



**CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, May 25, 2004

7:00 p.m.

**701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers**

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

ROLL CALL – Duboc, Winkler, Collacchi, Jellins, Kinney (arrived late)

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

PLEDGE OF ALLEGIANCE

A. COMMISSION APPOINTMENTS AND REPORTS

Mayor Duboc encouraged members of the community to apply for the various openings.

1. One vacancy on the Housing Commission to fill an un-expired term ending July 2005. Extended deadline for receipt of application is 5:30 p.m. on June 15, 2004.
2. Two vacancies on the Las Pulgas Committee (one business member seat and one rental owner seat) to fill un-expired terms ending in March 2005. The deadline for receipt of applications is 5:30 p.m. on June 15, 2004
3. Two vacancies on the Parks and Recreation Commission to fill un-expired terms ending September 2005 and 2006. The deadline for receipt of applications is 5:30 p.m. June 15, 2004.
4. Commission Reports.

Council Member Kinney entered the Council Chambers.

B. PRESENTATIONS AND PROCLAMATIONS

1. Presentation by C/CAG on the status of traffic congestion between the Dumbarton Bridge and 101 referred to as the 2020 Peninsula Gateway Corridor Study.

Walter Martone, Transportation Manager for C/CAG (City/County Association of Governments) shared a slide presentation focusing on roadway and improvements and identifying the full scope of possible solutions. Mr. Martone clarified that this will not lead into a project or an environmental impact report, but will lead into clarifying the options that need to be studied. He explained the process and the next steps including checking the feasibility of each option and doing outreach to the community. He clarified that the study is being funded by the San Mateo and Santa Clara Counties and over 300 recommendations have been received. It is expected that a report will come out in June 2005.

Council asked questions of Mr. Martone and if the list of project ideas is still open and if presentations are occurring in neighboring cities. Mr. Martone confirmed that the list is still open but it will close within the next month. Council asked if other jurisdictions would weigh in, and Mr. Martone confirmed that the surrounding jurisdictions are part of the process. The Council thanked Mr. Martone for his presentation.

Mayor Duboc said that City Attorney McClure had an announcement about the Allied Arts lawsuit. Mr. McClure stated that his office received a copy of a tentative decision on the Allied Arts lawsuit, and that the court denied the writ and ruled in favor of Allied Arts and the City. Council asked about recovering legal fees and Mr. McClure said that there weren't any statutory fees to recover.

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

Mary Gilles stated that it is unpleasant that threats are made about recalling public officials to persuade them to vote a certain way. She hopes the Council will reflect the will of its constituency and not the will of the opposition.

Hank Lawrence complimented the elected officials of the City and hopes that people respect the work they do because they are ethical people. Mr. Lawrence spoke about traffic concerns and a roadway matter on Alameda de Las Pulgas and Avy Street. He believes the traffic is too fast in that area. He also mentioned that at Ravenswood Avenue the crossing gate sensor is not set properly causing unnecessary delays.

Mayor Duboc asked if the Alameda-Avy area mentioned was County or City. Mr. Boesch responded that it is an area of shared jurisdiction and he would follow up on this matter.

Nancy Cash shared concerns with the Hamilton Avenue renovation because of an electrical transformer being placed too close to the church. Ms. Cash asks that the safety of the kids be considered, as well as the residents immediately affected. She stated that there are other options and she will meet with City Manager Boesch in hopes of a satisfactory resolution.

D. CONSENT CALENDAR

1. Adoption of a Resolution 5519 giving preliminary approval of the Engineer's Report for the landscape Assessment District for fiscal year 2004-05; and adoption of a Resolution 5520 of Intention to order the levy and collection of assessments for the 2004-05 Landscape Assessment District.

Item D2 pulled

2. Preliminary approval of a Regulatory Fee to implement the local City of Menlo Park Storm Water Management Program (SWMP) for Fiscal Year 2004-05, and setting a Public Hearing on the adoption of the fee for June 15, 2004.
3. Rejection of bids for the Ivy Drive Streetscape Project.

M/S Jellins/Kinney to move approval of items D1 and D3. Motion passes unanimously.

Discussion on D2

Mayor Duboc asked whether the Council appointed subcommittee had met about storm drain financing issues. Mr. Boesch volunteered to take the initiative and schedule a meeting.

M/S Duboc/Winkler to approve consent calendar D2. Motion carries unanimously.

E. PUBLIC HEARING - None

F. REGULAR BUSINESS

1. Action on a Certified Petition to repeal Ordinance No. 926. (*Item continued from the May 11, 2004 meeting. Public comment was closed at that meeting.*)

Mayor Duboc stated that she was going to allow those who had not spoken at the last meeting on this item the full three minutes, and those who had spoken at the last meeting could speak for one minute. Silvia Vonderlinden, City Clerk, presented the staff report on suspended Ordinance 926 and asked for Council direction on the options available: rescind Ordinance 926 or place the Ordinance on the ballot.

Council Discussion

Council Member Jellins asked when was the last day to place the matter on the ballot, and City Attorney McClure clarified that the last day is August 6, 2004. Mr. Jellins asked about other forms of ballot, and if it was possible to have a mail election. Mr. McClure confirmed that the City could call its own election but the deadline is the same and the consolidation with the County saves cost.

Public Comment

Sue Kayton spoke in regards to the current ordinance that nobody likes, and that she believes we owe it to the people to decide on this matter. She believes the current process is not user friendly, and the current ordinance does not work. Ms. Kayton believes that the proposed ordinance, while it doesn't please everybody, should be decided by the voters.

Council Member Jellins asked if the Council chooses to rescind the ordinance how soon thereafter can Council enact another ordinance. Mr. McClure clarified that the legal constraint is with adopting an ordinance that would be equal; but, modifying portions of the ordinance is acceptable for adoption. Mr. Jellins asked if the ordinance goes to the voters and is rejected, then the Council could adopt another one that is subject to a referendum again? Mr. McClure stated that in either case Council could rescind the ordinance and adopt a new ordinance before the November '04 election if it is not exactly the same. Mr. McClure clarified that after the one-year period anything goes, including an identical ordinance.

Sam Sinnott stated that he was in the company of Stephen Schmidt and Dave Bohanon who believe that Ordinance 926 should be rescinded and revised. He stated that if a significant number of people believe that it is inaccurate then we should rescind it and revise it. Mr. Sinnott does not believe that placing it on the ballot is the right option. He believes people on both sides should be heard. Mr. Sinnott stated that he was approached by former Mayor Schmidt to depolarize politics in Menlo Park, and he believes that a few additions to the ordinance will make a huge difference. He encouraged those involved to take the high road, and in his opinion the cost to amend 926 is not prohibitive. He suggested organizing a small committee with the help of one staff member and come back after receiving more public input.

Mayor Duboc introduced former Mayor Schmidt.

Stephen Schmidt believes that there is a division in the current Council and that the previous Council worked on this matter for over three years and they thought they had it right. He believes Ordinance 926 is close but it still needs modifications. Mr. Schmidt believes this is a hopeful time, but moderation is needed. His concerns are with solar access, the ability of overlay districts, and the need to define property and neighbor rights. Mr. Schmidt believes that with the assistance of a facilitator a small taskforce can make this a feasible ordinance. He stated that the Council tonight had an opportunity to bridge the divisiveness in the community. Mr. Schmidt asked Council to end the divisiveness and demonstrate leadership by rescinding Ordinance 926.

David Bohannon expressed agreement with the comments made by speakers Sinnott and Schmidt. He explained his particular circumstances when building his home, and while it was a successful process, not all cases have happy endings. He believes there is the need for an ordinance that gives everybody respect and fairness. He urges the Council to rescind Ordinance 926 and to bring unity to the community. Mr. Bohannon complimented the Council, in particular Mayor Duboc and Mayor Pro Tem Winkler, for trying to solve a problem, because there is a need for an ordinance that provides uniform rules and standards protecting multiple interests. Mr. Bohannon believes this was the original goal of the Council, but based on the petition the goal was not reached. He asks that Council rescind Ordinance 926.

Jim Harvey stated that the democratic way is to take it to the voters and let them decide in the matter. Mr. Harvey does not believe that those who signed the petition should prevail but their will shouldn't be crossed out either. Mr. Harvey believes that even if this ordinance passes, it is not on its final configuration because there is a 6-month review period and a team will review the process.

Pat White asked that Council place the ordinance on the ballot. Mr. White referred to some articles

written on the matter. He stated that Ordinance 926 offers fair and new rules, and maybe the opponents are afraid that the residents will like what they see. Mr. White stated that the Council needs to vote on this and let the voters decide.

Ted Sorenson, former Mayor, stated that he read the whole ordinance and he believes that a new ordinance is needed but the question is if this is the right ordinance? Mr. Sorenson believes the current ordinance has too many contradictions to it, but it also has some good ideas. Mr. Sorenson stated that this ordinance is very confusing, and he hopes the Council will vote 5-0 to repeal it and not place it on the ballot.

Mary Gilles spoke about the previous Council and its ordinance that in her opinion was too restrictive. She stated that the last Council imposed their views on residents, and she believes the majority of voters wanted to bring common sense back and that is why they voted the current Council in. Ms. Gilles stated that this ordinance excludes the power of subjective review. Ms. Gilles believes that many of the people who signed the petition thought this was a way of placing this on the ballot. She said that the voters should weigh in on this. Ms. Gilles believes the petitioners have changed the rules and now no longer want to place the item on the ballot. She believes the voters need to decide what to do with this ordinance.

Byron Brill (with time donated by Dick Poe) gave a brief historical overview. He believes Ordinance 926 is an excellent way to address concerns by people who want to remodel their homes. Mr. Brill believes that little has been said in the way of ameliorating this ordinance, and he would like the voters to have an opportunity to address this matter. Mr. Brill believes that this is an opportunity to offer better process, and he said that Ordinance 926 is an excellent solution to the problems experienced in the last few years. He stated that the Tier One is more restrictive than the current rules. He asks that if Council believes a better process can be found he encourages more discussion and rescind the ordinance, but if Council believes there is no common ground then put this matter to a vote of the people.

Shirley Chiu-Li urges the Council to place this ordinance on the ballot so that residents have a better process. Ms. Chiu-Li stated that there is a need for fairness and common sense. She wants the opportunity to vote on the matter. Ms. Chiu –Li made reference to what she believes have been abuses in the zoning ordinance. She asked Council to implement a process that is fair and shows common sense.

Lewis J. Young stated that he supports the Council and would like to place the matter before the people. He thanked Mayor Duboc and Mayor Pro Tem Winkler for their hard work in trying to bring common sense to the process. Mr. Young asks the Council to keep the City rules-based, because anything else is making the residents go through a difficult process. Mr. Young is a builder who chooses to build only in cities that have rules-based approaches.

Robert Cronin said that it is probably not possible to please everybody but it is possible to please a large majority. Mr. Cronin stated that building a house is not a completely private act and input from neighbors should be permitted. Mr. Cronin believes that Ordinance 926 needs to be sent back to the drawing board, and he urges the City Council to rescind Ordinance 926.

Kelly Fergusson (with time donated by Earl Shelton), spokesperson for the Citizens for Sensible Development Committee, stated that she is ready to dive in and work on a fair process to produce a fair and even-handed ordinance that respects the rights of all. She asked that Council use proven facilitation techniques and do what's right for the City. She believes the Council can create a forum that will lead to a better product, and the community will respect the process. Ms. Fergusson wants to work together for a better future, and she believes this is an opportunity to do that. She asks Council to rescind Ordinance 926.

Hank Lawrence suggests that Council and the other side pick an even number of people to form a Committee, and each side have this person represent its interests, so that a better version of the ordinance may be achieved. He proposes that both sides come up with a uniform ordinance.

However, anybody that is running for City Council should not be included in this committee because it shouldn't be a political matter. Mr. Lawrence resents people addressing the City Council in a disrespectful manner and vilifying the Council. He stated that the name-calling is inappropriate.

Council Discussion

Prior to making a motion Mayor Pro Tem Winkler asked the indulgence of the friends who want to see this ordinance on the ballot.

M/S Winkler/Duboc to rescind Ordinance 926, direct staff to return at a future Council meeting with options for a process to move forward with modifying the residential review ordinance concepts, and provide cost estimates associated with the various options for consideration. This motion to include looking at options on how to proceed with community discussions and the cost associated with it.

Council Discussion

Mayor Pro Tem Winkler stated that she wishes to avoid divisiveness in a tough economic time, and she has concerns that the community is already under financial stress so she would rather try and work this out in. Mayor Duboc stated that Mayor Pro Tem Winkler is very brave and has worked very hard to make this work. Consequently she will support this motion because this would make it a very divisive campaign. Mayor Duboc believes this is something good for the community and it is hard to deny. She added that she would support the motion out of her respect for Menlo Park. The Mayor expressed hopes that a better process will emerge.

Council Member Kinney will support the motion as he has been against the proposed ordinance for various reasons. Council Member Kinney made a friendly amendment, which is to give direction to staff to receive suggestions from the public and crystallize some of the input provided by the public. Mayor Pro Tem Winkler stated that this is part of the public process, and the second implies that staff knows how to address this matter.

City Manager Boesch stated that staff is open to receive communications and suggestions, but what is eventually needed is clarity on the process.

Council Member Collacchi commends Mayor Pro Tem Winkler's approach and wisdom, and he admires the maturity she showed with this motion. He doesn't think everything has been done, but he believes Council is on the right track and choosing a good working group that will work on a solution is another step in the right direction.

Council Member Jellins clarified that he has pondered how to make a decision, and he was particularly impressed with Mr. Brill's comments. Council Member Jellins believes there is room for interpretation and there is some time to make a decision. Mr. Jellins mentioned some of the merits of the proposed ordinance, which are the existence of Tier One and Tier Two categories. He would like voters to decide on the matter. But if there is an opportunity for compromise and avoid divisiveness, he understands those benefits. He will support the motion, even though his preference is to take a little more time before taking action.

M/S Jellins/Winkler substitute motion to table the item.

Mayor Duboc questioned if this could be discussed because a motion to table the matter, does not allow discussion to take place.

Mayor Pro Tem Winkler withdrew her second so that the idea could be discussed.

Motion dies for a lack of a second.

Council Discussion (continued)

Mayor Pro Tem Winkler is interested in Council Member Jellins's idea. However, this is a very complicated ordinance and consequently a committee that generates compromises might be beneficial. Council Member Collacchi stated that the success of the process will depend on whether people will be able to work together or not. He believes that there will be some hurt feelings from the referendum people, and if there is more time to look at this matter it will be better because it may take a while to get the process right. Mr. Collacchi stated that everybody has an interest in

resolving this challenge and he suggests a year as a reasonable time frame. Council Member Kinney agrees with Council Member Collacchi because the process is important and people should feel like they contributed somehow. In his opinion rescinding the ordinance gives Council the cleanest slate showing that Council heard the people. Mayor Duboc encouraged Council to communicate with staff if they have input.

M/S Jellins substitute motion to table the item. Motion fails for a lack of a second.

Council Member Jellins would like a commitment from the Council to not drag this out, since he believes it would be good to follow through with those who voted for the current Council with the expectation of a rules-based approach. He hopes staff and Council can work this out in less than a year.

Mayor Duboc called for the vote on the original motion. Motion passes unanimously.

2. Agency Board review and direction concerning the Below Market Rate (BMR) Housing Agreement for the Hamilton Avenue Park and Housing site.

Gretchen Hillard, Housing Coordinator, presented the staff report explaining the recommendations of the subcommittee which is composed of Mayor Duboc and Mayor Pro Tem Winkler. Ms. Hillard stated that the subcommittee recommends approximately 42% of the total units to be BMR units which equates to 20 BMR units. Ms. Hillard enumerated the recommended housing preference categories, and they are: 1) accredited teachers for the Ravenswood Elementary School District; 2) City of Menlo Park employees; 3) other accredited public school teachers who serve the Menlo Park community; 4) health care workers who work in Menlo Park; and, 5) health care workers who live in Menlo Park but work outside Menlo Park.

Council Discussion

Council asked if it was possible to stipulate that this was for the Belle Haven School, which is part of the Ravenswood School District. Mr. McClure stated that this was possible. Mayor Pro Tem Winkler asked that Belle Haven residents be identified, and other Council Members asked about including Fire District employees. Council consensus was to add these to the list. Council also discussed having 15% (of the 42% allotted to BMR units) designated for those who have been on the current list. Ms. Hillard stated that even though there are people on the list it is not easy to predict if everybody will qualify or is interested in buying these units.

Mayor Pro Tem Winkler stated that she would like to limit category one to teachers who are at the Belle Haven Elementary School in the Ravenswood District. She also clarified that category three should be for Belle Haven residents, adding one category for other accredited public school teachers and an additional category for Menlo Park Fire District firefighters.

M/S Winkler/Jellins to adopt the list below as the preference list for those qualifying to be assigned the BMR Units.

- 1) Accredited teachers at the Belle Haven Elementary School within the Ravenswood Elementary School District
- 2) City of Menlo Park employees
- 3) Belle Haven residents
- 4) Other accredited public school teachers who serve the Menlo Park community
- 5) Health care workers who work in Menlo Park
- 6) Health care workers who live in Menlo Park
- 7) Firefighters and paramedics who work for the Menlo Park Fire Protection District, and
- 8) Current list of applicants on the BMR list.

M/S Collacchi/Kinney substitute motion to include all items on the previously stated motion but have seven slots (of the 20 BMR units) be allocated to the people who are currently on the BMR list.

Council Member Kinney asked that the maker of the motion reduce the number of slots from seven to three slots. Council Member Jellins asked for a point of order because the motion could not

be altered by the second.

Council Member Collacchi did not alter the motion and Council Member Kinney withdrew his second. Motion dies for a lack of a second.

M/S Kinney substitute motion to add the stipulation of three slots. Motion dies for a lack of a second.

Mr. McClure stated that he needs direction on whether the Council will open up a list and give priority to people who are currently not on the list but fall under one of these categories. Mayor Pro Tem Winkler asks that the existing list be looked at for all these categories but if there was no one in a certain category, then the City could do some outreach and give priority to those who fit the categories.

Mayor Duboc called for the vote.

Motion passed 4-0-1 with Council Member Collacchi abstaining.

3. Consideration of the revised City Mission Statement developed by the Council Subcommittee.

Mayor Duboc explained that the process included working with the City Manager and Assistant City Manager and then going to all the commissioners and neighborhood associations. Mayor Duboc reiterated that this was a mission statement for City government. She believes this was a focused effort and a successful one. Council Member Jellins thanked the subcommittee as well as all those who provided input to make this happen.

M/S Jellins/Duboc to accept the mission statement as presented and replace the one that was previously on record.

Council Member Kinney asked why the current mission statement does not meet the vision. Mayor Duboc stated that she looked at what other cities did and these reflect better the goals for City government. Council Member Kinney would like to provide some input. Mayor Duboc welcomed the input from other Council members. Council Member Collacchi likes the old statement but also sees some value in the new statement. Mr. Collacchi would like it to state that the City fulfills certain functions.

M/S Kinney/Jellins to table this item until another date so other Council Members can provide input. Passes unanimously.

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.

Mr. Boesch, City Manager, stated that a few letters were sent to the legislature and Council received copies of those. Mr. Boesch clarified that letters are sent when it is clear that this action is congruent with City policy. The Mayor signs all such letters. Mayor Duboc stated that she had heard some encouraging words in regards to how much the State can take away. Mr. Boesch clarified that the Governor is supporting the ballot measure that the League of California Cities is placing on the ballot.

G. WRITTEN COMMUNICATION

1. Request of Mayor Pro Tem Winkler to schedule for discussion the consideration of an alternative approach to Caltrain grade separations.

Mayor Pro Tem Winkler has concerns that a decision on this matter is imminent and she would like to ask for a Study Session on the issue. She would like more data and a more diversified platform of professionals to get involved. Mr. Boesch clarified that additional graphic materials are being developed, and hopefully two full three-dimensional models. Mayor Pro Tem Winkler would like to have Mr. Watry involved in the process as well as others who have shown an interest such as Mr. Montague.

Mr. Boesch stated that this is easily accommodated and this is something City staff will follow-up on. The City Manager is hoping to schedule a meeting in September, because people will be back from vacation.

Mayor Pro Tem Winkler wants to include Mr. Harrington in the process, and Mayor Duboc would like to invite members of the Atherton City Council to also be present.

H. INFORMATION ITEM - None

Mayor Duboc announced that the next meeting is June 8, 2004.

I. COUNCIL MEMBER REPORTS

Council Member Kinney stated that he attended a BAWSCA (Bay Area Water Supply and Conservation Agency) meeting, and the financing of \$1.9 billion in improvements to the Hetch Hetchy system is being discussed. A consultant is looking at two options: raising rates or a bond measure. Council Member Kinney said there is both support and concern for the project. He requested that an alternate attend the June 10, 2004 meeting because he will be out of town.

Mayor Pro Tem Winkler said she is on the Policy Advisory Committee for the Dumbarton Rail, which is scheduled for completion by 2010. Ms. Winkler enumerated the issues for Menlo Park, which include: site selection for the station, noise reduction through neighborhoods, and grade separation from Menlo Park roads. Ms. Winkler invited the interested public to ask her for additional information.

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

John Preyer asked why the applicants of the Hamilton project do not visit the site and see what they're going to buy for thousands of dollars.

Council Member Kinney asked if there are plans for the homes. Mr. Boesch stated that in the near future there will be detailed drawings available. Mr. Boesch, also said that because of the zero energy features in the project it might be featured in Sunset magazine.

K. ADJOURNMENT - 10:00 p.m.

Respectfully submitted,

Silvia M. Vonderlinden, CMC
City Clerk

Approved at the Council meeting of August 17, 2004.