



CITY COUNCIL and COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, December 9, 2003
7:00 p.m.
801 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chamber

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

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

PLEDGE OF ALLEGIANCE

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

A. PRESENTATIONS AND PROCLAMATIONS

1. Swearing in the new Environmental Quality Commissioner.

Robert Swezey, newly appointed Commissioner to the Environmental Quality Commission, was sworn in by City Clerk Vonderlinden.

B. COMMISSION APPOINTMENTS AND REPORTS

1. There is one vacancy on the Transportation Commission to fill an un-expired term ending July 2006. The deadline for applications is 5:30 p.m. on December 29, 2003.

Mayor Duboc announced the vacancy and its deadline.

2. Council Member Reports.

Council Member Collacchi enters the Council Chambers.

Mayor Duboc asked for an update on the VLF (vehicle license fee) situation and City Manager David Boesch stated that the latest news from Sacramento and from the League of California Cities is that cities can expect to receive 25% of the previously estimated revenue. Mr. Boesch clarified that this revenue was anticipated to be \$1.7 million dollars. Now this figure will possibly be \$430,000. The City and other municipalities are placing pressure on the legislature to revisit this issue.

Council asked questions of Mr. Boesch in regards to projections for the future, and Mr. Boesch stated that he would keep the Council informed.

Mayor Duboc said she would be representing the City at the upcoming Council of Cities meeting.

Mayor Duboc is considering moving Council Reports to the end of the Agenda to streamline the meetings. Mayor Duboc asked for feedback from the other Council members on this issue, and they can contact her via email or by telephone.

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

Thomas Geoly spoke about the fee for guests who need overnight parking in Menlo Park. Mr. Geoly does not agree with this new way of handling overnight guests' parking and he expressed his discontentment.

Sue Kayton mentioned an editorial in the Almanac regarding the residential zoning ordinance and Ms. Kayton disagrees with the statements made because there were had various inaccuracies. She referenced comparisons with the City of Atherton and its setbacks regulations. She believes the rule-based approach is a good approach and it should be considered.

Bob Stephens, former mayor of Menlo Park expressed his disagreement with the pamphlet that went out via the Almanac, because in his opinion it contains a lot of misinformation. Mr. Stephens does not believe it is correct for the Almanac to disseminate personal communications from certain residents.

Mayor Duboc acknowledged Mr. Bob Stephens as a former mayor of Menlo Park.

Frank Tucker stated that the flier included in the Almanac is incorrect. He shared his surprise at this item being included in this publication. Mr. Tucker does not agree with this way of addressing issues or communicating.

Pat White congratulated Ms. Duboc on her Mayoral position. Mr. White stated that the editorial of Ms. Patti Fry demonstrates that her views are contrary to this Councils' approach on the issue of a residential zoning ordinance. Consequently, Mr. White suggested the removal of Ms. Fry from the Planning Commission.

Harry Harrison spoke on behalf of the Farmers Market and how its insurance has gone up in cost as well as its management fees. The Farmers Market has a negative cash flow every month and while these are tough economic times Mr. Harrison would like the city to help it financially.

Mayor Duboc suggested that City Manager Boesch draft a letter to the Almanac responding to the issue brought forth by residents. Mr. Boesch stated that he has not seen the flier, however he would hesitate to send a letter since this issue is of a political nature.

Council asked Legal Counsel McClure if this practice by the newspaper of inserting the flier is legal. Mr. McClure stated that this is a right the newspaper has to publish or accept advertising as they choose.

D. CONSENT CALENDAR

Consent Agenda items are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless members of the Council, staff or public request specific items to be removed for separate action.

1. Adoption of an Ordinance No. 925 adopting an amendment to the Redevelopment Plan for the Las Pulgas Community Development Project pursuant to Health and Safety Code Section 33333.6(e)(2) deleting the Debt Incurrence Time Limit and amending related Ordinances.
2. Authorization for the City Manager to enter into a modified Joint Powers Agreement between the City of Menlo Park and Bay Area Employee Relations Service (BAERS).

Item pulled

3. Approval of the City Council and Community Development Agency Meeting Calendar for 2004.

Item pulled

4. Acceptance of Work for the Traffic Signal Operating System Component of the El Camino Real Adaptive Traffic Signal Coordination Project.

5. Adoption of a Resolution No. 5480 approving the recommendation of the Transportation Commission to extend the Red Curb on Middle Avenue at its intersection with Maywood Lane from 6 feet to 22 feet.
6. Review of the annual report on the status of the Traffic Impact, Storm Drainage and Recreation in Lieu Fees collected as of June 30, 2003 according to Government Code Section 66001.

Item pulled

7. Authorization of the City Manager to enter into an agreement with the Menlo Park Fire Protection District for the purchase of fuel from the City.
8. Approval of Minutes for the City Council Meeting of October 14, 2003.

Items removed

Council Member Kinney removed item **D7**; Council Member Jellins removed item **D4**; Mayor Duboc removed item **D3**.

M/S Collacchi/Winkler to approve Consent Calendar items D1, D2, D5, D6 and D8. Motion carries unanimously.

Discussion on items pulled

D3

Mayor Duboc stated that she wanted to inform the Council and the public that on Item D3 she will have Mayor Pro Tem Winkler leading the Study Sessions, so she can prepare for a possible Mayoral term.

D4

Council Member Jellins stated that on item D4 he had questions about the traffic signal on Cambridge and El Camino Real. Mr. Jellins asked about the amount of green light time allotted for this particular site. Rene Baile, Transportation Engineer stated that there is always potential for change on the allocated green time on the northbound signal at Cambridge and El Camino Real. Mr. Baile said that at this time the green time is based on volumes of cars making left turns during peak times, and if staff limits "green time" on Cambridge and El Camino Real there could be a chain reaction and impact to Middle Avenue.

Mr. Jellins asked about the traffic flow in that intersection and if backups were observed. Mr. Baile said that no complaints had been received on backups at Cambridge and El Camino Real (northbound). Mr. Baile stated that this is a work in progress and the length of green light may be adjusted if staff receives complaints. Mr. Jellins inquired about the relationship with Caltrans and the City of Palo Alto, and staff responded that this has been a good working relationship.

D7

Council Member Kinney addressed the 30-day cancellation clause in the agreement. Mr. Kent Steffens, Public Works Director stated that the City always protects its interests by having this clause in the agreement. Mr. Steffens also answered questions about the capacity of the fuel tanks.

M/S Winkler/Kinney to approve items D3, D4 and D7. Motion carries unanimously.

E. PUBLIC HEARING - None

F. REGULAR BUSINESS

Mayor Duboc asked that item F1 be moved to the end of the Regular Business section, since it pertains mostly to Council.

Item moved

1. Appointments of City Council representatives to the various outside agencies and organizations

Council addressed item F2

2. Authorization of the City Manager/Community Development Agency Executive Director to enter into a contract with Lamphier-Gregory for \$65,320 for the completion of the Environmental Impact Report (EIR) for the Housing Element Update and with Dowling Associates, Inc. for \$22,500 for the preparation of a revised Administrative Draft Traffic Impact Analysis (Traffic Impact Analysis) for the EIR resulting in a total project budget of \$203,962 in consultant services; and review of the list of potential housing sites for analysis in the Housing Element EIR.

Tracy Cramer, Senior Planner presented the staff report explaining why these agreements are before Council, and Ms. Cramer made one revision to the revised list (attachment D and E) in the staff report stating that the five new units are to be included and the total of units to be studied in the Environmental Impact Report is 1304 units. Ms. Cramer provided an historical overview of the Housing Element and Environmental Impact Report and stated that the total budget for this project has been \$176,080.

Council Discussion

Council Member Kinney asked about additional costs associated with the revisions of the TIA (Traffic Impact Analysis) Guidelines. Ms. Cramer explained that staff doesn't have these figures and legal Counsel McClure clarified that this action is being triggered by the need of additional studies and not by the TIA Guidelines. Mayor Pro Tem Winkler asked if an EIR is necessary? Arlinda Heineck, Community Services Director responded that there are many benefits to conducting the EIR at this point. She stated that by doing an EIR upfront the environmental review is being addressed. Council asked if the TIA Guidelines were to change would this invalidate this study? Legal Counsel McClure stated that it would probably be less of an impact because this is an evaluation of worse case scenario.

Public Comment

Patricia Boyle representing the League of Women Voters for South San Mateo County spoke on behalf of the Housing Element and its need in the community. Ms. Boyle encourages the City Council to approve this and move forward because of the urgent need for housing.

Ray Hashimoto with HMM Engineers referred to a letter he dropped off for Council and staff. Mr. Hashimoto mentioned a correction that was needed on the number of units in 175 Linfield Drive development. The staff report should read 36 instead of 61 units.

Jim Pollart with the O'Brien Group spoke about the fact that he is representing property #11 on the list. Mr. Pollart shared his enthusiasm with the development of this property and he encourages the Council to move forward with this project.

Council Member Winkler asked if Mr. Pollart is going to use the City's EIR for his project. Mr. Pollart is not sure at this point but he is in the process of submitting an application.

Council Discussion

Council discussed the EIR and how there is a different number of units studied versus net new housing or existing housing. Ms. Heineck stated that the Housing Element always lists a larger number of units than the actual projects.

M/S Duboc/Jellins to accept the staff recommendation and authorize the City Manager/Community Development Agency Executive Director to enter into a contract with Lamphier-Gregory for \$65,320 for the completion of the Environmental Impact Report (EIR) for the Housing Element Update and with Dowling Associates, Inc. for \$22,500 for the preparation of a revised Administrative Draft Traffic Impact Analysis (Traffic Impact Analysis) for the EIR resulting in a total project budget of \$203,962 in consultant services; and secondly reaffirm the list of the Housing sites for analysis in the Housing Element EIR and number of units presented by staff and review of the list of potential housing sites for analysis in the Housing Element EIR. The numbers on the list are to remain as presented by staff.

Council Discussion

Council discussed the various options in regards to adopting the Housing Element and the Environmental Impact Report.

Legal Counsel McClure clarified that the motion on the second point is to modify the list of housing sites in unit numbers as it appears on circled page E1 with two changes: one is to include back in the list line item 10 on San Antonio with five units and to show the property at 175 Linfield as being owned by Consolidated Freight Ways rather than Olive Hill. The maker and second agreed with this clarification.

Council Member Collacchi suggested an amendment to the motion to include the Roger Reynolds and the McCanless sites in the list. Mr. Collacchi believes the Roger Reynolds site is a natural site for housing and the City should be prepared if that opportunity emerges. Council Member Collacchi would like to include both sites in the list.

Mayor Duboc asked if this would change the cost of the agreement and Ms. Heineck stated that it would not. Council Member Winkler asked why these properties were taken out, and Ms. Cramer said she had spoken to these people and they seemed to be more inclined to focus on commercial uses.

Mayor Duboc agreed with the proposed amendment by Mr. Collacchi.

Council Member Jellins stated that it is very unlikely that these sites will be utilized for housing, and Mr. Jellins recommends that these sites be excluded from this list.

Mayor Duboc withdrew her support for the amendment.

Council Member Collacchi suggested an amendment to the motion to exclude one site from the list – the Oak Grove Plaza.

Council Member Kinney would like this site to be included, because it is a good location for possible housing.

No second to the amendment.

**Vote on the original motion
Motion carries unanimously.**

3. Consideration of amendments to the Heritage Tree Ordinance and update on permit application procedural changes.

Dianne Dryer, Environmental Programs Coordinator presented the staff report explaining the changes that have been implemented since September 2003. Currently the City sends notices to neighbors within 100 feet of the property, and if no one files an appeal within 15 days then a permit is issued. Ms. Dryer covered the specific amendments recommended to the ordinance referring to an error in the attachment to the staff report because the words “and Redwoods” should be struck on 13.24.020 Section 3. Ms. Dryer also stated that Mr. Justin Murphy, Senior Planner was available to answer questions.

Council Discussion

Council Members asked for a definition of landscape heritage and Ms. Dryer stated that landscape heritage refers to recognizing the long-term history of this area and its indigenous character.

Public Comment

Dan Hitt said he was worried about the Redwood trees, but he is pleased it was only a typo. Mr. Hitt said the ordinance is a little weaker, but he agrees with this ordinance because trees protect us from high winds and absorb pollution. He is glad the City has this ordinance.

Lou Deziel spoke in favor of the ordinance and hopes the City Council continues to value trees. Mr. Deziel does not agree with cutting down trees. He requests that the current process provide an independent analysis of the situation. Mr. Deziel hopes that removals of trees are separated from the concerns with liability.

Mary Kenney spoke as the acting Chair for the Environmental Quality Commission saying that the Commission worked with staff to get this ordinance to its current shape. Since 2002 the Commission and staff worked to get community input on the process. Ms. Kenney believes these amendments make the ordinance more efficient while preserving its intent and purpose. Ms. Kenney believes that the changes are valid and the EQC supports them.

Mayor Duboc thanked Ms. Kenney for serving in a City Commission.

Hank Lawrence spoke about his view on what a heritage tree should be, and how heritage trees should be maintained. Mr. Lawrence would like to see a redefinition of what a heritage tree is, and he would like a reforestation of Menlo Park with native trees such as Redwood trees.

Mathew Ackerman agrees with the tree ordinance however he does not agree with the loosening of certain aspects. Mr. Ackerman stated that more trees are being cut down, and this is not good for preservation. He believes people should be charged higher fees when applying for a permit.

Council Discussion

M/S Winkler/Duboc to remove on page A1 of the report “and landscape heritage”; on A-2 Permitting Ms. Winkler wants the following:

- 1. Change the permitting process such that property owner calls City arborist for permit. Does not have to call private arborist first. The permit fee can be increased, say to \$200 from \$100.**
- 2. Property owners be allowed to enjoy the economic rights of their property such that if a tree prevents the execution of their plans to build or remodel their homes, they be able to obtain a permit to remove it.**
- 3. If homeowners, however, wish to remove a heritage tree to build an ancillary structure, or pool or add solar panels or for any other reason a garage, they must get approval from the Director of Public Works first, as outlined in this section.**
- 4. Heritage trees must be replaced by 24-inch box trees (or some like mitigation) on a 2 to 1 basis on property in question or elsewhere maybe on local properties or other site when trees are removed for purposes other than hazard or disease.**

With regards to Appeals – A3:

Any Menlo Park resident may appeal. If the appellant is not a Menlo Park resident, he or she must find a Menlo Park sponsor and must cover the full cost of staff.

Mayor Duboc asked if this motion included the staff recommendation on page 6 or if this is an addition, and Mayor Pro Tem Winkler said that it includes the staff recommendation and this is an addition.

Mayor Duboc asked to have a different notification from 100ft to 300ft. Ms. Dryer stated that this was to reduce cost and Mayor Duboc agreed with staying within 100 ft but Mayor Pro Tem Winkler would like this to be part of the ordinance. Legal Counsel McClure said the preference would be to keep it out of the ordinance and have it as an administrative policy.

Council discussed the notification process, and staff clarified that this has been an administrative process not included in the ordinance.

Legal Counsel McClure asked about the portion of the motion made by Mayor Pro Tem Winkler that is called permitting and the maker of the motion stated that this part of the motion that reads:

2. Property owners be allowed to enjoy the economic rights of their property such that if a tree prevents the execution of their plans to build or remodel their homes, they be able to obtain a permit to remove it. is an addition to the procedures and not for the ordinance.

Ms. Dryer explained how the property owners enjoy getting two points of views. Mayor Pro Tem Winkler does not want to force people to have to go to two arborists. Legal Counsel McClure stated that having two opinions can be an independent verification of a statement and believes this is like a third party verification covering the City on liability issues. Additionally, this is a way of getting the property owner to be responsible for assessing the tree followed by the City arborist making a determination.

Council Member Jellins stated that this approach is merely advising the owner of the status of their tree. Council Member Collacchi stated that when there is agreement then this approach would be easier. Legal Counsel McClure clarified how the process goes and he suggests that sometimes there are discrepancies of opinion, and so having a second opinion is important.

Mr. Murphy, Senior Planner brought forth concerns that the City arborist might not have enough time to go out and cover all the trees that need attention. Mr. Boesch also stated that the fees charged do not cover the full cost of this service, and this would need to be studied.

Council Member Kinney stated that in his opinion the private owner should have representation on the matter and this way they will, and then the City arborist just comes in and reviews the matter making a determination.

Mayor Pro Tem Winkler said she would not incorporate item 1 from in the ordinance, this portion of the motion reads: “Change the permitting process such that property owner calls City arborist for permit. Does not have to call private arborist first. The permit fee can be increased, say to \$200 from \$100.”

Council discussed the motion and certain aspects of it that are already part of the process. Mayor Pro Tem Winkler believes she will stay with her motion. Mayor Duboc stated that people will still have to discuss the matter with staff and this motion has a plus because of its other stipulations.

Council Member Collacchi asked if this means that staff has discretion. Mayor Pro Tem Winkler stated that this does not give staff any discretion. Legal Counsel McClure also clarified that this language is non-discretionary and the trees will be cut down without a discussion. The reason there is currently a discussion is because there is an analysis of the different values. Mr. McClure asked if Council wants this process to be totally non-discretionary or to have discussion and make it discretionary.

Mayor Pro Tem Winkler believes it should be non-discretionary because that was the consensus of the Council before and this approach creates certainty and provides for replacement of trees, and it ensures the future of our heritage trees. Council Member Collacchi covered different possibilities that could occur under this motion. For example Mr. Collacchi believes trees in the setback area should be distinguished from others, and he has concerns that small trees may be cut down without much analysis. Mayor Jellins asked about next steps if the motion passes.

Legal Counsel McClure stated that the goal would be for staff to go back, draft the appropriate language and then come back, have a public hearing for introduction of an ordinance followed by an adoption. Mr. McClure asked if this applies only to residential properties or commercial properties as well.

The maker of the motion clarified that this is for R1 and R2.

Council asked that Mr. McClure verbalize the motion:

M/S Winkler Duboc to direct staff to come back with an ordinance which includes the recommended amendments one through six (outlined on page 6 of the staff report) with

the exception of item 1 (the words landscape heritage would be changed to indigenous or some other wording). Secondly, that there would be amendments to that language and/or other provisions of the ordinance to incorporate the language that Council Member Winkler passed out specifically in the area of Permits (A-2 #2 in the motion previously stated by Mayor Pro Tem Winkler) and such concept to be incorporated to provide for non-discretionary permits for the removal of trees where they prevent the construction of a proposed house or addition on R1 or R2 lots. An additional amendment relates to appeals that would require either a resident or a property owner to be allowed to appeal.

The maker and seconder of the motion concurred with the motion as stated by Mr. McClure.

Council Member Collacchi made a substitute motion to include everything stated above but include "Property owners be allowed to enjoy the economic rights of their property such that if a tree prevents the execution of their plans to build or remodel their homes, they be able to obtain a permit to remove it" in the administrative process or policy guidelines.

Council decided that this item would be addressed when the matter comes back.

Vote on motion

Motion passes 3-2 with Council Member Collacchi and Council Member Kinney dissenting.

4. 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 COMMUNICATION - None

H. INFORMATION ITEM

1. Information regarding the Local Appointments List.

F. REGULAR BUSINESS

Item moved

1. Appointments of City Council representatives to the various outside agencies and organizations.

Council agreed on the following appointments:

AGENCY:

City/County Association of Government of San Mateo County (CCAG)

Airport Community Roundtable

Association of Bay Area Governments (ABAG)

Emergency Services Council
(San Mateo County Joint Powers Authority)

League of California Cities (Peninsula Division)

San Francisquito Creek JPA

REPRESENTATIVE/ALTERNATE:

Nicholas P. Jellins, Representative
Lee B. Duboc, Alternate

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Nicholas P. Jellins, Alternate

Nicholas P. Jellins, Representative
Mickie Winkler, Alternate

Lee B. Duboc, Representative
Nicholas Jellins, Alternate

Lee Duboc, Representative

Chuck Kinney, Representative
Lee B. Duboc, Alternate

County of Santa Clara Community Resources Group for Stanford University	Mickie Winkler, Representative Paul J. Collacchi, Alternate
San Francisco Bay Area Water Users Association	Chuck Kinney, Representative
Bay Area Water Conservation Service Agency (BAWCSA) and San Francisco Regional Water System Financing Authority	Chuck Kinney, Representative
Menlo Park Chamber of Commerce	Mickie Winkler, Representative

Mayor Duboc stated that she is implementing a previously used practice of appointing Council Members to serve as Council Liaisons to various City Advisory Bodies.

- Arts Commission – Lee Duboc
- Bicycle Commission – Paul Collacchi
- Community Mediation Services – Nicholas Jellins
- Environmental Quality Commission – Chuck Kinney
- Housing Commission – Mickie Winkler
- Las Pulgas Committee – Lee Duboc
- Library Commission – Mickie Winkler
- Parks and Recreation Commission – Lee Duboc
- Planning Commission – Nicholas Jellins
- Transportation Commission – Paul Collacchi

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

J. ADJOURNMENT – the meeting was adjourned at 10:45 p.m.

Respectfully submitted

Silvia M. Vonderlinden

Approved at the City Council Meeting of January 13, 2004.