

THE MINUTES OF THE SPECIAL MEETING OF THE PLANNING
COMMISSION
OF THE CITY OF LA HABRA
June 22, 2023

CALL TO ORDER: Chair Rojas called the Special Meeting of the Planning Commission of the City of La Habra to order at 6:30 p.m. in the Council Chamber.

PLEDGE OF ALLEGIANCE: LED BY COMMISSIONER MAHECHA

PRESENT: COMMISSIONERS: ROJAS
SURICH
MANLEY
MAHECHA

ABSENT: (EXCUSED) COMMISSIONERS: BERNIER

OTHERS PRESENT: ACTING DIRECTOR: COLE-CORONA
PLANNING MANAGER: LUI
SECRETARY: LOPEZ
CITY ATTORNEY: ROBERTO
CITY PROSECUTOR: DONOVAN

PUBLIC COMMENT

Chair Rojas asked if there was anyone in the audience that wished to speak on any item not listed on the agenda. There were none.

CONSENT CALENDAR

Chair Rojas explained the Consent Calendar procedures and asked if there were any Commissioners that wished to have any item removed. There were none.

Moved by Commissioner Mahecha, seconded by Vice Chair Surich, to approve the Consent Calendar. Motion passed 4-0.

1. **PROCEDURAL WAIVER:** Waive reading in full of resolutions and ordinances and approval and adoption of same by reading title only.

PUBLIC HEARINGS

1. Declaration of Public Nuisance at Coyote Village located at 901-997 West Imperial Highway.

Chair Rojas explained that the hearing would be conducted in accordance with Chapter 18.74 of the La Habra Municipal Code and stated that the purpose of the hearing was to determine whether a public nuisance exists at Coyote Village, located at 901-997 West Imperial Highway. Chair Rojas then outlined

the procedures for the hearing. She then invited City's representative to begin with the City's presentation.

The City's representative, attorney Veronica Donovan from the City Prosecutor's Office, introduced herself and explained that she would be calling on witnesses for their testimony. Attorney Donovan then provided two packets consisting of a total of 16 exhibits to each of the Commissioners, each witness and to Mr. John Peterson, attorney for Coyote Village.

Attorney Donovan called her first witness, Albert Mendoza, Deputy Director of Public Works and City Engineer. Mr. Mendoza provided a summary of his education, experience, and job duties. Mr. Mendoza explained that the property located at 901-997 West Imperial Highway came to his attention in the past few months following the second collapse of the covered channel that runs within the HOA property. He believed the first collapse occurred in 2019. Mr. Mendoza indicated that when he learned of the second collapse, he visited the site to assess the damages. When he visited the site, he saw a completely blocked channel that was blocked by debris, soil and some of the concrete roof that had collapsed at approximately the center of the channel that runs through the property. Mr. Mendoza explained that the channel was supposed to have been built with a maximum of three feet of soil above it, and that during his inspection after the second collapse, he observed more than three feet; that it varied between approximately six and up to 10 feet of soil. Mr. Mendoza stated the amount of soil was a concern for the City and that the blockage was blocking all of the storm water runoff, which could have resulted in substantial damage and flooding. Mr. Mendoza indicated it was his understanding that the channel is a privately-owned channel and there is no indication that the City owns the channel.

Mr. Mendoza explained that following the second collapse, there was an email correspondence from the HOA to the City requesting emergency assistance to move forward to abate the blockage in the channel. He indicated that the City agreed to assist and hired a contractor to perform the emergency repairs to clear the channel.

Reviewing Exhibits 6 through 14, Mr. Mendoza explained that Exhibit 6 was a photo of the contractor with a backhoe removing all the dirt to make way for the storm water runoff; Exhibit 7 was a photo probably from Sunday, March 19, 2023 showing that about 90 percent of the channel had been uncovered; Exhibit 8 was a photo from the following day, Monday, when the contractor had removed 100 percent of the debris; Exhibit 9 was taken later in the day on Monday, March 20, 2023 and showed when the contractor had placed some cross bracing to prevent any wall collapse; Exhibit 10 showed the placement of tarping on top of the soil to prevent the soil from becoming saturated and potentially adding more weight to the roof of the channel; Exhibit 11 was a photo showing they had removed all of the soil from a portion of the roof of the channel that still remained intact which is the area in between the first collapse to the north and the recent collapse to the south-southeast; Exhibit 12 was a photo looking north-northwest, showing the exposed channel roof where they had removed all the soil; Exhibit 13 was a photo looking toward the swimming pool, toward the southeast portion of the property; and Exhibit 14 was another picture from a different angle showing the cleared rooftop of the channel near the pool and showing the placement of tarps over the soil.

Mr. Mendoza believed the collapse had occurred on the night of March 15, 2023. He became aware of the collapse on March 16, 2023. Mr. Mendoza said the initial cleanup started on Friday, March 17, 2023. He said the emergency cleanup of the soil that was in the channel was completed on Monday and then there was an additional request from the HOA to remove additional soil from the channel's roof to prevent any additional collapse, which was completed on April 7, 2023. Mr. Mendoza indicated he believed it was possible another collapse could occur in the future.

Attorney Donovan said she had nothing further for this witness.

John Peterson, attorney for the Coyote Village HOA, asked if he could cross-examine the witness. Attorney Donovan said she had two more witnesses to call on and it would be up to the Commission if he would be allowed to cross-examine now. Chair Rojas said he would be allowed to cross-examine the witnesses after the City's attorney had finished presenting her witnesses.

Attorney Donovan called Rodney Sipma, Chief Building Official, as a witness. Mr. Sipma provided a summary of his education, certifications, and job duties. Mr. Sipma said he visited 901-997 West Imperial Highway on March 16, 2023 after the second collapse occurred. Mr. Sipma said he took photos of the collapse and collaborated with Mr. Mendoza, who was going to hire a contractor to clear the channel. Mr. Sipma said he observed at different points more than three feet of dirt on top of the channel's ceiling when he visited the property. Mr. Sipma said the blockage of the channel presented a possibility of flooding and a flood hazard. Mr. Sipma indicated there was a risk to surrounding properties. Mr. Sipma said he also worked Cynthia Bastreri from Code Enforcement on sending out a Public Nuisance Declaration notice, which was sent out on March 27, 2023. Attorney Donovan thanked Mr. Sipma and said she had nothing further for this witness.

Attorney Donovan called Cynthia Bastreri, Code Enforcement Supervisor, as a witness. Ms. Bastreri provided a summary of her education, training, certifications, and job duties. Ms. Bastreri said the property at 901-997 West Imperial Highway had come to her attention on March 16, 2023 when the Chief Building Official informed her that there was a channel roof collapse. Ms. Bastreri said after she spoke with the City Attorney's Office, a Notice of Public Nuisance was issued shortly after. Ms. Bastreri said the site had violations, which included dilapidated unsafe structures, erosion, water runoff violations, and conditions of hazardous structures hazardous to public health. Ms. Bastreri confirmed that she had then issued a Notice of Public Nuisance. Refencing Exhibit 5, Ms. Bastreri stated that Exhibit 5 included the Notice of Public Nuisance that she issued on March 27, 2023 to the Coyote Village Homeowner's Association. Attorney Donovan said she had no further questions for this witness and concluded her presentation.

Chair Rojas asked if the HOA's representative wished to cross-examine the witnesses.

Attorney John Peterson, representing the Coyote Village Homeowner's Association, introduced himself to the Commission and then called on Albert Mendoza for cross-examination.

Mr. Mendoza indicated that the immediate emergency had been mostly removed as of April 7, 2023 when the emergency work was substantially completed. Attorney Peterson asked Mr. Mendoza if he was aware that the State through its budget process has allocated \$8.5 million to the City of La Habra for repairs of the Imperial Channel through the HOA property. Attorney Donovan objected to Attorney Peterson's question regarding the State's allocation of funding, arguing financial information had no relevance to this public hearing. City Attorney Roberto reminded the Commission that the scope of the hearing is to determine if there is a public nuisance at this property. The funding related to it is not relevant, however it can be admitted and it will be up to the Commission to determine the weight of this particular line of questions. Chair Rojas asked Attorney Peterson to repeat his question and asked Mr. Mendoza to answer the question. Attorney Peterson repeated his question regarding the availability of funding. Mr. Mendoza indicated yes, that was his understanding.

Mr. Mendoza indicated that he had physically measured the level of the dirt with the contractor at a couple spots, including a location with 10 feet on the channel. The contractor took the measurement using a measuring tape with one person on the rooftop of the channel and one person at the bottom.

He explained that water goes through the HOA property through other private covered channels through another private channel and then enters County Flood Control property further downstream.

Attorney Peterson asked a series of questions regarding Mr. Mendoza's investigation into how the property came to have a covered channel covered with soil and landscaping. Mr. Mendoza indicated he had reviewed the Planning Commission resolution from 1979 approving a covered and landscaped channel. He indicated he was aware of Ordinance No. 10779 that was adopted to approve the channel but was not familiar with the details.

After Attorney Peterson said he had no further questions for Mr. Mendoza, Chair Rojas asked if he had any further questions for the other witnesses. Attorney Peterson said he had questions for Mr. Sipma.

After greeting Mr. Sipma, Attorney Peterson asked if he could ask one more question to Mr. Mendoza. Chair Rojas allowed it.

Mr. Mendoza indicated he had not seen a conceptual plan for the repair of the Coyote Creek Channel that Attorney Peterson stated his office sent to the City Attorney's Office in early March before this emergency situation developed in mid-March. Mr. Mendoza indicated he did not recall seeing a set of documents titled "Coyote Village residential development scope of work and general specifications for channel improvements" dated March 1, 2023. Attorney Peterson thanked Mr. Mendoza and said he was ready to question Mr. Sipma.

Mr. Sipma indicated he was not familiar with Mr. Fewell who held the Chief Building Official position in 2013 or with letters issued by the Chief Building Official in 2013. He indicated that the Clerk would take care of those files. He indicated he has not done an independent investigation into why a covered channel traverses the Coyote Village project. Mr. Sipma indicated he inspected the channel after the work was completed by the contractors and the emergency situation was resolved during the first week of April. Attorney Peterson said he had no further questions for Mr. Sipma.

Attorney Peterson asked if he could cross-examine Ms. Bastreri. Chair Rojas allowed Attorney Peterson to proceed.

Ms. Bastreri said she did not have any discussions with the Board of the HOA and further stated that all of her communications were through written correspondence by the City to the association. Ms. Bastreri indicated she did not inspect the property after the work was completed in early April and she did not know the current condition of the property. Ms. Bastreri said she was updated by the Chief Building Official that the emergency from the second collapse was resolved. Attorney Peterson said he had no further questions for the witnesses.

Chair Rojas invited Attorney Peterson to make his presentation on behalf of the Coyote Village Homeowner's Association.

Attorney Peterson provided packets with 19 exhibits to the Commission, HOA representatives and the City Prosecutor. The Chair reminded members of the audience that if they wished to speak during the public hearing portion, they should submit their speaker's cards to Secretary Lopez.

Attorney Peterson re-introduced himself and thanked City staff for their time and professionalism in dealing with the process. Attorney Peterson said it's an unfortunate situation and that all members of the HOA are living with the situation before the Commission. Attorney Peterson stated that the question before the Commission is whether or not there should be a nuisance abatement order issued against the association, which would inflict more damage on Coyote Village residents because it will further stigmatize the property. He stated it is an issue that the property owners do not have the ability to deal with. Attorney Peterson explained that the HOA has been proactively reaching out to the City and elected officials like Senator Newman, who championed an \$8.5 million allowance from the State budget to the City to get the channel fixed. Attorney Peterson said the HOA consists of residents that live there and want the problem solved so they are working with their State legislators, County legislators and trying to get something done.

Attorney Peterson stated that Don Hasch, on behalf of the Coyote Village HOA, submitted an appeal to the Nuisance Abatement Notice to the Planning Division on April 25, 2023.

Don Hasch introduced himself as the president of the HOA and acknowledged that he had signed the letter of appeal submitted by the HOA, shown in the packet as Exhibit 1. Attorney Peterson asked that Exhibit 1 be submitted as part of the evidence for this hearing. Chair Rojas noted that it had been included as part of the agenda packet which is part of the record. Attorney Peterson then provided an overview of the HOA's Exhibits 2-8: Exhibit 2 includes a map showing the location of the project and the Imperial Channel and additional photographs of the channel; Exhibit 3 includes the Imperial Channel Project report for historical reference; Exhibit 4 is the tract map; Exhibit 5 includes a press release by Senator Newman announcing his \$8.5 million funding for repair of the Imperial Channel as it traverses through Coyote Village; Exhibit 6 is an excerpt from Assembly Bill (AB) 179 where it shows that \$8.5 million is awarded to the City of La Habra for the Coyote Creek and the Imperial Channel improvement project; Exhibit 7 is a press release by Attorney Gary Kranker on behalf of the City; and Exhibit 8 is a joint status conference statement that is before the court in pending litigation signed by attorneys. Attorney Peterson said it is important to note that this statement was signed off by all counsel. Attorney Peterson read portions of the joint status conference statement. Quoting the statement, he said that the Department of Water Resources has allocated funds that should be made available to the City for the ultimate repair; that the City was recently orally informed that the Legislative Counsel's Office determined that the expenditure of those funds, since they are based on an act by the Legislature, would not be considered a gift of public funds. Further quoting the statement, Attorney Peterson stated that the parties believe that the funds allocated by AB 179 should be sufficient to make the necessary improvements to repair the channel and reimburse the City for the most recent emergency repair work. The HOA, with input from the County and the City, plans to proceed with specific planning and expending the funds and move forward with the repair which is not anticipated to be completed until at the earliest at the end of the year. Attorney Peterson explained that Exhibit 9 is a letter he received from Mr. Kranker to Mr. Peterson; Exhibit 10 is a letter Mr. Peterson sent to Mr. Kranker dated March 17, 2023; Exhibit 11 includes a timeline of events leading to the collapsed drain; Exhibit 12 includes copies of some permits; Exhibit 13 includes more history about why and how the emergency situation occurred, but also shows the City was involved in the process; Exhibit 14 is a letter to Mr. Kranker dated March 3, 2023 before the most recent calamity occurred, which is intended to show that the HOA knew that the situation needed to be resolved which led them to be proactive in commissioning a repair plan from a geotechnical engineer; and Exhibit 15 shows a printed version of the conceptual repair plans. He said his client has been trying to get the problem solved. Attorney Peterson then referred to Exhibit 17 and specifically pointed to the last paragraph of that letter dated March 17, 2023, which says: *"The city does not have any control over the State's grant funding at this time. The city will attempt to use a portion of the funds*

the State has allocated; however, there is no guarantee that the funds will eventually become available and can be legally used for this purpose. If the State funds are not available, then the HOA and its members will be assessed all abatement costs, including incidental expenses...” Mr. Peterson stated all that the Planning Commission would accomplish tonight if they were to adopt this nuisance, is give rise to further litigation, but this is not necessary and the City is protected. He stated there is an interested group of homeowners and an association who want to get the work done. Attorney Peterson said it is the HOA’s position that it doesn’t make sense for the Commission to move forward with an abatement order because they believe the emergency repairs have already been resolved. The State has already agreed to provide the funds.

Attorney Peterson then proceeded to ask Mr. Hasch a series of questions. Mr. Hasch testified that he became HOA president in approximately 2011 and was president through the events of 2019 and 2023. Mr. Hasch said following the collapse in 2019, the County coordinated with contractors to clear the collapsed section of the tunnel. Mr. Hasch said the County did not assess a nuisance abatement against the HOA and stated that work was done through agreement and negotiations. Mr. Hasch further stated that in 2023, the HOA continued to make attempts to work with the City. Mr. Hasch also said the HOA has extended every opportunity to allow the City to visit the site and assist with any improvements available. Mr. Hasch stated that was his understanding based on discussions with the County, the City and Senator Newman’s office and other officials that the State funding would be sufficient to finish the work. Mr. Hasch said he has had numerous meetings, discussions and communications provided electronically with the Coyote Village homeowners about their concerns relative to an order of abatement should their property be declared a nuisance. Mr. Hasch said that many homeowners were concerned about not being able to sell or buy their property if the City imposed a lien on their property. Attorney Peterson said he had no other questions for Mr. Hasch.

Chair Rojas asked if the City’s attorney wished to cross-examine the witness.

Attorney Donovan began her cross-examination of Mr. Hasch by asking him to confirm if he was aware of a previous collapse in 2019. Mr. Hasch said yes. Attorney Donovan then asked if the second collapse happened in the same spot as the first collapse. Mr. Hasch said no and relayed that the second collapse occurred approximately 50 yards away. Mr. Hasch confirmed that the first collapse happened in January of 2019 and the second collapse occurred in March 2023. Attorney Donovan asked if he was aware of any pending litigation between the HOA and the City regarding the first collapse. Mr. Hasch said yes. Attorney Donovan referred to Exhibit 16 of the City’s exhibits and asked Mr. Hasch if this was the HOA’s first amended complaint against the City regarding the first collapse. Mr. Hasch stated Exhibit 16 is the first amended complaint and he is familiar with the document. Attorney Donovan asked Mr. Hasch if he was aware that paragraph 31 of the complaint describes the collapsed channel as *“it affects a substantial number of people at the same time, including without limitation those living at the Subject Property and others at risk of flooding that could result from further collapse of the Covered Channel.”* Mr. Hasch said the HOA was aware that a further collapse could occur. Attorney Donovan asked what steps the HOA took to remedy that issue. Mr. Hasch said the HOA did not have the financial means to offer a remedy, therefore they continually reached out to the City, County and State representatives for assistance. As a volunteer board member, Mr. Hasch wasn’t aware of the existence of the tunnel and had no expertise as far as managing such a tunnel or repairing a tunnel on their own which is why he reached out to all the experts numerous times to try and get direction as to what the HOA could or should do. Attorney Donovan asked if the HOA took any steps to hire a contractor to remove some of the soil that might lead to further collapse. Mr. Hasch said they reached out to contractors but were turned down because they were a private entity and contractors didn’t want to take on the liability. They were informed by members of the City and County at the time that it might be challenging to hire a contractor since they would want

more substantial liability coverage which they would get in a public contract environment. Attorney Donovan asked Mr. Hasch to clarify if that meant that it was more of an insurance issue, after which Mr. Hasch responded yes, the contractors felt the HOA didn't have enough protection if something else went wrong. Mr. Hasch said the HOA consists of 70 families with very limited funds and they knew from the beginning that they didn't have the resources. Mr. Hasch said that in early discussions with the City and County, they were looking at alternative funding options, including loans, grants, bonds and other methods. The City helped the HOA submit for a bond through one of the environmental agencies, which didn't get approved. Mr. Hasch said they tried everything they could given their limited resources and capabilities. Attorney Donovan said she had no further questions.

Chair Rojas asked if any of the Commissioners had any questions. Commissioner Mahecha asked Mr. Hasch, prior to the first collapse, how many inspections had the HOA conducted on the channel. Mr. Hasch explained that the HOA had no knowledge that the channel existed prior to the first collapse as it wasn't identified in their CC&Rs nor was it included in their purchase documents as an owner or as a board member. Mr. Hasch stated that the only thing the homeowners understood was underground were the sewer and drainage facilities that were managed by Public Works for which they paid their utilities. Mr. Hasch said they were shocked when the first collapse occurred, but the City did come out and initially started the repair work. Mr. Hasch said the next morning, the City's attorney confirmed that the channel was on private property and that was the first time any of the homeowners became aware that the channel is private property.

Chair Rojas invited the HOA's representative to offer their rebuttal. City Attorney Roberto clarified that the City's representative will offer rebuttal first and then allow the HOA's representative to go next. Chair Rojas called on Attorney Donovan to present the City's rebuttal.

Attorney Donovan said that as much as she would like to keep the financial aspect out, it's clear that it's a big concern to the residents. She reminded the Commission that the purpose of the meeting is for the declaration of a public nuisance. Attorney Donovan stated that City staff said that at the time, it was an emergency that needed to be corrected immediately, or there was a risk of flooding; at the time, as an emergency, it needed to be abated. Attorney Donovan displayed a photograph and said that was the current condition of the property and it remains a nuisance. Although the channel is clear and the immediate problem has been abated, there are several other nuisances that exist on the property including a lot of unusable property, and a lot of tarps making those areas unusable by the residents as evidenced in photos. She argued that it is a nuisance. She stated that there will potentially be a second hearing on the financial aspect to confirm the fees associated with the abatement of the nuisance. Attorney Donovan said the status of the State grant is unknown at this time and, therefore, the City needs the declaration of a public nuisance in order to ensure that the City can recoup the funds that it expended to correct these nuisances back in March and April and potentially in the future if it doesn't get corrected.

Chair Rojas asked the Commission if they had questions for Attorney Donovan. Commissioner Manley said his question could be answered by either Attorney Donovan or staff. Commissioner Manley asked what criteria Building staff would utilize to determine if something is a public nuisance. Attorney Donovan said there is a specific section in the Municipal Code and that some of those sections were identified in the Notice of Public Nuisance. She said the Municipal Code outlines a laundry list of nuisance conditions and Building and Code Enforcement staff could reference that list in order to identify a nuisance. Commissioner Manley asked Attorney Donovan to specify what about the property's current condition results in the need to declare it a nuisance. Attorney Donovan deferred this question to staff. Chief Building Official, Rodney Sipma, quoted from the La Habra Municipal Code, Section 18.74.040(A)(2),

and (B)(2). Commissioner Manley asked where they could find those sections Mr. Sipma was quoting. Chair Rojas said that section was mentioned in the staff report provided on page 13 of the agenda. Commissioner Manley asked Mr. Sipma to repeat those sections again as clearly as possible. Mr. Sipma cited and read from LHMC Sections 18.74.040(A)(2), LHMC Section 18.74.040(B)(2), and LHMC Section 18.74.040(C)(1).

Chair Rojas asked if any other Commissioners had questions. Commissioner Mahecha said she had a question for Mr. Hasch, but would ask him later. Chair Rojas said she would also hold her question for staff later too. Chair Rojas invited the HOA's representative for their rebuttal and reminded him that it was limited to five minutes.

Attorney Peterson said no one at the HOA knew about the issue until after the first collapse. He said this proceeding is trying to hold people that had no knowledge about the condition to be responsible for the condition. Attorney Peterson said that the City Attorney had stated there will be a serious talk about a settlement agreement and indicated that everyone has a vested interest in getting this done. Attorney Peterson stated that everyone is aware of the events that led to second collapse on March 15, 2023 and the Notice of Public Nuisance. He further stated that the emergency has already been abated and, in the meantime, State funding was allocated to the City to get the channel fixed. He said his client has been trying to get answers from the City regarding the funding. He questioned the City's motives for filing the Notice of Public Nuisance in the first place. He stated that the litigation and settlements will work themselves out just like it did with the County. He asked the Planning Commission to be practical and not proceed with declaring a public nuisance since the emergency was abated and State funding will be made available to solve the problem. He remarked that it would not be right for the Commission and City to further antagonize their neighbors and constituents at Coyote Village.

Chair Rojas asked if the Commissioners had any questions for Mr. Peterson. Commissioner Mahecha asked if the HOA is professionally managed. Attorney Peterson deferred to Mr. Hasch. Mr. Hasch responded that it is professionally managed by Diversified Property Management, a licensed and professional management group. He said they have had them since he came on board. Commissioner Mahecha questioned why the County did not pay for second channel collapse. Attorney Peterson said that the State had already allocated the funds under a budget bill that passed in July. Commissioner Mahecha said that didn't answer her question. Attorney Peterson said he didn't know why they didn't pay, but he did know that the funds were there, routed through the City. Mr. Hasch said they requested help through an email to the City and the County and the City responded and the City agreed to do the repairs. Mr. Hasch said that he assumes there were discussions between the City and the County, but neither he or the HOA were privy to any City and/or County discussions. Mr. Hasch said the County agreed to do repairs resulting from the first collapse in 2019. Mr. Hasch said it made sense for the City to handle repairs for the second collapse because the HOA anticipated that State funding would be going to the City. Commissioner Surich asked Attorney Peterson whether the HOA had the same information from 1979 that Mr. Peterson asked Mr. Mendoza about. Attorney Peterson said the HOA did not and noted that the HOA sued the developer for fraud because the developer dug a channel, covered it up with landscaping, buried it and didn't tell anyone. There were no reserves in the budget for the channel and nothing in the CC&Rs referenced the underground channel. However, the CC&Rs did mention an open channel design concept that never came about. There is no mention of the channel in the white report, final public subdivision report issued by the California Department of Real Estate, the CC&Rs or the budget. Attorney Peterson said that he got involved in around 2020.

Chair Rojas asked staff if the City issued a Public Nuisance Notice in 2019 after the first collapse. Ms. Bastreri said the City did not; there was no record of a notice being issued at that time. The Chair asked

if there was any record of an intent to issue a Public Nuisance order in 2019. Ms. Bastreri said neither Code Enforcement nor Building Staff was aware of it. The Chair then called for a five-minute recess.

The Chair called the meeting back to order at 8:11 p.m. She reminded the audience that the Commission was present to decide whether a Public Nuisance exists, and they are not there to dispute funding or any other type of element. The Chair then opened public comment and gave the instructions to the public wishing to speak. The Chair asked if any correspondence had been received. Secretary Lopez said yes, a letter with attachments was received but staff advised the appellant to present their information during the public hearing. The Chair then asked how many speaker's cards were collected. Secretary Lopez said there were 11. The Chair informed the speakers that they would each have three minutes to address the Commission.

Mr. Don Hasch, Coyote Village Homeowner's Association President, addressed the Commission. Mr. Hasch said he has been at Coyote Village since about 2011. He said they are a nonprofit HOA with three volunteer board members that have equal voting rights. Mr. Hasch said he was appealing to the Commission's humanity, their understanding, and their logic. Mr. Hasch repeated that the first time the HOA was made aware of the channel was after the first collapse in 2019, which was repaired by the County. Mr. Hasch further explained that after the second channel collapse, the City hired the contractors and the HOA worked very closely with them to make sure they abated anything that was a risk and asked the contractors do extra removal to prevent the risk of another collapse so the HOA could get to the funding being made available prior to any other issues. Mr. Hasch said it was their understanding, based on the contractors from the City coming in and then leaving, that they had abated the immediate risk of any further collapse. He said the channel currently has a bare ceiling or roof with no more excess weight on top. Mr. Hasch said the HOA is hoping funding becomes available in the next couple of months so they can start their discussions with the City and County. Mr. Hasch said that it is a private nuisance that they have been struggling with for the last four years. Mr. Hasch noted that their kids can't play outside, they have mosquitos and gnats, they have rats and vagrants running through the channel, presumably gaining access from County and City controlled access points offsite. Mr. Hasch said they have done everything they could in the past four years to solve the problem and there is no benefit to putting a lien on the properties when they are at the mercy of the County, City and the State with the funding that is coming through.

Mr. Ken Thomas, resident of Coyote Village, addressed the Commission. Mr. Thomas recounted his experience as an active duty member of the armed forces for 25 years which included helping recovery efforts in Florida after hurricane Andrew, and in Louisiana after hurricane Katrina. He indicated he did not consider the misfortune of those impacted a problem; he said they were not responsible for the unfortunate disasters that they came upon. He considered their misfortune an obligation to serve their community. He said it was a privilege to serve in both those operations. It was a time when all parties, individuals, local, state, and federal authorities came together to help the citizens of those communities to help them regain their lives. Mr. Thomas said that it is their understanding that funding is available and requested that they access that funding as expeditiously as possible so that the citizens of Coyote Village can regain some type of normalcy to their lives.

Ms. Ana Sotomayor, resident of Coyote Village, addressed the Commission. Ms. Sotomayor said that she and her husband are the original owners of their condo and purchased it 40 years ago. Ms. Sotomayor said they were not aware of the channel, and they are aware that there is funding available and are now asking the Commission for their assistance in helping to expedite the repair of the tunnel.

Ms. Glenda Calvert addressed the Commission. Ms. Calvert stated she has been a landlord and a resident at Coyote Village since 2003. She said that the board members and residents have worked hard throughout the years to maintain their property values, but their homes are presently undervalued because they have lost their HOA amenities including the use of the pool, spa, tennis court, and greenbelt. Ms. Calvert stated her property is rented at a below market rate, which has put her and her family in a stressful financial situation that has lasted for several years. She concluded by asking the Commission to put themselves in their shoes.

Ms. Linda Valenzuela, resident of Coyote Village, addressed the Commission. Ms. Valenzuela said it has been hard, mentally, physically, and emotionally, and for so many of the homeowners. She said she opens her door and sees the hole every day. She said she is right in front of it. She sees kids riding their bikes through the tunnel. She said her stress level goes up when she sees kids coming through with skateboards because she is afraid they are going to fall down the hole. She commented on the trees, debris and bushes and said it is overwhelming. She said there is such a strong smell coming from the channel that it's like being at the ocean. Ms. Valenzuela expressed concerns for the pathway in front of her door, which she said slopes now when it did not before. She asked for the community to come together to get this handled.

Ms. Blandina Beltran, resident of Coyote Village, addressed the Commission and stated that she has been a La Habra resident for 16 years. She endured the financial crash of 2007/2008, and the stress of the pandemic like everyone else. She says they were relieved to find out there was funding from the State. Ms. Beltran said neither she nor the other homeowners are to blame for what happened initially. They should not be blamed for an act of nature or for decisions made many years ago, which they had no control of. She asked the Commission not to move forward with this action.

Mr. Ernest Najera, resident of Coyote Village, addressed the Commission. Mr. Najera said this has been a very stressful situation for all and they are begging for help. Mr. Najera said his front door is about 10 feet away from this and he sees it every day. He said he questions how 70 families could pay for an \$8-million project if the funding doesn't come through and said it would ruin their lives and they would go bankrupt. He ended by saying please help us.

Ms. Bilie Ward, property owner at Coyote Village, addressed the Commission and stated she was one of the people who called Senator Newman's office and was told that they would get the funding. She said it has been four years of no one getting anything done for them. Ms. Ward said she feels that no one wants to help them. She said they have the funds and wondered where the funds were to help them. She asked for the Commission's help and asked that they not put liens on their homes.

Ms. Jan Duncan, Coyote Village Homeowner's Association Vice President, addressed the Commission and said she has been an HOA board member since 2012. Ms. Duncan asked the Commission to do the right thing. Ms. Duncan said that the first collapse was much greater and the damage far bigger than the second collapse, but no one put a lien on their home nor did anyone declare it a nuisance then. She said that after this smaller collapse, after they kept saying it could happen again and they kept asking for assistance, nothing was done. She asked the Commission not to declare it a nuisance or put a lien on their homes.

Mr. Curt Russell, Coyote Village resident, addressed the Commission by stating he moved to La Habra in 2017 and had no knowledge of the channel. He said it was not mentioned on his deed or title. Mr. Russell said they are a community of people and recounted how they have helped each other. He asked the Commission not to do this and noted that the homeowners don't have the funds.

Mr. Joe Escobar, Coyote Village resident, addressed the Commission by stating that he has been a resident of La Habra for 15 years and has owned property at Coyote Village for 11 of those years. Mr. Escobar expressed his frustration after listening to the exchange from staff. He felt that none of the staff really knew about the collapse from four years ago. He mentioned that when the first collapse happened, cadaver dogs were sent into the channel because of transients living in the channel and the presence of coyotes' dens too. Mr. Escobar said those things can be considered a nuisance, but more than three feet of earth that was on top of the channel has been removed and therefore, no longer a public nuisance. He said a private nuisance exists with all the smells and flies that cover his windows where he can't even look out his window since he faces that hole. Mr. Escobar said this is a headache for them and asked the Commission to help them expedite this issue.

Chair Rojas asked if there were any other speakers. There were none. Attorney Roberto addressed the Chair and clarified that each party should have a five-minute closing statement at this time. Chair Rojas closed public comment and invited the HOA's representative to provide their closing statement.

Attorney John Peterson said he would use four minutes now and then reserve one minute of his remaining time. The Chair granted his request. He thanked staff for their time and for hearing from the various homeowners and association board members. Attorney Peterson said State funds are being made available to the City to remedy the situation, but the HOA is not aware of the exact status of these funds. The HOA has been asking for help and commissioned an expert to come up with a solution for the channel that could be done using the \$8.5 million. He said City staff with this Notice of Public Nuisance is asking the Commission to impose on the homeowners' association a finding of a public nuisance. Attorney Peterson stated that the nuisance has been abated and City staff admitted that the emergency has been abated. He said all that is left are some lizards and coyotes. He said a public nuisance is placing a stigma, but this property is already stigmatized and they don't need an official public act further stigmatizing it and hurting the homeowners. Attorney Peterson stated there's pending litigation that is on the verge of getting wrapped up because the State has found the funds, allocated the funds, and appointed the City to be in charge of the funds to get this job done. Attorney Peterson questioned what would be accomplished by declaring this a nuisance. He said nothing happens to the City if the Commission does not declare it a nuisance. However, he said the homeowners will be stigmatized and their homes would be stigmatized with this public nuisance finding and that is not right. Attorney Peterson also questioned if a declaration of a nuisance would interfere with the funding and noted that we don't know what ramifications will come from it. Attorney Peterson asked the Commission to pass on the action and said he would reserve his remaining time for final closing.

Chair Rojas called on Attorney Donovan for the City's closing statement. Attorney Donovan presented some slides that she indicated might help address some of the public comments. Her first slide contained the definition of a public nuisance under Civil Code section 3480: "a public nuisance is one which affects at the same time and entire community or neighborhood or any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal." Her second slide contained Civil Code section 3491: "the remedies against a public nuisance are: (1) indictment or information; (2) a civil action; or (3) abatement." Attorney Donovan said the City chose abatement. That same slide contained the Code of Civil Procedure section 731: "authorizes a city attorney to bring an action to enjoin or abate a public nuisance." Attorney Donovan then quoted some case law related to nuisance abatement and strict liability. She pointed to the exhibits that were passed out and said that it provides a large section of the nuisance abatement section, one of which discusses the immediate hazards and abating immediate hazards (LHMC Section 18.74.180). In part, it says that "such immediate action to abate a nuisance shall be limited to such action as is reasonably necessary to eliminate the

immediate hazard.” Ms. Donovan said that it has been shown that the City abated that which was the immediate hazard or the collapse to prevent flooding both on the property and up stream. She said the nuisance still exists, and it’s clear from the public comments that there are still several issues on the property. Ms. Donovan said she wanted to refocus the Commission on the 2023 collapse. No matter what the owners knew in 2019 or before, they knew, by the time of the 2023 collapse, that there was a danger. Attorney Donovan said the HOA took no physical steps to remove the dirt that was creating the danger from 2019-2023 and explained that the homeowners inherited these problems when they purchased their property, per the strict liability sections that she quoted earlier. Attorney Donovan said the speakers during public comments are essentially asking the Commission for taxpayers to pay to improve this property if the anticipated State funding does not come through. Essentially, the City would have to pay for the repairs that it made, on its own, if the grant doesn’t come through for them, for whatever reason. She concluded by asking the Commission to adopt the resolution as presented and declare that the property is and was a public nuisance.

The Chair then called on Attorney Peterson for his final closing statement, reminding him he had a minute and 16 seconds. Attorney Peterson said that the effort tonight is mean spirited because the problem will be solved; the City’s attorney is citing the possibility that funding may not come through. He said the Legislature adopted the budget and the budget bill appropriated that \$8.5 million through the Department of Water Resources to the City of La Habra and said the funds are there. The City is going to be reimbursed. He said the public nuisance has been abated. Attorney Peterson said Mr. Mendoza said the public nuisance was taken away and now what is left is an unfortunate situation for the homeowners that have to live there, but that’s not a public nuisance at this point because the channel back up is resolved. He asked the Commission not to adopt the finding of a nuisance, saying it’s mean spirited and it inflicts further harm on a problem that is being resolved and will be resolved.

The Chair called on the Commissioners to deliberate on this matter and asked if any of the Commissioners had any thoughts or comments.

Commissioner Mahecha addressed the homeowners’ association and residents of Coyote Village. Commissioner Mahecha said she was sorry that their attorney did not explain to them the purpose of the hearing; had he done so, the outcome of her vote may have been different. She said instead he asked the owners and residents to appeal to the Commission emotionally instead of logically. The Commission is not deciding who is responsible, they are not discussing the funding, they are simply being asked to determine if a nuisance exists. She said listening to them talk about the damage to their property did move her, but their testimony of the horrible conditions of their property provided more evidence of a nuisance. She said their attorney chose to frame their issues irresponsibly to pit them against the Commission. She said the attorney is saying that if the Commission decided against them, it’s mean spirited, and in that way, he is pitting them against the Commission. Commissioner Mahecha said she was offended by that and found it irresponsible on the part of their attorney. She said the property owners would have been better served if their attorney had explained to them what the hearing was actually for.

Vice Chair Surich thanked all the homeowners for being present. She said the Commission is understanding of the situation the owners are living with. She said the Commissioners live in La Habra and have to maintain their properties. She said that being a homeowner is expensive. She explained that their job this evening is not to talk about the money and where it was allocated to. They have been asked to decide whether or not it is a public nuisance.

Commissioner Manley said that this sucks for everybody. He noted that the Commissioners are all La Habra residents and he is a homeowner himself, though he has never had an \$8 million of repairs on his property and did not want to make light of that in any way. Commissioner Manley explained the Commission has been asked to decide, based on the Municipal Code, was there was a nuisance and is there still a nuisance. He noted they often sit in this chamber with one or two people hearing different projects proposed to them and they have to make decisions based on what codes say and on what ordinances are, and not how they feel or what they think is right. In order to be subjective and to do what's right, in the eyes of the residents' present, it's probably not doing what's right, in the eyes of what the codes say, what public nuisance criteria says. Commissioner Manley concluded by saying he was ready to make a resolution.

Chair Rojas said she was very empathetic. She said she is also a homeowner and resident of La Habra. She said as other Commissioners have pointed out they have to make a decision based on what the code is, leaving their emotions out. She said that as mentioned by Commissioner Mahecha, the residents' comments reaffirmed that there is a nuisance. There is pollution, noise, and all kinds of different types of nuisances that currently exist, unfortunately. She then asked staff, if the Commission were to vote on this resolution stating that this is a public nuisance, what happens next. Planning Manager Sonya Lui said that if the Commission passes the resolution, their decision is final, no further action is anticipated. If the City were to initiate cost recovery, a separate hearing and advanced notification would be given to the property owners. This is simply one requirement giving the City the option to initiate cost recovery in the future, but no decision has been made to do so. Chair Rojas then asked if the purpose of this resolution is so that in the future the City would have the option for cost recovery. Ms. Lui said that was correct. Chair Rojas asked if there is no further action or impact to the residents. Ms. Lui said that was correct.

Commissioner Mahecha asked the City Attorney if this would in fact place a lien on their property as Mr. Peterson repeatedly stated. Attorney Roberto said no, it does not.

Commissioner Manley said that it was made clear that funds have been allocated. The HOA representation painted a picture that City staff has flatlined in terms of communication, but he had a lot of paperwork in front of him showing that there has been a lot of communication, though he could understand their frustration. He asked staff if they could be diligent and expeditious in whatever the next steps are for those funds. Whatever the City can do to ensure to the residents, community, the Commission, and the City that they are being diligent in what role they may have in that. Planning Manager Lui said that the City has to make a determination regarding the funding separately from this meeting, which would involve decisions by various departments and the administration. Ms. Lui said that, generally, the City does try to work towards a resolution and she didn't see why staff could not work to their best of their abilities. Commissioner Manley said that it was clear to him that the homeowners weren't sitting on their hands. The documents presented by the HOA's attorney shows Senator Newman's press release, showing that the money was allocated for this specific purpose. Not knowing the accuracy of that, Commissioner Manley said, if that is true, as a City we should not take that lightly. He said that he knew that the City Council was listening really closely to this, but as a resident, he thinks it's fair to see members of the community fight respectfully as best as they can for themselves and for the State to step in and try to help and as a City that we can use those resources as they were intended so it is a win-win for everybody.

Commissioner Mahecha said that if they could all vote toward allocating money toward this, they would. If she had the money, she would give it to them. She requested that the homeowners not think the Commission does not care, because they are their neighbors, and they do care.

Chair Rojas said she agreed with Commissioner Manley and she empathized with the work they have all done and advised that they continue to work with Senator Newman's office to ensure those funds continue down to them.

Moved by Chair Rojas and seconded by Commissioner Manley, Adopting Resolution No. 23-07, entitled: A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF LA HABRA, CALIFORNIA, AFFIRMING THE NOTICE OF PUBLIC NUISANCE ISSUED TO THE COYOTE VILLAGE HOMEOWNER'S ASSOCIATION, with one amendment, as follows:

Amending SECTION 5 of the Resolution to read: The HOA is hereby ordered to take all necessary steps to repair the storm drain channel to prevent a future collapse within **90 days with the option to extend**, or longer with the City's consent.

The motion carried by the following roll call vote:

AYES: COMMISSIONERS: ROJAS, MANLEY, SURICH, MAHECHA
NOES: COMMISSIONERS: NONE
ABSTAIN: COMMISSIONERS: NONE
ABSENT: COMMISSIONERS: BERNIER

Secretary Lopez stated that pursuant to Section 18.74.170(C) of the La Habra Municipal Code, the Planning Commission's decision is final.

COMMENTS FROM STAFF

Planning Manager Lui informed the Commission that there were no items to present at the next regularly schedule meeting, so it would be canceled, but they did have an item to present at the first meeting in July.

COMMENTS FROM COMMISSIONERS

There were none.

ADJOURNMENT: 9:06 p.m. to the Planning Commission meeting on July 10, 2023.

Respectfully submitted,

Veronica Lopez,
Secretary