



**CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, September 12, 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, William McClure, City Attorney and City Clerk Silvia Vonderlinden. Other staff members were in the audience.

PLEDGE OF ALLEGIANCE

A. COMMISSION VACANCIES, APPOINTMENTS AND REPORTS

1. Appointments to the Parks and Recreation Commission.

Mayor Jellins announced that appointees will serve until September 2010.

He opened the floor for nominations:

Council Member Duboc nominated Kelly Blythe

Mr. Blythe is appointed with Mayor Pro Tem Fergusson opposing and Council Member Cohen abstaining.

Mr. Blythe was appointed to the Parks and Recreation Commission.

Mayor Pro Tem Fergusson nominated the incumbent Paula Maurano.

Ms. Maurano is appointed unanimously.

Mayor Pro Tem Fergusson nominated Noria Zasslow. Ms. Zasslow obtained the votes of two Council Members (Cohen and Fergusson).

Council Member Duboc nominated Nick Naclerio.

Mr. Naclerio received the votes from three Council Members (Jellins, Duboc and Winkler.)

Mr. Naclerio is appointed to the Parks and Recreation Commission.

2. Commission members and Chamber of Commerce reports.

Patti Boyle, vice chair of the Housing Commission, said that the Commission voted to support proposition 1C and she asks that Council do the same. She mentioned the reasons why this would be beneficial to the community and how she supports affordable and emergency housing.

Mayor Jellins said he asked the City Manager to place on a future agenda Propositions 1A, 1B, and 1C for consideration.

Fran Dehn, with the Chamber of Commerce, spoke about the "Rebuilding Together Peninsula" organization that provides home repairs to low income families. She provided details on the number of hours donated and invited the public to call the Chamber for details and to be matched to a project.

B. PRESENTATIONS AND PROCLAMATIONS - None

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

Heather Calk requested a deviation of code 9.26.030. She said she has three chickens that she would like to house in the garage at night for safety. She hopes the Council can place this on a future agenda to consider a code change.

Matt Henry, with time donated by another speaker, addressed plans to change the Menlo Park Senior Center's name. Mr. Henry said when this came up at a neighborhood meeting there was little support. He said that the Menlo Park Senior Center means something to the residents. He thought it would have been common courtesy to have communicated better on the issue.

Morris Brown spoke as a representative of Menlo Park Tomorrow and referred to a letter he sent regarding the Derry Project. He believes greater outreach should have been conducted and he asks Council to reconsider the matter on Consent Calendar. He is accepting volunteers to sign the petitions and asked Council to reconsider the matter.

Elias Blawie opined that the Derry project is too dense and he urges the reconsideration of the Derry Project. He believes the project has negative elements and it does not offer enough public benefit. He believes this project is fundamentally a developer give away. It is his opinion that the public is being taxed by the significant negative impacts and he believes this is a bad process and he can't support it. He believes it is poor zoning and negative policy.

Don Brawner, with time donated by Richard Cline, commented that in his view the Derry project is in violation of the General Plan. He asked if any of the Council read the Environmental Impact Report, because he found many problems that are being overlooked. He does not believe there is a need for housing. Mr. Brawner does not think Council is bound by decisions made by the Planning Department. He said the Council and the Planning Department can legitimately turn down any project that requires a General Plan amendment and rezoning.

Frank Carney added his voice to previous speakers and asked Council to reconsider the Derry project. He opposes this project because he finds this project too dense, the structures are too high and it is not in the best interest of Menlo Park. He asked Council to reconsider the project and move forward if the developer does not want to negotiate.

D. CONSENT CALENDAR

Item D1 pulled

1. Waiver of the reading and adoption of ordinance no. 953 amending Chapter 16.57, Planned Development District; and waiver of the reading of ordinance no. 954 and adoption rezoning property located at 550-580 Oak Grove Avenue and 540-570 Derry Lane from C-4 (General Commercial – applicable to El Camino Real) to PD (Planned Development).
2. Approval of the minutes for the City Council Meeting of April 18, 2006.

M/S Duboc/Fergusson to approve D2. Motion carries unanimously.

Discussion on item D1

Mayor Pro Tem Fergusson is hopeful that Council will reconsider some of its actions at its last meeting. She does not believe the Council should be giving away prematurely a General Plan amendment to the Derry Project and the Cadillac project. She views this project as being granted a large density bonus and the City is sending a signal to other developers that in Menlo Park density may be given away by meeting the bare minimum requirements. She believes the City is losing a cultural resource – the Fosters' Freeze. She would like to have the developer place \$1.5 million on the table for historical preservation and she finds the Park Theater a cultural landmark.

M/S Fergusson/Cohen motion to reconsider the matter.

Council Member Duboc said that the Foster's Freeze will stay in the city. She asked about fees and Megan Fisher, Assistant Planner, outlined the fees that had been mentioned in the staff report and the additional \$100,000. Staff explained that the fees included: a recreation in lieu fee of \$4.3 million, a traffic impact fee of \$97,500, the building permit fee is \$270,000, the construction street impact fee is \$214,000, and then the \$100,000 fee for a study to examine the opposite side of El Camino Real. Council Member Duboc asked how long this project has been going through the process and if there were opportunities for public input. Staff said it has been going on at least since 2004 and Ms. Fisher said that there were 11 public meetings on this matter and an environmental

report was prepared. Ms. Fisher said that the EIR was noticed in the paper and the residences within 300 ft received a notice in the mail. Council Member Duboc asked if the public spoke at the Planning Commission hearings on the EIR and Ms. Fisher said there was one resident who questioned the sound wall.

Council Member Winkler spoke about a contribution of a crosswalk light at Oak Grove Ave. and a contribution to the shuttle fund and creation of a road that goes from Ravenswood to Encinal. She believes that Foster's Freeze has been on notice for many years and is quite happy with the resolution. Council Member Winkler asked particular questions about section 16.57.050 and City Attorney McClure explained that this is a restatement of the current zoning ordinance. Council Member Winkler is comfortable with the project and believes that the City is getting a good deal. Council Member Cohen stated that Menlo Park has a housing shortage but he does not believe these units will be affordable to many. He shared concerns with the increase in density and the various unmitigated issues. He finds that the danger of flooding was not adequately addressed.

Mayor Jellins asked the City Attorney about the General Plan amendment and Mr. McClure explained that the current action enables other applications for projects but it does not automatically grant any benefits to other projects. Mayor Jellins asked Mayor Pro Tem Fergusson for clarification on some of her points. Mayor Pro Tem Fergusson explained that this plan is not consistent with the General Plan density and while we are getting mitigations the additional benefits are not sufficient because the developer is paying the minimum mandated fees. Mayor Jellins said that many of the commitments made by the developer are above and beyond the requirements. He also added that there have been many months of dialogue to find a compromise between what the developer was willing to provide and what the city is granting. Mayor Jellins also stated that the Foster's Freeze matter is not an issue because a letter explained that this business will remain in Menlo Park and they are happy with the arrangement. Council Member Winkler believes this project is an asset to the community because of its location and proximity to downtown. She fears that blight will be the result of holding back developments such as these and she asks residents to think carefully prior to signing the petitions.

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

M/S Duboc/Winkler to approve D1 as submitted.

Mayor Pro Tem Fergusson said that she was disappointed that the issue of public benefit was not fully addressed. She will vote for the project because this is the correct location for density and transit oriented development, but she does not believe the Council has done its job. Mayor Jellins disagreed with comments made by Mayor Pro Tem Fergusson regarding the public benefit issue. Council Member Cohen commented that trying to trivialize the expressed dissatisfaction with the project is an echo of what happened when anonymous emails were criticized by certain Council Members. He believes a General Plan review should take place prior to moving forward and so he supports Mayor Pro Tem Fergusson. Council Member Duboc said that this is an ironic night because housing is needed as explained by the request to endorse proposition 1C. She believes this kind of housing is good and the construction costs will be above \$60 million and it is an investment in our community. She wonders if we're not becoming a community that is too closed-minded. She encourages people who are asked to sign the petition to think long and hard. She hopes residents look at this and ponder what kind of city they want it to be. She said that residents could have made their concerns known earlier and not wait until the last minute to provide opposition. Mayor Pro Tem Fergusson asked Council to reconsider the items she mentioned before and while she is disappointed that we are not getting enough in return, she will support the project.

Motion carries 4-1 with Cohen opposing.

E. PUBLIC HEARING

1. Adoption of resolution no. 5702 approving the 2005 Urban Water Management Plan.

Pat Stone, Supervising Engineer, explained in detail the Water Manager Plan and the Menlo Park Water District. He mentioned that this plan would serve as a tool to manage the water system for the

upcoming years. It is necessary for grants, state loans for compliance with the State Department Water Resources and the Urban Water Management Plan. Mr. Stone said that wholesale water costs are expected to increase because of the expected shortage in this resource. The increasing water costs are believed to help motivate customers to reduce consumption and the city in promoting conservation. Mayor Pro Tem Fergusson asked if Mr. Stone was referring to the City's Menlo Park Municipal Water District which serves about one third of the residents. Staff confirmed that was correct.

Council asked about CalWater and Mr. Stone said that this organization is the one that serves most of residents in the city. That organization also has to submit a similar plan and such document is available for review if need be.

Mayor Jellins announced this was a Public Hearing. There was no public comment.

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

Mayor Pro Tem Fergusson asked about monitoring distribution systems so that problem areas can be detected in case of an earthquake. Kent Steffens, Public Works Director, said that currently there are none in the city, but with the new reservoir, staff is looking into a SCADA (Supervisory Control and Data Acquisition) system. Mr. Steffens answered questions from Council in regards to seismic retrofitting and the issue of global warming. He also explained that storage in the eastern part of the system is a concern and staff is studying the matter and is addressing a possible improvement. Mr. Steffens concluded that global warming may not directly impact the water supply in this area based on long range models and the fact that the Hetch Hetchy is at a high elevation.

M/S Fergusson/Duboc moved adoption of the plan. Motion carries unanimously.

F. REGULAR BUSINESS

2. Consideration of information regarding employee salary and benefits and receipt of public comment relating to upcoming contract negotiations.

Glen Kramer, Personnel and Information Services Director, presented the report. He said the report provides background information on practices used by the City, base wage rates, CalPERS retirement system, and health insurance and retiree health benefits. Council Member Duboc thanked Mr. Kramer for the report. She would like to encourage staff to begin comparing and bench marking with the private sector. Mayor Pro Tem Fergusson asked about appendix B, retirement benefit, highlighted in the staff report. Mr. Kramer said that this pension benefit covers 182 employees and this is 2% at 55. The employee pays into the plan 7% annually and the city pays an additional amount. Mr. Kramer provided details on the City payments into this system and how there were years where the City contribution was none. He explained that there have been spikes and losses over time, but now there is a system in place whereby the payments by the City are more stable and can endure different returns on the CalPERS investment. Mayor Pro Tem Fergusson asked if we have an unfunded liability. Mr. Kramer said that the system is a funded system.

Council Member Winkler asked about the \$13 million on unfunded OPEB (other post employment benefits) liabilities over the next 30 years. Mr. Kramer said this is not included because the Finance Director will come back with a plan for that particular item later this year. Council Member Duboc asked about the increase in benefit for the safety staff and the increase in the cost. Mr. Kramer said that the enhanced benefits rates of 3% at 55 and 3% at 50% were enacted by the legislature in 1999 and 2000 when the return on investments was very good. He said that the Council at that time decided to provide the benefit to remain competitive. Mr. McClure explained that the City does not contribute social security for employees and the employee contributes 7% with the City paying the rest. This is a fully funded retirement program for its retirees.

Council discussed the number of employees in the city in comparison to other communities. Mr. Boesch explained that other cities are not a full service provider unlike Menlo Park, hence their lower number of employees. Council asked questions about the CalPERS fund, and Mr. Kramer said that

there is fund of about \$208 billion that goes into the retirements and a board of directors makes decisions on how these funds are invested. Mayor Jellins asked if the City has a say on policy making. Mr. Kramer said that we don't because that is a task of the CalPERS Board of Directors. Council discussed the increased costs of CalPERS contributions.

Public Comment

Chuck Bernstein said that he served on the Budget Advisory Committee (BAC) and he would like the negotiations to be a more public matter and not held in Closed Sessions. He supports a defined contribution pension plan without guaranteed benefits. He asks that the City move employees to the social security system.

Council Member Duboc asked what capability the City has to change our benefit system and Mr. McClure said that we would need a two tiered plan that covers previous/current employees and future new employees.

Doug Scott said that there are three major costs for the plans: the cost, how long retirees will live and the rate of return. Mr. Scott compared the plan being discussed to other states. He said that other states offer 2% at 55. He said that the current plan costs too much.

Nicole Lance said she finds this out of place to discuss employee benefits in public. She supports forging partnerships between the public and the private.

Elias Blawie is confused about the agenda topic because the discussion is more general, focusing only on the benefits and not salaries. He does not believe this should be discussed in a public forum. Mr. Blawie said that the social security information was incorrect because it is capped on the employer and the employee side. He urges more long term planning and include the BAC.

Hank Lawrence shared concerns with the unions. He asks Council to report the union for its alleged practices. He believes outside legal remedies are needed to counteract recent actions by a certain union.

Riko Mendez, representing SEIU local 715, said his organization represents City employees and these are the people that provide the services valued by residents. Mr. Mendez said that his organization did not write anonymous letters or intimidate anyone, and he said that if any of the SEIU members would engage in these practices they would be fired.

Council Member Winkler commented on the issue of salaries. She asked about more openness in the process and Mr. McClure said there is limited amount of public discussion because of State law. He added that the negotiations cannot take place publicly, but ultimately the agreement is public and people can comment on it. Council Member Winkler said that bench marking is being done against other cities but it doesn't have to be that way necessarily because there is a perception that public sector currently has higher salaries than the private sector.

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 ITEM

1. Update on the backlog of City Council Meeting minutes and staff's approach to making these documents available to the public.

Mayor Jellins said that in previous years he has seen delays on the approval of minutes of over one year, and so he recognizes the tough task this is. He moved to table the matter until the approval of the video stream contract item comes before Council. No second was made on the motion. Mayor Jellins supports action minutes for past and future minutes because of the technology available and the City Clerk's workload. Council Member Duboc asked about the cost of the current video stream

and Mr. Boesch said that service is currently free because of a grant, but this matter will be before Council next week. He said that the proposal is to allocate \$10K to update 15 sets of minutes that are backlogged. Mr. McClure said that action minutes are a legal way of recording the actions of the Council. Council Member Duboc commended staff for its diligence in doing the best it can with the resources available.

Mayor Pro Tem Fergusson would prefer to have summary minutes for the ones that are backlogged. She believes there is a benefit to having a description of the Council discussions. She said that she has heard frustration with the current video stream. She supports hiring an outside vendor to address the backlog. Council Member Winkler said that frequently the minutes are turned back to the City Clerk for edits and she said that she does not find the minutes the best way to get the full picture. She finds the video stream a very user friendly system and she supports action minutes.

Elias Blawie is a corporate lawyer and takes minutes on a regular basis and he produces three to four sets of minutes per month. Mr. Blawie believes this is a question of priority and a certain level of resources are needed to address this task. He does not believe video stream is sufficient.

Mayor Jellins' motion died for lack of a second. Council Member Winkler asked if there were complaints about the current video stream matter. City Clerk Vonderlinden said that "yes" there have been complaints because of the application used. Mr. Boesch asked that the two matters be split and that staff continue with this approach. Mayor Jellins asked that both topics be addressed next week. **The Council agreed with this approach.**

I. COUNCIL MEMBER REPORTS

Mayor Jellins said he attended the Annual Convention of League of CA Cities and at the Business Meeting he voted on four items regarding legislation. Mayor Pro Tem Fergusson reported that she also attended the same conference. She found all the sessions very interesting.

Council Member Winkler would like to address the timing of the Commercial Zoning Ordinance Update in a future agenda. Council consensus was to place this matter on the agenda for next week. City Manager Boesch said staff could have a regular business listed on the agenda but since the Working Group meets on Thursday this would be too late to be included on the agenda packet.

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

K. ADJOURNMENT – the meeting adjourned at 9:54 p.m.

Respectfully submitted,

Silvia M. Vonderlinden, Certified Municipal Clerk

Approved at the Council Meeting of November 28, 2006.