



**CITY COUNCIL
COMMUNITY DEVELOPMENT AGENCY
MINUTES
Tuesday, October 2, 2007
7:00 p.m.
701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers**

ROLL CALL - Fergusson, Cohen, Boyle, Robinson, (Absent – Cline)

Staff present – City Manager Rojas, City Attorney McClure and City Clerk Vonderlinden. Other City staff were present in the audience.

PLEDGE OF ALLEGIANCE

A. VACANCIES, APPOINTMENTS AND COMMISSION REPORTS

1. Appointments to Advisory Bodies

Several applicants to the Transportation Commission spoke of their qualifications. Robert Cronin stated that someone with his experience and knowledge of bicycle issues should serve. Omar Kinaan said he has experience in traffic issues and proposed investigating the impact of traffic-related projects on individual neighborhoods as well as the entire city. Penelope Huang said she supports bicycle safety, traffic mitigation, and a well planned public transit system.

Alaina Sloo, seeking appointment to the Library Commission, stated she works as a school librarian and sees lots of opportunities for the library system.

Appointments to the Transportation Commission

Mayor Fergusson nominated Robert Cronin and Michael Meyer. Council Member Robinson nominated Martin Engel and Penelope Huang. Vice Mayor Cohen nominated Rich Rollins and Omar Kinaan. Council Member Boyle nominated Kent Smith and John Hoskins. Martin Engel received four votes; Robert Cronin received three votes; Michael Meyer received two votes; Penelope Huang received one vote; John Hoskins, Omar Kinaan, Rich Rollins, and Kent Smith received no votes.

Action: Robert Cronin was reappointed and Martin Engel was appointed to the Transportation Commission for terms expiring in September 2011.

Appointments to the Environmental Quality Commission

Council Member Robinson nominated John Nash and Daniel Kocher. Mayor Fergusson nominated Mitchel Slomiak. Council Member Boyle nominated James Schott. Vice Mayor Cohen nominated Rich Rollins. Council Member Cline nominated Reza Sheikhezai. Council Member Robinson suggested that the Council vote on the terms expiring in 2011 first and then vote on the term expiring in 2008.

For the first term, Daniel Kocher received four votes; John Nash and Mitchel Slomiak each received two votes; Rich Rollins and James Schott each received one vote; and Reza Sheikhezai received no votes. For the second term, Mitchel Slomiak received three votes and John Nash received two votes. For the third term, John Nash and James Schott each received two votes; Rich Rollins received one vote; and Reza Sheikhezai received no votes. In the runoff between John Nash and James Schott, James Schott received three votes and John Nash received two votes.

Action: Appointments to the Environmental Quality Commission were as follows: Dan Kocher was reappointed for a term expiring September 2011; Mitchel Slomiak was appointed for a term expiring September 2011; and James Schott was appointed for a term expiring August 2008.

Appointments to the Housing Commission

Council Member Robinson nominated Patricia Boyle and Elizabeth Lasensky.

Action: Patricia Boyle and Elizabeth Lasensky were reappointed by acclimation to the Housing Commission for terms expiring September 2011.

Appointment to the Library Commission

Council Member Boyle nominated Lucia Soto. Council Member Cline nominated Alaina Sloo. Alaina Sloo received three votes and Lucia Soto received two votes.

Action: Alaina Sloo was appointed to the Library Commission for a term expiring September 2011.

Appointment to the Parks and Recreation Commission

Kristi Breisch was nominated.

Action: Kristi Breisch was appointed by acclimation to the Parks and Recreation Commission for a term expiring September 2011.

Due to the resignation of George Pappas from the Transportation Commission and the resignation of Martin Engel from the Environmental Quality Commission, the Council agreed to accept additional applications until 12:00 p.m., October 4, 2007.

2. Chamber of Commerce report

Fran Dehn, Executive Director, said that the Chamber supports a study of grade separations. She also requested: 1) a status report on the repair and replacement of median lighting on Santa Cruz Avenue and 2) a study session on parking, focusing on parking structure alternatives as part of the El Camino Visioning Project. City Manager Rojas said that status reports will be presented at the October 3, 2007 meeting and can be discussed at that time.

Ms. Dehn stated that the Chamber is also awaiting the results of the Metropolitan Transit Commission (MTC) study, which is currently with the Transportation Commission. Mayor Fergusson requested a brief summary of the study for the October 3, 2007 meeting.

B. PRESENTATIONS AND PROCLAMATIONS

1. Proclamation declaring California Arts Day October 5, 2007.

The Mayor presented the proclamation.

C. PUBLIC COMMENT #1

Nick Ross, who works in the after-school program at the Menlo Children's Center, said he is losing his job due to the 1,000-hour regulation. He said he devotes a lot of time to the program, and if he held a full-time position, he could enrich the community in ways that have not been done before. City Manager Rojas said he assumed that those regulations were for part-time employees and they were made aware of that when they were hired. He said he will investigate, but also noted that part-time employees are hired for fiscal reasons.

James Lewis, on behalf of the Menlo Park Welcoming Committee, invited the Mayor, City Manager, and Chief of Police to a town hall meeting, scheduled for either October 25 or October 27. He stated its purpose is to bring together members of the community to meet with one another and city leadership. The committee will notify residents and businesses of this event through postcards, weekly newspaper ads, and a website. City Manager Rojas said that the Council will discuss possible community engagement programs at the October 3, 2007 workshop and will notify him whether such an event would be suitable for the program.

D. CONSENT CALENDAR

1. Approval of the minutes for the City Council meetings of August 13, 2007 and August 28, 2007.

Action: Moved, seconded (Boyle/Robinson) carried unanimously to approve the minutes as submitted.

E. PUBLIC HEARING

1. 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 578 Olive Street in the R-1-S (Single-Family Suburban) Zoning District.

Action: Continued to the October 30, 2007 meeting with the consent of the applicants and appellants to allow time for mediation.

F. REGULAR BUSINESS

1. Council consideration and direction regarding two options to provide funding for the restoration and preservation of the Park Theater as a potentially historic building.

City Manager Rojas presented the staff report. He informed the Council that the Park Theater began operation in 1947 and closed in 2002. Since then, it has deteriorated, and the owner has attempted to find alternative uses. Andy Duncan has entered into escrow for the site and wishes to move the Menlo Park Dance Academy there, but the costs to restore it are more than he can afford. Mr. Duncan has proposed two alternatives: 1) a \$500,000 loan from the City or 2) a ground lease where the City would purchase the land for \$1.4 million and Mr. Duncan would finance the improvements. The City Manager reported on the financial impacts of both alternatives and stated that staff is looking for direction from Council.

Mr. Duncan gave an overview of his proposal, including a brief history of the facility, his proposed renovations, and a cost analysis. He stated that the current owner, Howard Crittenden, planned to convert the building into office and retail space. He stated that in January 2007 he entered into a contract with Mr. Crittenden to purchase the building in the hopes of restoring it, and that two respected historical architectural firms and a state agency have reported that the building qualifies for historic designation.

Mr. Duncan explained that while other uses would be considered, his renovation plan includes turning the theater into three separate dance studios, building walls that would reach the ceiling, but could be removed to convert the space into a theater. He submitted a petition, signed by approximately 150 residents asking the City to provide financial support to restore the theater.

Mr. Duncan offered to fund the building's restoration in exchange for a \$500,000 loan, with the City receiving first right to purchase the building. As an alternative, he proposed that the City could purchase the property and lease it to him for 55 years. He offered to prepay rent for a period of time and giving the City the option of buying out the lease every 10 to 20 years. Mr. Duncan indicated the terms, including the loan amount, are negotiable, and asked the Council to provide direction to staff on his proposal.

Council Member Robinson said that the dance company has a rent estimate of \$225,000 per year, and the City would make 5% on the loan, leaving a gap of \$25,000 per year. He asked whether it would be possible to raise the rent on the property. Mr. Duncan said he would discuss this as part of the negotiations.

Council Member Boyle asked whether he had approached other parties to assist in the restoration. Mr. Duncan said he has had conversations with a few developers that went nowhere. Council

Member Boyle also asked who would cover cost overruns. Mr. Duncan responded that he has included a contingency of 15%.

Council Member Cline asked whether any other communities in the Bay Area had done similar restorations. Mr. Duncan pointed to the Fox Theater in Redwood City as an example. Mike Garavaglia, Garavaglia Architecture in San Francisco, said that dozens of communities have undertaken such projects, with varying commitments.

Mayor Fergusson asked Finance Director Augustine to comment on the staff report, which emphasizes the costs, but not the benefits. The Finance Director stated that the report only included costs because the benefits aren't easily determined in dollars. The Mayor then asked Mr. Garavaglia what he has identified as historically significant about the building. He responded that the marquee, the ticket booth, the lobby, the original signage, the restrooms, and the main theater are all historically significant.

Council Member Boyle said that many projects of this nature use redevelopment, not general, funds.

Members of the public commented as follows:

Paul Bendex said he would love to see what happened in Palo Alto happen in Menlo Park, including lit up theater facades. He talked about how San Francisco tore down a 5,000-seat theater, failing to consider future needs. He encouraged the Council to consider whether the City could use the space or imagine its potential uses.

Mark Garcia stated his opposition to City involvement in the project, but not the project itself. He questioned whether there are other sites in the City that may have more historical value. In terms of youth activities, he expressed his belief that a dance studio has a more limited use than, for example, a park, which has multiple uses and benefits.

Jane Kellam said she has taught dance for 23 years. She stated that the community center has limited space and is not conducive for dance classes. She suggested the City renovate the community center before renovating the theater.

Elizabeth Lasensky said she is supportive of renovating the theater, and asked the Council to consider turning the theater into a nonprofit movie theater and performing arts center.

Karen Holman talked about the successful renovation and reopening of the Palo Alto Children's Library, which used private and public funds, but no redevelopment money. She said that federal programs often recognize the value of investing in cultural resources.

Winter Donlak, of Palo Alto, stated that she has a leadership role in the Save Park Theater Group and has seen widespread support to save the building.

David Speer said he is not necessarily against the project, but that any approval should require the building be part of a plan for El Camino. He commented that a loan option is risky and recommended that if the City decides to proceed, it hire experts to negotiate the agreement.

Harry Harrison, on behalf of the Historical Association, said that the Association doesn't consider the theater to be historical. He stated his personal belief that the City should not subsidize this project unless the taxpayers enjoy some benefit. He also questioned the structural integrity of the building.

Roxanne Rorapough said the proposal mainly benefits Mr. Duncan, Mr. Crittenden, and the dance studio. She suggested that Mr. Crittenden pay for the renovations and then sell the building. She asked the City to not entertain this proposal, focusing instead on more police officers, better traffic patrols, infrastructure improvements, safety and emergency programs.

Stuart Soffer said this proposal is not for a community theater, but rather a private enterprise. He stated that since the Council did not solicit proposals for the theater, it is reacting more than planning, and has not done due diligence of either Mr. Duncan or his track record in executing projects. He said Council has other priorities, some of which were mentioned earlier, but this is not one of them.

Jim Cook, of Atherton, said he is working with Mr. Duncan on this project. He said that Mr. Duncan is an investor, not a developer, and he is undertaking this project for a smaller return than a developer would accept.

Mr. Duncan responded to questions raised by Mayor Fergusson. He said that the dance academy provides scholarships for children that cannot afford classes and has never turned away a prospective student. In addition, the academy has a nonprofit organization that runs an annual Christmas show, where thousands of people come to see live theater at either low or no cost. Mr. Duncan stated that the only other building he has been involved with is 1705 El Camino Real, which after its renovation, won a national award for the best rehabilitation of a building. He also responded that a structural engineer has examined the building and reported that it is structurally sound.

Mayor Fergusson asked the staff to address whether the project would take funds away from traffic enforcement. City Manager Rojas said that the \$1.4 million would have to come from the City's reserves of \$28 million and would not impact monies already allocated for traffic enforcement.

When asked whether the building would become public property when the lease ends, Mr. Duncan confirmed that the City would own the building whenever it chooses to purchase it.

Mayor Fergusson asked about the steps to convert the building to office space under CEQA. City Attorney McClure said that once a building is deemed historically significant, any change would require an environmental impact report (EIR). He stated that even the retail and commercial option would require review and findings by the City.

Council Member Robinson questioned what the financial impact would be of taking \$500,000 from City reserves. City Manager Rojas responded that the City would lose \$25,000 in interest per year on the loan and \$70,000 on the \$1.4 million.

Council Member Boyle asked whether the building had been declared historic by any agency. City Attorney McClure responded that it has not, but two independent reports have deemed it such. He stated the City has not vetted these reports, nor does it know how these conclusions were reached. The City Attorney stated that Mr. Duncan's proposal would not have to go through an EIR process, because the proposal is to restore the historical value; but Mr. Crittenden's proposal would, because it significantly alters the use of a potentially historic building.

Council Member Robinson said that he wants to support the project, but the details need to be addressed and that ideally, any agreement would be revenue neutral to the City. He stated his belief that this project would be an investment in the City, improving the downtown and increasing the value of the area. He recommended that the City work with experts who can help negotiate an agreement.

Council Member Cline said he sees a lot of value and public benefit to keeping the building. He stated he would like staff to work toward a mutually beneficial agreement, where the return is equal to the investment. He stated he does not support a loan from the City, but that there may be other financing options. He indicated that a lot of communities are fighting to save their local theaters, and he would like to see a theater that attracts families.

Council Member Boyle pointed out that ending the discussion tonight did not mean the end of the theater. He commented that a lot of parties have suggested other ideas for saving the building, and that there is time to consider this issue further. He stated that if the City is willing to invest \$1.4

million, it should first approach developers and also ask Mr. Duncan to find investors. He suggested that the City needs to develop a vision for El Camino and then decide how to use the building. In terms of a loan, Council Member Boyle warned that a 5% interest rate is not a good indicator of the financial impact and that the project is not risk free.

Mayor Fergusson said that she wants to see the building become a community theater because it is key to the revitalization of downtown. She stated that the theater will provide a large community benefit in terms of historical preservation and cultural activities. She said that prior councils have grappled with the dilemma of either preserving the theater or tearing it down, and that she wants to take advantage of this opportunity. She suggested that staff, with professional assistance, undertake negotiating with Mr. Duncan to forge an agreement that executes the land lease option with the most favorable terms possible, including strong protections on any loan.

Council Member Boyle said the City has little basis to make a decision, and would need more time to analyze the expected impact.

Council Member Cline expressed concern that Mr. Duncan had not mentioned his discussions with developers at prior meetings, and asked that those developers be known to the staff so that the City has a better idea of what can and cannot be negotiated.

Vice Mayor Cohen said that from the beginning, he has supported Mr. Duncan's project, but not the use of public funds. He stated that this deal gives Mr. Crittenden a way out of the situation he created. If the project moves forward, he can sell the property and avoid the process of converting the building to office space. Vice Mayor Cohen suggested that instead of creating three separate dance studios, the interior be renovated in a way that the hall isn't obstructed by permanent seating and the walls between the three spaces be movable so the space could be used for other purposes. He expressed concern for committing the City to the project too soon, and stated his belief that there is someone out there who wants to keep it as a theater.

The Mayor noted that the proposal provides for the City to purchase the building in year ten, and an opportunity to turn the building into a theater in that time. She said she has talked to several developers, some of whom offered advice, but Mr. Duncan is the only one who wanted to work with the theater. She stated her belief that the \$1.4 million purchase will result in tremendous public benefit, which is one of the roles of City government.

Council Member Robinson responded that he did not want the Council to finalize a deal right away. He said the Council must consider the wishes of the residents, and make sure any terms are as simple to understand and explain as possible.

City Attorney McClure suggested that the Council appoint a Council subcommittee to work with staff and outside experts to help with this deal.

Action: Moved, seconded, carried (Fergusson/Robinson; Ayes – Cline, Fergusson, Robinson; Noes – Cohen, Boyle) a motion as stated, discussed, and further amended to direct staff to pursue the ground lease option with the basic components as outlined in the staff report. The Mayor asked that a Council subcommittee review the lease payments in years 26-55 to see if the rate can better reflect the market value.

Council Member Boyle suggested that the Mayor include in the motion an estimated cost for converting the space into a community theater. Council Member Cline concurred, and requested a timeline for such a conversion. Council Member Boyle asked Mr. Duncan to compare the current market rent, \$2.50-4.00 per sq. ft., to what Mr. Duncan will spend on improvements. Council Member Robinson said that most people can't envision what downtown will look like, but if new businesses came in, the area would start to grow, and rents could go up to \$5.00 per sq. ft. Council Member Boyle remarked that cities can improve their communities by participating in public-private

partnerships or bundling parcels in order to attract larger development deals. However, committing to this building will limit the City's options and may even prevent the development of a larger theater. He cautioned against embracing this proposal without evaluating the project and considering other alternatives.

The Mayor asked how to incorporate the cost of conversion post-renovation into the motion. City Attorney McClure said that could be added. The applicant or an outside consultant would need to provide that information and the Council could review it. The City Attorney asked for clarification of the motion because there is some confusion about years 26-55 on a lease. He stated that if the Council wants to obtain more investment return throughout the term of the deal, staff and the Council subcommittee can negotiate that. He said it would be more appropriate if the subcommittee reviewed the terms of the negotiations rather than undertake the negotiations.

Mayor Fergusson amended the motion to include flexibility to have a return through the life of the lease. The City Attorney restated the motion as allowing staff to retain outside experts to proceed with negotiations for the ground lease option, with the basic terms as outlined in the staff report, including cash flow terms as outlined on page 5, and a Council subcommittee to provide assistance or feedback throughout the negotiations. Any contract would include strong protections of the City's capital before money is released. In addition, the negotiators would negotiate lease payments through year 25, as well as market lease payments in years 26-55. It would also provide cost estimates for the conversion to a theater.

Action: Moved, seconded, carried (Fergusson/Robinson; Ayes - Boyle, Cline, Fergusson, Robinson; Abstain - Cohen) to appoint Council Members Cline and Robinson to a subcommittee to guide the negotiations.

2. Appointment of a Council Subcommittee to review applications and make recommendations for the Menlo Park Community Funding Grant Program for Fiscal Year 2007-08.

Finance Director Augustine stated that for the past 20 years, the City has appropriated some money to fund this program and it has been the practice of the Council to appoint a Council subcommittee to review the City's fiscal status. She stated the staff report also includes the policy for setting aside these grants, the application, and contract that the agencies sign when they receive these grants.

Vice Mayor Cohen and Council Member Boyle both offered to serve, while Council Member Robinson offered to step down.

Action: Vice Mayor Cohen and Council Member Boyle were appointed by acclamation to serve on this Council subcommittee.

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

City Attorney McClure reported that the governor has until October 14 to veto AB 1294. He informed the Council that the bill would enable cities to use ranked voting if a city places the measure on the ballot, and a majority of the electorate approves the measure. Implementation is also contingent upon the local county being able to administer a ranked voting system. He stated that the Council has been asked to send a letter of support.

Council Member Boyle said the main benefit of ranked voting is to avoid runoff elections, and felt it might actually make the process more confusing for a city like Menlo Park. He stated that for this reason he is not in support of sending a letter asking the governor to sign the bill.

Council Member Robinson stated he supports sending a letter because elections can be competitive.

Vice Mayor Cohen said this system makes no guarantees, but it makes it more likely that there will be more candidates for each opening, allowing people in disenfranchised communities to apply for a nomination. He also pointed out that the system would not be mandatory, but rather an option.

Action: Moved, seconded, carried (Robinson/Fergusson; Ayes – Cohen, Fergusson, Robinson; Noes – Boyle; Abstain – Cline) to send a letter to the governor asking that he sign the bill.

G. WRITTEN COMMUNICATION

1. Request by Council Members Boyle and Robinson for a study session on Grade Separation.

Council Member Boyle stated that the Transit Authority has already authorized money to fund the studies, but they are awaiting the Council's approval. If the Council does not expressly approve, the Authority will fund a study elsewhere, and it may be five years before the City can participate.

City Manager Rojas said the staff typically presents the proposed scope of a study, gets the Council's approval, and then schedules the study session. He noted that the Public Works Director can resurrect the prior study and present a scope in two weeks.

Action: The Mayor stated the Council supports that direction unanimously.

H. INFORMATION ITEMS - None

I. COUNCIL MEMBER REPORTS

Council Member Robinson reported that the San Francisquito Creek Joint Powers Authority (SFCJPA) met to discuss the lack of federal money for the project. He said the Council may want to consider writing a letter. Council Member Robinson informed the Council that the Dumbarton Rail meeting takes place in a few weeks. He also stated that he had attended a meeting with Senator Leland Yee on transportation and expressed appreciation that the legislators are taking leadership roles on transportation and environmental issues.

J. PUBLIC COMMENT #3 - None

K. ADJOURNMENT – The meeting adjourned at 11:53 p.m.

Respectfully submitted,

Sherry M. Kelly, City Clerk

Approved at the Council meeting of January 8, 2008.