



# CITY COUNCIL and COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, April 20, 2004  
7:00 p.m.  
701 Laurel Street, Menlo Park, CA 94025  
Menlo Park City Council Chamber

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## **5:30 p.m. CLOSED SESSION** (Administration Building First Floor Conference Room)

1. Closed Session pursuant to Government Code Section §54957.6 to conference with labor negotiators regarding labor negotiations with the Menlo Park Police Officers Association and Teamsters 856 (representing the classification of Police Sergeant). Parties present: David Boesch, City Manager, Bill McClure, City Attorney, Chris Boyd, Chief of Police, Charles Sakai, Labor Attorney and Glen Kramer, Personnel and Information Services Manager.

## **RECONVENE IN OPEN SESSION and REPORT ON AFOREMENTIONED CLOSED SESSION**

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

Mayor Duboc announced that there was no action to report.

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

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

## **PLEDGE OF ALLEGIANCE**

### **A. COMMISSION VACANCIES, AND REPORTS**

1. One vacancy on the Las Pulgas Committee to fill an un-expired term ending in March 2005. The vacancy is for a business member seat. The deadline for receipt of applications is 5:00 p.m. on May 7, 2004.
2. One vacancy on the Housing Commission to fill an un-expired term ending July 2005. The deadline for receipt of application is 5:00 p.m. on May 7, 2004.
3. Appointment to the Library Commission.

Mayor Duboc opened the floor for nominations:

- **Council Member Jellins nominated John Haller Jr.**
- **Mayor Pro Tem Winkler nominated Anna Zara.**

Mayor Duboc called for the vote on the first nominee:

- **One vote by Council Member Jellins.**

Mayor Duboc called for the vote on the second nominee:

- **Anna Zara was appointed to the Library Commission with four votes.**

4. Commission Reports - None.

### **B. PRESENTATIONS AND PROCLAMATIONS**

1. Proclamation to recognize Police Dispatcher Week and the Dispatcher of the Year.

Chief Boyd read the proclamation honoring dispatchers, and mentioned that last year Menlo Park dispatchers handled over 35,000 incidents. Chief Boyd stated that Karen Cinfio, one of the City's dispatchers, was selected as the Dispatcher of the Year. The County of San Mateo held an award event recognizing these professionals, and Charleen Manning was recognized for her outstanding efforts with the Menlo Park Academy. Officer Mike Hacke was also acknowledged for his excellent community service.

2. Proclamation to recognize Arbor Day.

Ruben Nino, Director of Engineering Services, received the proclamation. Council Member Kinney stated that this event will be celebrated this Friday, and Mayor Pro Tem Winkler will attend.

3. Proclamation to recognize the Week of the Young Child

Monique Davenport thanked the Council for the services that are being offered at Belle Haven, especially the after school program. Ms. Davenport has two children that attend the program, and she is happy with the staff there. Cheryl and Christina Johnson addressed the Council stating their appreciation for the services provided by the Library and other departments. Christina Dong has been at the Burgess after school program for three years, and mentioned numerous things she likes such as the leaders and the snacks.

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

Elizabeth Houck expressed her views against the Nealon Park off leash dog park, and how she feels that her appeals have been unheard by staff and city officials. Ms. Houck referred to the lack of notification, and she mentioned a petition that was signed by 29 residents opposing such park. She asks that Council demand more communication of its staff. She shared concerns about the dog park, the day care center, and traffic on Middle Avenue.

Ross Wilson strongly urged the Council to authorize a full public review of the Willows traffic, and the cut through traffic. Mr. Wilson gave statistics on the number of daily trips he has counted, and the cut through traffic in the Willows. He believes a dialogue between residents and the Council is needed to implement protective measures to mitigate current patterns.

#### **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. Approval of the Minutes for the City Council Meetings of March 23, 2004 and March 30, 2004.
2. Authorization of the City Manager to enter agreements with the Menlo Park School District and the Las Lomas School District for the purchase of fuel from the City.
3. Adoption of a Resolution No. 5507 supporting the San Mateo County Coastal Annexation Project that is proposed by the Midpeninsula Regional Open Space District.

Council Member Kinney removed item D1 and D3.

**M/S Kinney/Collacchi to approve Consent Calendar item D2. Motion carries unanimously.**

#### **Pulled Item D1**

Council Member Kinney wanted the minutes of March 30, 2004 on page 2 (under Council Reports) to read "and he was disappointed that one grant given to this group for the Bonde Weir was returned with the termination of the project, only approximately 50% utilized, and the second grant (from the US Army Corps of Engineers in the amount of \$7.5 million) has not been released."

**M/S Duboc/Collacchi to approve item D1 with the above mentioned correction. Motion carries unanimously.**

**Pulled Item D3**

Council Member Kinney stated that this item had been approved by LAFCO on a 6-1 vote and he was disappointed that the Council did not approve this earlier. He supports this resolution.

**M/S Kinney/Collacchi to approve Consent Calendar item D3.**

Mayor Duboc stated that the MROSD addressed all of her concerns. Mayor Pro Tem Winkler would like to add the following wording to the resolution: "Whereas, and to its credit, the MROSD has eschewed acquiring land through the use of eminent domain, has agreed to reimburse the Pescadero school for lost revenue and has contracted for protection with the Fire District ". Mayor Pro Tem Winkler also thanked Mary Davey for her efforts with this matter.

**The maker and second of the motion accepted the above mentioned addition as a friendly amendment. Motion carries 4-1 with Council Member Jellins abstaining.**

**E. PUBLIC HEARING**

1. Proposed abandonment of a portion of an existing access easement between Deanna Drive and Monte Rosa Drive adjacent to the properties located at 1135 and 1160 Deanna Drive.

Kent Steffens, Public Works Director, presented the staff report stating that the issue before Council is if the existing access easement should be abandoned or not. The easements were originally created in 1971 and dedicated with a subdivision map. Both the public utility easement and an access easement were created and approved by the City Council. Mr. Steffens showed a map and aerial photographs illustrating the location and the easements in question. He stated that the way it is built, pedestrians and cyclists can get through the fence that exists. Mr. Steffens explained the process that City staff has followed to this point, which included notices of public hearings, Planning Commission review, and a neighborhood meeting. City staff has tried to address some of the concerns relating to maintenance work. Mr. Steffens clarified that the City in the past handled the maintenance of this area in an inconsistent manner. Now the City is willing to maintain the area if the access easement remains and the pedestrian access continues.

Mr. Steffens stated that there has been a lot of discussion on the definition of the easement but this is an unresolved issue, and Mr. Steffens is not asking the Council to resolve it. The question is if the abandonment should occur or not and its implications. Mr. Steffens covered some of the repercussions related to access if the easement is abandoned, and reiterated staff's recommendation for denial of the application to abandon the access easement.

Mayor Duboc offered the floor to the applicant Mr. Derman.

Irwin Derman stated that he has been a long time resident of Menlo Park, and he believes his petition should be granted. Mr. Derman believes that pedestrian access on this easement is a different matter that is beyond Council action. He stated that he will not settle for anything else, and he submitted a five-page summary regarding the petition for abandonment. David Boesch, City Manager, stated that this letter was included at the back of the staff report. Mr. Derman finds it peculiar that in 2003 the staff recommended abandonment, but after objection by two neighbors, the Planning Commission changed its recommendation.

Mr. Derman believes that at the neighborhood meeting only six neighbors attended because many others support the Derman's approach. He believes the City does not have the legal right to retroactively enlarge the scope of the use of the easement. Mr. Derman asked why the Engineering Department took six years negotiating with the Derman's for the abandonment and then changed its position. He believes he was given every assurance of all the steps needed for

the abandonment. He provided a history of the maintenance issues, and various incidents that have occurred in this area. He hopes to beautify the current area and will assure access to the City for utilities and emergency use. He also stated that the Fire Department no longer needs the fire easement. He submitted pictures for the record.

### **Council Discussion**

Council asked questions about the easements and the map descriptions. Mr. Steffens stated that the map does not specify what type of easements these are. Legal Counsel McClure stated that the request is to only abandon the access easement and for the City to retain the public utilities and emergency access easements. Council inquired about the maintenance needs, and how it would impinge on staff's current workload. Mr. Steffens stated that this would become part of the routine. Mr. McClure stated that technically the City would have to maintain it.

Mr. Derman stated that for years staff treated this as a fire lane; and, now the Fire District does not want it anymore, all of a sudden the City does not want to abandon it. Mr. Collacchi stated that it appears that the course of action changed, and he would like to know what was discovered that led to the change in plan. Mr. Steffens stated that staff had continued to research the matter, and got new information along the way. Another key fact was the Planning Commission rejection of the abandonment. Mr. Steffens said that staff is not in a position to grant or deny the abandonment, and their role is to advise the City Council on the issue.

Mr. Boesch clarified that the applicants sought guidance and got information on the process, and he stated that the process has worked because it brought forth information for Council to make a decision on the matter. Council Member Collacchi asked about the process, and Mr. McClure stated that this is really the third time this comes forth because there were two steps that needed to occur in order for it to be before Council.

Council Member Jellins asked for clarification on the matter that Mr. Derman believes is outside the scope of the City Council. Mr. Derman stated that there were three issues he brought forth, and he just wanted to delineate the variety of issues. There was some discussion about the plans and the utilities and how the water line goes along the easement. Council asked questions about the maintenance and how the two sides will cooperate to make maintain it. Mr. Derman did not want to speak for the other neighbor, and so he could only commit himself to the maintenance.

Council Member Collacchi asked about the need for gates, and Mr. Steffens stated that staff feels that the easement access is sufficient as it is. Mr. Derman stated that in the beginning they did not know what access meant and the process has educated Mr. Derman on what his rights are. Mr. McClure stated that the City could preserve the access easement, and then the Derman's can pursue legal action for a court to decide on the status of the access easement.

### **Mayor Duboc opened the public hearing.**

Carl Levinson mentioned that he is a neighbor but he had nothing to add to the discussion.

Ann Latta spoke about the area as a fire access road, and that it was blocked at one time. In her opinion there is no long-term use of this road as an access road. Ms. Latta urges the Council to look at this carefully because she has concerns that pedestrian access on public utility land will become *defacto*.

Jill Wegenstein said the issue is that this area is used for walking and it shouldn't be blocked off. Ms. Wegenstein has used this road for many years and other neighbors have as well, because it has been open. She asks if a resolution can be reached where the children and elderly neighbors can still use that easement, because some small access for the neighbors would be beneficial.

Tod Oliver said that he uses this path many times and there is a severe slope that cuts the neighborhood in two. Consequently, there are 11 families that possibly could use this easement. Mr. Oliver agrees with Mr. Derman on the questionable job the City did on maintaining and landscaping the easement. Mr. Oliver stated that Mr. Derman sometimes screams at the people

who are walking by that they are trespassing, and Mr. Derman feels that he owns it alone and does not want to share it. Mr. Oliver stated that this is a bitter issue for the neighborhood.

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

*Break from 9:00 to 9:05 p.m.*

**M/S Jellins/Winkler to move the staff recommendation due to the fact that there are a range of issues, many of them contentious, that are beyond the scope of the Council.**

#### **Council Discussion**

Mayor Pro Tem Winkler said that there are legitimate questions about who is liable for this, and she asked if Council could deal with the liability issue. Mr. McClure stated that the courts will have to decide, and then the City will have to deal with the situation and maintain the easement in a way that does not increase liability. Council Member Kinney would support the motion if the maintenance department gets together with the neighbors to find a consensus and get resolution. Mr. Kinney believes one more try at dialogue would be important.

**M/S Kinney/Duboc substitute motion to table the item for 30 days. The substitute motion includes directing staff, the City Attorney, and other parties to meet and find a consensus.**

Mr. Jellins does not believe the City can require people to reach a resolution. Mayor Pro Tem Winkler said that staff held a meeting in November to get to an agreement, and staff answered that they've done what they can to mediate the matter. Council asked how well attended the meeting was, and Mr. Nino said that about 8 or 9 neighbors were present including the Derman's. Council Member Kinney believes this would still be a valid approach.

**Vote on the whether to substitute the original motion.**

**Motion fails 2-3 with Council Members Collacchi, Jellins and Duboc voting no.**

**Vote on the original vote.**

Council Member Collacchi agrees with Council Member Jellins in denying the application to abandon it.

**Motion passes 4-1 with Council Member Kinney abstaining.**

Mayor Pro Tem Winkler offered that Council Member Kinney be part of a subcommittee to assist in this resolution. Legal Counsel Mr. McClure made a recommendation that Council wait until the City Attorney hears from the other side.

2. Adoption of a Resolution No. 5508 ordering the abandonment of Saga Lane.

Ruben Nino, Director of Engineering Services, presented the staff report stating that this abandonment is consistent with the General Plan. Mr. Nino explained that if the Council approves this action the resolution would be recorded with the County.

Council asked why this is different from the previous abandonment and Mr. Nino stated that in this case, there is no dissention from the two neighbors and the public utilities easement will be maintained. Council asked questions about the map provided.

**Mayor Duboc opened the public hearing.**

Peggy Lo asked that Council look at this favorably and approve the abandonment.

City Manager Boesch stated that a letter was received today from Sand Place Associates LP supporting this abandonment, but asking that Council consider all egress and ingress issues.

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

**M/S Jellins/Kinney to move staff's recommendation. Motion passes unanimously.**

## F. REGULAR BUSINESS

1. Appeal of a decision by the Planning Commission determining compliance with a Use Permit Condition of approval related to landscaping at 940 Cotton Street.

Stephen O'Connell, planning consultant to the City, explained that a landscape plan was submitted and approved. However, it required review and input of the neighbor. It is condition G that is causing some debate. A point of contention is if a heritage tree was removed or not. Staff cannot ascertain the allegations.

Mr. King, the appellant, submitted to Council an email in which he is trying to reach a compromise. Mr. King stated that there was a coastal live oak that was removed and this distressed the Kings. He also stated that there were other trees that provided a screen, and those were taken down. His request is to have an evergreen tree planted that is 16 ft. high to provide visual screening.

Mayor Pro Tem Winkler asked about the allegations of the removal of the trees, and Legal Counsel McClure stated that there was no information or evidence on the illegal removal of trees by the owner. Mr. King reiterated that he would like to get an answer on who removed the trees. Council asked Mr. King about the trees and his requirements to be satisfied. Mr. King believes he should be approving condition G, and he thinks the Planning Commission should have taken into consideration the impacts of taking out the trees.

Arturo Cazares, the property owner, stated that he desires to be a part of this community. Mr. Cazares stated that all the trees had been previously ignored and ill maintained, and so it was hard to balance what to trim and what to take out. He also stated that the elms were severally damaged, and while the oak tree was viable, one of the neighbors showed up at the Planning Commission Meeting and made a case for the removal of the oak. Mr. Cazares stated that his goal was to try and resolve the situation.

Josie Gomez, also the property owner, stated that the goal is to reach a conclusion. They agreed on a 36-inch tree and hoped that this would be acceptable. Ms. Gomez stated that the Planning Commission established condition G, and she hopes a compromise can be reached. She mentioned the various trees that had been proposed such as an ash and a magnolia.

Council asked what the Kings preference is, and they stated they would like a 36-inch box that is an evergreen tree. Mr. King stated that he wanted to know if a heritage tree was removed illegally. Mr. Jellins explained the process the Cazares went through. Mrs. King stated that she had another company look at the trees, and they would not have taken them down because it would be illegal.

Mr. McClure stated that the Council might want to direct Mr. King's question to the applicant. Mr. Cazares stated that no heritage trees were removed illegally. Stumps were removed, and trimming was performed but nothing was illegal. Mr. O'Connell clarified that the permit to remove the trees was for elm trees, but at the Planning Commission the neighbor to the left of the property was determined that the oak tree should also be removed. Consequently, the removal permit was amended and notices were sent out to all the neighbors about the removal of the oak. The Kings' were on vacation and the notice did not get forwarded to their vacation home.

Mr. Murphy, Senior Planner, made it clear that the Environmental Quality Commission had no involvement in the removal of this heritage tree and the three elms. Mr. Murphy said no appeals were filed.

### **Council Discussion**

**M/S Kinney/Jellins to approve the Planning Commission condition, but specify that the type of evergreen will be a coastal live oak with a minimum height of 16-ft and this to be at the applicants' cost.**

Ms. Gomez asked the Kings would have to share the cost as previously agreed. Mr. King stated that he had offered at one point to pay \$1,000 towards the tree.

## **Substitute Motion**

**M/S Winkler/Duboc to accept the Planning Commission decision unless the Kings' are willing to split the difference in cost between a 16 ft evergreen oak tree and the 32-inch box the Cazares suggested.**

**Council opted to withdraw all previously made motions and make a new motion.**

**M/S Duboc/Kinney stating that:**

- **the Cazares will plant a 16 ft. evergreen tree of their choice;**
- **such tree will replace the evergreen 36-inch box as shown in the plan that was submitted to the Planning Commission;**
- **this tree to be installed within the 30 days;**
- **the Cazares will consult with the Kings' on the placement of the tree to make sure it is placed in the correct location;**
- **the cost of the tree will be paid for by the Cazares, with no cost to the Kings.**

**Motion carries unanimously.**

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.

City Manager Boesch stated that at this point there was nothing to report.

## **G. WRITTEN COMMUNICATION**

1. Request from Mayor Duboc to place Ordinance 926 on a future Council agenda.

**M/S Duboc/Collacchi to take this item off its tabled status. Motion carries unanimously.**

Council consensus was to put this item on the of May 11<sup>th</sup> 2004 Agenda.

## **H. INFORMATION ITEM**

1. Results of the Willows Neighborhood Through-Traffic Study.

Penelope Huang asked the staff to have a neighborhood meeting to discuss this study and its results.

Council Member Kinney stated that he got some feedback from the public that it would like to have this information presented at a meeting. Mayor Pro Tem Winkler believes the information is important and this could be presented to the Council and the community. Mr. Collacchi believes that the Transportation Commission could have a role in disseminating it to the community.

## **I. COUNCIL MEMBER REPORTS**

Council Member Kinney provided additional details on a memo he sent to Council on the Bay Area Water Supply Conservation Agency. Mayor Pro Tem Winkler asked some questions about the various events surrounding this entity, and Council Member Kinney committed to keep the Council updated.

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

## **K. ADJOURNMENT – meeting adjourned at 10:38 p.m.**

Respectfully submitted,

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Silvia M. Vonderlinden (CMC)  
Certified Municipal Clerk

Approved at the Council Meeting of June 8, 2004.