



CITY COUNCIL AND COMMUNITY DEVELOPMENT AGENCY MINUTES

Regular Meeting
Tuesday, February 26, 2002
7:30 p.m.
Menlo Park Council Chamber
801 Laurel Street, Menlo Park

6:00 p.m. JOINT CITY COUNCIL/HOUSING COMMISSION STUDY SESSION (Held in the Council Chambers.)

1. Discussion and direction regarding the Oak Grove Plaza Housing Project.

All Council members and Commission members were present with the exception of Commissioner McPherson. Commissioner Murphy left early.

The Housing Commission and staff presented the results of the additional design work and identification of alternative housing sites as previously requested by Council. The Commission made a recommendation to proceed with a Request for Proposals for a developer for the project. Eleven people spoke, all but one in opposition to the project. The City Councilmembers discussed the cost of the project, the process used to bring the item to Council, and the nature of the public input. The majority of Councilmembers indicated that they did not wish to proceed with issuing the Request for Proposals.

ROLL CALL - Mayor Schmidt called the regular meeting to order at 7:45 p.m. Mayor Pro Tem Kinney and Councilmembers Collacchi, Borak, and Jellins were present. Also present were City Manager Boesch, Assistant City Manager Seymour, City Attorney McClure, City Clerk Ramos and other department heads.

A. PRESENTATIONS AND PROCLAMATIONS - None

B. ANNOUNCEMENTS, APPOINTMENTS AND REPORTS

1. There is one vacancy for the Housing Commission and one vacancy for the Library Commission. The deadline for applications is March 19, 2002.

Mayor Schmidt announced the vacancies listed.

2. Councilmember Reports: Schmidt, Kinney, Borak, Collacchi, Jellins

Councilmember Borak commented about Park and Recreation Commission community meetings to discuss Measure T project priorities and expressed concern about the current management of the Burgess facility shower use by the homeless. She would like to see this use reviewed in conjunction with the proposed renovation of the Burgess facility.

Councilmember Kinney concurred with Councilmember Borak.

Councilmember Borak reported on the Council of Cities dinner on February 22, 2002 featuring speaker Supervisor Jerry Hill who talked about general County activities and highlighted the Boy's and Girl's Club located in Menlo Park.

Councilmember Jellins noted a discrepancy in the public hearing date for Draegers' in today's issue of the Almanac and corrected it to March 5, 2002 instead of March 12, 2002.

C. PUBLIC COMMENT #1

Lawrence Zaro, Millbrae, expressed opposition to the proposed site of the Oak Grove housing project. He said he was bothered that no one addressed the issue of aesthetics during the discussion. He suggested the City consider other sites.

D. CONSENT CALENDAR

Mayor Schmidt read the consent calendar and noted that item D3 should read "Authorization of the Assistant City Manager..." instead of City Manager, due to a potential conflict of interest.

Councilmember Jellins requested to pull item 4 and 8. Councilmember Collacchi requested to pull item 2.

M/S Borak/Kinney to approve consent calendar items 1, 3, 5, 6, 7 and 8 as presented. Motion passed 5-0.

1. Approval of audited bills for period 32, 33 and 34 ending February 1, 2002, February 8, 2002 and February 15, 2002 and pay periods 1, 2 and 3 ending December 29, 2001, January 12, 2002 and January 26, 2002.

PULLED ITEM

2. Adoption of a Resolution: (1) approving an application, in collaboration with the San Francisquito Creek Joint Powers Authority, for grant funds in the amount of \$250,000 from Proposition 12 Riparian and Riverine Program for the development of pocket parks along City-owned portions of San Francisquito Creek; and (2) making the finding that the proposed project is categorically exempt from CEQA requirements.

Councilmember Collacchi said he inadvertently pulled this item.

M/S Collacchi/Schmidt to adopt the resolution as presented. Motion passed 5-0.

3. Authorization of the City Manager to enter into an agreement in the amount of \$136,000 with Rajappan and Meyer Consulting Engineers, Inc. to perform preliminary engineering and conceptual design for the Santa Cruz Avenue Corridor Study Phase II Project.

PULLED ITEM

4. Council adoption of a Resolution: authorizing the City Manager to enter into a contract with Vernazza Wolfe Associates in the amount of \$34,580 for services in support of the City's issuance of a Request for Proposals (RFP) and the selection of a developer for the Oak Grove Plaza Housing Site; and Agency Board adoption of a Resolution approving an additional allocation of \$24,295 in tax increment funds to provide sufficient funds to cover this contract expense, resulting in a total project budget of \$124,295.

Councilmember Jellins commented about the previous Council discussions regarding the Oak Grove housing site. He noted that the business community has expressed its opposition to housing at the proposed site along with similar reservations from some Councilmembers. He added that housing is a priority in Menlo Park, nevertheless he does not see a consensus for putting housing at the proposed site.

Original motion

Councilmember Jellins moved to table the matter at this time. Mayor Schmidt seconded.

Councilmember Kinney expressed support for the project and his disappointment that the Council is not able to reach a consensus. He said the project would give the City an opportunity to provide affordable housing. He did not concur with the concerns expressed by some of the merchants.

Mayor Schmidt also expressed disappointment noting the amount of time that has lapsed on this project. He said that the strong opposition from the merchants has caused some reservation and concern by the Council. He requested the Chamber of Commerce to continue its poll of its members and share the results with the Council. He said that the City has an obligation to provide subsidized housing and stated his belief that not all potential sites should be located on the east side of Highway 101. He would like to meet with staff to explore other strategies and alternatives.

M/S Borak/Collacchi to replace the original motion with a substitute motion.

Motion passed 3-2, with Mayor Pro Tem Kinney and Councilmember Jellins dissenting.

Substitute Motion

M/S Borak/Collacchi to reject this project at the proposed site and to not bring it back for further consideration.

Councilmember Collacchi expressed his disappointment and misunderstanding about the process. He said that the methodology of putting an item that was just discussed during a study session on the same agenda for Council action is not acceptable to him. He said that the study sessions presented opportunities for good discussion, however, it brought about certain expectations. He felt the project should have been brought to the Council as a regular business item, allowing the Council to decide whether to proceed. He commented on the inadequacy of the project analysis and noted that the project is not consistent with public policy.

Councilmember Kinney commented on the process as he viewed it, noting that he saw it as a step-by-step process and it was clear to him that the project would come to the Council for approval based on the discussions at the study sessions. He also said that an RFP would help bring clarity and definition to the project.

Mayor Schmidt called for the vote on the substitute motion.

Motion passed 3-2, with Councilmember Jellins and Mayor Pro Tem Kinney dissenting.

5. Adoption of a Resolution supporting State legislation to make improvements to the Bay Area Regional Water System (Hetch Hetchy).
6. Acceptance of work for the Sand Hill Reservoir Relining and Pipeline Project.
7. Acceptance of work for the El Camino Real Trees Phase I Project and the Ivy Drive Temporary Road Closure Project.

PULLED ITEM

8. Approval of City Council Minutes for the meeting of February 5, 2002.

Councilmember Jellins asked about the minutes of the special meeting of February 7, 2002 and staff responded that the minutes would be in next week's agenda for Council approval.

There was consensus to adopt the minutes of February 5, 2002 as presented.

E. PUBLIC HEARING

1. Introduction of amendments to the Heritage Tree Ordinance (Chapter 13.24, Municipal Code).

Dianne Dryer, Environmental Coordinator, presented the staff report. Walt Fuji, City Contract Arborist and Justin Murphy, Senior Planner, were present for questions.

Questions and discussion ensued regarding cost recovery, tree counts and permits, and the cost for an arborist report.

Mayor Schmidt opened the public hearing.

Frank Carney, Menlo Park, spoke as a resident and a member of the Environmental Quality Commission, urged the adoption of the amended ordinance, noting that the Commission supports reducing the size of a tree to qualify it as a heritage tree. He noted that that nearby cities have the same tree size in their ordinance that would make it easier to remember and enforce.

Brian McGovern, San Jose, Woodpecker Certified Arborist, commended the amended ordinance and suggested the following changes:

- Section 13.24.025 Maintenance and Preservation of Heritage Trees: Language in the first sentence, "...within the city shall maintain and preserve all heritage trees located thereon..." should be changed to reflect, "...within the city will make a reasonable attempt to maintain and preserve all heritage trees located thereon...". He argued that even under the best of circumstances, no one could guarantee the health and safety of the tree.
- Section 13.24.030 Removal and major pruning of heritage trees prohibited: He stated that the words "unbalance" and "mutilate" found in the last sentence could be very judgmental and it should be changed to read, "Any person who vandalizes, grievously mutilates, destroys or unbalances a heritage tree beyond the scope of the approved permit or without a permit shall be in violation of this Chapter."

Mr. McGovern stated he concurs with the previous speaker and supports keeping the numbers consistent with the ordinances of other cities.

Questions and discussion ensued regarding pruning, mutilating and unbalancing of trees, permit requirements and enforcement process. There was also discussion about maintenance of trees on vacant lots.

City Attorney McClure noted that the proposed ordinance would give staff direction on how to handle improper or illegal pruning by contractors who are hired by outside parties, including PG&E, to prune the trees.

City Attorney McClure suggested the following modifications based on concerns expressed tonight:

- The first sentence in Section 13.24.025 should read, *“Any person who owns, controls, has custody or possession of any real property within the City shall use reasonable efforts to maintain and preserve all heritage trees located thereon in a state of good health pursuant to the provisions of this Chapter”.*
- The last sentence in Section 13.24.030 should read, *“Any person who vandalizes, grievously mutilates, destroys or unbalances a heritage tree without a permit or beyond the scope of an approved permit shall be in violation of this Chapter.”*

Kathy Newman, Menlo Park, suggested the following to help reduce cost to the City and homeowners:

- Under Section 13.24.025, fourth sentence: “Any work performed within an area 10 times the diameter of the tree shall require submittal of a tree protection plan for review and approval by the Director prior to issuance of any permit for grading or construction”. – she is concerned that this means any work would require a tree permit even when the work is inside the house.
- She supports the proposed modifications regarding using reasonable efforts to maintain and preserve all heritage trees.
- Under Section 13.24.070 paragraph 1, it is not clear to her whether there was a violation that occurred because of the removal of a tree and a mitigation plan was required. The current provision states that the mitigation plan applies to all trees on the property. She would like it clarified that the mitigation plan applies to the remaining heritage trees that are on the property should a violation occur.

City Attorney McClure clarified that the intent is to apply the mitigation plan to more than just heritage trees to encourage the growth of the other trees on the property and basically replace the heritage tree. He noted that this process would be handled administratively and procedurally.

M/S Kinney/Schmidt to close the public hearing. Motion passed 5-0.

City Attorney McClure clarified that the provision under 13.24.025 (fourth sentence) regarding any work within an area ten times the diameter of the tree refers to work performed outside the house, not inside.

Original Motion

M/S Kinney/Jellins to approve the proposed Ordinance with the modifications discussed under Sections 13.24.025 and 13.24.030 as summarized by the City Attorney.

Mayor Schmidt requested an amendment to the motion to include:

- Under Section 13.24.020(2) Defining a Heritage Tree: Include another Redwood species called “Sequoia Gigantica”.

Amended Motion

M/S Kinney/Jellins to approve the proposed Ordinance with the modifications discussed under Sections 13.24.025 and 13.24.030 as summarized by the City Attorney and under Section 13.24.020(2) including in the definition of a heritage tree the following species: “Sequoia Gigantica”.

Councilmember Borak said she is pleased with the increased protection for heritage trees but has some concern about the reduced tree diameter size which may result in concerns from homeowners that they would have to get permits for trees that do not have the stature of a heritage tree. She will support the ordinance and hope that the community will accept it with the spirit that is intended.

Amended motion passed 5-0.

Mayor Schmidt declared a recess at 9:13 p.m. and reconvened the meeting at 9:21 p.m.

F. REGULAR BUSINESS

1. Approval of the draft findings and conditions of approval of a Mitigated Negative Declaration, Use Permit, Architectural Control and removal of a Heritage Tree for the construction of a two-story 10,336 square foot commercial building at 145 El Camino Real.

Tracy Cramer, presented the staff report and pointed out two changes to the proposed conditions listed under Attachment A in the staff report as follows:

- Condition kk (page A-9) be revised to indicate that the limits to the hours of operation are proposed to only apply to retail uses and not the office portion of the project. This condition should read, "*The hours of operation for retail uses on the property, including all deliveries to the site, shall be restricted to 7:00 a.m. to 7:00 p.m.*"
- Condition l (page A-4) be revised to include a provision for access to the garage on weekends. This condition should read, "*Prior to issuance of building permits...The underground parking garage gate will be open on weekdays from 6:30 a.m. and remain open until 7:00 p.m. and open on weekends during the established weekend hours however in no case shall the garage door be open earlier than 6:30 a.m. or later than 7:00 p.m.*" Office tenants arriving or leaving..."

Staff reported that a letter was received today from the applicant with a recommendation for prohibitive uses and hours of operation, and distributed copies to the Council and staff.

In response to Councilmember Collacchi, staff summarized the concerns expressed by the applicant and the neighbors regarding uses and hours of operation.

Erik Doyle, applicant, said that they have spent a lot of time meeting with neighbors and staff to resolve the concerns. He noted that some of the concerns, particularly related to the prohibitive uses would make the project difficult to finance. He described the uses, as stated in their February 26, 2002 letter, which the applicants would not want to prohibit (including cigars and tobacco sale, auto parts, dry cleaners). He also expressed concern about the proposed hours of operation.

Questions and discussion ensued regarding the concerns about uses and hours of operation and C-4 zoning uses.

City Attorney McClure clarified the use permit process and the process for the applicant to seek amendments to the prohibited uses.

Mr. Doyle commented that the problem with coming back to apply for a conditional use permit to amend the restricted uses is the timing which would make it difficult to lease the space.

Mayor Schmidt noted that the staff recommends a 20' curb radius at Cambridge and El Camino. However, after talking with staff, he would like to suggest changing the curb radius to 15'.

Jerry Jones, Menlo Park, asked for clarification about the after hours parking access for the office use. He encouraged the Council and staff to consider soliciting or requiring the use of public transportation by the workers in office or commercial development projects.

Mayor Schmidt clarified that Mr. Jones is referring to commuter check or other transportation incentive programs for the office tenants or occupants of the building.

Senior Planner Cramer referred to Condition Y, which identifies that the project needs to incorporate such amenities including transit reimbursement for employees, etc.

Mayor Schmidt suggested adding parking cash out to the amenities. He expressed support for the prohibited uses listed by the applicants in their letter dated February 26, 2002 and changing Condition kk to reflect the hours of operation from 7:00 a.m. to 10:00 p.m. and leave the gap in time up to the applicant's proposal to keep most retail uses open until 8:00 p.m. but restaurants and other similar uses could stay open until 10:00 p.m.

Councilmember Collacchi said he would support the applicant's proposal for Condition kk.

Councilmember Kinney expressed concern about not prohibiting fast food and automotive service uses at the proposed project site. He would support the recommendations of staff.

Discussion ensued regarding enforcing generated trips.

Jack Bariteau, co-owner, stated that the project owners do not intend to lease to classic fast food operators such as McDonald's, Jack in the Box, etc. and they would not want to be restricted from leasing to other types of fast food serving establishments. He suggested clarifying the definition of fast food establishments.

City Attorney McClure clarified that the C-4 zoning on El Camino prohibits fast food restaurants and drive-thrus and referred to the Code for a definition of fast food. He also named the general permitted uses in C-4 as currently listed in the Code.

Mr. Bariteau noted that retail users in general such as Blockbuster require more square footage than what the project currently proposes. He said that Condition jj is acceptable as long as it does not preclude fast food uses in the general sense of the word.

City Attorney McClure noted that he is not sure whether C4 restricts a "fast beverage" or "Starbucks" type of establishment.

M/S Schmidt/Kinney to replace the recommended Condition jj in the staff report with the list contained in the applicant letter of February 26, 2002 and add auto service to the list of prohibited uses; and to replace Condition kk with the hours proposed in the letter of February 26, 2002.

Mayor Schmidt reiterated his suggestion for a 15' radius mentioned earlier.

Councilmember Collacchi suggested keeping Condition jj and deleting the last statement about fast food.

Councilmember Kinney withdrew his second.

The first motion failed, due to lack of a second.

Councilmember Borak reminded the Council that she did not support this project when it was initially presented to the Council and stated she will not support it tonight. However, for lack of a motion on the table, she moved to modify Conditions jj and kk as follows:

Condition jj:

- **Delete auto parts and retain auto service**
- **Delete the last statement about fast food**
- **A second-hand store would not exclude antique, high end jewelry, furniture, clothing consignment stores**

Condition kk:

- **Rewrite the hours of operation to 7:00 a.m. to 10:00 p.m. for non-food retail and 7:00 a.m. to 8:00 p.m. for operations that involve food or beverage use.**

Councilmember Collacchi seconded the motion.

Erik Doyle, applicant, expressed concern that the prohibited uses would eliminate some potential future uses which would impact financing the project. He said that he would accept them, however, and would appreciate it if Council could make the list as limited as possible given what the applicants have done with the project to mitigate other concerns. He suggested eliminating the following from the prohibited list: tobacco products, liquor stores; second hand store, automotive parts, video rental, equipment rental, vehicle rental, and dry cleaning (without a plant).

Councilmember Borak noted that the types of establishments referred to by the applicant would generate numerous trips and create high volume traffic, which is a concern of the neighborhood. She suggested staying with her motion, with the understanding that there is a process for the applicants to come back to the City to request a change to their use permit.

City Attorney McClure clarified the motion on the table as follows:

- **Approve the draft findings and conditions of approval for 145 El Camino Real as contained in the staff report pages A1 through A10 subject to the three clarifications of conditions outlined previously by staff**
- **Change the radius from 20' to 15' at Cambridge and El Camino Real**
- **Modify Condition jj to read: The following uses shall be prohibited on the site: pawnshop, second hand store (except antique or "high-end jewelry, furniture, clothing consignment stores"), adult entertainment establishments, sale of fireworks, tobacco products, liquor stores, automotive service, video rental, equipment rental, vehicle rental, dry cleaners or Laundromat, video arcade, reprographics services and pet and animal sales and services.**
- **Modify Condition kk to read: The hours of operation for retail uses on the property including all deliveries to site shall be restricted to 7:00 a.m. to 10:00 p.m. provided that retail uses serving food and beverage limited to the hours of 7:00 a.m. to 8:00 p.m.**

Mayor Schmidt expressed disappointment that reprographics service would be prohibited at this site since it is an innocuous use. He suggested amending the motion to exclude reprographics service from the list of prohibited uses.

The proposed amendment failed due to lack of a second.

Motion passed 4-1, with Councilmember Borak dissenting.

2. Consideration of legislative items listed in the League of California Cities Bulletin(s), or items referred to in Written Communications or Information Items, including decisions to support or oppose any such legislative, communication or information item.
 - (a) Direction to staff on Council's position regarding AB 680 (Land Use: Sales Tax and Property Tax Revenue Allocation in the greater Sacramento region).

David Boesch, City Manager, presented the staff report.

Questions and discussion ensued regarding the benefits and concerns about cooperative agreements and sharing revenues. The positions of other cities and officials were also discussed. There was also concern expressed by the Council that the bill is ambiguous and lacks clarity with respect to the financial impact to local government.

City Manager Boesch commented that based on the discussion tonight, there is no clear consensus of the Council's position on the proposed bill. He proposed continuing to monitor AB 680 and updating the Council as new information becomes available.

G. WRITTEN COMMUNICATIONS - None

H. INFORMATION ITEMS - None

I. PUBLIC COMMENT #2 – None

J. ADJOURNMENT TO CLOSED SESSION— *Held at 11:00 p.m. in the Administration Conference Room at City Hall.*

1. Closed Session pursuant to Government Code Section §54956.8. Regarding property negotiations: 507 Hamilton, APN 055-341-080; Rear of 507 Hamilton, APN 055-341-020; 511 Hamilton, APN 055-341-090; 525 Hamilton, 055-341-120; 547 Hamilton, APN 055-341-160; vacant lot, APN 055-341-190; vacant lot, APN 055-341-200

Negotiating Parties: David Boesch, City Manager/Executive Director, Bill McClure, City Attorney, Don de la Pena, Housing and Redevelopment Manager.

RECONVENE IN OPEN SESSION – 11:20 p.m.

REPORT ON AFOREMENTIONED CLOSED SESSION – There was no reportable action taken.

K. ADJOURNMENT – 11:21 p.m.

Respectfully submitted,

Susan A. Ramos, CMC
City Clerk