



**CITY COUNCIL  
COMMUNITY DEVELOPMENT AGENCY  
MINUTES**

**Tuesday, February 6, 2007  
7:00 p.m.**

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

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**6:00 p.m. CLOSED SESSION (First Floor Conference Room - Administration Building)**

1. Closed session pursuant to Government Code Section §54957.6 to conference with labor negotiators regarding labor negotiations with Local 715 Service Employees International Union (SEIU) and the American Federation of State, County, and Municipal Employees Local 829 (AFSCME). Parties present: David Boesch, City Manager, Bill McClure, City Attorney, Labor Attorney Emily Prescott and Glen Kramer, Personnel and Information Services Director.

The Mayor called the meeting to order at 7:00 p.m. There was nothing to report from the Closed Session.

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

Staff present - David Boesch, City Manager, Bill McClure, City Attorney, Silvia Vonderlinden, City Clerk and other city staff was present in the audience.

**PLEDGE OF ALLEGIANCE**

**A. COMMISSION APPOINTMENTS AND REPORTS**

1. Swearing in of a new Transportation Commissioner.

City Clerk Vonderlinden swore in Charlie Bourne the new Transportation Commissioner.

2. Commission members and Chamber of Commerce reports. None

**B. PRESENTATIONS AND PROCLAMATIONS** - None

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

**D. CONSENT CALENDAR**

1. Authorize the City Manager to enter into an agreement in the amount of \$74,873 with TJKM Transportation Consultants to perform a Transportation Impact Fee Study. (Staff Report #07-016)

2. Adoption of resolution no. 5722 of intention to grant a designated period for two years additional service credit pursuant to Government Code 20903. (Staff Report #07-020)

**M/S Cline/Boyle to approve the Consent Calendar as presented. Motion carries 5-0-0.**

**E. PUBLIC HEARING**

1. Consideration of an appeal of the Planning Commission's decision to deny a Use Permit to operate a private school in an existing industrial building at 1215 O'Brien Drive in the M-2 (General Industrial) Zoning District. (Staff Report #07-017)

Thomas Rogers, Assistant Planner, presented the staff report. Mr. Rogers explained details about the proposed school and the M-2 (industrial use) zoning. He explained that the Planning Commission voted 6-0 on the matter and did not approve the plan because of the use and the possible exposure of children to hazardous materials.

Mr. Rogers provided details on the concerns associated with this use in the M-2 area. Staff reported that ten letters of support had been received, two letters in opposition plus one additional letter of opposition submitted tonight. Mr. Rogers referred to a change of wording on the last paragraph of page five.

Staff asked that Council consider both the information before Council and the Planning Commission's decision and make a determination.

Council Member Robinson shared that in his view there are children already in that area.

On behalf of the applicant and appellant, Greg Klingsporn addressed the Council explaining why he believes the Planning Commission exceeded its authority. He believes the potential risks already existed prior to the application from the Casa dei Bambini and such institution will not increase the potential risks. He shared a presentation highlighting his points. He also believes that the health and safety concerns have been addressed. He supported a shelter in place condition and staff could work with the applicant to develop such approach.

### **Public Comment**

Nancy Noe, representing ALZA Corporation, spoke about the fear of a possible accident and the need to evacuate. Ms. Noe is concerned with issuing use permits in industrial areas such as this one. She would like protection for the industrial zone.

Margaret Bruce, Environmental Director for the Silicon Leadership Group, shared her concerns and reservations with regards to having a school in the M-2 zone. She is aware of the need for childcare but she believes there will be long-term consequences to the business desirability of Menlo Park because additional requirements will be imposed on businesses that move into this area. She asked Council to consider this carefully because this could heighten the sensitivity of the community.

Matt Henry commented that these uses are not compatible and while the businesses in M-2 are useful it is a concern if children are placed in the same zone. Mr. Henry referred to the decision of the Planning Commission and he believes it did its job. He has concerns that the placement of this school is based on property affordability and he does not believe this should be the deciding factor.

Charles Beeler supports Casa dei Bambini and he said that the Planning Staff has studied the matter carefully. He believes this is a good opportunity for Menlo Park.

Joseph Sahyum is the landlord and he pointed out that currently there are children living in that area and may not be aware of the materials. He said this is not an industrial area and he believes there is residential back to back with the M-2. He asked Council to be open-minded and he does not believe there are serious hazardous materials in the area.

Joseph Derrough spoke as a parent who has had a daughter at Casa dei Bambini for the last three years. He urges Council to support this school.

Venny Ganesaw supports the school and hopes the Council approves this permit. He believes that if there is a disclosure then it is reasonable. He asked for what he called a realistic assessment of the situation.

Jill Wernicke spoke in support of Casa dei Bambini and the type of care it provides.

Ketan D. Kothari is concerned with this situation and the hazardous materials. He said that right next to the proposed site there is a training center with childcare. He urges Council to reconsider the decision of the Planning Commission because he does not find it equitable.

Manish Kothan opined that childcare can be an anchor for the community and he believes it would be negligent to disallow this school to move forward with its plans.

Ellen Ackerman spoke about many of her clients who use chemicals and what she believes was overlooked, which are the other agencies that also regulate this matter. She said that at the research

level these companies are exempt but once they move into production then the regulation requirements apply. She believes Casa dei Bambini encroaches into the industrial district and will impose stricter rules.

Jose Sandoval, who owns a facility on O'Brien Drive, said it uses about 250 chemicals. He listed all the agencies that monitor his production. He believes this is a very dangerous area because of all the chemicals used in the industrial district.

Cheryl Webster cannot support this proposal because there are chemicals on adjacent sites. She shared concerns with the possibility of an earthquake. She does not believe other businesses will want to move in if the school goes in.

Randall Mrsny said that Menlo Park provides opportunities for development and he appreciates that. He believes that if people place their children into this program their concerns will grow with time.

Tig Tarlton originally owned 50-acres in this area. He spoke about the tenants he had in the past and how after 13 public hearings the Council attached 66 conditions to his M-2 project. One of these conditions was to attract a childcare facility which he was unsuccessful in achieving. He does not agree with the placement of the daycare center in this area.

John Tarlton, with time donated by Dave Tarlton, said that it seems that the City desires research and development due to lower traffic and higher possibility of generating revenues. He believes the childcare in this zoning is pushing this area to be office instead of research and development.

Wesley Skow asked for a denial of the appeal. He referred to various communications he sent to the Council. He acknowledged the conflict between the two sides.

Sara Armstrong spoke about the feelings around the school but she relies on the experts in the public sphere who reviewed the matter. She believes the findings of the experts have been that there are no additional regulations that need to be in place if the school goes in.

Vivian Leal is concerned for the homes and she believes the Council has a tough choice. She believes schools are needed, especially pre-kindergarten, and she supports Casa dei Bambini.

Katherine Stanton and her daughter spoke about the benefits of Casa dei Bambini. Her daughter mentioned that this institution taught her to be kind and respectful and to love the community. She supports this application.

Jim Zuegel is the vice president of a company that is located on O'Brien Drive and his company is expanding quickly. He believes that the denial of the use permit by the staff has been the correct decision.

Margaret McCormack said that she works for Sun MicroSystems and she believes that multiple uses can coexist and she supports Casa dei Bambini.

**M/S Boyle/Cline Close the public hearing. Motion carries 5-0-0.**

Council discussion

City Attorney McClure said that three votes would be needed to overturn the decision of the Planning Commission. He said that the determination has to be made on the information that was submitted to the City Council.

Mayor Pro Tem Cohen referred to attachment A and attachment B and questioned how this project is exempt from CEQA. The City Attorney explained that all projects need a determination that they are exempt because it falls within certain categories or if not exempt you need to approve a negative declaration or if there is a potential for a significant environmental impact then an environmental impact report is necessary to evaluate the impacts.

Mr. McClure said that Council could always make the finding that more environmental work is needed and this can be a Council decision.

Council Member Boyle asked about the M-2 zoning and if the childcare allowed there is intended to serve the immediate area.

The City Attorney provided information on the special uses and what it entails.

Council Member Robinson asked about the decision of the Planning Commission and the assumption that it changed the zoning of that area. City Attorney McClure said that the findings of the Planning Commission are worded a little bit too broad and it might have been beneficial to have had a little bit more specificity.

Council Member Robinson asked about the specific chemicals in the area. Staff provided some details on the hazardous materials but the list is extensive so staff did not read it off but could make it available.

Mayor Fergusson shared her observations and the dilemma before Council. The fact that local property owners have concerns is a red flag for the Mayor. She values the incubator nature of the M-2 district and that scientists can come here and start their businesses here.

She believes diverse land uses have to coexist. She complimented the Tarlton's for being a good neighbor and for thinking of the greater good.

Council Member Boyle thanked all the public present for paying attention and caring. He believes this is a difficult decision and he is struck by the fact that there wasn't one single business owner who spoke in favor of this. He said it is hard to imagine that if the Council approves this, in the industrial district, it would not be detrimental. He is concerned about changing what happens in the M2.

Council Member Cline said he was surprised that there were so many businesses that are research and development. He said that maybe the business park is not very diverse. He believes that this discussion leads to a discussion of what we want in M-2. He believes the business community is elastic and he is hopeful they will all work together.

Mayor Pro Tem Cohen said he came to this meeting with an open mind even though he got a lot of emails on the matter. He is concerned about safety and how to address the zoning issue. He is not prepared to take a position without more qualified information.

Council Member Robinson believes in co-existence but he has concerns when things move from the research phase to the production phase. He is in agreement with various comments made by Council Member Cline. He would like to better understand the implications of these actions.

Mayor Fergusson said that today the situation of potential exposure exists and everybody is being notified and that does not seem to be a deterrent. She does not think this is a unique case and she believes that these uses have to coexist.

Council Member Boyle said that this is an industrial park and in his opinion placing another childcare in the area is similar to diluting the industrial park.

Mayor Pro Tem Cohen feels torn and he is concerned that the Council has gotten vague and unclear information. He would like to hear more within one month.

He would like this tabled and in the next month have a consultant review the materials and then receive public input and return to Council within one month. He suggests that the City pay for these costs. He asked why the two parties could not have reached a consensus prior to this date.

Mayor Fergusson said that there are two Council Members who want more information, two that are leaning one way and one that is leaning on another way. Council Member Boyle said that getting more information is good but getting a consultant may not be the answer.

Mayor Pro Tem Cohen said that what he is suggesting is to get the community to work together.

Council Member Cline wondered why communication has not happened between the parties involved. He would not like to spend money in a consultant.

Mayor Pro Tem Cohen said that 3,000 people signed a petition and that is about to go to mediation. He believes that the Council should give one to two weeks to the parties involved to get to a resolution.

Council Member Robinson suggested tabling the matter and not hiring a consultant but instead have ask both parties to dialogue and come up with a solution.

Council Member Boyle said that this is a bit different because in the Derry Project there was one proponent and an opponent and here it is a bit more unclear. Mayor Pro Tem Cohen said he recognized that reality but he believes that these are creative people who might find a solution.

The City Attorney said that if the Council does not act within 75 days of the date of the filing of the appeal then the decision of the Planning Commission is deemed affirmed.

Council Member Cline said he is looking for the arguments for fact and he is not sure that all the information will be available. He recommends that Council move forward.

**M/S Cline/Robinson to grant the appeal, override the decision of the Planning Commission.**

Council discussed the findings specifically attachment B item #2 was mentioned. Council Member Cline believes there is a precedent with other childcare facilities in the area. He does not believe this childcare center will drive away other businesses. He does not see this as a vital threat to the area.

Council Member Robinson said that this is on one edge of the M-2 and the fact that there are schools and other facilities in that area. Council Member Boyle disagrees with this approach because the business community does not approve of it. He asked for a friendly amendment to consider negating finding number 1 and that the Council require some environmental impacts.

Council Member Cline asked Mr. McClure for clarification and he said that this would be sending it back to the Planning Commission and get further information.

Mr. McClure said it would have to be a different amendment because the current one is inconsistent with the current action.

**Substitute motion by Council Member Boyle to deny the appeal without prejudice and direct that further environmental review take place. Motion dies for lack of a second.**

Mayor Fergusson said that the evidence provided by the applicant/appellant was compelling and reasonable.

**The original motion also directs staff to modify the findings to be supplemented by the comments made by Council and to return via the Consent Calendar next week for the final approval of the findings.**

**Motion carries 4-1-0 with Council Member Boyle opposing.**

*Council took a break at 9:50 p.m. The meeting resumed at 10:02 p.m.*

**F. REGULAR BUSINESS (item taken out of sequence)**

1. Accept the 2006-07 Midyear Financial Summary and adopt a resolution effecting the recommended amendments to the 2006-07 operating budget; discuss and provide direction regarding implementation of the Utility Users Tax and alternative approaches to funding retiree medical benefits. (Staff Report #07-019)

Mayor Fergusson said that she wanted to see what the agenda looked like for the evening. Council Member Boyle said that item F1 could be placed on the top of the agenda at next week's meeting.

Mayor Fergusson asked about the implications of postponing this item. Finance Director Augustine said that instructions had been given to the utility users who might take advantage of the \$12K cap and the deadline for that is February 14, 2007. Subsequently, staff will give the information to the utility providers. Consequently, there is a shorter turn around time for staff to tell the utility providers which customers need to be exempted from further application of the tax in their bill.

**Council consensus was to continue item F1 until next week.**

2. Consideration of state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item.

**J. PUBLIC COMMENT #2** (Limited to 30 minutes) Item taken out of order.

Michael McKay spoke on behalf of two other parents about the issue of available childcare in Menlo Children's Center. Mr. McKay does not believe it is a reasonable process when parents have to stand in line at 3:00 a.m. He does not call this open registration when parents have to camp out all night. He believes the City is underserving its residents.

Council Member Robinson asked if there is any idea of how many parents did not get slots. Mr. Boesch said that the short answer is no. Mr. Boesch spoke about a survey of parents many years ago and there were several hundred interested in after school care at school, but that discussion with the School District never matured.

**F. REGULAR BUSINESS (taken out of sequence)**

2. Consideration of an appeal of the Planning Commission's decision to approve a Use Permit to construct a new two-story, single-family residence on a substandard lot with regard to lot width at 805 Evergreen Street in the R-1-S (Single-Family Suburban) Zoning District, and for excavation into a required side yard setback for light wells and egress associated with a basement. (Staff Report #07-018)

Thomas Rogers, Assistant Planner, presented the report explaining that the Planning Commission voted 6-0 to approve the request and grant the use permit.

Phil Friedly, the appellant, asked that Council deny the design that is being proposed. He believes this is an incompatible design and he said that forty neighbors signed a petition against this project. He found the Planning Commission used a mechanistic approach. He said that there was a valiant effort to reach consensus on the issue but it was not possible. Ms. Traub also addressed the Council and she does not agree with the design because it will impact her residence. Mr. Friedly submitted a petition to initiate an overlay zone of that area and there were 3/4 of the property owners who supported such approach.

The applicant, Sharon and Robert Hasslen, addressed the Council regarding the scope of their project. Ms. Hasslen said that they have met all the zoning requirements and the design was based on conversations with the neighbors. She said that the proposed home is a green home and they want to be environmental stewards. Mr. Hasslen said that they put a lot of work into the drawings to make sure it was considerate to other properties. John Stewart, the architect, spoke about the suggestions that were incorporated and the input from neighbors.

**Public Comment**

Al Heibeim supports the project and he does not believe the overlay document can be accepted since he was never contacted on this matter. He believes the zoning ordinance has set the objective standard and so the project should be approved.

Greg Druehl said that there are some homes that are two-story and he supports the Hasslen's project. He believes the applicant has listened to input from the neighbors.

Kathleen Baker Rice is for the appellant and does not support this development. She accepts two story homes but she feels that this one alters the character of the community. She feels that the applicant needs to work with the neighbors.

Stefan Heller opposes what he called out-of-scale remodel because he will be affected and he believes that a substantial redesign is needed.

John Nash said that this an area that has a lot of character and he supports the appeal and not the use permit as currently presented. He asked Council to move this conversation to a place of agreement.

Bill Tandler supports the appellant and he hopes that better dialogue takes place.

Debbie Rau, with time donated by Valerie and Colish, spoke about the people who live in the neighborhood who do not want to believe that change is needed. Ms. Rau said that while there are challenges living in Eichlers there are many benefits. She asks Council to overturn the Planning Commission.

Earl Shelton, with time donated by James Madison, referred to a previous case at 710 Lemon Street. He feels this is like predatory real estate development. Mr. Shelton said that he found out the Hasslens have had 28 different recordations in the last ten years and so he does not believe this is something new.

Pam Salvatierra supports the appeal and asks Council to be reasonable and stay focused on the impact.

Scott Brady supports the applicant because they meet all the requirements. He said that if this was such a big issue to the neighborhood they could have tried to reach an agreement.

Pierce Gould said that he lives two doors down and is currently remodeling his house. He has a deep respect for all the opinions presented tonight but tonight the Council should be upholding the current decision of the Planning Commission and there have been moderate concessions.

Dorothea Collins would like people to make a home and not a business. She is not certain how long people will live at this home. She believes that once this house goes up then other ones will go up.

Mayor Fergusson closed the public hearing.

Council Member Robinson said that the impact of the second story element is the set back and the existing landscape screening was also considered.

Council Member Boyle said that he drove around the neighborhood and he counted at least 10 two-story homes of which six were traditional and not Eichlers.

Mayor Pro Tem Cohen asked if staff attended the meetings of the neighborhood. Mr. Rogers said that he tried to facilitate communication and consensus.

Council Member Cline understands the position of the applicant. He said that historically speaking the applicant is being very open. He believes there is a need for compromise. Council Member Robinson complimented all parties and one of the arguments was that it was allowed by the zoning rules. He believes that there is a need for design guidelines. He has issues with designing from the dais but he is worried about the skylines that may change and impact neighbors.

Council Member Boyle would like Council to be consistent and have some basis to make these decisions so they don't seem arbitrary.

Mayor Fergusson complimented the applicants saying she appreciates the fact that they want to build a green home and that there is a unanimous recommendation from the Planning Commission. She said she struggles with this deliberation.

She fears this new home does not mirror the character of the block and nearby homes and so she cannot make finding number two. Council Member Boyle said that the precedent has already been set because there are 10 other homes in the same neighborhood that have two story homes. Council Member Boyle said that the Council is designing from the dais because they are overturning decisions of two commissions.

Council shared its views on the matter. The City Attorney answered questions about the options on the table.

The applicant said he doesn't have a lot of hope but he is willing to work with neighbors.

The appellant explained that he is not a designer but he provided the applicant with an example of what might work.

The City Attorney explained the timelines and what decisions could be taken by the City Council. The Council engaged in conversation with the appellant and the neighbors and the timelines were discussed. The applicant said that he will not waive the time.

**M/S Robinson/Cohen to uphold the appeal and make the finding that the project is detrimental and have staff return with draft findings for the denial of the use permit. Motion carries 4-1-0 with Council Member Boyle opposing.**

**G. WRITTEN COMMUNICATION** - None

**H. INFORMATION ITEM** - None

#### **I. COUNCIL MEMBER REPORTS**

Mayor Fergusson said that City Manager Boesch and Kent Steffens will meet with the Menlo Park School District and she is looking for another Council Member representative to be present. Council Member Cline is interested and will be the second Council representative.

Council Member Robinson attended a meeting of the Menlo Park Historical Association and he mentioned some items that are stored in the basement of the Library. That organization is looking for a place to display these items. He also spoke about a historic fire house that needs to be moved.

Mayor Fergusson announced the upcoming Special City Council meeting this Thursday at 5:30 p.m. to receive input in the characteristics of the Menlo Park City Manager.

**K. ADJOURNMENT** - the meeting adjourned at 12:13 a.m.

Respectfully submitted,

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Silvia M. Vonderlinden, Certified Municipal Clerk

Approved at the City Council meeting of March 13, 2007.