

Torrance, California
December 21, 1948

MINUTES OF AN ADJOURNED REGULAR
MEETING OF THE CITY COUNCIL
OF THE CITY OF TORRANCE

The City Council of the City of Torrance convened in an Ad-journed Regular Meeting in the Council Chamber, City Hall, Torrance, California, on Tuesday, December 21, 1948, at 8:00 p.m.

Mayor Sherfey called the meeting to order.

Clerk Bartlett called the roll, those answering present being Councilmen: Drale, Haggard, Jackson, Powell and Sherfey. Absent: Councilmen: None.

All those present in the Council Chamber saluted the Flag.

Mayor Sherfey announced that this being an adjourned meeting, the regular order of business would be dispensed with.

Mayor Sherfey announced that this is the time and place for holding a Public Hearing to consider an Appeal from the decision of the Torrance City Planning Commission granting a Zoning Variance for Cemetery purposes, Case No. 149, involving approximately 110 acres of land located north of the Palos Verdes City limits, east of Crenshaw Blvd. and south of Pacific Coast Highway.

Mayor Sherfey called for written communications.

Clerk Bartlett read a communication from the Walteria Civic Organization protesting the establishment of a cemetery including crematory and mausoleum, etc., in the Eastern part of Walteria.

Clerk Bartlett read a communication from the Law Office of Lewinson & Armstrong, signed by Donald Armstrong, advising that the City of Palos Verdes Estates wishes to go on record as joining in the protest made by the community of Rolling Hills to the granting of a variance which would permit a cemetery in the vicinity of Pacific Coast Highway and Crenshaw Blvd.

Judge Shidler handed the City Clerk two letters to read, one from the Rolling Hills Community Association, the other from the Dapplegray Lane Property Owners Association, both protesting the establishment of a cemetery and its accompanying buildings, which they state will have a definite tendency to lower the values of homes and real estate generally in the vicinity of the cemetery.

Engineer Stevens reported that he had received no written protests.

Mayor Sherfey advised that at the meeting of December 14, 1948, one of the bids for the painting of Public Buildings and Bus Terminal was overlooked, and he requested Clerk Bartlett to open the bid at this time.

Clerk Bartlett proceeded to open and read the bid submitted for the Exterior Painting of Civic Auditorium, Library, Chamber of Commerce Building and Bus Terminal.

<u>BIDDER</u>	<u>TOTAL BID</u>
Van Daele & Van Daele 1542 Colegrove Ave. Montebello, Calif.	\$ 2,175.00

A Cashier's Check in the amount of \$218.00 accompanied the bid.

Councilman Powell moved that this bid be referred to the City Engineer for his consideration with the other bids now in his possession. Councilman Drale seconded the motion which was carried unanimously.

There being no further written protests, on the granting of a variance for a cemetery, Mayor Sherfey announced that oral protests will now be heard.

Judge Shidler advised that he represented all the appellants that are of record in this case. He advised that he had prepared an outline of an appeal a copy of which he presented to each of the Council as well as Mr. Senness. He called the Council's attention to the outline of his procedure and stated that he intended to call on several people to make oral statements, on behalf of his clients, showing why this variance should not be granted and should be overruled by the Council; then Mr. Senness will present whatever evidence he has on the issues.

Mayor Sherfey explained that it has been the custom in the past to hear oral evidence as it is presented by any individual, stating their names and residences.

Judge Shidler stated that the necessary conditions mentioned in his proposed appeal must be met before a variance can be granted and declared that the discussion should be limited to certain points in the ordinance, and should be viewed on the testimony presented.

Mayor Sherfey said the Council is willing to hear anyone who has something to say on the subject, but if there are many people wishing to make statements, it will be necessary to restrict their time. However, it was his opinion, unless the Council thought otherwise, that they proceed along the outline suggested by Judge Shidler who may call on whomever he wishes for statements, and the Council will also ask for oral communications.

Councilman Powell preferred first to hear statements from anyone in the audience and then follow Judge Shidler's outline.

Mr. David Mitchell protested the establishment of the proposed cemetery.

Mr. Percy representing Torrance-Lomita Realty Board, said that the members of the Board are opposed to granting the Variance for various reasons, one reason being the site for the proposed cemetery is definitely an ideal location for residences, also, that it will lessen the value of property in that area making it difficult to obtain loans for building. They are also opposed because there is a cemetery within approximately three or four miles of the proposed new cemetery. The Torrance-Lomita Realty Board has gone on record as opposing the variance.

There being no further oral protests, Judge Shidler stated that he also represents the Palos Verdes Land Corporation who have sold many homes in that area and these people have organized what is known as the town of Rolling Hills. They are opposed to the cemetery. He also referred to a community known as Dapplegray Lane consisting of some 85 homes whose owners are opposed to the establishment of said cemetery.

At this time Judge Shidler presented to the Council a number of petitions explaining that they consist of two types, some signed by approximately 1400 Torrance residents, the balance signed by residents of adjacent communities, all totaling approximately 1800 signatures. Judge Shidler further commented that this action is not intended as a threat to the City Council but is presented for the sole purpose of showing the feelings of the people toward this project.

Judge Shidler introduced Ralph S. Hultz, an expert real estate appraiser.

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Mr. Hultz reported that he had interviewed several financial concerns who, in the main, stated that a cemetery is detrimental to real estate loans on properties adjacent thereto.

At 8:57 p.m. Mayor Sherfey declared a recess.

At 9:10 p.m. the meeting reconvened.

City Attorney Smith stated as follows: "I thought we might shorten this matter up by getting down to the basic facts of the case in question. The courts of California have held that a cemetery is a lawful business and is not to be considered as a nuisance per se, that is a nuisance in itself. A cemetery has been put on a footing with other lawful business. There are some restrictions in densely populated districts, where the courts have held that it was not a healthy thing to do, to put a cemetery there. But there is no decision which I have found where the location is in an isolated locality. I don't know whether this cemetery is going in an isolated locality or in a well populated place - I am not familiar with the vicinity on which this variance has been granted - but as a City Attorney it is my duty to look over the acts of the Planning Commission. Judge Shidler has told you, this is a quasi judicial body, acting in the capacity of an appeal board, and they are going to decide, if they do decide, on the facts and what the courts have said. This body has no other alternative, it being a lawful business - just as lawful a business as Sam Levy's, or any other lawful business, and the City Council, nor the Board of Supervisors, has the power nor the authority to act arbitrarily in the matter. The cemetery being a lawful business, it is up to the persons who live in close proximity to show the Council that the operation of a cemetery will jeopardize the health and welfare of those persons opposing the variance. It makes no difference to me, one way or the other, I am absolutely neutral in this matter. I don't know where the cemetery is going to be nor care - I have no interest in it. I am only interested that this Council act on the basis legally, the way I advised the Planning Commission. They will have to follow the law. If they don't follow the law and a writ of review should occur, then the Council would be overruled by the courts. It is up to the people who have appeared here to show damages and the burden of proof is on them. The cemetery business being a lawful business. The people who are interested are the people who live close by and if it is going to jeopardize their health or interests, they should show it. This is the way I am advising the Council."

Judge Shidler asked the Council if they proposed to close the hearing or take evidence.

Mayor Sherfey replied that they proposed to follow the City Attorney's advice and decide whether a cemetery is a nuisance or not. He asked for testimony from people who signed the petitions and who live in the vicinity of the proposed cemetery and not testimony from people living in some other place as the Council is not interested in their views.

Judge Shidler placed on a blackboard a brief outline of his appeal for consideration by the Council. He also read Mr. Senness's Petition requesting the variance and gave a report of the hearing before the Planning Commission at which time the Commission unanimously granted the variance. He stated that there were no particular findings and the maps and plats were not shown at the hearing, and he suggested that the Council see the maps and plats if they wish to review the case. He then said that he would like to call on various persons living immediately adjacent to the proposed cemetery for statements regarding material damage or prejudice to their property.

Mr. Bowen, Mr. Howard J. Percy and Mr. C. J. Justice, representing the Empty Saddle Club, protested the proposed cemetery and it was their opinion that the surrounding property would definitely be damaged materially.

Attorney Smith asked Mr. Hultz if the establishment of a cemetery would jeopardize anybody's health.

Mr. Hultz replied in the negative.

Judge Shidler asked permission to question Mr. Senness. He asked Mr. Senness, "What special circumstances do you feel are attached to this particular property which does not apply to other property in that area?"

Mr. O'Connor, Counsel representing Mr. Senness, said that the complaint does not rest on his client and that the Planning Commission has already granted the variance. Mr. O'Connor advised that after Judge Shidler has concluded he will present his client's case.

There was considerable discussion between Judge Shidler and Mayor Sherfey on the legal procedure to be followed, Mayor Sherfey saying this is not a trial but a hearing.

Judge Shidler declared that the only evidence the Council has is the matter which he has given to them. He said he is willing to rest his case and hear Mr. Senness' side. In addressing the Council Judge Shidler said, "You must have some statement of his (Mr. Senness) financial ability to have a cemetery".

Mrs. Weston, Vice-President of the Weston Ranch Investment Co., explained that their property had been for sale for two years and that no one had a suggestion for its development - some only wanting to develop the most desirable pieces of the property. She said that Mr. Senness has undertaken to improve the entire area and has both the money and fortitude to tackle such a difficult task and she and the company she represents have every confidence in his ability. Mrs. Weston did not believe that a memorial park cemetery would be detrimental to adjoining property owners and that the devaluation of said property is problematical. On behalf of the Weston Ranch Investment Co. she asked the Council to grant Mr. Senness a variance to establish a Memorial Park Cemetery on this site.

Mrs. Wilhites, Mr. Norman Thurman and Mr. Vonderahe protested the variance.

Mr. Senness informed the Council that he owns 480 acres of land, some of which is level and the balance consists of rolling hills. He gave an outline of his building program, explaining what has already been accomplished and his future plans concerning additional homes and businesses, for which he claimed he has already secured a loan. He also stated that on 50 acres of this land permission was granted for a sand and gravel pit. He pointed out that the hilly land would be difficult to handle, but he did not deny that the property that is being considered for a cemetery, could be used for the building of homes. However, he added that, "no one can deny that a Memorial Park Cemetery will be an asset".

Judge Shidler wished to question Mr. Senness as he believed the Council should know if Mr. Senness has the financial ability to put over this cemetery. There was considerable discussion on this point, Mrs. Weston declaring that the Weston Ranch Investment Co. is satisfied with Mr. Senness' financial ability and that he should not be subjected to an examination on this matter.

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There was some conversation between Mayor Sherfey and Judge Shidler as to the approximate time it would take to conclude the hearing, and it was determined it would take approximately half an hour.

At 10:26 p.m. Mayor Sherfey declared a recess.

At 10:37 p.m. the meeting reconvened.

Judge Shidler declared that he is treating this problem as a judicial one, and he told the Council that they should wipe from their minds everything except what they have heard tonight. He then proceeded to review the statements made by the various protestants, all of whom stated substantially the same thing - that the establishment of a cemetery would do material damage and be injurious to their property. He also reviewed Mr. Senness' statement.

Judge Shidler stated that the contention of the applicant, "that the granting of a variance will not be detrimental to the health and welfare of the people," will be shown to be erroneous, and then proceeded to read excerpts from two cases to substantiate his argument that material damage will result from the granting of this variance. Judge Shidler advised that this is a situation which requires clear thinking on the law, as it governs this case; that the Council should consider the evidence submitted tonight, and that they should not grant a variance which will permit the property in question to fall into commercial use.

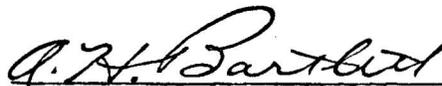
Mr. O'Connor addressed the Council saying that he had not expected this hearing to develop into a legal discussion - that this is a hearing before an administrative body. He continued saying that the City Attorney had properly stated the case, that is - the question being whether the action of the Planning Commission can be affirmed. Mr. O'Connor pointed out that at the meeting of the Planning Commission there was a complete absence of representation of any of the appellants, that even the Judge himself did not appear, and now at this meeting the people raise an issue which should have been presented to the Planning Commission - it was the Planning Commission who heard the evidence and the Planning Commission granted the variance. Mr. O'Connor said that as a matter of law - if this is a lawful business, it is not a matter for the courts to say whether it is depreciating the property, and as a matter of economics - he doubted very much if a beautified cemetery would depreciate the value of any surrounding property. Mr. O'Connor explained that his client has made financial arrangements for commitments on his houses, and as regards Mr. Senness' financial standing, he did not consider it to be the concern of any one present; that this is a matter of concern to Mrs. Weston, who has one of the finest lawyers in Los Angeles, and it was his opinion that her attorney would not approve this business arrangement if Mr. Senness was not a responsible person. It was Mr. O'Connor's opinion that the evidence to determine whether or not the public welfare or safety of the community is going to be affected, or the adjoining property owners will be affected, has not been shown.

Judge Shidler again suggested to the Council that they should consider only what has been said by the witnesses at this meeting. He then read excerpts from Land Use Ordinance No. 316 and said, "there is nothing there that gives any presumption that the case has been proved. If this matter goes up on appeal there has to be evidence to support your findings. There is the evidence here to support any one of them. I feel deeply that there is a great error attempted here. The Zoning Ordinance is for the protection of a whole area. Under the law you have to find that there will be no material damage or prejudice."

There being no further written or oral protests, Councilman Haggard moved that the case be taken under advisement by the entire Council, and that a decision be announced at the next regular meeting to be held December 28, 1948. Councilman Jackson seconded the motion which was carried unanimously.

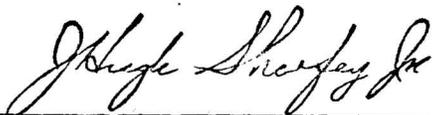
Councilman Jackson moved that all bills properly audited be paid. Councilman Haggard seconded the motion which was carried by the following roll call vote: AYES: COUNCILMEN: Drale, Haggard, Jackson, Powell and Sherfey. NOES: COUNCILMEN: None. ABSENT: COUNCILMEN: None.

At 11:05 p.m., upon motion of Councilman Jackson, seconded by Councilman Powell, and unanimously carried, the meeting adjourned.



CITY CLERK OF THE CITY OF TORRANCE

APPROVED:



MAYOR OF THE CITY OF TORRANCE

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