



**CITY COUNCIL, COMMUNITY DEVELOPMENT AGENCY
CITY OF MENLO PARK JOINT POWERS PUBLIC
FINANCING AUTHORITY**

Minutes

Tuesday, May 9, 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; Mike McClure, City Attorney; and Silvia Vonderlinden, City Clerk. Other staff members were present.

PLEDGE OF ALLEGIANCE

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

A. COMMISSION VACANCIES, APPOINTMENTS AND REPORTS

1. Appointment of two Planning Commissioners.

Council Member Duboc nominated the incumbents:

- Melody Pagee
- Henry Riggs

The incumbents are reappointed by unanimous vote of the City Council.

2. One vacancy on the Housing Commission to fill an un-expired term that expires September 2009. The extended deadline for receipt of applications is Tuesday, May 30, 2006 at 5:30 p.m.
3. Two vacancies on the Las Pulgas Committee to fill two un-expired terms that expire March 2009. One vacancy is for a business member seat and one is for a rental owner seat. The deadline is Tuesday, May 30, 2006 at 5:30 p.m.
4. Commission Reports.

Richard Cline, Parks and Recreation Commissioner, summarized the conclusions contained in a report saying that two full adult field spaces are needed, and three locations should be considered: Burgess Park, Kelly Park, and the Hamilton Avenue development area. As a member of the task force that worked on this, he recommended that the City evaluate the fees charged for the use of the playing fields and the use of artificial turf. He supports engaging in negotiations for the use of fields in neighboring cities as well as to investigate options for field development at the 75 Willow, 110 and 175 Linfield properties. Another recommendation is to develop a fund that would allow the City to acquire, build and maintain playing fields long-term. He asked that the matter be placed on a future agenda.

B. PRESENTATIONS AND PROCLAMATIONS - None

C. PUBLIC COMMENT #1 (*Limited to 30 minutes*)- None

D. CONSENT CALENDAR

1. Waiver of the second reading and adoption of ordinance no. 946 approving a contract amendment with the California Public Employees' Retirement System, providing for Section 21362.2 (3% at 50 full formula) for local safety members.

M/S Fergusson/Duboc to approve the item. Motion carried unanimously.

E. PUBLIC HEARING(S)

1. Consideration of an appeal of a Planning Commission action to approve a use permit and variance request for construction of a second story addition and remodeling that exceeds 50 percent of the existing square footage, exceeds 50 percent of the replacement cost, and would encroach into the front and rear setbacks of a nonconforming, single-family residence on a substandard lot in the R-1-U zoning district at 168 Oak Court.

Mayor Pro Tem Fergusson stepped down from the dais, but as the applicant she stayed in the Chambers. Council Member Winkler recused herself as she resides within 700 ft. of the project. Deanna Chow, Senior Planner, explained that the appeal was filed by a collective group of four appellants representing two households indicating that the approval of the variance and use permit was improperly granted and requesting that written standards be created. Staff recommends that the City Council uphold the Planning Commission's action and deny the appeal.

Ms. Sue Kayton, the appellant, addressed Council on the issue of legality and zoning asking that Council either add three conditions to the approval or reverse the approval for consideration of alternative designs. She stated that the issues are fairness and legality. The carport would continue to have less than a five-foot front setback after an extensive remodel. Both the carport and the garage are grandfathered and are legal non-conforming structures. City planning regulations dictate that in such instances if proposed work exceeds 50% of its value it is no longer grandfathered in which case it would need to be brought up to code, a variance received or be torn down. She drew a comparison between the recent Lemieux's request for variance and the Fergusson project citing what the issues were with both, and stated that the Lemieux's project was not approved while Ms. Fergusson's was. She asked Council add to the variance that the windows to the music room not open or that air conditioning is put in so that it will be soundproofed, that no more than 50% of improvements are made to the carport, and that no more than 50% improvements to the garage be made.

The applicant, Kelly Fergusson, explained that they are asking that the City Council uphold the approval by the Planning Commission for the use permit and variance for the addition to their home. She explained that when the home was built, it was part of unincorporated San Mateo County, and when Menlo Park annexed the area, it was subjected to a different set of rules and setbacks. Their adjacent neighbors support the design. Robert, the applicant's husband, spoke about the willingness to include as much green building as possible. Establishing standards for a variance go against the definition of a variance, and the Lemieux's item has since been approved. In terms of the neighbor's conditions, Ms. Fergusson explained that they would be subject to the noise ordinance whether or not the music room is soundproofed or has windows.

Public Comment

Sam Sinnott asked Council to overturn the decision of the Planning Commission. He believes the project has six conditions that are non-conformities: the upper floor maximum setback encroachment, structural improvements encroaching into the required front yard, structural improvements in the rear yard, non-conforming parking spaces, required parking in a front yard setback and the illegal improvement question. Four of them are variances that require hardship justifications as violations of the zoning ordinance. He redrew the plans to have only three non-conformities as opposed to the six and will provide that to the applicant.

Mary Gilles spoke on behalf of Richard Poe requesting that the City Council overturn the approval. She believes laws and rules should be applied equally and impartially to all. A design alternative not requiring a variance should be utilized. She opined that the Planning Commission decision is going to set a bad precedent and at best will be perceived as impropriety.

Heyward Robinson spoke against the appeal and pointed out the extra scrutiny that is taking place with regard to this project. The appellants were not present at the Planning Commission meeting, and they live miles away from the property, which he questioned in terms of a precedent for filing.

Richard Li spoke about the process that residents have to go through for a use permit review. He referred to his own case and he does not believe that this is a fair process. He pleaded for use permit reform.

Alaina Sloo is a neighbor to Ms. Fergusson, and she agrees with the current project and believes the decision should be upheld. The current plan is the best for them as neighbors.

David Sloo said that he has a music room and the variances are needed because their houses are on flag lots and need special attention. He believes the Council should reject the appeal.

Bronwyn Forikowa shares a property line with Ms. Fergusson, and she and her husband support the plan and approval. The current one is by far the friendliest for all of the neighbors.

Robert Carlson stated that the variance process was made more difficult by Planning Commissioners, who did not understand what a variance is, a Planning Commissioner who believed that the law should not be considered and the absence of meaningful, objective standards that are applied consistently. The process is biased and in disarray. He reminded the Council that Ms. Fergusson voted against his project though there was only one smaller encroachment into the setback as opposed to the numerous encroachments by the applicant's plan.

Michelle Harbottle fully supported the applicant's right to enlarge her property but not to have a variance. The Zoning Ordinance should dictate what gets built, and it has to mean the same thing for everyone.

Frank Tucker spoke in support of the Council granting the appeal. The homeowners are entitled to the home of their dreams but they are not entitled to bending the zoning rules to get there. The variance cannot be granted on the basis of a hardship unique to the property. The approval represents an extremely bad policy direction as the zoning rules exist to provide consistent and equitable implementation of development policies across multiple properties and owners.

Laure Laprais, the neighbor who is affected the most by the plan, supports the applicant. She is overwhelmed by the scope of the discussion and questions its appropriateness.

Lou Deziel is a Planning Commissioner but speaking individually. He wanted to correct his words in the minutes because he believes there is a hardship. The special circumstance is the panhandle lot. The hardship is that in this case there is a twenty-foot wide garage and no scenario in which the Zoning Ordinance would allow the outer ten feet of that garage to be roofed other than just maintaining the existing flat structure.

Reese Walsh supported the Planning Commission's decision. She does not support what she sees as a political move.

Elias Blawie, with time donated by Elizabeth Lasensky and Stu Soffer, spoke in support of the applicant and upholding the approval. He believes there are policy issues that need to be addressed such as the imperative that appeals be permitted only from those who have a legitimate standing.

Mayor Jellins confirmed that the Public Hearing had been open and he welcomed further comments.

The applicant's attorney reiterated the merits of the application as having dealt with all four issues and substantively addressed the unique configuration of the lot.

Hearing no objections, the Public Hearing was closed.

M/S Duboc/Cohen to uphold the staff recommendation and deny the appeal.

Mayor Jellins spoke in support of neighbor input coupled with the rule of law.

Motion carried with Duboc and Cohen in favor, Jellins abstained, and Winkler and Fergusson recused.

Council took a break at 8: 45 p.m. and reconvened at 8: 51 p.m.

2. Consideration of request for a tentative map to create nine office condominiums in an existing building, a variance to allow the provision of existing nonconforming parking to continue in lieu of meeting parking requirements for condominium conversions, and a use permit to allow personal services and financial establishments on the ground floor in a C-3 zoned property at 695 Oak Grove Avenue.

M/S Duboc/Fergusson to continue the public hearing to next weeks' meeting on Tuesday, May 16, 2006. Motion carried by unanimous vote.

Item addressed out of sequence

3. Adoption of Resolutions 5666A, 5666B, 5666C, 5666D, and 5666E, amending the City's Master Fee Schedule to incorporate proposed changes in fees to become effective immediately for the following departments: Community Services, Police and Public Works.

Carol Augustine, Finance Director, reported that updating the fee schedule is an annual undertaking, and the revenue impact from the changes will be reflected in the 2006/2007 budget with an estimated increase in General Fund revenue of over \$260,000. Many of the changes are new fees or fee increases; however, a decrease in annual revenue is anticipated in the Police Department due to reconfiguration of DUI emergency response fees. The child care fees for MCC reflect a 7.5% increase for school-age care during the school year and a 16.5% increase for the school-age summer camp program, along with a 15% increase for the full-time preschool program. The fee increase proposal should bring the school-age program close to cost recovery, but it is expected that the preschool child care program will continue to be below full cost recovery. The proposed fees are still below market average for preschool care and school-age summer camps, and the proposed fees for school-age care during the school year are slightly higher than market rates from last year's survey. Historically, fee increases have been between 5% and 6% annually.

Ms. Augustine said that the total cost for the MCC child care program is \$901,000 of which approximately \$796,000 are direct costs. Indirect costs are 12.9% of the total cost and of that 12.9% approximately 10% are unallocated benefits included in administrative overhead. Direct costs for the Burgess school-age program are \$583,000 and indirect costs are roughly \$75,000, 12.86% of total costs. If the new fees are implemented, the net cost would be reduced such that the MCC child care program would be \$227,000 and the school age program \$83,000. Council Member Duboc requested that there be careful earmarking of whether children are moved to the part-time, three-day program as this could affect the ability to keep the program at cost recovery.

Public Comment

Hank Lawrence, with time donated by Sue Kayton, explained that the school-age program is in good shape with a cost of \$658,000 and revenue of \$529,000, which leaves a shortfall of \$129,000 with a 19.5% subsidy. If there is a 7.5% increase with 98 children, there will only be an \$89,000 shortfall and a 13.6% subsidy, but if the 7.5% increase is with 102 children, it is down to a \$66,000 subsidy the bottom line being that the cost per child subsidy is only \$650/year, which is relatively low. On the child care program there was a \$315,000 subsidy, and the cost recovery is only at 65%. If the fee is increased by 15%, there is a \$227,000 subsidy with a 74% cost recovery. Raising the child care 50% would still result in a \$22,000 shortfall. To break even would require a 53.74% fee increase. The cost of privately provided child care for toddlers would be \$1,443 and preschool \$1,127 per month. At 53.74%, which would be full cost recovery, the cost would be \$1,916 and \$1,507. If the City is providing child care, it is going to lose \$483/month on the toddlers and \$380/month per child for the preschool. If child care is privatized, it can be provided at no cost to the City using existing rates.

Jeff Staudinger, with time donated by Lara Hoyem, said that in his estimate the direct costs are \$276,000 and not \$444,000 and every single program in the City is getting a subsidy. Direct costs go down to \$62,000, and the direct cost recovery rate is at 95%. MCC gets more than double the standard fee increase. The numbers in isolation may look bad, but that is not accurate. He proposed a 5% fee increase and supported the concept of a cost allocation study.

Mike Gardner, with time donated by Sophie Lo, spoke about the need to work together and unite the ethnic diversity of the community. He disagrees with wanting a full cost recovery when it is not applicable to every area of the city. He asked for a nominal increase before the results from the cost allocation study.

Joe Grass spoke about the value of child care. He called for the Council to not act prematurely but to wait until understanding is gained about what the real costs are. Parents whose wages do not meet those of others in Silicone Valley need refuge from market rates. The "Your City Your Way" survey on which a lot of this is based was flawed, and privatization would mean high teacher turnover.

Osnatt Loewenthal, with time donated by Mr. Roarke, said that many of the parents do not want the center privatized and would agree to a slight increase just to keep the program as it is. He questioned why the RFP is still in place. More child care should be supported without privatizing.

Jonathan Granot, with time donated by Orit Granot, said that it was a shame that the parents with young children had to wait for so long to speak. Educating kids should not be viewed as a business, and young kids should be treated as an asset and given top priority. He would seriously consider moving to a more child-friendly City if the fees were increased by such a large amount.

Sophie Loo, with time donated by Rico Mendez, is concerned that the teachers will change and having steady faces and a solid environment is important for the children.

Without objection, the Public Hearing was deemed closed.

City Attorney McClure pointed out that if any of the proposed fee increases would have a direct, material financial impact on individual Council Members that they should recuse themselves from that specific fee. Mayor Pro Tem Fergusson explained that she has a child who attends the Burgess School Age program so she would recuse herself from that issue.

M/S Jellins/Duboc to approve the Police Department fees. Motion carried unanimously.

Kent Steffens, Public Works Director, explained that Public Works' revenue increase from the fees will be minimal. Encroachment permits are required for any company or individual doing work in the public right-of-way. The fee for debris boxes for less than 30 days is currently \$100, and the proposal of \$131 was suggested to encourage citizens to use them expeditiously. The weekly fee of \$50 would make the fee for two weeks \$100. An alternative would be to place the box in their driveway. Council Member Duboc suggested that staff monitor whether fee increases pertaining to banners and barricades has any impact on people availing themselves of those. Council Member Winkler suggested that a refundable deposit be instituted as an incentive for individuals to remove banners.

The suggestions made by the Chair of the Environmental Quality Commission (EQC) were an alternative to the fee schedule in the proposed staff report to increase the tree removal permit from \$100 to \$125 for a single tree up to three trees on a particular project, lot or development, and \$75 for additional trees beyond three. Staff sees it as a reasonable compromise.

M/S Fergusson/Duboc to approve the Public Works fee changes with the exception that the heritage tree fees follow the EQC's Chairs recommendation with an increase in the appeal fee. Motion carried unanimously.

Mayor Pro Tem Fergusson believes that community development fees are an area where the cost allocation and cost recovery study could help in allowing the City to reap perhaps hundreds of thousands of dollars in savings. Mayor Jellins pointed out that it could work both ways. Mayor Pro Tem Fergusson said with regard to the preschool and toddler programs at MCC the speakers brought up some good points and she believes a needs-based subsidy might be the correct answer. MCC is also pursuing accreditation, which will help to quantify it and make a better comparison across programs. The shortfall is \$134,000 in the child care program, which is a gap that can be worked on. All things considered, she believes the fee increase should be more in line with the past several years of roughly 6%.

Council Member Winkler pointed out that everyone is paying higher taxes in Menlo Park, and many taxpayers resent that child care is being subsidized at almost \$6,000/child. She reiterated that the staff recommendation is 15% and not 22%. She supports the staff recommendation citing emails from residents who do not think the City should be in the child care business unless it can do an efficient and excellent job. She is committed to the idea that the program not be subsidized in the future. Ms. Winkler believes children are incredibly important, but with the limited pie, there are many parents paying for private child care for their own children who do not believe they should also pay to subsidize child care for others. Council Member Duboc supports all fees included with the exception of the school-age child after-school program but believes it is important to explore alternatives. Council Member Cohen suggested a 5% increase and no more with regard to the child care programs.

M/S Cohen/Jellins to accept the miscellaneous child care fees, Burgess Recreation Center room rental fees, and the new fees in the child care program. Mayor Pro Tem Fergusson made a friendly amendment to add in the school-age summer program as recommended by staff. This was not accepted by the maker or the second of the motion.

The original motion carried unanimously.

M/S Duboc/Winkler to accept staff recommendation to accept the balance of the fee increases recommended by staff, which would be Menlo Children's Center school-age child care summer program fees and the Menlo Children's Center early preschool and preschool program, which does not include MCC school-age child care after school program fees.

Council Member Cohen said if there is any problem in the City, it is that there is not enough good child care and there is not a need-based subsidy system. Mayor Pro Tem Fergusson said that the jump of 15% is simply too much. The community spoke in the "Your City Your Way Survey" in which the increases had very little support. Council Member Duboc pointed out that there are a lot of new people in the City who are choosing other alternatives for child care. Other cities have looked at the issue, and Menlo Park is catching up in its evaluation of this. Council Member Winkler stated that the only way to cut the budget is to reduce the number of employees, which is sad but the absolute truth.

Alternate motion/second by Jellins/Fergusson to adopt:

- **The proposed fee schedule with a 10% increase for the 5-day programs**
- **The set schedule of fees for the three-day programs as recommended by staff**
- **The \$1/day increase in hot lunch fees as recommended by staff**
- **The staff recommendation for the summer program fees**

Vote on the motion to substitute: Motion carried with Winkler and Cohen opposed.

Vote on the substitute motion: Motion carries 4-1 with Cohen opposing.

With regards to the MCC school-age child after-school program, staff recommendations are to increase the fee 7.5% and to add afternoon kindergarten full-time, five-day and afternoon kindergarten part-time, three-day.

M/S Winkler/Duboc to accept staff recommendation. Motion carried with Duboc, Jellins and Winkler in favor, Cohen opposed and Mayor Pro Tem Fergusson recused.

F. REGULAR BUSINESS

1. Review of and potential direction on the Fiscal Impact Study and PEER Review for the proposed hotel and office development at 2825 Sand Hill Road. (Postponed this Item to a date certain.)
2. Adoption of Resolution No. 283 of the Community Development Agency of the City of Menlo Park authorizing the issuance of the Agency's Las Pulgas Community Development Project Tax Allocation Refunding Bonds, Series 2006; approving a Swap Policy; authorizing the execution and delivery of an Indenture, a supplemental Indenture, an escrow agreement, an interest rate swap and related agreements, a standby agreement and related agreements, a bond purchase agreement, and approving a preliminary official statement in connection therewith, and authorizing related actions (Attachment B);

Adoption of Resolution No. 06-01 of the City of Menlo Park Joint Powers Public Financing Authority Authorizing the execution and delivery of a bond purchase agreement by and between the Community Development Agency of the City of Menlo Park, the City of Menlo Park Joint Powers Public Financing Authority and Piper Jaffray & Co. and actions related thereto (Attachment C); and

Adoption of Resolution No. 5667 of the City Council approving the issuance and sale of not to exceed \$75,000,000 aggregate principal amount of Community Development Agency of the City of Menlo Park Las Pulgas Community Development Project Tax Allocation Refunding Bonds, Series 2006, and approving a swap policy for the City (Attachment A).

Carol Augustine, Finance Director, said the purpose of the refunding is the savings of approximately \$3.5 million in debt service while not extending the debt. More dollars will be available to the Agency for redevelopment projects in the project area. An upgrading of the Agency's debt has been attained, and there is also a commitment for the backing of the insurance. The risks have been identified and

mitigated to the extent possible. Progress has been made on the terms of the Swap Agreement, which is being finalized. The market is behaving well for the bond issuance, and the approval of the attached resolutions would authorize the City Manager to take the necessary steps to finalize the implementation of the bond issuance and the Swap Agreement with Piper Jaffray, approve the swap policy for the City and the Community Development Agency.

Mark Curran added that the savings will not accrue to the General Fund but will only deal with the redevelopment programs and the capital improvements, economic development and housing improvements that are done in the project area. Every one basis point costs the Agency between \$65,000 and \$70,000. The savings are going to be around the \$4 million threshold on a net present value basis. He said the goal is to lock the rate in on Thursday morning if the appropriate resolutions are adopted. The City Manager would make the judgment call as to the precise day on which action is taken. Ambac insures the bond lending at their triple-A credit rating thereby decreasing the cost of the bonds to the Agency. The independent rating agencies reinforced the multiple ways that Ambac maintain it's triple-A credit rating in order to stay in business and to be the insurer of choice. There are checks and balances written into the proposal, and this is a way to get more money into the Redevelopment Agency with fewer finance charges.

M/S Jellins/Fergusson to adopt and approve the three resolutions referenced. Motion carried 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

Mayor Pro Tem Fergusson attended a sad but uplifting event held in honor of East Palo Alto Officer Rich May who was killed January in an act of gang violence. His family has established a new project in East Palo Alto in conjunction with Redwood City's Friends for Youth, which is a youth mentoring program.

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

Hank Lawrence commented that it is important that citizens be allowed to disagree with Council, but when they approach the dais in a threatening manner with violent, inappropriate language that some action needs to be taken. Secondly, there should be a perimeter saying that individuals cannot approach the dais unless invited to do so or unless they request permission. Lastly, Mr. Lawrence opined that any time a Council member has an issue or problem with a member of staff, it would be best to resolve it before the meeting and not make public implications that they are less than truthful or not up to the task.

K. ADJOURNMENT – the meeting adjourned at 11:40 p.m.

Respectfully submitted,

Silvia M. Vonderlinden, Certified Municipal Clerk

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