



## CITY COUNCIL SPECIAL AND REGULAR MEETING MINUTES

Tuesday, February 12, 2013, at 5:00 p.m.  
701 Laurel Street, Menlo Park, CA 94025  
City Council Chambers

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### 5:00 P.M. CLOSED SESSION

Mayor Ohtaki called the closed session to order at 5:12 p.m. Councilmember Cline arrived at 5:20 p.m. Councilmember Mueller arrived at 5:30 p.m.

- CL1.** Closed Session pursuant to Government Code section 54957.6 to conference with labor negotiators regarding labor negotiations with the Police Officers Association (POA) and the Police Management Association (PMA)
- CL2.** Closed Session with City Attorney regarding litigation
- (1) Existing litigation: *Peninsula Interfaith Action, et al. v City of Menlo Park* San Mateo County Superior Court Case No. CIV513882 pursuant to Government Code Section 54956.9(a); and
  - (2) Potential litigation against the City of Menlo Park pursuant to Section 54956.9(b)(1)

### 7:00 P.M. REGULAR SESSION

Mayor Ohtaki called the regular session to order at 7:26 p.m. with all members present.

Staff present: City Manager, Alex McIntyre; Assistant City Manager, Starla Jerome-Robinson; City Attorney, Bill McClure; and Deputy City Clerk Pam Aguilar

Mayor Ohtaki led the **PLEDGE OF ALLEGIANCE**

**ANNOUNCEMENTS** - None

**REPORT FROM CLOSED SESSION** – No reportable action

#### A. PRESENTATIONS AND PROCLAMATIONS

**A1.** Presentation by HIP Housing: Willow Road Project Update  
Presentation by Kate Comfort-Harr, Executive Director of HIP Housing ([Presentation](#))

#### B. COMMISSION/COMMITTEE VACANCIES, APPOINTMENTS AND REPORTS

**B1.** Bicycle Commission quarterly report on the status of their 2-Year Work Plan  
No report

#### C. PUBLIC COMMENT #1

- Elizabeth Houck spoke regarding transparency of the Housing Element law suit and properly vetting the downtown specific plan
- Cherie Zaslowsky spoke regarding Menlo Park's Regional Housing Needs Assessment allocation
- Margaret Olson expressed concerns regarding the Stanford-Arrillaga development project
- Chuck Berntstein spoke regarding the fiscal impact of development ([Attachment](#))

- Barbara Hunter spoke regarding the Neighborhood Traffic Management Program and that no changes need to be made ([Attachment](#))
- Francois Michael spoke regarding the Glass-Siegel Act addressing unemployment, housing and hunger and against flouride
- Wynn Grcich spoke against hexafluoride gas in the environment and drinking water ([Attachment](#))

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

- D1.** Approve a change in the meeting schedule of the Environmental Quality Commission ([Staff report #13-017](#))
- D2.** Accept minutes of the January 22, 2013 Council meeting

**ACTION:** Motion and second (Cline/Keith) to approve the Consent Calendar with amendments to item D2 passes unanimously (5-0).

#### **E. PUBLIC HEARINGS**

- E1.** Consider an appeal of the Planning Commission's decision to approve a Use Permit for the storage and use of hazardous materials (diesel fuel) for an emergency generator, associated with a professional office use at 2200 Sand Hill Road ([Staff report #13-022](#))  
Staff presentation by Kyle Perata, Assistant Planner.

Mayor Ohtaki opened the Public Hearing.

Presentation by Appellant Dennis Monohan:

- Respondent can consider a solar panel system, or alternate energy system, to back up computer servers rather than a diesel generator.
- Respondent can consider establishing a separate location, possibly out of state, for back-up computer servers in the event of an emergency.
- Respondent can reduce carbon footprint by mitigating air, noise and water pollution caused by a diesel generator.
- The use of diesel fuel is not a necessary component to operate respondent's business.

Presentation by Respondents Russell Berry and Stephen Loeffler:

- Installation of the diesel generator was in response to the needs of tenant Light Speed Venture Partners.
- The diesel generator meets all Environmental Protection Agency (EPA) regulations.
- The placement of the diesel generator was the most pragmatic location. A concrete masonry unit (CMU) and landscaping will be installed around the generator in order to blend with the existing environment.
- Respondent is precluded from installing the generator next to the commercial center of the property due to the existence of PG&E transformers in that location and the 15-foot clearance required to access the transformers.
- The generator runs on 49 horsepower which is relatively small compared to generators used by other businesses.
- The generator will only be utilized in the event of an emergency or power outage and will only be tested once a month, for a total of approximately 6 hours a year.

#### **Public Comment:**

Erhan Yenilmez spoke in support of the appeal ([Attachment](#))

Motion and second (Keith/Mueller) to close the Public Hearing passes unanimously (5-0).

In response to Councilmember Keith, staff stated that an amendment could be made to permit standard condition #3F requiring any new use permit for hazardous materials to be submitted within 90 days of the expiration of the current permit or the current permit will expire.

In response to Councilmember Cline, staff stated that they are unaware of any requirement that residential property owners must disclose the existence of the diesel generator upon selling their property. City Attorney McClure stated that the size and type of the generator does not constitute a hazardous condition that must be disclosed.

Councilmember Mueller stated that the diesel generator does not pose any more risk than the number of cars that drive through the property at any given time.

In response to Councilmember Carlton, Respondent stated that they have taken all necessary steps to mitigate any environmental impacts.

**ACTION:** Motion and second (Keith/Cline) to deny the appeal and uphold the Planning Commission decision with the proposed amendment to standard condition #3F passes unanimously (5-0).

**E2.** Consider an appeal of the Planning Commission's decision to approve a Use Permit and variance to construct two single-family dwelling units and associated site improvements on a substandard lot located at 1976 Menalto Avenue, and to consider an appeal of the Environmental Quality Commission's decision to uphold an appeal of staff's decision to remove a heritage size magnolia tree ([Staff report #13-024](#))

Staff presentation by Kyle Perata, Assistant Planner ([Presentation](#))

Mayor Ohtaki opened the Public Hearing.

Presentation on behalf of Appellants by Michelle Daher and Scott Marshall ([Presentation](#)):

- 22 neighbors are opposed to the variances to the front and rear set-backs and the removal of three heritage trees; they are being unfairly "taken from".
- Appellant raised an issue with the notice stating one tree is in bad condition; 1 tree is in good condition and should not be removed.
- The developer is urged to work with the neighbors; they want to maintain good will toward the new resident who will move into the property.
- The T-shaped lot is not conducive for 2 units.
- An alternate development design was proposed that would move parking away from under trees and neighbors' windows and save one tree.
- The 22 neighbors have been involved with the process from the beginning.

Presentation by Respondent Billy McNair ([Presentation](#)):

- The project has been approved by the Planning Commission & Planning Staff over a 9 month period (5/12 – 2/13) and 2 lengthy Planning Commission meetings.
- There is no significant risk to the neighboring Oak. This is supported by arborists' reports.
- The Southern Magnolia tree must be removed in order to construct the proposed improvements as directed by the Planning Commission, and there is no reasonable and feasible alternative that would allow for the preservation of the tree.
- Public policy supports this project as the City is in dire need of additional housing units.
- The approved, 2-unit plan is the only reasonable and feasible plan for development of the property. Alternate designs are not viable and do not conform to the direction given by the Planning Commission.

**Public Comment:**

- Chuck Bernstein spoke in favor of the appeal.
- Cathy Moran spoke in favor of the appeal.
- Daniel Kopisch spoke in favor of the appeal.
- Philipp Kopisch spoke in favor of the appeal.
- Manfred Kopisch spoke in favor of the appeal.
- Jason Watson spoke in favor of the appeal.

Motion and second (Cline/Keith) to close the Public Hearing passes unanimously (5-0).

Councilmember Keith stated she respects the work of the Planning Commission but that the appeal process allows another review of the project. Because there are 22 long-time neighbors concerned about the project, the developer should strive to work with the neighbors.

In response to Councilmember Cline, Planning Commissioner Henry Riggs discussed his decision process regarding the correct use of the variance procedure when traditional rules do not apply.

Mayor Ohtaki stated that he has worked with the Respondent/Applicant as his realtor on two recent transactions and after consulting with the City Attorney determined this does not present a conflict of interest and therefore does not require him to recuse himself from taking action on the item.

In response to Mayor Ohtaki, staff stated that a variance cannot be used to reduce a development standard by more than 50%. In this instance 10 feet is the maximum that can be allowed, therefore an alternate proposal to move the home 3 feet forward toward 120 O'Connor would not be feasible.

In response to Councilmember Cline, staff addressed the arborist report regarding the drip zone and tree protection zone for the Oak, mitigating damage to the tree, and what steps can be taken if the tree is damaged beyond repair. An alternative parking location/orientation was also raised.

Councilmember Carlton asked for clarification regarding the date the petition signed by the neighbors in favor of the appeal was submitted.

Councilmember Carlton asked for clarification regarding the date changes were made to the initial plans.

Councilmember Mueller stated that the project is too dense for the T-shaped lot and it changes the quality and character of the neighborhood.

Mayor Ohtaki expressed the need to respect the Planning Commission process.

Councilmember Keith stated she would like to see hand digging of the Oak tree on the O'Connor property to protect the root zone. Councilmember Carlton also supported utilizing methods to preserve the Oak tree.

**ACTION:** Motion and second (Keith/Mueller) to grant the appeal and deny approval of the project variances and heritage tree removal passes (4-1, Ohtaki dissents) with the following Findings as a basis for the denial:

- The project changes the quality and character of neighborhood.
- The project is detrimental to immediate neighbors due to the proximity of parking near a neighbor's property and the impact to an existing Oak tree on a neighboring property.

## F. REGULAR BUSINESS

**F1.** Review and modification of the City's Fund Balance Policy and use of one-time revenues; approve funding mechanism for comprehensive planning and capital projects; approve establishment of separate infrastructure maintenance and capital projects funds

Staff presentation by Carol Augustine, Finance Director ([Staff report #13-018](#)) ([Presentation](#))

### **Public Comment:**

- Elizabeth Houck expressed concern regarding using funds to pay staff and consultants to support private wells projects.
- Elias Blawie expressed concern regarding the need for establishing the separate funds and defining what specific issues exist for approving this action.

**ACTION:** Council directed staff to bring this item back for further consideration and include an unfunded pension liability reserve fund.

**F2.** Consider authorizing additional staff, appropriating \$100,000 for 2012-13 budget and approximately \$1.2 Million for 2013-14 budget and authorize a new Capital Improvement Project for City Hall improvements, appropriating \$250,000 for the project and authorize the City Manager to execute any necessary contracts associated with the project not to exceed the budgeted amount ([Staff report #13-019](#))

Staff presentation by Alex McIntyre, City Manager, Arlinda Heineck, Community Development Director and Chip Taylor, Public Works Director ([Presentation](#))

### **Public Comment:**

- Paul Ring spoke in support of authorizing additional staff.
- Cherie Zaslowsky spoke in favor of slowing down development, against authorizing additional staff and hiring consultants instead.
- Elizabeth Houck encouraged Council to direct staff to revisit the Specific Plan and spoke against the Stanford-Arrillaga development project.
- Steve Pierce, Greenheart Land Company, spoke regarding upcoming projects and in support of authorizing additional staff.
- Chuck Bernstein spoke in support of hiring contract planners.
- Henry Riggs spoke in support of contract employees.
- Elias Blawie spoke against adding additional staff.

**ACTION:** Motion and second (Ohtaki/Keith) appropriating \$300K in FY 2012-13, authorizing the Request For Proposals (RFP) process to retain appropriate staffing contractors, authorizing the hire of 2 limited-term employees in FY 2012-13, returning with a hybrid proposal for the balance of the positions to be considered during the FY2013-14 budget process, and authorizing the City Manager to execute agreements in excess of the current \$50,000 authorized for agreements for City Hall modification projects passes unanimously (5-0).

**F3.** Approve the Median Island and Right-of-Way Landscape Maintenance Service Request for Proposals ([Staff report #13-020](#))

Staff presentation by Ruben Nino, Assistant Public Works Director ([Presentation](#))

**ACTION:** Motion and second (Cline/Keith) to approve the Median Island and Right-of-Way Landscape Maintenance Service Request for Proposals passes unanimously (5-0).

**F4.** Council discussion and possible recommendation on various seats for determination at the next City Selection Committee meeting scheduled for February 22, 2013

[\(Staff report #13-021\)](#)

Council concurred regarding the following recommendations:

- Association of Bay Area Governments (ABAG) – 1 seat: Pedro Gonzalez
- Local Agency Formation Commission (LAFCO) – 1 seat: Nadia Holober
- San Mateo County Transportation Authority (SMCTA) – 1 seat: David Canepa
- Housing Endowment and Regional Trust (HEART) – 4 seats: Cliff Lenz, Pam Frisella, Laurence May and Maryann Moise Derwin

**F5.** Consider 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. CITY MANAGER'S REPORT – None**

**H. WRITTEN COMMUNICATION – None**

**I. INFORMATIONAL ITEMS**

**I1.** Update on the Housing Element meeting schedule [\(Staff report #13-023\)](#)

**J. COUNCILMEMBER REPORTS**

- Councilmember Cline reported on High Speed Rail.
- Councilmember Keith reported on the upcoming gun buy-back event at the City of East Palo Alto City Hall on February 23<sup>rd</sup> and on the SFCJPA meeting.
- Mayor Ohtaki is preparing a letter to send to Assemblyman Rich Gordon regarding improvements to the Housing Element.

**K. PUBLIC COMMENT #2 - None**

**L.** Meeting adjourned at 12:59 a.m., Wednesday, February 13, 2013.



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Pamela Aguilar  
Deputy City Clerk

Minutes were accepted at the Council meeting of March 5, 2013