



# CITY COUNCIL and COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, December 16, 2003  
7:00 p.m.  
801 Laurel Street, Menlo Park, CA 94025  
Menlo Park City Council Chamber

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

Mayor Duboc called the meeting to order at 7:00 p.m.

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

**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.

## **PLEDGE OF ALLEGIANCE**

Mayor Duboc said she would be moving items around on the Agenda to streamline the meeting.

Council Member Jellins informed the public that PG&E offered a grant in the amount of \$2,600 to support the lighting of the trees in Menlo Park during the Holiday Season. He thanked PG&E for its support.

*Mayor Duboc moved Agenda item H1 to this part of the Agenda.*

## **H. INFORMATION ITEM**

1. Update on joint efforts by the Police Department and the Menlo Park Fire Protection District to establish Community Emergency Response Teams (CERT) in various neighborhoods within the City.

Mayor Duboc introduced Fire Captain John Shoffe and acknowledged his contributions to the community. Commander Greg Rothaus presented the staff report explaining how this item fits into the current practices of the City's Emergency Preparedness program. Captain Shoffe also explained that CERT (Community Emergency Response Teams) has been in effect for the last 18 years, and he listed its benefits. He said this program develops the Community's basic response skills.

Mayor Duboc thanked the guests and staff and stated that if Council Members had questions about this item it could be placed on a future agenda.

*Mayor Pro Tem Duboc announced that the Public Hearing (item E1) is to be continued to another meeting possibly on January 27, 2004.*

## **A. PRESENTATIONS AND PROCLAMATIONS - None**

## **B. COMMISSION ANNOUNCEMENTS 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 encouraged the public to apply.

2. Council Member Reports - *Item B2 was moved to the end of the meeting.*

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

John Conway stated that as a business owner he asks Council to act on the "Percent for Art Ordinance" and address the affected business owners who are not happy with the current ordinance.

Milton Borg (with time donated by Margaret PetitJean) said that the current "Percent for Art Ordinance" is too intrusive on business interests and the Arts Commission has deliberative power on this matter. Mr. Borg asked that the ordinance be abolished, and he believes there is excessive power at the commission level. Mr. Borg gave an inventory of the expenses he has incurred with this process and he is not satisfied with the requirements.

Stu Soffer spoke on behalf of the projects from John Conway and Milton Borg stating that their proposals have to comply with the "Percent for Art ordinance" and he has concerns with subjective interpretations of what art is. Mr. Soffer also commented that moving the Agenda item "Council Reports" to the end of the meeting might not be helpful to the public because they might have left the meeting.

### **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.

Mayor Duboc explained that any pulled Consent items would be handled at the end of the meeting.

1. Approval of the Below Market Rate (BMR) Housing Program annual report for fiscal year 2002-2003 and approval of the 2003 annual report for the affordable Housing Action Plan.
2. Community Development Agency Board approval of the Menlo Park Community Development Agency annual report for fiscal year 2002-2003.
3. Adoption of a Resolution 5481 supporting enhanced regional funding from the Metropolitan Transportation Commission for maintenance of local streets and roads.
4. Adoption of a Resolution 5482 to appropriate \$40,000 from the Measure A Account to fund the repair and maintenance of City street signage and striping.
5. Adoption of a Resolution 5483 approving the recommendation of the Transportation Commission to replace 40 feet of red curb on Alma Lane with a yellow commercial loading zone.

**M/S Collacchi/Winkler to approve the Consent Calendar. Motion carries unanimously.**

### **E. PUBLIC HEARING**

1. Introduction of a Zoning Ordinance amendment modifying the Below Market Rate Housing program to delete the reference to a specific index for calculating annual increases in the commercial in-lieu fee and adoption of a Resolution modifying the Below Market Rate Housing Program guidelines to establish the consumer price index (shelter only) for all urban consumers in the San Francisco-Oakland-San Jose area as the index for calculating annual increases in commercial in-lieu fees.  
**(This item was continued to a later meeting possibly January 27, 2004)**

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

Tracy Cramer, Senior Planner presented the staff report enumerating key changes to the review process as well as the Tier I and Tier II approaches. Ms. Cramer said that the draft ordinance amendment includes various changes to definitions and requirements, and the establishment of a zoning ordinance overlay process. Ms. Cramer added that changes from the last Council meeting and the public comment received were considered and incorporated.

Council asked questions of staff in regards to the basement setbacks and Ms. Cramer used slides to illustrate what the proposed ordinance encompasses. The Council also asked about excavation and overlays, and how these apply to the physical attributes of properties. Council explored the issue of daylight plane and various intrusions. Ms. Cramer stated that the proposed ordinance would allow intrusions on both sides of the daylight plane. Council inquired about bay windows and how these would work, and staff explained that previously there were no limits whereas the proposed ordinance would propose a limit of two bay windows with certain limitations (these are considered architectural features).

Council inquired about privacy issues as well as appeals. On the latter issue Ms. Cramer said that anybody could appeal. Council discussed the basement and the FAL limit as well as the number of dormers.

Mayor Pro Tem Winkler asked Legal Counsel McClure if it would be possible to change the following items at this meeting and still introduce the ordinance:

- 1) increase the required second story setbacks in Tier I to 10 feet from the property line;
- 2) change and restrict the size of the dormers with respect to height and the baseline;
- 3) create an ordinance monitoring committee;

City Attorney McClure stated that these changes could be incorporated but item No. 3 would not be part of the ordinance it would be direction to staff.

### **Mayor Duboc Opens the Public Hearing**

Elizabeth Houck urged the Council not to approve this proposed ordinance because it does not consider privacy impacts on small homes. Ms. Houck showed illustrations of how her neighbors impact her residence, and she asked Council to not approve this ordinance, because it excludes neighbors from the process.

Anne Perlman stated that while the ordinance has improved, it is still not the right one for Menlo Park because it doesn't maintain neighborhood character. Ms. Perlman stated that this proposal is inadequate in neighborhoods where single-story homes are prevalent. Ms. Perlman disapproves of the proposed ordinance.

Patti Fry spoke as a resident stating she has spent hundreds of hours studying this matter and she does not agree with the current proposal because it has numerous loopholes and several unknowns. Ms. Fry stated that these rules are less strict than the current ones, and the Tier I will alter neighborhood character. Ms. Fry offered her assistance in continuing to study this matter, and she presented a letter with her opinions.

Toni Stein encouraged Council to not adopt the documents before Council because in her opinion the approach is not right and it doesn't acknowledge the Planning Commission. She believes this is not an improvement because the neighbors' participatory rights are being taken away. Ms. Stein asked that Council not introduce this ordinance.

Henry Riggs spoke on the issue of rights and privacy. He spoke as an architect who believes that two-story homes can impose on each other and impact areas where now there are mostly single-story homes. Mr. Riggs believes this matter should be studied further, and he presented illustrations for an alternate proposal. He would like some architects and architect planners to be consulted before this proposal moves forward.

Cynthia Duzel-Bacon shared concerns about having “no screenings” from neighbors and how this can greatly impact residents. Ms. Duzel-Bacon has concerns about the impacts of this ordinance on the character and quality of life of Menlo Park residents. She does not agree with the setbacks stated in the proposed ordinance.

Kelly Fergusson (with time donated by Ross Wilson) explained that based on her education she knows that this ordinance is not the right thing for Menlo Park because it takes a naïve approach to residential property development. Ms. Fergusson stated that this Revised Negative Declaration challenges the General Plan because it will lower quality and destroy character. Ms. Fergusson stated that character matters and that people are opposed to this approach. She believes the Council should engage the community and get a different approach.

Lisa Shumway spoke about the City of Menlo Park’s responsibility to look after its residents, and in her opinion this will be an embarrassing decision for the City. Ms. Shumway urged the Council to not approve the Revised Negative Declaration and not introduce this ordinance.

Hersh Shefrin stated that while there were some improvements in the proposed ordinance the Negative Declaration is incorrect because it will cause a significant market failure. He believes that there is a lack of balance, and he asks for transparency. Mr. Shefrin spoke about opaque framing since there are no diagrams to explain what the standards will allow for. He stated that the issues need to be framed transparently, and he asks the Council to move from opaqueness to transparency.

Catherine McMillan said that the courtesy notice is not sufficient for the neighbors to express their concerns. Ms. McMillan does not appreciate the lack of opportunity to share neighbors’ concerns. She asks what can a resident do when they oppose a Tier I situation? Ms. McMillan said this approach offers predictability to the ones developing, but not to the existing neighbors. She asked that Council vote no on the introduction and continue the debate.

Charlie Bourne opposes the proposed ordinance because he thinks that there hasn’t been enough public review and debate, and he said there were few City sponsored workshops on the issue, and this is a misguided suggestion for an 18 month trial period. Mr. Bourne asks that Council specify case by case what was wrong with the old rules.

Chuck Bernstein was a member of the task force that worked on this matter, and he opposes the proposed ordinance because it benefits developers and nobody else. Mr. Bernstein said that the ordinance will pass and the real estate community has done their duty by donating thousands of dollars to support it.

Frank Carney spoke about a previously approved ordinance that weakens the heritage tree protection. He believes this current proposed ordinance gives automatic permission to have heritage trees cut down. Mr. Carney believes Tier I is an automatic permission to expand homes without much process. Mr. Carney asked if the Negative Declaration is still valid when there are two items that will adversely impact the quality of life.

Earl Shelton shared his concerns about the proposed ordinance because of its effects on the City of Menlo Park’s character. The history is that homes are usually surrounded by green spaces, which preserve and give a sense of privacy. Mr. Shelton believes that the lack of notice diminishes the chances of neighbors voicing their opinions. He asked that Council not limit input from the public.

Robert Cronin stated that he has brightened up his house by installing windows. Subsequently, he installed solar panels and this has been very positive, however if this proposed ordinance passes his solar panels will be in the dark and his \$9,000 investment (in solar panels) will be in vain. Mr. Cronin urged the Council to reconsider this ordinance so that it includes some kind of protection for solar panels.

Don Brawner does not agree with the current proposed ordinance and believes it will mostly benefit developers. Mr. Brawner believes that there is an interest in urbanizing the Peninsula, and if this passes trees will be killed. He believes some experts should get involved and in his opinion there is a large number of people who disagree with the opinions of the current experts.

Russ Dember shared drawings of what is allowable and he wants to move the debate into a more philosophical realm. He thanks Mayor Pro Tem Winkler for understanding the gable dormer intrusion and the victory in being more objective and analytical. Mr. Dember would like 3D illustrations to be shared with the public for a better understanding to be reached.

Stu Soffer spoke as a resident, and he believes that the City has a cavalier attitude towards the Negative Declaration. Mr. Soffer reminded Council that he had sent an email specifying his points of view on this matter.

Sue Kayton is in favor of this proposed zoning ordinance, and while she is not a developer nor does she have plans to remodel her home, she believes the residents will benefit from this. She agrees with this predictable approach and with regulations that are clear and make sense. Ms. Kayton said this is good for the city and the new ordinance will be more restrictive in certain areas. Ms. Kayton asked Council to pass this ordinance.

Elias Blawie believes that tonight is not an appropriate time to address this matter, and he believes it is incorrect to hold this meeting when other organizations are having their events. Mr. Blawie believes that the current Negative Declaration has not provided the public with enough opportunity to comment. Mr. Blawie does not believe this is an unbiased report. He asks that Council consider the cumulative comments received, and he hopes the environmental impacts will be considered.

Nancy Hosay asked that Council not accept the proposed ordinance because there wasn't enough public comment, and not enough process. Ms. Hosay stated that process has not been good because the current system is not malfunctioning.

David Schwartz stated that he has been to three of these meetings and he believes that there are very few people who really understand what is being stated. Mr. Schwartz would like a fully informed decision with illustrations and clear statements about what this proposed ordinance means.

**M/S Collacchi/Winkler to close the Public Hearing. Motion carries unanimously.**

*Mayor Duboc announced a recess from 9:00 p.m. to 9:10 p.m.*

#### **Council Discussion**

**M/S Winkler/Jellins to introduce the ordinance with the following changes:**

**1) allowed intrusions to be changed such that the base of a single triangle cannot exceed 15 feet and the triangle is limited to a maximum building height of 24 feet, and that to apply to section 16.67.040 on items 2) and 3)**

**2) change the second story setbacks in Tier I such that second stories must be at least 10 feet from the side property lines, and on corner lots second stories must be 10 feet from the side property line except on the street side**

**16.16.030 Subdivision four (minimum yards) – “for sides” needs to be inserted after the word width on part 3.**

**New subsection 4.A.4 to read “ten feet for second floor interior sidewalls, except that in interior second story sidewall complying with subsection three may be allowed subject to written approval of the owners of contiguous property abutting the portion of the structure with the reduced second story setback or the granting of a single family development permit in accordance with sections 16.82.VII (provision only to be applicable to the R1 use Zoning District – section eight of the ordinance)**

**3) Creation of an ordinance monitoring committee whose goal will be to monitor the new ordinance for 6 months after its effective date and bring back problems to the City Council. This committee to be made up of:**

- a) one Council Member elected by the Council**
- b) one Planning Commissioner elected by the Planning Commissioner**
- c) a volunteer architect**
- d) a staff person**

**Staff is also directed to inform Council of any major problems (if detected) in the administration of the ordinance.**

### **Council Discussion**

Council asked questions about the possible cumulative effect of the proposed zoning ordinance and the heritage tree ordinance. Legal Counsel McClure stated that on the Negative Declaration there was a comment about this item (page 26 of the Revised Negative Declaration in the explanation section) and that issue has been addressed in the Negative Declaration. Mr. McClure also stated that Council has not amended or revised the heritage tree ordinance, and when that comes to Council this item can be addressed.

Council Member Kinney made a presentation sharing his views on the proposed ordinance and reiterating his recommendation. Mr. Kinney pointed out positive and negative aspects of the proposed ordinance and the reasons why he believes the proposed ordinance needs more work. One of the reasons is because second stories have a big impact on neighborhoods that have mostly single stories. Mr. Kinney would like the City to have design guidelines, and he would like to continue the notice to properties within a 300 ft radius. He believes there is no review process with the current proposal.

**M/S Kinney/Collacchi to table further consideration of the proposed ordinance by the Council, and to refer the matter back to staff so that the City Council can hold a Study Session for consideration of alternatives proposed by the Planning Commission, and a citizens' committee.**

Mayor Duboc stated that a motion to table is not debatable.

**Council Member Kinney restated the motion to read:**

**M/S Kinney/Collacchi to send this item back to the Planning Commission and a citizens' involvement group to be put together, with some direction from Council, to study the matter.**

### **Council Discussion**

Council Member Collacchi thanked the speakers for their input and recognized the people's feedback on this complex matter. Mr. Collacchi believes there are technical flaws in the ordinance. Mr. Collacchi has concerns with a rule-based system that does not address context such as hot tubs, shadows, and window placement. He said there could be improvements so that the ordinance could deal with lights, glare, solar panels, etc. He believes this is an imbalanced ordinance and it opens the door to having things being built bigger. Mr. Collacchi has done an extensive study of the permits issued and the process as well as appeals for the last three years and he is satisfied with the results.

Council Member Collacchi will not support the original motion and if the Council decides to send this back for further study he would make a friendly amendment to have staff deal with the intrusions mentioned above.

Mayor Pro Tem Winkler stated that this has been a high-class discussion, and she believes this has been in the works for 5 years with a community-based effort. There was a community task force, and architects working on this matter. Ms. Winkler stated that this ordinance is not about special interests, and if this ordinance is not passed in many areas monster homes will continue to be built, without any neighbor notification or review. Mayor Pro Tem Winkler said if this

ordinance is not passed people who live on sub-standard lots would not have any certainty. Ms. Winkler shared some overheads showing approved homes that would not be built with the new rules. She believes the proposed ordinance is not perfect but it is a grand compromise between rules and review. Mayor Pro Tem Winkler thanked all those who contributed to this proposed ordinance.

**Vote on the alternate motion to send this item back to the Planning commission and a citizens' involvement group.**

**Motion fails 2 to 3 with Duboc, Winkler and Jellins dissenting.**

**M/S Winkler/Jellins original motion (clarified by City Attorney McClure) to make the findings as outlined in the first page of the staff report, approve the revised negative declaration for the project and introduce an ordinance in the form as attached to the staff report with three revisions:**

- 1) Section 16.67.040 related to intrusions – to include language as previously read into the record modifying subparagraphs two and three. Subparagraph two reading the aggregate length of the basis of all triangles intruding into a daylight plane must not exceed 30 feet with the base of a single triangle not exceeding 15 feet and on subparagraph three reading the triangle is limited to a maximum building height of 24 feet**
- 2) Section eight of the draft ordinance on circled page A10 section 16.16.030 would revise subsection four (A3) to insert the words “for sides” after the words minimum lot width in the first line.**
- 3) Add a new subsection 4.A.4 under 16.16.030 to read: 10 feet for second floor interior side walls, except that an interior second story side wall complying with subsection three may be allowed subject to written approval of the owners of contiguous property abutting the portion of the structure with the reduced second story setback or granting of a single-family development permit in accordance with Section 16.82 VII;**
- 4) Create an ordinance monitoring committee (as stated above) to review the impacts of the ordinance to report back to the City Council no later than six months after approval of the ordinance**

**Mayor Duboc called for the vote**

**Motion passes 3-2 with Collacchi and Kinney dissenting for the reasons stated above.**

Mayor Duboc thanked those present for making this a civilized and respectful meeting and discussion. Ms. Duboc thanked the Planning staff and the Council, especially the work of Council Member Kinney and Mayor Pro Tem Winkler.

## **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.

City Manager Boesch informed the City Council that the VLF has not been addressed by the legislature and the cities are working to get this back information on the debate. Mr. Boesch will keep the Council and the community informed of any status changes on this matter.

## **G. WRITTEN COMMUNICATION - None**

## **B. COMMISSION ANNOUNCEMENTS AND REPORTS**

2. Council Member Reports – None

## **I. PUBLIC COMMENT #2 (Limited to 30 minutes) - None**

Mayor Duboc wished everyone a great holiday season.

**J. ADJOURNMENT – the meeting was adjourned at 10:00 p.m.**

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Silvia M. Vonderlinden, City Clerk

Approved at the City Council Meeting of January 27, 2004.