-28 ending the emergency status.

6.10 Resolution No. 08-25 Opposing State Budget Decisions That Would Borrow Local Government and Redevelopment and Transportation Funds.  
RECOMMENDATION: The City Council approve Resolution No. 08-25, a Resolution opposing state budget decisions that would borrow local government and redevelopment and transportation funds.

Mayor Pro Tem Spear requested item 6.8 be removed from the Consent Calendar for a discussion regarding who was attending the L.O.C.C. Conference.

On a motion of Councilmember Klink, seconded by Mayor Pro Tem Spear, and carried with a 5-0 roll call vote the balance of the Consent Calendar was approved as submitted.

## **7.0 ITEMS REMOVED FROM CONSENT CALENDAR FOR DISCUSSION OR SEPARATE ACTION AND/OR ADDED AGENDA ITEMS**

6.8 Designation of a Voting and Alternate Delegate for Annual League of California Cities (LOCC) Annual Conference  
RECOMMENDATION: The City Council designates a voting delegate and an alternate for the League of California Cities Annual Conference September 24-27, 2008, in Long Beach, CA.

Mayor Pro Tem Spear asked for clarification about who would be attending the LOCC Annual Conference. On a motion of Mayor Pro Tem Spear, seconded by Councilmember Harris and carried with a 5-0 voice vote, Councilmember Flock was designated Voting Delegate and Councilmember Klink was designated the Alternate Voting Delegate.

## **10.0 LEGISLATIVE /COUNCIL/REDEVELOPMENT**

10.1 Property Improvement Program  
RECOMMENDATION: The RDA Board provides direction for proposals that might receive redevelopment funding.

Frank Spevacek, RSG, gave a power point presentation and staff report to the Redevelopment Agency (RDA) Boardmembers. He said at the July 22, 2008 meeting staff was directed to continue the work they had been doing on the Jelly Donut and Pete's Restaurant proposals in having an agreement prepared for each. The RDA taskforce was given the responsibility of looking at the questionnaire that accompanies each application so that the projects can be further evaluated.

City Attorney Munoz said that the direction from the City Council at the last meeting was to bring back for the RDA's consideration and potential funding a property purchase, Pete's Restaurant and the Jelly Donut. He said that if the RDA does not do something different there is not enough money to do all of the projects. He said if they move forward with the property acquisition there will be no money left for the Jelly Donut or Pete's Restaurant project.

Mr. Spevecek went over the attachment to the staff report that summarized the pending local businesses, property owner, and City proposals. He said what they are seeking from the RDA tonight is 1.) policy direction and policy guidance on the criteria they have looked at, and 2.) specific project recommendations.

Vice Chair Spear made a motion that the loan be restructured for repayment over 4 years vice 2 years. The motion died for lack of a second.

Chair Bernal opened the Public Hearing.

Anna O'Hare, Twentynine Palms, asked if the RDA asked for past tax returns so that they could tell profit loss on a business. She also asked if there was something available to businesses that needed help, but did not require a loan.

Paul Smith, Twentynine Palms, said that he was representing the native species nursery and if there is a restaurant rating letter in the policy there should be some flexibility.

Boardmember Flock said that he was not in favor of extending the loan, and he wants a reserve. He said they need to discuss how much owner participation will be required. He said that he did not want to borrow into the future that they cannot look at future projects.

Vice Chair Spear responded to Ms. O'Hare that many new businesses do not have tax returns yet. Vice Chair Spear said that the issue is does the RDA wish to change the current repayment plan of 2 years and if they do not wish to change that then much of what they are discussing is mute. If they opt to re-change the repayment schedule to 4 years they will triple the amount of money available in the RDA and the issues that have been brought up become debatable. Vice Chair Spear made a motion that the RDA change the repayment schedule from 2 years to 4 years which would enable the RDA to have 1.1 million in expendable dollars vice \$300,000 plus. The motion was seconded by Boardmember Harris and carried with a 4-1 roll call vote (Flock-no)

Boardmember Harris requested addresses for the properties that are being discussed.

Boardmember Flock made a motion that 25% participation is adopted as proposed by staff. This motion died for lack of a second.

Mr. Spevecek clarified that what the RDA is looking for is a greater detail from those who are applying for this investment as to what dollar amount they will be putting up.

City Attorney Munoz suggested having a study session where there is a deadline where everybody has to have their information as complete as they can have it and they can interview all of the applicants, and how much money, if any; the RDA wants to spend on each project.

Pamela Carmichael, Twentynine Palms, told the RDA that she has tried to open a business in the City, and she said that 25% participation is out of line.

Paul Smith, Twentynine Palms, said that there should not be a rigid formula for this. He said that the Council should leave themselves with the latitude for evaluating the nature of the participation and they will end up with better flexibility and better results.

Rhonda, representing Commercial Diversified, said she did not agree with the 25% owner participation because if it is too expensive for contractors because of the cost of prevailing wages.

On a motion of Councilmember Flock, seconded by Councilmember Harris and defeated with a 2-3 roll call vote (Klink, Spear, Bernal-no) the RDA did not approve adopting a 25% owner participation amount as presented by staff.

Vice Chair Spear recommended a study session be held, along the lines of a CDBG presentation so that they can be on record as to why they denied or approved a project.

City Manager Tree clarified that a study session be held to look into detail at the applications that have been turned in and the variables involved.

City Attorney Munoz said that an issue that is before them with restaurants is that restaurants are required to maintain an A Rating.

Andy Masouris, Pete's Restaurant, asked why the restaurants are rated, and not barber shops. He asked if he could be told tonight if his project was going to be approved.

Vice Chair Spear made a motion that the restaurant rating be removed unless an inspector fails a restaurant, which will result in the first warning of default, then they must correct the failure within 30 days. If they fail to correct the failure within 30 days they default on the loan. Boardmember Klink seconded the motion. The motion was approved with a 4-1 roll call vote (Harris-no).

Boardmember Klink made a motion, seconded by Chair Bernal, and approved with a 4-1 roll call vote (Harris no), to close the application process on August 29, 2008. On August 29<sup>th</sup> all applications must be turned in complete or they are out of the process.

City Manager Tree said that the study session could be held the second or third week in September. He said at that time the draft agreements from the Jelly Donut and Pete's Restaurant will be available, and he suggested they be looked at with the other projects.

On a motion of Boardmember Klink, seconded by Vice Chair Spear, and carried with a 4-1 roll call vote (Harris–no) it was decided a reasonable cushion of \$300,000 be left after the money is given out.

Mayor Bernal call for a recess at 8:10 p.m. The meeting reconvened at 8:20 p.m.

## 8.0 PUBLIC HEARING

- 8.1 PC 08-03 – Applicant Mike de la Torre of Global Premier Development is Appealing the Planning Commission’s Denial of an Application for a Conditional Use Permit for an 81 Unit Family Apartment Complex Located on the East Side of Mesquite Springs Road between El Paseo Drive and Sunnyslope Drive. RM Zone, APN 0618-161-08, Section 29, T1N R9E.

RECOMMENDATION: The City Council conduct a Public Hearing, consider all oral and written testimony, and adopt Resolution No. 08-29 approving the appeal and the Conditional Use Permit.

Rusty Reed, Community Development, presented a staff report to the City Council.

City Attorney Munoz explained the appeal process to the City Council.

Mayor Pro Tem Spear said that there is a significant traffic hazard and he said the traffic study does not adequately address traffic. He said that 50 trips should be added to the figure. He said that he has a problem with public safety over this project.

Mayor Bernal also said she had a problem with traffic.

Charles Hutchison, Project Manager and Wayne Dietz spoke to the City Council about the Project

Mayor Bernal opened the Public Hearing.

Nicole Panter, Twentynine Palms, said she was opposed to the project.

Mike Duncan, Triad Realty, Twentynine Palms, said that he was in favor of the project.

Melissa, Tarbell Realtors, said the project is in a bad area.

Mayor Bernal closed the Public Hearing.

Mayor Pro Tem Spear said they cannot approve the mitigated declaration because of the traffic. He suggested they deny the project without prejudice.

On a motion of Mayor Pro Tem Spear, seconded by Councilmember Klink, and carried with a 4-1 roll call vote (Harris-no), the City Council denied the appeal and the project.

- 8.2 Purchase of Real Property at 73484 Twentynine Palms Highway  
RECOMMENDATION: The City Council conduct a Public Hearing, consider all written and oral testimony, and approves Resolution No. 08-27 and the Redevelopment Board approves RDA Resolution No. 08-01 to approve the purchase of real property at 73484 Twentynine Palms Highway (APN 618-21-01), which includes an adjacent unimproved parking lot (APN 618-221-04), in an amount not to exceed \$265,000 and authorize the City Manager to sign documents relating to said purchase.

City Manager Tree presented a staff report to the City Council.

Councilmember Klink asked why the owner of the building does not pay the closing costs. He said that he thinks she should.

Councilmember Harris said that this is a great investment and win-win situation.

On a motion of Mayor Pro Tem Spear, seconded by Councilmember Harris and carried with a 4-1 roll call vote (Klink-no), the City Council approved Resolution No. 08-27 and RDA Resolution No. 08-01 approving the purchase of real property at 73484 Twentynine Palms Highway (APN 618-21-01 which includes an adjacent unimproved parking lot (APN 618-221-04), in an amount not to exceed \$265,000 and authorize the City Manager to execute the documents.

## **9.0 REPORTS, REQUESTS AND COMMUNICATIONS - None**

## **11.0 FUTURE COUNCIL INITIATED ITEMS**

- 11.1 Mayor Pro Tem Spear requested a report and a Resolution regarding moving the turtles in the area where the Casino is to be built.
- 11.2 Mayor Pro Tem Spear also requested a time-line of when the General Plan zoning will be finished
- 11.3 Mayor Bernal said she would like the City Council to discuss Flood Control.

## **12.0 CLOSED SESSION**

- 12.1 Closed Session Pursuant to Government Code Section 74957  
Public Employee Performance Evaluation – City Manager

- 13.0 ADJOURN** – The City Council meeting adjourned at 9:55 p.m. to Closed Session. The Closed Session ended at 10:45 p.m. with an amendment being made to the City Manager Employment Agreement. No other action was taken.

Respectfully submitted,

Charlene L. Sherwood CMC, City Clerk

