

MINUTES OF A SPECIAL MEETING  
OF THE BUENA PARK CITY COUNCIL  
HELD APRIL 30, 2021

Vol. 52 Pg. 63

CALL TO ORDER

The City Council met in a special meeting on Friday, April 30, 2021, at 10:08 a.m., via Zoom, Mayor Traut presiding.

ROLL CALL

PRESENT: Brown, Sonne, Swift, Park, Traut  
ABSENT: None

Also present were: Aaron France, City Manager; Chris Cardinale, City Attorney; and Lucie Cazares, CMC, Assistant City Clerk.

ORAL COMMUNICATIONS

Mayor Traut announced the public may at this time address the members of the City Council on any matters within the jurisdiction of the City Council. There being none, Mayor Traut closed oral communications.

CLOSED SESSION (1 - 2)

Mayor Traut stated the need for a closed session as scheduled and ordered the meeting into closed session.

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Pursuant to Gov. Code Section 54956.9(d)(1)  
Name of Case: City of Buena Park vs. Butterfly Pavillion, LLC  
Case No.: 30-2019-01059680-CU-BC-CJC
  
2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR  
Pursuant to Gov. Code Section 54956.9  
Property: 7711-7733 Beach Blvd., Buena Park, CA  
Orange County Tax Assessor Parcel Numbers 136-203-40, 136-211-57 & 64  
Negotiating Parties: Aaron France, City Manager, Butterfly Pavillion, LLC, Proforma 77 Corporation  
Under Negotiation: Terms and Conditions

Mayor Traut reconvened the meeting in open session at 11:04 a.m. and it was announced that no reportable action was taken for Item Nos. 1 and 2.

## NEW BUSINESS (3)

**Contracts 70 C-3285 C-3286**

3. CONSIDERATION OF APPROVING THE EXECUTION OF AN EXTENSION AGREEMENT BETWEEN THE CITY AND THE NEW BUTTERFLY PAVILLION, LLC, AND CONSIDERING THE APPROVAL OF A PRELIMINARY REAL ESTATE AGREEMENT BY AND AMONG THE CITY, BUTTERFLY PAVILLION, LLC, AND PROFORMA 77 CORPORATION CONCERNING THE PROPERTY LOCATED AT 7711-7733 BEACH BOULEVARD IN THE CITY OF BUENA PARK  
Presented by Christopher G. Cardinale, City Attorney

Purpose: The City Council will consider approving the execution of an Extension Agreement with Butterfly Pavillion, LLC (under new management and control), together with a Preliminary Real Estate Agreement with both Butterfly Pavillion and Proforma 77 Corporation (the current owner of the Property), which together detail the preliminary terms, conditions, and schedule for the purchase and development of the Property by Butterfly Pavillion, subject to various future discretionary approvals of the City Council, the City's reservation of rights, and performance obligations of the parties.

Recommended Action: That the City Council review and consider the proposed terms and conditions of the Extension Agreement and Preliminary Real Estate Agreement, and either: 1) approve the Agreements in the form substantially presented, and authorize the City Manager to execute the Agreements in a form approved by the City Attorney; 2) approve the Agreements subject to changes directed by the City Council, and authorize the City Manager to execute the Agreements subject to the City Attorney making the directed changes; 3) decline to execute the Extension Agreement and decline approval of the Preliminary Real Estate Agreement; or 4) provide alternative direction to staff.

City Attorney Cardinale reported the City Council will consider approving the execution of an Extension Agreement with Butterfly Pavillion, LLC, the new Butterfly Pavillion and Proforma 77 Corporation, which jointly detail the preliminary terms, conditions, and schedule for the purchase and development of the Properties by the new Butterfly Pavillion, subject to various future discretionary approvals of the City Council. To evidence the City's preliminary consent to the transaction, Proforma 77 and the New Developer have requested the City approve an Extension Agreement.

The Extension Agreement details the steps and actions that will be taken by the New Developer over the next 12 months in furtherance of the Project, and represents that the Developer will complete and operate the Project within 36 months. The Developer has represented that, due to restrictions associated with its proposed financing, the form and terms of the Extension Agreement are not negotiable and may not be altered. In connection with ongoing efforts to settle and resolve the action and initiating the Condemnation Case, the Extension Agreement concept was considered by the City Council in closed session on April 27, 2021, and the City Council authorized approval of the Extension Agreement conditioned upon the City, Proforma 77, and the New Developer entering into a second "Preliminary Real Estate Agreement that clarifies, supplements, and amends the Extension Agreement to include terms that adequately protect the City's rights and interests.

The Preliminary Agreement is also anticipated to have a relatively short term (approximately 3 to 4 months), during which time the New Developer and Proforma 77 would be required to complete several tasks to demonstrate good faith and capacity, and the Parties would have to enter into a three (3)-party Purchase and Sale Agreement for the complete transaction. If either party breaches the Preliminary Agreement, or it expires without a Purchase & Sale Agreement in place, then both the Preliminary Agreement and the Extension Agreement would be subject to termination by the City without recourse to the other parties.

Mayor Traut announced the public may at this time address the members of the City Council on this item.

Michael H. Leifer, Palmieri, Hennessey & Leifer, LLP, submitted an email stating, this office represents Proforma77 Corporation. Proforma 77 believes that the City should support further implementation of the Project via the new development team and does not agree with each assertion in the City's staff report. We think that the City's aim should be a win/win result for all. We look forward to participating in a win/win result.

Kendra Carney Mehr, representing the new Butterfly Pavilion, LLC., spoke about staff working with the Parties over the last several days to come to terms on an agreement. Her client is

willing to accept all conditions which they are able to accomplish with a short amount of time, but it is vital to have the extension agreement signed today to meet the Korean Investor's deadline.

There being no additional requests to speak, Mayor Traut closed public comment.

Mayor Traut recommended the City Council recess the meeting to 5:00 p.m. to allow staff to create a reservation of rights agreement to be approved with the Extension Agreement.

Council Member Swift spoke about her concerns with rushing this process. She suggested postponing the approval of the agreement and rights of reservation agreement to Tuesday as it seems the Korean Investor's deadline seems to be a business decision and not a regulatory requirement.

Ms. Mehr responded to Council Member Swift's question regarding the Korean Investor's deadline requirement. She explained that the Korean Government must approve an investment group to move money out of the country therefore there is need to obtain an agreement with the City to meet the Korean Investor's deadline.

Council Member Sonne also expressed concerns with the Extension Agreement and of rushing the process.

MOTION: Traut  
SECOND: Park  
AYES: Traut, Park, Brown, Sonne  
NOES: Swift

MOTION CARRIED to recess the meeting, direct staff to draft a reservation of rights and remedies document which will terminate May 25, 2021, and return at 5:00 p.m. to discuss the reservation document and the Extension Agreement.

#### RECESS/RECONVENE

Mayor Traut recessed the meeting at 11:33 a.m. and announced the meeting would reconvene at 5:00 p.m.

Mayor Traut reconvened the meeting in open session at 5:00 p.m.

City Attorney Cardinale reported staff drafted a proposed version of a bridge document, an Agreement between the City of Buena Park, Butterfly Pavillion, LLC., and Proforma 77 Corporation relating to and allowing the execution of an Extension Agreement. This information is a public document and available for public viewing in the City Clerk's Office. Staff has accomplished the direction from the City Council and is now ready for direction and further discussion.

Mayor Traut announced the public may at this time address the members of the City Council on this matter. There being none, Mayor Traut closed public comment. Council Member Swift requested clarification on what the City Council would be voting on.

City Attorney Cardinale clarified the City Council is considering approval of an agreement between the City of Buena Park, Butterfly Pavillion, LLC., and Proforma 77 Corporation relating to and allowing the execution of an Extension Agreement. The motion will also authorize the City Manager to execute the Extension Agreement.

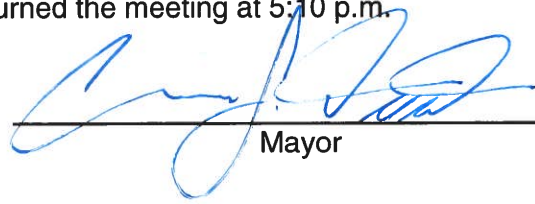
Council Member Swift expressed concerns about signing the Extension Agreement.

MOTION: Brown  
SECOND: Park  
AYES: Brown, Park, Sonne, Traut  
NOES: Swift

MOTION CARRIED to approve an agreement between the City of Buena Park, Butterfly Pavillion, LLC., and Proforma 77 Corporation relating to and allowing the execution of an Extension Agreement, and authorize the City Manager to execute the Extension Agreement.

ADJOURNMENT

There being no further business, Mayor Traut adjourned the meeting at 5:10 p.m.

  
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Mayor

ATTEST:

  
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City Clerk

