MINUTES OF THE WILLOWS CITY COUNCIL REGULAR MEETING HELD
April 14, 2009

1. The meeting was called to order at 7:00 p.m. by Mayor Towne.

2. **PLEDGE OF ALLEGIANCE:** Council Member Hansen led the Pledge of Allegiance.

3. **ROLL CALL:**
Present: Baker, Holvik, Yoder, Hansen & Towne
Absent: None

4. **Agenda Review & Acceptance:** The City Manager asked Council to consider pulling item 6 (e) from the Consent Agenda and voting on it as a separate motion. He also requested that Closed Session item 13 (a) entitled "INITIATED LITIGATION" be removed from the agenda, as there are no new updates on the case to report to the Council. It was **moved** by Council Member Yoder and **seconded** by Council Member Hansen to accept the April 14, 2009, agenda with the recommended changes requested by staff. The motion was unanimously passed.

5. **Oral and Written Communications:**

a) Rose Marie Thrailkill, citizen of Willows, informed the Council of upcoming community activities, events and fundraisers.

6. **Consent Agenda:** It was **moved** by Council Member Hansen and **seconded** by Council Member Yoder to approve the Consent agenda, minus item 6 (e). The motion was unanimously passed and the following items were approved/adopted:

a) Approval of General Check Register.
b) Approval of Payroll Check Register.
c) Approval of the March 13, 2009, City Council Special Budget Meeting Minutes.
d) Approval of the March 10, 2009, City Council Meeting Minutes.
f) Acceptance of the Butte Street STIP Project Improvements.
g) Authorize the Police Chief to accept a generator and light trailer from the DRMO program.

Finance Director Tim Sailsbery stated the reason that staff requested item 6 (e) be pulled from the Consent Agenda was to point out a typographical error in the Staff Report. The report reflected an incorrect account number for the Bayliss Library. Rather than account number 338.122, it should have been account number 338.121. It was then **moved** by Council Member Holvik and **seconded** by Council Member Hansen to approve item 6(e) of the Consent Agenda with the recommended amendment to the account number. The motion was unanimously passed and the following was adopted:

6 (e) Appropriate $3085 in County Library Funds carried over to the Elk Creek Library (Account # 338.122) and $627 to the Bayliss Library (Account # 338.121).

7. **Presentations and Proclamations:**

a) Mayor Towne asked if anybody would like to entertain a motion to approve a Proclamation declaring the Month of April as Sexual Assault Awareness Month in the City

of Willows. It was **moved** by Council Member Holvik and **seconded** by Council Member Baker to approve a Proclamation Declaring the Month of April as Sexual Assault Awareness month in the City of Willows. The motion was unanimously passed. Nobody from the Rape Crisis Center was present to accept the Proclamation; therefore the City Clerk will mail the Proclamation to the Rape Crisis center.

b) Mayor Towne asked if anybody would like to entertain a motion to approve the presentation of a Certificate of Recognition to the Willows Kiwanis Club for 85 years of service to the Community of Willows. It was **moved** by Council Member Hansen and **seconded** by Council Member Yoder to approve a Certificate of Recognition commending the Willows Kiwanis Club on the celebration of their eighty-fifth anniversary. The motion was unanimously passed. Mr. Roy Michaels accepted the Certificate of Recognition from Mayor Towne on behalf of the Willows Kiwanis Club.

8. <u>Ordinances:</u> None

9. <u>Public Hearings:</u>

a) Appeal by Mr. Forrest Sprague of the Planning Commission's March 18, 2009, decision to deny a Design Review for modification of architectural style and design of new homes for 14 vacant lots within the Willowglen Estates Subdivision Phase II Unit II.

Mayor Towne briefly outlined the protocol and procedures to be followed while the Public Hearing is taking place and he asked that any persons wishing to speak during the hearing would please take a seat at the podium to present their comments to the Council. In the interest of time, Mayor Towne asked that individuals please keep their comments brief and to the point, and not be repetitive in stating the same point(s) that another individual(s) may have already stated.

Mayor Towne introduced the subject of the Hearing, stating that this is an appeal by Mr. Forrest Sprague of the Planning Commission's March 18, 2009, decision to deny a Design Review for modification of architectural style and design of new homes for 14 vacant lots within the Willowglen Estates Subdivision, Phase II, Unit II. Mayor Towne asked Mr. Sprague if Phases I and III have already been built-out and completed. Mr. Sprague replied, stating that there are still two remaining lots in Phase I. Mayor Towne then asked the City Manager if he had any comments.

City Manager Steve Holsinger stated just by way of introduction that the City does not have any defined or formal procedures for the Council to follow when conducting an appeals hearing. He wanted to note that this is not a De Novo Hearing process and that Council is not reviewing the whole of the record from the Planning Commission; Council is merely here to consider the decision that was made by the Planning Commission at the March 18, 2009, meeting. Typically, from a Hearing standpoint, Staff would make a brief presentation; the applicant would then be given an opportunity to make a presentation, followed by a public comment period. The Council has the discretion of limiting the time period for speakers, with Staff typically being allowed five to ten minutes, the Applicant fifteen to twenty minutes, and allowing approximately fifteen to twenty minutes of public testimony. Upon hearing all comments and testimony, the Mayor will close the public hearing and enter into deliberations, ask specific questions, and make a determination. With that, the City Manager turned it back over to the Mayor to conduct the public hearing.

Mayor Towne asked the Council Members if they had any questions prior to his officially opening the public hearing. The Council Members all indicated that they had no questions at this time and Mayor Towne opened the public hearing and invited Mr. Sprague to address the Council to share his comments.

Mr. Sprague took a seat at the podium and thanked the Mayor and the Council for allowing him the opportunity to be heard. He requested that he be allowed about three minutes to introduce a picture display which he prepared prior to the meeting in order to share some history about this particular project. The Mayor granted Mr. Sprague's request. Mr. Sprague approached the picture display and explained, by way of history, his "model home" complex that he built for this project in 1991 beginning at the corner of Green Street and Pacific Avenue and expanding to the two adjacent lots. He explained that he was the "Project Manager" and the "turn-key General Contractor" for the then Developer who came from Lodi. When the model home complex was built, it was the first time that America went to war in Kuwait and the economy did just as it is doing right now and everything came to a screeching halt. He stated that he did the improvements on the remaining lots and he had some sewer connections put in and some PG&E connections to relocate and so on. Subsequently, other builders came in and built-out the remaining lots. The remaining lots were developed between 1991 and 1999 by Jeff Clevenger and Don Cabral. In 1991 Mr. Sprague stated that he went off to Sacramento to pursue a career in Politics until such time as he returned in 2000. Upon his return in 2000, Mr. Sprague contacted the owners of the property asking them if they would like to build again. The owners stated that they did not want to build, but they would like to sell, and for Mr. Sprague to make them an offer to purchase the property. Mr. Sprague stated that he purchased the remaining 8 ½ acres consisting of 41 lots and identified the project as "Willowglen Unit II, Phases I, II and III". At that time, Mr. Sprague presented to the Planning Commission his idea of having three standard plans, or three models to choose from. He had two three-bedroom plans and one four-bedroom plan. Additionally, he petitioned the Planning Commission at that time to be able to offer "build-to-suit" concepts as well. The first homes he built were on Willowglen up against the Railroad tracks. Not knowing what the market was going to be like, he offered two floor plans, albeit, the elevations were different, but he had standard plans which he simply alternated back and forth. Then he indicated that some people approached him with some "design-build" concepts and those homes were built across the street in the cul-de-sac on the South side. He indicated that his purpose in doing this was to hit a cross section of buyers – those who would come in and buy the "basic" plans, and those who wanted upgrades and modifications as well. He stated that one of the biggest criticisms that he had when trying to sell the three standard design homes was that people would ask if they could have a larger dining room or a bigger bedroom, so he indicated that he did not want to make that type of mistake again and that is how the "build-to-suit" or "design-build" concept was born. He then built Applewood Way and constructed a few homes on that street just prior to the market taking a change for the worse. Once Mr. Sprague concluded his explanation of the history of the Willowglen project, he once again took a seat at the podium to address the Council. He continued, stating that he would like to be able to continue to construct similar "build-to-suit" homes on Applewood Way, however, the difference is that the market has gone away and the proof of that is in the fact that the two model homes that he still owns, even at today's reduced prices, are just not selling because that is not where the market is. Due to the market decline, Mr. Sprague indicated that he and his family made a determination in November of 2008 to try to do something else with the property, and that is why he submitted a Design Review application to the City in February with some modifications and a scaled-down version of the currently approved plans. The plans were designed in such a way that they would blend in well with the surrounding neighborhood, as well as blend in fairly well with the homes that were already built. That was the concept that was presented in his Design

Review application which was submitted on February 18 to the City's then Planning Director, Karen Mantele. Mr. Sprague alleged that he was promised by Ms. Mantele that his project would go before the Planning Commission on March 4, which meeting was subsequently not held, and his application for Design Review went before the Planning Commission at the March 18 meeting, where his modifications were denied approval by the Planning Commission. Subsequent to the denial of his Design Review application, Mr. Sprague had a meeting with the City's then Planner, Audrey Anderson, whose recommendation to the Planning Commission at the March 18 meeting was to approve the design review application. Ms. Anderson explained to Mr. Sprague that what she understood from the meeting of the Planning Commission was that the Commissioners, as well as those who spoke at the Public Hearing, wanted to see more of those elements and features that were provided in the past. Specifically, Ms. Anderson recommended possibly adding balconies and porches to the designs. Mr. Sprague stated that balconies are generally associated with two-story homes which he does not build due to cost.

At this time, Mr. Sprague circulated some color photos to the Council which showed some of the houses he has already built. He explained that he has taken some of the elements from those homes shown in the photos and incorporated them into subsequent plans which he has recently submitted to a committee, consisting of the Planning Commission Chair and the City Building Official, for their review. He stated that he has been working with this committee for the past few weeks and has submitted additional information requested by them on four separate occasions. He stated that he believes that the time for him to submit to this committee has apparently expired, but he doesn't know, and is seeking direction from the Council on how to go about continuing with this project. Mr. Sprague then stated he would answer any questions that the Council may have.

Mayor Towne asked Mr. Sprague whether he currently has eight designs or four designs approved for construction or that have already been built. Mr. Sprague stated that there are eight plans which are currently approved that closely mimic those homes that have already been built in Phases I and III. Mayor Towne then asked what was different about the four new designs and what was the reason for his presenting them to the Planning Commission for approval on February 18. Mr. Sprague stated that they were more economical to build. He continued, stating that the four-page letter that he provided to the then Planner, Karen Mantele, which was included in tonight's agenda packet, explained that at the time what he was looking to do was to be able to streamline his field activity and not have to have so many specialty pieces of siding and various things and to be able to build something that was a little more "builder-friendly" and consistent, therefore he went to a predominantly stucco design. To be more specific, Mr. Sprague stated that the four plans which he proposed are similar in finishes and whatnot so he could get some efficiency of field activity, a consistent floor plan and a consistent design where he would not have to bring in a special siding crew and so forth. He stated that that opportunity was apparently denied to him.

Mayor Towne stated that as he understands it, the Building and Construction Industry have imploded and there is virtually no new house construction going on in the United States today. Mr. Sprague stated that he doesn't know if that is an accurate assessment to say that there is *no* construction. Mayor Towne reiterated, stating that he said "it was only as I understand it". Mr. Sprague stated that what he is led to believe in watching the market and reviewing the trade magazines that he reads, is that the current phenomenon is going to pull the industry back to the 1150 to 1350 square-foot home with fewer bells and whistles; the basic "starter" home. He stated that it seems to be the current activity and the trend right now. Additionally, for that type of housing the financing market is looking very favorable with an interest rate of 4.5 - 5% fixed

for a 30-year loan. He also stated that between the Federal and State Governments there is an approximate $18,000 of tax credit available for first-time home buyers. Mr. Sprague stated that he enumerated many of these things in the letter which he provided to the then City Planner, Karen Mantele, in November of 2008, that many of the things he had forecasted would be coming on the horizon and he is pleased to say that his forecasting was pretty accurate, which is why in February he determined that he would go ahead and try to do something different as opposed to just sitting on it.

Mr. Sprague stated that in April of 2008 he made a conscious decision to shut down his operations for at least one year, knowing that the industry was slow and uncertain what the future would bring. Recently he made the decision that he would like to get back to doing what he has been doing all of his life and that was the reason he put together the initial presentation for the Planning Commission in February. Subsequent to that meeting, he is, however, now in open escrow with another Builder/Developer.

Council Member Holvik had some questions about the color photos that Mr. Sprague presented to the Council, asking what the words "Match To" meant on the photos. Mr. Sprague explained that when he initially presented the original four designs which were denied by the Planning Commission, it was his understanding that what the Planning Commission clearly wanted to see was some of the elements that he had in Phase I, therefore, he spoke to the then Planner, Audrey Anderson, and he suggested that he be allowed to default back to the two-person committee. He stated that his son then make some modifications to the original plans which were submitted to the Planning Commission by adding some of the elements from the Phase I designs. He then showed the modifications to Ms. Anderson and she agreed that she believed that the modifications looked good and she asked that he label each of the photos to reflect which of the four original plans the modified photos were "matched to" and they would schedule a meeting for the committee to review the modified plans. He then spoke to the Mayor and the City Manager the following day and they agreed that they would convene the committee to have them review the revised plans and that is what they have been doing. However, he stated that he has submitted those plans four times because each time they have met, he claims that the committee kept requesting more items that they would like to see and he is just not used to doing that. He stated that in the past he used to be able to submit his plans to the committee for review and they would look at them and see that the plans comply and fit within the parameters of what the entire Planning Commission agreed upon. He explained that this is currently where he is at, which is why he is asking the Council if he is in a situation where the Council can appeal either an "up and down vote" on these four designs or support or overturn the Planning Commission's decision. He then stated that he would be pleased to introduce the same plans with the modifications which he talked about earlier. He stated that he has a total of 12 designs which were submitted, eight of which have already been approved by the committee; however, due to the fact that the Planning Commission outright rejected the four designs in question, the committee indicated to him that they did not feel comfortable allowing those four designs to be brought in as part of the total package. He stated that he agreed with that and he therefore eliminated those four designs and just took the package down to eight plans.

Council Member Holvik asked for clarification about which four designs were eliminated, as he was uncertain whether it was the four designs which the Council is looking at tonight, or if there were an additional four designs which were eliminated by the committee. Mr. Sprague stated that he is only speaking of the four designs that were eliminated by the Planning Commission and that he still currently has eight approved designs. Mr. Sprague stated that he wasn't prepared that the Council was going to be discussing the eight approved designs tonight. Mayor Towne

interjected, stating that the Council cannot discuss those eight designs at tonight's meeting and that the Council can only review the four designs which were rejected by the Planning Commission.

Council Members Baker, Hansen and Yoder indicated that they had no questions at this time. Council Member Yoder stated that he would like to hear from other parties and what they have to say. Council Member Hansen agreed. Mr. Sprague then stated that what he would look at is if the consideration here is what is in the surrounding neighborhood, which is the way the Ordinance reads, that anything he designs in any new projects will fit and preserve the characteristics of the surrounding neighborhood. He continued, stating that the dilemma he is facing is that he's got his own neighborhood that he has built, he has the North side of that street and the South side of that street, as well as Pacific Avenue, Green Street and Baywood Way. He suggested that the four plans which he is presenting to the Council are contemporary with and blend well with the surrounding neighborhoods. He stated that his first choice would be to continue to construct the "build-to-suit" types of homes but the market has gone away and nobody has any idea when that market is going to come back. He stated that he owns the property and he should be able to do with the property what he sees fit, apart from placing "double-wides" out there. Council Member Baker stated that the four floor plans are the ones that are in question and are the ones that were denied and she feels like the discussion is beginning to get off track with Mr. Sprague's statement that he just wants to do what he wants to do because he owns the property. She stated that she would like to focus only on the four designs in question and that she would like to get moving along and hear what some other people might have to say about the subject. Mr. Sprague then asked for clarification from the Mayor whether the Council will only be considering these four plans and asked if there is any flexibility or middle ground on the other items which he has been discussing with the committee. Mayor Towne responded by stating that there can not be any additional discussion as to the committee's review of the additional eight approved designs, as the appeal was solely based on the Planning Commission's rejection of the four designs which were presented to them and that is what the Council will be deciding on. He stated that the Council can either confirm or deny the Planning Commission's decision, or they can defer the matter back to the Planning Commission for reconsideration, and those are the only three options available to the Council.

Mayor Towne then stated that as he understands it, the terms of the CC&R's (Covenants, Conditions and Restrictions) on the property were dictated by Mr. Sprague at the time of development and he asked whether all of the current designs within the framework of the remaining 14 lots would be constructed to comply with the CC&R's. Mr. Sprague stated that he did not understand the question about the CC&R's. Mayor Towne rephrased his question, asking if all of the previous designs are approved for building on any of the remaining 14 lots and if they are attached to the property as a part of the CC&R's. Mr. Sprague responded by stating that the CC&R's don't address the design, but rather just the square footage of the property. He added that there was nothing in the CC&R's which states that the homes should all be two stories or all be 3500 square feet, etc. Mayor Towne stated that the CC&R's do address the square footage and some of the square footages being proposed are considerably less. Mr. Sprague then stated that he still owns 80 percent of the lots and that he could change the CC&R's at will. He stated that he had a Phase I, and Phase II and a Phase III and they all had their own separate CC&R's. Phase II is twenty lots and Mr. Sprague owns two homes and 14 vacant lots which gives him the majority vote on changing the CC&R's to reduce it down to a smaller square footage, and that is not in the City Council's purview. Mayor Towne then inquired of
Mr. Sprague that if that is what he wanted to do, why did he not just go ahead and do it, rather than going through all of the procedures he has gone through. Mr. Sprague stated that he is

going through all of these procedures because he was told that he had to. Mr. Sprague stated that he would only have to amend the CC&R's for a reduction of the square footage and that he is not here for a reduction of the square footage. Mayor Towne stated that the four designs being presented are for a reduction in the square footage. Mr. Sprague stated that is not what the designs are for and that is not why he brought them before the Planning Commission. He brought them to the Planning Commission per the request of the City's then Planner, Karen Mantele, because in her view, the designs were outside of the scope of what the Planning Commission approved for the latitude that was given to him for design, and his application had nothing to do with the square footage.

At this time Mayor Towne stated that he will be asking to hear from members of the audience who wish to speak on the matter. Mr. Sprague stated that his Attorney was present and asked that he be able to share some of his comments with the Council. Mayor Towne stated that would be fine.

Mr. Sprague's Attorney, Walt McNeill, introduced himself to the Council. He stated that he submitted a rather extensive letter to the Council which should have arrived via Federal Express today and he hoped that the letter has been distributed to all of the Council Members and that they have all had an opportunity to take a look at it. Mr. McNeill indicated that the letter has some important points in it in which he feels the Council needs to consider for this appeal. He stated that rather than to read the letter, he would like to cover some important points that were made in the letter and outline them for the Council and answer any questions they may have. He requested that Council give these points their closest attention. Mr. McNeill stated that he is an Attorney with his specialty being in Real Estate, Land Use and Government Law and he was employed as the Assistant Attorney for the City of Redding for approximately ten years, so he does have some understanding of what the City is dealing with here in terms of Design Review, but also enforcement of the City's own Municipal Code. He also stated that he is familiar with the issues and concerns that arrive with respect to low to moderate income housing requirements and the laws that apply to that. He stated that he also represents Builders throughout the State and the California Building Industry Association and Builder groups in Southern California.

Mr. McNeill stated that he would like talk about the initial approval for design for the second phase of Glenwood Estates. In looking at the design approval that Mr. Sprague's four designs are measured against, what you see is a little unusual. Typically in Design Review what you find are approvals of specific designs with specific models and specific floor plans, elevations and even materials such as type of roofing material, colors, etc. all specified particularly. In this case the City does not have that, specifically with respect to the design approval for Phase II. What the City got for Phase II, which was approved in 2003, was a very generic and "open" kind of Design Review approval, which was what Mr. Sprague asked for. It was the kind of approval that allowed Mr. Sprague to build "custom-design" homes and incorporate different elements, different floor plans, and different features that buyers might wish to have. Apparently Mr. Sprague's buyers wanted to have that type of flexibility and he wanted to give that to them. He stated that as he understands it, Mr. Sprague has built some very nice homes that people are very happy with. Nonetheless, if you go back and look at the standard in which we are measuring these four designs against, it was a very wide-open, generic-type and flexible standard which Mr. Sprague was given in order to build homes. Mr. Sprague used that concept to build very nice homes during the economy "boom" years. Now Mr. Sprague has 14 lots which he needs to do something with. In November of 2008 Mr. Sprague went to the City of Willows and asked for approval of these four designs, and as Mr. Sprague pointed out, those designs were scaled down considerably, although they were not outside the range of what was permitted and allowed under

his general design approval that he had been given before in 2003. In order to address Mayor Towne's earlier question as to why this may have happened and what Mr. Sprague is intending to do, Mr. McNeill stated that perhaps he needed to be more direct in answering this question. He stated that these particular designs are designed to be suitable for low to moderate income housing. That is, they are of a size and a design that make them suitable for low to moderate income housing. Low to moderate income housing is the term that is used in the Government Code and is the type of housing that cities throughout the state are required to provide to their residents. Despite the fact that the designs are suitable for low to moderate income housing, Mr. McNeill maintains that they are fully within the design guidelines that had been approved previously. Mr. McNeill also wanted to point out that these particular designs are basically samples so if and when they are actually built on these 14 lots, what the City will get are different looking facades on each one – different design elements and different features that make each home look different. Further, the City will get the kind of variation and design elements that make the homes look very much like all the other houses on that block and in the surrounding neighborhood. Mr. McNeill maintains that what Mr. Sprague has proposed is consistent with what he has built in the past.

Mr. McNeill stated that Mr. Sprague has gone through a cycle of almost four months after November of trying to get approval of these designs by appearing before a committee. The reason the committee was set up was because the initial design guidelines that were approved were so generic and wide-open and because somebody has to look at the specific plans of the actual houses that are going to be built. These designs were admittedly made suitable for low to moderate income housing and there are people who are concerned about that and he believes that has become a source of controversy about these particular housing designs. Mr. McNeill stated that when this application went before the Planning Commission for consideration the decision rejecting the designs does not say that they were inconsistent with what had previously been approved in 2003, but rather it says that they are inconsistent with the general neighborhood. Additionally the decision also said something that Mr. McNeill claimed was contradictory which was that the proposal doesn't bring new design elements, when in fact they are different. What the denial didn't say is that the designs are inconsistent with what had been done before. What Mr. Sprague indicated earlier is that he is currently in escrow to sell these lots and the escrow has been opened under a binding sale contract to sell the lots to a qualified, non-profit builder of low to moderate income housing. A condition for the close of that escrow is that Mr. Sprague completes a Design Review process through the City of Willows, and of course Mr. Sprague is the proper applicant because he is the owner of the property. The sale for those properties is over one million dollars which means there is a lot at stake. Mr. McNeill stated that what is important for the City to know is that it was no secret before and it is no secret now that this group of 14 lots is submitted for consideration as low to moderate income housing and under those circumstances, Design Review does not really come into play. When dealing with low to moderate income housing, Mr. McNeill maintains that the City can not impede or block or deny the approval based upon Design Review. In other words, if Mr. Sprague or a purchaser for Mr. Sprague or any other person in the future who owns those lots wants to build low to moderate income housing, the City does not have any say about the design. The City has absolutely no authority over the design when it is a project for low to moderate income housing.

Mr. McNeill stated that Mr. Sprague is a long-term resident of Willows and he wants to build nice looking houses. He maintains that Mr. Sprague has bent over backwards for the last four months going back and forth again and again to the two-person committee and the committee keeps requesting additional information. Mr. McNeill alleges that Mr. Sprague has basically been given the "run-around". Now, four months later, Mr. Sprague is in danger of the escrow

failing and this issue basically needs to come to a close. Mr. McNeill believes that the City has not only the authority, but the obligation to uphold Mr. Sprague's appeal because these designs are consistent with what was initially approved. It is Mr. McNeill's belief that because it is low to moderate income housing that is being proposed, that the City has to give clearance to Design Review as a matter of law.

In closing, Mr. McNeill stated that Mr. Sprague has submitted a package of designs and details to the committee as recently as yesterday and each time he goes back he keeps trying to make it better. He indicated that he and Mr. Sprague were not trying to get out from under anything or to get away with something as cheaply as possible. He reiterated that Mr. Sprague is making every effort to make houses that are actually affordable that somebody could actually build and he asked that the Council uphold Mr. Sprague's appeal. With that, Mr. McNeill stated that he would be happy to answer any questions.

Council Member Hansen made a statement to Mr. McNeill informing him that only just prior to beginning tonight's meeting he received Mr. McNeill's letter dated the previous day, Monday, April 13, and he obviously has not had time to read the letter in a matter of only ten minutes and he does not feel comfortable asking any questions of Mr. McNeill at this time, as he had not had adequate time nor opportunity to read or interpret the letter.

Council Member Yoder stated that Mr. McNeill has indicated that the City has no authority over Design Review for low to moderate income housing, but the Council is sitting here tonight. So if the Council has no authority over this, yet Mr. McNeill has stated that everything is contingent on upholding Mr. Sprague's appeal tonight, he wonders if that is not contradictory. Mr. McNeill stated that perhaps "approval" is not the appropriate term and he should have used the term "clearance". He stated that the problem is that Mr. Sprague can't do anything or build anything unless the City of Willows says that it is okay. Council Member Yoder stated to Mr. McNeill that he just told the Council that they did not have any authority to do that. Mayor Towne stated that it depends on who owns the property, and that currently Mr. Sprague owns the property and that C.H.I.P. (California Housing Improvement Project) does not. Council Member Yoder stated that Mr. McNeill indicated that it has already been known to the general public and to everybody that the project is for low to moderate income housing and the Council has no authority to do anything about it or to stop it and no authority over Design Review because it has already been presented that the project is low to moderate income housing. Council Member Yoder reiterated that if it is low to moderate income housing, but Mr. McNeill is saying that the Council has an obligation to approve the appeal, then that is contradictory. Mr. McNeill stated that all the Council has to do is make a motion, approve it, say that the City has no authority over Design Review, and they're done. Mr. McNeill stated that the point is, is that Mr. Sprague can not go in and pull a building permit tomorrow to build one of these houses, and the reason he can't is because the staff will tell him that they are sorry but they can not issue the permit because he hasn't had his design approved. Mr. Sprague will then say that he doesn't need to have his design approved and the staff will say that yes, he does, and that is why they are here tonight. He indicated that he does not think they should be here, but they are, and he stated that he is asking for the Council to turn them loose. At this point, Mayor Towne thanked Mr. McNeill for his comments and asked if anybody else from the audience would like to speak.

Jean Flowerdew, who resides on Pacific Avenue in Willows and right across the street from this housing development, addressed the Council. Mrs. Flowerdew stated that she was present during the original hearings when the City first approved the application for Mr. Sprague's development and at that time she was most concerned that if Mr. Sprague didn't fully develop the area that it

might possibly be turned over to C.H.I.P. and now that is exactly what appears to be happening. Mrs. Flowerdew stated that Mr. Sprague promised that this would not take place. She stated that she has seen this happen to the South and to the rear of her property, and now it is going to happen right in front of her property. She asked if the City is going to be bullied by Mr. Sprague and his Attorney and by what they have said and what they want the Council to believe. She stated that if the City allows a change to a lower square footage for this development, it just opens the door to a "big elephant" that will come stomping in and it galls her to think that the City is at this point again. She stated that this has been done before and it is being done again. She stated that Mr. Sprague and his Attorney say that the City has an obligation to provide for low to moderate income housing, but, she asked, has the City not already provided enough of this type of housing for the population of the City? She asked what the percentage of required low to moderate housing is and how much the City obligated to provide? She asked if it is the City's responsibility to promote low to moderate income housing as Mr. Sprague's Attorney stated. She asked if the citizens have a choice of the type of community that they live in. Mrs. Flowerdew stated that she moved to Willows because she had a choice and now we are turning Willows into a low to moderate income community. She stated that a few years ago Willows was considered the "Chico Bedroom Community" and then all of the sudden the housing market crashed. She indicated that she has little sympathy for Mr. Sprague, because living across the street she watched the time that he took to build out that housing development and he had more than enough time to complete that development and sell to people who were willing to buy. There were people that were willing to buy, but she stated that Mr. Sprague dragged his feet and he did a lot of sitting back and letting nothing happen. She stated that she watched weeks on end, and possibly two months at a time without a hammer even being employed. She stated that she felt sorry for those people who were waiting for Mr. Sprague to build them a house. She asked if the City is now obligated to bail out Mr. Sprague like the people have bailed out every other business because of bad corporate management. Mrs. Flowerdew indicated that she is sorry, but that she just does not buy it. With that, Mayor Towne thanked Mrs. Flowerdew for her comments and asked if anybody else would like to speak.

Larry Domenighini, current Chair of the Willows Planning Commission, addressed the Council, stating that he would like to give the Planning Commission's input on this issue. First off, to address some of the things that are not connected to this issue, Mr. Domenighini stated that economics had no bearing on the Planning Commission's discussions or on their ultimate decision. The issue of low to moderate income housing has been brought up this evening but he stated that this project was never approved as such and is not outlined in the Housing Element - and a valid Housing Element as such - and therefore he believes that whole argument should not even be discussed tonight. He reiterated, stating that economics has no bearing on the Design Review process. He stated that he can sympathize with the people in the neighborhood and their concerns about their neighbors, but the Planning Commission in its determination believed that the occupants in those houses, whether they are C.H.I.P. homes or otherwise, had no bearing on the Planning Commission's decision. As already mentioned, he stated that this was a Design Review decision by the Planning Commission and not a housing project decision. The Planning Commission did not deny a housing project, but rather they rejected a Design Review, with findings that the submitted designs were inconsistent with the established neighborhood and that the proposal does not bring any design elements that would maintain or enhance the design spectrum of the overall neighborhood. He continued, stating that a Community may deny developments that are monotonous in design and external appearance and that decision has been upheld in many court cases. Once again, Mr. Domenighini wanted to stress that the Planning Commission's decision was based solely on Design Review. He alluded to the fact that other factors, such as the committee's subsequent design review of submitted plans, have been brought

up tonight, and he stated that this is another whole issue and is not relevant to the four designs that are being discussed tonight. Mr. Domenighini then asked if the Council had any questions.

Council Member Yoder asked Mr. Domenighini if the Planning Commission took into consideration the existing homes in the neighborhood directly to the East that borders the fence-line of Mr. Sprague's subdivision (Baywood Way) as a comparison to the consistency and characteristic to what Mr. Sprague was proposing in his Design Review application. Mr. Domenighini responded by stating that in his decision, he was looking at the Willowglen Estates as a whole and Baywood Way he sees as a whole different neighborhood to a large degree because it was built at a different time and built to different design standards. With that and having no further comments, Mr. Domenighini exited the podium and Mayor Towne asked if anybody else in the audience would like to speak.

Mary Godfrey addressed the Council stating that she purchased a house in Phase II and was told by Mr. Sprague that the remainder of the street would be upgraded to match the rest of the area with more appealing front yards and therefore she stated that she spent a lot more money than she would normally have and that Mr. Sprague's word to her was that everything was going to be a lot nicer there. She stated that she looked at purchasing other homes, but after she spoke to both Mr. Sprague and his son, they assured her that this would be the best thing for her, and so she decided to purchase her home there because of that neighborhood and because of that street. She continued, stating that to hear what is going on now is crazy and that she can not even get work done that needs to be done to her home because Mr. Sprague's contractor's license is on hold. Therefore, she can not get anything that needs to be fixed in her home completed by Mr. Sprague. Ms. Godfrey stated that at this point she is very upset that she spent a lot of money for her home and a lot of extra money for the landscaping outside of her home because Mr. Sprague indicated that her home was an "upgrade" even compared to the rest of the area and that he wanted this street to be even better. Ms. Godfrey closed by simply stating that she was very disappointed. Mayor Towne then asked if anybody else in the audience would like to speak.

Rose Marie Thrailkill addressed the Council stating that she lives at 871 Applewood Way and hers was the last house built in Phase II in the Willowglen Estates Subdivision. She expressed that she believes that there are two issues to consider here. The first one is one which was mentioned earlier as the "elephant in the room", which is C.H.I.P. housing. She stated that they are all afraid of that happening, and after looking at what has happened in the Orland area, four of those subdivisions have already been sold to C.H.I.P. and the others will probably be the same. She indicated that the residents in the neighborhood are concerned that Mr. Sprague is going to sell, and now that there has been mention of a "non-profit builder" as a potential buyer, she is concerned that it will be sold to C.H.I.P. She continued, stating that this was evident at the Planning Commission meeting when Mr. Sprague was denied his Design Review and he immediately said that "what we didn't want was what we were going to get". That statement left Ms. Thrailkill and others in the neighborhood to believe that Mr. Sprague would sell to C.H.I.P. Ms. Thrailkill asked the Council to consider the second issue which is that of her neighborhood. She stated that those people who live in this subdivision do not consider it to be "low to moderate", but rather they consider it "moderate to higher income" for the amount of money that they paid for those homes. She stated that she built out there because of the "custom" concept. She stated that Mr. Sprague, at the Planning Commission meeting, said that hers was a "standard plan" and she didn't realize that "standard" plans existed in that subdivision. She stated that she made a "walk-through" of one of the models and she liked the traffic flow of it and she and Mr. Sprague modified it in order to come up with her individual house plan. Ms. Thrailkill questioned that if her home was so "standard", then why she had to come up with $2500 up-front

in order to wait for one month to get nine pages of blue prints which clearly stated at the bottom "House designed especially for Rose Marie Thrailkill". She indicated that in her opinion, that is considered to be a "custom" home. She continued, stating that Mr. Sprague in all of his advertising of his homes always said "Your Home, Your Way". Mr. Sprague, in all of his correspondence on his company letterhead, reflects Forrest Sprague, "Design/Build Contractor" and does not state "General Contractor", there again, giving the buyer the impression that the homes are "custom". Ms. Thrailkill stated that all of these homes in this subdivision reflect each buyer's individual taste, and to now put "cookie-cutter" homes in there will destroy the whole concept of the neighborhood. Mr. Sprague has indicated that Willows needs more low to moderate cost housing, and she stated that she disagrees with that. She cited as an example, the number of people who reside in Willows but are employed in Chico. She actually believes that we need more "up-scale" houses in Willows to satisfy the requirements of those types of people who can afford those types of homes. Ms. Thrailkill went on to explain that as of a couple of weeks ago there were only 32 houses in Willows which were for sale, and only six of those were what she would consider to be above $300,000.

Ms. Thrailkill then stated that she would now like to discuss the four specific plans brought before the Council for consideration this evening. She stated that it is her opinion that all four designs look alike and have no real distinguishing qualities, other than the pillars on one of the homes. She continued, stating that the four designs that Mr. Sprague is proposing are 1272, 1300, 1342 and 1499 square feet, and the homes that have already been built in the cul-de-sac were built on lots between 8100 and 10,430 square feet. It is her belief that to build a 1300 square foot home on such a large lot between or next to other homes which are significantly larger will be totally disproportionate. She then spoke to the Recorded CC&R's for Unit II, Phase II, stating that, among other things that Mr. Sprague is in violation of, he is in violation of his own document which requires all residences built in Unit II, Phase II, have a minimum area of 1350 square feet. She points out that three of his four proposed plans do not meet those minimum requirements. However, as was also previously mentioned, Mr. Sprague does have controlling interest in this phase of the subdivision and could therefore revoke or modify the CC&R's without there being any legal say by the current property owners. To that, she stated that she hopes he will stay true to his CC&R's and not revoke them, and stay true to what the buyers were told to originally expect – which was a "custom home" concept.

Ms. Thrailkill began to wrap up her comments by stating that Mr. Sprague builds very nice homes, which is why she chose to purchase a home in that subdivision. She stated that Mr. Sprague should be proud of what is currently built in the subdivision, adding that the proposed design changes are just not consistent with the existing neighborhood. She asked that the Council put themselves in the place of the homeowners in this subdivision, most of which put a lot of money into a home that they felt would likely be their last, only to have the possibility of low to moderate income housing built directly around them. Ms. Thrailkill then quoted some excerpts from the "Willows Development Requirements, Processes and Procedures Handbook" Section 18.3 entitled "DESIGN STANDARDS – BUILDING" which states "Good design will reflect compatibility with the character of the area. Compatibility includes building style, size, setback, form, color, and material considerations", Section 18.3.2 which states "The building design shall exhibit variety by providing relief achieved through the use of functional architectural features. Variety is not achieved solely through the use of either different or contrasting exterior materials", and Section 18.0 which states "It is the objective of the Planning Commission and design standards to: 1) Preserve the characteristics of existing residential neighborhoods and 2) Maintain design compatibility between existing and new development. Ms. Thrailkill indicated the proposed design plans simply do not meet these criteria, which

would stand to reason why the designs were denied by the Planning Commission. She also stated that 27 residents of the Willowglen subdivision and surrounding neighborhoods signed a petition against this Design approval, expressing their desire that the Willowsglen Estates remain as "custom-built" designs and ask that the Design review changes requested by Mr. Forrest Sprague be denied. With that, Ms. Thrailkill asked if the Council had any questions.

Council Member Yoder addressed Ms. Thrailkill only to clarify that the decision before the Council tonight is not based on who the builder is, nor can the Council base their decision upon the concept of CC&R's or square footage, as the City has no authority or legal right to uphold the CC&R's which were recorded for Willowglen subdivision Unit II, Phase II. Council Member Yoder stated that the Council's issue at hand tonight is either to uphold or overturn the Design Review denial decision made by the Planning Commission. Ms. Thrailkill stated that she agrees, however the residents who purchased homes in the Willowglen subdivision did so under the understanding that the CC&R's would be followed and she is disappointed that Mr. Sprague is not going along with them. Mayor Towne then asked if anybody else would like to speak on this matter.

Jeff Williams, citizen of Willows, took to the podium and stated that he hopes that whatever the decision the Council makes that they check with legal Counsel in order to determine if there could potentially be any legal ramifications. He also shared that when he was being raised by his father, he was taught that if a man's word is no good, neither is his signature. He stated that he believes that if Mr. Sprague promised these people that they would live in a custom-built area, he should stay true to his word. Mayor Towne asked if any other members of the audience had any more comments, and hearing none, he asked if City Manager Holsinger had anything to add.

The City Manager stated by way of clarification and for the record that there was not a four-month "delay" in the Design Review process. Mr. Sprague submitted a letter to the City Planner, Karen Mantele, in November of 2008. That letter was responded to in a reasonable time-frame, within about ten business days from the date it was received. The response that Mr. Sprague received indicated that it was staff's opinion that he needed to return to the Planning Commission for Design Review. Mr. Sprague never objected to the City's decision; however he just simply didn't actually submit the Design Review application until February 18. The application was processed accordingly. During this same time-frame, the City Council, during a budget meeting, indicated and gave direction to staff that they wanted to cut back on Planning services staff hours. Even under these circumstances, the application continued to be processed as expeditiously as possible and has continued to be processed throughout the time between February 18, right up until today.

Mayor Towne asked if City Attorney Gary Krup had anything he would like to add. Mr. Krup stated that as he understands it, there are currently eight designs which are still available and can be utilized by Mr. Sprague and only four designs which are being considered tonight. In essence, there is one "basic" design which can be used, with the committee reviewing, adding to, and creating certain flexibility to the actual design itself for final approval in obtaining building permits. Tonight we are discussing four additional designs with the same type of flexibility as he understands it. At the Planning Commission meeting, the Commission did entertain all of the various subjects of what was intended and why this particular application was being submitted. Mr. Krup stated that he did not see Mr. Sprague anywhere within the Draft minutes of the Planning Commission meeting ever indicating at all that he intended at any time to make an application for a housing development project for very low to moderate income level housing and he doesn't see where his application ever changed from the very beginning in regard to what

his plan was for the development. He therefore doesn't see the Code Section cited by Counsel as being applicable. He continued, stating that a violation of the Code would only have occurred or been applicable when an application was rejected, however, he does not see that there was ever an application in existence for rejection in this instance. He stated that with regard to the issue of whether or not a Design Review is applicable in this case, it is his opinion that it is, in fact, applicable. Willows Municipal Code in Section 2-96 **(Criteria for approval of applicants)** Subsections A., B., and C. speak to overall design compatibility and architectural characteristics being consistent within a development and that proposed structures and site development shall be related harmoniously and have good development in the vicinity. In Mr. Krup's review of the minutes from the Planning Commission meeting, it is his opinion that the Commission did consider this and did make findings to that affect. Mr. Krup stated that what it is up for the City Council to determine this evening is whether or not the design plans submitted to the Planning Commission for approval actually met the criteria for approval of Design Review for those particular plans or not. Therefore, the options before Council are to approve the decision of the Planning Commission, deny the decision of the Planning Commission, or send it back to the Planning Commission for further findings.

Council discussion ensued and Council Member Holvik stated that he had some concerns and he asked that if the Council denies the appeal, what are the options for Mr. Sprague? Mayor Towne stated that the item can either go back to the Planning Commission with Mr. Sprague presenting some other designs which would be more compatible, or it could go back to the committee consisting of the Planning Chair and Building Official in order to proceed with the revisions of the plans. Mayor Towne also stated that he would like to point out that at no time in the past year and a half has there been any discussion at all about low or moderate income housing or CHIP housing anywhere in the discussions with Mr. Sprague at any time to anybody and evidently this is something that has been going on for quite some time. The Mayor stated that he just wanted to state that this concept is one that has never been presented to either the Planning Commission or the City Council. Council Member Holvik stated that he still has concerns why we are even addressing the subject of CHIP homes, as this is not part of the issue. He stated that listening to everything that has gone on tonight, he is trying to put himself in the positions of both Mr. Sprague as the developer, as well as the surrounding property owners, and he believes issues have been raised from both sides and he is still in a quandary over how he is gong to vote once this issue goes to a motion. He stated that he wants to be perfectly clear on what Council will be voting on, what the alternatives are, and what he is going to decide to do.

Council Member Hansen stated that he concurs with Council Member Holvik that low to moderate income housing has no bearing on the reason the Council is here tonight. He stated that Mr. Sprague has developed some very beautiful houses and it is a really good looking subdivision, but that he can thoroughly understand where a buyer may have concerns. As far as that particular neighborhood goes, he stated that Mr. Domenighini touched on something that he was thinking about, which is the Baywood subdivision is a completely different neighborhood which was built in 1979. As far as he as concerned, there is no real comparison between the Baywood and the Glenwood subdivisions as far as the looks of the neighborhoods. He stated he would be hard pressed to overturn a 5 to 0 vote by the Planning Commission to deny Mr. Sprague's Design Review.

Lengthy discussion ensued among the Council and Staff regarding current economics, what options are available, etc. Once discussions ceased, Mr. Sprague was allowed a final opportunity to give his closing comments. Mr. Sprague gave his closing statements and upon conclusion, his

Attorney and the City Attorney had additional discussions regarding the procedures to apply for or qualify for an application to construct low to moderate income housing.

Additional discussion ensued once again by the Council, with Mayor Towne giving clear direction on what Council's options are. Those options are to (1) deny Mr. Sprague's appeal, (2). approve Mr. Sprague's appeal, or (3). send the item back to the Planning Commission for additional review. He continued by clarifying that no matter whether the Council approves or denies Mr. Sprague's appeal, Mr. Sprague would always have an opportunity to go back before the Planning Commission at any time with another new Design Review application. With that, it was **moved** by Council Member Hansen and **seconded** by Council Member Baker to uphold the Planning Commission's decision to deny Mr. Sprague's Design Review application and to deny Mr. Sprague's appeal. Brief discussion ensued between Council Member Holvik and Mr. Sprague, and then Mayor Towne asked for a roll call vote.
The motion was unanimously passed by a 5/0 vote to reject Mr. Sprague's appeal and support the Planning Commission's denial of his Design Review application. Mr. Sprague then inquired whether he can still continue to submit his designs to the two-person committee for review. Mayor Towne stated that yes, the committee is currently still active and is a resource available to him.

At 9:03 Mayor Towne announced that there would be a brief recess and the meeting reconvened at 9:10 p.m.

10. <u>Items introduced by City Council or Administrative Staff for discussion purposes only:</u>

a) Clarification of Planning Fees annual update:

Finance Director Tim Sailsbery presented this item to the Council as informational only, explaining that a few years ago when the City initially increased their Planning Fees, as part of that process it was directed that Staff come back annually and hold a public hearing based upon an increase in accordance with the Consumer Price Index Western size B and C Cities from February to February, with that increase being .1%. Staff simply wanted to notify Council that the increase is negligible, and because of that they felt that it was not necessary to take the time and money to go through the public hearing process and staff was recommending that we table the issue at this time and bring the item before Council next year for consideration. None of the Council Members had any objections to table this item and to consider the item at this same time next year.

b) LAFCO Applications:

Mayor Towne stated that item 'b' is simply an informational item to announce that LAFCO is currently accepting applications for a Public Commission Member and an Alternate Public Commission Member. Application deadline is April 24, 2009 and applications may be obtained at 125 South Murdock Avenue, Willows.

11. <u>New Business:</u>

a) <u>Consider approval of a Resolution to allow the Police Chief to apply for a Justice Assistance Grant:</u>

Police Chief Bill Spears presented the Staff Report to the City Council explaining that a Justice Assistance Grant has been authorized by the Federal Government to fund local Law Enforcement needs. The City of Willows has been preauthorized $15,056 under this program. Although the funds can not be used for Personnel costs, the expenditures under this grant can fill departmental needs where general funds are not available. If approved, the department intends to utilize this grant to accomplish the purchase and install of two repeaters, antennas, duplexers, support cables and other equipment for the Willows Police and Fire Radio frequencies. In addition, funds will be used to purchase four (4) mini-14 patrol rifles, three (3) Remington 870 police shotguns and one (1) ballistic shield.

Chief Spears stated that as one of the conditions to apply for the grant, the City Council must adopt a Resolution allowing him to apply for the grant and upon acceptance, be authorized to sign the grant. Council discussion ensued and it was then **moved** by Council Member Hansen and **seconded** by Council Member Baker to adopt a Resolution allowing the Chief of Police to submit the JAG Grant Proposal to the Bureau of Justice Assistance and authorizing him to sign the approved grant and any amendments thereof on behalf of the City. The motion was unanimously passed.

12. <u>Council Member Reports:</u>

Council Member Hansen announced that the Sacramento Valley Shrine Club will be sponsoring their ninth annual Shriner's Hospital Medical Screening Clinic from 9:00 a.m. to 1:00 p.m. on May 16 at Glenn Medical Center. The screenings are free of charge and are open to all children under 18 years of age that have any problems with bones, joints, muscles, burns, or other medical conditions.

Council Member Baker stated that she attended the LAFCO meeting earlier today.

The meeting adjourned into Executive Session at 9:25 p.m.

13. <u>Executive Session:</u> Pursuant to California Government Code § 54950 et seq., the City Council will hold a Closed Session. More specific information regarding this closed session is indicated below:

a) INITIATED LITIGATION – Pursuant to Government Code § 54956.9 (a)

This item was removed from the agenda under item 4(a), due to there being no additional updates to share with the Council.

b) CONFERENCE WITH LABOR NEGOTIATOR – Pursuant to Government Code § 54957.6

Agency Negotiators(s):	City Manager Steve Holsinger Finance Director Tim Sailsbery
Employee Organization(s)	Willows Employees Association Willows Public Safety Association

Update on discussions with labor groups concerning wage and benefit concessions for FY 2009/2010.

Open Session reconvened at 9:32 p.m. with the following report out:

13 b) Mayor Towne stated that no formal action was taken on this issue, as it was merely an update on discussions with various labor groups concerning wage and benefit concessions for FY 2009/2010.

14. **Adjournment:** The meeting was adjourned at 9:33 p.m.

Dated: April 14, 2009

NATALIE BUTLER

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City Clerk