



# CITY COUNCIL and COMMUNITY DEVELOPMENT AGENCY MINUTES

Tuesday, January 11, 2005  
7:00 p.m.  
701 Laurel Street, Menlo Park, CA 94025  
Menlo Park City Council Chambers

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

1. Closed Session with City Attorney McClure pursuant to Government Code Section §54956.9(a) regarding Derfner v. Menlo Park, San Mateo County Superior Court Case No. 416821; McBay v. Menlo Park, San Mateo County Superior Court Case No. CIV 424128; and Carlson v. Menlo Park, San Mateo County Superior Court Case No. CIV 441703. Parties present: David Boesch, City Manager and Chris Boyd, Police Chief.

**Reconvene in Open Session and Report on Aforementioned Closed Session.**

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

**ROLL CALL** – Winkler, Jellins, Cohen, Duboc, Fergusson

**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 APPOINTMENTS, VACANCIES AND REPORTS**

1. Appointment to the Planning Commission.

Mayor Winkler opened the floor for nominations:

- Council Member Duboc nominated Henry Riggs.
- Council Member Cohen nominated J. Michael Gullard.
- Mayor Pro Tem Jellins nominated John O'Malley.
- Council Member Fergusson nominated Stu Soffer.

Mayor Winkler asked Council to vote on the nominees:

- Two votes for J. Michael Gullard.
- One vote for John O'Malley.
- Two votes for Henry Riggs.

Mayor Winkler asked Council to vote on the two applicants with the most votes:

- Three votes for Henry Riggs from Council Members Duboc, Jellins and Winkler.
- Two votes for J. Michael Gullard from Council Members Fergusson and Cohen.

Council Member Duboc thanked those who submitted applications.

2. One vacancy on the Housing Commission to fill an un-expired term that ends in July 2005. The extended deadline for receipt of applications is January 18, 2005 at 5:30 p.m.
3. One vacancy on the Transportation Commission to fill an expired term that ends in January 2009. The deadline for receipt of applications is January 11, 2005 at 5:30 p.m.
4. Commission Reports.

## **B. PRESENTATIONS AND PROCLAMATIONS**

1. Proclamation in recognition of Uma Chokkalingam's retirement.

Mayor Winkler presented a proclamation honoring outgoing Finance Director Uma Chokkalingam. The former Finance Director expressed her appreciation to the Council, staff and the residents of Menlo Park.

## **C. PUBLIC COMMENT #1 - None**

## **D. CONSENT CALENDAR**

1. Adoption of Resolution 5575 authorizing application to San Mateo County for Community Development Block Grant (CDBG) funds in the amount of \$200,000 for fiscal year 2005-2006 for the Housing Rehabilitation Loan Program and authorizing the City Manager to execute related CDBG agreement for fiscal year 2005-2006.

**M/S Duboc/Jellins to approve Consent Calendar item D1. Motion carries unanimously.**

## **E. PUBLIC HEARING**

1. Consideration of an appeal of the Planning Commission's decision to approve a Use Permit at 1981 Menalto Avenue for the construction of a new, two-story dwelling unit with access from an alley that runs between Elm Street and Walnut Street located on an R-2 Zoned lot that is substandard with regard to lot width.

Mayor Winkler recused herself from this Agenda item, because she lives less than 300 ft. away from the property and left the Council Chambers. Council Member Fergusson asked for a point of privilege and clarified why she would not recuse herself on this item. Council Member Fergusson stated that this is a new hearing and she will listen to all viewpoints with an open mind. Ms. Fergusson sees it as her duty to participate on all matters that pertain to City business and she is confident that she will afford the applicant a fair hearing.

Arlinda Heineck, Community Development Director, explained that Senior Planner Murphy's spouse is the appellant. Ms. Heineck stated that staff made sure Mr. Murphy was not privy to any information relating to the project. Tracy Cramer, Senior Planner, presented the staff report covering how this project has evolved. Ms. Cramer stated that the applicant had made various changes to the design to meet the Planning Commission requirements. Ms. Cramer referred to the October 25, 2004 Planning Commission meeting minutes noting that three changes were made on page 12 to clarify Commissioner Deziel's comments.

Ms. Cramer reported that currently six neighbors have signed the appeal. Others have withdrawn their names from the original document. Staff explained the various points of dissent between the appellants and the applicant. Staff referred to the recently raised issue of space for maneuvering around a utility pole in the alleyway.

Council asked questions about the alleyways as well as access. City Attorney McClure explained the situation with the alleyways, that they were originally offered for dedication to the County but were never accepted. He added that it is legal to rely on alleyways to access garages and secondary units. Council asked about two-story units in this area and staff explained how each of these structures has been in place for a long time. Council inquired about acceptable paving materials and Ms. Heineck explained

that staff looks at projects case-by-case prior to determining the type of pavement. Council discussed prior zoning codes versus the current zoning. Staff stated that it has been difficult establishing a historical sequence of events. Council discussed the long-term development for alleyways and the current needs of particular projects.

*The appellants addressed the City Council.*

Jennifer Dahmus who lives at 526 Central Avenue asked for an alternate approach that mitigates issues of compatibility and privacy. Ms. Dahmus does not oppose a two-story unit, but in this case it is her opinion that it compromises the privacy of the surrounding property owners. Other issues of concern include traffic, access and impacts for the whole area. She stated that five neighbors immediately adjacent to the project object to it. She hopes a solution is found that makes Menlo Park a better place to live.

Council asked how common substandard lots are in this area, and staff confirmed that the majority of the lots here are substandard.

Subramanian Sabbiah said that he believes the issue is that the alley is only 12 to 15 feet wide and this is a problem for access. In his opinion this will set a precedent for additional buildings.

Jim Quilliam has lived in the neighborhood for 14 years and he has no opposition to a one-story unit. However, a two-story unit will impact his privacy and will set a precedent that may lead to traffic problems.

Mayor Pro Tem Jellins noted that Sarah Mickey sent a letter on this topic.

Kristen Powell, representing her client Ms. Dahmus, stated that the definition of alleys does not meet the definition of the City's Municipal Code because it is meant to be a secondary access. Ms. Powell said that even though it is okay for access it is not to be used as the only access. She asks Council to grant the appeal and deny the project.

Michelle Harbottle, project applicant, addressed the Council responding to the comments made by Council Member Fergusson. She played an audiotape from a Planning Commission Meeting, which included words by then Planning Commissioner Fergusson. Ms. Harbottle believes that Council Member Fergusson should recuse herself from the discussion because of previous statements. Ms. Harbottle mentioned that Mr. Hassim might be under the wrong impression that access will be solely from Walnut and that may not be the case. The applicant stated that she believes that all of the appellants' concerns have been addressed at the Planning Commission level, and that this project is consistent with development patterns in the area. Ms. Harbottle said that many neighbors supported the project.

Mayor Pro Tem Jellins asked City Attorney McClure to address the contents of the letter sent by Ms. Powell. Mr. McClure stated that it focuses mostly on alleyways, but the City disagrees with Ms. Powell's interpretation because this is still one lot with possibly two accesses. In regards to the second point in the letter, Mr. McClure explained that this is not a panhandle lot so the arguments do not apply. As far as the CEQA arguments, Mr. McClure explained that this is categorically exempt because it is a project by itself.

Council discussed the issue of alley liability and the possibility of the applicant entering into a maintenance agreement with her neighbors. Ms. Harbottle stated that her preference is to have access from Walnut.

### **Public Comment**

Lisa Van Horn lives at 2040 Menalto and is in favor of the project because she thinks it is a good addition to the neighborhood. Ms. Van Horn stated that this part of Menalto has other two-story houses.

Paul Wilson, Fire Chief, shared his concerns about a principal residence being located off of an alley. The Fire Chief stated that the alleyway is not sufficient for a fire vehicle to gain access.

Council Member Fergusson asked if the Fire Chief was suggesting that the only way to move forward was for the access to be from Menalto, and Mr. Wilson confirmed.

Art Martin, project designer, referred to a proposed plan that included a common driveway to access the front house and the rear-unit. He proposes that Council consider this alternate design.

Council Member Fergusson asked questions about the direction of the shadow orientation on the study. Mr. Martin said he used the information available on the parcel map. Council Member Fergusson explained that if the orientation is incorrect then the impact could be greater than shown.

Irvin Chambers residing at 2160 Menalto supports the project, but reports drainage problems in that alley area.

Anne Hilbert lives at 144 Elm Street and supports the project but reserves judgment on the structure. Ms. Hilbert was always under the impression that the access would be from Walnut Avenue.

Stephanie Zeller resident of 518 Central Avenue opposes the project and has concerns with the increased use of the alley.

Sonia Quilliam resides at 1975 Menalto, which is adjacent to the proposed development, and she read a letter from Sara Michie. Ms. Michie's letter shared concerns with traffic intensification.

Ken Fuson lives at 111 Elm Street and he believes there is confusion about the alley because it is being treated as a street when it is not. Mr. Fuson suggests that other options be considered.

Hossein Razave resides at 1981 Menalto and he supports this project. He does not believe that privacy is an issue because currently there is a lot of visibility and the fences are too low.

Lou Deziel, speaking as a resident, make himself available to answer Council questions.

Michelle Harbottle referred to a memo from the Fire District approving the project. Chief Wilson said that the Fire Department did not approve the project.

### **Public Hearing is closed with full Council consensus.**

### **Council Discussion**

Ms. Heineck explained that originally the Fire District had approved the project with the understanding that emergency access would be possible from Menalto Avenue. Council asked if this project were to be approved if a new address would be added. Ms. Heineck said this has not been determined yet. Council asked staff about the common driveway and how staff feels about it. Ms. Cramer stated that it would require a redesign and at this point staff couldn't comment on this. Council discussed the various conditions imposed by the Planning Commission.

Council Member Fergusson has no objection to having a second unit built provided the required findings identified by the Planning Commission are met. However, Council Member Fergusson believes there will be impacts to the neighbors relating to privacy and these are not addressed by the conditions of the Planning Commission. In her opinion the shadow study also shows multiple impacts to the neighbor to the north. Council Member Cohen believes that most of the support comes from people who are not close to the location and he finds the two story unit inappropriate for that area. The impacts he finds deleterious are related to the issues raised by the Fire Chief. In addition he is concerned with traffic, weight bearing in the alley, parking, access, and other issues, and in his opinion these change the character of the area. Council Member Duboc visited the site and agrees that an entrance from Walnut would make sense. She added that currently there is no policy on second story units in the back of an R-2 zoned lot. Mayor Pro Tem Jellins believes that there are some significant impacts and some provisions are necessary to mitigate those impacts. He would prefer to send the matter back to the Planning Commission.

Mr. McClure explained the needs of the Fire Department, which are to have access from Menalto. Fire Chief Wilson added that access could mean an open area or a fence with a gate. Council Member Fergusson stated that this alley has a potential for being used for through traffic and this could impact other properties. Council Member Duboc suggested “No Through Traffic” signs be placed in the alley. Mayor Pro Tem Jellins encouraged the Council to work together in finding a solution, otherwise the decision of the Planning Commission will prevail.

**M/S Jellins/Duboc to require landscaping plans be approved at the Planning Commission level.**

Council Member Cohen does not agree with cosmetic fixes, and he does not believe there has been an effective dialogue between neighbors. Council Member Cohen suggested either a one-story unit is built in the back or a two-story unit is built in the front. Council Member Duboc commented that this approach would have impacts too.

Council Member Cohen expressed his preference to grant the appeal and give the neighbors an opportunity to take a fresh look and consider some alternatives that have been prematurely ruled out. Council discussed the merits of various approaches and the concerns with each option.

**Substitute Motion**

**M/S Fergusson/Cohen to deny the appeal and approve the project defined as a single-story unit constructed at the rear of the parcel with access via Menalto Avenue. Furthermore, the following items are to be addressed by the Planning Commission:**

- approval of the architectural details
- review the design of the rear-unit
- review the landscaping plans
- final review

Council Member Duboc believes the impacts are being shifted from one area to the next. She shared concerns with a heritage tree that is located in the property. Council Member Cohen is hopeful that the neighbors will work together.

**Vote on whether to substitute the original motion for the motion made by Council Member Fergusson. Motion carries 3-1 with Council Member Duboc opposing.**

**M/S Fergusson/Cohen to deny the appeal, grant a use permit for a single-story residence at the back of the lot, with access via Menalto Avenue. The architectural design and site layout is to be presented to the Planning Commission, and included in this motion are the draft findings and conditions of approval (exhibit F of the staff report) modified to be in congruence with this motion.**

Council Member Duboc stated that in her opinion the motion does not address privacy, alley issues, and the height of the one story unit.

**Vote on the motion carries 3-1 with Council Member Duboc dissenting.**

*Council recessed for 5 ½ minutes.*

Mayor Winkler rejoined the Council at the dais.

**F. REGULAR BUSINESS**

1. Consideration of a recommendation from the Housing Commission to approve a Resolution reserving \$3.5 Million of the Below Market Rate (BMR) Housing Fund for use in the Purchase Assistance Loan Program and establishing preferred uses for the unreserved BMR Housing Fund.

Council consensus was to hear the staff report and public comment, but to then table the item.

Gretchen Hillard, Housing and Redevelopment Manager, presented the staff report recommending that Council approve a resolution reserving \$3.5 million dollars for the BMR (Below Market Rate)

housing fund. Ms. Hillard stated that Council had set a high priority for the Housing Commission to make recommendations on this matter. Ms. Hillard explained that the Housing Commission took this priority seriously, interviewing various experts and engaging in a thorough and detailed process. Ms. Hillard gave details about the PAL loan system.

Mayor Winkler asked if the Housing Element has been completed and Ms. Hillard stated that it is still in progress.

**Public Comment**

Carol Louchheim, Housing Commission Chair, stated that the Housing Commission recommends that Council allocate \$3.5 million for PAL loans. She mentioned that 40 to 60 BMR units would be built in the next four years. Ms. Louchheim offered that in the recent past 4.4 PAL loans were made annually. If this action is approved 46 families will be able to access PAL loans, however there are still 367 families on the waiting list, half of them waiting more than five years, and some waiting up to 17 years. She emphasized three points: (1) PAL loans are a good investment for the City and homebuyers because it is a revolving fund since the loans are repaid and the money is used again for PAL loans, (2) PAL loan is a second mortgage loan and it can help buyers (buyers must qualify for a first mortgage before they can qualify for a PAL loan), (3) people in lower income brackets need PAL loans and other loans to buy BMR homes in Menlo Park.

Mayor Winkler congratulated Ms. Louchheim on becoming the Chair of the Housing Commission.

Anne Moser, Housing Commissioner, stated that this program helps people who are unable to buy houses in Menlo Park; especially teachers, firefighters and police officers. Ms. Moser stated that PAL loans will increase the buying power of certain segments of the population, and she supports this investment in our community.

Kirsten Keith stated that when she was on the Housing Commission she had worked on the BMR Fund proposal. She fully supports the PAL loan proposal.

Mayor Winkler said this item would return to Council possibly on February 22, 2005. Council Member Duboc suggested including the minutes from tonight when the item returns.

- 2. Consideration of state and federal legislative items including decisions to support or oppose any such legislation and items listed under Written Communication or Information Items.

**G. WRITTEN COMMUNICATION - None**

**H. INFORMATION ITEMS - None**

**I. COUNCIL MEMBER REPORTS - None**

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

**K. ADJOURNMENT – the meeting adjourned at 10:37 p.m.**

Respectfully submitted,

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Silvia M. Vonderlinden, CMC

Approved at the Council Meeting of March 22, 2005.