



**CITY COUNCIL
COMMUNITY DEVELOPMENT AGENCY
MINUTES**

Tuesday, December 19, 2006

7:00 p.m.

701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers

5:30 p.m. CLOSED SESSIONS (First Floor Conference Room – Administration Building)

1. Closed Session pursuant to Government Code Section §54956.9 regarding San Mateo County Superior Court Case Number CIV 452721 litigation Bonner versus the City of Menlo Park. Parties present: David Boesch, City Manager, and William McClure, City Attorney.

2. Closed Session conference with legal counsel-anticipated litigation significant exposure to litigation pursuant to subdivision (b) of Government Code Section §54956.9 two (2) cases: 75 Willow Road and 321 Middlefield Road. Parties present: David Boesch, City Manager, William McClure, City Attorney, and Arlinda Heineck, Community Development Director.

Mayor Fergusson announced a Closed Session that started at 5:30 p.m., and that there was no reportable business.

ROLL CALL - Fergusson, Cohen, Boyle, Cline and Robinson

Staff present: City Manager Boesch, City Attorney McClure, Acting Deputy Clerk Carson. Other City staff was present in the audience.

PLEDGE OF ALLEGIANCE

A. COMMISSION VACANCIES, AND REPORTS

1. There is one vacancy on the Housing Commission to fill an un-expired term that ends July 2009. The deadline for applications is Monday, January 8, 2007.

2. There are two vacancies on the Parks and Recreation Commission to fill two un-expired terms. The terms expire September 2008 and September 2009. The deadline for applications is Monday, January 8, 2007.

3. There are two vacancies on the Transportation Commission to fill two un-expired terms. The terms expire September 2007 and July 2009. The deadline for applications is Monday, January 8, 2007.

4. Commission members and Chamber of Commerce reports.

B. PRESENTATIONS AND PROCLAMATIONS - None

C. PUBLIC COMMENT #1 (Limited to 60* minutes)

Don Barnby welcomed the new City Council Members, and asked the Council to consider eliminating all parking in front of Celia's Restaurant. He submitted a petition signed by 50 residents supporting this request.

Walter Hays, a resident of Palo Alto, addressed the Council regarding global climate changes.

Bruce Hamilton, Executive Director of the Human Investment Project (HIP), addressed the Council regarding affordable housing. He thanked the Council for its support of this program.

Carson Rosenberg addressed the Council regarding Project Read.

Eileen McLaughlin, with time donated by Elizabeth Lasensky, spoke about the Salt Pond Restoration Project, and asked the Council to give this project prompt attention.

City Manager Boesch, commented briefly about the Salt Ponds and stated that the City is always informed when an Environmental Impact Report is being done that has impacts to the City of Menlo Park. When the document is completed the City staff will review it and report back.

Steve Van Pelt commented about the December 9, 2006 Community Forum brainstorming session. He was very impressed with the creativity and ideas.

Margarita Brisette from Project Read, stated she is benefiting from the program.

Several members of Project Read were in attendance and were acknowledged by Council.

Juanita and Michael Duggleby spoke in support of Project Read stating that there are a lot of students on the waiting list. They asked for help for this program.

Lucia Soto, a Project Read participant, thanked the Council and stated that the program helps her improve her English.

Betty Meissner welcomed the new Council.

Matt Henry talked about one of the Belle Haven programs and recent program changes.

Marcia Dore-Perez, with time donated by two other residents, talked about the Belle Haven child care program. She also feels that residents have been struggling to maintain and keep this program.

At the request of the Mayor, the City Manager briefly responded to the questions about proposed changes to the Belle Haven Program.

Ann Moser stated that one of her interests is affordable housing, and she is concerned that the message to developers is that Menlo Park is unfriendly to developers.

Elias Blawie asked the Council to be careful about instructing the public about their comments. He encourages the Council to embrace public input. He asked that the Council respect freedom of speech.

D. CONSENT CALENDAR

1. Approval of the annual report on the Below Market Rate (BMR) Housing Program and the status of the BMR in-lieu fees collected as of June 30, 2006, in accordance with Government Code Section 66000 et. seq. (Staff Report #06-225)
2. Community Development Agency Board approval of the Menlo Park Community Development Agency annual report for Fiscal Year 2005-06. (Staff Report #06-226)
3. Review of the annual report on the status of the Traffic Impact, Storm Drainage, Recreation in-lieu and Building Construction Road Impact fees collected as of June 30, 2006 according to Government Code Section 66001. (Staff Report #06-227)

4. Authorization of the Public Works Director to accept the work performed by Casey Construction, Inc., for the Oak Avenue Storm Drain Improvement Project. (Staff Report #06-229)

5. Approval of the minutes for the City Council meetings of October 10, 2006, (attachment); October 17, 2006, (attachment); October 24, 2006, (attachment); and November 14, 2006 (attachment).

The Mayor asked if any Consent items are to be pulled. Consent Calendar items D2, D3, D4 and D5 were pulled.

M/S Robinson/Cline to approve Consent Calendar item D1. Motion carries 5-0-0.

Mayor Pro Tem Cohen asked the Community Development Director, Arlinda Heineck, to answer questions regarding work on the Hamilton Avenue Project. Ms. Heineck responded that the project is in the works but has not been completed.

Council Member Boyle asked if there was flexibility on how the City approaches affordable housing and about using redevelopment funds. He also asked if affordable housing could become a goal for the Council during the goal setting process. He requested that this issue be placed as a high priority.

There was continued discussion regarding the Housing Element. An update is currently in process. Mayor Pro Tem Cohen asked about the kind of changes that can be expected. Staff said the changes will include: development sites, density, rezoning to residential, looking at sites that have been rezoned, another key component was to look at the goals and policy statements. Staff said that ABAG has regional allocations, and the City is obligated to meet state certifications and allocations and these may be hard to meet without increases in density.

Staff added that Housing Element cannot be certified unless the City meets the certified housing element and to not meet the requirements would prevent the City from applying for certain grants.

M/S Cohen/Cline to approve Consent Calendar item D2. Motion carries 5-0-0.

Consent Calendar Item D3

Council Member Boyle asked about increasing fees and Finance Director Augustine provided answers. Ms. Augustine stated there is no report on the numbers for an increase in fees. City Manager Boesch stated information will be forthcoming to the Council. A report will be done containing information and data volumes for analysis in order to deal with fees in the April/May time frame. When Council identifies items such as the Housing Element and Impact Fees they will then be prioritized by the Council.

M/S Boyle/Robinson to approve Consent Calendar item D3. Motion carries 5-0-0.

Consent Calendar D4

Council Member Cline asked if there is a list or schedule for storm drain work. He asked that the City identify when work will be done in areas throughout the City. He would like to see lists so that we can keep track and approach storm drain problems systematically. City Manager Boesch responded that we have a lot of information that comes to the City through a program to track and handle problems and complaints. The Menlo Park Direct Connect is a system used by the public and staff to track these problems. The City is responsive and always responds to residents. At this time of the year, a lot of times leaves clog storm drains. Mr. Boesch said that some of the problem areas are well known.

M/S Cline/Robinson to approve Consent Calendar item D4. Motion carries 5-0-0.

Consent Calendar D5

Council Member Cohen thanked the City Clerk for the hard work involved to catch up on minutes and expressed that he is happy that the City is caught up. It is his goal and hope that we stay that way and review the minutes from the previous meeting at each next meeting. Council Member

Robinson stated a remarkable job has been done and commends staff. He likes the quick turn around on action minutes and he appreciates the video stream and the summary minutes that come up the next day.

City Manager Boesch interjected that action minutes can be quickly turned around but summary minutes take more time. Mr. Boesch referred to the City Council packet schedule and reminded everyone that in order to turn minutes around by the next week would mean the minutes would need to be done in one day because packets are done every Thursday preceding the Council Meeting. Council Member Cohen would like the draft summary minutes that get posted the next day on the website to be brought before Council.

M/S Cohen/Cline to approve Consent Calendar D5. Motion carries 5-0-0.

Council took a break at 8:47 p.m. and resumed at 8:52 p.m.

E. PUBLIC HEARING - None

F. REGULAR BUSINESS

1. Discussion and possible direction to staff on previous Council actions taken relative to property located at 321 Middlefield Road. (Continued from Written Communication G-1 of the City Council Meeting of December 12, 2006.) (Staff Report #06-228)

City Attorney Bill McClure started the discussion by providing a legal analysis. He explained that a Use Permit was granted, and that it becomes final when approved by the Council. Options were provided to the Council about the action they could take. When an applicant has vested rights there is a much higher standard to demonstrate what harm can be caused or if there is significant new information. The City needs to prove detriment and harm caused by going forward with the Use Permit. He has not seen any new information that shows detriment. The Mayor asked in a sentence or two what action the Council can take. In response, City Attorney McClure stated the burden is on the City to prove there is new information that causes harm by allowing the Use Permit.

Former Mayor Dee Tolles spoke highly about the quality of the developer. He stated that he has known the developer for over 30 years. He has done banking business with them and they do have integrity. He stated that they have gone to great extent to make this project work.

Scott Fross stated he is a surgeon currently practicing on Welch Road who will be displaced. He says his patients are comprised of 75% Menlo Park residents.

Nancy Hosay would like to talk about 321 Middlefield Road, and will wait to discuss the development at that address.

David Mullens stated that he practices on Welch Road as well, and that a lot of his patients are from Menlo Park. If the project does not go through, there will not be options for the doctors or the patients. If the private practitioners have no place to practice they will need to go somewhere else.

Steve Schmidt asked the Council not to act hastily against the previous Council's actions. In his opinion neither project is unusual for Menlo Park. Withdrawing these projects is similar to the vindictive actions of the previous Council. He suggested the Council move on.

Amy Arnold, a resident of the Lindfield Oaks neighborhood, asked if she could wait and speak after discussions ended regarding 75 Willow Road.

Jim Pollack spoke about their project. He talked about their fiduciary obligation. He says they have worked with neighborhood groups, and that they met with the Council several times. This project will allow doctors a place to practice.

Wesley Skow requests the Council take no action tonight. Two and a half years of work have gone into this project. He respectfully requests that the Council honor this project.

Brian Gaffney, representing the Linfield Oaks Neighborhood Association with time donated by another speaker posed questions about the noticing. He opined that the Environmental Impact Report is inadequate, and that findings have been made that he thinks are invalid. He believes transportation impacts were not considered as well as the removal of heritage trees.

Chuck Bernstein stated that in his opinion the only issues at hand are the merits of this project. That should be the focus. To increase traffic at intersections that are already at max is unthinkable. He asked that the Council revoke this project.

Elias Blawie said he wrote a lengthy letter about this project, and stated that he believes the applicant has not been forthright. He opined the applicant was not honest about his preemptive appeal. The stated reason at the time was that so the current Council who had experience could see it to the end.

Pat McGaraghan, a lawyer with DLA Piper Law Firm, spoke about a Deed of conveyance. The Pollack Corp. is a partner owned by many, many investors that sold the property on June 30th. She added the property was sold and there was 45 days to purchase a replacement property and 180 days to get the benefits of the exchange by re-investing. The description was that the project would be medical office use and titled as such. The appeal was designed to give notice of the proposal as required. An appeal can be filed anytime within the appeal period. The approvals were final on November 28th. Nothing he has heard tonight suggests any new findings and he asks Council to support moving this project forward.

Don Brawner, with time donated by Tony Reynolds, talked about the zoning and stated it was zoned to prevent additional crowding. He opined that residents in this neighborhood do not want another Palo Alto Medical Foundation in Menlo Park. In his opinion, there is no justification for medical use at this location.

Mayor Fergusson asked the City Attorney to explain a statement made regarding the appeal process, and the comment about the timeliness. City Attorney McClure stated the argument by Mr. Gaffney is that someone has the right to appeal an action. It was a motion to reconsider the motion. The action taken was to reaffirm the decision. Robert's Rules of Order states you cannot appeal a motion to reconsider. The second item that rose was that there were no rights because of an outstanding appeal assuming there was a valid appeal. There was an appeal by Mr. Brawner within the period of time. The letter was accepted. It is his understanding that Mr. Brawner received notice of the appeal hearing. The merits of all of the issues were considered by the Council when they acted on November 28th. Someone that alleges that they have a right doesn't mean they have one. The action of the City was final. Mayor Fergusson asked if there are sufficient grounds for revocation. According to the City Attorney, in his opinion the Council does not have the legal ability to rescind the previous action. There is a legal argument that the Council would need to notice to rescind but he doesn't think this Council has the right to rescind. City Manager Boesch was asked to respond to the criticism regarding the Council's process to amend ordinances dealing with appeals. Those are important follow-up items and staff would need direction to study medical use, and changing the appeal process.

Council Member Boyle asked about the comment made about risk of expansion if we let one medical use in it's going to grow to more medical office space. Does this use permit make it easier? City Attorney McClure said the answer is no. Any other project would need to go through the Use Permit process and it depends on the zoning requirements. This is not a binding precedent for any other application in the vicinity of this property. Another question was asked about the Traffic Impact claim that the report was invalid. On what basis does the Council decide this matter? City Attorney McClure explained that the City Council or the Planning Commission receives the EIR. If the Planning Commission receives the EIR it reviews the report and certifies the report as

being adequate. They make a finding. They could make a finding that it is inadequate and it would go back to staff for more findings. The public can challenge the EIR or the City in litigation. There is a 30 day review period for someone to file a legal challenge. Council Member Robinson asked about a document that was given to the City Attorney. It is the Pollack Corp. deed that was recorded on December 4, 2006. Council Member Cline questioned traffic mitigation discussions. What is the impact long term? Staff said that one condition of approval for this project includes the cost for traffic signal improvements. Staff would advise Council to review traffic implications. Staff added that the money can be used for traffic calming in this neighborhood or another neighborhood in the City.

Mayor Pro Tem Cohen asked about the election of the previous council and what was its first act? City Attorney McClure stated that the first act was to repeal a Residential Ordinance; the second act was that it did not renew the application for two Planning Commissioners. Mayor Pro Tem Cohen stated they made new appointments and that he assumes they made the appointments based upon members that agreed with their agenda. He then asked whether there was an investigatory process? City Attorney McClure said the use has to be proven to be harmful and a detriment. It is not typically initiated if this is brought to the City beforehand. This would be time consuming. The act of revocation can only follow setting a Planning Commission public hearing, evaluating the evidence, and making a recommendation to the City Council before the City Council can act.

Council Member Robinson stated this project is very close to 110-175 Linfield, and the impact to this neighborhood should be acknowledged. He believes the neighborhood is carrying the burden of the City increasing housing density and valid concerns have been raised about the process. He stated he is committed to reviewing these issues at the Council Goal Setting. There is also some validity to the comments that Stanford may be creating this displacement of doctors by their expansion projects. There will be pressure by surrounding communities to absorb the displaced medical offices. During the campaign it was talked about to give a clearer vision of where Menlo Park is going. He listened to the City Attorney and believes there is no action to be taken.

Council Member Cline commented on the appeal. In his opinion, it put the applicant in an advantageous position. He does not like this type of process because it seems like manipulation. Council Member Cline said that in terms of medical buildings Council Member Robinson summed it up very well. There is a lack of sales tax and when Stanford has a beautiful place completed there may be the potential of doctors wanting to go back to Stanford. El Camino Real will be impacted. Santa Cruz Avenue is already starting to erode. Projects are coming and Menlo Park is being asked to respond.

Mayor Pro Tem Cohen said he was hopeful that this would be a different Council with a new way of doing things. He wants to make sure the message goes out that things will be different. He agrees with former Mayor Tolles that Mr. Pollock is a man of integrity. He believes the residents have been loud and clear about their concerns of traffic, safety, cut-through traffic and medical office use.

Mayor Fergusson provided a summation of what she had heard. She explained that initially she voted against this project because of the intense use. Tonight the question is whether there are sufficient grounds for revocation, and there have been two more meetings to discuss this item. Her conclusion is that there is not sufficient information for revocation and she is not willing to take action.

2. Discussion and possible direction to staff on previous Council actions taken relative to property located at 75 Willow Road. (Continued from Written Communication G-1 of the City Council Meeting of December 12, 2006.) (Staff Report #06-228)

City Attorney McClure expressed that the Council cannot legally rescind the ordinance because legally this action would be invalid. If the Council wanted to change the zoning back to C1A, the Council could direct staff to initiate the process to amend the General Plan, to change the land use designation. There are issues with vested rights and property rights but the City would need to go

back to the Planning Commission and it would need CEQA (California Environmental Quality Act) analysis. The process would need to be completed before building permits were issued. Staff would need direction on this process. Another matter that the Council could consider is a possible moratorium to place a hold on this project. Moratoriums require a four-fifths vote of the Council. This could be considered separately but there is no action tonight to rescind. It would be appropriate to ask staff to return with a timeline to return to Council if those are Council's wishes.

Council Member Robinson asked about a letter that states SummerHill has due process rights and asked the City Attorney to comment. City Attorney McClure responded that there are rights to due process. For example, the tentative map and the General Plan amendment were final when adopted. There has been no request up to this point to change that. The General Plan and zoning could be changed if due process was followed. Council Member Boyle asked for an estimate on the time frame to amend the General Plan. City Attorney McClure thinks three to four months on the short side, and noticing would be required and the matter would need to go back to the Planning Commission.

Public Comment

Nancy Hosay asked the Council to consider a General Plan amendment and a moratorium for 75 Willow Road. She feels this has been a frustrating process. The neighborhood has been interested in this project from the beginning and she asked the Council to reconsider the development.

Frank Carney asked the City Attorney if the first action by the previous Council was to vote in Nicholas Jellins as Mayor. He stated that he is personally insulted by the comments of former Mayor Steve Schmidt. The residents spent hours voicing their opposition to this project, and he feels they have been ignored. Many of the residents in his neighborhood oppose this project.

Joanne Goldberg provided the Council with a visual aid. She opined that no one ever discussed whether it was appropriate to convert this property to residential.

Mr. Gaffney disagreed with statements made by the City Attorney.

Don Brawner, with time donated by Tony Reynolds, gave the Council information and he believes there is a lot of new information. He opined that there was no chance to share the information before.

Vince Bressler spoke what he believes is the problem with this project which is the building is a big part of the Sunset complex. He believes residents have been ignored.

Chuck Bernstein urged the Council to rescind this project. He believes the General Plan is internally inconsistent internally and so it is easy for the developer to get the changes. He asked Council to vote to rescind because in his opinion this kind of density is not good for the City.

Elias Blawie supports Mr. Schmidt's comments and it is his opinion that there is a problem with the Planning Commission. He would like to see a review of how to properly amend the General Plan.

David Speer asked Council to act tonight. He is appalled at the process.

Elaine Breeze with time donated by another speaker referred to a letter she submitted this afternoon and the goal was to provide clarification. Ms. Breeze outlined the various changes to the site plan and highlighted that all city commissions approved the project. She referred to the number of meetings that took place and the fact that there will be a traffic reduction. She added that SummerHill will fund traffic improvements and has committed to a large donation to the school district. In addition, Summerhill will provide pro-bono help to assist Peninsula Habitat for Humanity in moving forward with the Terminal Avenue site.

Andrew Faber agreed with the City Attorney and in this case, the EIR was dealt with properly so that all merits of the project were dealt with. He believes there is nothing to appeal and when Council made its decision they had all the information in front of them.

Matt Henry doesn't like the way the developer has handled this and the way this project is being tied together with another City project.

Council discussion

Mayor Fergusson listed the things that she had as issues. She believes the comments were included in the final EIR and the comment letters were included in the EIR. The courts could set this aside if the proper process is not followed. The General Plan is legally required to include how land can be used. Land Use designation is a map that shows how the land can be used. To change a land use from commercial to residential you have to change the General Plan. The fire department has reviewed and approved the project. The City has approved five Below Market Rate units, SummerHill proposed an alternative agreement to help the Terminal Project, however that project has to go through its own approval process.

Council Member Boyle asked for more information about a moratorium. City Attorney McClure said it would be for a stated period of time no building permits would be issued for this project until the City determines the appropriate land use for this site. Depending on the direction of the Council, it could be a limited moratorium or more broad. There is an obligation that when projects come through the door they must be processed. You must be careful with moratoria, there could be unintended consequences. There is an ordinance process and a public hearing process.

Council Member Boyle thinks this was a fair process. There should be compelling reasons to change this. He does not agree with Mr. Bernstein. Sure, there's less traffic if it is an empty, well-maintained building. Traffic will be worse if the building is leased out to full capacity. Residents who live in the neighborhood are more sensitive to the needs of the neighborhood. Nice proposal for "medium density homes". We have a project on the table. Let's move forward and stop looking backwards.

Council Member Robinson says it seems too easy to amend the General Plan and he believes we need to look at ways to strengthen the process.

Council Member Cline thinks there was a lot of work put into this project. There were too many plans and bad timing. The community has been over-exposed. Not comfortable asking this community to tow the line. There is a lot of good with this project. There are neighborhoods that have not seen development.

Mayor Pro Tem Cohen is not interested in more deliberations.

Mayor Fergusson expressed her concern with the practice of overturning outgoing Council's decisions. She would not like to perpetuate this. She commented that if Council had discovered egregious actions or illegal actions that would be different. She does not support continued review of this matter and there are too many downsides to a moratorium.

Mayor Pro Tem Cohen stated he is already looking ahead to two or four years from now. He commented that the way this seems is the Council is not willing to say no to this project, he doesn't know what he will say the next time someone comes forward. He opined the neighborhood is about to be abused.

Motion by Council Member Cohen to approve that Council come back with a staff report with the pros/cons of declaring a moratorium and taking action to amend the General Plan and change the zoning so that they are consistent, and revert the land use designation in this site to commercial. Motion fails for lack of a second.

Council Member Cline agrees with the spirit of the motion but he has a problem with the moratorium. He is not comfortable wasting staff resources.

Council Member Boyle asked how GM would handle this. He said that if he was a developer this would be scary, but to say that we could block development arbitrarily, just because Council doesn't like a decision. If we were overwhelmed and applications were flooding in that would be one thing.

Council Member Robinson thanked his fellow Council and staff. He said that a moratorium is a good tool but not sure it's good in this case. He does not believe there is enough support for that approach. He agrees with the Mayor that we may not have liked the previous decisions but that is what we have.

M/S Cline/Cohen to approve reconsideration of this item and direct staff to come back with a proposal to amend the General Plan and land use designation. Motion fails 2-3-0.

Council Member Cline stated he is not trying to make a point. He is trying to save the community.

Noes: Fergusson, Robinson, and Boyle.

The motion fails with Mayor Fergusson and Council Members Boyle and Robinson voting against it.

G. WRITTEN COMMUNICATION - None

H. INFORMATION ITEM

1. Implementation of the voter-approved Utility Users Tax (UUT). (Staff Report #06-230)

Finance Director Carol Augustine approached the podium to answer questions about the Utility Users Tax. Council Member Boyle said the tax rate can be lowered on a year to year basis. He thinks it's hard to say we need all 3%. The ordinance became effective with the passing of the vote. The City is attempting to implement the measure as of April 2007. The ordinance is set at 2.5% to 3.5% but Council can direct staff to do something different. Council Member Boyle would like further discussion and to hear public comment. Council Member Cline agrees public input is a good thing. He doesn't think this should be delayed too long. Council Member Boyle made a motion that staff place this matter on a future agenda. The motion did not receive a second. Motion failed.

I. COUNCIL MEMBER REPORTS - None

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

Jesus Monroy spoke about a law in Atherton wherein the Police Chief should live in the City. Menlo Park has the same rule.

David Speer stated that it takes three votes to approve a project. He made comments about projects, the approval process and the number of votes it takes to approve certain project applications.

K. ADJOURNMENT - The meeting adjourned at 1:07 a.m.

Respectfully submitted,

Pat Carson, Acting Deputy City Clerk

Approved at the City Council meeting of March 6, 2007.