



CITY COUNCIL AND COMMUNITY DEVELOPMENT AGENCY MINUTES

Regular Meeting
Tuesday, October 15, 2002
7:30 p.m.
Menlo Park Council Chamber
801 Laurel Street, Menlo Park

6:30 p.m. CLOSED SESSION - in the Administration Conference Room located on the first floor at City Hall, 701 Laurel Street, Menlo Park.

1. Closed Session pursuant to Government Code Section §54956.8 regarding property negotiations for: 525 Hamilton, (APN 055-341-120). Negotiating Parties: David Boesch, City Manager/Executive Director, and Bill McClure, City Attorney.

7:25 p.m. CLOSED SESSION ENDED

ROLL CALL – Mayor Schmidt called the meeting to order at 7:30 p.m. in the City Council Chambers and stated there was nothing to report from the Closed Session. Mayor Pro Tem Kinney, Councilmembers Borak, Collacchi, and Jellins were present. Also present were City Manager Boesch, Assistant City Manager Seymour, City Attorney McClure, Interim City Clerk Wahlsten, and other department heads.

A. PRESENTATIONS AND PROCLAMATIONS - None

B. COMMISSION VACANCIES, APPOINTMENTS AND REPORTS

1. Environmental Quality Commission (one vacancy), Las Pulgas Committee (one vacancy - homeowner in the Redevelopment Area) and Housing Commission (one vacancy). The deadline for applications is October 29, 2002.

Mayor Schmidt announced the Commission and Committee vacancies.

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

There were no reports given.

H. INFORMATION ITEMS

1. Status report regarding a review of the City's Child Care Programs.

Mayor Schmidt stated this item was continued from the October 1, 2002 agenda and offered to give the public and Council an opportunity to address this item first during this meeting. Staff's intention is to propose this item for Council's ranking consideration during its 2003 priority-setting process.

No one wished to speak.

C. PUBLIC COMMENT #1

Alex Tourk, Santa Clara, introduced himself to the City Council as the new Governmental Relations Director with the San Francisco 49ers.

Cheryl Cheslowski, Menlo Park, spoke regarding the need for a community theatre in Menlo Park. She suggested that Menlo-Atherton High School is not a good site for a theatre as recommended in the consultant's report and stated other options should be explored, particularly the Burgess.

Harry Harrison, Menlo Park, stated he is not in favor of a joint use facility with Menlo-Atherton High School.

D. CONSENT CALENDAR

1. Approve audited bills for period 13 ending September 27, 2002, and pay periods 18, 19 and 20 ending August 24, September 7 and September 21, 2002.
2. Approval of Minutes for the City Council Meeting of September 24, 2002.

M/S Jellins/Schmidt to approve the Consent Calendar as presented. Motion passed unanimously.

Councilmember Jellins stated he had noted some typographical errors in the minutes of September 24, 2002, and would give them to the City Clerk for correction.

E. PUBLIC HEARING

1. Consideration of a recommendation by the Planning Commission to approve a Zoning Ordinance amendment, rezoning, and negative declaration for the establishment of new M-2 General Industrial Zoning Districts that would allow distinctions in uses and floor area ratios between the districts.

Acting Director of Community Development Heineck gave the staff report. She reviewed the history from 1998 regarding the M-2 issue.

Director Heineck summarized the proposed zoning ordinance amendment that was prepared following the Council's August 20 and August 21 meetings. There are three elements to this amendment:

1. Creation of four new zoning districts to replace the existing M-2 district along the eastern edge of the City: Limited Office, Business Park, Menlo Business Park sub-area; Willow Park sub-area;
2. New definitions in the zoning ordinance for general office, general industrial uses and revised definitions for professional office;
3. Changes to provisions for non-conforming structures to make them legal, non-conforming if they receive a certificate of exemption from the City within one year of adoption of the ordinance amendment.

The Planning Commission has reviewed the proposal and recommends approval with some changes outlined in the staff report. If the City Council concurs with the Planning Commission's

recommended amendments, they should direct staff to prepare a new Negative Declaration and consider the ordinance at a later meeting.

Councilmember Jellins stated the staff report refers to the business district adjacent to Marsh Road at Highway 101 receiving its zoning designation because of the proximity to the Lorelei Manor neighborhood and asked why the zoning on the other side of 101 adjacent to the Belle Haven neighborhood should not be the same.

Council asked staff several questions regarding the proposed changes. Staff concurred that Professional Services should be added under sections 16.47.020 and 16.48.020

Mayor Schmidt concurred to grant David Bohannon, owner of property currently zoned M-2, 15 minutes to make an organized presentation. Nancy Cash will also be given 15 minutes because of the number of speaker cards submitted giving time to her.

David Bohannon, Menlo Park, requested the City Council to not make a change in the M-2 zoning because the proposed changes would reduce the flexibility needed to be able to respond to a changing market place.

Joanne Brion, Brion & Associates, Oakland, representing the Bohannon organization, questioned the assumptions used in the fiscal model and traffic analysis. She stated they have done their own revised traffic and fiscal analyses and submitted them to the City. She questioned the adequacy of public input into the planning study.

Timothy Tosta, Stoefel, Levitt & Weiss, San Mateo, representing the Bohannon organization, also stated the fiscal and traffic assumptions used in the city's studies were inconsistent and the market has been going opposite to the city's study. He referenced the threatened lawsuit that was the subject of the City Council's closed session on October 8.

Nancy Cash, Menlo Park, stated she was speaking on behalf of Mt. Olive AOH Church of God, 605 Hamilton Avenue in Belle Haven. She turned in petitions signed by Belle Haven residents and members of the Church. She requested the City Council reject the proposed rezoning. Lorelei Manor is proposed for different treatment because of its past input to the Council and Belle Haven should have the same consideration.

Pat White, Menlo Park, stated that changes in zoning will not make Menlo Park competitive. There is a lot of vacant commercial space in the corridor between Gilroy and San Francisco. He suggested the item be tabled until the new Council takes office.

Spence Leslie, Director of Site Services, Tyco Electronics, and a member of the Menlo Park Chamber of Commerce Board, stated the Chamber opposes the change. He cited the four things that keep Tyco In Menlo Park: low occupancy costs which offsets the high costs of being an industrial user in this area; flexibility in being able to change the campus as the business changes; the number of key customers are in this area and they lease some of their buildings to others. Flexibility and leasing will both be endangered by this proposal.

Charles Brock, Woodside, owns property at 130 Constitution Drive, which is currently zoned M-2 and proposed to be zoned M-2 LO. He stated he is opposed to the proposal.

Kevin Reichelderfer, Menlo Park, Exponent, an engineering and scientific consultant firm with corporate offices at 149 Commonwealth Drive in what is proposed to be M-2 limited office, stated he believes that a decision to downzone will restrict professional service firms such as Exponent locating in Menlo Park. In response to query from Councilmember Borak, he stated they are a service firm with approximately 200 employees locally.

Ward Hart, Menlo Park, part owner of two buildings at 162 Constitution Drive, in what is proposed to be M-2 LO. He stated he is opposed to the proposed rezone.

Byron Brill, Menlo Park, representing Menlo Oaks Partners, part owner of property located at 4400 Bohannon Drive in the M-2 zone, requested a sub-zone for the Menlo Oaks Corporate Center to codify the Master Plan approved in 1984, as recommended by the Planning Commission.

Marty Brill, representing Menlo Oaks Partners, owners of Menlo Oaks Corporate Center, 4100 - 4700 Bohannon Drive, stated the history of the approval of the Menlo Oaks Corporate Center project. Their project will be non-conforming and not exempt as to FAR if the zoning ordinance is approved as presented by staff.

Howie Dallmar, Menlo Park, stated he works for Cornish & Carey Commercial, specializing in commercial real estate in the area. He does not believe the proposal will work because the demand is not there. He presented a letter from 55 commercial real estate brokers. In response to query from Councilmember Jellins, Mr. Dallmar stated that there are small pockets of property in Redwood City and San Carlos where an industrial use is possible, but the demand is for office space. In response to query from Mayor Schmidt, Mr. Dallmar stated the current vacancy rate in the mid-peninsula area is about 25%.

Michael Cabak, San Francisco, stated he owns six buildings with seven tenants in the M-2 zone, including his architecture and engineering firm. He stated adoption of the Planning Commission's six recommendations would be helpful if the Council decides to go forward with this proposal, however he feels the proposal is unduly complicated.

Don Harrier, Menlo Park, an architect who has represented many owners and tenants in the current M-2 zone, talked about the process and urged that risk and benefits be evaluated

Johnnie Walton, Belle Haven, Menlo Park, stated he had heard a statement at the Planning Commission meeting about the "forecasted future for Belle Haven" and asked what that is.

Kamron Motamedi, Menlo Park, who owns a business on O'Brien Drive stated he feels the proposed rezoning is piecemeal and unreasonable.

Robert Moore, Menlo Park, is a heavy equipment operator and deals with hazardous waste materials. He doesn't want that in Menlo Park.

Kitty Craven, Lorelei Manor, Menlo Park, stated she is opposed to the downzoning of M-2.

Lucy Berman, Palo Alto, stated her family owns 40,000 square feet of manufacturing space on Haven Avenue that overlooks the bay. It is for sale and there have been 6 lookers, all eligible under the new zoning, but all resellers that would generate no sales tax. She feels the City needs to be friendlier to business if it wants to increase its sales tax base. She is opposed to the rezoning proposal.

Cailean Sherman, Woodside, stated her family owns property on Haven at Marsh Road. They are planning a new building on their property but it would not be allowed under zoning changes. In response to query from Councilmember Collacchi, she stated the application was submitted in March 2001, but it has not been approved. Director Heineck stated that an environmental report was required and is being prepared.

Timothy Tosta, representing the Bohannon organization, showed a map of non-conforming uses in the M-2 area. The proposal makes the predominant buildings non-conforming because of the FAR or use.

Phil Erickson, Community Design and Architecture, Oakland, representing the Bohannon organization, stated they prepared the map referred to by Mr. Tosta. Each non-conforming building that gets a certificate would become a separate zoning district, in essence, and it would be very hard for staff to administer.

Don Brawner, stated he is concerned about the quality of life and too much traffic.

Nina Wouk, Menlo Park, recording secretary of Belle Haven Association, suggested the City Council needs to create an educated citizenry.

Chuck Bernstein, Menlo Park, stated he supports the proposal. The biggest problem is traffic and pure office uses creates more traffic.

Newton Craven, Lorelei Manor, Menlo Park, requested the City Council slow down and get more input from the community.

Maree Kent, Lorelei Manor, Menlo Park, stated these issues are tearing the community apart. She cited the noise from fans and roof-mounted equipment from uses in the M-2 zone. The changes proposed are to help resolve the problems that they have been documenting.

Jim Calhoun, Menlo Park, stated he is concerned about the process. The residents want to be involved.

M/S Kinney/Borak to close the public hearing. Motion passed 4-1 with Jellins dissenting.

Councilmember Borak asked if a closed session would be appropriate due to the threat of litigation. Mayor Schmidt stated the Council would take a break and discuss it when they come back to order.

RECESS AND CALL TO ORDER

Mayor Schmidt called for a recess at 10:15 p.m. and called the meeting back to order at 10:28 p.m. with all Councilmembers present.

M/S Jellins/Kinney to table the entire matter until further notice. Based on the public input tonight and input from Planning Commission this is not ready to be enacted. The underlying assumptions need to be examined and more public input needs to be gathered.

RECESS AND CALL TO ORDER

Mayor Schmidt called for a recess at 10:38 p.m. following discord among the Councilmembers. The meeting was called back to order at 10:40 p.m.

Mayor Schmidt stated he would like to have some staff response to the Planning Commission's recommendations and the discrepancy between the figures presented by the City staff and the figures presented by Bohannon. He asked if this could be accomplished if the item was tabled.

Councilmember Borak stated her experience is that tabling puts the item in limbo and made a motion to call for the question.

Councilmember Jellins asked for a point of information and asked the City Attorney the meaning and effect of tabling. City Attorney McClure stated a motion to table an item suspends any further discussion or action on the item until such time as the Council votes to have further discussion. The item would have to be put back on the agenda by the Mayor or a Councilmember in order to discuss it in the future.

Councilmember Jellins stated his motion was to table consideration of the Negative Declaration which, if the Ordinance is amended, would need to be reissued. City Attorney McClure concurred that if the motion was merely to table consideration of the Negative Declaration, discussion could take place regarding the proposed Ordinance.

Following discussion of the procedure and what the motion to table would achieve, **Mayor Pro Tem Kinney withdrew his second of the motion to table.**

RECESS AND CALL TO ORDER

Mayor Schmidt called for a closed session at 10:50 p.m. in order to discuss threatened litigation. Mayor Schmidt called the meeting back to order at 11:10 p.m. and stated there was no reportable action from the closed session.

Councilmember Collacchi asked what the Planning Commission meant by Research and Development. Director Heineck responded that the Planning Commission wanted to identify R&D as a use within the list of permitted uses and restrict the amount of office square footage within the R&D designated building. The amount would be the same limits as are drafted for the office component of general industrial uses in each of the zoning districts. For example, in the Limited Office District, R&D would be listed as a permitted use with a FAR of 55%, but the office component of that would be 20% or up to 30% through a use permit process. R&D is a combination of uses with office space, lab space, manufacturing space and warehouse space. It's difficult to define because it is so broad.

In response to query, Director Heineck clarified that Professional, Legal and Financial Services would be listed in the Business Park zone to replace Professional Office. Traditional Professional Office would be listed wherever General Office is listed.

Council discussed the request from the Menlo Business Park to be a fifth sub-zone and what that would mean.

Councilmember Jellins requested further consideration of the aspirations of the Belle Haven community and work to reconcile that with the zoning. He also requested a report from staff that would explain how their numbers differ so widely from the developer's numbers and suggested performance based zoning should be part of the consideration now, not as another phase. If we acknowledge that the intent is to change the zoning to allow certain types of revenue generating uses, then we need to scrutinize the assumptions we've put into the model to give us certain ranges of results.

Councilmember Collacchi stated that his recollection is that the M-1 zoning next to Belle Haven is a result of meetings with the neighborhood that rezoned M-2 to M-1.

Councilmember Borak stated that less revenue stream and more traffic is not the direction we want to go. We have a process that goes back to 1994 when the General Plan was updated and we need to move forward.

M/S Jellins/Kinney to give direction to staff that any further work on the M-2 proposal include additional public outreach.

City Attorney McClure attempted to clarify what kind of public outreach they're asking for: What is the vision and what values do you want to achieve?

Councilmember Jellins withdrew his motion for discussion to clarify the context. Councilmember Kinney agreed.

Following discussion, Council concurred to continue this item to the next meeting for further discussion. Councilmembers agreed to meet with staff independently during the week to ask their questions. Based on direction next week it could be possible to bring back a draft ordinance in a few weeks.

F. REGULAR BUSINESS

1. Consideration of state and federal legislative items or items referred to in Written Communications or Information Items, including decisions to support or oppose any such legislative, written communication or information item.

There were no items discussed.

G. WRITTEN COMMUNICATIONS - None

H. INFORMATION ITEMS

1. Status report regarding a review of the City's Child Care Programs.

Mayor Schmidt gave the public and Council an opportunity to address this item at the beginning of the meeting. There was no discussion.

2. Government Access Channel Policies and Procedures.

Councilmember Jellins asked about the effective date of the policies regarding the priority for coverage of Council meetings. Assistant City Manager Seymour stated these policies are effective immediately. The City of Palo Alto also has this item on their agenda and she will report back if their City Council has any differing opinion on these policies.

I. PUBLIC COMMENT #2 - None

J. ADJOURNMENT – 12:55 a.m.

**Marjorie K. Wahlsten, CMC
Interim City Clerk**

Approved by the City Council on November 12, 2002