



CITY COUNCIL
and
COMMUNITY DEVELOPMENT AGENCY
MINUTES
Tuesday, May 8, 2007
7:00 p.m.
701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers

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

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

PLEDGE OF ALLEGIANCE

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

A. COMMISSION REPORTS

1. Recognition of outgoing Bicycle Commissioner.

The Mayor recognized Peter Fechheimer, an outgoing Bicycle Commissioner.

2. Commission members and Chamber of Commerce reports. None.

B. PRESENTATIONS AND PROCLAMATIONS

1. Proclamation celebrating Bike-to-Work Day Thursday, May 17, 2007. (attachment)

The Mayor presented the proclamation to Bob Steele, Chair of the Bicycle Commission, and outgoing Commissioner Fechheimer. Bicycle Commissioners MaryAnn Levenson and John Fox were also present and expressed their appreciation for the recognition. Mr. Fox announced the energizing stations and their locations. The Mayor recognized a T Shirt that was presented to each Council Member celebrating Bike-to-Work Day.

Fran Dehn, Chamber of Commerce Executive Director, announced an upcoming mixer on Wednesday evening and she invited the business community to bicycle to the event at Glenwood Inn.

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

Betty Meissner appreciated the Budget Open Houses and she thanked Glen Kramer and Carol Augustine for their quick responses to her questions on Saturday afternoon. Ms. Meissner spoke about the Library Foundation and thanked Council for the proclamation presented to them. She asked that in the near future the Council consider increasing Library staffing.

Matt Henry congratulated the Police Department for the way it relates to people and how it solves issues. He said that Police Department staff listens and tries to understand what residents are trying to tell them and he appreciates that.

Loren Lyell, said that regarding item D3, he appreciated the large donation to the Trees for Menlo. He hoped that in the future there is movement towards strengthening the heritage tree ordinance. He thanked former Mayor Kinney for his guidance and wisdom.

Stu Soffer, former Planning Commission Chair, commented that on agenda item D2 there is a word missing on section six of the ordinance. He also asked why the City would want to eliminate the tool of eminent domain.

Elias Blawie addressed item D1 and said he does not agree with the proposal. He believes every Council Member should be able to place an item on the agenda without the need for a second Council Member. He found the proposal has Brown Act issues and he did not support requiring two Council Members to place an item on the Agenda. He shared concerns with what he called the “rights of the minority.”

D. CONSENT CALENDAR

Items D1 and D2 were pulled for discussion

1. Approval of revision to the City Council Procedures Manual regarding use of Council Colleagues' memoranda to place items on an agenda. (Staff Report #07-086)
2. Waiver of the full reading and adoption of Ordinance No. 958 adopting a description of the Property Acquisition Program for the Community Development Plan for the Las Pulgas Community Development Project Area pursuant to new State Health and Safety Code Section 33342.7. (Staff Report #07-088)
3. Adoption of modified findings and conditions of approval for 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. (This item is continued from the City Council Meeting of April 10, 2007.) (Staff Report #07-087)
4. Approval of the minutes for the City Council meeting of April 10, 2007. (attachment)

Council Member Boyle asked if he needed to recuse himself from D3 and the City Attorney said this should be voted on separately so that the City Clerk could announce that he will recuse himself.

M/S Cline/Cohen to approve item D3. Motion carries 3-0-0 with Council Members Boyle and Robinson recused.

M/S Cline/Cohen to approve item D4. Motion carries 3-0-2 with Council Members Boyle and Robinson abstaining.

Discussion on item D1:

City Attorney McClure said that item D1 raises an interesting question of whether placing the matter on the agenda requires a substantive discussion. He added that the Brown Act covers reaching a consensus and if there was a discussion it could result in a situation where the Council Member could not go to another member to pursue further concurrence. Council Member Boyle agreed with the comment from the public but he said this had been suggested to move things along at meetings. He added that if one person places this on the agenda and the other four do not want to place it on a future agenda then the other four could always object to it. Vice Mayor Cohen said he has been against this proposal from the beginning and he is reverting to his original position on this and so he supports having just one Council Member being able to place an item on the agenda. Council Member Cline said in his view this was to avoid grand standing and for him this is about efficiency. Mayor Fergusson said she looked at this as a way to work with another Council Member to flush out an idea. Council Member Boyle suggested continuing with the practice of still voluntarily requiring two Council Members to place an item on the agenda.

Motion to table by Mayor Fergusson dies for lack of a second. Council Member Robinson said he agreed with the majority and while this was a well-intentioned idea some concerns have risen. He did not want to be efficient at the expense of the law but he encouraged Council Members to continue voluntarily requiring two Council Members to submit a request.

Discussion on item D2:

City Attorney McClure explained that the power of eminent domain lapsed several years ago, and at that time the Council decided not to renew it. This is a new statutory requirement that a plan be set for

this matter and he acknowledged that the word “ordinance” was missing from section six of such document and that this would be corrected.

M/S Boyle/Cline to adopt Ordinance No. 958 with the word “ordinance” being added on section six. Motion carries 5-0-0.

E. PUBLIC HEARINGS – None.

F. REGULAR BUSINESS

1. Consideration of options for clarifying the definition of gross floor area related to Floor Area Ratio (FAR) and parking requirements in multi-family residential, commercial and industrial zoning districts. (Staff Report #07-082)

Acting Community Development Director Justin Murphy presented the report explaining that staff is seeking direction on an ordinance amendment and clarification on the gross floor area definition. He provided details on previous historical exclusions. He covered each of the options before Council.

Council asked questions about the number of buildings that might fall under the legal but non-conforming category. Mr. Murphy said that the majority of the City is zoned single family and is subject to a different definition and he said that he would estimate maybe six per year and provided some examples Council Member Robinson asked how items in the pipeline would be handled and Mr. Murphy said that unless the applicant has pulled building permits and has fully vested approvals, the literal interpretation will apply. Mr. Murphy highlighted the various milestones related to the approval of a project and commented that in the past the City Council has set specific milestones for when an ongoing project would be exempt from the new regulation or definition. Mr. Murphy spoke to the issue of interpreting the ordinance and he said that this particular topic has required interpretations at a staff level, Planning Commission and Council level. Staff was asked if the exceptions and exemptions have been consistent throughout the years with the existing ordinance and Mr. Murphy confirmed. City Attorney McClure explained that after February 2007, when Council gave direction for a literal application of the ordinance, this has been the approach implemented by staff and applied to items that came forward and that do not require Planning Commission or City Council action.

Vice Mayor Cohen asked what was included in the Acorn Restaurant plan that was one of the exceptions from the gross floor area. Mr. Murphy said that one of the exceptions was the utility room. Mr. Murphy also said the elevator is only being counted once and the balconies were excluded. Council Member Boyle did not recall the Council giving official direction to change the direction. Council Member Boyle asked if staff acted differently after February 2007 and staff confirmed. He asked if there is a list of the exclusions. Mr. Murphy said that the list does not exist but it could be developed, recognizing the potential for debate and the implications on staff resources. Council Member Boyle stated that he would like to see how Menlo Park compares to other neighboring cities.

Mayor Fergusson said that regarding option #2 for a clean-up of the language, she understands some of the implications when elements like utility rooms are included in the gross floor area possibly driving people to then place such features outside and affecting the quality of life. Council Member Robinson asked about interpreting the ordinances and City Attorney McClure explained that it is up to the Council to interpret its ordinances. City Attorney McClure said that the existing ordinance has ambiguities that require interpretations at some level, and he explained that variances are not granted for floor area based on previous Council direction. Vice Mayor Cohen stated that he would like underground parking to be part of the subject area for discussion and the City Attorney said the Council could review that as well. Mayor Fergusson asked about the public correspondence received and Mr. Murphy said that there were three pieces of correspondence and he explained the comments.

Public Comment

Elias Blawie summarized his points saying that free market systems work and people do not build unattractive sites. He believed that these exclusions are viewed as providing more intense development. He is concerned that non-conforming use was not addressed. He believed the zoning ordinance is the law and these interpretations are outside of it. He urged Council not to create defacto development through changes or exceptions.

Paul Collacchi, former Mayor, provided a handout directly to the City Council. He guided the Council through the handout. He said that what was being used for projects was different from the policy. He referred to certain projects stating that in his opinion certain projects were shielded from environmental review due to administrative interpretation. He stated that polices are being changed administratively and this matters to him. The City Clerk announced that Mr. Soffer donated three minutes to Mr. Collacchi. He spoke about specific projects and how he believes there were different interpretations and he would like consistency. He believes that administrative changes decrease political accountability between the Council, staff and public. He said that if there is a need for more intensity in development then the rules need to be changed, but that this should not be done administratively because these are policy changes and Council and the public need to have a chance to comment. He opined that the public should be entitled to make fair historical comparisons based on fair consistent metrics.

Morris Brown said that the point is how the FAR should be measured and how these rules are going to be interpreted. Mr. Brown opined that on the 1906 El Camino Real project the developer managed to avoid doing a traffic study and other items and this changed the nature of the project. He would like to see that project appealed to Council so it can be looked at again. He would like all these projects to stop until the El Camino Real plan and vision are defined.

Patti Fry said it is important to clean up the definition and she said that when there are rules it would be good to know that they are being followed so there is clarity. She would like changes to be explicit and while she understands how some of the interpretations occurred, such as covered parking, others are just not acceptable like elevator shafts. She shared with Council a comparison of what five other cities have done and she said that they are not liberal in their interpretations. She would like more specificity on the zoning ordinance instead of interpretations. She asked that the information from the Municipal Codes from other cities be put into the record.

Peggy Lo, property manager for Quadrus, said that she understands the need for consistency but there are projects that are almost complete and this could impact the ability to finish the project. Ms. Lo said that there were financial and aesthetic decisions that were made over 20 years and if the rules change there are impacts to the applicants. She asked that Council consider that reality.

Council Member Cline said that he does not want to create a different policy but instead follow what is written in the ordinance. Council Member Cline supported option #2, cleaning up the ordinance. Regarding the incentive items he believed they should be looked at later, but he wanted to have consistency and he wanted to address this because it will impact El Camino Real. He did not like going back in time and changing the rules so in his opinion the projects that are in the pipeline should stay the course. Council Member Robinson said that over time the situation has gotten muddled and he does not want to impugn motives. He believed it is more appropriate for the Planning Commission to address this matter and he agreed with Council Member Cline on pursuing option #2. He stated that the projects in the system are a concern and he asked staff to comment. Mr. Murphy provided details on the reasoning beyond staff's decisions on mechanical rooms and how these have been excluded from the gross floor area ratio. Staff said that there are ways to discriminate between projects going forward and previous projects that can be grandfathered. Staff added that the goal has always been to apply rules consistently and not be arbitrary.

Council Member Boyle said he is concerned that the rules have been changed and he does not recall giving explicit direction to staff for literally interpreting the ordinance. He asked that option #3, consideration of building features to be either included or excluded in gross floor area be revisited as soon as possible and that an ordinance that is less ambiguous be developed. Council Member Boyle would like to have a comparison with other cities and understand how they handle this issue and what exclusions they use. He did not support changing the status quo unless more information is available. He was not opposed to change but he believed Council should choose option #3 because option #2 will equate to a slow growth policy and that may take a long time to be resolved. Mayor Fergusson asked Council Member Boyle if he would support option #2 if it included projects that are in the pipeline to be viewed under the more liberal approach (i.e. using the interpretation prior to February 2007) and have these be grandfathered. Council Member Boyle said he could not support that approach because this

would impact new projects that get submitted. Vice Mayor Cohen said he could not accept options #2, #3, or #4 because he is concerned with the definitions and he sees a city that has stopped following the rules as written. He said he does not want to place blame on anyone but this is what has happened. He commented that he hoped to get all the exceptions that had become common practice in the last 10-15 years in the staff report. He would support option #1 to follow the literal interpretation of the ordinance as it has always existed. Council Member Robinson referred to the matter of the CEQA exemption and how this makes option #2 a more attractive option, and if Council went with option #3 it would not be exempt from CEQA. City Attorney McClure stated that in the most conservative approach that is correct and that option #3 likely will require an Environmental Impact Report (EIR) or a Negative Declaration. Staff explained that a Negative Declaration would add a month or two and an EIR would add a year or two. The City Attorney said that staff recommends option #2 because if Council stays at option #1 interpretation will still be needed since the ordinance is ambiguous as currently written.

Council Member Robinson asked details about the Quadrus project and staff said that applications have been received but the project has not been completed. The City Attorney added that the complexity of this project is that they have a certain amount of FAR and if the literal interpretation is applied they would not be able to build what they applied for because they are close to maximum build out.

M/S Robinson/Cline to pursue option #2 and send it through the Planning Commission for review and recommendation.

Council Member Boyle suggested going back to the status quo prior to February 2007 for the short term, but if that is not acceptable he suggested having Council give clear direction to staff. Council Member Boyle would accept option #2 if staff would come back with: 1) a list of clarifications that can be made without the need for an EIR on a conservative assessment; and 2) other possible exclusions from the gross floor area that would require a more aggressive interpretation but would still not require an EIR. He would like to see the list of current exceptions that are used by staff and the City Attorney. Council Member Robinson stated that he would like the Planning Commission to evaluate the list of what will go into an ordinance. Mayor Fergusson supported option #2 but said she would like to have option #3 still be on the table. She is uncomfortable with the unintended consequences of option #2. Mayor Fergusson respects the history that has led to this. She said this is classic tension with staff wanting to do the best for the public and similarly trying to find the way of working within the ordinance. Mayor Fergusson with all due respect to the speakers does not see free market working in zoning and land use issues.

Motion by Council Member Boyle to go back to the status quo interpretation of the ordinance and in parallel begin working on a new ordinance that clarifies the exceptions. Motion dies for the lack of a second.

Council Member Cline stated that maybe portions of option #3 should be considered, such as showers. He also liked some of the suggestions made by Council Member Boyle. Council Member Cline would like to see the rules be set. Vice Mayor Cohen said he cannot support the motion because the baseline (which is the ordinance) needs to be enforced. He said that first it is important to go back to what has been set as law and so he believes option #2 is not appropriate. City Attorney McClure described the ambiguous nature of the ordinance and that interpretations are necessary. Council Member Boyle suggested option # 2 but also having staff come back with a list of needed clarifications that could be done without environmental review and those that would need environmental review. Mayor Fergusson agreed with this approach and Council Member Robinson asked staff to comment. Staff asked if this would be a step that goes to the Planning Commission or comes back to the City Council. Council Member Robinson agreed with having it go to the Planning Commission as a public hearing and he would like to do something that does not require environmental review and so he viewed option #2 as a good option.

City Attorney McClure restated the motion:

M/S Robinson/Cline to direct staff to refer definition 16.04.325 (Gross Floor Area) of the Municipal Code to the Planning Commission to develop a recommendation on clarifications to the definition with consideration of items that in staff's, Planning Commission and City

Attorney's opinion would be categorically exempt from environmental review if included in the definition. The staff report will include a list of possible exemptions for consideration and whether those considerations are likely or not to be considered categorically exempt.

The restated motion was acceptable to Council Members Robinson and Cline. Mayor Fergusson said that this action does not make any statements about projects that are in the pipeline. **Motion carries 4-0-1 with Vice Mayor Cohen abstaining.**

The Mayor said that the next step is to deal with projects that are already built and projects that are in the pipeline. The City Attorney explained the implications of each option. Council Member Boyle stated that a stricter direction will force applicants to change projects and it may be inconsistent with what the Council wants. He would prefer a continuation of existing practices until the Council is ready to make a change. Council Member Robinson said that regarding built projects he would like to understand the consequences of not creating an exemption for a legal nonconforming building. Mr. Murphy explained that the zoning ordinance covers non-conforming structures and that there are limitations on new work that can be done on a non-conforming structure. Mr. Murphy said that there are amortization implications for non-conforming structures. Council discussed the benefits of exempting these structures.

M/S Robinson/Cline providing direction that all existing buildings would not become non-conforming as a result of the new definition. Motion carries 5-0-0.

Council Member Robinson then addressed items that require Planning Commission approval and he stated that the same exemption should be included. City Attorney McClure explained that there are various levels and types of approvals.

M/S Robinson/Fergusson providing direction to exempt from the new definition projects that have received a final Planning Commission or City Council approval and/or any projects that do not require a Planning approval but that have received building permit approval.

The City Attorney clarified that planning applications and building permit applications that had been received but not yet approved would not be exempt from the new definition under the motion. Council discussed the issue of what comprises a final approval and whether the approvals should be final in order for the projects to be exempt under the new definition. **Council Member Robinson called for the question and Council Member Cline seconded.** Staff asked for clarification on the effective date on the exemptions. The City Attorney stated an assumption that the effective date would be as of tonight. The maker of the motion supported it being effective tonight but the seconder had concerns that this action regarding implementation would be coming before any action on the definition itself. **Council Member Robinson withdrew his motion to call for the question.** Mr. McClure explained that the issue is that staff has been taking a literal interpretation for applications that have come in since February 2007, and there needs to be direction on how to treat the projects that were in the pipeline before February 2007. Mayor Fergusson liked the idea of today being the cut off date. Council Member Robinson referred to the recommendation in the staff report for handling matters that are in the pipeline and that is to exempt projects that were in the pipeline prior to January 1, 2007 with building permits issued by January 1, 2008. Council Member Cline had concerns with this creating a race to get a building permit. Council Member Robinson was no longer comfortable with the starting date being tonight.

Substitute motion:

M/S Boyle/Fergusson to adopt the staff suggestion and exempt from the new definition projects that have submitted a Planning application prior to January 1, 2007 and have submitted a complete building permit application prior to January 1, 2008.

Council Member Cline asked how long it takes for approval of a building permit application. Mr. Murphy explained that there are a range of timelines, but that by relating the exemption to building permit submittal instead of approval, some of the burden of a race to approval is reduced. Council Member Boyle explained that the motion would not allow any new projects if they had not been submitted via a Planning application. Staff said that the number of these applications is probably not in excess of 10.

The City Attorney reworded the substitute motion:

M/S Boyle/Fergusson providing direction to exempt from the new definition all projects that have submitted a Planning application prior to January 1, 2007 and have submitted a complete building permit application prior to January 1, 2008.

Vote on the motion to substitute: Motion carries 4-0-1 with Vice Mayor Cohen abstaining.

Vote on the substitute motion: Motion carries 4-0-1 with Vice Mayor Cohen abstaining.

Council asked about the projects that only need a building permit and staff said it would be a very small universe, for example adding a mezzanine to a building. City Attorney McClure explained that Council had provided direction to staff tonight to work with the Planning Commission to revise the definition of Gross Floor Area and consider the inclusion for exemptions from the new definition for existing buildings and projects that have applied for Planning applications prior to January 1, 2007 and have submitted a complete building permit application prior to January 1, 2008, and that all other projects would be subject to the new definition of Gross Floor Area. He further noted that staff could report to the Planning Commission if there are cases of projects only requiring a building permit that would be impacted by the new definition and, if so, those could be addressed at that time.

M/S Boyle/Cline providing direction to exempt from the new definition building permit applications for which no Planning approval is required that are submitted prior to January 1, 2007

Council Member Robinson stated that he was not comfortable with this approach because the other projects being exempted had received at some point different information from staff but that this was not the case with building permits that do not require planning approval and have not yet been submitted. Council Member Cline stated that he wanted to be consistent and is more comfortable dealing with projects that have a history rather than those in the future.. Mayor Fergusson agreed with the comments from these two Council Members. Based on these comments the maker of the motion amended his motion to:

**M/S Boyle/Cline providing direction to exempt from the new definition building permit applications submitted as of tonight for which no Planning approval is required.
Motion carries 5-0-0.**

City Attorney McClure asked if option #3 will be considered later. Council Member Robinson would like to wait because of the unknowns and due to the fact that more data is forthcoming. Council Member Boyle agreed with this approach and he would prefer to wait, but he wanted to be clear on what the procedure would be if an applicant walked in tomorrow. Staff explained that it would continue to provide the same direction that has been provided since February 2007 specifically that elevator shafts and stair cores would not be excluded from the definition but that underground and structured parking and balconies would be excluded. Council Member Boyle stated that this is more a matter of a stricter interpretation than a literal one.

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.

G. WRITTEN COMMUNICATION - None

H. INFORMATION ITEM - None

I. COUNCIL MEMBER REPORTS

Council Member Robinson noted that the Dumbarton Rail topic will be on the Council Agenda for the May 22, 2007 meeting. He said that Howard Goode and other staff will make a presentation. Kent Steffens, Interim Acting City Manager, confirmed that this item was added to the tentative calendar.

Council Member Boyle reported on the downtown visioning project and he said that Mr. Murphy agreed to pull together a list of speakers and seminars including a potential budget. This item will come back on May 22, 2007.

Council Member Robinson said that there is a meeting tomorrow of the Gateway 2020. He would like to ask for another Council Member to attend it at 4:00 p.m. because he and the alternate are unable to attend. The Mayor said that maybe a Transportation Commissioner could attend.

Mayor Fergusson spoke about an effort to organize a Ravenswood Working Group to guide the salt pond restoration project. She referred to a request for participation by a Council Member, staff, one individual representing the Belle Haven community, and encouraging City Commissioners to attend these meetings as citizens. Mayor Fergusson said that a representative from the Parks and Recreation, Environmental and Planning Commissions could be designated and she offered to write a letter. City Attorney McClure said this should be placed on a future agenda as a discussion item. Council Member Boyle would like to understand how much this will take up of staff time and the expense since this was not an explicit priority.

Mayor Fergusson announced that the fifth meeting of the Green Ribbon Citizen's Committee will take place tomorrow at 4:00 p.m. and Clark Kepler will speak on the "Go Green Initiative."

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

Patti Fry proposed a question for a future City Manager candidate that might be how to handle challenges such as the ones that were expressed tonight and which she called undocumented policies. She referred to the Quadrus project and she said that it benefited from the abandonment of a right of way in terms of FAR and when the trigger for the trips was modified she believes they got an entire building approved. She thanked Council for its work.

K. ADJOURNMENT

The Mayor adjourned the meeting in the memory of Lou Papan, who died recently after serving many years in the State Legislature. Mayor Fergusson expressed hers and the Council's condolences to his family and friends. The meeting adjourned at 10:42 p.m.

Respectfully submitted,

Silvia M. Vonderlinden, Certified Municipal Clerk

Approved at the Council Meeting of June 19, 2007.