



**CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, October 25, 2005
7:00 p.m.

110 Terminal Avenue, Menlo Park, CA 94025
Menlo Park Senior Center

7:00 p.m. REGULAR MEETING (Menlo Park Senior Center, 110 Terminal Avenue, Menlo Park)

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

Mayor Winkler announced that the Bayfront Park item was moved to November 1, 2005 so it could be televised live from the Council Chambers.

PLEDGE OF ALLEGIANCE

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

A. COMMISSION VACANCIES AND REPORTS

1. Commission Reports.

B. PRESENTATIONS AND PROCLAMATION - None

C. PUBLIC COMMENT #1

Myrtis Silas shared concerns about code enforcement in the Belle Haven area. City Manager Boesch referred the speaker to Police Commander Boettger who was in the audience.

D. CONSENT CALENDAR

1. Adoption of Resolution No. 5628 of Intention to Abandon the emergency vehicle access and public utility easements at 2122 Santa Cruz Avenue, set a date for a public hearing, and refer the issue to the Planning Commission for review.
2. Award of contract to Precision Emprise, Inc., for the Fiscal Year 2005-06 Sidewalk Trip Hazard Removal Program in the amount of \$100,000; and authorization of a total of \$125,000 for construction, contingencies, engineering, construction administration and testing.

Item pulled D3

3. Adoption of Resolution No. 5629 to accept easements dedicated to the City for public use at 414 O'Connor Street.
4. Award of contract for the Oak Avenue Storm Drain Improvement Project to Casey Construction, Inc., in the amount of \$69,983; and authorization of a budget of \$100,000 for construction, contingencies, testing, engineering, inspection, and administration.

Item pulled D5 (Minutes for September 27, 2005)

5. Approval of the City Council Minutes for the meeting of October 4, 2005 and Council Meeting of September 27, 2005 (revised).

M/S Duboc/Jellins to accept Consent Calendar items D1, D2, D4 and D5 with the exception of the pulled Minutes. Motion carries unanimously.

Discussion on item pulled D3

3. Adoption of Resolution No. 5629 to accept easements dedicated to the City for public use at 414 O'Connor Street.

Council Member Fergusson pointed out that the map shows the school parcel owner as the Ravenswood School District when it should be the Menlo Park City School District.

M/S Fergusson/Duboc to approve the staff recommendation with staff taking appropriate action to correct the map to show that the parcel owner is the Menlo Park City School District.

City Attorney McClure confirmed that there was a de-annexation of the parcel by the Ravenswood School District, but staff will review the matter for accuracy.

Motion carries unanimously.

Discussion on item pulled D5

5. Approval of the City Council Minutes of September 27, 2005 (revised).

Council Member Fergusson moved approval with the insertion of verbatim statements. Council Member Duboc asked if this is normal practice and Mr. Boesch said that it was not. Ms. Fergusson explained that this was the most expeditious way to get her specific comments included; however, she would be willing to hold off and continue working with the City Clerk to come up with one sentence on the matter. Council Member Duboc preferred this approach. The approval of these minutes was tabled.

E. PUBLIC HEARING

1. City Council consideration of a request by Clarum Homes for a General Plan amendment via Resolution No. 5630, rezoning, conditional development permit, waiver of construction and demolition debris recycling deposit via Resolution No. 5631, tentative subdivision map, waiver of the 40 foot street right-of-way width requirement via Resolution No. 5632, and Environmental Impact Report to construct forty-seven detached residential units and an approximately one-acre neighborhood park at 507 through 555 Hamilton Avenue (see Attachment A for specific findings and actions).

City Council consideration of Resolution No. 5633 approving execution by the Agency Executive Director of a disposition and development agreement with Clarum Hamilton Park L. P. and making certain findings and approvals in connection with the above described project (see Attachment A for specific findings and actions).

Agency Board consideration of an Environmental Impact Report and Resolution No. 281 authorizing execution of a disposition and development Agreement with Clarum Hamilton Park L. P. and making certain findings and approvals in connection with the above described project (see Attachment A for specific findings and actions).

City Manager Boesch presented the staff report explaining that this project required environmental review. He added that four City Commissions reviewed the project. Mr. Boesch also commented that the Housing Commission has a different recommendation relative to the preference given for the Below Market Rate units.

Jon Bassman, with Clarum Homes, addressed the Council giving details on what he believes is a high quality project. Mr. Bassman elaborated on the design of the individual residences and how the project will benefit the area. The project architect explained some of the amenities of the homes as well as the street layout plan. The landscape architect covered details on the park design and the vision behind it.

Council asked questions about street standards, and Mr. Bassman offered that the streets will be built according to City specifications. The width of the proposed streets was discussed as well as the number of visitor parking spots. Mr. Bassman elaborated on the vision for the park. Council Member Duboc shared positive remarks about the model homes available for touring. The landscape architect responded to questions about the park and how it will accomplish the feeling of a neighborhood park.

Council discussed street maintenance and water conservation. The landscape architect offered that native plants are going to be used and the goal is to have a low water landscape plan. Mr. Bassman commented that there is no maintenance agreement and so it will be the property owners' responsibility to maintain their areas. He said a deed restriction will be prepared and give the City power to prune the trees along the ditch. The tree warranty was discussed as well as drainage patterns in the area. Mayor Pro Tem Jellins asked about the species to be planted, he would like to exclude London Plane trees. Council Member Fergusson asked for clarification on the street tree pruning and Mr. McClure explained that the City will prune trees along public streets. Council asked about the warranty on the park trees and the developer said those have a one year warranty. The drainage channels were discussed and Mr. Bascom said a hydrology study had been conducted. Mayor Pro Tem Jellins asked about the warranty on the trees that are to be maintained by residents and the developer said those typically have a 90 day warranty.

Mayor Winkler Opened the Public Hearing

Roxanne Rorapaugh shared concerns with the Environmental Impact Report (EIR) in regards to soil contamination and the possibility of carcinogens in the area, and the railway that is planned for 2030.

M/S Duboc/Cohen to close the Public Hearing. Motion carries unanimously.

Mayor Winkler asked if the properties will pay property taxes and Mr. Boesch confirmed that would be case. Council discussed the profit sharing agreement and Mr. Boesch said that the developer has estimated what the sales price of each unit will be. He added that this was the basis for the Disposition and Development Agreement (DDA); and, in case the homes are sold for more than anticipated, there is a profit sharing clause. Council Member Fergusson asked about the net cost and the overall health of the redevelopment area and the benefits to the City. The blight was discussed and what is being done about it. Mr. McClure explained that the issue of blight included a lot of industrial sites and general uses that were incompatible with the residential homes across the street. Mr. Boesch explained the various bonds that have been issued. He added that the contamination that Ms. Rorapaugh mentioned has been removed and this site is fully approved for residential use. Council Member Fergusson appreciated the report and is aware that this has been in the works for over a decade.

Mayor Pro Tem Jellins asked about the price proforma and Mr. McClure responded that this was based on a formula that has not changed since the summer. Mr. McClure explained the various elements that went into the study to ascertain fairness. The negotiations between the City and the developer were discussed. Mr. McClure said that there is no clause in the DDA about the warranty of landscape items. Mayor Pro Tem Jellins asked that a condition be added so that residents and the City get the same warranty for the landscape items, which is one year from the date of final acceptance. Flood concerns were brought forth, and Mr. McClure explained that if the construction is defective then the developer would be responsible, otherwise it would be the homeowner.

M/S Jellins/Winkler to adopt the staff recommendations, making all the findings as outlined on attachment A, with two additions:

- **exclude the use of London Plane trees**
- **amend the DDA requiring that the developer provide the same warranty to the homeowners for landscaping as the warranty provided to the City of Menlo Park.**

Council discussed the recommendations from the Housing Commission for Below Market Rate (BMR) units eligibility. Council Member Fergusson asked for clarification on the noise impacts and Mr. McClure said that the EIR addresses those concerns and there are overriding considerations to adopt the EIR. Ms. Fergusson supports this project and believes it is high quality. Mayor Winkler echoed those comments.

Motion carries unanimously.

Council took a five-minute break.

F. REGULAR BUSINESS

1. Introduction of an Ordinance to amend the current City of Menlo Park Dog Ordinance to reflect the amendments made to San Mateo County's Dog Ordinance Code regarding animal control and dangerous animal proceedings.

Mark Boettger, Police Commander, presented the staff report explaining the history and the amendments to the ordinance. The definition of vicious animal was explained by Commander Boettger. Council Member Cohen asked about the hearing officer and Mr. Boettger explained that the Peninsula Humane Society is the organization providing the officer. Council discussed the use of the word aggressive. Mr. McClure explained that the contract with San Mateo County requires the City to adopt the same ordinance, so that there is uniformity in the applicability of the law. Mr. McClure explained the definition of domestic and dangerous animal. The ordinance from Portola Valley was discussed, since Council Member Fergusson wanted to consider alternative language and Mr. McClure had provided it to her. Ms. Fergusson believes that the word domestic needs to be included because the ordinance should be limited to domestic animals and not wild animals.

Public Comment

Rick Saletta, from D.O.G.M.A. (Dog Owners Group of Menlo Park Area) appreciates the concerns about safety; however, he does not agree with the current approach of one strike and you're out. He requests that this be tabled and the City work with various community members to get their concerns addressed.

Schel Reyes supports the comments made by the previous speaker. Ms. Reyes agrees with the inclusion of the word domestic in the ordinance.

Council asked questions about the hearing process, and Commander Boettger explained the process. Mayor Winkler asked if there is an appeal process and Mr. Boettger said that was not the case. City Attorney McClure clarified the proposed ordinance on two levels: 1) if an animal had already been classified as dangerous and there is another violation, then the animal is classified as vicious and it is not permissible to own or maintain such a vicious animal; and 2) the one strike situation is when an animal inflicts severe injury or kills a human being or another animal.

Council Member Duboc supports tabling this matter and directing staff to work with D.O.G.M.A. and other people who are interested in the subject. Ms. Duboc offered a motion to that end: M/S Duboc/Jellins direction to table the item and interface with more residents, especially from the Belle Haven area. Mayor Pro Tem Jellins withdrew his second so the matter could be discussed.

Mayor Winkler asked staff to find out from D.O.G.M.A. if they would like muzzled and dangerous dogs to be excluded from off leash areas. Council Member Cohen has concerns about the vagueness of the descriptions in the ordinance, e.g. "because of the animals' disposition, behavior or other characteristics..." As a dog owner he is concerned that friendly behaviors might be misinterpreted. He would like dog groups to have input and his preference is for tighter language. Ms. Fergusson is looking for a balance between safety, dog owners' concerns, and fairness in addressing this subject.

Council Member Duboc withdrew her motion. City Attorney McClure explained that he would not like to see this delayed too much. Mayor Pro Tem Jellins appreciates the comments from Mr. McClure, and in his opinion the goal is to expedite the matter and get consensus. Mr. McClure has concerns that the Peninsula Humane Society might not want to work with Menlo Park if the ordinance is not tight enough. Ms. Winkler would like the Police Department to take a lead on the negotiations and for the item to come back in two weeks.

Bob Gilmore, a member of the public, addressed Council opining that this ordinance has no bearing on off leash dogs in fenced areas.

Council Member Fergusson suggested a one page summary clarifying the expectations for the community and how the ordinance will be enforced. She believes the community could write it up to help interpret the ordinance. Mr. McClure shared concerns about this way to amend the ordinance and reiterated that if the ordinance changes too much the Peninsula Humane Society will not be able to apply it. Council Member Cohen suggested that D.O.G.M.A. work through the ordinance and propose specific changes. Mr. Cohen would also like to have the City use trained officers to expand the City's expertise in safety and to try and build some flexibility into the ordinance. Commander Boettger offered to meet with D.O.G.M.A representatives to expedite the process. Council Member Cohen would like to see some kind of appeal process. City Attorney McClure explained that there would be a cost with such a process and currently there could be a written request to the Superior Court as legal recourse after the hearing.

The item was tabled to a future meeting with direction to staff.

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.

H. INFORMATION ITEMS

1. Status update on Commercial Streamlining Phase III and Planning Staffing.

Council Member Fergusson asked for clarification on the issue of the El Camino Real area and when it is going to be addressed. Mr. Boesch said that staff is committed to bringing this matter to the Council late November or early December. He added that this will be a precursor to the Council's Priority Setting Session.

2. Belle Haven Action Plan Update.

Council Member Fergusson asked about the marketing plan and how brochures are being disseminated. Curtis Brown, Director of Community Services, explained that staff is handing out brochures. Ms. Fergusson would like the YMCA to be added to the list provided by staff. Council Member Duboc pointed out that the Onetta Harris Center will open on Saturdays starting in January 14, 2006. Ms. Duboc asked if it was possible to start earlier, and Mr. Brown said that the goal was to inform the community first so that everybody is aware. Mayor Winkler asked if volunteers are being used and how much of a liability that was. Mr. Brown said that the Center is not run by volunteers, and while they help, they are supervised. Mayor Winkler gave staff marketing tips on how to promote attendance.

3. Review of the City's Investment Portfolio as of September 30, 2005.

I. COUNCIL MEMBER REPORTS

Mayor Winkler and Council Member Cohen left the room.

Item G was addressed now

G. WRITTEN COMMUNICATION

1. Request by Council Member Duboc to include a letter dated September 12, 2005, from Michelle Harbottle regarding a Use Permit for 1981 Menalto Avenue, and consider scheduling the item on a subsequent meeting agenda.

City Attorney McClure announced that Mayor Winkler and Council Member Cohen would be recusing themselves from the topic. Mr. McClure said that he received a communication from Ms. Harbottle indicating that she believes there is a conflict of interest with Council Member Cohen because of some services she provided to him. It is her position that these services constitute a gift, which requires Mr. Cohen to recuse himself on any matters before the City Council involving Ms. Harbottle. Mr. McClure said that he reviewed the situation and Mr. Cohen has chosen to recuse himself. The City Attorney said that presumably the conflict of interest will end sometime in March 2006.

Council Member Duboc agrees with placing the item on a future agenda because of new information that has surfaced. Mayor Pro Tem Jellins said that another approach is for Council to wait until Council Member Cohen could participate. Ms. Duboc asked about the current use permit, and Mr. McClure said that the applicant has a permit good for one year and it could be extended without application fees.

Public Comment

Michelle Harbottle posed questions to the City Attorney. Ms. Harbottle asked Council to reconsider her project because she believes new information has emerged from the Fire District.

Mayor Pro Tem Jellins asked if Ms. Harbottle would be willing to waive the conflict of interest with Mr. Cohen in order to have her item heard earlier. Ms. Harbottle said that it is not within her control whether a conflict of interest exists or not.

Jennifer Dahmus shared concerns about the reconsideration of this matter. She asked Council to maintain its previous decision and not reopen the issue.

Diane Mavica said that she considers most of Council's decisions fair and just, and she believes that the Council will act the same way.

Council Member Fergusson does not support reconsidering the matter, and she would prefer that the applicant submit an application to the Planning Commission and go through the process. She believes reopening the matter would be granting a special privilege to Ms. Harbottle. Council Member Duboc values the finality of decision making, but she believes that reviewing the matter one more time might be beneficial.

M/S Duboc/Jellins to have this item reconsidered when Council Member Cohen can join the Council (March 2006). Motion carries with Council Member Fergusson opposing.

J. PUBLIC COMMENT #2 - None

K. ADJOURNMENT – the meeting adjourned at 10:35 p.m.

Respectfully submitted,

Silvia M. Vonderlinden, Certified Municipal Clerk

Approved as submitted at the Council Meeting of November 29, 2005.