



Date: November 14, 2008

To: Mayor and City Council for Council Action

From: Dominic Caserta, Council Member

Subject: Request City Council to Authorize Correction to Minutes of November 16, 2004 City Council Meeting Regarding Abstention by Council Member Dominic Caserta from Taking Action on the Mills Act Contract pertaining to his Primary Residence Located at 936 Fremont Street, Santa Clara, CA

EXECUTIVE SUMMARY:

I am requesting the City Council vote to correct the minutes of the November 16, 2004 City Council meeting to indicate that I abstained and left the dais when the Mills Act Contract for my home was acted upon by Council. I consistently abstain from issues that involve my property and any other agenda items that would cause a conflict of interest; and I follow the advice of the City Attorney on these matters. Recently affidavits (declarations) by several City officials were prepared that support my position that I did not vote on November 16, 2004.

In addition, the minutes of November 9, 2004, show that I abstained when the Council continued the Mills Act contract for my home to November 16, 2004, a clear indication that I recognized the need to abstain on this contract.

Roberts Rules of Order allow minutes to be corrected at future meetings:

Roberts Rules of Order: "Corrections. The minutes may be corrected at future meetings. After an assembly approves the minutes, without a reconsideration, it may correct them further at any future time no matter how much time has elapsed or how many times they have already been amended. The official version of the minutes (not the original notes) must be signed by the person who acted as secretary for that meeting."

There are several attachments to this report which support my request to Council to correct the November 16, 2004 Council meeting minutes:

1. Declarations submitted to FPPC on November 5, 2008:
 - Declaration of Dominic Caserta
 - Declaration of Patricia M. Mahan
 - Declaration of Patrick Kolstad
 - Declaration of Michael R. Downey
 - Declaration of Carol McCarthy

Mayor and City Council for Action

SUBJECT: Request City Council to Authorize Correction to Minutes of November 16, 2004
City Council Meeting Regarding Abstention by Council Member Dominic Caserta from Taking Action on
the Mills Act Contract pertaining to his Primary Residence Located at 936 Fremont Street, Santa Clara, CA
November 14, 2008

Page 2

2. Excerpt from minutes of November 9, 2004 City Council meeting.
3. Excerpt from minutes of November 16, 2004 City Council meeting.
4. June 12, 2008 agenda report to City Council for information from Council Member Dominic Caserta clarifying November 16, 2004 vote on Mills Act contract.
5. Report from City Clerk regarding City Council Member Dominic Caserta voting record including meeting dates, and topic that he abstained on during meetings.

Based on the information provided, and the provision in Roberts Rules of Order that allows for corrections at future meetings, I respectfully request City Council to vote to correct the minutes of November 16, 2004 to reflect that I abstained from the vote on the Mills Act contract for my home at 936 Fremont Street.

ADVANTAGES AND DISADVANTAGES OF ISSUE:


The advantage to correct the minutes of November 16, 2004 will be that the City's records will reflect correctly for the future.

ECONOMIC/FISCAL IMPACT:

There is no economic impact to this report.

RECOMMENDATION:

That the Council authorize correction to minutes of the November 16, 2004 City Council meeting regarding abstention by Council Member Dominic Caserta from taking action on the Mills Act contract pertaining to his primary residence located at 936 Fremont Street, Santa Clara, CA.



Dominic J. Caserta
Council Member

Documents Related to this Report: See above referenced list of Attachments No. 1 thru 5 in the Executive Summary section.

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8
9
10 **BEFORE THE**
11
12 **FAIR POLITICAL PRACTICES COMMISSION**
13
14 **OF THE STATE OF CALIFORNIA**

15 In re matter of
16
17 **DOMINIC CASERTA**

DECLARATION OF DOMINIC CASERTA

18 I, Dominic Caserta, declare:

- 19 1. I am a City Council Member for the City of Santa Clara, a position I have held since
20 December 2002. The following facts are known to me and I can and will competently
21 testify to them if necessary.
- 22 2. Prior to the November 9, 2004, Council meeting I recall receiving a telephone call from
23 Michael Downey, the City Attorney, advising me that I had a conflict of interest on my
24 Mills Act contract with the City, which was on the agenda for approval on November 9,
25 2004.
- 26 3. At the City Council meeting of November 9, 2004, when the agenda item was called, I
27 recused myself from the vote, stating that I owned the property in question, and left the
28 room. The Council then voted to continue the matter until the Council meeting of
November 16, 2004. I returned to my seat following consideration of the item by the
Council.
4. At the City Council meeting of November 16, 2004, the Mills Act issues were again on
the agenda. When the agenda item was called, I recall that I again recused myself from
the vote, stating that I owned the property in question, and left the room. I then returned

1 to my seat following consideration of the item by the Council.

2 5. On December 16, 2008, I do not recall voting on the minutes. It would have been my
3 practice to abstain on those items I had abstained upon previously.

4 6. The issue of whether I had voted on my own Mills Act contract was raised by my
5 political opponents in May 2008 (I was then running for the State Assembly). At that time
6 I checked with the City Clerk and City Attorney regarding steps to take to correct the
7 minutes. I was informed that there were not enough sitting City Council Members who
8 were Council Members in 2004 to be able to reconsider and correct the minutes. I was
9 informed that the proper procedure would be to submit a memorandum to the Council
10 clarifying my voting record, which I did. A true and correct copy of the memorandum is
11 attached hereto.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct. Executed this 31 day of October, 2008, at Santa Clara, California.

14 
15 _____
16 DOMINIC CASERTA

17 /Users/Dominic/Desktop/Caserta Declaration.DOC

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9 **BEFORE THE**
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11 **OF THE STATE OF CALIFORNIA**

12 In re matter of

13 **DOMINIC CASERTA**

14 **DECLARATION OF PATRICIA M. MAHAN**

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16 I, Patricia M. Mahan, declare:

17 1. I am the Mayor of the City of Santa Clara, a position I have held since December
18 2002. Prior to that time I served as a Council Member for the City for eight (8) years. The
19 following facts are known to me and I can and will competently testify to them if necessary.

20 2. Minutes of the various City Boards and Commissions are routinely on the City
21 Council agendas for approval by the Council. The minutes of Commission meetings often request
22 the Council to take certain actions. Those actions are considered as part of the same agenda item as
23 the minutes.

24 3. At the City Council meeting of November 9, 2004, the minutes of the City's
25 Historical Landmarks Commission were on the agenda for approval. As part of that same agenda
26 item, the Commission also requested that the Council approve the Mills Act contract for Council
27 Member Dominic Caserta, as well as increase the number of Mills Act contracts awarded by the City
28 to a total of ten (10) per year.

1 4. I recall that when the agenda item was called on November 9, 2004, Mr. Caserta
2 immediately questioned whether or not he should even vote on whether the City should increase the
3 number of Mills Act contracts approved per year to ten. In order for staff to research that issue, the
4 matter was continued to the following week. Mr. Caserta abstained on voting, even on the routine
5 procedural matter of a continuance.

6 5. When the issue of Mr. Caserta's Mills Act contract was again taken up on November
7 16th, I recall that Mr. Caserta recused himself and left the dais. That fact was not recorded, but then
8 it has been my experience that was often the case (i.e., that the minutes did not reflect a
9 councilmember's absence from the dais.) So, Mr. Caserta did not participate in the discussion and
10 was not present when the vote was taken. The fact that he was not on the dais could explain why his
11 abstention was not recorded in the minutes. Nothing would have shown up in the vote tally. Council
12 Member Mathews was reported as absent because he was absent from the meeting.

13 6. I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct. Executed this 21st day of October, 2008, at Santa Clara, California.

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PATRICIA M. MAHAN

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10 **OF THE STATE OF CALIFORNIA**

11
12
13 In re matter of

14 **DOMINIC CASERTA**

DECLARATION OF PATRICK KOLSTAD

15
16 I, Patrick Kolstad, declare:

17 1. I am a City Council Member for the City of Santa Clara, a position I have held since
18 December 2000. Prior to that time I served as a Police Sergeant for the City of Santa Clara. The
19 following facts are known to me and I can and will competently testify to them if necessary.

20 2. Minutes of the various City Boards and Commissions are routinely on the City
21 Council agendas for approval by the Council. The minutes of Commission meetings often request
22 the Council to take certain actions. Those actions are considered as part of the same agenda item as
23 the minutes.

24 3. At the City Council meeting of November 9, 2004, the minutes of the City's
25 Historical Landmarks Commission were on the agenda for approval. As part of that same agenda
26 item, the Commission requested that the Council approve the Mills Act contract between the City
27 and Council Member Dominic Caserta, as well as increase the number of Mills Act contracts
28 awarded by the City to a total of ten (10) per year.

1 Helene Leckman Leichter, City Attorney SBN 144221
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**DECLARATION OF
MICHAEL R. DOWNEY**

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17 I, Michael R. Downey, declare:

18 1. I am the former City Attorney for the City of Santa Clara, a position I held from
19 April 1992 to December 2006. The following facts are known to me and I can and will competently
20 testify to them if necessary.

21 2. Some time during 2004, in a City Attorney staff meeting, one of the attorneys in the
22 office mentioned that they were working on several Mills Act contracts and that one was for Council
23 Member Dominic Caserta's home at 936 Fremont Street, Santa Clara, California.

24 3. Because of the potential legal problems with a City Council Member-City contract,
25 the matter was researched. After it was determined that a Mills Act Contract was possible, I spoke
26 with Council Member Caserta on at least one occasion about the procedure that would have to be
27 followed. He was cooperative.

28 4. A staff meeting of City employees who attend the City Council meetings is usually

1 held on Monday afternoons, before a City Council's regularly scheduled Tuesday meeting. The City
2 Council Agenda is reviewed and items of interest are identified by the appropriate staff member.
3 Council Member Caserta's Mills Act contract and his voting disqualification would have been an
4 Agenda item I would have identified to the other City staff members.

5 5. As was my standard practice, on Tuesday mornings (or early afternoon), before the
6 City Council meetings, I would telephone each Council Member (at her request, I usually did not
7 call Mayor Patricia Mahan) conveying to them items of legal interest on the Agenda. If a Council
8 Member were available, I would speak to them. If they were not available, I would leave a message
9 on their recorder. I would have reminded Council Member Caserta that he could not vote on his
10 Mills Act contract. Council Member Caserta's Mill Act contract voting disqualification would have
11 been one of the Agenda items of interest I would have routinely identified to the other Council
12 Members.

13 6. I recall that at the November 9, 2004 Council meeting, Council Member Caserta
14 recused himself and left the dais on the matter.

15 7. When the item appeared again on the November 16, 2004 Agenda, my recollection is
16 that Council Member Caserta followed the same procedure.

17 8. Should Council Member Caserta have remained on the dais for the Mills Act contract
18 item, I would have stopped the meeting to remind him to step down. I do not recall needing to do
19 that.

20 I declare under penalty of perjury under the laws of the State of California that the foregoing
21 is true and correct. Executed this 31st day of October, 2008, at Santa Clara, California.

22
23 
24 MICHAEL R. DOWNEY

25 I:\DATA\WP\HELENE\City Council\FPPC Caserta 2008\Downey Declaration 10-31-08.DOC

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10 **OF THE STATE OF CALIFORNIA**

11
12
13 In re matter of

14 DOMINIC CASERTA

DECLARATION OF CAROL MCCARTHY

15
16 I, Carol McCarthy, declare:

17 1. I am the Deputy City Manager for the City of Santa Clara, a position I have held since
18 1990. The following facts are known to me and I can and will competently testify to them if
19 necessary.

20 2. Before the November 9, 2004 Council Meeting, during the City's Executive Staff's
21 Agenda Planning meeting, I recall the Director of Planning & Inspection notified staff that the Mills
22 Act property in the Agenda Report was Council Member Caserta's home. I recall this because that
23 was the first time I had heard about the Council Member moving to this street. I recall the City
24 Attorney saying that he was advising the Council Member that he could not vote on this item. This is
25 standard procedure, and Executive Management staff who were present at that Agenda Planning
26 meeting would have heard and understood the discussion about the home being Council Member
27 Caserta's, and heard and understood that he would have to abstain on this Mills Act contract item.

28 3. Should the Council Member have accidentally voted on the item at the meeting, I

1 believe the City Attorney or any of the Executive Management staff present at the Agenda Planning
2 meeting who also attended the City Council Meeting would have raised a question before Council
3 moved on to the next Agenda item.

4 4. When the item appeared on the November 16, 2004 Agenda, I cannot recall if
5 Council Member Caserta abstained or not, or removed himself from the dais, or not. If he had voted
6 on the item, I believe the members of the Executive Management team (usually seven people) who
7 attend both the Agenda Planning meeting and the Council Meeting would have requested
8 clarification on the vote before moving to the next Agenda item.

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct. Executed this 29th day of October, 2008, at Santa Clara, California.

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12 
13 CAROL MCCARTHY

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opposition to the project. There being no further public input, MOTION was made by Caserta, seconded and unanimously carried (Matthews absent), that the hearing be closed. MOTION was then made by Diridon, seconded and unanimously carried (Matthews absent) that the Council uphold the Planning Commission action and deny the above-referenced variance.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works (11/2/04), the Council accept the bid in the amount of \$144,106.75 for the Signing and Striping Plans for De La Cruz Tri-level, Forbes Avenue, Park Avenue, Great America Parkway, and Bowers Avenue (CE 04-05-09); award the contract to the lowest responsible bidder, Chrisp Company and authorize the City Manager to execute change orders in connection with the project which, in the aggregate, do not exceed 10% (\$14,410.68) of the contract amount.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that, per the Director of Parks and Recreation (10/26/04), the Council reject all bids received for the Central Park Lawn Bowls Clubhouse Project (PK 03-04-02) and direct the City Manager to resubmit the project for bids after making necessary design changes.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that the Council note and file the Minutes of the Planning Commission for the meeting of October 27, 2004.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that the Council refer to the City Manager the recommendation contained in the Minutes of the Historical and Landmarks Commission for the meeting of September 2, 2004, regarding the transmittal of a letter to Governor Schwarzenegger opposing the California Performance Review recommendation to eliminate the State Historical Resources Commission. The Minutes were duly noted and filed.

MOTION was made by Diridon, seconded and carried with Caserta abstaining (owns the subject property) (Matthews absent), that the Council continue to November 16, 2004 consideration of the recommendations contained in the Minutes of the Historical and Landmarks Commission for the meeting of October 7, 2004 regarding the approval of additional Mills Act Contracts for 2004 and approval of a Mills Act Contract for 936 Fremont Street and addition of the property to the

Architecturally or Historically Significant Properties List. MOTION was then made by Parle, seconded and unanimously carried (Matthews absent), that the Council approve funding up \$600 for the Berryessa Adobe Reception/Open House. The Minutes were then duly noted and filed.

After a brief discussion, MOTION was made by Caserta, seconded and unanimously carried (Matthews absent), that the Council note and file the Housing and Community Services Division Manager's Informational Memo (10/20/04) entitled "Mapping Locations of Completed Project of the Neighborhood Conservation and Improvement Program".

After a brief discussion, MOTION was made by Caserta, seconded and unanimously carried (Matthews absent), that the Council note and file the Minutes of the Neighborhood - University Relations Committee for the meeting of September 20, 2004.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that, per the Director of Parks and Recreation (10/22/04), the Council approve a transfer of \$5,000 from the Friends of Parks and Recreation Trust (account 084-blank-23772-(A)-20410) to Parks and Recreation As-needed Salary (account 001-1143-87020) to cover the Teen Zone as-needed labor staffing costs.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that the Council approve the payment of Bills and Claims and Progress Payments as submitted.

There being no further business, the meeting was adjourned at 10:26 p.m. in Memory of Betsy Ross Cabral (native Santa Claran) to Tuesday evening, November 16, 2004, at 6:30 p.m. for a Closed Session in the Council Conference Room pursuant to Government Code Section 54956.9(a) and to 7:00 p.m. in the City Hall Council Chambers for the regular scheduled meeting.

ATTEST: _____
City Clerk

APPROVE: _____
Mayor

Also as a Special Order of Business, the Council proceeded with the Electric Utility Strategic Plan Status Report for the Third Quarter 2004. The Director of Electric Utility reviewed her memo (11/5/04) and gave an electronic presentation regarding Patrons/Customers, Prices/Rates/Revenues, Power/Power Trading, Programs, Projects, Processes, People/Personnel, Partnerships/Joint Action, Political/Industry/Legislative Issues and Performance/Reliability.

[Handwritten Signature]
CITY CLERK
CITY OF SANTA CLARA

MOTION was made by Diridon, seconded and unanimously carried (Matthews absent), that, per the Director of Planning and Inspection (9/17/04), the Council authorize an increase to ten of the limit of Mills Act Contracts approved per calendar year and the addition of 936 Fremont Street to the Santa Clara List of Architecturally or Historically Significant Properties and approve and authorize the City Manager to execute a Historic Property Preservation Agreement (Mills Act) with Dominic Caserta for 936 Fremont Street.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that, per the Director of Water and Sewer Utilities (11/1/04) and the Assistant Director of Water Utility (11/3/04), the Council approve the use of City forces for the installation of facilities at 3775 Eastwood Circle and 1995 Benton Street (Solar Utility) and 505 Laurelwood Road (Water).

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works (11/8/04), the Council adopt Resolution No. 7178 entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, ESTABLISHING CERTAIN PARKING RESTRICTIONS" which establishes a No Parking for Commercial Vehicles in excess of 20 feet in length zone on both sides of Bassett Street, south of Norman Avenue.

MOTION was made by Parle, seconded and unanimously carried (Matthews absent), that, per the Director of Public Works (11/8/04), the Council adopt Resolution No. 7179 entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SANTA CLARA, CALIFORNIA, ESTABLISHING CERTAIN PARKING REGULATIONS" which resolution repeals Section 1.a of Resolution No. 6686, Section 2.b of Resolution No. 6264 and Section 1.b of Resolution No. 6972 which established Disabled Parking zones on Janice Drive, Monroe Street and Harrison Street, respectively.

Meeting Date: 6/17/08

AGENDA REPORT

Agenda Item # 13B

City of Santa Clara, California



Date: June 12, 2008
To: City Council for Information
From: Dominic Caserta, Council Member
Subject: Clarification of November 16, 2004 Mills Act Contract Voting Record for Property Owned by Council Member Dominic Caserta (936 Fremont Street, Santa Clara, CA)

At the Historical and Landmarks Commission meeting held on October 7, 2004, the Commission requested the City Council approve a Mills Act Contract and historic designation for property owned by me which is located at 936 Fremont Street, Santa Clara, CA. On November 16, 2004, based on review by the Historical and Landmark Commission, City staff recommended to the Council to add 936 Fremont Street to the Santa Clara List of Architecturally or Historically Significant properties and to approve a Mills Act Contract with me for the property. The Council's vote on this action was taken and so noted in the City Clerk's minutes as approved with no notation that I as a sitting Council Member abstained from voting on the Mills Act designation and Mills Acts contract with the City on this item.

The summary of actions from the meeting date in 2004 does not contain a vote tally. The summary of actions simply indicates if an item passed or failed. The City Clerk's Office has checked the original set of draft minutes that were sent to Council for approval and the actual minutes book to check if there were any inconsistencies that would indicate a clerical error. The draft minutes, approved minutes and the minutes book are all consistent, and do not note my abstention on the vote.

This agenda report is being submitted to the Council to note that I had abstained from voting on the Mills Act agreement with the City in regards to my property even though the minutes do not note my abstention. Prior to the Council meeting, I had consulted with then City Attorney Michael Downey, who advised me to abstain. I followed the City Attorney's advice and did not vote on either the Mills Act designation or the Mills Act Contract for my property. I do understand that this report does not change the Council minutes of November 16, 2004. However, through this memorandum I am requesting that my clarification be part of the City's Council minutes for tonight's City Council meeting (June 17, 2008) records in regards to the Mills Act contract for my home, 936 Fremont Street, recorded on November 16, 2004.

Dominic Caserta
Council Member

Documents Related to this Report: None

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Attachment 4

CERTIFIED AS A TRUE COPY
CITY CLERK
CITY OF SANTA CLARA

Council Member Dominic Caserta - Review of all Recorded Abstentions

Years 2002-2004

DATE	ITEM
12/17/02	Minutes of December 3, 2002
04/22/03	Variance to reduce rear yard setback at 1191 Reed Street
06/10/03	Minutes of April 15, 2003
10/21/03	Minutes of July 22, 2003
11/18/03	Housing and Community Development Needs Assessment for Fiscal Year 2004-05 Annual Consolidated Plan
05/25/04	Minutes of April 20, 2004
09/21/04	Minutes of June 29, 2004
10/12/04	Minutes of July 20, 2004
11/09/04	Continuance of HLC recommendation for approval for historic designation and a Mills Act Contract for 936 Fremont Street

Years 2004-2006

DATE	ITEM
03/22/05	Minutes of February 22, 2005
05/24/05	Minutes of April 26, 2005
06/07/05	Parking Maintenance District No. 122 (Franklin Square) Maintenance Assessment for Fiscal Year 2005-06
08/23/05	Minutes of June 28, 2005 and July 12, 2005
08/23/05	Addition of 985 Harrison Street to the City's Architecturally or Historically Significant Properties List
08/30/05	Minutes of July 19, 2005
09/27/05	Downtown Revitalization Project
09/27/05	Sister Cities "Local Government Leadership Circle" and the "50th Anniversary Circle of Distinguished Volunteers" awards
10/25/05	HLC recommendation for historic designation and a Mills Act Contract for 946 Harrison Street
11/01/05	Downtown Revitalization Project
01/24/06	Rezoned and amend Master Use Permit for Santa Clara University campus
03/21/06	Minutes of February 21, 2006
08/29/06	Downtown Revitalization Project
10/10/06	Downtown Revitalization Project
10/24/06	Agreement and Covenant Running with the Land for 1050 Harrison Street

Years 2006-2008

DATE	ITEM
03/20/07	Minutes of February 20, 2007
03/20/07	University Redevelopment Plan and the Bayshore North Redevelopment Plan
04/03/07	Downtown Revitalization Project
04/03/07	Downtown Revitalization Project
05/01/07	Tax Increment Study for North Bayshore and University (Downtown) Project Area
10/23/07	Morse Mansion and Downtown Revitalization Project - Council Principles and Priorities
01/22/08	Morse Mansion - Council Principles and Priorities
05/13/08	Downtown Revitalization Project
05/20/08	Historic Property Preservation Agreement (Mills Act Contract) for 985 Harrison Street
08/26/08	Morse Mansion