



**CITY COUNCIL  
COMMUNITY DEVELOPMENT AGENCY  
SPECIAL AND REGULAR MEETING MINUTES**

**Tuesday, October 26, 2010 at 5:30 p.m.  
701 Laurel Street, Menlo Park, CA 94025  
City Council Chambers**

**5:30 P.M. CLOSED SESSION (Council Conference Room, 1<sup>st</sup> floor of City Hall)**

Mayor Cline called the special meeting to order at 5:30 p.m. with all Council Members present.

**Public comment on the item will take place prior to adjourning to Closed Session**

1. Closed Session pursuant to Government Code Section §54957  
Public Employee Performance Evaluation - City Manager  
Attendees: City Manager Glen Rojas and City Attorney William McClure

At 7:17 the Council reconvened in open session, called the regular meeting to order with all members present.

Pledge of allegiance was led by Mayor Cline.

**REPORT FROM CLOSED SESSION**

There was no reportable action from Closed Session.

**ANNOUNCEMENTS**

- The Parks and Recreation Commission is holding a special meeting on November 4<sup>th</sup> in the Council Chambers from 6:00 p.m. – 7:30 p.m. to take public input on the Aquatics Request For Proposal process
- The City Clerk's Office is accepting applications for the Environmental Quality Commission – 1 vacancy due to a resignation – term expires 04/30/2014

**A. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS – None**

**B. PRESENTATIONS AND PROCLAMATIONS**

1. Proclamation: Arts and Humanities Month (Mary Alice Bowie, Peninsula Arts Council)
2. Presentation: SamTrans and Caltrain fiscal outlook and update on Federal surface transportation reauthorization (Kim Rothschild, SamTrans) (PowerPoint)

**C. PUBLIC COMMENT #1**

- Adina Levin spoke regarding a new organization called Friends of CalTrain and the need to keep the funding in place for public transportation.
- Chuck Bernstein spoke regarding the budget and provided a letter to the Council. (Letter)
- Morris Brown spoke regarding transportation issues including High Speed Rail and CalTrain.

#### D. CONSENT CALENDAR

1. Approval of an Agreement with Capitol Advocates to provide legislative and regulatory advocacy as well as High Speed Rail related issues (Staff report # 10-150)

The item was pulled by Council Member Boyle for additional information.

Note: Councilmember Cohen and City Attorney McClure are recused from this item and left the Council chambers at 7:57 p.m. (returned at 8:06 p.m.)

**Action:** Motion and second (Fergusson/Robinson) to approve an agreement with Capitol Advocates to provide legislative and regulatory advocacy as well as High Speed Rail related issues passes by the following votes: Ayes: Cline, Fergusson, Robinson; Noes: Boyle; Absent: Cohen (recused).

2. Accept Council minutes for the meetings of September 21 and October 19, 2010 (Attachment)

**Action:** Motion and second (Robinson/Fergusson) to accept the minutes of September 21 and October 19 as amended passes unanimously.

#### E. PUBLIC HEARINGS – None

#### F. REGULAR BUSINESS

1. Issue a determination on an appeal of the Environmental Quality Commission's denial of a heritage tree removal permit at 240 University Drive (Staff report #10 - 148)

Staff presentation by Rebecca Fotu, Environmental Services Manager and Justin Murphy, Development Services Manager (PowerPoint Presentation)

Appellant: Kimberly LeMieux (PowerPoint Presentation)

- Data was provided for all financial transactions related to the heritage tree removal.
- K. LeMieux has worked with the neighbors and staff on the plans.
- The project was approved by the Planning Commission.
- The landscaping was redesigned after discussions with the neighbor.
- The Heritage Tree Ordinance allows for removal of a tree for good cause and for the enjoyment of the property.
- Alternative designs to preserve the trees were rejected by architects, the Planning Commission and City staff.
- The Redwood tree is growing into the existing house damaging the foundation and lifting up the front porch.
- There is no feasible alternative to preserve the tree without significant pruning of the tree to accommodate a second floor and it would preclude a basement.
- The existing trees in the immediate block provide ample nesting sites and dense shade for wildlife.
- The property cannot support the Redwood tree and a new residence.
- Removal of the tree would have no impact on privacy and would reduce shade but increase solar access.
- K. LeMieux pointed out that she has submitted a balanced application of the eight factors which supports issuance of the tree removal permit and requested that the City Council grant the appeal and issue the tree removal permit.

Public Comments:

- The architect for the appellant spoke to the canopy of the tree and the possibilities of leaving the tree where it is currently located. He worked with the City arborist regarding the tree as well.
- Daniel Kocher of the Environmental Quality Commission (EQC) spoke regarding heritage trees and the discussion that took place at the EQC meeting. He read a letter with additional comments and then read comments from the Chair of the EQC Kristen Dursetti. (Kocher Letter) (Dursetti Letter)
- The following members of the public spoke in favor of removing the heritage tree
  - Andrian Bastain
  - Leslie Woods
  - Kelly Brennan
  - Barbara Tyler
  - Sherwood Anderson
  - Henry Riggs
- The following members of the public spoke against removing the heritage tree
  - Loren Lyle
  - Kathy Schrent (Member of the EQC)
  - Stephane Lencioni
  - Christina Smolke (Smolke PowerPoint) (Smolke Letter)
  - Bob Lancioni
  - Doug Scott
  - Jordan Gruber
  - Peter Colby
  - Maureen Teter
  - Angus Teter
  - Gail Slocum

The Council recessed at 9:41 p.m. and reconvened at 9:49 p.m.

Council Comments

Kelly Ferguson

- There was one City commission that approved (Planning Commission) and one that denied (Environmental Quality Commission) the removal of the heritage tree.
- K. Fergusson suggested authorizing staff to work with an architect to come up with a reasonable plan.
- Would it be possible for the City to purchase the property for a park? B. McClure stated that the City could purchase the property and establish an assessment district for the neighborhood and determine if the potential properties that would be part of the assessment district would be willing to form and be assessed. Maintenance issues would also need to be taken into consideration. There would need to be a CEQA determination made and potentially a negative declaration.
- It would be helpful to have additional information regarding feasible alternatives.
- The Council needs to find the value of the tree to the community, the value to the property owner and the feasibility of enjoyment.
- What would be a path for preserving the tree without economic enjoyment?

Heyward Robinson

- How does a full basement impact the plans for the house? J. Murphy stated that in other circumstances people have built houses near trees. The size and location of the tree have implications on the design of the house on the property.
- Has a cantilevering foundation been contemplated? J. Murphy advised it is very similar to option C with some differences and could be pursued.
- The tree is magnificent but H. Robinson is cognizant that the coastal redwood is a fast growing tree and could take over, making it difficult to design a house on the lot.
- The item could be continued to explore alternatives.
- Building a house around a tree will attract a certain type of buyer.
- H. Robinson pointed out that in the past six months the Council sent back an appeal directing the parties to find a solution, and the parties were able to reach an agreement. He would like to send the issue back to the property owner and the neighbors to come up with alternative solutions.

John Boyle

- J. Boyle requested the applicant look at the comments provided by the Chair of the EQC. Mr. Simpson, architect for the appellant, stated it is very similar to option C and that the chair recommends a full second floor which is in the canopy of the trees.
- Not all heritage tree removal requests are granted.
- The ordinance is very relevant and does not prevent people from cutting down heritage trees.
- The tree is disrupting the current roof of the house.
- J. Boyle stated he believes six of the eight factors would allow removal of the tree.

Andrew Cohen

- What is the possibility of the tree living over 1,000 years? An arborist in the audience stated it would probably live another 30-40 years.
- A. Cohen stated the appellant likely took into account the number of heritage trees removed in years past.
- The canopy could be raised without killing the trees.
- The Council could table the item and set standards for the appellant to do further work and come back with alternatives to possibly include an alternative that would preserve the tree.

Richard Cline

- Does the property owner have the right to take down a big, healthy tree?
- R. Cline does not feel that he should be requesting modifications as that should be left up to the professionals.
- R. Cline is unsure if something could be built on the property that is reasonable.
- This tree is the biggest tree in the area by far and the community feels some ownership of the tree.
- R. Cline feels the appellant knew at the time of purchasing the property that the tree was a heritage tree and the difficulties of the location of the tree.
- Based on the facts presented in the staff report and the information presented during the meeting, R. Cline is inclined to allow the tree to be removed.

**Action:** Motion and second (Boyle/Cline) to grant the appeal and allow the removal of the tree failed 3-2 with the following votes: Ayes: Boyle, Cline; Noes: Cohen, Fergusson, Robinson.

Additional Council Comments

H. Robinson stated that the ordinance is vague and the Council needs to collectively determine the outcome.

K. Fergusson stated these are extraordinary circumstances and she would like to hear more facts.

J. Boyle pointed out that if the Council goes through the eight factors, just as staff did, the Council will come up with the same conclusions.

A Cohen pointed out that when making their decisions, both the Planning Commission and Environmental Quality Commission only had a quorum. He is persuaded by those who support what the EQC did. He cannot support the tree being cut down yet and is not willing to spend City funds to do a peer review. He is willing to have the appellant come up with another alternative. He only wants alternatives that maintain the tree with a reduced canopy.

**Action:** Motion and second (Robinson/Fergusson) to determine that there are sufficient findings to direct staff to work with the appellant to bring back alternatives.

Discussion on the Motion

J. Murphy stated that staff needs specific direction as to what the Council wants explored, including using a peer review.

Suggestions to look at: (Option 3 Plus)

- Raising the canopy of the tree.
- Utilizing a raised foundation or cantilever foundation.
- If a peer review is done, who will absorb the cost?
- The economic value and costs of turning the property into a park
- What is the value of the tree to the community?

A. Cohen stated he wants the item to go back to the Planning Commission and Environmental Quality Commission. There has to be a limitation on what can be built, which is no basement, but a two-story house under a reduced canopy. The appellant should come back with alternatives.

H. Robinson stated that the design should be left open regarding the basement and to thoroughly investigate the ideas included in EQC Chair Durisetti's letter.

B. McClure understood the EQC felt there were alternative designs that would preserve the tree. The item would only fall under the purview of the EQC if the tree was being pruned in excess of 25% of the foliage. The item would only go back to the Planning Commission if the Council determined there is a reasonable, feasible alternative for their approval of the revision.

The motion was amended as follows:

Motion and second (Robinson/Fergusson) to authorize/direct staff to use an independent architect to evaluate feasibility of alternative designs that would retain the tree. If there is no feasible alternative to retain the tree, the matter will return to the City Council for final determination/consideration of application; and if there is what the staff considers to be a feasible alternative and the applicant is unwilling to withdraw its request for a heritage tree removal permit, the applicant can request that the matter be rescheduled for a

determination/consideration by the Council. The motion passes 3-2 by the following votes: Ayes: Cohen, Fergusson, Robinson; Noes: Boyle, Cline

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:
  - (a) Position on Proposition 23 (Staff report #10-151)

Public Comment:

Adina Levin spoke in support of the Council opposing Proposition 23. (Email submission)

**Action:** Moved and second (Fergusson/Robinson) to take a position in opposition to Proposition 23, passes 4-1 with Boyle dissenting.

**G. CITY MANAGER'S REPORT – None**

**H. WRITTEN COMMUNICATION – None**

**I. INFORMATIONAL ITEMS**

1. Review of the City's investment portfolio as of September 30, 2010  
(Staff report #10-0147)
2. Quarterly financial review of the General Fund operations as of September 30, 2010  
(Staff report #10-149)

**J. COUNCILMEMBER REPORTS**

1. Report from the City Council Subcommittee on High Speed Rail

Note: Councilmember Cohen and City Attorney McClure are recused from this item and left the Council chambers at 12:03 a.m.

**K. PUBLIC COMMENT #2**

- Wynn Greich spoke about the effects of recycled water and the connection to breast cancer.

**L. ADJOURNMENT – 12:12 a.m.**



Margaret S. Roberts, MMC  
City Clerk

Minutes accepted at the Council meeting of December 14, 2010