

**MINUTES  
CITY COUNCIL MEETING  
MONDAY, JUNE 10, 2013**

**SPECIAL MEETING:**

Mayor Benton called the special meeting to order at 5:16 p.m. at the Hillsborough Town Hall, 1600 Floribunda Avenue, Hillsborough, California.

**ROLL CALL:** Present: Benton, May, Chuang, Christianson, Royse

**PUBLIC COMMENT:**

There were no public comments.

**PUBLIC ANNOUNCEMENT OF CLOSED SESSION ITEMS**

**ADJOURN TO CLOSED SESSION**

**CLOSED SESSION:**

- A. CONFERENCE WITH LABOR NEGOTIATOR  
Section 54957.6

Agency Negotiator: Kristin Armbruster, Human Resource Specialist

Employee Organization: Police Unit - Teamsters Local 856

- B. PUBLIC EMPLOYEE PERFORMANCE EVALUATION  
Section 54957

Title: City Manager

**ADJOURN CLOSED SESSION**

**REGULAR MEETING:**

Mayor Benton called the regular meeting to order at 6:05 p.m. at the Hillsborough Town Hall, 1600 Floribunda Avenue, Hillsborough, California.

**ROLL CALL:** Present: Benton, May, Chuang, Christianson, Royse

Mayor Benton introduced former Mayor Christine Krolik and Hillsborough Memorial Parade Co-Chair Lilli Rey to lead the pledge of allegiance.

**PLEDGE OF ALLEGIANCE**

**REPORT FROM CLOSED SESSION:** Mayor Benton reported out that there was nothing to report from the Closed Session.

**MINUTES:** The minutes of the May 13, 2013 City Council meeting were approved as submitted with two changes from Councilmember Christianson. She stated that the third paragraph from the bottom of page 8 should read "Councilmember Christianson reported that she has been meeting with Hillsborough City School District Board President Lynne Esselstein, *Hillsborough City School District Superintendent Anthony Ranii* and City Manager Randy Schwartz to discuss space *in the Town's and the School District's respective communications and that communications guidelines have been drawn up.*" She stated that the third paragraph on page 9 should read "Councilmember Christianson reported that she *and Councilmember Chuang* attended the Housing Leadership Council's Legislative Policy Breakfast on Friday, May 10, 2013."

## **PRESENTATIONS:**

- Mayor Benton thanked Hillsborough Memorial Day Parade Co-Chairs Christine Krolik, Lilli Rey and their team for the wonderful Memorial Day Parade. Former Mayor Krolik thanked the City Council for the opportunity and stated that it was an honor to be here. Ms. Rey stated that she grew up in the East Coast where Americana was created and it was wonderful to bring the event to the Town. She reported that there were 70 floats, 45 vehicles, 25 walking groups, a total of 740 participants in the parade, 32 volunteers, 17 musical acts, 10 games and a dunk tank. Former Mayor Krolik reported that \$5,000 was raised from private donors and \$2,000 from ticket sales and beverages, and that expenses were around \$7,000. She stated that surplus money will be used for a replacement of the large parade banner and for a nest egg in case there are no police cadets available next year to help. She thanked all the parade participants, and volunteers and staff that assisted in the parade. Mayor Benton presented former Mayor Krolik and Ms. Rey with Certificates of Appreciation for the very memorable and successful 2013 Hillsborough Memorial Day Parade.
- Councilmember Royse recognized Finance Director Edna Masbad for the Government Finance Officers Association's (GFOA) Certificate of Achievement for Excellence in Financial Reporting Award for the Town's comprehensive annual financial report. He stated that the award is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by Ms. Masbad. He reported that the Town has had a balanced budget for the last decade and that the Town's budget and its presentation exceed expectations. Councilmember Royse thanked Ms. Masbad and stated that the Town did not win this award until Ms. Masbad started working for the Town.

Mayor Benton announced that newly appointed Interim Deputy Fire Chief Kevin McWhirter will be representing the Central County Fire Department at this meeting. Interim Deputy Fire Chief McWhirter thanked Mayor Benton, the Councilmembers, City Manager Randy Schwartz and Fire Chief Mark Ladas.

## **CONSENT CALENDAR:**

On motion of Vice Mayor May, seconded by Councilmember Chuang, and unanimous on voice vote, Consent Calendar items 1 - 3 were approved.

### 1. MONTHLY CLAIMS: MAY 1 THROUGH MAY 31, 2013

The monthly claims for the month of May 2013 in the amount of \$5,169,110.33 were approved as submitted.

### 2. RESOLUTION AUTHORIZING THE PAYMENT OF \$20,000 TO C/CAG IN FISCAL YEAR 2013-2014 FOR THE "FULL 21 ELEMENTS / RHNA-5 HOUSING ELEMENT UPDATE PACKAGE" AND AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH BAIRD & DRISKELL COMMUNITY PLANNING FOR PREPARATION OF THE 2014 HOUSING ELEMENT IN AN AMOUNT NOT TO EXCEED \$20,000

The resolution authorizing the payment of \$20,000 to C/CAG in fiscal year 2013-2014 for the "Full 21 Elements / RHNA-5 Housing Element Update Package" and authorizing the City Manager to execute a contract with Baird & Driskell Community Planning for preparation of the 2014 Housing Element in an amount not to exceed \$20,000 was adopted.

### 3. RESOLUTION REJECTING ALL BIDS FOR THE HYDROPNEUMATIC TANKS AT SKYFARM 3 AND TOURNAMENT SITES PROJECT

The resolution rejecting all bids for the Hydropneumatic Tanks at Skyfarm 3 and Tournament Sites Project and allowing staff to rewrite and recirculate the bid documents to solicit greater interest among firms capable of doing this work was adopted.

**NEW BUSINESS:**

4. RESOLUTION ESTABLISHING THE TOWN OF HILLSBOROUGH'S APPROPRIATIONS LIMIT FOR FISCAL YEAR 2013-2014

Finance Director Edna Masbad provided a Power Point presentation on the Town's Appropriations Limit. She reported that the Appropriations Limit was authorized by Proposition 4 and approved by voters in November 1979 and that the initial implementation year was fiscal year 1980-1981 with fiscal year 1978-1979 as a base. She stated that the Appropriations Limit restricts the amount of revenues from "proceeds of taxes" that can be appropriated in any fiscal year, and that the limit is equal to the limit from the previous year adjusted for cost-of-living and population growth.

Ms. Masbad further stated that proceeds of taxes are allowed to be spent on several types of appropriations that do not count against the limit, such as voter approved debt, costs of complying with court orders and transfers of financial responsibility between two or more government agencies, from and to the public and private sector, and from other funding to user fees. She reported that the Appropriations Limit requires local governments to return to taxpayers any tax revenues in excess of the limit, and as an alternative, a majority of the voters may approve an "override" to increase the limit up to a four-year maximum. She stated that in simple terms, it is a "spending limit".

Ms. Masbad provided charts showing the subsequent modifications to the Appropriations Limit from Proposition 111, which passed in 1990, and its effect on the Town. Ms. Masbad reported that with the Appropriations Limit a combination of high inflation and weak revenue growth helps a jurisdiction to stay within the allowed limit, but that the Town's small population growth does not give much room for the Appropriations Limit to grow. She stated that with the passage of Proposition 111 that gave options for inflation and population growth, the Town reinstated its limit back to fiscal year 1986-1987 which helped some. She reported that by fiscal year 2001-2002, the Town was within less than \$200,000 of the excess limit, and in fiscal year 2005-2006, the Town would have exceeded its allowed limit by approximately \$463,000. She further stated that upon review and with the Legal Department's review and concurrence, the Town recalculated its calculation to incorporate costs related to the transfer of the Advanced Life Support program from a private contractor to the Town requiring it to hire nine more firefighter paramedics to implement the program starting in fiscal year 1998-1999. She stated that this recalculation increased its excess Appropriations Limit in fiscal year 2005-2006 by approximately \$1 million. She added that currently, the Town has an excess limit of approximately \$2 million.

Vice Mayor May asked if having an excess limit of approximately \$2 million was a good thing. Ms. Masbad replied that what this means is the Town has approximately \$2 million more room before it exceeds the appropriations limit.

Councilmember Royse asked if there was any danger of exceeding the limit in the next three years. Ms. Masbad replied that there was no danger of exceeding the limit in the next three years.

On motion of Councilmember Royse, seconded by Vice Mayor May, and unanimous on voice vote, the resolution establishing the appropriations limit for fiscal year 2013-2014 was adopted with an unanimous roll call vote.

5. RESOLUTION ADOPTING THE SECOND AMENDED AND RESTATED JOINT EXERCISE OF POWERS AGREEMENT (JPA) FOR THE SOUTH BAYSIDE WASTE MANAGEMENT AUTHORITY (SBWMA) TO CHANGE THE COMPOSITION OF THE BOARD OF DIRECTORS AND ELECTION OF ONE COUNCILMEMBER AS THE TOWN'S REPRESENTATIVE AND ANOTHER AS AN ALTERNATE TO THE SBWMA BOARD

City Manager Randy Schwartz stated that in 1999, the Town and eleven other agencies of the SBWMA entered into a JPA agreement. He reported that a Blue Ribbon Task Force was formed in February 2013, and at the April 2013 Task Force meeting,

members voted to recommend that the SBWMA JPA Agreement be modified to define the JPA Board as being comprised of an elected official from each of the member agencies' governing bodies. He stated the purpose of this agenda item was to determine if the Councilmembers would prefer to have an elected official on the SBWMA Board and, if so, they could elect one Councilmember to serve on the Board and another to serve as an alternate, if the amendment is approved by a two-thirds vote of the JPA.

Mayor Benton stated that he is a member of the Blue Ribbon Task Force. He reported that there was a lot of frustration with the SBWMA Board during the contract process with Recology. He stated that the SBWMA Board is currently comprised of City Managers, Finance Directors and Public Works Directors, but no elected officials. He reported that 11 of the 12 SBWMA agencies sent representatives to the Blue Ribbon Task Force meetings. He stated that during a Task Force meeting, a staff report was presented with information regarding the governance models of ten other JPAs and that the SBWMA JPA is the only JPA that has a board comprised of staff rather than elected officials. He reported that the SBWMA Board Chair Larry Patterson provided history on the SBWMA JPA and how the needs of the JPA have changed over time. He stated that Mr. Patterson and SBWMA Executive Director Kevin McCarthy both felt that the Board composition should change. He stated that the Task Force members voted unanimously to amend the SBWMA JPA to define the JPA Board as being comprised of an elected official from each of the member agencies' governing bodies. He also stated that the Task Force encouraged the new SBWMA Board to establish a Technical Advisory Committee comprised of member agency staff to support the Board. He added that amendment of the JPA Agreement requires approval by two-thirds of the JPA members.

Councilmember Royse stated that he attended the March 20, 2013 Blue Ribbon Task Force meeting where greater accountability was discussed, and that Mayor Benton was one of the leading voices at the meeting and that Mayor Benton voiced support for having elected officials on the SBWMA Board.

Vice Mayor May stated that he truly supported changing the Board composition.

On motion of Councilmember Royse, seconded by Councilmember Christianson, and unanimous on voice vote, the resolution adopting the Second Amended and Restated Joint Exercise of Powers Agreement for the SBWMA to define the SBWMA Board of Directors as being comprised of an elected official from each of the member agencies' governing bodies was adopted.

Mayor Benton stated that the City Council has the opportunity tonight to elect the Town's representative and alternate to the SBWMA Board.

By nomination of Councilmember Royse, seconded by Councilmember Christianson, and unanimous on voice vote, Mayor Benton was elected the Town's representative to the SBWMA Board.

By nomination of Mayor Benton, seconded by Councilmember Christianson, and unanimous on voice vote, Councilmember Royse was elected the Town's alternate to the SBWMA Board

#### **OLD BUSINESS:**

6. RESOLUTION ADOPTING THE MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PLAN, APPROVING THE FIRE HAZARD MITIGATION AND FUEL LOAD REDUCTION PROJECT AND AWARDDING THE OPEN SPACE VEGETATION MANAGEMENT CONTRACT TO SHELTERBELT BUILDERS, INC., AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE AMENDMENT TO THE CONTRACT WITH MAY & ASSOCIATES, INC. TO PROVIDE ENVIRONMENTAL COMPLIANCE CONTRACT SERVICES

Public Works Superintendent John Mullins provided a Power Point presentation on the Fire Hazard Mitigation and Fuel Load Reduction Project in Town-Owned Open Space Areas. He stated that this project was discussed at the October 8, 2012, and March 11, 2013 City Council meetings. He stated that this is a three-year project for the eight Town-owned open spaces and includes approximately 88 acres of treatment area with 42 acres of Defensible Space Zones and approximately 46 acres of High Priority Fire Management Areas. He further stated that a \$624,000 Federal Emergency Management Agency (FEMA) grant fund was approved on May 30, 2013.

Mr. Mullins reported that public outreach has included the Open Space webpage on the Town's website, a Hillsborough Neighborhood Network (HNN) member meeting and block parties, Hillsborough Beautification Foundation (HBF) meetings, 500-foot public noticing by postcard, a Hillsborough Together email, public meetings held on May 22 and 29, 2013, an article in the Town's quarterly newsletter, and California Environmental Quality Act (CEQA) public noticing.

Mr. Mullins stated that staff and the CEQA consultant from URS Corporation have prepared the draft Initial Study (IS), Mitigated Negative Declaration (MND), and Mitigation Monitoring and Reporting Plan (MMRP), which indicate that, with proposed mitigation measures, the project will not have a significant effect on the environment. He reported that the public review period was from May 6, 2013, through June 6, 2013, with no agency or public comments on the draft IS or MND received.

Mr. Mullins stated that staff is recommending that the City Council authorize approval of the project with Shelterbelt Builders, Inc. to do the vegetation management work as the firm specializes in vegetation management and restoration, has been successful with similar projects and is the most qualified and lowest bidder, and for May & Associates Inc. to provide environmental compliance/biological monitoring services. He added that the project start date would be around August 15, 2013, if approved.

Vice Mayor May asked how the Town will handle residents who do not comply with vegetation management on their properties. Mr. Mullins replied that the Town is very fortunate that most of the 240 abutting residents have maintained their properties, but that there may be some challenges with residents encroaching into Town-owned open space areas. Mayor Benton asked how the Town will rectify the problem of residents encroaching into Town-owned open space areas. Mr. Mullins replied that staff will work one-on-one with the property owners.

Councilmember Christianson stated that the resolution mentions that the Town is in the final stages of entering into the grant agreement with FEMA to implement the project and asked when that should occur. Mr. Mullins replied that upon approval of the CEQA reports, the grant agreement process will be completed.

The Councilmembers and Mr. Mullins further discussed the Town's Fire Hazard Mitigation and Fuel Load Reduction Project.

Mr. Mullins thanked the Town's Senior Program Analyst Consultant Ed Cooney, Environmental Consultant Loran May, URS Corporation's Senior Project Manager David Fee, City Planner Liz Cullinan and Fire Marshal Rocque Yballa for their assistance with the project.

City Attorney Norm Book stated that the Mitigated Negative Declaration requires that the meeting be opened for public comment.

Mayor Benton opened the meeting for public comment.

Hillsborough resident Brad Koch stated that he was in total favor of the project. He asked if he must file a permit for the work. Mr. Mullins replied that no Planning permit will be required for the work on his property. Mr. Koch commented that the project is a great way to mitigate the fire hazard.

Mayor Benton closed the meeting for public comment.

On motion of Vice Mayor May, seconded by Councilmember Chuang, and unanimous on voice vote, the resolution adopting the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Plan, approving the Town's Fire Hazard Mitigation and Fuel Load Reduction Project, and awarding and authorizing the City Manager to execute, on behalf of the Town, the contract for the Open Space Vegetation Management to Shelterbelt Builders, Inc. in the amount of \$654,975 plus a 10% contingency, and authorizing the City Manager to execute, on behalf of the Town, the amendment to the contract with May & Associates, Inc. for a not to exceed amount of \$148,092, was adopted.

**PUBLIC HEARING:**

7. FUNDRAISING EVENT PERMIT APPLICATION 13-04 FOR CASA OF SAN MATEO COUNTY AUXILIARY'S ANNUAL GARDEN PARTY

City Clerk Miyuki Yokoyama stated that CASA of San Mateo County submitted a fundraising application for their Auxiliary's Annual Garden Party on Sunday, August 25, 2013, from 4:00 p.m. to 6:00 p.m. at 100 Stonehedge Road. She added that CASA is Court Appointed Special Advocates for Children.

Ms. Yokoyama stated that public notices have been sent to homeowners located within a 500-foot radius of the property and no comments have been received. She added that staff recommends approval of the application subject to the conditions of the Police, Fire and Building Departments.

Mayor Benton opened the public hearing. There were no comments. The public hearing was closed.

On motion of Councilmember Chuang, seconded by Councilmember Christianson, and unanimous on voice vote, Fundraising Event Permit Application 13-04 for CASA of San Mateo County Auxiliary's Annual Garden Party on Sunday, August 25, 2013, subject to the conditions recommended by staff, was approved.

8. APPEAL OF THE MARCH 25, 2013 ARCHITECTURE AND DESIGN REVIEW BOARD (ADRB) APPROVAL OF THE DESIGN OF A NEW MULTI-LEVEL SPANISH MEDITERRANEAN STYLE RESIDENCE OF APPROXIMATELY 7,388 SQUARE FEET AND ASSOCIATED LANDSCAPING AT THE VACANT LOT AT 60 BUCKEYE COURT (APN: 031-250-180)

City Attorney Norm Book stated that he had to recuse himself as Ben Kong, the applicant, is a client of his firm, and that the Town will be represented by Jean Savaree of Aaronson, Dickerson, Cohn & Lanzone.

Director of Building and Planning Liz Cullinan introduced Associate Planner Serena Nevarez, Senior Building Inspector/Plan Checker Ray Yniguez, Consulting Landscape Architect Bruce Chan, and Historical Consultant Laura Jones. Ms. Cullinan provided a Power Point presentation on the appeal of the ADRB approval of a new residence at 60 Buckeye Court in Hillsborough. She thanked the City Council for reviewing over 270 pages of documentation of the project history with the Town. She stated that she will focus on facilitating a decision based on required findings, and providing the appellants, the applicant and the public opportunity to provide input. She noted that in the Staff Report for Agenda Item 8 of the City Council agenda packet, "11 inches" was replaced with "11 feet" in the last full paragraph on page 241, and Attachment 1 and Attachment 8 were revised. She stated that the solution should acknowledge comments from three neighbors, two regarding visual and one regarding construction concerns, all of which had been resolved with the exception of the appeal issues.

Ms. Cullinan reviewed the process for the meeting with 1) staff presentation, 2) appellant presentation, 3) City Council questions/clarifications, 4) public comments, 5) closing staff clarifications, and 6) City Council deliberations.

Ms. Cullinan stated that on March 25, 2013, the Architecture and Design Review Board approved the new multi-level Spanish Mediterranean style residence of approximately 7,400 square feet in floor area with just under an 8% percent floor area ratio (FAR). She further stated that while a conceptual landscape plan was approved, a final fully developed landscape plan was required to be reviewed at a future date. She reported that one of the key project points is that the minimum required setbacks are 30 feet from the street property lines and 20 feet from interior property lines. She stated that the Buckeye Court street setback to the new residence is approximately 140 feet, the Merner Road street setback is approximately 110 feet, and interior setbacks range from approximately 45.5 feet to 147 feet. She reported that another key project point is the removal of seventeen trees, which include four oak trees and thirteen eucalyptus trees, of the 105 trees surveyed on site. She stated that the seventeen trees are below the Town's 36 inch diameter threshold for permits, are in poor to fair health, the majority are inconsistent with the Town's General Plan, and new healthy trees will be replaced at a 3:1 ratio.

Councilmember Chuang asked what type of tree #15 was. Ms. Cullinan replied that she will find out what type of tree #15 is.

Ms. Cullinan reported that a project is required to be compatible with its neighborhood according to the Town's Zoning Code, General Plan, and Design Guidelines. She stated that the Design Guidelines further reference massing, sensitivity to the environment, the topography of the site and surrounding buildings, and the quality, uniqueness and historical accuracy of the architecture. She explained that as far as neighborhood compatibility and massing, while the proposed house size is larger than the neighborhood average, the lot is larger, the FAR is lower than the majority of surrounding areas and the setbacks exceed those properties in the area. She stated that the approximate average FAR in the neighborhood of 40 lots studied in a 500-foot radius was 14.21 percent, 7.94 percent for the 10 lots studied on Buckeye Court, 10.26 percent for the 6 lots studied on Merner Road, 9.8 percent for the 6 lots studied on Via Delizia Court, and 10 percent for 12 lots studied on Merner Road and Via Delizia Court combined.

Ms. Cullinan reported that the ADRB's due diligence, which included reviews of the project on October 12, 2013, January 22, 2013, and March 25, 2013; and two site inspections from 35 Via Delizia Court and 60 Buckeye Court, resulted in meaningful project changes and revisions.

Ms. Cullinan stated that the ADRB serves as a volunteer citizens' advisory committee to determine community and neighborhood character and consistency with Design Guidelines. She further stated that there was extensive deliberation on the project. She reported that references to the project's consistency with the Town's Design Guidelines were made during the ADRB consideration and deliberation of the project, and provided direct quotes from the ADRB minutes referencing the incorporation of high quality design and materials, historical architectural authenticity, neighborhood compatibility, and massing/visual impact reduction through modulation and siting.

Ms. Cullinan reported that collaborative efforts included public outreach on the project which began on August 22, 2012, with mailings, a neighborhood meeting, and early story pole installation; a high level of staff facilitation beginning in January of 2013 with over 2,000 pages of email correspondence, multiple conference calls and multiple site inspections; and an architectural facilitator hired by the applicant. She also reported that ADRB continued consideration of the project on January 22, 2013, for further collaboration opportunities.

Ms. Cullinan stated that the collaborative results included that the overall height of the residence has been reduced by approximately two feet, the height of the tower feature has been reduced by approximately 3.5 feet, the residence has been moved approximately seven feet further away from 35 Via Delizia Court along the property contour line in a southeasterly direction, a window on the north elevation of the tower which faced the neighbors at 35 Via Delizia has been removed, and landscape

screening has been enhanced through the proposed planting of trees on both properties at Lot 5 on Buckeye Court and in the rear yard of 35 Via Delizia.

Ms. Cullinan recommended that the City Council open the public hearing and receive comments, and adopt the resolution upholding the March 25, 2013 ADRB determination, denying the appeal and approving the project. She stated that the next step in tonight's meeting would be the appellant's presentation.

Vice Mayor May asked if all the ADRB members voted in favor of the project. Ms. Cullinan replied that it was a 5:0 vote in favor of the project by ADRB Chair Eric Nyhus and Boardmembers Julie Tenenbaum, Christian Huebner, Jerry Wings and Lionel Foster, and that Alternate Boardmember Nan Ryan did not vote.

Doug Dal Cielo stated that he was representing Douglas Holsclaw and Melody Summers and that he was requesting a continuance of the appellants' hearing to review a landscape architect report received on June 6, 2013 addressing the heritage oak tree and email correspondence between Ben Kong and Town staff to allow fair and reasonable due process.

Mayor Benton asked Ms. Savaree about the continuance of the appeal. Ms. Savaree replied that unless it is not in the Town's best interest, the continuance should be granted.

Ms. Cullinan clarified that the request for the email correspondence was received on Friday June 7, 2013, and that State law allows ten days for agencies to inform the requester of public records when the records will be available. She stated that staff needs more than two business days to provide the correspondence requested. She reported that the April 4, 2013 records request from the appellants was for application documents submitted to the Town and not email correspondence and that the documents were provided to the appellants within four days. Ms. Cullinan read the records request into the record.

Mayor Benton asked Ms. Cullinan if she recommended a continuance of the appeal at a future City Council meeting. Ms. Cullinan replied that she recommended that the City Council conduct the public hearing and then decide if a continuance is needed.

Vice Mayor May asked when would be appropriate for a continuance. Ms. Cullinan replied that if the City Council were inclined to continue the item, it could be held at the July 8, 2013 City Council meeting, but that the Councilmembers should keep in consideration the grading moratorium.

Vice Mayor May asked what was the reason for the continuance. Mr. Dal Cielo replied that in March 2013, his clients requested any and all correspondence between Mr. Kong and Town staff, and that he received the landscape architect's report dated June 5, 2013 on June 6, 2013, which referenced survivorship and maintaining the root system of the heritage oak.

Vice Mayor May stated that he would like to hear from the applicant to see if a continuance was needed. Applicant Ben Kong commented that the project has been already delayed too long. He stated that he would like the opportunity to present the design concept and the concessions already made. He added that the only grounds for a continuance would be for the appellants' request for a copy of the correspondence between him and the Town.

Vice Mayor May asked the applicant's attorney if he felt there were any grounds for a continuance. Bart Hechtman, land use attorney for Mr. Kong, stated that the request for a copy of the correspondence was received on Friday, June 7, 2013. He further stated that Mr. Dal Cielo's second reason for the continuance is not on solid legal footing regarding the arborist's report as the supplemental arborist's report has been received. He reported that construction will be affected by the continuance as there are grading cut-off dates and that he did not want Mr. Kong to miss the grading period.

Vice Mayor May asked if Mr. Dal Cielo had the date of the prior request for records. Mr. Dal Cielo replied that the request was made in early to mid-March 2013. Ms. Cullinan stated that the request was made on April 4, 2013, and that she provided a copy of the correspondence requested on a disc copy on April 9, 2013. Mr. Dal Cielo stated that he did not know that another request needed to be made to receive copies of more recent correspondence as Mr. Kong was given that courtesy. Ms. Cullinan stated that the appellants had made a request for copies of all future correspondence and that legal counsel had advised that the public records act requires that requests for correspondence be for a specified time period.

Mr. Dal Cielo stated that he would start by quoting the Design Guidelines regarding views from neighboring properties that “Where feasible, buildings and trees should be designed and sited so as to minimize the obstruction of key views from adjacent properties.” He explained that this dovetails into the three concerns of his clients, the siting of buildings and trees, minimizing obstruction, and the beautiful heritage oak tree directly in sight of his clients. He stated that if the home is moved seven feet to the east, it would automatically alleviate two concerns, 1) the observation tower and 2) the master balcony, which has a direct view into their master bedroom. He further stated that his clients offered to pay in its entirety the increased grading cost from moving the home seven feet easterly, but were flatly rejected.

Mr. Dal Cielo expressed that the process failed for his clients because of some comments made by Boardmembers at the ADRB hearing and also because Mr. Kong is a known developer in Town. He stated that there was prejudice in the process as his clients had a May 24, 2013, submission deadline while everyone else was given until June 4, 2013, and that there should have been a uniform deadline.

Mr. Dal Cielo commented that Richard Reisman has an impeccable reputation and that he was supposed to be neutral and objective, but that anyone that reads Mr. Reisman’s email will see that Mr. Reisman became an advocate for Mr. Kong. He stated that Mr. Reisman exited the process and indicated that his meter was off, although he had taken the position earlier that he would be there until the end. He reported that Mr. Reisman felt that his clients’ requests were reasonable, but Mr. Kong objected to moving the home seven feet east. He commented that the process did not work. He reported that his clients still would like reasonable concessions made and that they would pay the additional grading cost. He stated that the appellants would withdraw their appeal if further changes are made such as opaque glass installed in the tower window and the size of the French doors of the master bedroom decreased in size. He further stated that there should be further consideration to implement the Residential Design Guidelines where buildings and trees minimize the obstruction of key views. He thanked the City Council.

Doug Holsclaw, the appellant, stated that at first he expected honesty in the process and that he whole heartedly participated in the process, but that the applicant’s collaborative efforts were called into question. He stated that he was pleased that Mr. Reisman was here tonight so that he could respond directly to him. He commented that it was a difficult process and not collaborative. He stated that he sent Mr. Kong a four page letter, but Mr. Kong refused any dialog and that the project was forced through the ADRB. He commented that he had hoped that Ms. Cullinan and Ms. Nevarez were interested in genuine collaborative efforts, and that Mr. Reisman was helpful in the beginning. He stated that there was no change in the design or square footage in his proposal, but just a change in location, which Ms. Cullinan and Ms. Nevarez felt was reasonable. He further stated that he followed the process, but the proposal was not considered by the ADRB, as Ms. Cullinan did not present their option. He commented that Mr. Reisman is a very influential person of great stature as past Chair of the ADRB, but that Mr. Reisman’s letter was very inflammatory and prejudicial with misstatements. He added that he was given different submission deadlines than the applicant. He stated that Mr. Reisman’s rebuttal letter was inflammatory in tone and that Mr. Reisman’s comments were untrue and not factual. He also stated that Mr. Reisman edited every communication for Mr. Kong and also edited the applicant’s proposal. He recommended that the appeal be approved.

Mr. Reisman reported that he was hired to assist in the facilitation of an architectural solution. In response to an inquiry of Mayor Benton, Mr. Reisman noted that Mr. Kong had asked him to assist with a resolution to the appellants concerns. Mr. Reisman stated that he wanted to make a couple of points. He explained that in regards to remaining neutral, he was bringing the parties as close together as he could and got some concessions. He stated that the appellants were asking for more than the ADRB Board felt was required as the applicant did much more than other ADRB projects. He stated that the appellants will be looking over the roofline, but that they just do not want to see the house. He added that the house will be blocked out with landscaping and that the house will not obliterate their view. He reported that he helped compose correspondence for both Mr. Holsclaw and Mr. Kong. He stated that the process was getting smoother and that they were almost there, but then the demands for more adjustments were made. He stated that the appellants' requests may exceed what is expected of Mr. Kong.

Mr. Kong reviewed the original design and stated that after the ADRB meeting on January 22, 2013, changes were made to the design which lowered the height of the entire house by two feet to eleven feet below the appellants' floor elevation, lowered the second floor elevation by 2.5 feet, eliminated a window, and that he will provide eight shrubs for the appellants' property to screen the roof. Mr. Kong stated that the lot was 2.51 acres and he provided a drawing of the home to show the location on the lot. He stated that the highest point of the tower feature was lowered by 3.5 feet. He added that he does not know how to satisfy the appellants' needs. He explained that he did not want to move the house seven feet easterly because that would require that the hillside be cut two more feet with 300 to 400 cubic feet of haul away. He also explained that he did not want to accept the appellants' offer to pay the additional amount for grading as the appellants and he would be involved in the grading process and that the appellants and he would probably end up in court. He added that moving the house seven more feet would not make a change and the appellants would still see the roofline. He stated that in May of 2013 the appellants asked that the house be moved another ten feet to the east which would require that the hill be cut four feet and would put the house closer to the other property line with only a 30-foot setback. He added that if the house was moved it would be on the steepest part of the lot, oak trees would need to be cut, and that the appellants would see more of the house. He commented that he did not understand why the appellants wanted to move the house in that direction.

Mr. Hechtman stated that he wanted to focus on the issue of collaboration. He stated that many of the appellants' requests for changes were made and that the resulting design meets the Town's Design Guidelines. He further stated that Mr. Dal Cielo requested that Mr. Kong move the house back to the original position and then move it 17 feet easterly from that point and to leave a great part of the trees visible. Mr. Kong provided the Councilmembers a copy of the Mr. Dal Cielo's letter dated April 5, 2013, demanding four concessions in order to avoid protracted litigation. Mr. Kong pointed out that the letter demands that the house be moved 17 feet easterly.

In reference to appellants' statements regarding "artificial deadlines", Ms. Cullinan clarified that the appeal deadline was set by code and that Staff had provided guidance for the submittal of any supplemental information the appellants would desire to submit. She reported that in response to Councilmember Chuang, Tree #15 is a Eucalyptus slated to be removed in the conceptual landscape plan as it is in poor condition and has a 20-inch diameter. She added that the oak tree has a 40-inch diameter and noted that the Municipal Code does not reference "heritage" trees, but has a 36-inch diameter threshold for permit for removal.

Ms. Cullinan stated that the ADRB approved the design and their decision was based on the design being consistent with the Town's Design Guidelines. She asked the City Council to weigh in on the continuance.

Vice Mayor May asked for clarification as to whether the appellants received copies of the requested application documents. Mr. Holsclaw replied that he did receive the documents requested, but did not understand the process. He stated that the appellants' emails were immediately being forwarded to Mr. Kong and that he would like

to be afforded the same courtesy. Vice Mayor May asked if Mr. Holsclaw's written request for a copy of the communication was ongoing. Mr. Holsclaw replied that despite his request, he only received certain material, but did not receive copies of emails. He added that he renewed his request for a copy of communication a week or two ago. Ms. Cullinan stated that the original request was for application documents and not for email correspondence and that despite staff's offer to provide any further information, the appellants did not indicate to staff that any further information was requested. She reported that she did receive a request for emails with no specific dates on Friday morning, June 7, 2013. Mr. Dal Cielo stated that emails are documents and that anything submitted in writing by Mr. Kong should have been turned into his client.

Vice Mayor May asked why the arborist's report was material to the appeal. Mr. Dal Cielo replied that the arborist's report talks about preserving the oak tree which is in the direct line of the site. He stated that the oak tree has a 40-inch diameter and exceeds the permit removal of a 36-inch diameter. He further stated that the report recommends preservation of the root system from the piers. Vice Mayor May asked how this was material to the appeal. Mr. Dal Cielo replied that because of due process the arborist's report was germane to the decision as to whether the oak tree will survive. Vice Mayor May stated that the oak tree could be addressed as part of the landscape plan.

Ms. Cullinan stated that in Bruce Chan's letter included in Attachment 8 of the City Council agenda packet, Mr. Chan stated that the two tree protection reports will be taken into consideration for the formal landscape plan. She added that the patio will be reconfigured also.

Vice Mayor May asked again why these issues were material. Mr. Holsclaw replied that the arborist was concerned about post construction and long-term survival of the oak tree.

Councilmember Christianson asked how the patio will be reconfigured. Mr. Holsclaw replied that after the initial report, it was requested that the patio be moved to the east and south of the tree. Mr. Kong stated that the patio will be moved 20 feet from the tree.

Mayor Benton opened the public hearing.

Mr. Kong stated that one neighbor could not come to this meeting, but submitted a letter of support, and that another neighbor waited and waited but had to leave before public comment.

Mayor Benton asked ADRB Chair Eric Nyhus if he wanted to comment. ADRB Chair Nyhus replied that he was there as an observer of the process and did not want to comment.

Mayor Benton closed the public hearing.

Mr. Hechtman stated that he believed due process has been served, but did not want a lawsuit, and would support a one month continuance to allow review of the arborist's report and emails.

Ms. Savaree stated if the City Council grants a continuance, only what is newly learned and not what was discussed tonight should be discussed at the next meeting.

The possible dates of the continuance was discussed and was set for the Monday, August 12, 2013 City Council meeting.

Councilmember Christianson stated that the limited purpose of the continuance was articulated and only those points are to be brought before the City Council at the August 12, 2013 meeting.

Mayor Benton stated that the issues are pretty clear. He reviewed the issues which were that the appellants want the house moved, the oak tree protected, and time to

review email correspondence. He stated that just these specific issues will be discussed at the next meeting.

Mr. Dal Cielo stated that the next meeting's discussion will be limited to the material presented by staff, the arborist's report, and the two letters submitted in the last two to three days by Mr. Reisman and Mr. Kong.

Councilmember Royse asked if the purpose of the continuance was to insure due diligence, would Mr. Dal Cielo envision the ADRB reviewing the project again. Mr. Dal Cielo replied that he would request that the project be remanded to the ADRB for further review upon receipt of the new material, which includes the emails, the arborist's report and the two letters.

On motion of Vice Mayor May, seconded by Councilmember Christianson, and unanimous on voice vote, the meeting was continued to the August 12, 2013 City Council meeting.

Mayor Benton stated that the meeting will be continued to August 12, 2013, to allow time to review the email correspondence and time to study the arborist's reports.

#### **PUBLIC COMMENT:**

City Manager Randy Schwartz stated that he will keep the City Council informed about the Bridgepoint Ice Chalet Rink possible closure.

City Manager Schwartz stated that he will set up a meeting with Verizon and Crown Castle representatives in the morning of July 8, 2013 before the City Council meeting to discuss how to move forward with their proposed wireless communications facilities, and that he will bring back the information gathered to the City Council that evening.

#### **CITY COUNCIL ITEMS:**

Mayor Benton announced that the Council of Cities Dinner/Meeting will be held on Friday, June 28, 2013, in the City of South San Francisco. Councilmember Christianson announced that she will be attending.

Vice Mayor May announced that he attended the Council of Cities Dinner/Meeting on Friday, May 17, 2013, at the Four Seasons in East Palo Alto, and that the Councilmembers gave presentations on their city.

City Manager Randy Schwartz announced that the League of California Cities Conference will be held in Sacramento on September 18 - 20, 2013, and that he will be attending with Assistant City Manager Kathy Leroux. He stated that there is an early bird discount for registration and that he will be sending a reminder about the conference to the Councilmembers. Mayor Benton announced that he will probably attend. Mr. Schwartz stated that he will include an agenda item on the July 8, 2013 City Council meeting to elect a delegate to vote at the conference.

Councilmember Royse announced that he attended the San Francisco Airport Roundtable meeting on Wednesday, June 5, 2013, and reported that the noise issue on overcast days was discussed and the budget was approved with dues remaining relatively the same.

Vice Mayor May announced that he attended the Hillsborough Recreation Commission meeting on Monday, May 20, 2013, and reported that some direction was given on how to proceed with maintenance of the North and South fields which will be a large ticket item.

Mayor Benton announced that there was no report on City/Council Association of Governments of San Mateo County (C/CAG).

Councilmember Chuang announced that Central County Fire Department provides CPR renewal classes for \$40 and encouraged residents to participate.

Councilmember Christianson announced that she will be attending the Central County Fire Department Pancake Breakfast on Saturday, June 15, 2013, at Fire Station 34 in Burlingame.

Vice Mayor May announced that the Hillsborough Concours d'Elegance will be held on Sunday, July 21, 2013, at the Crystal Springs Golf Course.

Councilmember Christianson reported that she reviewed the proposed guidelines for the shared communications with the Town and Hillsborough City School District and that it is moving forward.

Councilmember Christianson thanked City Manager Randy Schwartz for the Emergency Operations Center (EOC) identification card.

Mayor Benton announced that on Monday, June 3, 2013, Councilmembers were provided with a review and orientation of the EOC in Burlingame and he thanked Hillsborough Emergency Coordinator Bill Reilly.

**ADJOURNMENT:**

Mayor Benton adjourned the meeting at 9:20 p.m.