The Ross Retort
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by Lisa Ross
www.lisaross.com

Open Meeting Debate Deja Vu for Carmel Valley Activitst

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Media philosopher Marshall McLuhan wrote in the 1960's that "mud Eight years ago, in a case brought by citizen activists and argued all the way the California Supreme Court, a San Diego City Council was told that its clandestine decision to let a powerful utility skip out on a multi-million dollar obligation should have occurred in full public view.

As the current City Council comes to the end of its first term, streams of angry citizens are arguing that far too much of the people's business is conducted behind closed doors.

Some activists believe that similar, in spirit if not in kind, giveaways to powerful friends still occur under the cover of closed sessions.

Not a lot has changed even after two major court cases on the issue of closed sessions have been won by San Diego citizen watchdogs, one involving negotiations over Petco Park in 1992 brought by Mel Shapiro.

But it was two local women who won the earlier landmark case against the City of San Diego for violating the Ralph M. Brown Act when the City Council hammered out a new franchise agreement with San Diego Gas & Electric in closed session.

The Brown Act requires legislative bodies to meet and deliberate in open session, allow public comment and notice the public and the press in advance.

Some exceptions are permitted when the public would be served better by keeping discussions closed. For example, certain labor and property contract negotiations and litigation strategy discussions might warrant keeping the public out if an open hearing would jeopardize the city's position.

In reality, the exceptions are in the eye of the City Attorney. A succession of them honed the art of stretching exceptions into gaping loopholes. Closed meetings under the rubric of contract negotiations or lease agreements became a way for council members to find cover on controversial projects.

In 1995, Carmel Valley resident Joan Tukey and her Rancho Bernardo friend Karen Johanson wanted to know why the ugly power lines in their communities were not buried. Like many citizens, they knew little about how utilities operated, and even less about how city government conducted business.

They were two women who cared about the quality of life and the economic well-being of their neighborhoods. They just wanted to know where their tax money was going,

When Tukey and Johanson approached their council members about under grounding their power lines, they were given a dozen different answers to a dozen different questions, an experience shared by many citizen groups.

The underlying message from both council members was that the city had no money to bury the lines in their neighborhoods.

The one answer they did not hear from their representatives was that the city council decided in a closed door session to take 2 cents on the dollar from SDG&E in what was one of the biggest give-aways in the city's history, tossing aside enough money to bury every power line in the city.

Tukey and Johanson found that out several weeks later. They formed a citizen's action group, CAUSE. (California Alliance for Utilities Safety and Education)

According to CAUSE, the council negotiated a new utility franchise agreement that allowed SDG&E to skip out on a potential $169 million allocation for under grounding power lines in exchange for a quick $3.4 million general fund infusion and another $55 million over ten years to bury lines. The allocation was required by an agreement made in 1984.

While the city was historically under-using required set-aside funds for undergrounding lines, new Public Utility Commission rate-setting rules allowed the utility to pocket unused allocations. So, a lot was at stake in this deal for SDG&E stockholders.

But, CAUSE believed a lot more was on the line for San Diego taxpayers and rate-payers, not the least of which is how deals like this are conducted at city hall.

While the merits of the SDG&E franchise agreement were argued into the ground, the critical public debate never happened before the deal was done because the San Diego City Council worked out the franchise agreement behind closed doors without noticing the public on several critical amendments.

It is entirely possible that City Council members did not know the ramifications of the vote they took in 1995 relieving SDG&E of most of their allocation burden. No sane person would pass on $160 million, even for the best of friends.

Tukey and Johanson came to their conclusions only after months of scouring a hundred pounds of city and Public Utility Commission documents.

Adequate use of the public hearing process in this case could have saved money, time and litigation hassle. Had these citizens been taken seriously by their representatives, there might have been a very different result.

Open government is not just theoretically a good idea. A judge should not have to tell us that.

Angry citizens are again arguing that far too much of the people's business is conducted behind closed doors