



CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting
August 8, 2013

Because a quorum of Council Members were not present, the meeting was not called to order at 6:00 P.M. and the Special Orders of the Day would not be an official part of the Council meeting.

SPECIAL ORDERS OF THE DAY

1. Flip the Switch on Free City Wi-Fi-Cogswell Plaza
264 Lytton Avenue, Palo Alto

The City Council met on this date in the Council Chambers at 7:03 P.M.

Present: Berman, Burt, Holman, Klein, Kniss, Price, Scharff, Schmid, Shepherd

Absent:

ORAL COMMUNICATIONS

Kevin Hauck found a \$1.5 million discrepancy between public records and a City letter regarding the amount the City Council approved for the loan to the Palo Alto Housing Corporation (PAHC).

Aram James thanked Council Members Price, Holman, Schmid, Burt and Berman for participating in discussions with the Community Cooperation Team. The Community Cooperation Team did not convince those five Council Members to vote against the Vehicle Habitation Ordinance.

Chuck Jagoda thanked Council Members Berman and Holman for voting against the Vehicle Habitation Ordinance. He called on the Council to make a serious effort to end poverty and homelessness in Palo Alto. Enhanced services were not closing showers and banning vehicle habitation.

Tim Gray indicated PAHC's tax credit application for the Maybell Avenue Project contained the City's statement that the required zoning for the project was in effect. Because of the City's Referendum Rules, the zoning

MINUTES

change was not in effect. Without immediate corrective action, each Council Member would be a coconspirator to a fraudulent misrepresentation. He would forward the information to the State of California Tax Credit Committee for review with the State Attorney General's Office.

ACTION ITEMS

2. Transmittal of Certificate of Sufficiency of Signatures on Referendums on Resolution No. 9348 Amending Land Use Map of Comprehensive Plan and PC Ordinance 5200 Establishing Overlay Zone to Permit Development of 12 Market Rate Single Family Homes and 60 Affordable Multi-Family Senior Homes, and Council Reconsideration to Repeal Same or to Call Special Election for November 5, 2013 to Place Referendums on Ballot.

Molly Stump, City Attorney, wished to assist the Council in discharging its duty under Palo Alto Charter Article 6, Section 3, which called for the Council to act in response to the receipt of sufficient signatures on a referendum of a Council legislative action. Under the Charter, the Council was required to reconsider the legislative and either repeal it or submit it to the electorate at the next General Municipal Election or special election. The first referendum concerned the Council's adoption of an Ordinance adopting a Planned Community (PC) Overlay Zone for the Maybell Avenue property. Staff made no recommendation on that referendum. The second referendum concerned a Resolution amending the Land Use Map of the Palo Alto Comprehensive Plan. Staff recommended the Council repeal the Resolution, because the amendment to the Comprehensive Plan was not determinative of the senior housing project proposed for the Maybell Avenue property. The Council could avoid the expense of an election regarding the second referendum by granting the relief requested and repealing the Resolution. The Council could submit the second referendum to the electorate for a determination. Should the Council choose to place one or both referenda on the November 2013 ballot, the Council would choose an election date and pass a Resolution calling the election on August 8, 2013. August 9, 2013 was the last legal day to forward the Resolution to the Santa Clara County (County) Board of Supervisors calling an election on November 5, 2013. Those dates complied with the State requirement of 88 days. The County Registrar of Voters set two dates which applied to the November 5, 2013 election. August 16, 2013 was the due date for direct arguments for and against a ballot measure. August 23, 2013 was the due date for rebuttal arguments and for the City Attorney's impartial analysis of a measure. The Registrar of Voters did not set the due dates for election dates in June 2014 or November 2014. If the Council chose to place one or both referenda on an election date in either June or November 2014, Staff would inform the Council of the due dates

MINUTES

once the Registrar of Voters set them. A standalone all-mail ballot was a legal option; although, it had not been utilized previously in Palo Alto.

Candice Gonzalez, Executive Director of Palo Alto Housing Corporation (PAHC), believed the Maybell Avenue Project (Project) was inherently good and would benefit the community. The Council made changes to the Project for the benefit of the neighborhood. Almost all senior housing in Palo Alto existed under PC Zones. Delaying the Project would be a disservice to lower income seniors; therefore, she requested the Council place the referendum on the ballot on November 5, 2013.

Michael Maurier stated the City's participation in the Project raised concerns regarding conflict of interest. Changing the zoning was a betrayal of the neighborhood residents. The City utilized the PC loophole to undermine residential property owners' interests and quality of life.

Ken Scholz supported senior housing; however, the Council and PAHC did not fully protect the neighborhood. He proposed the Council rescind the decisions, not hold a special election and return to negotiations with neighborhood residents.

Bob Moss preferred the Council rescind the Ordinance and Resolution, and allow the Project to proceed under existing zoning. The PC Zoning violated several provisions of the Comprehensive Plan. Mr. Tim Wong's June 18, 2013 letter stated the Council approved funding of \$7,320,220; however, the Council approved only \$5.8 million. Mr. Wong's June 26, 2013 letter indicated the Council approved the needed zoning; however, June 26, 2013 was two days prior to the second reading of the Ordinance and 32 days prior to the effective date of the Ordinance.

Timothy Gray wished to work together to build senior housing without disposing of protections provided by the Comprehensive Plan. Development should honor the Comprehensive Plan, and zoning should preserve the quality of life.

Soroor Ebnesajjad reviewed PAHC's tax credit application and found it did not include funds from development of the market-rate housing. PAHC struggled to identify a grocery store and medical clinic within a reasonable distance of the Project.

Laszlo Tokes indicated neighborhood residents provided several reasons for the Council not to approve the rezoning of the Project. The only sensible alternatives were to rescind the rezoning or have PAHC withdraw its application.

MINUTES

Cheryl Lilienstein felt the City was committed to the Project and intended to approve rezoning for the Project. The Council accepted incorrect data for the Project.

Kevin Hauck believed the rezoning circumstances set a precedent for developers. PAHC's traffic study ignored pedestrians and bicyclists. Holding an election would not resolve the California Environmental Quality Act (CEQA) and tax credit application issues.

Kathy Eisenhardt encouraged the Council to rescind the Ordinance. The two referenda reflected the tremendous support for existing zoning. Residents were frustrated with large developments and restricted traffic flow.

Jerry Underdal recalled the lack of public comment regarding the Project at the February 13, 2013 Planning and Transportation Commission (PTC) meeting. The Project would be good for the neighborhood.

Lydia Kou stated the referenda caused both the Ordinance and Resolution to be suspended. The City's June 26, 2013 letter, prepared two days prior to the Council's vote to adopt the Ordinance, represented that the Project was zoned for the intended use.

David Darling reiterated that the traffic study was inaccurate. The Project was a bad idea.

Joe Rolfe was disappointed by opposition to the Project and requested the Council place the referenda on a November 2013 ballot. Alternative development would generate more traffic, demand more municipal services, and increase school enrollment.

Diane Rolfe encouraged development of the Project, particularly the senior housing. The Project would have less impact on schools, traffic, and pollution.

Suzanne Keene suggested the land remain as a heritage orchard.

Rachel Wright believed the Project was a part of the homeless solution. Affording housing projects were always opposed by immediate neighbors. She requested the referenda be placed on a ballot.

Ron Hall applauded the Council for its commitment to affordable housing. PC Zoning was an excellent tool to retain affordable housing in perpetuity.

MINUTES

Lynn Melena noted PAHC's outreach efforts. She supported the Project and urged the Council to proceed with a November 2013 election.

Aram James supported the Project and hoped the Council would place the referenda on a November 2013 ballot. Diversity in the neighborhood should be preserved.

Jim Jurtovich felt the Council turned their backs on citizens by approving high-density projects. The Council could allow construction of 30 units of senior housing and 7 market rate homes.

Jean McCown, Palo Alto Housing Corporation Board Member, believed the community supported the Project. The referenda should be placed on a ballot in November 2013. Project opponents supported affordable housing but only under existing zoning. The Project could not occur without the approved PC Zone.

Chuck Jagoda believed diversity and affordable housing were important. He supported the Council's adoption of the Ordinance and Resolution.

Cedric de La Beaujardiere supported the Project and urged the Council to place the referenda on the November 5, 2013 election. He did not believe senior housing would generate more traffic than market rate homes. Massing of the Project was within the character of the neighborhood.

Aparna Ananthasubramanian reported the two leading causes of homelessness in the elderly were poverty and lack of affordable housing. Waiting lists for affordable housing in Palo Alto were either closed or more than one year long. Affordable housing was critical for vulnerable populations.

Herb Borock urged the Council to repeal the Ordinance for rezoning. A Motion to place an item on a ballot or to repeal an item could be continued to a future meeting. If the Council placed the referenda on a 2014 ballot, PAHC could apply for funding in the next cycle. The cost for a ballot measure on the November 2014 election would be less than \$40,000.

Jennifer Fryhling, speaking for five people, expressed concerns about the City's June 26, 2013 letter regarding Project zoning; PAHC's July 1, 2013 certification that zoning was complete for the Project; the City's failure to retract any letter regarding zoning approval; and the City's June 18, 2013 letter regarding a loan commitment for the Project.

MINUTES

Alice Smith stated outreach and municipal meetings resulted in improvements to the Project. The City Transportation Department should convert Maybell Avenue to a one-way street with half the street reserved for pedestrians and bicyclists.

Rita Vrhel opposed the selective rezoning of Palo Alto. The Council should rescind the Ordinance and Resolution.

John Elman believed much of the opposition was caused by closing Arastradero Road. Neighbors did not oppose senior housing; however, Clemo Avenue was used as parking for the neighborhood park.

Robert Smith felt the Project was out of scale with the neighborhood and should not have been approved. PAHC did not have sufficient funds to build the Project; therefore, it needed the market rate homes to complete funding. He urged the Council to repeal the Ordinance.

Council Member Berman indicated the Council's job was to do what was best for the entire City. Given the divisiveness of the issue, a one-year delay in the ballot measure would be costly to the fabric of the community. He encouraged both parties to campaign vigorously and respectfully in the next few months and to support the will of the electorate.

MOTION: Council Member Berman moved, seconded by Council Member Kniss to: 1) adopt Resolution 9368 attached to the Staff Report as Attachment C calling for a special election for November 5, 2013 on the referendum on the Ordinance to rezone the property located at 567-595 Maybell Avenue from R-2 low density residential and RM-15 multiple family residential to PC Planned Community Overlay to permit 12 single family units and a 60-unit multifamily affordable rental development for seniors; 2) adopt Resolution 9369 attached to the Staff Report as Attachment D repealing Resolution No. 9348 amending the comprehensive plan land use map that changed the land use designation for 567-595 Maybell Avenue from multi-family residential to single family residential; and 3) authorize Council Members to use their official titles if they choose to sign ballot arguments.

Council Member Berman stated the campaign would be used to present both parties' opinions, and then the voters would decide. It was not logical to have the issue continue for 15 months. He did not favor repeal of the Ordinance.

Council Member Kniss explained the Council did not give funds to PAHC; it loaned funds to PAHC. Most people were not aware of affordable housing

MINUTES

projects in Palo Alto. Affordable senior housing had a positive impact on the community. To provide 60 units of affordable senior housing had great value. It was important to hold an election sooner rather than later.

Council Member Price supported the Motion as stated. The Council needed to focus on the broader social good. The lack of affordable housing was a cause of homelessness. The Project was well designed and provided needed affordable housing. Extending the debate into 2014 would be divisive. PAHC and the City offered to continue discussions with neighbors; however, some opponents would not accept the offers. All Palo Alto voters had a right and responsibility to vote.

Council Member Schmid requested the City Attorney comment on the City's June 26, 2013 letter.

Cara Silver, Senior Assistant City Attorney, had not seen the June 26, 2013 letter. City Staff contacted the tax credit association, which was aware that the zoning did not take effect, that two referenda qualified for the ballot and that a CEQA lawsuit was filed. A tax credit association official spoke with Planning Department Staff who relayed pertinent information.

Council Member Schmid suggested a written status update regarding the June 26, 2013 letter be provided to the Council. The second part of the Motion continued the zoning change but not the Comprehensive Plan change. Several public speakers indicated the commitment for senior housing was in perpetuity. He inquired whether zoning for the L-shaped market rate homes was also in perpetuity.

Ms. Silver explained that the PC Zoning Ordinance provided that the PC District was an overlay. If the property owner elected to develop the property as a senior citizen housing complex, then the PC Zone superseded the underlying zoning. The protection for the L-shaped parcels created with the PC Zone would be in the Ordinance and would supersede any sale.

Council Member Schmid asked if those changes were considered in perpetuity.

Ms. Silver stated the changes were not necessarily in perpetuity, because the developer could request a zone change.

Council Member Schmid felt the proposed senior housing would be an asset to the City. The zoning along Clemo and Maybell Avenues raised issues of zoning and traffic for the neighborhood. He supported holding an election.

MINUTES

Vice Mayor Shepherd believed in the democratic process. She supported placing the initiative on the ballot. Under existing zoning, the maximum build on the property could be 37 units.

Aaron Aknin, Acting Director Planning and Community Environment, reported 34 units could be constructed under existing zoning.

Vice Mayor Shepherd wanted to understand the number of bedrooms that would be added to the community. The Council was interested in the number of bedrooms, because the Palo Alto Unified School District (PAUSD) was concerned about zoning of residences. Small units could attract seniors or singles but not families with children. The Project followed Palo Alto's process. The Project resulted in 104 bedrooms. She inquired about the number of bedrooms resulting from a single-family development.

Mr. Aknin calculated the Project would provide 103 bedrooms. A standard development without a density bonus would provide 119 bedrooms. A standard development with the maximum density bonus would provide 161 bedrooms.

Vice Mayor Shepherd heard that a market-rate development would not be built to the maximum density allowed for the site. She wanted to proceed with a ballot measure, because people signed referenda in order to vote.

Council Member Holman inquired whether the funding source for affordable housing required the Project to remain as affordable housing.

Ms. Silver reported there were several safeguards regarding affordability covenants. The City would place a regulatory covenant on the land via its loan to PAHC. Other loan providers also held affordability covenants. The tax credit funding probably also had an affordability requirement.

Council Member Holman felt too many projects negatively impacted the community; however, this Project was compatible with the neighborhood. This Project would help with the homelessness issue. The number of bedrooms from a market-rate development would have a greater impact than the Project. The Council needed to address traffic issues on Maybell Avenue. She requested that campaign participants make informed and accurate statements.

Council Member Burt agreed with previous comments made by colleagues. The two most prevalent objections to the Project concerned the houses on Maybell Avenue and the PC process. The current zoning along Maybell Avenue was R-2, which meant 8 units could be built under existing zoning.

MINUTES

Under the PC Zone, the Council reduced the number of units from 9 to 7. With the Council's changes, housing on Maybell Avenue had a lower impact and a better design than existing zoning would provide. The Project provided fewer impacts and less density than existing zoning.

Council Member Klein concurred that PC Zoning protected the neighborhood better than existing zoning. He recommended residents read the Frequently Asked Questions provided by the Planning Department Staff and located on the City's website. Setting the election in November 2013 provided a time value for the community.

Mayor Scharff stated the neighbors supported 60 units of senior housing but preferred 8 units of market-rate housing. The Project would improve the quality of life in the neighborhood more than existing zoning. Unless someone was willing to pay for the property, it would not be an orchard. Existing zoning would reduce the quality of life for the neighborhood. Some neighbors formed a non-profit corporation and filed a CEQA lawsuit. He suggested they dismiss the lawsuit and let the residents of Palo Alto decide on the Project. He reiterated that the Project was less impactful than existing zoning, and citizens should support the Project.

MOTION PASSED: 9-0

Donna Grider, City Clerk, noted that direct arguments were due Friday, August 16, 2013. She would be in the Council Conference Room to accept arguments. Rebuttal arguments were due Friday, August 23, 2013, in the Clerk's Office.

COUNCIL MEMBER QUESTIONS, COMMENTS AND ANNOUNCEMENTS

None

ADJOURNMENT: The meeting was adjourned at 9:20 P.M.