

**Special Meeting Minutes
City Council
City of Huntington Beach**

Tuesday, November 29, 2005
6:00 P.M. - Council Chambers
Civic Center, 2000 Main Street
Huntington Beach, California 92648

An audiotape of this meeting is
on file in the Office of the City Clerk.

Call to Order

Mayor Hardy called the special meeting of the City Council of the City of Huntington Beach to order at 6:17 p.m. in the Council Chambers.

City Council Meeting Roll Call

Present: Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook

The City Clerk Read Call for Special Meeting

City Clerk Joan Flynn read the Call for Special Meeting Notice

CALL FOR CITY COUNCIL SPECIAL MEETING

CITY OF HUNTINGTON BEACH

TUESDAY, NOVEMBER 29, 2005

Jill Hardy, Mayor
Dave Sullivan, Mayor Pro-Tem
Don Hansen, Council Member
Gil Coerper; Council Member
Cathy Green, Council Member
Keith Bohr, Council Member
Debbie Cook, Council Member

You are hereby notified that a Special Meeting of the Huntington Beach City Council of the City of Huntington Beach, California, is called for and will be held in the **Civic Center Council Chambers, 2000 Main Street, Huntington Beach, CA 92648** at the hour of **6:00 p.m.** on **Tuesday, November 29, 2005** in order to allow discussion of the following:

(City Council/Redevelopment Agency) Reconsider the Continued Public Hearing Date of Conditional Use Permit 02-04/Coastal Development Permit 02-05 – Poseidon Seawater Desalination Project and the Associated Owners Participation Agreement (OPA) from December 19, 2005 to January 9, 2006.

Dated: November 28, 2005

ATTEST: City Clerk

Mayor

I hereby certify that I received the above notice, "Call of Special Meeting of the Huntington Beach City Council" prior to 6:00 p.m. on Monday, November 28, 2005.

Mayor

The City Clerk Announced No Late Communications

Pursuant to the Brown (Open Meetings) Act, City Clerk Joan L. Flynn announced no Late Communications regarding agenda items had been received by her office following distribution of the agenda packet.

Public Comments Regarding Special Meeting Item

Eileen Murphy, Residents for Responsible Desalination, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant and urged the Council to uphold their decision to postpone action on the item to January 9th so that the public can enjoy the Christmas holiday. She also referred to Costa Mesa's disapproval of Poseidon's plans to construct a pipeline, and stated her opinion that the City will not receive water from the proposed project.

Teddi Alves, 32 year resident, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. She urged the Council to find a convenient time after the holiday season to consider action on the proposed Poseidon project and voiced concerns about the City providing fair public notice of tonight's special meeting.

Chuck Scheid spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He voiced concerns about the lack of information available to the public on the Owner Participation Agreement (OPA). Mr. Scheid also stressed the importance of citizens' fair opportunity to review information in a timely manner, and urged the Council not to rush judgment, and to consider hearing the item on January 9th or later.

Steve Stafford spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He voiced concerns about hearing the item on December 19th when two other public hearings are scheduled for the same evening. Mr. Stafford urged the Council to hold a public hearing on the item on a night without other public hearing items.

Dave Guido, representing Huntington Beach Tomorrow, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He voiced concerns about public notice for the special meeting, resulting in approximately 24 community members present to provide comments. Mr. Guido also discussed the project's significance, stating it is technically challenging and should not be rushed.

Merle Moshiri spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. She thanked Poseidon for meeting with community members but voiced concerns about the residents' need for more time to review project-related material. Ms.

Moshiri also alleged an incomplete public records request submitted to the City Attorney's office, and urged the Council to hold the public hearing on January 9th.

Councilmember Cook assured Ms. Moshiri that a status on her public records request would be forthcoming from the City Attorney.

Mayor Pro Tem Sullivan asked Ms. Moshiri to describe the nature of her public records request. Ms. Moshiri stated that the request called for all public records to be disclosed on Poseidon.

City Attorney McGrath explained that the public records request related to negotiations between Poseidon and the City, including the terms of the OPA. She stated that such information was not considered public record and would not be forthcoming until certain information was disclosed by the applicant and approved for release to the City Council.

Councilmember Cook inquired why the City was requesting additional time to respond to the public records request when it involved information not disclosable to the public. City Attorney McGrath explained that the letter to Ms. Moshiri requesting a 14-day extension on producing public records did not adequately communicate what information was available.

John Earl of Residents for Responsible Desalination, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He voiced concerns about the City claiming it doesn't possess disclosable information on the Poseidon OPA and stated that the City Attorney's written response provided November 15th as the date the request for public records would be satisfied. Mr. Earl also voiced concerns about the special meeting not being televised, and urged the Council to postpone the Poseidon public hearing until a later date to resolve the issues presented this evening.

Councilmember Cook stressed the importance of the public records request process. She also suggested adopting procedures so that the public is not left feeling frustrated, and stated that the City has a good record on public records requests.

Councilmember Green stated that the City could not disclose something it does not have.

City Attorney McGrath apologized to Ms. Moshiri, stating that she simply didn't realize the request expired on November 15th and promised to provide a written response.

Larry Porter of Residents for Responsible Desalination, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He urged the Council to wait until after the Christmas holiday to hold the public hearing so that details can be completely presented and the public provided ample time to review the new, disclosable information.

John Scott, resident, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He voiced concerns about the Council approving a project that he stated is not in the best interest of the City's residents, and, in his opinion, condemns our coastline to an industrial use that is detrimental. He called for open records of every piece of information, stating that the public deserves nothing less. Mr. Scott urged the Council not to rush such an important decision and give members of the public time to spend with their families during the holidays.

Nancy Donovan, resident, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. She voiced her surprise at the Council holding a special meeting and voiced concerns about outside influences. Ms. Donovan urged the Council to consider postponing the public hearing.

Tim Geddes, resident, spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He voiced concerns about holding the public hearing in December after the Council made a decision to postpone it until January. He stated his opinion that the community wants the project to be considered after the holiday season and voiced concerns about the Council accommodating the applicant and not the residents. He also voiced concerns about the public's ability to review new information, specifically related to the deal points of the Poseidon OPA.

Jan Vandersloot spoke in opposition to the agenda item pertaining to the Seawater Desalination Plant. He repeated the sentiments voiced by previous speakers and described the Poseidon Environmental Impact Report (EIR) as deficient due to Costa Mesa's disapproval of Poseidon's plans to construct a pipeline. Mr. Vandersloot conveyed the need for a supplemental EIR, voiced concerns about adequate public notification, and urged the Council to delay the public hearing until January.

(City Council/Redevelopment Agency) Declined to Reconsider the Continued Public Hearing Date of Conditional Use Permit 02-04/Coastal Development Permit 02-05 – Poseidon Seawater Desalination Project and the Associated Owners Participation Agreement (OPA) from December 19, 2005 to January 9, 2006. (520.70)

The City Council considered a communication by Councilmember Bohr transmitting the following **Statement of Issue:**

At the City Council Meeting on November 21, 2005, the City Council passed a motion to reschedule the public hearing for the Seawater Desalination Facility Conditional Use Permit and Coastal Development Permit and an Owners Participation Agreement (OPA) between the City of Huntington Beach Redevelopment Agency and Poseidon Resources Inc. to January 9, 2006. I voted on the prevailing side during this meeting and am requesting that the City Council reconsider this matter. In an effort to insure attendance by all members of the City Council, I recommend that we move the hearing date back to December 19, 2005. By approving the recommended action the hearing will again be scheduled for December 19, 2005.

A motion was made by Bohr, second Coerper to reconsider the continuance of Conditional Use Permit 02-04/Coastal Development Permit 02-05 - Poseidon Seawater Desalination Project and the associated OPA from December 19, 2005 to January 9, 2006.

Councilmember Cook requested that the item be considered on any date after the holidays, stating that she would clear her calendar to accommodate the Council when all could be present. She also requested that the Council consider that the public and certain Councilmembers thought January 9th would be the hearing date and urged them not to set precedence for reconsideration. She stated this typically has not been done in past, citing an example of action on a land use item in 1990 whereby the Council approved a land change and then, at the urging of a third party, reconsidered their decision. She also alluded to a contract between AES and Poseidon due to expire at the year's end, and voiced concerns about Poseidon's failure to bring forth new information necessary for negotiations.

Mayor Pro Tem Sullivan agreed with Councilmember Cook. He voiced concerns about the revised agenda including a second sentence in the recommended action that suggests additional action following the request for reconsideration.

Mayor Hardy clarified with Councilmember Bohr her opinion that the motion only addressed reconsideration of the item.

Councilmember Bohr stated he didn't realize that the revised agenda modified the recommended action.

City Administrator Culbreth-Graft explained that the second sentence was added to communicate the end result of the request for reconsideration.

Mayor Hardy asked the Maker and Second to amend the motion by removing the second sentence. The Maker and Second agreed.

Councilmember Bohr addressed concerns heard from public speakers that stated Council was conspiring to meet without ample public notification. He also stated that the Council was not participating in secret talks with Poseidon, and that he was not aware of any contract expiring between AES and Poseidon.

Mayor Hardy clarified the motion and City Attorney McGrath explained that if the motion failed, the hearing date would default to January 9, 2006 per the action taken on November 21st.

Councilmember Bohr discussed the item's postponement history and stated that the public receives information when the Council receives it.

Councilmember Green asked if the City is in negotiations with Poseidon on an OPA. City Attorney McGrath confirmed negotiations, but explained that the confidential negotiations did not require Council participation.

Councilmember Green expressed interest in receiving new information on the OPA, including deal points and associated benefits to the public and residents. She talked about the 2-year history on the proposed project and asked the Council to strongly consider moving forward with a vote to hear the item on December 19th, regularly scheduled Council meeting.

Councilmember Hansen asked for the City Attorney's expectations for completing negotiations on the OPA. City Attorney McGrath responded that a majority of the deal points had been met, and that she assumed staff could meet deadlines for hearing the item on December 19th.

Councilmember Hansen thanked the Council for their willingness to postpone action on November 21st to accommodate his absence, and stated, although he shares sentiments to reconsider postponement of the item, he feels the community would be better served with a complete review, stating that the decision needs to be beyond reproach. He stated his support for hearing the item on January 9th.

Councilmember Coerper asked if the City Attorney would be able to provide the information requested by public speaker Merle Moshiri. City Attorney McGrath responded that the information will be available for the public immediately following distribution of the agenda packet for Council, unless the Council gives direction to allow the public additional time for review.

Councilmember Coerper asked if the applicant supports a hearing on January 9th. Billy Owens, Poseidon Resources, responded that Poseidon would accommodate the Council and residents in any way possible.

Councilmember Coerper also asked Mr. Owens if what Councilmember Cook alluded to about an expiring contract between Poseidon and AES was true. Mr. Owens replied "No."

Councilmember Cook asked Mr. Owens if he was willing to show the Council Poseidon's agreement with AES. Mr. Owens replied "No." Councilmember Cook described the information available as limited.

Councilmember Green urged Councilmember Hansen to reconsider his support for hearing the item on January 9th, explaining that citizens will receive information at the same time as Council, including the deal points currently being negotiated for the OPA. She described her plans to visit the gulf coasts to assist family members effected by Hurricane Katrina, and how she has postponed personal matters to accommodate review of the project.

Mayor Hardy asked Councilmember Green if her calendar would allow hearing the item sometime during the last two weeks in January. Councilmember Green repeated her recommendation to hear the item on December 19th when it was originally scheduled.

Mayor Pro Tem Sullivan stated his opinion that there are public perception problems with considering the item at a special meeting, that it is not convenient to the citizens, and that public access should be paramount. He stated that the item should not be heard without full representation by the Council, and that if Councilmember Green is gone the first part of January, then the hearing should be held the later part of January. He also reminded the Council that not everyone accesses the City's website for information on a daily basis. He recommended that the hearing be scheduled by itself as to not be a disservice to other public hearings and consent items scheduled on the December 19th agenda.

Councilmember Bohr disagreed with Councilmember Cook's comments about action taken by the Council in 1990 involving a land use issue and the Huntington Beach Company. He also disagreed with statements about the public being described as ill informed, stating that ample public notification and information has been provided. He amended his motion to include holding a special meeting on December 20th to hear the item.

With no second, the amendment was not accepted.

Mayor Hardy asked that the Council reconsider the original motion, and then provide a separate motion to determine a hearing date.

Councilmember Coerper stated his opinion that the hearing date won't make a difference to those adamantly opposed to the project and explained how the public has provided the same opinion numerous times. He voiced support for the community, and for Councilmember Bohr's position on the item and its impact on the City and staff. He asked if January 9th is considered a special meeting date. City Attorney McGrath confirmed.

Councilmember Green asked if the items scheduled for public hearing on December 19th were confirmed, and if it were possible to postpone those items. City Administrator Culbreth-Graft responded that the December 19th public hearing items have been confirmed for some time; whether or not it was critical to hear them on that date would require investigation.

Mayor Hardy apologized to the community for the inconvenience of holding a special meeting and voiced her opposition to the motion, urging the Council to keep the January 9th hearing date originally approved on November 21st.

The original motion was then voted on. The motion failed by the following roll call vote:

AYES: Coerper, Bohr, Green
NOES: Hansen, Sullivan, Hardy, Cook
ABSENT: None

Adjournment – City Council at 7:24 p.m.

City Clerk and ex-officio Clerk of the City Council of the City of Huntington Beach, California

ATTEST:

City Clerk

Mayor