

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, August 20, 2007

A Regular Session of the Piedmont City Council was held August 20, 2007, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on August 16, 2007.

- CALL TO ORDER** Mayor McEnroe called the meeting to order at 7:35 p.m. with the Pledge of Allegiance.
- ROLL CALL** Present: Mayor Nancy McEnroe, Vice Mayor Abe Friedman and Councilmembers Dean Barbieri, John Chiang and Garrett Keating
- Staff: City Administrator Geoff Grote, City Attorney George Peyton, Police Chief Lisa Ravazza, Fire Chief John Speakman, Public Works Director Larry Rosenberg, City Clerk Ann Swift, City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technician Sharon Lai and Recording Secretary Chris Harbert
- INTRODUCTIONS** The Police Chief introduced the following new Police Department employees: Police Officer Alvin Sangco, Parking Enforcement Officer/Relief Dispatcher Allison King and police canine Jocks.
- CONSENT CALENDAR** The following items were considered under one vote by the Council:
- Minutes** Approves as submitted Council meeting minutes of July 16, 2007
- Agreement** Renews the *Certification and Mutual Indemnification Agreement* with Alameda County regarding the collection of taxes
- Report** Accepts the June 2007 Local Agency Investment Fund Statement
- Resolution 61-07**
RESOLVED, that the City Council approves the consent calendar as noted.
Moved by Chiang, Seconded by Barbieri
Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating
Noes: None
Absent: None
(0045; 0165)
- PUBLIC FORUM** There were no speakers for the public forum.
- REGULAR CALENDAR** The Council considered the following items of regular business:
- Public Hearing:
Appeal of Planning
Commission Decision
212 Carmel Avenue** The City Planner stated that Mr. Don Eidam and Ms. Ellie Campbell are appealing the Planning Commission's June 11 conditional approval of their design review application for retroactive approval of modifications made to the design of their previously approved garage at 212 Carmel Avenue. Planning Commission actions related to their variance application for an increase in garage height and their installation of a tankless water heater were not appealed. The two

design review conditions being appealed by Mr. Eidam and Ms. Campbell are:

1. The stepped stucco top of the garage wall shall be redesigned so as to maintain the proportions of the previously approved design; said redesign shall be subject to staff review and approval; and
2. The planter boxes atop the garage shall be painted to match the colors of the existing house.

Public testimony was received from:

Clark Thiel, Planning Commission Chairman, explained the basis for the Commission's finding that the garage "as-built" failed to comply with the City's Design Review Guidelines in terms of avoiding a tacked on appearance. The proposed conditions are intended to improve visual integration by restoring proper proportions and matching existing conditions on the property.

Rebecca Schnier, Project Architect, stressed her belief that the minor, after-the-fact changes to the garage are harmonious with the property, neighborhood and streetscape and are less visually intrusive than the design modifications required by the Planning Commission. Thus, the Commission erred in finding that the as-built design failed to comply with the City's Design Review Guidelines. She emphasized that evaluating aesthetics is very subjective, adding that both herself, the applicants and all of their neighbors find the as-built garage quite attractive – there is no neighborhood objection to the modified construction.

Don Eidam emphasized his belief that the garage as-built is the best design for his home and property, reiterated the full neighborhood support for the modifications and accepted responsibility for failing to seek approval for the design changes prior to construction. He agreed with his architect that the Commission erred in interpreting the City's Design Review Guidelines in this particular instance.

The Council discussed at length the basis for the Commission's findings and appropriateness of the proposed conditions. Mayor McEnroe supported upholding the Commission's decision in this matter. She agreed that evaluating the aesthetics of a project is very subjective and acknowledged that the position of both the Commission and applicant with regard to the attractiveness of the modified design is reasonable. However, she was opposed to overturning the Commission's decision on the basis of aesthetics, stressing her reluctance to substitute her personal taste for that of the Commission. She felt that that no mistakes were made by the Commission in this case, the Commission's actions do not reflect an obviously bad decision and the basis for the Commission's decision and conditions is reasonable and supportable per the City's Design Review Guidelines. The Vice Mayor supported granting the appeal and overturning the Commission's decision, citing as the basis for overturn the weight of evidence and Commission error. As to the weight of evidence, the Vice Mayor noted unanimous neighborhood support for the modifications, the attractiveness of the as-built garage and the

Commission's unanimous approval of the variance to allow the increase in garage height. As to Commission error, the Vice Mayor noted the inappropriateness and undesirability of requiring the wood stained planter boxes to be painted white or yellow, stressing that discoloration from watering/dirt spills will be much more noticeable on a light background and therefore would create an unattractive streetscape view. Councilmember Keating felt that the Commission erred in requiring the garage planter boxes to match in color the portable planters on the steps, noting that the step planters could be easily changed. If they were replaced with natural wood stained boxes, then the garage boxes would match and thus the project would comply with the City's Design Review Guidelines. Councilmember Chiang supported the Vice Mayor's weight of evidence argument but did not believe that a significant error was made by the Commission. Councilmember Barbieri felt that the Commission's decision relating to changes in the proportionality of the top of the garage wall was reasonable, supportable by the City's Design Review Guidelines and could easily be resolved with the addition of a white or yellow facia board or other design modification agreed to between the applicants and City planning staff as conditioned by the Planning Commission. However, he felt that the Commission erred in requiring that the garage planter boxes be painted to match the house for the reasons cited by the Vice Mayor.

Resolution 62-07

WHEREAS, Mr. Don Eidam and Ms. Ellie Campbell are requesting permission to modify the previously approved detached garage design located at 212 Carmel Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, that Planning Commission conditionally approved Mr. Eidam's and Ms. Campbell's design review application on June 11, 2007, and this conditional approval related to the garage design was appealed by Mr. Eidam and Ms. Campbell; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application and appeal, and after having visited subject property, the Piedmont City Council concurs in part with the Planning Commission's decision and concurs in part with the appellants' appeal, finding that:

With regard to Condition #1 relating to the redesign of the top of the garage wall:

1. The exterior design elements (including but not limited to height, bulk, area openings, breaks in the façade, line and pitch of the roof, materials, arrangements of structures on the parcel, and concealment of mechanical and electrical equipment) are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development in that: As modified per approval conditions, the overall mass of the garage will be mitigated and will be better integrated with the architectural character of the existing home. The proposal complies with Design Review Guidelines III-5, III-5(a).

2. The design is appropriate, considering its effect on neighboring properties' existing views, privacy and access to direct and indirect

light. The primary intent of the modified garage is the same as that originally approved. There is no material change or modifications of any substance.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress.

With regard to Condition #2 relating to the painting of the garage planter boxes:

- The basis for the Commission's findings related to this condition is not supported by the weight of evidence.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont City Council upholds in part the Planning Commission's June 11 decision relating to Condition #1 requiring:

The stepped stucco top of the garage wall shall be redesigned so as to maintain the proportions of the previously approved design; said redesign shall be subject to staff review and approval; and

grants in part the appellant's appeal and overturns the Planning Commission's June 11 decision relating to Condition #2.

Moved by Barbieri, Seconded by Chiang

Ayes: Barbieri, Chiang, Keating

Noes: McEnroe, Friedman

Absent: None

(0080)

Agreement

The Assistant Planner recommended approval of an amendment to the City's agreement with Republic Services to extend the E-waste curbside collection program until July 5, 2008 (the end of the City's current waste and recycling contract). He further recommended that this program extension be funded through the City's Quarterly Measure D funds. The Assistant Planner emphasized that the curbside electronic waste program has been extremely popular with residents, with nearly 27 tons of electronic waste diverted from the landfill since program inception (April 2004).

Mayor McEnroe inquired whether funding from the state program allowing designated collectors of e-waste to receive up to 60 cents per pound in state funds can be used to offset the cost of program extension. The Assistant Planner responded that the non-profit Alameda County Computer Resource Center that is under contract to receive e-waste from Republic Services does not participate in this state funding program because of its focus on refurbishing e-waste and donating such equipment to schools and other non-profit organizations. Reused electronic items are not eligible to receive state funding.

Resolution 63-07

RESOLVED, that the City Council approves the *Further Amendment to Agreement Between the City of Piedmont and Republic Services* to extend the E-Waste Curbside Collection Program through July 5, 2008, and authorizes the use of Quarterly Measure D funds to implement said program extension.

Moved by Friedman, Seconded by Chiang
Ayes: McEnroe, Friedman, Barbieri, Chiang, Keating
Noes: None
Absent: None
(0045)

**Management
Compensation Report**

Ms. Katie Kaneko, President of Koff & Associates, the City's consultant retained to examine the City's current management compensation practices, submitted her firm's final report. She explained the review process undertaken and responded to Council questions concerning the report's findings, analysis and recommendations. In summary, the report recommended that the City should implement a standardized performance-based pay program.

Public testimony was received from:

George Childs cautioned the Council that performance-based pay programs can be quite contentious.

The Council supported proceeding with developing a pay for performance compensation program, with a Council majority directing the City Administrator to work with Koff & Associates in preparing a draft customized plan for Piedmont. The Council requested that the Council's subcommittee on this matter continue to participate in this effort, reiterating that Koff & Associates is being retained by the Council and not the City Administrator. The Vice Mayor requested that the proposed compensation structure: (1) be aligned with the City's budget year and not calendar year; (2) set July 1, 2008, as the target date for implementation; and (3) include a bonus pool set-aside in each annual budget. The Mayor requested that the proposed plan include salary ranges.

**Utility Undergrounding
Hampton-SeaView**

The City Clerk reported that residents within the Hampton/SeaView neighborhood have submitted a petition requesting the formation of an utility undergrounding assessment district.

Councilmembers Friedman and Chiang acknowledged that they live within 500 ft. of the proposed underground assessment district and as such are recusing themselves from discussion and action on this matter. They left the Council chambers.

The City Clerk stated that the submitted petition indicates a 75% level of property owner support to proceed with exploring district formation. Undergrounding proponents have provided the City with a proposed boundary map and have raised sufficient funds to cover the cost of preliminary engineering and legal expenses as required by City policy.

Correspondence was received from: Kathleen Quenneville & Diane Allen, dated August 15.

Public testimony was received from:

Kathleen Quenneville referenced her August 15 letter in requesting that the Council postpone any action on the proponents' requests until neighborhood meetings are held so that residents can discuss the pros and cons associated with utility undergrounding projects. She noted

that several properties were included within the proposed district rather late in the process and as such did not participate in the initial discussion meetings. Also many owners who signed the petition in 2004 and 2005 are now wavering in their support.

Stephen Block, a member of the Hampton/SeaView Steering Committee, requested Council authorization for proponents to proceed with district formation, stressing that a 75% support level of affected property owners has been achieved and sufficient funds have been raised to cover preliminary costs. Therefore, the proposed district has met the City's requirements for proceeding to the next phase. He added that over the course of the last two years that proponents have been pursuing district formation, each affected property owner has been sent letters disseminating information and advising of project status. This was done because earlier neighborhood meetings were poorly attended. Consequently, the Steering Committee determined that neighborhood meetings were an inefficient and ineffective method of communication.

Elizabeth Schultz concurred with Ms. Quenneville's request, noting that she was never invited to any neighborhood meeting concerning this proposal nor has information been widely distributed or fully disclosed. She felt the City's current process for obtaining petition signatures door-to-door limits the ability for resident dissent and discussion. Therefore, she requested the Council place a moratorium on undergrounding projects until a better, more balanced process is developed by the City. She disagreed with the view that tonight is strictly an initial stage in the process, noting that if the Council approves proceeding with this project, a "cloud" will be placed on the title of each affected property, putting prospective buyers on notice that the property is proposed to be included in an assessment district. Ms. Schultz voiced concern that given the current very difficult housing market, such action could inhibit owners from selling their properties and/or prevent prospective buyers from obtaining mortgage financing.

The Council agreed that proponents have met the City's stated threshold for proceeding with the formation of an utility undergrounding assessment district, acknowledging that given the proposed district's high level of initial support, the proposal is consistent with the City's undergrounding goals and policies. The City Clerk added that every property owner within the proposed district received notice of tonight's meeting and she received no requests to rescind petition signatures.

Resolution 64-07

RESOLUTION ACCEPTING PETITION

Proposed Hampton/Sea View Underground Assessment District

WHEREAS, the owner of certain real property situated in the City of Piedmont (the "City") has filed with the City Clerk several signed counterparts of a petition, requesting the implementation of a project for the undergrounding of certain existing, overhead utility facilities and the relocation of certain related street lighting facilities, together with appurtenant work and improvements, as described therein, the cost of which is to be specifically assessed against each parcel of land benefiting from such improvements as shown on an exhibit map attached to the petition; and

WHEREAS, the petition contains an express waiver of statutory proceedings under the Special Assessment Investigation, Limitation and Majority Protest Act of 1931, as provided in Section 2804 of the Streets and Highways Code of the State of California; and

WHEREAS, the City Clerk has also received a certificate to the effect that the petition has been signed by persons owning lands constituting more than sixty percent (60%) in area of the land subject to assessment within the proposed assessment district; and

WHEREAS, this City Council finds that the owners of more than sixty percent (60%) in area of the land proposed to be assessed for the proposed improvements, including the owners of more than five of the subject parcels, have signed such petition and that the petition contains the matters required by Sections 2804 and 2804.5 of the Streets and Highways Code;

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES as follows:

1. PETITION ACCEPTED. The petition, as filed with the City Clerk, is hereby found to be legally sufficient and is accepted.

2. DETERMINATION TO UNDERTAKE PROCEEDINGS. The special assessment proceedings shall be undertaken by the terms of the petition, pursuant to the Municipal Improvement Act of 1913 and without further compliance with the Special Assessment Investigation, Limitation and Majority Protest Act of 1931 (commencing with Section 2800 of the Streets and Highways Code).

3. PUBLIC INTEREST AND CONVENIENCE SERVED. This City Council hereby finds and determines that the public interest and convenience will be served by the taking of such proceedings.

4. ACTION IS FINAL. This action is "final" within the meaning of Streets and Highways Code Section 3012.

Moved by Barbieri, Seconded by Keating
Ayes: McEnroe, Barbieri, Keating
Noes: None
Recused: Friedman, Chiang
(1075)

Resolution 65-07

RESOLUTION APPROVING BOUNDARY MAP
Proposed Hampton/Sea View Underground Assessment District

WHEREAS, there has been filed with the City Clerk a proposed boundary map entitled "Proposed Boundaries of the Hampton/Sea View Underground Assessment District, City of Piedmont, County of Alameda, State of California" (the "Proposed Assessment District"), which map shows the area to be assessed in the Proposed Assessment District; and

WHEREAS, this City Council wishes to establish said map as the map of the proposed boundaries (the "Boundary Map") of the Proposed Assessment District.

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES as follows:

1. This City Council approves the Boundary Map and adopts the boundaries shown on the Boundary Map as describing the extent of the territory included in a proposed assessment district to be known as the Hampton/Sea View Underground Assessment District, City of Piedmont, County of Alameda, State of California.

2. This City Council finds and determines that the Boundary Map contains the matters and is in the form prescribed by Section 3110 of the California Streets and Highways Code.

3. This City Council directs the City Clerk to certify the adoption of this resolution on the face of the Boundary Map and to file a copy of the Boundary Map with the Alameda County Recorder for placement in the Book of Maps of Assessment and Community Facilities Districts.

Moved by Barbieri, Seconded by Keating
Ayes: McEnroe, Barbieri, Keating
Noes: None
Recused: Friedman, Chiang
(1075)

Resolution 66-07

RESOLVED, that the City Council approves the Preliminary Expense Agreement for the Hampton/Sea View Underground Assessment District as on file in the City Clerk Office.
Moved by Barbieri, Seconded by Keating
Ayes: McEnroe, Barbieri, Keating
Noes: None
Recused: Friedman, Chiang
(1075)

Resolution 67-07

RESOLVED, that the City Council approves the Agreement Regarding Engineering Services for the Hampton/Sea View Utility Undergrounding Assessment District as on file in the City Clerk Office.
Moved by Barbieri, Seconded by Keating
Ayes: McEnroe, Barbieri, Keating
Noes: None
Recused: Friedman, Chiang
(1075)

Resolution 68-07

RESOLUTION OF INTENTION
Proposed Hampton/Sea View Underground Assessment District

WHEREAS, under the authority of the Municipal Improvement Act of 1913 (Sections 10000 and following, California Streets and Highways Code; hereafter the "1913 Act"), this City Council intends to order public improvements consisting generally of the conversion of existing overhead and above-ground utility facilities to underground facilities, together with appurtenant work and improvements (including but not limited to replacement of street lights where appropriate) (the "Undergrounding Project") within or immediately adjacent to the

proposed boundaries of an assessment district to be known as the "Hampton/Sea View Underground Assessment District, City of Piedmont, County of Alameda, State of California" (the "Proposed Assessment District"); and

WHEREAS, this City Council finds that the land specially benefited by the Undergrounding Project is the land shown within the proposed boundaries shown on the Boundary Map previously approved by this City Council and on file with the City Clerk (the "Boundary Map"); and

NOW, THEREFORE, THE CITY COUNCIL HEREBY FINDS, DETERMINES AND RESOLVES as follows:

1. As authorized by the 1913 Act, including the provisions of Sections 5896.1 through 5896.17, inclusive, of the Streets and Highways Code, as incorporated into the 1913 Act by Section 10102.1 thereof, and Section 53753 of the California Government Code ("Section 53753"), this City Council intends to levy a special assessment upon designated portions of the land within the Proposed Assessment District in accordance with the special benefit to be received by each parcel of land, respectively, from the Undergrounding Project.

2. Where any disparity occurs in level or size between the work and improvements of the Undergrounding Project and private property, this City Council determines that it is in the public interest and more economical to eliminate the disparity by doing work on the private property instead of adjusting the work on public property. Accordingly, work may be done on private property for this purpose with the written consent of the landowner. Without limiting the generality of the foregoing sentence, this City Council intends to include within the authorized Undergrounding Project the work of installing underground on the private property of each requesting landowner the facilities to connect the residential improvements of such landowner to the newly-undergrounded utility improvements, on the conditions that (a) the estimated cost and expense of such parcel-specific work will be added to the assessment levied against that specific parcel and (b) the owner or owners of the specific parcel will consent thereto.

3. This City Council intends, pursuant to subparagraph (f) of Section 10204 of the 1913 Act, to provide for an annual assessment upon each of the parcels of land in the proposed assessment district to pay various costs and expenses incurred from time to time by the City of Piedmont (the "City") and not otherwise reimbursed to the City which result from the administration and collection of assessment installments or from the administration or registration of the improvement bonds and the various funds and accounts pertaining thereto, subject to the limitation on the amount of such annual assessment as shall be prescribed in the engineer's report to be prepared and considered by this City Council as prescribed by the 1913 Act and Section 53753.

4. Bonds representing unpaid assessments, and bearing interest at a rate not to exceed twelve percent (12%) per annum, will be issued in

the manner provided by the Improvement Bond Act of 1915 (Division 10, Streets and Highways Code; hereafter the "1915 Act"), and the last installment of the bonds shall mature not to exceed twenty-four (24) years from the second day of September next succeeding twelve (12) months from their date.

5. The procedure for the collection of assessments and advance retirement of bonds shall be as provided in Part 11.1 of the 1915 Act.

6. Pursuant to Section 8769 of the 1915 Act, the City will not obligate itself to advance available funds from the City treasury to cure any deficiency which may occur in the bond redemption fund. A determination not to obligate itself shall not prevent the City from, in its sole discretion, so advancing funds.

7. This City Council appoints ILS Associates, Inc., as Engineer of Work for this project, and directs the preparation of the report (the "Engineer's Report") containing the matters required by Section 10204 of the 1913 Act, as supplemented by Section 53753.

8. In the opinion of this City Council, the public interest will not be served by allowing owners of assessable lands to enter into a contract for the Undergrounding Project as otherwise permitted in Section 20485 of the Public Contract Code.

9. The amount of any surplus remaining in the improvement fund after completion of the Undergrounding Project and payment of all claims shall be distributed in accordance with the provisions of Section 10427.1 of the Streets and Highways Code.

10. For all purposes of the Proposed Assessment District and the legal proceedings pertaining thereto, the Director of Public Works of the City shall be deemed to be the "Superintendent of Streets."

11. The requirements of Division 4 of the California Streets and Highways Code shall be satisfied by both (a) the property owner petitions which have been filed with the City Clerk and accepted by separate resolution adopted this same date and (b) inclusion in the Engineer's Report of the information specified by Part 7.5 of said Division 4.

Moved by Barbieri, Seconded by Keating
Ayes: McEnroe, Barbieri, Keating
Noes: None
Recused: Friedman, Chiang
(1075)

The Mayor requested the City Clerk to post all relevant information regarding the proposed Hampton/SeaView Undergrounding Project on the City's website, including the City's utility undergrounding guidelines. In addition, the Clerk noted that each property owner within the proposed district will receive a letter from the City explaining tonight's actions, setting forth a tentative timetable for future action and inviting residents with questions or concerns to contact City Hall for further information.

ANNOUNCEMENTS

Camp Augusta – Councilmember Keating distributed invitations to the Council regarding Camp Augusta’s *Gold Rush* fundraiser on September 29.

ADJOURNMENT

There being no further business, Mayor McEnroe adjourned the meeting at 10:30 p.m.