



**CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

**Tuesday, September 30, 2003
7:00 p.m.
The Menlo Park Council Chamber
801 Laurel Street
Menlo Park, CA 94025**

6:00 p.m. JOINT STUDY SESSION CITY COUNCIL AND PLANNING COMMISSION (Council Chamber)

1. Residential Zoning Ordinance.

Mayor Jellins called the Joint Study Session to order at 6:05 p.m. and all Council Members were present. All Planning Commissioners were present with the exception of Commissioner Bims. Mr. Jellins thanked the Planning Commission for their work and dedication to finding viable solutions to a complex matter. Mr. Jellins formally recognized Ms. Fry, Chair of the Planning Commission, for her labor and focus on this issue. Ms. Fry made some opening remarks and asked Commissioners to express their views on the residential zoning ordinance. The two bodies engaged in some dialogue and the Planning Commission shared its concerns and divergent perspectives.

7:00 p.m. REGULAR MEETING (Council Chamber)

Mayor Jellins called the Regular Meeting to order at 7:02 p.m.

ROLL CALL – Jellins, Duboc, Collacchi, Kinney, Winkler

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

PLEDGE OF ALLEGIANCE

A. PRESENTATIONS AND PROCLAMATIONS - None

B. COMMISSION VACANCIES AND REPORTS

1. There are no current commission vacancies.
2. Council Member Reports.

Council Member Kinney reported on attending two meetings one of BAWSCA (Bay Area Water Supply and Conservation Agency) and the second for the San Francisquito Creek JPA. Mr. Kinney stated that water rates will see a 300% increase.

Council Member Winkler received a resolution from the League of California Cities addressing the State taking local funds. Ms. Winkler would like to agendaize this matter for Council review, and she got concurrence from Mayor Pro Tem Duboc.

C. PUBLIC COMMENT #1 (*Limited to 30 minutes*)

Catherine McMillan addressed the Council expressing her views relating to freedom of speech. Ms. McMillan asked that the discussion be kept to the highest standards of civility, and avoid character assassination. Ms. McMillan would hope that everybody would be heard regardless of their opinion.

D. CONSENT CALENDAR - None

1. Award of contract to Consortium Consolidate Corporation for the Spruce Avenue and Harvard Avenue/Cornell Drive Intersection Storm Drainage Improvement Project in the amount of \$48,895; and authorize a Project budget of \$71,895 for construction, contingencies, and construction administration.
2. Approval of the City Council Minutes for the Meeting of September 2, 2003.

M/S Duboc/Winkler to approve the Consent Calendar as presented. Motion carries unanimously.

E. PUBLIC HEARING

1. Consideration of an Ordinance amending Zoning Ordinance regulations pertaining to single-family residential development and the Negative Declaration prepared for the Ordinance amendment.

Mayor Jellins informed those present that a Joint Study Session took place and that staff would make a presentation followed by a public hearing.

Arlinda Heineck, Community Development Director, presented the staff report providing a slide presentation illustrating the proposed review process and regulations relating to the Zoning Ordinance. Ms. Heineck addressed the seven highlighted areas contained in the draft ordinance: setbacks, floor area limit (FAL), horizontal length of second floor side walls, lot coverage, permeable surfaces, building height, and daylight plane. Ms. Heineck explained the terminology to be used such as discretionary process, ministerial process and substandard lot, etc. It was also explained that the current proposal is based on Council's desire to have a more objective and impartial set of rules.

Ms. Heineck addressed items brought forth in letters sent by opponents of the proposal, which included: the project description is incomplete and misleading, the elimination of the current use permit process will adversely impact residents and these impacts are not properly addressed. Ms. Heineck reiterated that the Planning Commission is divided in this matter, and while the majority did not approve the Negative Declaration, a small minority believes this proposal is a good starting point. Such body made specific recommendations and these were included in the staff report. It was also noted that the date of October 21, 2003 has been reserved to continue addressing this matter.

Council Discussion

Council Member Winkler stated that because she did not have time to comment during the Joint Study Session she wanted to clarify that this item is on the table because of two problems: out of scale houses and lack of certainty for people on substandard lots. Ms. Winkler believes the proposal is attempting to address these two problems.

Mayor Pro Tem Duboc also clarified that this is the culmination of a four and a half years process that included previous Councils, community input and Commissions review.

Mayor Jellins invited the members of the Planning Commission who wished to speak to do so as individuals if they filled out speaker's cards.

Mayor Jellins opened the Public Hearing

Public Comment

Elias Blawie said that the current proposal is destructive to the neighborhoods, and he believes this is not the best route to proceed because of possible EIR litigation and possible Referendum. Mr. Blawie shared particular details of items he would like to see changed or addressed.

Oscar Braun is a professional planner and complimented the City's work with this amended ordinance. He believes this is a very good approach and he hopes Council will adopt the ordinance but include an 18-month review. Mr. Braun believes that this amendment protects individuals' equal civil property rights.

Shirley Chiu has moved three times in the last 2½ years while trying to rebuild her house on Cambridge Avenue. Ms. Chiu stated that the current ordinance and the current use permit process are arbitrary and expensive to the applicant. She said the current process is not equitable to those who wish to build two-story homes.

Richard Li (with time donated by Mark Mueller) explained his personal experience while applying for a permit to build a two-story house. Mr. Li shared his challenges in dealing with the Planning Commission and in his opinion there is a lack of objectivity. He does not support the current process that residents have to go through, and in his opinion objectivity and rules are the answer.

Mitch Tuchman – presented a letter via Dick Poe.

Dick Poe (with time donated by Mitch Tuchman) read a letter from Mitch Tuchman. The letter addressed the need for extra space because Mr. Tuchman's family has grown. Mr. Tuchman believes that an extra bedroom would make all the difference in his family, and he supports the staff recommendation to revise the zoning ordinance. Mr. Poe stated his disappointment at the website identifying houses and placing addresses on the web page publicly humiliating and criticizing homeowners. Mr. Poe presented a copy of the website for the record. He expressed sadness that this City is not family friendly. He believes that a discretionary approach allows a few individuals to have great impacts in other homeowners' plans. Mr. Poe supports the proposal that is before Council.

Louis Deziel supports the amended ordinance and stated that the Tier-One is a very good approach. Mr. Deziel believes that in a suburban location a second floor is sometimes a necessity. He stated that it is good to have neighbors give an opinion however it is not good to have the neighbors drive the process. It is his opinion that Tier-One creates a civil process and adds objectivity to the process. Mr. Deziel asked that a few accommodations be made: 1) maximum FAL percentage to be 40%, 2) the wall length to be 30 feet 3) special accommodations for heritage trees.

Victoria Tregoning said she enjoys living in Menlo Park, however she has four concerns with this proposed ordinance: the reduction of daylight plane and privacy protection, long walls, the existing solar protections, the reduced privacy in gardens and yards rooms. Ms. Tregoning believes that the current expanded notification process is positive.

Erika Bailey said she has nothing against two-story homes but hopes the Council will not follow the recommendation from staff because of the impacts on sun deprivation in certain homes. Ms. Bailey believes the current proposal does not give equal protection to all, and residents who live next to substandard lots have no opportunity to give input. Ms. Bailey requests that Council take a balanced approach and include design reviews.

David Speer thanked the Council for taking the time to have a Joint Study Session. He believes the communication between the Planning Commission and the Council is very positive. Mr. Speer believes the problem is the lack of design guidelines. He believes that the proposed ordinance does not address out of scale housing as well as design issues. Mr. Speer appreciates that the current process allows neighbors to have a voice at the Planning Commission, and this will be lost with the new ordinance.

Catherine McMillan (with time donated by Elizabeth Houck and Greg McMillan) believes that no notification regarding the proposed changes had occurred. Ms. McMillan has reached out to a large majority of residents in West Menlo and 61% of them disagree with this proposal. She believes a good

ordinance should include mitigation, and neighborhood compatibility and have a balanced approach. Ms. McMillan believes that all residents need to have privacy and security and that the character of the neighborhoods they bought into needs to be preserved. Ms. McMillan stated that this proposal gives all the rights to the project owners and omits notification to the neighbors. She presented a list of 170 people who oppose this proposal, and she believes that neighbors of proposed sites deserve predictability. Ms. McMillan opposes an 18-month experiment but instead believes in having small group discussions in various neighborhoods.

Anne Pearlman agrees with the following speakers: Elias Blawie, Erika Bailey, David Speer and Catherine McMillan. Ms. Pearlman believes that notification to adjacent homes and the neighborhood is necessary to keep people informed. Ms. Pearlman has had first hand experience with people building large homes and decreasing her privacy. She cannot support the current proposal as is.

Evan Reis lives in Suburban Park and he commends the staff for writing this ordinance and especially Council Member Winkler and Council Member Kinney for their work. He believes that this multi-tiered approach is useful and the fact that all lots now will have a neighborhood review is positive. Mr. Reis believes this ordinance is fair and promotes diversity and encourages the Council to adopt it.

Rhoda Kaplan shared her positive experience with constructing a two-story house because she explained her plans to the neighbors and brought everybody on board. Ms. Kaplan encourages people to work with their neighbors because the process can go smoothly as she can attest it, especially if communication is encouraged from the start.

Lisa Anderson owns two houses in Menlo Park because she wants to avoid people building behind her residence. Ms. Anderson believes that it is important to maintain the integrity of Menlo Park instead of just building bigger and higher. She does not believe the proposed ordinance helps residents maintain the character of their homes.

Milton Borg spoke about the benefit of old houses and the benefit of an equitable approach. He believes this ordinance is a good approach because some of the new large homes are aesthetically correct and some of them are pretty. Mr. Borg shared particular examples of homes that are large and beautiful.

Marjorie Stone lives in a substandard lot and has been able to come to the Planning Commission and expand her house three times. Ms. Stone believes that this proposed ordinance places the burden on the existing homeowner and not in the person who wants to build. She believes those who want to build are the ones that should have to justify their plans.

Stuart Soffer speaking on his own behalf compared the current process with the heritage tree ordinance, which requires people to be notified within a 300-foot radius. He does not believe the proposal has good process because it avoids notifying people about what is happening. Mr. Soffer believes that good government includes checks and balances.

George Fisher (with time donated by Bill Brown) believes that changes are needed because rules will make this a less arbitrary process. Mr. Fisher believes the Council should act with care and revise this ordinance to help control homes and preserve the existing neighborhoods, the rights to privacy and rights to sunlight. He encourages the Council to come up with a comprehensive program, and he does not believe in the overlay approach. Mr. Fischer believes Council needs to refine the ordinance and find something that is reasonable and truly controls large homes. He supports the Council working with the Planning Commission to find a better process that includes fair notification and design guidelines.

Horace Nash lives on Santa Cruz Avenue and does not support the proposed ordinance because it is too restrictive. Mr. Nash believes that this is too dramatic of a change and that greater thought should be given to this. He does not fully believe in rule-based systems but instead he believes in principle-based approaches that generate better results.

Russell Dember thanked Council Member Kinney and Council Member Winkler for their work on this ordinance. He particularly thanked Ms. Winkler who attended all the Planning Commission meetings at which this item was discussed. Mr. Dember believes that the rule-based system is reasonable however the goal of 0% in number of applicants to not be reviewed (within Tier-One) is unreasonable. He believes a better goal should be kept in mind may be 10% or 20%. Mr. Dember does not agree with the 17-½ foot high vertical wall length, he believes 15 feet would be better for a Tier-One scenario.

Patrick Brandon was surprised that his house was on the website that illustrated large homes. He believes residents have the right to change their properties to meet their family needs as long as these changes conform to building rules. Mr. Brandon said that his family has been in Menlo Park for a long time and that as a property owner he should have the right to develop his own property and he does not believe that an administrative review is a fair process. He suggests that individuals who need to restrict so much others' properties place deed restrictions on their own properties. Mr. Brandon believes the ordinance put forth was well thought out, and balanced and it allows individuals to improve their houses as they deem necessary. (Mr. Brandon asked to use his wife's time since she had been at the Council Meeting but had to leave, her name is Jackie Glynn Brandon).

Roger Crawley believes that the neighbors need to be heard and the current process does permit neighbors to give input. Mr. Crawley does not believe the proposed ordinance is the right approach because the rights of the neighbors are not being considered. He believes Tier-One excludes review of impacts to those affected by the construction. He would like to see more compatibility between plans and surroundings.

Scott Eikenberry believes the proposed ordinance needs to be revised and he opposes it because it is too extreme. He is very concerned about the elimination of notification. He believes neighbors should be allowed to give input, and in his case he has first hand experience with this because there are two houses being built by his home that directly affect him.

Bob Stephens encourages the Council to pass this ordinance as proposed, and suggests having an 18-month review with a report that shows who is making applications to remodel. Mr. Stephens has had first hand experience with the current system and he believes it is capricious. He was not pleased with the way he was treated by the Planning Commission, and the Council has a responsibility to be aware of these situations and take care of the community.

Mayor Jellins acknowledged Mr. Stephens as a former Council Member and former Mayor of Menlo Park.

Henry Riggs is a residential architect and is trying to see the various sides of this equation. He believes the document is very objective and it addresses issues well. Mr. Riggs stated that many clients avoid going to the Planning Commission because of the ambiguity in the process. Mr. Riggs shared a concern about the daylight plane because as it is it affects the neighbors, and he would prefer to preserve the daylight plane of neighbors.

Frank Tucker is in support of the proposed ordinance and has followed this matter since 2000. He commented that all the issues being reviewed then are still being reviewed now. Mr. Tucker does not believe this ordinance is an arbitrary creation of the current Council. He stated that many hours of public comment have given the community an opportunity to respond to this. Mr. Tucker asks Council to move forward because all comments mentioned are not new.

Dan Baum does not support the current subjective review process. He shared concerns about the lack of clear and objective rules in the current process. Mr. Baum shared that he has had many challenges trying to remodel his house. Mr. Baum gave specific examples of what he believes was excessive input provided by his neighbors. He believes the current process is divisive and problematic.

Marc Fontana stated that a picture of his home was placed on a website, and he feels that listing his home as "unsuitable" was not appropriate because Mr. Fontana feels ostracized and attacked by those who advocate privacy rights. He supports the proposed approach because it is objective. Mr. Fontana

believes that the neighborhoods of Menlo Park are about the good people that live there, and this should be kept in mind.

Roy Sardina said that he has been coming to meetings for four years asking to build two story homes and he believes the Council needs to approve the proposed ordinance. Mr. Sardina believes that the Planning Commission made this process hard even when Mr. Sardina hired the most qualified architect who has written 11 books. Mr. Sardina did not appreciate someone placing a picture of his house on the front page of a website against large homes.

Tom Maurano stated that generally he is in support of the proposed rules because the Tier-One approach makes sense and the additional Tiers are also reasonable. He believes that at least there are rules that one can work with but he believes that the basement setbacks should be clarified. Mr. Maurano said that backyard setbacks should also consider pre-existent surrounding elements.

Pat White asked the Council to adopt the proposed ordinance because the current process can be arbitrary. Mr. White did not appreciate comments and threats of a lawsuit against the City.

David Ferrari has been in real estate for 23 years and supports the proposed ordinance. He is surprised how people want to regulate what other people can build on their lots. Mr. Ferrari believes the City is a great place but the recently created website was an invasion of people's privacy and this is not what Menlo Park is about.

Kelly Ferguson with time donated by Patti Fry and Melody Pagee presented a slide presentation explaining why these three individuals oppose the proposed amendment to the zoning ordinance. Ms. Ferguson urged the Council to not support this ordinance because it favors developers at neighbors' expenses. She stated the four problems identified and that needed to be addressed were: that the permit process is uncertain and unfriendly, that houses were out of scale in Menlo Park which brought loss of privacy and neighborhood privacy, inequities, and loss of privacy and neighborhood character. Ms. Ferguson said the current proposed ordinance does not address these problems because she believes the Tier-One approach does not work as advertised. She does not believe there are enough effective triggers in Tier-One to prompt review. She believes the new ordinance creates new loopholes and allows for excessive excavations into the setback. In her opinion it also deletes solar provisions, eliminates neighborhood notification and increases flood risks. Ms. Ferguson believes Tier-one is ineffective and believes Menlo Park deserves better. She requests that Council and Planning Commission work through their differences to create a bridge and a better product.

Mayor Jellins announced a ten-minute break.

Mayor Jellins thanked the public for the two hours and a half of input. Because of a threat of litigation made through some of the comments, the Council contemplated going into Closed Session and City Attorney McClure confirmed that this was an option. Mayor Jellins stated that his preference was to keep the Public Hearing open and that those who did not speak tonight, or could not attend the meeting, could do so at the next meeting. Mayor Jellins requested that this item be addressed at the next Council Meeting of October 7, 2003 instead of October 21, 2003 as previously suggested. Furthermore it was suggested that precedence be given to those members of the public who have not addressed the Council on this issue, and that if agreed the Public Hearing will be closed at 9:00 p.m. to discuss the matter.

Council consensus was to:

- Agendized this item for the meeting of October 7, 2003;
- Speakers who spoke tonight may fill out cards at the next meeting however precedence will be given to those who have not addressed the Council;

City Attorney McClure clarified that if there was action to report from the Closed Session, the Council would report it at Open Session.

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.

None

G. WRITTEN COMMUNICATIONS - None

H. INFORMATION ITEMS - None

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

None

J. ADJOURNMENT – At 10:05 Council adjourned into Closed Session. Council adjourned at 10:55 p.m. from Closed Session with no action to report in Open Session.

Respectfully submitted,

Silvia M. Ponte, City Clerk

Approved at the City Council Meeting of October 14, 2003.