



**CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, November 8, 2005

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 - Winkler, Jellins, Cohen, Duboc, Fergusson

PLEDGE OF ALLEGIANCE

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

Mayor Winkler dedicated the meeting in memory of Andrew Maurice Kline, who served the Menlo Park Police force for 24 years.

A. COMMISSION VACANCIES AND REPORTS

1. Commission Reports. None.

B. PRESENTATIONS AND PROCLAMATIONS - None

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

Don Charles addressed Council on a Below Market Rate unit on Pine Street. Mr. Charles previously expressed his interest in purchasing this unit and would like an official response from the City.

Mayor Winkler referred Mr. Charles to City Manager Boesch.

Mary Gilles thanked Council for approving the proposal to investigate the future of Bayfront Park. She highlighted the benefits of this decision, and she believes multiple uses are possible.

Ken Gardner voiced his agreement with the use of Bayfront Park as a golf park, and what he believes are needed sports fields. He spoke about Spanish Bay and how that model could be replicated.

Former Mayor Steve Schmidt defended the facts printed on his Bayfront Park flyer. Mr. Schmidt reiterated the words from Council Member Fergusson in regards to the possibility of Council's actions being legally challenged. He asked for an apology because Ms. Fergusson did not threaten a lawsuit but spoke of the possibility.

D. CONSENT CALENDAR

1. Adoption of Resolution No. 5634 of Intention to Abandon a portion of the Hamilton Avenue future street line along the property located at 507-563 Hamilton Avenue; setting a date for a public hearing; and referral of the issue to the Planning Commission.
2. Approval of the revised City Council Minutes for the meetings of September 27, 2005 and October 18, 2005.

M/S Duboc/Jellins to approve the Consent Calendar. Motion carries unanimously.

E. PUBLIC HEARING - None

F. REGULAR BUSINESS

1. Reconsideration of a Conditional Development Permit to demolish an existing Safeway Grocery Store and construct a new Safeway Grocery Store and consider whether certain uses of the retail space should be permitted or conditional; and waiver of reading of Ordinance No. 942 and adoption of Ordinance No. 942 Rezoning the Safeway Store property located at 525 and 625 El Camino Real from C-4 (general Commercial, applicable to El Camino Real) to C-4-X (general commercial applicable to El Camino Real, conditional development).

Justin Murphy, Development Services Manager, explained that the issue before Council relates to uses for the ancillary building and adoption of an ordinance. Mr. Murphy referred to two additional pieces of correspondence that were received on the matter. Council asked questions about the square footage of the ancillary unit and the office spaces contemplated by Safeway. Council inquired about the process that staff underwent to reach the current compromise and Mr. Murphy offered that staff met with different interested bodies, the City Attorney, and reviewed comments made by Council. Council discussed the retail uses that were red-lined in the permit, and asked about real estate office use and its implications. Mayor Pro Tem Jellins questioned why real estate offices should be handled differently from other uses. Council agreed with including the word “occupying” in the fourth bullet for the sake of clarity.

Public Comment

Paul Cardus, with the Silicon Valley Association of Realtors, opined that the requirement of a conditional use permit for real estate uses is discriminatory. He disagrees with the current approach.

Chris Draper, with Silicon Valley Association of Realtors, disagrees with having the Chamber of Commerce try and impose regulations on the permit. He believes this policy is discriminatory.

Michon Coleman, with the San Mateo County Association of Realtors, believes this approach restricts the rights of realtors to conduct business. Ms. Coleman finds the ordinance unacceptable.

Janet Case, with the San Mateo County Association of Realtors and Silicon Valley Association of Realtors, believes there is discriminatory language in the ordinance. She asked Council to reconsider it.

Dick Poe supports previous comments and believes the Council should take a broad overview on the issue and not focus on a specific issue. Mr. Poe disagrees with the current approach.

Council Discussion

Council asked questions about permitted office uses and real estate offices. Council asked staff to comment on the permitted uses and the permit process. Mr. Murphy explained that in the current proposal real estate offices would go through a conditional use permit process. He added that the current proposal includes permitted uses, conditional uses and prohibited uses. Council Member Cohen proposed limiting all uses to a certain square footage because the original intent was to avoid having one office monopolize the space available. Council Member Duboc would prefer adding a sixth bullet point (to the permit) saying that the “total of all financial establishments shall not exceed 5,000 ft. for all uses.”

Mayor Pro Tem Jellins asked Fran Dehn with the Chamber of Commerce to comment on the matter. Ms. Dehn clarified that the Chamber does not oppose real estate uses, and she emphasized that the Chamber would like the project to move forward so Safeway could have its project approved. She explained that the examples cited on Chamber’s letter were just examples, and it was not their intention to single out real estate offices.

M/S Duboc/Jellins to amend the permit to include a sixth bullet point stipulating that “the total of all financial establishments shall not exceed 5,000 ft. for all uses” in the ancillary building. Motion includes adopting the ordinance.

Council Member Fergusson explained that the pattern she sees is that real estate offices can afford to pay more. In her opinion, real estate introduces tough competition that small businesses can’t afford. Council Member Fergusson explained that with the current proposal there are administratively permitted uses, permitted uses, conditional uses and prohibited uses.

Alternate motion

M/S Fergusson/Cohen to adopt the staff recommendation as it stands (adding on page B2 the word “occupying”) and waiving the reading of the ordinance and adopting it.

Council Member Cohen seconded the motion, however he believes that a better solution is to limit the square footage of the uses to 3,000 square foot. Mayor Pro Tem Jellins wondered how the Planning Commission would deliberate on an application for a real estate office. He questioned the basis for allowing or disallowing a real estate use. Mr. Cohen offered that the size of the space and the number of people could be reviewed. Mayor Winkler believes this is micromanaging the process.

Vote on whether to accept the alternate motion:

Mr. McClure explained that the substitute motion is to approve the permit, waive reading of the ordinance and adopt the ordinance. Motion fails 2-3-0 with Winkler, Jellins and Duboc opposing.

Vote on the original motion to amend the conditional development permit and include a sixth bullet to read: “a total of all financial establishments and offices shall not exceed 5,000 sq. feet” and add the word “and” on the line immediately above it.

Council Member Fergusson volunteered that she would support the motion to show a united front to Safeway. Mr. Murphy clarified that the fifth bullet should be eliminated because it is redundant.

The maker and the second of the motion agreed with deleting the fifth bullet.

Motion carries 4-0-1 with Cohen abstaining.

M/S Fergusson/Duboc to waive the reading of the ordinance and adopt it.

Motion carries 4-0-1 with Cohen abstaining.

2. Adoption of Resolution No. 5635 directing the City's San Francisquito Creek Joint Powers Authority (JPA) Board Member to vote in favor of the US Army Corps of Engineers JPA Feasibility Cost Share Agreement, and authorize the expenditure of up to \$32,500 from the Storm Water Management Fund to fund Menlo Park's share of costs that include the study of tidal flooding in the U.S. army Corps of Engineers Feasibility Study.

Kent Steffens, Public Works Director, made a presentation about flood zones in Menlo Park. Mr. Steffens shared illustrations showing how the levies have performed in the past, and then he focused on the U.S. Corps of Engineers Feasibility Study. Staff also covered the costs of the studies and the funding sources. The amount required to include areas susceptible to tidal flooding is \$64,650.00; and, this amount would be split between Menlo Park and East Palo Alto. The Menlo Park share is \$33,500.

Council Discussion

Mayor Pro Tem Jellins asked about the federal match and what guarantee the City has that this money will materialize. Mr. Steffens said there are no federal assurances because it is up to Congress to annually approve the funds. Mr. Jellins asked about drawing the funds from the storm water management fund, and Mr. Steffens said the funding of the San Francisquito Creek JPA is the largest expense from this fund, about \$70K. Mr. Steffens informed Council that this fund has been declining. Mr. Jellins asked if federal funds don't come through will the City be asked to make the money up. Mr. Steffens believes the project would take longer but probably the City would not be charged more.

Council Member Fergusson asked questions about flood risk, the federal government's role and the fluvial areas. Ms. Fergusson explored the issue of creek bank erosion and levy failure. Council Member Cohen wanted additional figures for peak flow from 1999 to present. Mr. Cohen was curious about what communication the City had with the City of East Palo on this matter. Mr. Steffens said that there have been many conversations and it is his understanding that East Palo Alto staff will recommend the cost sharing option. Mayor Pro Tem Jellins posed questions about the local match and how it would be allocated. Mr. Steffens said that a future agreement would come back to Council for approval. Mr. Jellins' preference is to not allocate the funds all at once and asked if this could be allocated on an annual basis instead of a lump sum. Cynthia D'Agosta, Executive Director to the San Francisquito Creek Joint Powers Authority, explained the reason for the lump sum is that the tasks within the tidal area are similar and so it would be difficult to differentiate the various phases. She said the U.S. Army Corps of Engineers would like the money in an escrow account. Council Member Fergusson added that the financial commitment shows the City's readiness to embrace the project.

Mayor Winkler asked if there is an estimate of how much project implementation (design and construction) would cost. Ms. D'Agosta said that the estimates have been upward of \$100 million dollars. Mr. Steffens added that during design and construction, the federal government typically pays a

larger share. Mayor Winkler asked how we would pay for this and Mr. McClure said that the whole watershed might need to be considered and this may become a regional issue. Ms. Winkler shared pictures of how other communities worldwide have addressed flooding issues. Ms. Winkler is concerned that Redwood City decided not to participate in the study. Ms. D'Agosta said Redwood City is four to five years into another study. Mayor Winkler thinks that we should have a discussion with Redwood City since they are our neighbors and have similar problems. She also alluded to flood walls and how these have been restored which can be an effective way to protect communities. She would like to know why flood walls are not being studied since they're cheaper. Ms. D'Agosta said that flood walls will be included as an alternative in the study. She also cited some local studies that have been done and that the City will get credit for as part of reducing the cost of the study.

Public Comment

None.

Council Member Duboc shared that the County of San Mateo has just approved this action. Ms. Duboc gave credit to former Mayor Chuck Kinney for his contributions and the contributions of former East Palo Alto Council Member Duane Bay.

M/S Duboc/Jellins to the adopt staff recommendation.

Mayor Pro Tem Jellins believes that through the feasibility study and dialogue with neighbors a path will become clear. Mayor Winkler has concerns with a possible gap in federal funding. Ms. Winkler enumerated various projects that have been studied and no resolution came of it. Mr. Steffens said that if the funds aren't allocated from the federal government the options include placing the project on hold, asking the local sponsors to spend more, or activate the termination clause within the cost sharing agreement. Mayor Winkler would like to have a stipulation on what will happen if the federal government can't support the project. Mr. Jellins believes this is the starting point and for that reason he will support the motion. Ms. Winkler wants more information about what Redwood City is doing. Council Member Fergusson complimented Ms. Duboc for her leadership on the San Francisquito Creek Joint Powers Authority Board.

Motion carries unanimously.

3. 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 9:34p.m.

Respectfully submitted,

Silvia M. Vonderlinden, CMC

Approved at the City Council Meeting of January 10, 2006.