

CARSON CITY OPEN SPACE ADVISORY COMMITTEE

Minutes of the September 27, 2010 Meeting

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A meeting of the Carson City Open Space Advisory Committee was scheduled for 6:00 p.m. on Monday, September 27, 2010 in the City Hall Capitol Conference Room, 201 North Carson Street, Carson City, Nevada.

PRESENT: Chairperson Steve Hartman
Vice Chairperson Dan Jacquet
Member Teri Green-Preston
Member Tricia Lincoln
Member Howard Riedl
Member Bruce Scott

STAFF: Roger Moellendorf, Parks and Recreation Department Director
Juan Guzman, Open Space / Property Manager
Kristin Luis, Senior Deputy District Attorney
Tamar Warren, Recording Secretary
Transcribed by Recording Secretary Kathleen King

NOTE: A recording of these proceedings, the committee's agenda materials, and any written comments or documentation provided to the recording secretary during the meeting are part of the public record. These materials are available for review, in the Clerk's Office, during regular business hours.

CALL TO ORDER AND DETERMINATION OF QUORUM (1-0035) - Chairperson Hartman called the meeting to order at 6:00 p.m. Roll was called; a quorum was present. Member Fischer was absent.

CITIZEN COMMENTS ON NON-AGENDIZED ITEMS (1-0042) - None.

1. ACTION ON APPROVAL OF MINUTES - July 26, 2010 (1-0043) - Member Riedl moved to approve the minutes. Member Scott seconded the motion. Motion carried 6-0.

2. MODIFICATIONS TO THE AGENDA (1-0054) - None.

3. AGENDA ITEMS:

3-A. DISCUSSION ONLY REGARDING A POTENTIAL TRANSACTION AND MATTERS RELATED TO THE FEE TITLE ACQUISITION OF APPROXIMATELY 405 ACRES OF LAND LOCATED IN THE CARSON RIVER CANYON, PRESENTLY OWNED BY JOHN SERPA, AND KNOWN AS APNs 8-541-73, 8-531-05, 8-531-39, 10-021-55, 10-011-27, 8-531-40, 10-011-26, AND 8-541-92 (1-0060) - Mr. Guzman introduced Attorney Scott Heaton, Stephen Lincoln, and Dwight Millard. Mr. Guzman provided an overview of the agenda materials pertinent to this item, advised of the recent appointment of Appraiser Tony Wren, and provided an overview of time conflicts associated with Mr. Serpa's appraiser.

(1-0081) Mr. Heaton expressed disagreement over the term "conflicts," noting the requirement for Mr. Serpa's appraiser to obtain a business license. "By the time you would have had him go through all the rigamarole, we would have been into October before he could even start and we would have, for sure at that point, lost the State funds." Mr. Heaton expressed uncertainty as to "all of the stuff that you did with

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our appraiser,” and advised that the “as is” appraisal had been submitted to the City, as requested. He accused Mr. Guzman of having “put ... roadblocks in front of the deal.” Mr. Guzman expressed the belief that he had “bent backwards in trying to accommodate” Mr. Serpa’s appraiser in compliance with City regulations. In response to a comment, Mr. Guzman advised of the requirement for appraisers to obtain a City business license. Mr. Heaton reiterated the opinion that Mr. Guzman has “continue[d] to put roadblocks in terms of what we tried to do in terms of providing you with an appraisal that’s ‘as is’ for a fair value that Serpa wants to sell the property.” He provided historic information on Mr. Serpa’s offers to sell the property, and advised “he’s come down a long way from where he was previously.” He expressed the opinion that Mr. Guzman “seems to want to ... find some appraiser that’s going to continue to low ball the price of the property to a point to where this deal’s not going to go forward.” He reiterated that an “as is” appraisal had been submitted to the City, and offered for the appraiser to “jump through some hoops and get a business license and go before the Supervisors and get sworn ... He can do that at this point.” Ms. Luis reviewed the requirement for any contractor to have a City business license in order to be paid by the City. Mr. Heaton expressed the opinion there is no need for a “City-contracted appraiser for purposes of making a decision on this.”

Chairperson Hartman suggested the issue, at this point, “is whether the City can purchase based upon the appraisal that was submitted by ... Kelly Underwood, who’s the local MAI.” Chairperson Hartman advised of having suggested the possibility of a review appraisal. Ms. Luis advised of having reviewed the applicable statutes, earlier in the day, together with Senior Deputy District Attorney Joel Benton and Chief Deputy District Attorney Randy Munn. “We’re not finding ... direct authorization that allows us to do ... long-term financing, an installment contract or lease-purchase contract for real property.” Ms. Luis expressed the understanding that for the government to purchase property, there has to be specific authorization, “not just if it doesn’t say that we can’t do it, therefore, we can.”

Chairperson Hartman inquired as to whether the Board of Supervisors can rely upon Mr. Serpa’s September 10, 2010 appraisal. Ms. Luis advised that a price must be fixed on behalf of the City. “We can’t just rely on Mr. Serpa’s appraisal.” Chairperson Hartman noted that Mr. Wren will need to communicate his intentions “and how long it’s going to take.” Chairperson Hartman noted the next step is to determine whether the City can purchase on an installment sale basis. Mr. Guzman advised that the statute allows installment purchase from another government or public agency. A brief discussion followed, and Mr. Guzman further advised of having been informed by Finance Department Director Nick Providenti of the possibility of purchasing medium-term bonds. Discussion followed, and Member Riedl noted “the best way to get ... sales tax funds frozen from the State raiding your coffers is to bond against a project.”

Mr. Heaton advised of having spoken with Chuck Pope earlier in the day, who “doesn’t confirm ... that the State money is for sure gone. ... The State is short on funding projects from the ... bonding that presently has been done and they’re going to have to pool some of the projects. And this could be one of them.” Discussion followed regarding State funding, and Mr. Moellendorf related information from Question #1 Grant Program Manager Kevin Hill. Mr. Moellendorf expressed concern with regard to bonding on the current sales tax revenues. “We’re probably only having a net of about \$60,000 to \$70,000. There’s just not much money there in Question #18 to pay the bond.”

Member Scott inquired as to the kinds of general terms Mr. Serpa may be willing to consider. Mr. Heaton advised of having discussed with Mr. Serpa the possibility of 5 percent for three years. Mr. Heaton expressed the opinion that terms will likely not be an issue for Mr. Serpa “if, in fact, that’s a viable

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alternative.” He advised that Mr. Serpa “is a developer in trouble and this is not an opportunity that will continue. And if, in fact, we don’t start to deal with the City on this, then we’ll be doing something else with the property and, presumably, selling it.”

Member Green-Preston noted the superfund site, and advised of having discussed with Keith Serpa the possibility of dividing the property. “You’ve got a couple of different interests. The V&T only wants a portion of it. Open Space only wants a portion of it. They don’t need the superfund aspect of it. They don’t need the redevelopment area up on the industrial site. Why can’t it be parceled into four?” Mr. Heaton acknowledged the potential, and suggested that “the City can look at it from the perspective of, if they acquire it, they can ... do it.” He noted that Mr. Serpa has held the property for thirty years. “One of the issues ... he’s had with this process is ... the appraisal that was initially done was an incredibly low-balled appraisal and he wasn’t willing to sell for that price.” Mr. Heaton advised that when Mr. Serpa initially talked to the Mayor about selling the property, “he talked in the range of \$8 to \$10 million so now he’s down to \$5 [million.]” Mr. Heaton advised “there’s just no market out there right now” to compel Mr. Serpa to parcel the property.

In response to a further question, Mr. Heaton expressed the opinion that Mr. Serpa has no specific sum in mind relative to a down payment. “To the extent the V&T is part of this puzzle, he’s going to get \$1.5 million cash from them.” Mr. Heaton expressed the opinion Mr. Serpa “can live with reduced amounts from the City, especially if it’s a two-year period.” Member Green-Preston noted that Mr. Serpa has expressed a willingness “to give the V&T their easement,” and inquired as to “why [the City] needs to be at the table.” She noted that “not everybody is enamored with the train.” Mr. Heaton advised that “if the City doesn’t want it for open space ..., we’ll quit spending our time and effort on it. We have other things that we can do with the property, clearly.” He acknowledged that Mr. Serpa would follow through with the V&T deal; that it’s not predicated on the open space purchase. In response to a question, Member Green-Preston explained the State’s non-appropriations provisions.

Chairperson Hartman suggested considering an option relative to the two-year period “with ‘x’ amount of dollars. It gives us some idea in terms of what’s going on revenue-wise.” He further suggested considering bonds based on “whatever the continuous cash flow that’s safe ... That ... may fill that other piece that we would need in addition to cash that we might have.” He requested Mr. Guzman to contact David Lloyd at the U.S. Environmental Protection Agency to discuss the superfund issue. Mr. Guzman advised that brownfields funding “appl[ies] prior to being designated. Once you are designated, you are in the creek without a paddle.”

Mr. Heaton advised of having “heard the superfund stuff for thirty years.” He referred to the Santa Maria Ranch development, as an example, and noted that the lenders didn’t have any problem with that. Chairperson Hartman clarified his intent in requesting Mr. Guzman to contact the U.S. EPA was to inquire as to funding possibilities. Mr. Guzman advised of having previously studied the superfund site, “we presented to the feds for a grant, and we agreed that it was a risk that we could take.” He clarified that Member Green-Preston disagrees. Mr. Heaton pointed out that Mr. Guzman “initially used the fact that this was superfund property as a basis for saying, ‘You’ll never be able to develop it.’” Mr. Heaton noted “there’s property all along Deer Run that’s developed and there’s property through Dayton where there’s far more mercury in the tailings down there where the mills were than there is in the upper river here.” Mr. Guzman advised that Mr. Serpa conducted the superfund studies. Chairperson Hartman offered to contact Mr. Lloyd at the U.S. Environmental Protection Agency.

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Mr. Heaton advised of not having completely “given up ... on the State funds because the million dollars that was allocated is money that actually has been generated and it’s sitting there. And, granted, the State may say, ‘Since we’re not under contract with these guys to do anything, we’re going to pull it and use it for something else’.” Mr. Heaton noted that the State funding was previously going to be withdrawn as of December 2009 “and they’ve given us all the way until October.”

Mr. Guzman advised that the Southern Nevada Public Lands Management Act is another possible funding source “if we have an option.” Mr. Heaton stated, “I don’t think an option is an option. ... Serpa is either going to have to sell it or move on.” Member Scott advised that, up until two weeks ago, there was another bond sale programmed for December at the State level. He suggested “that the monies that they might put with money they pulled from us to go do something else may not be there. And so it may be that our project rises up a little bit because it’s a known and the money that they had set aside that potentially could be lost but may not be there to match other monies could be available.” Mr. Heaton noted that, with Question #1 funding, if the City subdivides and sells, “then they repay that million bucks.” Since the entire 405 acres is not needed for open space, he suggested “sell[ing] off ‘x’ and that generates more than enough money to repay the State because it’s on a pro rata basis based on all the acreage. Then you actually put money back into your pocket.” Mr. Heaton reiterated that Mr. Serpa is a “developer in trouble,” and advised of no flexibility “in terms of sitting back and holding this property out. We either make a deal with the City or we move on and see what else we can do. It’s a piece of property that’s free and clear for us so it is property that gives us some flexibility in terms of what we can do ...” He suggested the possibility of “tak[ing] a relatively low amount of money down and carry[ing] a note, secured by a Deed of Trust, that ties the property up if, in fact, that’s something that works.”

Chairperson Hartman reiterated the need for “hard and fast answers” to the appraisal and the Question #1 funding questions. He inquired as to the amount of time needed by Mr. Wren to complete the appraisal process. Mr. Guzman advised that Mr. Wren anticipates needing 30 to 45 days. Mr. Guzman emphasized 30 days, and advised of having begun the process of hiring Mr. Wren. In response to a comment, Mr. Heaton advised of not having lightly made his earlier statements relative to Mr. Guzman creating roadblocks. Mr. Heaton clarified that his statements constituted his opinion and, “if it’s wrong, I’m sorry.” He reiterated the opinion that Mr. Guzman has “thrown roadblocks in front of this,” and that he would be conveying this opinion to the Board. Mr. Moellendorf advised Mr. Heaton that his opinion was wrong.

Mr. Guzman reiterated that the process for hiring Mr. Wren was initiated last week, and advised that he had explained to City Manager Larry Werner the time frames associated with this meeting. In response to a question, Mr. Guzman advised that Mr. Wren’s contract will be presented to the Board of Supervisors at their October 7th meeting. Chairperson Hartman inquired as to whether Mr. Guzman would have information relative to Question #1 funding by the October 7th meeting. In response to a question, Mr. Heaton advised of having hoped to receive an answer from Chuck Pope prior to this meeting. Mr. Guzman suggested Mr. Heaton’s connections may be better, and anticipates not receiving “anything better from Question #1.” Chairperson Hartman emphasized the importance of knowing the answers to these questions in order to avoid having “Scott hanging around,” and to avoid having to appear before the Board of Supervisors for no reason. Chairperson Hartman reiterated his intent to contact Mr. Lloyd at the U.S. EPA.

Chairperson Hartman expressed understanding for Mr. Heaton’s earlier statement that “an option is not an option.” Mr. Guzman advised that \$2.1 million is currently available for the transaction. Member Scott suggested considering the \$2.1 million “as a place to start for discussion.” He noted the “landmark

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number,” and the representation that the V&T is considering purchasing a piece of the property. He inquired as to “how ... those numbers fit together? How do they compare? Where does that put us in terms of a difference?” Mr. Guzman advised that if the V&T offers \$1.5 million and the Open Space Program offers \$2.1 million, “that is the total monies we have to do this transaction.” He acknowledged “it’s a million short.”

Mr. Heaton inquired, “If the review appraiser, in fact, substantiates the Serpa appraisal for the \$4.6 [million], then do you want to go beyond the \$2.1 [million] ...?” Mr. Guzman advised that would be this committee’s and the Board of Supervisors’ decision. He advised of a commitment to Mr. Bently and “we have the lands bill and that’s where our dough is going.” Mr. Moellendorf advised that these commitments total approximately \$2 million. In response to a question, Mr. Guzman clarified the \$2 million would be allocated from the \$3.9 million “we have in total right now.” Mr. Moellendorf advised of approximately \$3.9 million in the Open Space Program acquisitions fund. Mr. Guzman offered additional clarification. Chairperson Hartman advised of a requirement for a cash payment under the provisions of the lands bill.

In response to a question, Mr. Heaton advised, “The last thing Serpa needs is tax write-offs. He has enough to last him for whatever the rest of his life is ...” Chairperson Hartman reiterated the request to get the answers to the previous questions, and expressed the desire to schedule another committee meeting as soon as possible. In response to a question, Mr. Heaton advised of a written commitment from the Question #1 program. He clarified this was not a contract, and suggested making inquiries of Governor’s Office staff. Mr. Moellendorf advised that Open Space Program staff’s conversations, to this point, have been with Question #1 Grant Program Manager Kevin Hill.

Mr. Moellendorf explained that Question #1 Grants Program staff is considering “a two-pronged approach with the money out there.” The first is that projects which have funding committed but no contract will not be funded. The second approach is to withdraw funding from projects with committed funding and a contract, but no progress on the project. Mr. Heaton acknowledged the State’s serious budget problems, but noted their “heavy-handed approach” which may not “work with everybody.”

Chairperson Hartman acknowledged he would talk with David Lloyd at the U.S. EPA, and keep Open Space Program staff and Mr. Heaton apprised. Chairperson Hartman reiterated the importance of knowing Mr. Wren’s appraisal time line and Question #1 funding availability. Mr. Guzman advised that, in his most recent conversation with Tony Wren, he asked him to provide an appraisal. Mr. Wren was not asked to review the previously-submitted appraisal because it is not a summary appraisal; it is a restricted appraisal. Mr. Guzman further explained that a review appraisal would require Mr. Wren to request to review the other appraiser’s data. “He says that appraisers are very uncomfortable about doing that.” In light of this and the District Attorney’s staff’s literal interpretation of “fixed value,” Mr. Guzman requested Mr. Wren to “find the value of this piece.”

Chairperson Hartman suggested asking if Mr. Serpa’s appraiser would allow access to his data in consideration of the time and money to be saved. Mr. Guzman acknowledged that the Open Space Program has previously used review appraisers. Mr. Heaton advised that a major comparable in Mr. Serpa’s appraisal is a recent sale in April 2010; 140 acres for over \$10,000 per acre. He expressed the opinion that Mr. Serpa’s appraiser would have no problem sharing his data. Discussion followed, and Mr. Heaton emphasized the importance of knowing, as soon as possible, whether or not the Open Space Program is interested in purchase. He expressed the opinion that the property should have been designated as “a high

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priority” on the Open Space matrix, and emphasized that Mr. Serpa needs “to get rid of this property one way or another. It’s going to be to the City or somebody else.” Mr. Guzman offered to correct the Open Space matrix.

In response to a question, Mr. Guzman reviewed the status of four pending Open Space Program projects, two of which are Question #1 projects. Chairperson Hartman summarized the direction to Mr. Guzman. In response to a question, Ms. Luis further clarified the District Attorney’s direction to ensure the appraisal fixes the price. Chairperson Hartman expressed the opinion that, as the appraiser represents the Board of Supervisors, they are fixing “their view of value to the Board.” He emphasized getting “to the meat of the matter which is basically two appraiser comps which are the one that Scott talked about and ... the other one was an ‘08 or ‘09.” He expressed the opinion that this shouldn’t take too long, and requested Mr. Guzman to convey the requirement to fix the value, in compliance with the District Attorney’s direction.

Mr. Heaton acknowledged Mr. Serpa’s intention to sell the entire 405 acres. Member Scott noted “that reflects ... desires but it may not reflect some financial capability.” He inquired as to the possibility of purchasing part of the property. Mr. Heaton expressed the opinion that Mr. Serpa “would be amenable to that, especially if we carved out the 16 acres.” Mr. Heaton clarified “it’s not an ‘all or nothing’.”

Chairperson Hartman and Member Scott responded to questions of clarification relative to the requirement for the appraiser to be employed by the City. Discussion took place regarding the differences between the Open Space Program’s and the V&T’s appraisal requirements. In response to a question, Chairperson Hartman re-emphasized the importance of knowing the availability of the Question #1 funding. In response to a further question, Mr. Heaton provided background information on the previous proposal to withhold 16 acres.

In reference to Mr. Heaton’s previous comments relative to the first appraisal being “low-balled,” Mr. Guzman advised of having completed four transactions along the River with the same appraiser. Mr. Heaton described the properties as “apples and oranges.” He noted that the Bently property has no utilities, and that the “development possibilities ... aren’t close to what they are on the Serpa property.” Mr. Guzman clarified he was referencing the Andersen, Jarrard, and Desormier properties. Mr. Heaton suggested he could “hire five appraisers and ... get five different answers ... and a ten-fold difference between appraisals.” Chairperson Hartman noted that the Jarrard property represented “not just the flood plain, but the flood way.”

Member Lincoln expressed shock over “the interaction at the beginning between you two gentlemen,” in consideration of the length of the Horse Creek Ranch transaction and the patience displayed by Michael Fagen. Chairperson Hartman noted the pressures associated with the current economy. Mr. Guzman acknowledged sufficient direction. Ms. Luis acknowledged that she and Mr. Benton will continue to assist Mr. Guzman. Mr. Heaton expressed appreciation to the committee for scheduling the special meeting. Member Scott expressed the hope that “we can make something work.”

4. NON-ACTION ITEMS:

STATUS REPORTS AND ANNOUNCEMENTS FROM STAFF - None.

MEMBERS’ ANNOUNCEMENTS AND REQUESTS FOR INFORMATION - None.

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5. FUTURE AGENDA ITEMS (1-0965) - Chairperson Hartman advised that another special meeting would be scheduled, if necessary.

6. ACTION ON ADJOURNMENT (1-0968) - Member Lincoln moved to adjourn the meeting. Member Scott seconded the motion. Motion carried 6-0.

The Minutes of the September 27, 2010 Carson City Open Space Advisory Committee meeting are so approved this 18th day of October, 2010.

STEPHEN D. HARTMAN, Chair