

DRAFT

CITY COUNCIL AUDIT SUBCOMMITTEE

Regular Meeting Minutes for Wednesday, March 31, 2010

A Regular Session of the City Council Audit Subcommittee was held March 31, 2010, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 549542(a) the agenda for this meeting was posted for public inspection on March 29, 2010.

CALL TO ORDER

Mayor Barbieri called the meeting to order at 7:40 p.m. with the Pledge of Allegiance.

ROLL CALL

Present: Mayor Dean Barbieri, Vice Mayor John Chiang and Judge Ken Kawaichi (ret.)

Staff: City Administrator Geoff Grote, Public Works Director Larry Rosenberg, City Clerk Ann Swift and Recording Secretary Chris Harbert

PUBLIC FORUM

Al Peters advised that the Piedmont League of Women Voters has appointed a 5-member Civic Governance Task Force to observe the proceedings of the Audit Subcommittee's examination of the Piedmont Hills Utility Undergrounding Project. The Task Force has been charged: (1) to increase public understanding of the facts surrounding the undergrounding controversy and project cost overruns; and (2) to assure that corrective action is taken by the City. As a part of its charge, the Task Force will undertake any additional inquiries deemed necessary to achieve a full understanding of the matter and corrective action. The Task Force will attend all Audit Subcommittee meetings, periodically update the League Board on the Subcommittee's deliberations and prepare a final report for public review. He then introduced the other members of the Task Force, summarized the expertise each member brings to the Task Force and offered the Task Force's assistance to the Subcommittee in its examination of the issues.

SCOPE OF WORK

The City Administrator submitted a proposed scope of work for the Subcommittee's evaluation process, noting that the proposed outline was prepared based upon input received from the Mayor and Vice Mayor as well as suggestions received from the general public. The Administrator also noted that in addition to the Subcommittee's assignment, the City has initiated legal action against the project engineers as well as retained special legal counsel to examine the role and actions of City personnel in this matter. He also offered City staff assistance in providing any

documents needed to aid the Subcommittee in its examination. The proposed scope of work was as follows:

1. Review of existing City Council policy for underground utility assessment districts (20B projects)
 - a. Steering Committee functions & obligations
 - b. Role of Piedmont staff
 - c. Engineer of Work - Development of plans, bid specifications and cost estimates
 - (1) Rock clause and standard provisions
 - (2) Validation or verification of engineer's work
 - d. Legal obligations of the city and financial exposure under current law
 - e. Construction -- coordination, inspection and change orders and the role of the City Engineer
 - f. Payments and commitments upon issuance of bonds
 - g. Past experience with undergrounding projects
2. Application of City policy to the Piedmont Hills Underground Assessment District
 - a. Explanation of the engineering process for the district including the use of multiple firms
 - b. Timeline of expenditures including the development of "rock" issue
 - c. Available alternatives at the time rock was discovered
 - d. Timeline for seeking legal counsel (notification of the City Council and notification of the public)
3. Recommendations for the future
 - a. Limitation of financial exposure of the City from beginning stages through construction
 - b. Determination of tasks to be done in-house and those that should be contracted
 - c. Process of early identification of problems and the reporting obligations
 - d. Frequency and distribution of progress reports
 - e. Process for review of contracts prior to signage by Mayor
 - f. Applicability of these recommendations to other capital projects

Correspondence was received from: Angela & Neil Teixeira; Rick Schiller; Timothy Rood; Alice Creason

Public testimony was received from:

Elizabeth Schultz, Rick Schiller, Aaron Salloway and Al Peters requested the Subcommittee to consider the following issues in its examination:

- Why the City Council chose to ignore the requirement set forth in the Sea View/Hampton District's undergrounding petition that a 60% to 70% property owner approval level would be necessary to establish the district, when in fact the Council approved district formation based upon a 54% level of support? What steps can be taken to assure that property owners are not similarly misled in the future;
- Ways to insure that 20A funds are never used again for privately initiated undergrounding districts. Examine if 20C rule funds can be used for private undergrounding districts as an alternative option;
- Why net change orders for the Piedmont Hills Project were so quickly approved and authorized. Disclose the percentage of work completed at the date of each change order;
- Examine the benefits of a citywide approach to utility undergrounding;
- Provide a simple accounting of construction credits, disclose what the total cost has been to City taxpayers (including Crest Road repairs, City Engineer costs, 20A funds, etc.) and list all the City funding sources used to cover project costs and overruns;
- Determine when it became apparent to City staff that the project was in trouble and what response options existed at that time;
- Incorporate the questions posed in Alice Creason's letter of March 26 into the Subcommittee's examination. Indicate which questions, if any, were not addressed and the reasons why;
- List the specific documents to be provided in connection with each bullet point in the scope of work;

Rick Schiller also submitted a financial analysis of the project he compiled to assist the Subcommittee in its work. He also voiced concern over the appearance of a conflict interest because the outside special counsel that has been retained to investigate staff in this matter has been previously retained by the City for other employment law matters. Mr. Salloway suggested that the Subcommittee ask Mr. Schiller and Ms. Schultz to assist the Subcommittee in its financial analysis of the project.

Robert Phelps questioned the propriety of permitting City staff to assist the Subcommittee in its investigations, citing concerns over conflict of interest. He stressed his opinion that a completely independent investigation of the matter is required.

The Subcommittee agreed to the proposed scope of work outline submitted by the City Administrator, with the Mayor requesting Vice Mayor Chiang to assign specific tasks to each subcommittee member. It was noted that the Vice Mayor would analyze the work change order issue and Judge Kawaichi would review City undergrounding policies, City Council minutes, Charter requirements and background information pertaining to the issue. In addition, his review would identify potential risk points within the existing policies. City staff was requested to prepare a flow chart indicating the steps involved in utility undergrounding projects, starting from the point of initial interest by property owners through the completion of project construction. In addition, staff was requested to cross-reference the documents contained in the Subcommittee's work document binder/City website with the bulleted items on the scope of work outline.

NEXT MEETING

Thursday, May 6 at 7:30 p.m. Tentative agenda to include Scope of Work 1, a through d.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 8:45 p.m.