



CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES

Tuesday, April 10, 2007

7:00 p.m.

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

6:30 p.m. CLOSED SESSION (First Floor Conference Room – Administration Building)

1. Closed Session pursuant to Government Code Section §54956.9 regarding Linfield Oaks Homeowners Association v. City of Menlo Park, et al., San Mateo Superior Court Case No. CIV 459921. Parties present: Arlinda Heineck, Acting Interim City Manager and Bill McClure, City Attorney.

7:00 p.m. REGULAR MEETING (Menlo Park City Council Chambers)

ROLL CALL - Fergusson, Cohen, Boyle (absent), Cline, Robinson (absent)

Report from Closed Session – The Mayor announced that on the case of Linfield Oaks Homeowners Association versus the City of Menlo Park, the City has approved a settlement agreement. City Attorney McClure said that a stipulated judgment was presented to Council and it was approved on a 3-0-0 vote with Council Members Boyle and Robinson absent.

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

PLEDGE OF ALLEGIANCE

A. COMMISSION REPORTS

1. Commission member and Chamber of Commerce reports. None.

B. PRESENTATIONS AND PROCLAMATIONS

1. Proclamation celebrating National Library Week.

Bill Harris, with the Library Foundation, received the proclamation. Other Library staff was present.

Mayor Fergusson announced the upcoming “Youth Jobs Summit” event on April 18, 2007 at 5:45 p.m. at the Palo Alto Council Chambers. Mayor Fergusson said this represents a joint effort from Menlo Park, East Palo Alto and Palo Alto Mayors to provide local youth with employment and networking opportunities.

C. PUBLIC COMMENT #1

Kristi Breisch spoke about Project Read and events that are being organized for the near future. She said that on April 28, 2007 there would be a tutor recognition event. Ms. Breisch commented on the positive things that are happening with Project Read.

D. CONSENT CALENDAR

1. Adoption of Resolution No. 5733 by the City Council approving a Menlo Park Annex in conjunction with the Association of Bay Area Governments (ABAG), and the San Mateo County Sheriff’s Office of Emergency Services (OES) regarding a regional strategic plan to reduce long-term risk to people and property in Menlo Park resulting from natural disasters. (Staff Report #07-058)

2. Authorization for staff to execute an agreement with Reliance Standard Insurance Company, to provide group term life insurance, accidental death and dismemberment, dependent life insurance and long term disability coverage to city employees for the period beginning May 1, 2007 and ending April 30, 2010. (Staff Report #07-064)

3. Approval of the City Council minutes for the meetings of March 13, 2007 and March 20, 2007.

M/S Cline/Cohen to approve the Consent Calendar as presented. Motion carries 3-0-0 with Council Members Boyle and Robinson absent.

E. PUBLIC HEARINGS

1. A. Consideration of Resolution No. 5734 approving a 6.0 percent rate increase, effective retroactively to January 1, 2007, in solid waste collection rates for all Menlo Park commercial and multi-family residential customers.

1. B. Consideration of Resolution No. 5735 defining the service area for all single-family residences and approving a 6.0 percent rate increase, effective July 1, 2007, in solid waste collection rates for all Menlo Park single-family residential customers.
(Staff Report #07-059)

Items E1A and E1B were addressed jointly. John McGirr, Revenue and Claims Manager, presented the report explaining staff's recommendation for a 6% increase. He explained the services provided by the City and the South Bay Waste Management Authority (SBWMA) who has contracted through the year 2010 with Allied Waste to provide the collection of refuse. Mr. McGirr commented that a full rate review was conducted by a third party. He also explained the billing process for Menlo Park. He reported that staff complied with the public notice requirement as set by Proposition 218. Mr. McGirr said that to date two letters have been received on the matter.

Council Member Cline asked about the Your City/Your Decision impact on this issue. Mr. McGirr explained that through that process there was a suggestion to transfer to the garbage fund expenses that are related to the median and roadway litter collection. In the past, this was funded through the General Fund, but because it is directly related to the garbage fund it was moved. Mr. McGirr added that from all the cities in the Joint Powers Authority, Menlo Park has the lowest rates for the one-can service.

Mayor Fergusson asked if there was any public comment. There was none.

M/S Cline/Cohen to close the Public Hearing. Motion carries 3-0-0 with Council Members Robinson and Boyle absent.

M/S Cline/Cohen to approve the staff recommendation for both items.

Vice Mayor Cohen noted one of the letters that pointed out difficulties in communicating with Allied Waste. He stated that he was confident that staff would implement some of the suggestions and address the issues in the letter.

Motion carries 3-0-0 with Council Members Boyle and Robinson absent.

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 depth at 511 Grace Drive in the R-1-S (Single-Family Suburban) Zoning District, and for excavation into a required side yard setback for a light well associated with a basement. (Staff Report #07-060)

Megan Fisher, Associate Planner, presented the staff report and provided some history on the Planning Commission decision to approve the project with conditions as modified by that body. She provided details on the appellants' issues including the size of the structure, detrimental alteration of the character of the street, possibly setting a new construction standard on substandard lots and that the Planning Commission did not satisfactorily address the removal of the heritage trees. Ms. Fisher

referred to additional steps the applicant had taken to mitigate impacts to the neighbors. She referred to correspondence received from a previous renter at the project site.

John O'Sullivan, one of the appellants, stated that he and Loren Lyell were appealing the decision of the Planning Commission because of the removal of two heritage trees, presumably by an unlicensed contractor. He believed that the removal of the trees allowed the project to move forward. Mr. O'Sullivan opined that if the trees were not removed the two-story development would not have been allowed. He further asked the Council to deny the use permit and consider various changes to the project including a reduction in the size of the second floor that he believed would have been necessary had the trees not been removed, that the replacement of the trees be supervised by an independent arborist, that future construction be done under the supervision of an arborist and that an 18-month moratorium be imposed on the property. He also asked that the fines be increased.

Bill Harris, the applicant, addressed various concerns related to design and square footage. He stated that the house next door has a larger square footage than the proposed project and he was not aware that the trees were heritage trees when they were cut down. He stated that one of the trees was infested with rodents and that is why the renters left. Mr. Harris said that the removal of the trees was done in between renters and he is not the type of person that would disregard City ordinances. Mr. Harris explained the various steps that are being taken, via the tree protection plan, and so he finds it unsatisfactory for the neighbors to accuse the owners of not addressing the tree issue. He remembered offering the plans three times to one of the neighbors for review and their response was that they were philosophically opposed to the project. Mr. Harris asked Council to consider the tree replacement plan and the adjustments made to satisfy the neighbors next door.

Public Comment

Gary Ahern, the project architect, said Mr. Harris was using an old heritage tree ordinance under which the trees were not defined as heritage-sized. Mr. Ahern commented that the company that was hired to cut the trees down was licensed. The project architect added that many of the recommendations from the neighbors were considered and weaved into the project.

Peter Mulligan said that he had heard first hand how much accommodation the Harris' had made to please the neighbors. He said that as a neighbor he knew that the Harris' would not jeopardize the look of the neighborhood.

Bill Harris said that he has been a resident of Menlo Park for over 40 years. He supports the project and he believes there have been misrepresentations in the appeal.

Dr. Bryan Kolozsi said that he knew the character of Mr. and Mrs. Harris and there had been some exaggerations on the appeal. He did not agree with some of the comments made by the appellant and he offered his support for the project.

Chuck Kinney, former Mayor of Menlo Park, wanted to discuss the heritage tree ordinance. Mr. Kinney provided an overview of the different steps taken regarding the trees. He supports the conditions and the findings and found these extensive. He believes the staff has done a good job. He asks the Council if the staff recommendations are enough or if there should be more ramifications for what happened. He suggested reducing the second story two to three hundred square feet.

Art Schroeder said he has a house across the back fence from the Harris' and he has found that the applicant has been cooperative and he finds them to be honest. He believed it time to wrap this up and he said that the Harris' have been through many loops.

Lewis Young said that he was a neighbor to Bill and Cristina Harris and when he learned that they were going to build a new home he was excited for them. As neighbors they were asked to review the plans and shared a few concerns and these were taken into consideration. He further stated that the house will integrate well into the neighborhood.

Maurice Schlumberger said that he was upset that the two heritage trees were felled. He suggested that the imprint of heritage trees that were taken down be a non-buildable area and that a replacement be forced for trees of the same kind.

Marianne Schlumberger spoke about native live oaks and how these trees don't need much water. She commented that streets get named after trees but then residents cut down the trees.

Loren Lyell with time donated by Spencer Allen spoke about the items he found important. He addressed the heritage trees that were cut by presumably an unlicensed contractor. He said that he is convinced that the original design of the house, which was moved to the right from where it is now, would not have been built if the trees were alive. He has lived at 510 Grace for over 20 years and he is concerned that if it weren't for the cutting down of the trees then the house would not have been approved. He said that 95 people signed a petition (75 households) against this and many of the neighbors said that they had to work around heritage trees. He urged the Council not to set a precedent and allow trees to be destroyed and then have the site be developed for profit. He would like the integrity of the heritage tree ordinance respected and followed.

Mayor Fergusson asked if the arborist was licensed or unlicensed in Menlo Park. Ms. Fisher said that while the contractor was licensed it did not have a Menlo Park business license. Ms. Fisher said that a letter would be issued shortly requiring a fine of \$5,800 be paid and the applicant would have to pay the same amount. Mr. McClure, City Attorney, said that any business that performs work in Menlo Park needs a business license. Mayor Fergusson spoke about a moratorium and asked Mr. McClure to clarify the options. He said that if there is a violation that occurs then the City has the ability to mandate a moratorium necessary for staff to review the situation and establish mitigations as part of the project approvals. He said that the purpose of the moratorium is to give time to allow for the review process but a moratorium cannot be used to penalize an applicant.

Vice Mayor Cohen asked Mr. McClure to clarify the principle of unjust enrichment. Mr. McClure explained that unjust enrichment is making a profit from unlawful acts. In response to a question by Council Member Cline, Mr. McClure said that the Council has authority to modify the project. Mr. McClure explained that the law requires the Council to make findings and if it finds this project to be detrimental then the Council should deny the project. He added that in some ways the issue of the heritage ordinance is a separate issue. He reminded the Council that it had approved a large number of houses that have included the removal of heritage trees.

Council Member Cline asked about the pest control firms that the appellant contacted, and Mr. O'Sullivan named the following: Little David Pest Control, Donavans, Vacate, and one pest control in Redwood City. Mayor Fergusson asked the architect about the second story mass and he said that the zoning ordinance dictates the maximum size and the applicant is not close to that figure. He added that what was included in the second story were bedrooms and to address the lean of the oak tree the house is pulled even further away from the single story home next door. The architect said that the goal was to minimize the visual impacts on the two side neighbors.

Mayor Fergusson asked about the elevation of the house as one faces it from the street and she asked about the height. The architect estimated it at 14 feet. She suggested hiping that side of the house and she asked if that could be done. The architect said that he did not see a problem with that. Council Member Cline reiterated that the last statement from adjacent neighbors (Schroeder and Naclerio) is that they were satisfied. Staff confirmed this statement.

M/S Cline/Cohen to close the Public Hearing. Motion carries 3-0-0 with Council Members Boyle and Robinson absent.

Mayor Fergusson commented that nothing incensed her more than the loss of heritage trees in the City, and she likes that neighbors were watchdogs and are pushing for a resolution that addresses this issue. She also appreciates the strictness of the Planning Commission and the fact that the applicants seem to be sincerely remorseful for their actions. Vice Mayor Cohen said that he was reluctant to make any judgment about reducing the volume of the second story. He is not questioning any of the parties'

requests for relief but he just does not think that making those decisions from the dais is a good approach.

Council Member Cline said that this project has gone through a couple of reviews and modifications. His past experience is that he does not want to get into design from the dais. He is not unsatisfied with the size or location of the second story. Vice Mayor Cohen added that he thinks this needs to go back to the Planning Commission to review whether the mitigation for the tree loss is adequate. He supported comments made by Chuck Kinney and Maurice Schlumberger. The petition was discussed by the Council and Vice Mayor Cohen said that as a neighbor he would have felt attacked by the comments.

Council Member Cline said that he does not think it appropriate to send this back to the Planning Commission. He supported looking at administrating the heritage tree ordinance. Based on the facts he believed that the tree removal violation had been addressed on this project. Mayor Fergusson said that she is sensing that Council Member Cline will not be convinced to send it back to the Planning Commission. He clarified that the process of addressing this project and heritage tree issues should be decoupled. Vice Mayor Cohen said that his problem is that the tree ordinance failed Council and he is trying to save the situation. He supported beefing up the ordinance but that is not what is before the Council.

Mayor Fergusson said that if Council is unable to take action tonight, she proposed the three Council Members come up with a plan for proceeding. Vice Mayor Cohen stated that the Planning Commission may have relied improperly on certain facts which do not include all the facts that were heard tonight. Mayor Fergusson suggested approving the use permit subject to some additional conditions such as reduction of the second story and enhanced mitigation for the tree removals and sending it back to the Planning Commission for additional review. Council Member Cline said that ambiguous directions make him uncomfortable.

Mayor Fergusson suggested a continuance for two weeks. Mr. McClure said that May 20 is the deadline for the Council to approve or deny the matter. He also pointed out that this has been to the Planning Commission three times. Mr. McClure walked Council through the elements of the replacement tree plan. Mayor Fergusson commented that the mitigation plan is sound and she supported maybe setting aside money for heritage tree ordinance enforcement. Vice Mayor Cohen said that there might be other options. He added that if the item is going back to the Planning Commission he wants the size of the tree looked at, the square footage of the second floor and possibly a fresh review of the issues. Council Member Cline did not support this approach. He did not see this going back to Planning Commission because it has already gone to them three times and there was no ambiguity in their decision.

Mayor Fergusson attempted to build consensus among the divergent views. Council Member Cline said that there has been ample public engagement in seeking a collaborative solution. He stated the applicant has worked hard to reach a resolution and so does not support drawing the review out further. Mayor Fergusson stated her support for the Planning Commission's process. However, she still finds this an opportunity for additional mitigation like getting an independent arborist to oversee the project. Vice Mayor Cohen said that if a 10% reduction of the second story would be considered then he would be willing to investigate it. He noted his support for further mitigation of the trees, including trees to be administered by Trees for Menlo Park, trees elsewhere in Menlo Park, and use of an independent arborist to oversee the tree replacement plan.

Council Member Cline said he believes the replacement plan is sufficient and wonder what an independent arborist would do. He stated that he does not support the 10% reduction on the square footage. Vice Mayor Cohen explained that the independent arborist would evaluate the type of trees that are being proposed. Mayor Fergusson wanted to have the independent arborist look at the best time for the planting of the trees to make sure they thrive.

Council Member Cline said that he has concerns with the next proposal that comes to the Council because this one would set a precedent for future development. City Attorney McClure suggested that

the three main issues be sent back to staff, the appellant and the applicant. He suggested having this return in May and if the parties can't agree, Council will need to make a decision at that point.

Mayor Fergusson took a question from the architect who asked what was the clear reason for the 10% reduction on the square footage. Mr. McClure interjected and said that the Council did not decide on 10% or specify the purpose behind it and since only two Council Members agreed with that approach, this was not direction.

M/S Cline/Cohen to continue the item until May 8, 2007 and have the applicant and the appellant discuss and confer with staff addressing the following issues: 1) size or mass of the second floor; 2) use of an independent arborist to ensure that the trees will thrive; and 3) the possibility of providing trees at another location in Menlo Park or a contribution to the City or Trees for Menlo to make up for the loss of heritage trees. Motion carries 3-0-0 with Council Members Boyle and Robinson absent.

Vice Mayor Cohen asked all parties to embrace this approach with a new spirit.

F. REGULAR BUSINESS

1. 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 – None.

H. INFORMATION ITEMS – None.

I. COUNCIL MEMBER REPORTS

Council Member Cline referred to a housing report on baby boomers prepared by the City of Palo Alto that was informative and requested that the City Clerk provide copies to Council.

Vice Mayor Cohen said he attended a conference at Stanford hosted by the Constitutional Law Society and he was impressed with the materials on voting systems. He referred to a column published in a local newspaper and how it speaks about minority representation in the State of California. Vice Mayor Cohen spoke about district elections and that these could be an alternative to general elections but even a better suggestion in his opinion is proportional representation. He said that since he is the person in charge of campaign reform he is investigating proportional representation as an alternative to district voting. Mayor Fergusson asked that Vice Mayor Cohen send a link to the article to the CCIN address.

Mayor Fergusson reminded everyone that tomorrow at 4:00 p.m. the Green Ribbon Citizens Committee meeting will take place and she invited everyone to attend.

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

Jesus Monroy thanked Council for finishing the meeting early. He said that the Historical Association has information on a tree census that might be useful on the appeal item.

K. ADJOURNMENT - The meeting adjourned at 10:30 p.m.

Respectfully submitted,

Silvia M. Vonderlinden, Certified Municipal Clerk

Approved at the Council meeting of May 8, 2007.