



**CITY COUNCIL  
COMMUNITY DEVELOPMENT AGENCY  
MINUTES**

Tuesday, February 27, 2007

7:00 p.m.

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

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

**Staff Present** - Interim City Manager Steffens, Acting Assistant City Manager Heineck, City Attorney McClure, and City Clerk Vonderlinden. Other City staff was present in the audience.

**PLEDGE OF ALLEGIANCE**

**A. COMMISSION APPOINTMENTS AND REPORTS**

1. Appointment of two residents to the Dumbarton Rail Citizen Advisory Panel. (Memorandum)

Mayor Fergusson opened the floor for nominations:

Nominations: Mayor Pro Tem Cohen nominated Susan Robinson, Council Member Cline nominated Rich Ferrick, Council Member Boyle nominated Matt Henry and Council Member Robinson nominated Margaret Fruth.

Rich Ferrick received one vote from Council Member Cline.

Matt Henry received four votes from Council Members Fergusson, Boyle, Cohen and Robinson.

Susan Robinson received five votes.

Council Member Boyle said that all four candidates are very involved, but he believes Mr. Henry would represent a different neighborhood and he finds that positive.

**Matt Henry and Susan Robinson are the appointees to serve on the Dumbarton Rail Citizen Advisory Panel.**

2. Commission members and Chamber of Commerce reports.

Fran Dehn from the Chamber of Commerce reported on an upcoming event hosted by that organization.

**B. PRESENTATIONS AND PROCLAMATIONS - None**

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

Morris Brown spoke on the Derry Project, and he announced that the O'Brien Group and Menlo Park Tomorrow have agreed to enter mediation and will have more to report in late March or early April.

**CONTINUED ITEMS FROM 02/13/07**

- i. Adoption of resolution no. 5725 approving a Memorandum of Understanding (MOU) between the City of Menlo Park and Service Employees' International Union (SEIU), Local 715, for the period beginning October 29, 2006 through October 24, 2009.

- ii. Adoption of resolution no. 5726 approving a Memorandum of Understanding (MOU) between the City of Menlo Park and the American State, Federal, County and Municipal Employees (AFSCME), Local 829, for the period beginning October 29, 2006 through October 24, 2009.

- iii. Approval of a resolution authorizing the City Manager to adjust salaries for executive management staff up to 4% effective January 7, 2007.

Bill McClure, City Attorney, provided details on the action before Council. Mr. McClure said that the first two items represent tentative agreements with the bargaining units and are the culmination of about a dozen or so negotiation sessions with two sessions of mediation. The City Attorney explained the details of the agreements, including the enhanced retirement benefit.

Glen Kramer, Personnel and Information Systems Director, provided a brief report on the third item related to the executive management remuneration. The recommended adjustments were designed to address the need to update salaries given that management did not receive an adjustment in 2006 and that there would not be another opportunity to consider adjustments until the City Manager vacancy is filled and that person has had the time to evaluate staff. Mayor Fergusson asked about how many times the Council met in Closed Session on these issues and staff said about four or five times.

#### Public Comment

Chuck Bernstein said he opposes the retirement enhancement, and he asked if Council had any idea of how much this will cost the City.

Patti Fry said that Council has bargained hard but she believes that the structural imbalance needs to be addressed. She does not believe there is enough information on this and she encourages Council to try and use the expertise of the BAC (Budget Advisory Committee) and take the time to understand the situation.

Elias Blawie does not believe the Council has enough data to support this action. He would prefer understanding how Menlo Park employees' pay compares to other city workers and clarify if they are overpaid or underpaid. He requested more data because he does not believe that the management raise is clear enough. He opined this is a mistake for the unions and for the City and he does not find the increases justifiable. He supports the unions but he believes this is a way to drive employment out of this area. Mr. Blawie would like City employees to not work a 9/80 week and instead get back to the five day work week. He commented that he finds it unwise for Council Members to be communicating with the media prior to the Council Meeting, because in his opinion this makes the public question why they should show up at the meeting.

#### Discussion on the Old Business Items

Council Member Boyle asked if the Council could waive the confidentiality clause for the negotiations conducted in Closed Session and proposed a motion to that effect. Mayor Fergusson seconded the motion for the purpose of discussion; however, she said she is concerned that this will set a bad precedent because people are able to put things on the table openly when they are discussing items in Closed Session. She requested a friendly amendment to have the discussion rely mostly on the votes that occurred under Closed Session. City Attorney McClure said that this could be done and Council could explain some of the information that was shared at the Closed Session.

**M/S Boyle/Fergusson to waive the clause of confidentiality regarding the Closed Session specific to what was voted on and information that was considered and provided under Closed Session and not provide specific comments that were made. Motion carries 4-0-1 with Mayor Pro Tem Cohen abstaining.**

Council Member Boyle said that there was question about data from other cities. Mr. Kramer confirmed that many of the positions were surveyed via a salary survey of the fourteen cities and staff took a sampling of all the positions that are unionized. Council Member Cline asked about an independent audit and analysis and Mr. Kramer said that this has not been done. Mr. McClure added that CalPers uses independent actuarial analysis, but the City has not hired an independent actuarial to do the analysis. Council Member Robinson referred to the costs related to just straight raises versus the final plan and Mr. Kramer provided the costs of hypothetical raises versus the cost of the current package, which is the lowest cost to the City.

Council Member Robinson asked whether the lack of future salary adjustment means that the employees are paying for the retirement benefit in advance of receiving the benefit. Council Member Boyle said that

would be correct, as long as three years from now (and in order to retain the savings) we do not catch up for the missed raises. He requested that this be in the record and that he would not like to have the City in three years play catch up. Mr. Kramer agreed with the statements from Council Member Boyle.

Mayor Fergusson asked if we are accounting for total benefits and she referred to Other Post Employment Benefits (OPEB) and if there are any other benefits that are being deferred. Mr. Kramer said that CalPERS is the only other future liability but based on CalPers formula and the money will be there when the employee retires. Mayor Fergusson addressed the management increases and asked if the figures presented are an average of the ranges. Mr. Kramer said that every year there is a survey for each executive management position for the range of the position and if the range moves then an adjustment is needed so that Menlo Park ranges don't lag behind. Mr. Kramer commented that if there are no long term raises then the positions fall behind the average salaries paid in the comparable cities. He added that there is a performance component attached to this as well.

Mr. McClure said that this current analysis was suggested by outgoing City Manager Boesch. Mayor Fergusson asked for clarification that not all positions would be getting a 4% raise and Mr. Kramer confirmed that was the ceiling. Mayor Pro Tem Cohen asked about who will be affected by this and Mr. Kramer referred to the list of 16 positions attached to the staff report. Mayor Pro Tem Cohen asked if the item before Council could be modified to include a provision that these employees return to a five day work week. Mr. McClure said no because it is not on the agenda and such approach needs analysis.

Council Member Robinson asked about the 4% proposed increase and Mr. Kramer said that 4% is a ceiling but not everyone would get 4%. Mayor Fergusson expressed her opinion about the fact that Menlo Park is below the other cities and when we lose executive management employees it is disruptive for the organization. Mayor Fergusson said that the amount of knowledge that is lost when there are changes is hard to recoup. She believes that employees at all levels are fairly compensated. Council Member Cline still does not feel he has enough comparables with other cities and would like more information.

Mayor Pro Tem Cohen said he values senior staff and he is aware that the loss of Mr. Boesch and former Police Chief Boyd are examples of why we need to retain senior staff and their institutional knowledge. He added that even among the new management, he finds that knowledge valuable. However, his concern is Council is trying to get adequate notice of issues that come before Council and to have City Council offices closed every other Friday is not helpful. He believes that there was a good reason to go to a four day work week, but he believes this may not be applicable anymore and this may be a serious obstacle to him supporting this item at this time.

**M/S Robinson/Cline to continue item iii) of continued business to a future date, noting that even though he hopes executive management is paid a little above the average, he needs more comparable data for each of the positions listed. Motion carries 5-0-0.**

Regarding the 9/80 schedule, Council Member Robinson believes this is within the City Manager's purview and he would like to discuss it with the City Attorney and the Personnel Director but that compensation issues should not be coupled with the 9/80 issues. Mayor Pro Tem Cohen said that the issue is not a simple one but he believes it would be a mistake to ignore what has been written in the media about the reaction of rank and file to the compensation items. He said that he is questioning the five day work week because it would be a way to get a better sense of parity or fairness in all sides.

Council Member Boyle asked about the full benefits for the executive management team and if Council can arbitrarily mandate schedule changes. Mr. McClure said that if Council were to set specific hours for management issues of payment for overtime could be triggered. Mr. McClure explained that management employees are considered exempt employees and as such do not get overtime, but that a mandated schedule would require overtime pay. He added that if Council adopts a retirement benefit of 2.7% at 55 for miscellaneous employees it applies to all employees. Council Member Robinson stated that the City Manager and his senior staff need to study the issue of the work schedule. He believes

Council can provide input but he believes that discussion is a separate issue from compensation.

**M/S Cline/Robinson to adopt of Resolution No. 5725 approving a Memorandum of Understanding (MOU) between the City of Menlo Park and Service Employees' International Union (SEIU), Local 715, for the period beginning October 29, 2006 through October 24, 2009. Motion carries 5-0-0.**

**M/S Cline/Robinson to adopt Resolution No. 5726 approving a Memorandum of Understanding (MOU) between the City of Menlo Park and the American State, Federal, County and Municipal Employees (AFSCME), Local 829, for the period beginning October 29, 2006 through October 24, 2009. Motion carries 5-0-0.**

#### **D. CONSENT CALENDAR**

##### Public Comment

Chuck Bernstein is interested to know how item D1 related to additional service credit for one employee got on the Consent Calendar. He does not know this employee but he cannot understand how this person is getting this retirement gift from the City. Mr. Bernstein shared his thoughts about benefits in perpetuity and he thinks this is a bad precedent. He made comments about the UUT and he thanked one Council Member for his position on the issue.

Item D1 was pulled, Council Member Boyle requested to vote on item D2 separately, and Council Member Cline requested item D3 be pulled.

1. Adoption of Resolution No. 5727 to grant a designated period for two years additional service credit for one eligible employee whose position is being eliminated due to a department restructuring pursuant to Government Code 20903. (Staff Report # 07-030)
2. Adoption of findings for granting an appeal to deny 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 #07-032)
3. Authorization of the Public Works Director to accept the work by State Roofing Systems, Inc., for the Onetta Harris Gymnasium Roof Replacement project. (Staff Report # 07-037)

##### Discussion on D1

Council Member Cline asked why this appeared twice and Interim City Manager Steffens said this is a two step process because of CalPERS rules and regulations. Mr. Steffens said that there is only one employee impacted.

**M/S Robinson/Cohen to approve Consent Calendar D1. Motion carries 5-0-0.**

**M/S Cohen/Cline to approve Consent Calendar Item D2. Motion carries 4-1-0 with Council Member Boyle opposing.**

##### Discussion on D3

Council Member Cline said this matter came up at the Commission meeting and asked if there are other projects that would require the roof to be redone. Interim City Manager Steffens said that there are no plans to do further work at this site.

**M/S Cline/Cohen to approve authorization of the Public Works Director to accept the work by State Roofing Systems, Inc. for the Onetta Harris Gymnasium Roof Replacement project. Motion carries 5-0-0.**

#### **E. PUBLIC HEARING**

1. Consideration of Request for a Use Permit, Architectural Control, and Tentative Subdivision Map for Construction of a New Two-Story 9,825 Square-Foot Office Building for Medical/Dental Use and

Related Site Improvements Including 49 Parking Spaces at 1906 El Camino Real in the C-4 (General Commercial Applicable to El Camino Real) Zoning District. (Staff Report #07-033)

Justin Murphy, Development Services Manager, introduced Lorraine Weiss the contract planner who presented the report. Council discussed the difference between the staff's recommendation and the Planning Commission's recommendation. The Floor Area Ratio (FAR) was discussed and staff provided answers on how the zoning ordinance has been consistently interpreted over past years.

Council Member Boyle asked about the fairness and the equity of the FAR. Ms. Weiss stated that the interpretation has been consistently applied over the years, but that it had continued to evolve as well. Mayor Pro Tem Cohen asked if this method of calculation has been in place for a long time and Mr. McClure said that there are various elements of buildings that have been excluded over the years as projects have been reviewed based on discussions and decisions made either by the Planning Commission or Council. Mayor Pro Tem Cohen asked about rules from other organizations and Ms. Weiss said that for different cities there are similarities and differences.

The applicant, Joe Colonna, addressed the City Council stating that he believes the project complies with the floor area ratio. He said that contrary to correspondence sent, there is no interest in hiding the building size. Bob Peterson, the architect, also addressed Council providing slides that showed the plan for the site.

Council asked questions of the architect and the applicant and they addressed questions regarding traffic patterns and the sidewalk. Council Member Robinson asked if medical and dental uses are distinguished differently than general office with regards to traffic. Mr. Taylor, Transportation Manager, said that the manual used for traffic generation does not distinguish between the uses. Council Member Robinson asked if the Council could request that the applicant have only dental offices and the City Attorney McClure stated that the City could not place such a restriction on the property.

#### Public Comment

Anne Moser said she is a neighbor and she wished the developer had talked to the neighbors about the project. She said that as a Housing Commissioner she had hoped for a housing project, and not medical. She hoped this was not piecemeal development. She believes that trees and the set back should have been looked at.

Elias Blawie does not think the FAR issues are related to the law, but are interpretations of the law. He believes that the Council should be the one setting the law and not the staff through interpretations. He requested an economic evaluation.

Patti Fry echoed the comments made by Mr. Blawie and shared concerns that if the building changes hands, the use could change. She does not support interpretations of the law because, in her opinion, the definitions are not arbitrary. She believes this is a golden opportunity to address development on El Camino Real.

Morris Brown urged the Council to reject this project because there isn't enough parking.

Garrett Gafke is in favor of this project because the Acorn area is a disaster and a lot of the buildings there are a disaster. He is hoping the Council will see that El Camino Real is not a pedestrian area because it is too dangerous.

Don Brawner complimented the City Council for being bright and open. He favors open government and he questioned various comments in the staff report.

David Speer agreed with other speakers such as Ms. Moser, Mr. Blawie, and Ms. Fry, and he believes there is an inconsistent and unfair application of the FAR rules. He believes the items excluded from FAR should have been part of the square footage. He mentioned that four years ago there was a change to 10,000 from 5,000 square feet to trigger traffic studies. He supports guidelines on the vision for El Camino Real and he urged Council to work on this.

Lou Deziel believes there was lack of clarity in the staff report. He spoke as a resident and not as a Planning Commissioner, but he explained why that body made its decision. He opined that staff misinterpreted the decision of the Planning Commission.

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

Council Member Cline believes that there is the need for more time and information in order to make a decision. He is uncomfortable with the process and concerned that the Council may have inaccurate information. City Attorney McClure clarified that it is inappropriate for a Planning Commissioner, as an individual, to address Council and contradict the minutes that were approved last night by that body. Mr. McClure said that Mr. Deziel is not speaking on behalf of the Planning Commission because that body spoke last night and approved the minutes.

Council Member Robinson said that he read the minutes from the Planning Commission and it was clear to him and he shared that body's concerns with design, the traffic impacts and other issues. He believes there has been an improvement in the look but he still has a great deal of concern with the appearance. Council Member Boyle concurred with some of the comments from Council Member Robinson. He believes this use is an improvement to the area since a restaurant would have more traffic impacts. Mayor Pro Tem Cohen spoke about the Grand Boulevard concept and the fact that Stanford wants to move 50% of its doctors to another area. He said he'd like to work with the applicant on this.

Mayor Fergusson spoke about the benefits of this plan and what she likes about it such as that it will not require a General Plan amendment. She would like the building to make more of a statement on El Camino Real. She would like a bus stop friendly design. Mayor Fergusson believes it is important to nail down the FAR definitions and so weighing all these items she wants the project to return to the Planning Commission to address certain items that the Council has mentioned tonight. Council Member Cline said that his underlying concern is El Camino Real. He asked staff why there is no final interior and staff said this is common at this stage of the process. He would like to have traffic issues addressed.

Council Member Boyle made a suggestion to return the whole project to the Planning Commission but he also wants to look at the FAR interpretation and make it more explicit. Interim Assistant City Manager Heineck spoke to the interpretations as they relate to the FAR and what has been the practice and how the exemption list has evolved. Ms. Heineck said that these have been related to primarily mechanical rooms and storage areas.

Council decided to do a polling of the Council on the following items (straw poll on these items):

- 1) Acceptability of medical/dental office usage at this location at this approximate density: Three Council Members agreed (Council Members Cohen and Cline opposed);**
- 2) El Camino Real Facade needs to do a better job of addressing the frontage and entry to Menlo Park: Unanimous agreement;**
- 3) Address the bus stop, the side walk on Watkins, and the location of the power poll within the curb: Unanimous agreement; and,**
- 4) Acceptability of the current interpretation of the FAR on this specific project, but not using this project to set precedent: Three Council Members agreed (Council Members Robinson and Cohen opposed.)**

Council Member Boyle asked that staff come back with suggestions on how to address medical/dental use in general and have staff bring this back and place this on a future agenda. **There was Council agreement for this approach.**

**M/S Fergusson/Boyle to direct that this be taken back to the Planning Commission with the direction provided in the straw votes. The Council further directed that the FAR interpretation be revisited and that Council wants to better understand medical/dental office usage. Motion carries 4-1-0 with Mayor Pro Tem Cohen opposing.**

Council Member Boyle clarified that regarding the medical/dental use he is looking for analysis on the incentives, pros and cons, encouraging it or not, options available and brainstorming for Council to possibly consider policy issues. The City Attorney restated the motion which includes referring the item back to the Planning Commission with further direction as outlined by Council. Staff wanted to confirm that the entire project would have to come back for full Council approval. The City Attorney said that there are certain items such as the subdivision map that the Planning Commission does not have authority to approve. Council discussed various possible approaches but agreed on having the matter come back to Council for full approval.

## **F. REGULAR BUSINESS**

1. Appointment of a Council Subcommittee to review applications and make recommendations for the Menlo Park Community Funding Grant Program for Fiscal Year 2006-07.

Carol Augustine asked for a Council appointment of two Council Members to serve on this subcommittee. Mayor Fergusson spoke about the benefits of this program and how she has enjoyed being part of this subcommittee in the past.

### **Council Members Cline and Robinson volunteered to serve on this subcommittee.**

Council Member Boyle said he struggles with the guidelines regarding eligibility. Council Member Robinson said that there is terminology that covers the issue brought up.

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. None.

## **G. WRITTEN COMMUNICATION**

1. Communication from the Menlo Park School District regarding development of the athletic field at Encinal School. (Attachment)

Kent Steffens, Interim City Manager, summarized the communication saying that staff seeks direction to see if this should be placed on the agenda. Mayor Pro Tem Cohen believes this should go back to the Parks and Recreation Commission. Council Member Robinson agrees with having the Commission and staff work on this and he believes this should be on their next agenda. He asked if Atherton has been approached and he would like to consider how money from Menlo Park should be spent in a field in Atherton. Council Member Cline would like to see the Parks and Recreation Commission work on this.

Mayor Pro Tem Cohen would like private schools to step up to the plate. He believes the Commission should be looking at this. Council Member Fergusson believes this is a golden opportunity because there are a lot of kids that play sports and could use this.

## **H. INFORMATION ITEM - None**

## **I. COUNCIL MEMBER REPORTS**

Council Member Cline said that he attended a Regional Housing Needs Assessment meeting and there are real challenges regarding housing in this area.

Council Member Boyle said he met with the Mayor and Menlo Park parents who expressed the need for more child care and after school care. He mentioned that other school districts provide after school care. He mentioned that the goal is to recognize the issues and to create an informal task force with representatives from all jurisdictions including parents. Mayor Pro Tem Cohen said he has seen problems brewing in the east and the west side and he does not support piecemeal work on this and leave Belle Haven out of this plan.

Council Member Robinson believes the Parks and Recreation Commission should be part of this effort.

Council Member Robinson reported on the ABAG climate summit workshop in Oakland. He also attended the Dumbarton Rail Way Committee meeting. He attended the San Francisquito Creek retreat in East Palo Alto. He said that the board of supervisors is considering leaving the JPA.

Mayor Fergusson announced that the first Green Ribbon Citizen meeting will take place on March 14, 2007 from 4 to 6 p.m. in the Library Conference Room. She invited people to attend the Chamber of Commerce mixer.

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

Jesus Monroy asked the Mayor to repeat the date and time for the Green Ribbon Task Force. He asked questions of Council and the Mayor responded. On Global Warming he said there is too much of this and he does not believe all the facts have been presented accurately.

**K. ADJOURNMENT** - The meeting adjourned at 11:15 p.m.

Respectfully submitted,

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Silvia M. Vonderlinden, Certified Municipal Clerk

Approved at the City Council Meeting of April 3, 2007.