

MINUTES OF THE ADJOURNED MEETING OF
THE MONTCLAIR CITY COUNCIL HELD ON
MONDAY, FEBRUARY 2, 2015, AT 5:45 P.M. IN
THE CITY COUNCIL CHAMBERS, 5111 BENITO
STREET, MONTCLAIR, CALIFORNIA

I. CALL TO ORDER

Mayor Eaton called the meeting to order at 5:45 p.m.

II. ROLL CALL

Present: Mayor Eaton; Mayor Pro Tem Raft; Council Members Dutrey, Ruh, and Martinez; Director of Community Development Lustro; Director of Public Works Hudson; Building Official Westerlin; Deputy City Clerk Phillips

Also

Present: Appellant Quach; Attorney Leiter; Advisor Miles

III. PUBLIC COMMENT - None

IV. COUNCIL WORKSHOP

A. CALVIN QUACH APPEAL HEARING

1. Presentation by Public Works Director Michael Hudson on Behalf of City Staff

Director of Public Works Hudson explained, "The Conditions of approval for [the development of **Mr. Calvin Quach's** commercial property located at 4875 Mission Boulevard, Montclair] were set by Planning Commission action on February 13, 2007." He explained the Planning Commission approval process as follows: "A property owner doesn't automatically have the right to develop property in this City or any other city. Approval for development is generally subject to certain conditions, which may include constructing street improvements; paying development impact fees; installing life safety items, such as fire alarms and sprinklers; installing landscaping; and obtaining approval for the building design, to name a few.

Director of Public Works Hudson stated, "This project included Conditions 6e and 46f, which addressed the undergrounding of utilities along the frontage of the development on both Monte Vista Avenue and Mission Boulevard, and providing underground services to the building. Condition 7i required the payment of Transportation Development Impact fees. This fee is composed of two parts: one for regional improvements, as mandated by the **San Bernardino Associated Governments** and **Measure I**, and the second for local improvements. Both fees were established in 2006 and have been collected from all developers since that time. [The City has] no latitude in modifying or waiving the regional fees, and only enough latitude on the local improvements to the extent the developer is required to construct qualifying street improvements.

"In March 2007, with the project approved, **Mr. Quach** began importing fill material. This import occurred prior to a submittal or approval of a grading plan. The fill was being dumped in a haphazard manner, creating loads on perimeter walls that they were not designed to withstand. After being ordered to stop importing fill, it was found that **Mr. Quach** had stopped during weekdays, but was continuing to import fill on weekends. It appeared the import had stopped by August 2007, but dirt was still being moved around onsite. **Mr. Quach** claimed it was necessary in order to demolish onsite structures.

"On November 8, 2007, the grading plans for this development had been approved and the Building Division issued a grading permit.

"On January 2, the Building Division calculated the Transportation Development Impact fees to be \$118,217.24, based on the fees in effect at that time. Under [the City's] ordinance, a developer may pay the fee at the time the building permits are obtained, or wait until occupancy is requested, then pay the fee. The downside of waiting to pay the fees is that the fees may increase.

"By October 2009, the building shell was complete and **Mr. Quach** requested shell occupancy so a tenant, **7-Eleven**, could begin its tenant improvements. **Mr. Quach** said that he did not have the \$118,000 plus required for the impact fees, and wanted to pay with a post-dated check. His intent was to refinance the property, and that with tenants he should be able to do so. He also felt that with **7-Eleven** and other tenants being able to move in shortly, he would generate additional cash flow so he would be able to refinance and cover the check by January 2010. In an effort to help a cash-strapped developer, I accepted the post-dated check, something that I have not done previously nor will I ever do again."

Public Works Director Hudson showed a letter from **Mr. Quach** regarding the post-dated check and refinancing his property. He noted that, "also by October 2009, **Mr. Quach** had completed undergrounding of the **Southern California Edison** power lines as well as installed conduit for **Time Warner** and **Verizon** lines. The undergrounding of the **Verizon** and **Time Warner** lines had not been completed, but **Mr. Quach** informed the City that he had paid their fees and was just waiting for them to schedule the work to be done. As proof, **Mr. Quach** submitted copies of checks as proof that the invoices had been paid. The following slides are copies of invoices and checks signed by **Mr. Quach**." He showed images of photocopies of the two checks that **Mr. Quach** submitted to the City as evidence of his payments to **Verizon** and **Time Warner**. "Two things worth noting on this series of slides: For **Verizon**, two work orders had been created for the work. The invoice and check for \$70,448.79, was for only one of the two work orders. The second one was not included. Therefore, **Mr. Quach** had accounted for only half the work being done for **Verizon**. Second, note that the ['PAID' stamp on the] **Time Warner** invoice [infers] that it had been paid. It had not. It was not until January 2010 that the City discovered that the checks had never been sent to the two utility companies. It was not until last year that the City discovered the amount of the **Verizon** bill only covered half the work to be done.

"On January 15, 2010, the City deposited the post-dated check for Transportation Development Impact fees.

"On January 22, 2010, the City received email from **Mr. Quach** indicating that it was not his intent to deceive the City, but that he hadn't been able to work out issues with the utility companies." He showed a slide depicting a summary of the email from **Mr. Quach**. He noted that **Mr. Quach** stated in the email, "'It was not his intent to deceive,' but, in fact, that is exactly what he had done.

"On January 25, 2010, the Building Division issued a correction notice to **Mr. Quach** regarding illegal building construction associated with just about every unit. The next three slides are pictures showing some of the illegal construction.

"On February 8, 2010, the post-dated check was returned to the City, noting 'not sufficient funds.'" He showed a photo of the returned check.

Public Works Director Hudson continued: "Because of the issues associated with illegal construction, returned checks, unreturned checks, and similar issues, the City denied any further permits for tenant

improvements or occupancies.

"In February 2010, some City staff met with **Mr. Quach** to discuss his need to increase occupancies to at least 65 percent to get capital to complete the undergrounding work. Based on his promise to pay and complete the undergrounding work, the City agreed to increase occupancies. As agreed to back in February, additional occupancies granted to **Mr. Quach** in July 2010. More occupancies were granted in September 2010, bringing his total occupancy to approximately 62 percent.

"A stop work order was issued on December 14, 2010, for more illegal work. One week later, a correction notice for illegal construction in Unit A was issued by the Building Division. An administrative citation was issued for Unit H for illegal construction of tenant improvements. For the next two years, the City has had continuing problems with **Mr. Quach** over illegal construction activities associated with the subject property."

Public Works Director Hudson showed an image of a furniture store with a "Grand Opening" sign. He stated, "This is a picture of a unit being used for 'furniture storage.' I'll leave it up to you whether this looks like a business." He continued with the timeline of events, noting "the City continues to meet with **Mr. Quach** to resolve outstanding issues.

"Correction Notice issued on April 26, 2011, for illegal construction in Unit C.

"On May 19, 2011, the City was advised that **Mr. Quach** had declared bankruptcy.

"On May 24, 2011, another administrative citation was issued for illegal construction in Unit H.

"Correction notice issued on August 15, 2011, for a unit being occupied that was not permitted.

"This final slide shows that **Mr. Quach** did make good on the \$118,000 plus check for the transportation fees. The City did accept the check as payment in full for those fees, but between the time the fee had originally been paid with a bad check and the time **Mr. Quach** was actually able to adequately fund the check, the fee went from \$118,217.24 to \$150,415.40. The City accepted the lower amount because that is what had already been reported to SANBAG in 2009.

"One other item that I feel needs to be discussed in connection with this project is the City's underground ordinance. The ordinance was codified in 2011. Prior to that time, and for at least 20 years prior to that time, undergrounding was more of a policy than a requirement of the Municipal Code. The policy left too much up to staff's discretion, and wasn't always clearly understood by the utility companies as to what extent of undergrounding was required.

"Ordinance No. 11-923 makes it very clear whether a property development or redevelopment is subject to undergrounding. It also provides exceptions to the undergrounding requirements subject to certain conditions. **Mr. Quach**, in his appeal to staff and the City Manager focused on economic hardship as being justification for an exception.

"First and foremost in this discussion is that **Mr. Quach's** development is not subject to Ordinance No. 11-923 [which added Section 11.75.052 to the Municipal Code] as its conditions of approval were given in 2007, four years prior to the adoption of the ordinance. If it were subject to the ordinance, then the economic hardship cited in that ordinance would be determined prior to any construction taking

place. Paraphrasing the ordinance, it states:

11.75.052. Where the enforcement of this section would result in severe economic hardships requiring underground expenditures which are substantially disproportionate to the improvement being erected, property owners may make an application for exception from the provisions of this section.

"**Mr. Quach** states that it is an economic hardship to complete the undergrounding at this time. As proof, he submitted a spreadsheet purporting to be his profit and loss statement for the last three years. Whether the numbers are accurate is irrelevant with respect to the economic hardship cited in the ordinance. It is the cost of the undergrounding versus the cost of property improvements that is used to determine an economic hardship."

Public Works Director Hudson emphasized that the economic hardship is not achieved by the inability to pay, but by a disproportionately large cost for undergrounding utilities compared to the cost of the overall improvements. He noted that "a cost analysis should have been performed as a part of the developer's due diligence to determine the total cost of development versus what the economic benefit would be to the developer, which should be done before the property has even been purchased."

Public Works Director Hudson noted he would be open to answering any questions from the City Council at this time.

There being no questions from the City Council, Mayor Eaton opened the floor to **Attorney Leiter** presenting on behalf of **Mr. Quach**.

2. Presentation by Quach Investments, LLC

Attorney Leiter introduced herself as legal counsel to **Quach Investments, LLC**. She noted tonight's hearing is based on an appeal of the City Manager's denial of **Mr. Quach's** application under Montclair Municipal Code Section 11.75.052, which provides for an exception based on "economic hardship." She stated, "What we're asking for tonight is not actually a waiver, it is actually to confer the plan to comply with the requirement—we've been calling it '**Calvin's Plan**'—over the course of five years, to enable him to get out of Chapter 11 Bankruptcy and to allow him to get enough cash flow to be able to comply with it; we're not asking for a waiver of the requirement, which we think he is entitled to."

"In February when the development was approved pre-recession—one of the worst recessions since the Great Depression—**Mr. Quach**, this was his first development, this was his first kind of solo project; I'm not saying he was an angel during the entire thing, but there are a lot of companies with much greater assets and expertise that fell during this period. This was a difficult economic period that we're frankly coming out of just now; and where we are today, we have a center that is partly unleased and that still has four poles up that we would like to get the underground cabling done for; but, you know, we're basically at a stand-still at where we are with the City."

Attorney Leiter noted that, once the bankruptcy was in effect, any funds of **Quach Investments, LLC** were subject to the court, so the \$118,000 was delayed, but it *was* paid. She stated her understanding that there are a small amount of outstanding fines, and that funds had been allocated during the ongoing bankruptcy; however, she is assisting her client in resolving the bankruptcy so that those fines can be paid.

Attorney Leiter read Section 11.75.052 of the Montclair Municipal Code, emphasizing the phrase "economic hardship." She noted the exception would be granted based on the City Manager's decision.

She stated City Manager Starr had indicated in his rejection of the application for exemption that "the act of filing bankruptcy is not evidence that your business has suffered or is suffering a severe economic hardship." She noted that a bankruptcy filing by definition means that a company does not have sufficient assets to meet its liabilities. She noted copies of financial statements were provided to City Manager Starr showing a combined loss of over \$700,000.

Attorney Leiter noted that City Manager Starr further stated in his determination that **Quach Investments, LLC** had failed to demonstrate cost of the undergrounding of utilities presents a burden of severe economic hardship. She noted that \$200,000 in the context of a company that has suffered \$700,000 in losses and is in Chapter 11 Bankruptcy is a significant amount, and emphasized that **Quach Investments, LLC** is no longer requesting an exemption, but is now asking for an extension and payment plan so that the property can be refinanced, so that **Mr. Quach** can clean up violations, and so that the units can be leased to generate revenues to fund the undergrounding of utilities in the near future. She noted that **Mr. Quach** is also willing to agree to a \$200,000 lien filed against his commercial property in favor of the City if the undergrounding work is not completed after five years. She noted her belief that her client is entitled to have this condition entirely removed, restating the fact that in 2007, **Mr. Quach** had fully intended to do the work, emphasizing the economy's subsequent unforeseeable collapse wherein the real estate market went from "boom to bust."

Attorney Leiter stated that **Mr. Quach** wants to fulfill this obligation and is merely asking to defer the requirement to accomplishment over the next five years, noting that, in order to do so, he would need the remaining units to be released by the City to generate enough cash flow to fund the project. She asked that the City also focus on the fact that this is not a major health situation; there are four poles that will eventually be removed; the cabling will be underground, which will be aesthetically beneficial to the City; however, it would also be beneficial to the City to have the center fully leased.

Attorney Leiter thanked the City Council for their time in hearing this appeal and turned the presentation over to **Mr. Loren Miles**, advisor to **Mr. Quach**.

Advisor Miles noted he is assisting **Mr. Calvin Quach** in this matter pro-bono. He stated that he is a trustee of **HEG Trust**, a real estate trust that is currently working on a \$25 million residential project in Upland and noted that several City of Upland staff members, including the Director of Development and the Fire Chief, can vouch for **HEG Trust's** compliance with all local procedures. He also discussed his firm's involvement in other large development projects in various cities.

Advisor Miles stated that he has recently begun advising **Calvin** in getting his business back on track, including compliance with local rules and making meaningful contributions to the City of Montclair. He noted neither he nor his firm have any financial interest in assisting **Mr. Quach**, nor in his properties, and that he is providing his advising services to **Calvin** pro-bono to give back to the community by mentoring a business owner in need.

Advisor Miles noted **Calvin** built his retail center in Montclair just as the recession began and "was clobbered, just as many, in this community and nationally, even those with far greater resources and expertise. **Mr. Quach's** family invested everything they had in this center, as many new emigrants do when they arrive in this country. **Calvin** also made many mistakes. This was his first development project and his first business. He could have done a better job at compliance with local rules."

Advisor Miles noted that, in some instances, **Calvin** performed what he may have believed to be minor work without obtaining permits. "He was cited for those actions and realizes this is not the way to do things. He regrets those actions."

Advisor Miles noted that, when **Calvin** sought permission from the City of Montclair to build his small center, the City had two financial requirements: payment of the \$118,000 for a traffic impact study, and to install underground cabling for **Verizon** and **Time Warner** in order to remove four power poles with an estimated cost of \$200,000.

Advisor Miles stated that the impact of the Great Recession hit **Calvin's** center so severely that he had no other choice to save his family investment other than to seek protection under Chapter 11 Bankruptcy. He noted that, although it took quite some time, the City of Montclair eventually did get paid the \$118,000 for the traffic impact study; however, **Calvin** was unable to afford the work to underground the cabling to remove the four power poles. He stated, "As a consequence, the City blocked **Calvin** from leasing approximately 40 percent of his center, which still remains in effect today. This blockade has cost **Calvin** nearly \$300,000 in lost revenue to the center, not to mention revenue the City of Montclair could have received, and also loss of local employment for those businesses blocked from opening. Suffice it to say, this has not been a win-win situation for the City of Montclair or **Calvin**. **Calvin** was unable to make good on his commitment initially because of the recession, and ultimately because of the blockade placed on 40 percent of his business at the center by the City. We understand the City needed to enforce its agreement with **Calvin** in order to get the underground cabling and power pole requirement taken care of, and it was naturally a concern he would never do it unless there was leverage in place, hence the blockade on 40 percent of his business. Neither the **Calvin** nor the City of Montclair have succeeded in their efforts with each other over the past several years, nor will they ever under this present course. It is financially impossible for a small retail center to accumulate enough revenue to pay for itself let alone a \$200,000 out-of-pocket expense for cabling with 40 percent of his business locked—hence, we could wait 5, 10, 50 years, it will never happen.

"In order to fix this impasse, a new course of action needs to be taken and the relationship between the City and **Calvin** has to be reset. First, we have to improve the management of **Calvin's** company, which will be accomplished by my mentoring of **Calvin**. Next is a new plan on taking care of the underground cabling and the removal of the four power poles, which is estimated to cost \$200,000. Our calculations show that **Calvin** can pay for that expense in up to five years if the City immediately and fully releases its blockade of new tenants coming to the center. **Calvin** will provide for a judgment lien to be in effect in five years if the work to underground cabling and remove four poles is not completed at that time.

"Now I wish to emphasize the following: there is no public safety issue with either the cabling or removal of the power poles; there is no obstacle to development in neighboring areas; the sole purpose of the removal of the power poles is for the beautification of the City of Montclair, which is a fine goal to have; however, it should not be at the expense of a small business unable to survive as a result of this requirement. There are hundreds if not thousands of power poles in the City of Montclair, as will most likely be the case for years to come. We must put into proper perspective and balance between people, power poles, and our diverse community. **Calvin** has filed the motion for relief being heard today under Section 11.75.050(b). This section provides that, if a builder is in financial distress for underground cabling, that he may seek permission to have that undergrounding requirement waived.

"**Calvin** is in Chapter 11 reorganization, has incurred over \$700,000 losses in the last three years, he clearly meets the City code's requirement for this waiver. I am not the only one who agrees with this. Merry Westerlin, who is the City of Montclair's certified Building Official who is well aware of **Calvin's** retail center from the very beginning, stated, in an interoffice memo, the following: 'It is my understanding that the in-lieu fees are for hardship situation, and **Calvin** certainly does fit that description.' That said, **Calvin** still wants to make good his commitment to the City and pay the \$200,000 for this obligation. **Calvin** needs *your* approval to his plan to immediately remove the blockade and allow him to rebuild his business, and he will fulfill his obligation to the City.

"**Calvin** has support from the community, and your motion notebooks provided for voting 'yes' to **Calvin's Plan** are various letters from community leaders: **Dr. Huu Dinh Vo**, who is the president of the **Vietnamese Community of Pomona Valley**, provided his written support, you may note on his letterhead that **U.S. Representative Norma Torres** is on the advisory board. Also supporting **Calvin** is **Vincent McCoy**, Executive Director of the **Inland Empire Small Business Development Center**.

"I would like to add that, as much as **Calvin** has had his financial challenges, it has not stopped him from giving to local schools and supporting school athletics, which has included **Montclair High School Cavaliers**, and football team **Ontario Pop Warner Football, Pee-Wee Saints**, and **Howard Elementary School Get Fit Club**.

"Of all the things said about **Calvin** tonight, you cannot ignore when somebody gives back to the community when their family are hurting financially themselves, that this is a true reflection of his character. I believe that voting 'yes' for **Calvin's Plan** is the right thing to do for the City of Montclair, the community, and this very remarkable Vietnamese-American family of **Calvin** and **Tiffany Quach**. Thank you."

3. Deliberation and Decision of City Council

Mayor Eaton invited questions and comments from the City Council.

Council Member Dutrey asked if staff has reviewed the letter from **Attorney Leiter** dated January 9, 2015, when the financial five-year plan was proposed, and made a determination on it.

Public Works Director Hudson stated he does not recall seeing it, noting he did see a spreadsheet with no indication of the source showing the profit and loss as referred to earlier.

Council Member Dutrey asked City Attorney Robbins if she had seen the letter.

City Attorney Robbins requested clarification as to which letter.

Council Member Dutrey noted it is a two-page letter addressed to her office that has the attachment titled "Five Year Payment Plan."

City Attorney Robbins stated, "Yes, we have had negotiations with the **Quach** team in trying to resolve this matter; staff has looked at that documentation, we discussed the pros and cons of the proposal made by the **Quach** team. Staff does have concerns based upon the track record of **Mr. Quach**. We certainly did try to find a resolution."

Council Member Dutrey asked if this financial proposal was the first time this proposal had been submitted to the City.

City Attorney Robbins stated, "I believe so. We received the financial information from **Ms. Leiter**, so, if that is the correspondence you've indicated, we received that just recently and we did look at that, but

we looked at all of the issues and there have been proposals back and forth in our attempt to resolve the matter, and the City is interested in certainly getting the undergrounding done, and the City has—as I think came out earlier this evening—those requirements were part of the original conditions and normally no occupancy would be permitted. But the City has made efforts over the years to work with **Mr. Quach** and did eventually agree to go up to the 60 or 62 percent occupancy, even in light of the history and I think that, I would ask that you correct me if I'm wrong, what the **Quach** team is suggesting is that the Council agree to go ahead and give **Mr. Quach** or **Quach Investments** 100 percent occupancy, which then gives him additional cash flow, and rely upon his agreement to eventually in the next five years pay for the undergrounding. We've looked, staff has looked at that, yes."

Advisor Miles stated he agrees with City Attorney Robbins' characterization of that, with one provision: "We understand the extreme frustration of the City Manager and Mr. Hudson and everybody from the City of Montclair's team with regard to **Mr. Quach**; my going through it, I can certainly empathize. I was frustrated myself, so we can completely understand that. I do want to add one factual point to the City Attorney's point, and that is, we're not asking that the City of Montclair once again cast its faith in **Mr. Quach** his word or agreement, we are stating that we are providing a judgment lien and, in the litigation world, the judgment lien is, from my understanding, the gold standard of the hammer, if you will. The judgment lien simply, I'm not an attorney, but for lay-purposes, my understanding is the judgment lien says that if you do not perform what you agreed to, boom, the amount that you agreed for that amount of judgment is in the other party's control and is generally irrefutable and extremely difficult to reverse. So, **Mr. Quach**, in light of everything that is going on and the extreme frustration and broken promises, is offering a judgment lien that, if **Mr. Quach** does not fulfill this obligation, then he will agree that a \$200,000 lien be filed against the property."

Council Member Dutrey asked if the letter dated January 9, 2015 discusses the judgment lien.

Attorney Leiter stated that it is not in the letter, but it was discussed during meetings with City staff.

Council Member Dutrey noted his frustration is with the history of inaccuracies with checks and illegal construction without permits. He noted that, the City of Montclair also felt the effects of the Great Recession, having to cut \$2 million out of the budget and enact layoffs. He noted there is a question of integrity here that he doesn't feel is genuine, stating this proposal being made is very "last-hour" and there is discussion of a judgment lien that does not appear in the letters. He added he feels these issues need to be aired out by staff and he does not feel that he is in a position to support a five-year plan which has a lot of holes in it.

Council Member Dutrey asked if the letters include discussion of the general plan for Mission Boulevard and its inclusion of the undergrounding of utilities.

Community Development Director Lustro noted what Public Works Director Hudson described at the beginning of his presentation is that it has been staff's policy for a number of years to require projects to underground utilities as part of their project as a cost of development.

Council Member Dutrey stated his understanding that the City is going by the ordinance and past policy, and asked if previous projects such as McDonalds that were located near single family home tracts required the removal of power lines.

Community Development Director Lustro stated that the cited projects were required to underground utilities throughout their frontage.

Council Member Dutrey asked, "What about the Arco station at the front of Mission and Central, does that have power lines?"

Public Works Director Hudson stated that those have been placed underground as well, noting that the developer delayed the undergrounding until the end. He advised that the developer entered into an agreement with the City agreeing that the power lines would be undergrounded within a five-year period, and the developer posted a bond for the cost of the project. During the five-year period, the property was put on the market and sold and, as a condition of escrow, the seller was required to convert the bond to a cash deposit to the City, so the work was completed later by the City.

Council Member Dutrey stated his understanding that, in this case, the developer of this project requested a deferment of power line undergrounding and posted a bond in the full amount, which was collateral, so if the developer decided not to do the work and take the citation, then there was collateral.

Public Works Director Hudson stated that there was an agreement, but the only collateral was the agreement and the bond.

Council Member Dutrey thanked Public Works Director Hudson. He asked City Attorney Robbins, "Is [a judgment lien] collateral that we can rely on?"

City Attorney Robbins stated, "In order to have a judgment bond, there must exist a pending legal proceeding, such as a lawsuit being filed that goes to judgment through stipulation, by court order on a stipulation, or through a contested proceeding where there has been a full adjudication of facts. Then you get a judgment, and then you record your judgment, which creates a lien on your real property. Unless there is something I am not aware of, I do not know how you would get a judgment lien without some litigation. Even if we could stipulate to that and the filing of that, **Quach Investments** is in bankruptcy and any action like that would require the approval of a Bankruptcy Court because that would be like taking action. I don't know that that would necessarily be a good resolution. Also, a judgment lien, in priority, would be behind whatever has already been recorded against the property. We know that there is financing on the property, we know that there is at least a first Deed of Trust, we don't know what the value of the property is, we don't know the principal amount of the loans, we don't know how much equity is in there, in looking at the bankruptcy file there have been orders for attorney's fees that have been created that would create further liens and any judgment lien that the City might get later would be after all of that.

"My suggestion, in light of the time, is to perhaps suggest that we continue this hearing and look, perhaps, into this a little further. It might be beneficial to get an idea of the value of the property, the number of the liens on the property, and see if there is equity in the property, because if there is no equity in the property, then even if we could instantly obtain a judgment lien, and I think **Mr. Miles** and **Ms. Leiter** would agree, that would not provide much security to the City in that regard, but we can't make that determination obviously in the next couple of minutes, so my suggestion would be, if the Council concurs, to continue this hearing, or we would have to continue it to a date certain and I don't know how easy that would be to do tonight."

Council Member Ruh stated he would like to make a motion to continue this item to allow City Manager Starr to investigate the

matters discussed this evening.

Moved by Council Member Ruh, seconded by Council Member Martinez, and carried unanimously to continue the Calvin Quach Appeal Hearing to a future meeting at a date to be determined.*

Advisor Miles noted he would like to address a concern Council Member Dutrey brought up earlier before the meeting adjourns. He noted the letter dated January 9, 2015 that was being referred to was a document submitted in earlier negotiations for a settlement agreement. He stated some of that was done in writing, which is provided to the Council, and some of the discussion took place between the **Quach** team and City Manager Starr, City Attorney Robbins, Public Works Director Hudson, and Community Development Director Lustro. He noted the letter references a settlement that was not reached and is not relevant to the offer submitted in the notebook.

Council Member Dutrey stated that if there is going to be a resolution to this issue, the City needs collateral. He noted there are conditions in place and the issue has been going on for seven years now. He stated there have been similar issues in the past such as with Arco where a bond was posted, and that is one collateral resolution.

Council Member Ruh concurred, noting that he made the motion to continue the hearing so that the City Attorney can do the due diligence to investigate those options and gain that collateral or whatever is deemed legally necessary for the City.

Mayor Eaton stated that the City Council has taken action to continue this hearing to a date uncertain.

Mayor Pro Tem Raft noted that, on this five-year plan to pay **Verizon** and **Time Warner** \$205,563, this is the payment for the utilities; if he doesn't pay this, then these people have to be paid. She asked, "Does that mean the City will have to pay this up front?"

Public Works Director Hudson stated that he does not believe Verizon or Time Warner will accept payment for this work on a payment plan and that "somebody is going to have to be the recipient of those funds and that somebody has to be the City."

Council Member Martinez stated that, if this request was denied by the City Manager without all the facts that were brought up at this meeting, that it would only be appropriate to allow extra time for him to review this new information to possibly revise his decision.

Mayor Eaton noted there has been a motion to continue this hearing to a date uncertain.

City Attorney Robbins noted that the City Council should postpone further hearing on this matter until a mutually agreed upon date to schedule the continuation of this hearing.

*The decision to continue of the Calvin Quach Appeal Hearing to a date to be determined was carried unanimously by the City Council.

V. ADJOURNMENT

At 6:48 p.m., Mayor Eaton adjourned the City Council.

Submitted for City Council approval,



Andrea M. Phillips
Deputy City Clerk