



CITY COUNCIL and COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, July 22, 2003

7:30 p.m.

The Menlo Park Council Chambers
801 Laurel Street
Menlo Park, CA 94025

7:30 p.m. REGULAR MEETING (Menlo Park City Council Chamber)

ROLL CALL - Jellins, Duboc, Collacchi, Kinney, Winkler.

STAFF PRESENT - Audrey Seymour, Acting City Manager; William McClure, City Attorney; Silvia Ponte, City Clerk. Various department heads and other City staff were present.

PLEDGE OF ALLEGIANCE

A. PRESENTATIONS AND PROCLAMATIONS - None

B. COMMISSION APPOINTMENTS, VACANCIES, AND REPORTS

Mayor Jellins addressed items **B2** and **B3** prior to addressing item **B1**. He announced the vacancies available, and encouraged the public to apply for these positions.

2. The Arts Commission has two vacancies to serve four-year terms that expire September 2007. The deadline for receipt of applications is 5:00 p.m. on August 18, 2003.

The Environmental Quality Commission has two vacancies to serve four-year terms that expire September 2007. The deadline for receipt of applications is 5:00 p.m. on August 18, 2003.

The Housing Commission has two vacancies to serve four-year terms that expire September 2007. The deadline for receipt of applications is 5:00 p.m. on August 18, 2003.

The Las Pulgas Committee has one vacancy for a Rental/Owner to serve an un-expired term, ending March 2005. The deadline for receipt of applications is 5:00 p.m. on August 18, 2003.

The Parks and Recreation Commission has one vacancy to serve a four-year term expiring September 2007. The deadline for receipt of applications is 5:00 pm on August 18, 2003.

The Transportation Commission has two vacancies to serve four-year terms that expire September 2007. The deadline for receipt of applications is 5:00 p.m. on August 18, 2003.

3. Council Member Reports.

Council Member Kinney reported that on Monday (July 21, 2003) a meeting of the San Francisquito Creek JPA took place announcing that the request for funding submitted to the Federal House of Representatives was taken out. Mr. Kinney stated that this item is in the Senate version of the budget but is not fully approved. Mr. Kinney thanked all those who called and supported this cause. Mr. Kinney also announced that on July 23, 2003 in Foster City, a meeting will take place with the two new Water Agencies, the Planning and Financing Agencies, and these are the first meetings after the inaugural

meetings.

Mayor Jellins requested that the record reflect that Council Member Collacchi arrived at 7:34 p.m.

1. Appointment to the Transportation Commission to fill one vacancy of an un-expired term, ending July 2005.

Mayor Jellins announced that three applications were received for this vacancy. The applicants were: Theo Keet, Michael Meyer and Reginald Rice.

Mayor Jellins Declared the Nominations Period Open

Council Member Winkler nominates Reginald Rice to the Transportation Commission.

Council Member Collacchi nominates Reginald Rice to the Transportation Commission.

Council Member Kinney nominates Theo Keet to the Transportation Commission.

Mayor Jellins Closed the Nomination Period

Appointment of Reginald Rice - Four Council Members voted in favor. They were: Jellins, Duboc, Collacchi and Winkler.

Appointment of Theo Keet - One vote from Council Member Kinney

Reginald Rice was appointed to the Transportation Commission.

The two other applicants were encouraged to apply for the next two vacancies. Mayor Jellins requested that these applicants contact the City Clerk and confirm their interest.

Mayor Jellins announced that on Thursday July 24, at 6:30 p.m. the quarterly meeting of the Peninsula Division of the League of California Cities Council of Cities will take place. The topic of this meeting will be "Privacy Issues".

C. PUBLIC COMMENT #1

None

D. CONSENT CALENDAR

Items pulled D1 and D2

1. Adoption of an Ordinance No. 924 to amend the Menlo Park Municipal Code to change the starting time of regular City Council Meetings from 7:30 p.m. to 7:00 p.m.
2. Council direction on posting of electronic mail correspondence directed to the City Council on the City's Web site.
3. Adoption of a Resolution No. 5466 authorizing an application to the Area Agency on Aging for the reimbursement of Senior Congregate Nutrition and Transportation Services in the amount of \$104,972 for the Fiscal Year 2003-04 and 2005-05.

M/S Duboc/Kinney to approve Consent Calendar item C3. Motion carries unanimously.

Item D1

Discussion

Mayor Jellins stated that the second sentence of the first paragraph, relating to the cancellation of meetings, is unclear because it doesn't delineate if these are two options or not. Mr. McClure clarified that these are two options and two methods for canceling meetings.

M/S Jellins/Duboc to adopt the ordinance with a small change which is to list the two methods by which meetings can be cancelled as (i) and (ii). Motion passes unanimously.

Item D2

Discussion

Council asked questions about these emails being public and the identity of the originator of the email.

Ms. Seymour, Acting City Manager, stated that these emails are already public information, however now they will be readily available for public review on the web page. Ms. Seymour also stated that there is a disclosure of this fact on the web page. The main difference is that with this new policy, the emails sent to the City Council, will be immediately posted for review. Council also asked about the email address of the email originator and if it was going to be disclosed. Ms. Seymour confirmed that a technical solution had been found, and it masks the senders email address.

Council Member Collacchi thanked the Management Information Services staff for its efforts in providing a solution that is cost free. Ms. Seymour said she would relay the positive feedback.

M/S Duboc/Collacchi to accept this policy. Motion passes unanimously.

E. PUBLIC HEARINGS

1. Adoption of Resolution No. 5467 approving the final report of the City Manager regarding unpaid garbage collection fees for Fiscal Year 2003-04 and approving the placement of unpaid compulsory, single-family garbage service fees on the 2003-04 property tax roll.

Uma Chokkalingam, Finance Director, provided the staff report stating that this is an annual report to place the unpaid garbage fees on the tax roll. All property owners have been notified about these unpaid fees. If property owners choose to pay the fees directly, rather than through the property tax roll, do not pay the fees within the appropriate time, there will be a \$25.00 fee for the County to do a manual correction.

Mayor Jellins Opened the Public Hearing

No public comment.

M/S Kinney/Jellins to close the Public Hearing. Motion carries unanimously

M/S Kinney/Winkler to adopt the resolution and recommendation. Motion carries unanimously.

2. Appeal of a decision by the Planning Commission to approve a Use Permit to allow for the construction of a fence with a height of six feet located in the allowed front setback where a maximum of four feet is allowed and in the sight-visibility triangle where a maximum of three feet is required at 204 Princeton Road.

Arlinda Heineck, Community Services Director, provided the staff report stating that the Planning Commission reviewed this request at its meeting of May 5th, 2003. All four variances were approved unanimously, however the use permit request for the fencing requiring that it be set back from the City right-of-way, was approved 4-3 with Commissioners Bims, Halleck and Sinnott opposing. The property owner is appealing the decision and has general neighbor support on this matter. Staff concurs with the decision of the Planning Commission. Previously, staff had a different recommendation, however the policy issue of whether private use of public land is permissible, has made staff reconsider its position.

Council asked about the encroachment permit, and if the City would be allowed to revoke such permit at any time. Mr. McClure stated the permit can be revoked at any time but it may be more difficult depending on the use established. Council discussed permit restrictions regarding the City's right of reclaiming its right-of-way, and how this information might not be transferred to the next owner, since it doesn't get recorded. Sidewalks were discussed and Council asked Public Works Director Kent Steffens if this street has enough space for sidewalks. Mr. Steffens responded that there was room for sidewalks but not for both sidewalks and a planter strip. He also addressed other issues relating to fences in the public right-of-way.

Staff clarified that the purpose of the use permit is what is being appealed, and the applicants are directing their appeal only to the right of way issue and not the height issue. The Planning Commission approved the 6 ft. high fence with the condition that the fence be relocated to the property line, so that it is not within the public right-of-way.

The appellants Ann Sison and J.T. Sison, thanked the neighbors who came out to show their support for the placement of the fence. Ms. Sison stated that she has been working with City staff for many months and is now asking for the ability to enjoy the same rights as other property owners do in Menlo Park. In her research of properties within 300 feet from the property, Ms. Sison found 16 homes out of 35 that have hedges, walls or fences in the right of way. The applicants want the 5½-foot fence to be enclosed in order to allow socializing, and to do projects with kids. Ms. Sison stated that three Commissioners supported this project, and the neighbors support it, too. Ms. Sison presented 16 signatures of support, and six letters. At the Planning Commission meeting there were five speakers in support of this project. Ms. Sison stated that this is an extraordinary circumstance because the lot has eight heritage trees that were preserved throughout the remodeling, and has double set backs. She also stated that this is about privacy, and the safety of children to work on projects. Ms. Sison was surprised that the Planning Commission took issue with this request because there were no safety issues, and the Engineering and Planning staff had previously given verbal agreement.

Council asked about the aeration considerations for the eight heritage trees. Ms. Sison stated that they are invested in preserving these trees consequently all the materials used in the driveway maintain the health of these trees.

Mayor Jellins invited Mr. Stuart Soffer, Planning Commissioner, to comment on the matter.

Mr. Stuart Soffer, expressed his personal views on this matter, saying that the compromise of raising the height of the fence, but preserving the right of way, was a good one.

John Livingstone spoke about this being an exceptional case, and all the neighbors support this action. Mr. Livingstone stated that with the encroachment the boundaries of the site would actually be symmetrical with other nearby properties. Mr. Livingstone says it is commendable that the Sison's asked for permission before the fact.

Marnie Jackson supports the Sison's request because neighborhood kids could benefit from this extra yard area. The Sison's have been proactive in dealing with City staff.

Keyko Pintz supports this project, and having this extra space allows the kids to enjoy the area. Ms. Pintz believes the Sison's are aesthetically conscientious, and are good caretakers of the land. That is the reason why they didn't build a two-story home.

Ann James supports this project, because the Sison's are conscientious and all of the community will benefit. They have been exceptional neighbors, and it is a wonderful neighborhood. Ms. James asks the Council to grant this appeal.

M/S Kinney/Jellins to close the public hearing. Motion carries unanimously.

Council Discussion

Council Member Kinney would like to grant the appeal because in his opinion the result will be a better community, and there isn't anything to lose because the proprietors have a good sense that this permit may be revoked at any time.

M/S Kinney/Jellins to grant the appeal with the conditions for approval of the use permit listed in attachments A1 and A2 and the deletion of subparagraph 3 "i".

Discussion

Council Member Kinney believes the appeal would be the right thing to do. Mayor Jellins asked more questions of the appellant, namely about the possibility of removing the gate all together. The appellant clarified that the gate was initially to keep kids and toys enclosed. However, the Sison's have identified other ways of making boundaries that are not that permanent.

Other Council Members expressed their dilemma after looking at the site, walking and talking with

neighbors. Mayor Pro Tem Duboc does not think this is sound City policy, to grant this kind of easement, which the City would then have the challenge of revoking. Council Member Winkler shared concerns about the four variances that were requested for this matter. Ms. Winkler's fear is that Menlo Park becomes the place where individual likes and tastes become policy instead of what is in the books. Council Member Collacchi was considering both sides of the issue and vacillating as to the most appropriate outcome.

Mayor Jellins expressed his views on why he was going to vote for this because Cambridge Road is not going to be widened to 50 feet and some communities are not going to have sidewalks. In his opinion it is reasonable to grant this appeal because of the unique considerations of the lot. Mr. Jellins does see value in granting this appeal, and is comfortable because the City would have the opportunity to require removal of the fence. Council Member Kinney believes that certain homes require a number of variances and in this case the encroachment permit process protects the City. Mr. Kinney also believes that the neighbors' support is very significant.

Council Member Collacchi stated his uneasiness with providing private use of public property. In his opinion this is a private benefit that the public does not get. Mr. Collacchi is very appreciative of all the efforts the appellant made, and the support of the neighbors.

Council further discussed the benefits of the aesthetically pleasing landscape on this property and the benefit of such views to the public. Mayor Pro Tem Duboc expressed her inclination to codify policy, and to think about these issues on a broader citywide basis. Certain Council members expressed that this was a hard decision to make especially because the appellant asked for permission and got rejected.

Mayor Jellins called for the vote. Motion fails 3-2 with Duboc, Collacchi and Winkler voting against. Mayor Jellins and Council Member Kinney voted for the motion. Motion fails.

M/S Winkler/Duboc to accept the staff recommendation and deny the appeal. Motion carries with Jellins and Kinney dissenting. Motion carries.

F. REGULAR BUSINESS

1. Community Development Agency approval of an Exclusive Negotiating Rights Agreement (ENRA) with Clarum Homes as developer of the Belle Haven Park and Housing site on Hamilton Avenue.

Gretchen Hillard, Housing Coordinator explained that in January 2000 the City Council identified a piece of property on Hamilton Avenue for Housing and Redevelopment purposes. During 2002 and 2003 the majority of the property was acquired, and a Request for Proposals (RFP) was drafted. Subsequently, the Council appointed a Developer Selection Committee who interviewed prospective developers. Clarum Homes was the selected developer, and the City Council certified this choice. Two community meetings have been held in Belle Haven to get community input. Ms. Hillard stated that the Exclusive Negotiating Rights Agreement is before Council with a 9-month time frame.

Council asked questions of staff, and the City Attorney also clarified items related to the computations behind the numbers. The issue of pro-formas and assumptions were discussed. Mr. McClure explained why the land purchase price was at 20% of the gross sales of the market rate units and not the usual 25% to 28%. He also stated that this project was set for moderate-income buyers. Council asked about the park area, and how it compares to the housing area. The community's input was that a smaller park would be safer, and it would still allow for the picnic tables and areas for kids to play.

Council Member Collacchi stated that he preferred if the numbers were more defined in the report. Mayor Jellins concurred, and while the presentation was thorough it didn't provide enough detail. The Council would have liked a table that included data such as: minimum BMR percentage, the number of units for BMR, and remaining units.

Public Comment

Mr. John Bassam, with Clarum Homes provided some specific deadlines that are coming up. He stated that the return for Clarum Homes is 15% on the invested cost, and this is the lowest they will accept for any project. Mr. Bassam stated that one-week delay might be reasonable but the schedule is tight if this gets further pushed back. Mr. Bassam said that business practice is to not begin developing design schemes without a contract. He said the ENRA is a necessity. He also clarified that the normal market rate, and the BMR units will have exactly the same plans; only the price will differ. All the appliances, finishes, etc. are the same in both types of units.

Council Member Collacchi stated that he felt very comfortable dealing exclusively with Clarum, but the formulas used are a little unclear. Mr. McClure explained that the current pro-forma protects the City but more specifics can be provided. Council Member Collacchi would like to get the information off-line.

Mayor Pro Tem Duboc shared concerns about this approach jeopardizing the August 26, 2003 meeting date.

Council Discussion

M/S Collacchi/Jellins to continue the item, and place it on the consent calendar at the next Council Meeting of July 29, 2003. Motion passes 4-1, with Mayor Pro Tem Duboc opposing.

Mayor Pro Tem Duboc expressed concerns about not meeting the schedule due to the one-week delay.

2. 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.

None.

G. WRITTEN COMMUNICATIONS

1. Correspondence from Mayor Pro Tem Duboc regarding applications for bright-colored signs.

Mayor Pro Tem Duboc requested that the City Council look at the current policy and possibly change it to allow more flexibility to the Planning staff when making decisions on this matter. Her preference would be to give more discretion to the Planning staff, and not always have to take the matter to the Planning Commission. Council agreed that staff is to write some recommendations, present them to the Planning Commission and then bring them to Council possibly in October.

Arlinda Heineck, Community Services Director, clarified the current process and that some collaboration with the Chamber of Commerce would be beneficial to better understand what would work for the business community. Ms. Heineck spoke about the design guidelines, and how the "Bright Colors" (clause seven) is the only one that causes some questions at times.

Council consensus was for staff to come back to Council in October, after having the Planning Commission look into this matter, and having the Chamber of Commerce give input on this matter. Some Council Members requested that staff provide a date history to assist Council, and to provide a historical context.

H. INFORMATION ITEMS - None

I. PUBLIC COMMENT #2 (Limited to 30 minutes)

J. ADJOURNMENT – 10:18 p.m.

Respectfully submitted,

Silvia M. Ponte, City Clerk

Approved at the City Council Meeting of August 19, 2003.