

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, December 7, 2009

A Regular Session of the Piedmont City Council was held December 7, 2009, 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 December 3, 2009.

CALL TO ORDER

Following a 6:00 p.m. Closed Session relating to the initiation of litigation and regarding significant exposure to litigation related to the Piedmont Hills Underground Utility District held pursuant to Government Code Sections 54956.8 and 54956.9(b)(1) respectively, Mayor Friedman called the meeting to order at 7:35 p.m. with the Pledge of Allegiance.

ROLL CALL

Present: Mayor Abe Friedman, Vice Mayor Dean Barbieri and Councilmembers John Chiang, Margaret Fujioka and Garrett Keating

Staff: City Administrator Geoff Grote, City Attorney George Peyton, Fire Chief John Speakman, Finance Director Mark Bichsel, Public Works Director Larry Rosenberg, Recreation Director Mark Delventhal, City Clerk Ann Swift, City Planner Kate Black, Assistant Planner Kevin Jackson and Recording Secretary Chris Harbert

CONSENT CALENDAR

The following items were considered under one vote by the Council:

Minutes

Approves as submitted Council meeting minutes of November 16, 2009

Agreement

Approves the *Amendment to Ambulance Provider Agreement* between the City and the Alameda County Emergency Medical Service Agency proposing mandatory rate increases that apply to all service providers in Alameda County.

Resolution 96-09

RESOLVED, that the City Council adopts the consent calendar as noted.

Moved by Barbieri, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0045)

PUBLIC FORUM

Kathleen Quenneville encouraged the Council to engage in more strategic planning for the community as a whole rather than react to small, vocal segments of the population to insure that the City's core essential services and reserves are not eroded during these challenging financial times. She also criticized the Council for scheduling important civic matters late on agendas when residents are less likely to remain in attendance to voice their comments. She also urged that more advanced public notification be given of scheduled discussions of major issues.

TOYS FOR TOTS

The Fire Chief announced that the Piedmont Fire Department is once again collecting new, unwrapped toys for the annual *Toys for Tots*

Program. He encouraged residents to drop off toys anytime at the Department.

REGULAR CALENDAR

The Council considered the following items of regular business:

**Public Hearing:
Appeal of Planning
Commission Decision,
210 Pacific Avenue**

The City Planner stated that Drs. David Baer & Linda Dubins of 214 Pacific and Mrs. & Mrs. Jim Saunders of 209 Pacific have appealed the Planning Commission's November 9th reaffirmation of its August 10, 2009, conditional approval of Mr. & Mrs. Hong Kim's variance and design review application to make modifications to their residence at 210 Pacific Avenue. On September 21, in connection with a Baer/Dubins & Saunders appeal of the Commission's August 10th decision, the City Council remanded the application back to the Commission for further consideration of two issues: privacy impacts on 214 Pacific and front yard view impacts at 209 Pacific. After an extensive re-review of these issues on November 9, the Planning Commission reaffirmed its previous conditional approval of the Kim's application with two additional modifications: (1) reducing the size of the two upper level windows, installing obscure glass and hinging the windows at the top so they would open "awning style;" and (2) installing obscure glass in the south corner of the stairwell window.

Correspondence was received from: David Baer/Linda Dubins, Dec. 3; Madeline & Robert Hall, Dec. 2; Dorothy Lee, Dec. 1; Lynn & Jim Saunders, Dec. 3

Public testimony was received from:

Edward Buchanan, Project Architect, submitted drawings of the proposed design changes in summarizing the extensive efforts made by the applicants to minimize impacts on neighboring property and urged the Council to uphold the Planning Commission's November 9 decision. In response to Council questions, he stated that an earlier rearward expansion plan for the property approved by the City in 1999 was never constructed by the applicants because it failed to provide a master suite with a Bay view desired by the owners, involved five variances and did not comply with Building Code requirements in terms of light and ventilation.

The Council, with the exception of Vice Mayor Barbieri, voiced support for upholding the Planning Commission's November 9th decision, citing the Commission's thorough review and re-examination of the issues set forth in the Council's remand, the absence of any errors in the Commission's deliberations and the proposed mitigation measures which were responsive to the Council's concerns. The Vice Mayor continued to voiced his opposition to the proposed second story expansion, believing that it imposed significant impacts on neighboring property which could be minimized and/or eliminated if the previously approved 1999 rearward expansion plan was constructed. Councilmember Keating agreed with the Vice Mayor but supported the Commission's decision on remand because of the Commission's findings regarding the impacts of home additions on yard views.

Resolution 97-09

RESOLVED, that the City Council upholds the Planning Commission's November 9, 2009, unanimous reaffirmation of its

August 10, 2009, conditional approval of Mr. and Mrs. Hong Kim's variance and design review application for proposed construction at 210 Pacific, subject to the proposed window modifications on the October 20, 2009 plans and the Commission's additional requirement that the proposed stairwell window in the south corner of the house also have obscure glass to further mitigate privacy impacts on 214 Pacific; and

RESOLVED FURTHER, that the City Council adopts the Planning Commission's new findings of approval set forth in Planning Commission Resolution 22-PL-09, as follows:

1. the distance between the proposed upper level addition and adjacent residence is reasonable and appropriate due to the existing topography and neighborhood development. The upper level setback is greater than the lower level and was implemented to preserve light and create privacy between the two properties. The project complies with Design Review Guidelines II-7 and II-7(a); and
2. The position and design of the roof of the proposed second story addition mitigates as much as possible the impact of view and light from the north. The position of the ridge allows neighboring properties views to the east and west as well as more light to south facing windows than would be possible with any other ridge orientation.

Moved by Chiang, Seconded by Fujioka

Ayes: Friedman, Chiang, Fujioka, Keating

Noes: Barbieri

Absent: None

(0080)

**Piedmont Hills
Underground Utility
District**

The City Administrator recommended that the Council appropriate \$1,004,832 from the General Fund Reserve for projected construction costs required for completion of the Piedmont Hills Underground Utility District. He emphasized his distaste over this extraordinary and unpleasant recommendation but stressed that it is the least financially damaging option available to the City. He reviewed the unforeseen bedrock excavation problems encountered in connection with the Piedmont Hills Undergrounding contract which have significantly escalated construction costs and the fact that abandoning the project or significantly delaying project completion while other financing options are explored would undoubtedly cost the City more money in terms of litigation exposure, expenditure of funds to make the City streets impacted by a work stoppage safe and passable, and renegotiations with PG&E for services rendered to date. He stressed that the City intends to vigorously pursue cost recovery from those parties that the City believes are responsible for the cost overruns and also noted that district residents are currently engaged in a fund raising campaign to contribute \$100,000 toward project completion. The City Administrator cautioned that while the \$1,004,832 cost is the maximum amount the City and contractor estimate to be required to complete the project, there is no guarantee that it will be sufficient to finish the job if more unforeseen bedrock complications are encountered. Sam Sperry, the City's Bond Counsel, concurred with staff's recommendation, giving his professional opinion that not finishing the project would be

unquestionably more expensive for the City because of likely lawsuits by district property owners and/or bond holders. Both the City Administrator and Bond Counsel outlined the various financial and litigation scenarios that would be likely to occur if the project is not finished.

Correspondence was received from: Carl Anderson; Joseph Hurwich; Ryan Gilbert; Neil Teixeira; Melissa Feldman; Barbara Bysiek; Alice & Malcolm Talcott; Timothy Rood; Jim Best; Anita Bloch & Steve Berl; Arthur Edmonds; Annick Shields; Maude Pervere; Edward Dougherty; Pauline Marx; Steve Sidney & Carolyn Schuman; Lisa Joyce; Jon Elliott; Cory Smegal; Rick Fehr; Bert Kurtin; Jeffrey Horner

Public testimony was received from:

Leon Bloomfield, Aaron Salloway, Robert Phelps, Tom Thomas, Joe Hurwich, Timothy Rood, Ryan Gilbert, Ignacio Barandiaran and David Arpi all voiced strong opposition to the staff's recommendation, citing the following reasons: (1) irresponsible expenditure of approximately 1/3 of the City's General Fund Reserve; (2) the absence of a "not to exceed" clause in the proposed resolution authorizing the appropriation; (3) failure of the City to seriously explore the option of having district property owners pay for the cost overruns; (4) lack of confidence in City staff and Council to solve a problem largely created by their own bad decisions and mistakes; (5) lack of adequate public notification of this critically important matter and the need for more time for residents to learn of this issue, consider other possible options and submit suggestions and ideas for solving the problem; (6) an unfair bail-out of 144 property owners at the expense of all Piedmont taxpayers; and (7) the Piedmont Hills project was approved on the basis that there would be no cost to the City. Many of the speakers voiced their concern that the City's utility undergrounding policy is severely flawed in that it promotes the formation of districts and then socializes the risks of such undertakings by making the City a contractual partner. They suggested that in the future, all construction contracts and agreements be strictly between service providers and district property owners, without City involvement. Mr. Hurwich inquired if any studies have been conducted to determine if the hard drilling which has occurred in the district has damaged or weakened the City's geological strata. Mr. Arpi suggested that the Council examine whether the Piedmont Hills Underground Utility District can be reconfigured to reduce cost overruns.

Jeff Wieler urged the Council to take more time to consider various options before making such a difficult decision.

William Schnitzer urged the Council to float its own bond to cover the cost overruns since the problems encountered are due largely to the City's mistakes and that in the future, the City refuse to become involved in utility undergrounding projects.

Carl Anderson, Tony Trutner, Marion Keyworth, Mary Hedley, Francoise Putting, Lonnie Simonson, Clifford Fried and Ted Buttner all voiced support for staff's recommendation, noting that: (1) the cost overruns are not the fault of district homeowners; (2) the undergrounding project will improve public safety and thus is a benefit

to the entire community; (3) requiring the district to rebalot to add approximately \$7,000 to each assessment would be time consuming, significantly delay project completion and if a majority protest prevailed, the City will be in the same predicament that it currently finds itself; (4) the best and fairest approach is for the City to recoup the overrun costs from the responsible parties and not from innocent district members; (5) abandoning the project would lower property values in the district which in turn would lower potential property and transfer tax revenue to the City as well as expose the City to costly litigation; and (6) the problem is essentially a City contractual matter. Judge Anderson added that after one-week of the fund raising campaign, the district has received funds/pledges totaling \$52,000.

The Council discussed the situation at length with staff, the City Attorney and Bond Counsel. Given the complexities of the issues involved and the short public notification of this extraordinary matter, the Council decided to defer action and schedule a special meeting for Saturday, December 12 at 2 p.m. to provide more time for staff input and public comment prior to making a decision.

On a motion by Vice Mayor Barbieri, seconded by Councilmember Chiang and unanimously carried, the Council agreed to extend tonight's meeting to 12:00 a.m. in order to complete agenda consideration.

The Council directed staff to provide the following information for the December 12 meeting, requesting that this information be made available for public review, if possible, by no later than Wednesday night, December 9th:

- Layout all the options available to the Council, with best and worst case scenarios;
- Identify potential costs associated with each option;
- Provide estimated costs for securing the safety of public streets within the district if a decision is reached not to pursue project completion at this time;
- Provide a reforecast of the FY 09-10 budget, including anticipated revenue and expenditures, mid-year cost appropriations required to cover Fire Department overtime and utility undergrounding legal expenses as well as any unplanned expenses for the remainder of the fiscal year;
- Provide a list all of the City's various reserve funds and the amount currently in each reserve;
- Research if and how other cities have attempted to recoup overrun costs from utility undergrounding districts and the time frame involved in such actions;
- Determine if the district fund raising campaign can increase its goal beyond the \$100,000 level;
- Staff work closely with the project contractor to freeze cost overruns pending the Council's decision on Dec. 12;

The Council requested that the Saturday special meeting be held in the Council Chambers and televised by KCOM.

**Environmental Task
Force Report**

Environmental Task Force Chair Teddy King presented the task force's 3rd quarterly report pursuant to the Council's charge of May 19, 2008. The 1st quarterly report focusing on waste diversion was presented on

January 5 and the 2nd report focusing on reducing energy consumption by public agencies was presented on May 6. Tonight's report focused on public education and outreach, with the goal of reducing greenhouse gas emissions through non-regulatory or voluntary strategies to achieve more sustainable construction, transportation, and energy use. Chairman King summarized the following seven specific recommendations contained in the report, ranked as to priority:

- Upgrade Piedmont's website, including a dedicated "green" page;
- Pursue funding for a part-time (shared) energy efficiency manager who could help initiate and monitor outreach and education programs;
- Collaborate with the schools on outreach and education initiatives;
- Use traditional media, such as television and newspapers, to increase awareness of environmental issues;
- Ensure that the City is a role model for its residents. Publicize and make visible City actions and operational changes which reduce emissions;
- Recognize residents efforts through an environmental honor roll and awards programs;
- Consider (or co-sponsor) contests, tours, and lecture series which encourage greener living.

The Council thanked Ms. King for her report, with the Mayor announcing that at the January 4, 2010, meeting the Council will consider a process for implementing proposed recommendations as well as consider whether the charge of the Task Force should be renewed for another term. In the interim, Councilmember Keating requested staff to research and report on "sustainability commissions" established by other cities.

CaliforniaFIRST

The Assistant Planner recommended Council authorization for the City to join the CaliforniaFIRST Program, a municipal financing program to offer property-assessed loans to property owners who voluntarily make energy efficiency upgrades on their homes. The CaliforniaFirst Program is under the auspices of the California Statewide Communities Development Authority (CSCDA) and Alameda County, in partnership with 14 cities within the county, intends to participate. The one-time set up fee for City participation in this countywide program would probably range from \$7,125 to \$10,000 and would be paid by grant funds.

Resolution 98-09

RESOLVED, that the City Council approves Resolutions, on file in the City Clerk's Office: (1) authorizing and directing the City Administrator to execute a Joint Powers Agreement relating to the California Statewide Communities Development Authority; and (2) authorizing the City to join the CaliforniaFIRST Program, authorizing the CSCDA to accept applications from property owners, conduct contractual assessment proceedings and levy contractual assessments within the territory of the City of Piedmont, and authorize related actions.

Moved by Fujioka, Seconded by Chiang

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None
Absent: None
(0045)

**Energy Efficiency
Grant Funds**

The Assistant Planner recommended Council approval of a resolution authorizing an application for \$58,369 in Energy Efficiency and Conservation Block Grant funds from the California Energy Commission. The purpose of these non-competitive grant funds is to help cities to continue to implement projects and programs that will reduce fossil fuel emissions, reduce total energy use and improve energy efficiency. The City of Piedmont is eligible to receive \$58,369 under this grant program.

Resolution 99-09

RESOLVED, that the City Council approves the proposed resolution authorizing an application for \$58,369 in Energy Efficiency and Conservation Block Grant funds from the California Energy Commission; \$48,369 of said funds to be used for an LED street light replacement project and \$10,000 to be used for set-up costs for the CaliforniaFIRST municipal financing program, finding that the projects are categorically exempt under the California Environmental Quality Act.

Moved by Fujioka, Seconded by Keating

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0045)

On a motion by Councilmember Chiang, seconded by Councilmember Keating and unanimously carried, the Council agreed to extend tonight's meeting to 12:05 a.m. in order to complete agenda consideration.

Sewer Rehabilitation

The Public Works Director recommended that the Council award the contract for the Phase IV Sanitary Sewer Rehabilitation Project to J. Howard Engineering, Inc. in the amount of \$1,603,145. Councilmember Fujioka requested that in the future, copies of proposed contracts be included in staff reports.

Resolution 100-09

RESOLVED, that the City Council awards the Phase IV Sanitary Sewer Rehabilitation Project to J. Howard Engineering, Inc. in a contract amount of \$1,603,145.

Moved by Chiang, Seconded by Barbieri

Ayes: Friedman, Barbieri, Chiang, Fujioka, Keating

Noes: None

Absent: None

(0045)

ANNOUNCEMENTS

Turkey Trot – Councilmember Chiang reported on the success of the PHS Cross-Country Track Team's annual *Turkey Trot* fundraising footrace held on Thanksgiving morning.

ADJOURNMENT

There being no further business, Mayor Friedman adjourned the meeting at 12:05 a.m.