

DRAFT

CITY COUNCIL AUDIT SUBCOMMITTEE

Regular Meeting Minutes for Thursday, September 22, 2011

A Regular Session of the City Council Audit Subcommittee was held September 22, 2011, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on September 19, 2011.

- CALL TO ORDER** Mayor Barbieri called the meeting to order at 7:30 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 and Recording Secretary Chris Harbert
- Others Present: Former Public Works Director Larry Rosenberg (ret.) and Former City Clerk Ann Swift (ret.)
- PUBLIC FORUM** There were no speakers for the public forum.
- APPROVAL OF MINUTES** The Committee deleted the word "strongly" on page 2 (1st paragraph, line 13).
- Resolved**, that the City Council Audit Subcommittee approves as amended herein its meeting minutes August 23, 2011.
Moved by Kawaichi, Seconded by Chiang
Ayes: Barbieri, Chiang, Kawaichi
Noes: None
Absent: None
- REVIEW OF DRAFT PRELIMINARY REPORT** The Subcommittee resumed review and discussion of its *Preliminary Report of the Audit Subcommittee on the Piedmont Hills Underground Assessment District Project*, as revised by Vice Mayor Chiang per the August 23rd meeting and dated September 22, 2011.
- Correspondence** was received from: Neil Teixeira; Rick Schiller
- Public testimony** was received from:
- Rick Schiller and Rob Hendrickson were highly critical of the report and the Subcommittee's examination process with regard to the October 2009 washout of Crest Road. They felt that the City Council was misled by staff with regard to the cause and responsibility of the incurred damages as well as the remedies taken to repair the roadway and trench. They noted in particular that contrary to the recommendations of the City's geotechnical consultant that trench dams be installed, no dams were actually installed. However the City Council was never

informed that another repair method (cement slurry) was followed by the project contractor. They also emphasized their belief that the washout was the fault of the project contractor and not the City, the City should not have paid for any repairs and in any event City sewer funds should never been used to finance the repairs since the damage was not sewer related. They urged the Subcommittee to address this matter more thoroughly in its report and include in its report that City staff knowingly omitted critical information as well as provided false information to the Council. Mr. Hendrickson added his opinion that the trench dam issue was used as an excuse/ruse by City staff to enable Sewer Fund monies rather than project monies to be expended to fund the cost of trench and roadway repairs as a means of preserving rapidly depleting project contingency funds -- an inappropriate gift of public funds.

Tim Rood agreed with the previous speakers that the Subcommittee's investigation and report was wholly inadequate and fundamentally flawed, citing multiple reasons, including: the lack of response to questions raised by Alice Creason in her letter of March 10, 2011 and other received correspondence and oral testimony; the failure to address the City Administrator's and City Attorney's role in the project, including their failure to keep the City Council truthfully and timely informed; the use of funds in behalf of the project that were not designated for the project; the inappropriateness of City staff/Council investigating themselves; the absence of any explanation why an independent audit of the PHUAD was not undertaken; errors/omissions and liability insurance issues; whether 20A funds have been restored; the lack of specific dates provided in the report, etc.

Before reviewing the report per se, Judge Kawaichi reported on his recent deposition by attorneys representing Robert Gray Associates and Harris & Associates, the close scrutiny of the Subcommittee's work by these attorneys and the importance to the City's legal case that the Subcommittee not undermine the City's legal position by ignoring rules and prohibitions related to attorney/client privilege, attorney work product and the Brown Act. The Subcommittee and City Administrator also responded to speaker concerns/objections by explaining the various options available to the public for accessing the pleadings and other legal documents in the PHUAD case, summarizing staff decisions/actions with regard to the Crest Road washout and repair, and reiterating that the purpose and focus of the Subcommittee's examination is to identify what happened with the PHUAD project, what are the lessons to be learned and what actions can be taken through new policies, procedures, project controls, etc. to prevent a reoccurrence of such problems in the future -- not to assign blame.

The Subcommittee then reviewed the Preliminary Report, agreeing to numerous clerical/grammatical changes and requesting that:

- Judge Kawaichi review the draft and provide the Interim City Clerk with additional revisions to eliminate any "adjectives" that are not factual in nature;

- Vice Mayor Chiang to clarify the date inconsistencies on pages 13, 14 and 20 with regard to when rock was first encountered;
- Vice Mayor Chiang to verify the accuracy of the figures cited on page 13 regarding "Rock, Boring and Other."
- Vice Mayor Chiang to include a reference on page 14 that the "rock billing" chart on page 19 is the source for the 15% underestimated linear footage amount cited on page 14.

The Subcommittee acknowledged that the revisions made tonight and those to be submitted by Judge Kawaichi and the Vice Mayor are not substantive in nature and therefore there is no need for the Subcommittee to reconvene in order to review these changes prior to report approval.

Resolved, that the Council Audit Subcommittee adopts the *Preliminary Report of the Audit Subcommittee on the Piedmont Hills Underground Assessment District Project*, as amended and dated September 22, 2011.

Moved by Chiang, Seconded by Kawaichi

Ayes: Barbieri, Chiang, Kawaichi

Noes: None

Absent: None

Future Steps

The Subcommittee voiced its preference that its revised *Preliminary Report* be forwarded to the City Council for tentative consideration at the Council's October 17, 2011, meeting.

Public testimony was received from:

Tim Rood voiced support for the *City Policies* recommendations contained in the report and requested that the following additional recommendations be included: (1) establishing a minimum approval percentage ahead of time for utility undergrounding districts; and (2) having an explicit policy stating that no public funds will be expended for private benefit districts.

Rick Schiller reiterated his belief that the report should not be approved and forwarded to the City Council until the issues related to the Crest Road washout are more thoroughly examined and addressed.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 9:40 p.m.