



**CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, April 18, 2006

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 – Jellins, Fergusson, Cohen, Duboc, Winkler

STAFF PRESENT - David Boesch, City Manager; Dan Siegel, Acting City Attorney; and City Clerk Vonderlinden. Other senior staff was present.

PLEDGE OF ALLEGIANCE

A. COMMISSION VACANCIES AND REPORTS

1. One vacancy on the Las Pulgas Committee to fill an un-expired business member seat that expires March 2009. The extended deadline for receipt of applications is Wednesday, May 3, 2006 at 5:30 p.m.
2. Two vacancies on the Planning Commission to fill two expired terms. The seats are for terms that will end April 2010. The deadline for submittal of applications is Wednesday, April 26, 2006 at 5:30 p.m.
3. There is one vacancy on the Housing Commission to fill an un-expired term that expires September 2009. The deadline for receipt of applications is Wednesday, May 3, 2006 at 5:30 p.m.
4. Swearing in of a Transportation Commissioner.

City Clerk Vonderlinden swore in Mr. Boyle to the Transportation Commission.

5. Commission Reports.

Mayor Pro Tem Fergusson asked if item G1 could be moved to next week's agenda.

B. PRESENTATIONS AND PROCLAMATIONS

1. Presentation regarding the South Bayside Waste Management Authority process for future garbage and recycling contractor selection.

Robert Hilton, consultant to the South Bayside Waste Management Authority, made a presentation to Council sharing details about the upcoming contractor selection and what services the cities will be contracting for.

2. Proclamation for Tennis Month, April 28 through May 29, 2006.

Dick Gould, Director of Tennis for Stanford University, was present to receive the proclamation.

3. Proclamation declaring April 24 through April 30, 2006 West Nile Virus and Mosquito and Vector Control Awareness Week.

Valentina Cogoni, the City representative to the San Mateo County Mosquito Abatement District, was the recipient of the proclamation.

4. Proclamation for National Dispatcher's Week.

Police Chief Goitia provided statistics on dispatcher services in Menlo Park. The following dispatchers were present: Richard Silagi, Darryl Lindsay, Yvonne Gulley, Karen Cinfio, Mike Hacke, Suzanna Dea-Huang and supervisor Janette Lanier.

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

Richard Givens announced that the Menlo Park Rotary Club in conjunction with the Menlo Park Fire Protection District (MPFPD) and the Menlo Park Police Department and the Office of Emergency Services, have organized a program for Personal Emergency Preparedness on May 11, 2006 between 6 p.m. and 9 p.m.

Elias Blawie made comments in reference to Consent Calendar item D1 and while he understands this needs to be acted upon he opined that the figures in the private industry are lower. He disagrees with the timing of placing this item on the Consent Calendar because he believes it will be an issue.

Hank Lawrence referred to a BAC (Budget Advisory Committee) attempt to have a meeting but for the lack of a quorum there was no meeting. He disagreed with some of the assertions made at such event. He opined that in looking at the Peninsula there are various programs that are outsourced.

Pat White said that he supports outsourcing for the Menlo Child Care Center and he hopes the Council votes in favor of outsourcing. It is his view that the citizens do not want more taxes.

Chuck Bernstein, speaking as an individual, said that he has a problem with item D1 on Consent and he believes that a defined benefit pension plan is something the City cannot afford. He does not think the City can afford the current retirement plan because it is not reasonable and fair in the eyes of the community.

Mayor Jellins added that the points made by the speakers can be considered in the future; however, what is on the Consent Calendar pertains to past contractual obligations.

D. CONSENT CALENDAR

1. Adoption of Resolution No. 5661 of Intention and Introduction of a City Ordinance to approve a contract amendment with the Public Employees' Retirement System, providing for Section 21362.2 (3% at 50 full-formula) for local safety members.

Item D2 pulled

2. Selection of Dyett & Bhatia as a consultant for a comprehensive update of the commercial use categories and regulations in the zoning ordinance, adoption of Resolution no. 5662 to appropriate \$52,120 from the General Fund Reserve for consultant services, and approval of a selection process for working group business and resident representatives.

M/S Duboc/Jellins to approve item D1. Motion carries 3-0-2 with Cohen and Fergusson abstaining.

Discussion on item pulled D2

Council Member Cohen asked about the contributions of residents and business members. Mr. Murphy, Development Services Manager, responded that this includes the formation of a working group with members of the City Council, Planning Commission, three business community members and three residents. Mayor Jellins said he pulled the item to get clarity on the timeline.

M/S Jellins/Duboc to approve the item.

Mayor Pro Tem Fergusson asked questions about an EIR (Environmental Impact Report) versus a Negative Declaration and about the various types of uses and how the process will address such uses. Mr. Murphy said that there will be two paths to address this, one with a better platform to review uses and move forward faster and another for changes that require further analysis. Mayor Pro Tem Fergusson would like to see a problem statement, a financial analysis of the impacts and projections. Additionally, she would like the task force to include residents and her hope is that leaders from the downtown merchants' group are part of it. She supports the idea of a proxy for Council Members who are unable to attend the meeting. Council Member Winkler does not agree with that concept because in her opinion it would be hard to have someone come in and understand the issues. Mayor Pro Tem Fergusson would like to have a proxy that is familiar with the process in order to maintain balance in the working group. She believes this is a defining point because the character of Santa Cruz and El Camino Real is being defined.

Substitute Motion:

M/S Fergusson/Cohen to approve the contract with a subcontract that includes an analysis of the financial impact.

Council Member Cohen asked if this was a substitute to changing the General Plan. Mr. McClure said that his understanding was that this is merely proposing amendments to the zoning ordinance and not the General Plan. Council Member Cohen asked if a review of the General Plan wouldn't be better and Mr. McClure said that his understanding was to look at certain areas and action items that could be addressed in a shorter time period. Mayor Jellins said that the idea was to update the zoning classifications and have someone go through each zone and come to some understanding and balance. Council Member Winkler said this is a step towards an update of the General Plan but it is not the same thing.

City Attorney McClure said that these will be Brown Act meetings and a Brown Act body. He confirmed that Mayor Pro Tem Fergusson wanted to add the following provision to the motion:

Proxies will be allowed.

Mayor Pro Tem Fergusson said that she would like Council Members to select whomever they find appropriate. She would like to have the proxy be one's peer.

Vote on whether or not to substitute.

Motion fails 2-3 with Jellins, Winkler and Duboc opposing. Motion to substitute fails.

Mayor Pro Tem Fergusson asked for a friendly amendment to include the Business Development Manager and Finance Director offer some level of analysis. Council Member Winkler said that she feels this should not come back to Council but move forward with the RFP (Request for Proposal). Mayor Pro Tem Fergusson asked if the General Plan does not dictate a financial analysis when a zoning change is required and Mr. Murphy said that he is aware of financial analysis policy as it relates to development proposals but not in zoning changes. Mayor Jellins did not accept the friendly amendment from Mayor Pro Tem Fergusson.

Motion to approve staff's recommendation. Motion carries 4-1 with Council Member Cohen opposing.

E. PUBLIC HEARING(S)

1. Consideration of an appeal of a Planning Commission action to allow Team Sheep, LLC to operate a Swimming and Aquatics Program and Physical Fitness Training Business in an existing Aquatics Center (Burgess Pool) owned by the City of Menlo Park in the P-F (Public Facilities) Zoning District.

Justin Murphy, Community Development Manager, presented the staff report reflecting that the Planning Commission approved the item and staff recommends that Council uphold the decision of the Planning Commission. Mayor Jellins said that this is a Council appeal and it was scheduled to be heard promptly after the Planning Commission meeting. He asked that this be considered a Council appeal. Council Member Cohen asked about senior rates. Mr. Murphy answered questions about the items covered at the Planning Commission and its discussion on the terms of the lease, and the request for a use permit. Mayor Pro Tem Fergusson asked if the inventory provided in "Appendix C" by a resident was correct, and Mr. Murphy said it was not appropriate for him to answer that question.

Mayor Pro Tem Fergusson asked questions about the various proposed programs. Mr. Sheep explained that most of the programs are year round and Mayor Pro Tem Fergusson focused on the open recreation time. Mr. Sheep commented that there is a fee to get into the pool and his goal is to get data to see what programs people enjoy. Mayor Pro Tem Fergusson asked about weekday and summer camps. Mr. Sheep said that two camps are being proposed. Council Member Cohen inquired about the possibility of Mr. Sheep going broke and if he had done some financial analysis. Mr. Sheep said that he hopes he does not go broke and he did do some fiscal analysis.

Public Comment

Lucey Bowen spoke about the cost of swimming over the last 13 years and it hasn't been free. She believes that this schedule will accommodate many different types of swimmers.

Mary Terrel shared concerns about the schedule and fees and it no longer being a public facility. She had trouble getting information on the web site, and there have been different schedules proposed.

Elias Blawie does not believe the Council has sufficient information to move forward. He opined that there is no answer on the public hours of operation and/or the intensity of the use. He is disappointed that the Planning Commission did not review certain documents.

Anne Long shared her excitement about Team Sheeper running the pool and she spoke highly about the programs.

Sam Sinnott spoke about public and private partnerships and in particular the Menlo Atherton Nursery School. Mr. Sinnott believes if staff was to run this pool it would cost half a million dollars. Mr. Sinnott said that staff was declining Menlo Masters swimmers access to the Burgess Center.

Joanne Sanders said that Mr. Sheeper is a former colleague and she finds him to be one of the greatest aquatic professionals in the community.

Mayor Jellins, without objection, deemed the public hearing closed.

M/S Duboc/Winkler to uphold the decision of the Planning Commission.

Council Member Duboc believes this started in 1994 and this is a positive outcome of many years of study and the type of pool was the result of countless meetings of the Parks and Recreation Commission. She believes the vision of what this should be is coming full circle and she commends Tim Sheeper for his plan. Council Member Winkler believes there is much support in the community to move forward with this. She asked particular questions about the findings and Mr. McClure said that the finding is based on a negative declaration that was done when the entire Burgess Facility was built and the specific pool layout was based on maximum use. Council Member Winkler would like a review in 2007 and Mr. McClure said that there is a review built into the process.

Mayor Pro Tem Fergusson believes that the central question is if a facility that is zoned PF (public facility) should be issued a use permit to be run by a private entity. She believes the City is turning over a revenue stream and her expectation is that the public benefit is commensurate with the value of the land. She questioned if there was enough public benefit to justify such action. Mayor Pro Tem Fergusson feels good about the quality of programs Mr. Sheeper will bring to Menlo Park, but she does not believe the financial figures presented have the rigor necessary to make a decision of this magnitude. She is not happy with the approach of giving away a \$7 million facility, plus the land, and turning it over and including the public benefit and the revenue stream. She is upset that there are no triggers or mechanisms to review the use permit. She asserted that correspondence from another Council Member earlier in the year was misleading because there was no crisis. She is disappointed with the process and the fact that there was no RFP. She welcomes the quality of the programming by Team Sheeper, but the manner in which this has come forward i.e. without a discussion of the policy issue of transferring this over to a private operator, is not acceptable to her.

Council Member Cohen remembered the words of Jeff Dybdal but said this employee is now gone. He is resigned to the fact that this is a done deal. He is no longer interested in a senior rate because in the free market system he can swim in Palo Alto for 40% less. Council Member Cohen asked Council Member Winkler for a review of this arrangement in a reasonable amount of time that is less than five years and a disclosure of the economics. He wished Mr. Sheeper the very best and he regrets that he can't support it. Mayor Jellins said that turning over a negative revenue stream is a good thing and it has been a negative revenue stream for many years. He also stated that the programs proposed by Mr. Sheeper are commensurate with the ones previously offered by Menlo Park and public access will be allowed.

Motion carries 3-2 with Cohen and Fergusson opposing.

2. Adoption of Resolution No. 5663 approving an 11.9 percent annual increase in water meter and consumption charges in each of the next four years, increasing the Capital Facilities charge in Fiscal Year 2006-07, transferring approximately \$4.4 Million from the Water Operating fund to the Water Capital Fund, and authorizing an additional staff position.

Ruben Nino, Director of Engineering Services, presented the staff report explaining the need for both an annual increase in water use charges and an increase in a capital facilities charge that was last updated in 1991. Mr. Nino provided information about the meetings held with various water users. Mr. Nino presented comparative statistics on what Bay Area average users pay in different cities. Council Member Cohen asked about the staffing needs and Mr. Nino said that there are new requirements and levels of certification, and that currently we do not meet the criteria the State has requested. Council Member Cohen asked if we currently pay for contract services and Mr. Nino confirmed.

M/S Jellins/Duboc to approve the staff recommendation. Motion carries unanimously.

3. Adoption of Resolution No. 5664 defining the service area for all single-family residences and approving a 6.0 percent rate increase, effective July 1, 2006, in solid waste collection rates for all Menlo Park single-family residential customers, comprised of a 5.8 percent rate increase in garbage, recycling and plant material collection and a 0.2 percent increase in the surcharge on solid waste fees to cover the Marsh Road Landfill post-closure maintenance and capital costs.

Carol Augustine, Finance Director, presented the staff report and explained that the proposed 6% rate is an increase for single-family residential customers. Ms. Augustine said that on page six of the staff report a correction was needed on the rates listed for three cities. The rates should be higher. Mayor Jellins mentioned that Stacey Wagner, with Allied Waste Services, was in the audience to answer questions. Council discussed various questions about the garbage fund and Ms. Augustine provided the figures. Mayor Pro Tem Fergusson asked about the Bayfront Park funds and Ms. Augustine said that there are two special revenue funds, the landfill fund is specifically for landfill operations and capital costs and the Bayfront Park maintenance fund is specifically for maintenance of Bayfront Park. Mayor Pro Tem Fergusson made suggestions about further studying the capital improvements facet. She asked how in the past the two funds were spent and Ms. Augustine said that the separation of the two funds is relatively recent. Mayor Pro Tem Fergusson asked if the 0.2 percent is enough and Ms. Augustine said that this is staff's best estimate at this time.

Mayor Jellins welcomed public comment. There was no public comment. Mayor Jellins deemed the public hearing closed without objections.

M/S Fergusson/Duboc to approve the staff recommendation. Motion carries unanimously.

F. REGULAR BUSINESS - None

1. 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(S) (taken out of sequence)

2. Memorandum from the Public Works Director regarding the Mosley Tract Levee.

Council Member Winkler said that Council received a letter from PG & E with an assurance that the substation is not in any danger should high tide water breach the levy.

Public Comment

Eileen McLaughlin, who works with the Refuge and the Wildlife Stewards, pointed out that waves hit the levy in a repetitive motion as the tide raises and lowers and there is an internal levy that has stagnant water. Ms. McLaughlin said that the levy is not designed to take the movement and she asks that the City ask the City of San Jose to look at the issue.

Mayor Pro Tem Fergusson said that she has a different interpretation of PG & E's letter and she sees value in having a staff presentation because she believes that the Dumbarton Bridge is at risk of flooding and the City of San Jose has some responsibility. Her preference is for a political solution to this issue in order to protect the economic and public safety interests of Menlo Park. She suggests that Mr. Steffens author a letter, to be signed by the Mayor, and send it to Assembly Member Ira Ruskin who is willing to help the City with this issue.

Mayor Jellins said that he was told there was urgency and then he was told that there was no urgency. He has spoken with PG & E and read the memorandum from the Public Works Director.

Kent Steffens, Public Works Director, said the issue came up with the Menlo Park Fire Protection District (MPFPD) after observing the condition of the levies, and the flood risk on Highway 84. An additional concern was flooding of the PG & E substation. Mr. Steffens talked about a meeting on site and PG & E assured staff that the substation was designed for wet conditions, and it could be flooded and still would work. PG & E also had the option of rerouting work but it was concerned if access was not feasible. Mr. Steffens said that he has seen the area flooded but not Highway 84 and he has seen both levies under water and so there is a risk of flooding. In conclusion, Mr. Steffens said there is a flood risk but in his opinion the risk hasn't substantially changed by the breaches he has observed in the Mosley tract. If there is a way to reduce risk he would support that. Mayor Jellins pointed out that the way to reduce the risk is to increase the height of all the levies and not just patch the bridge and Public Works Director Steffens concurred.

Mayor Pro Tem Fergusson believes the focus should be on the infrastructure that has a potential for flooding. She opined that Menlo Park is log jammed between the City of San Jose and CalTrans and the Frontage Road is where the MPFPD stages its vehicles. Mayor Jellins disagreed with this interpretation of the problem. Mr. Steffens said that because of the breach on the Mosley Tract the Frontage Road is more likely to flood but he does not know what the MPFPD protocol is in terms of responding and use of the Frontage Road, and there might be other areas where they can stage vehicles but he does not know the details. Council Member Duboc believes this is a MPFPD issue and has not been identified as a high priority. Mayor Pro Tem Fergusson said she talked to Assembly Member Ira Ruskin and he was willing to help the city if the Mayor submits a letter.

1. Memorandum from the City Manager seeking clarification regarding the scheduling of Bayfront Park related topics.

Council Member Duboc said that the question is if play fields can exist at Bayfront Park. She asked for an attachment to the staff report with a portion of the Recreation Master Plan and the timelines. Mayor Pro Tem Fergusson said that she has an interest in a more regional approach.

Public Comment

Chris MacIntosh supports the recommendation of discussing the need for play fields separately from Bayfront Park. She supports keeping Bayfront Park as open space and it is her belief that it is valued by hundreds and thousands throughout the region. She believes that there must be room for both in the City and Bayfront Park does not need to be used for fields.

Robin Smith is the Conservation Chairman for the Sequoia Audubon Society and she referred to a symposium she attended in Davis about Avian Influenza. She believes that the H5N1 avian flu will hit the US this fall and this flu is fatal to birds. She believes the Council needs to know that geese and ducks are the primary carriers of this and Bayfront Park has both resident and migratory geese. She provided details on how the avian influenza is transmitted (through fluids) hence fields in that location would be dangerous, according to her.

Council Member Duboc suggested that Council discuss the matter at its meeting next week, focusing on whether sports fields are feasible at Bayfront Park or not. Mayor Pro Tem Fergusson believes that ball fields should be looked at separately from the question of Bayfront Park. She would like to look at the demand for ball fields in a comprehensive way and at a separate meeting with the Parks Commission report being presented and receiving public input. She wants to know what can be done in a cost effective way to address the issue of fields. What is the inventory of all the possibilities where we can build fields and look at it in a comprehensive manner instead of an ad hoc approach. She would like to see Bayfront Park looked at in its regional context. She asked if there are opportunities for funding for multiple ends and what are the volunteer opportunities. Mayor Pro Tem Fergusson received a letter from the San Francisco Bird Observatory which is interested in a nature oriented facility and maybe a teaching facility at that site. Mayor Pro Tem Fergusson believes that assessing demand for fields should be the first step.

Council Member Duboc opined that Council should keep it simple and start with what is possible at Bayfront Park. She opined the City has needed sports fields since 1994 when it was identified via the Master Plan process. She is okay with the report from the Parks and Recreation Commission and

having staff include additional information. She would like to find out if fields can be built at Bayfront Park, what is the cost and if there is community support for it. Council Member Cohen feels this is a railroad job and he finds himself aligned with all the people that are being ignored. Council Member Duboc believes that there have been a lot of people who have been ignored.

City Manager Boesch said that there are time constraints about creating new documents for next week because Council has another meeting tomorrow night and staff is still preparing for it. Mr. Boesch offered that staff could submit documents that are already in existence but there won't be an opportunity to do any real in-depth analysis given the short timeline. Council Member Winkler feels that next week is just an opportunity to plan the next steps and she is open to having a study session on Bayfront Park.

Mayor Pro Tem Fergusson asked if Council Member Winkler agrees with separating the issues. City Manager Boesch said that as he hears it next week staff will place on the agenda a regular business item that will be framed around the discussion of the feasibility of ball fields at Bayfront Park and potential direction. Council Member Duboc asked for any materials staff might have available. Mayor Pro Tem Fergusson asked if demand for ball fields could be placed on an agenda and potential new fields. Mayor Jellins said that this could be addressed at the next week's meeting.

H. INFORMATION ITEMS - None

Mayor Pro Tem Fergusson asked for a point of order to correct item E2 (a typo in a number in the resolution) since the corrected amount should be \$2,520.00. Mayor Jellins confirmed that the correction was included in the motion.

I. COUNCIL MEMBER REPORTS

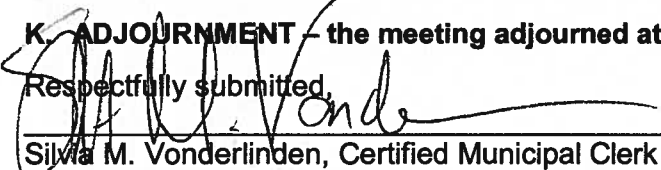
Council Member Winkler said that for the record when she sent a memo in January about considering delaying the opening of the pool she was not aware of what would transpire henceforth. Council Member Winkler said that there was no trick intended and no one can speak to her motives.

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

Matt Henry spoke about a break down in decorum in the Chambers and he believes these attitudes cascade down to the City and its residents. He said that the Council should be "cooler" with each other.

K. ADJOURNMENT - the meeting adjourned at 11:21 p.m.

Respectfully submitted,


Silvia M. Vonderlinden, Certified Municipal Clerk

Approved at the Council Meeting of September 12, 2006.

