

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, August 2, 2010

A Regular Session of the Piedmont City Council was held August 2, 2010, 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 July 29, 2010.

CALL TO ORDER

Following a 7:00 p.m. Closed Session regarding Interim Police Chief performance evaluation, lease negotiations related to City property at 777 Magnolia Avenue and possible initiation of litigation regarding the Piedmont Hills Underground Assessment District, held pursuant to Government Code Sections 54597, 54956.8 and 54956.9(c), respectively, Mayor Barbieri called the meeting to order at 7:35 p.m. with the Pledge of Allegiance.

ROLL CALL

Present: Mayor Dean Barbieri, Vice Mayor John Chiang and Councilmembers Margaret Fujioka, Garrett Keating and Jeff Wieler

Staff: City Administrator Geoff Grote, Deputy City Attorney Ben Winig, Interim Fire Chief John Speakman, Recreation Director Mark Delventhal, Interim Public Works Director Chester Nakahara, City Planner Kate Black, Assistant Planner Kevin Jackson, Deputy City Clerk John Tulloch and Recording Secretary Chris Harbert

PROCLAMATION

Mayor Barbieri presented retired Fire Chief John Speakman with a proclamation declaring August 2, 2010, as *John C. Speakman Day* in recognition and gratitude for his 13 years of service as Piedmont Fire Chief.

CONSENT CALENDAR

The following item was approved under one vote by the Council:

Minutes

Approves as submitted Council meeting minutes of July 19, 2010

Resolution 72-10

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

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

PUBLIC FORUM

Barbara Peters inquired re the process for the certification of the Environmental Impact Report for the Moraga Canyon Sports Fields Project given the Draft EIR's alternative design option of one field rather than the originally proposed two sports fields in Blair Park. She felt that the final design for the proposed Blair Park project should be clarified prior to its submittal to City commissions for review and comment. Therefore, she suggested that the Council defer EIR certification until such time as the uncertainties regarding the project's final design have been resolved.

Ray Catalano cited inaccuracies in a recent *Piedmont Post* news article regarding the number of public hearings that have been held regarding the Moraga Canyon Sports Field Project in requesting City staff to publicly announce how many noticed public hearings have been held regarding the Blair Park portion of this project.

Rick Schiller referenced the large amount of public support and opposition to the proposed Moraga Canyon Sports Field Project in urging the Council to seriously consider the likelihood of litigation should the project either be approved or denied. Given this potential for lawsuits, he requested the Council to require project proponents to indemnify Piedmont taxpayers against litigation costs and to include in their project budget sufficient funding to cover potential legal fees.

REGULAR CALENDAR

The Council considered the following items of regular business:

**Fire Chief
Appointment**

The City Administrator announced that from an outstanding field of candidates, the Council has selected Edward Tubbs to serve as Piedmont's new Fire Chief, effective August 30, 2010, at an annual salary of \$160,000. Mr. Tubbs has been the Assistant Fire Chief for the City of Dixon for the past nine years and prior to that appointment served as a captain in the City of Davis Fire Department.

Resolution 73-10

RESOLVED, that the City Council appoints Edward Tubbs as Fire Chief for the City of Piedmont, effective August 30, 2010, and approves the salary and benefits resolution on file in the City Clerk's Office.

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0085)

The Council welcomed Chief Tubbs and his wife Catherine.

**Interim Fire Chief
Appointment**

The City Administrator recommended that Fire Captain Warren McLaren be appointed Interim Fire Chief for the period August 7 through August 29, 2010. Captain McLaren has been with the department 22 years, is currently Piedmont's Fire Marshall and has experience in all facets of the fire service. During this interim period, Captain McLaren will receive a 10% increase in pay as Interim Chief.

Resolution 74-10

RESOLVED, that the City Council appoints Fire Captain Warren McLaren as Interim Fire Chief, effective August 7 through 29, 2010.

Moved by Fujioka, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0085)

**Artuna Avenue
Preferential Parking
District Expansion**

The Interim Public Works Director reported that in response to the increase in use of Dracena Park as a result of the addition of a new children's play area, the expansion of the quarry site and the construction of a restroom facility, neighborhood residents submitted a petition last September requesting that the existing Artuna Avenue preferential parking district be expanded to include properties along Ricardo and El Cerrito Avenues as a means of providing relief from parking congestion. The City retained Traffic Consultant Moses Wilson of Wiltec to examine the matter and report his findings.

Mr. Wilson reported that his 2009 examination did not substantiate the neighborhood's claims of parking congestion and as a consequence he held meetings with the neighborhood and conducted additional parking surveys in 2010. While he acknowledged that his parking surveys never verified neighborhood claims of parking congestion, he was convinced that parking congestion does exist; however, its inconsistent nature may explain why he failed to observe such congestion during his spot surveys. As a consequence, Mr. Wilson recommended that the existing Artuna Avenue parking district be expanded to include five homes along the west side of Ricardo which appear to be the most impacted because of their proximity to level-in park entrances. These homes are 157, 201, 205, 209 and 213 Ricardo Avenue. However, Mr. Wilson recommended that the residential parking restrictions not be 24 hours/7 days a week as is currently in place along Artuna, but instead be 4 p.m. to 9 p.m. on weekdays and 10 a.m. to 6 p.m. on weekends. He felt that a 24 hour restriction in front of these homes would create spill over congestion for homes further down the block. The Interim Public Works Director added that residents at 135, 138, 147, 148, 151 and 214 Ricardo have requested that they also be included in the expanded parking district. However, the resident at 134 Ricardo has requested that the existing parking district not be expanded because of the potential for spill over congestion spreading throughout the neighborhood.

Correspondence was received from: John & Miriam Ponce; Jason Altieri; Henry & Jeananne Moon; Joe Loduca; Robert Padway; David & Martha Kelley, Alissa Welch; Henry & Jeananne Moon/Jeff & Linda Trowbridge/Mike & Judy Abel; Garrett Keating

Public testimony was received from:

Robert Padway requested that his property at 147 Ricardo be included in the expanded district, voicing concern that if only the 5 homes recommended by Wiltec are included, spill-over parking congestion to the immediately adjacent homes will increase. He noted that along his block of Ricardo, parking is already congested at an average of 82% capacity. He did support the concept of a limited time restriction for the expanded area as opposed to the current 24/7 prohibition along Artuna. He requested that the homes from 142 to 156 on the east side of Ricardo and 139 to 213 on the west side of Ricardo be included into the expanded parking district.

The Council discussed the issue at length, including (1) proposed options for including additional properties, other than the 5 homes recommended by Wiltec; (2) concerns over spill-over congestion, the fact that Dracena Park is a public park and the imposition of too much controlled parking may preclude other Piedmont residents who do not live in the immediate vicinity from conveniently using this community asset; and (3) the fact that Piedmont streets are "public" streets maintained by all Piedmont taxpayers. The Council also acknowledged that new use restrictions intended to reduce the number and frequency of large group gatherings/parties at the park (adopted May 3, 2010) will be in place next week, with the expectation that current parking congestion will be eased as a result. Councilmember Keating referenced his correspondence and photographs in support of his contention that parking congestion is a regular occurrence on weekends and he moved to expand the preferential parking district to include the west side of Ricardo from 213 to 139, along the east side from 214 to 150 and along El Cerrito from 112 to 134 per the limited hours recommended by Mr. Wilson. During discussion, it was revealed that Councilmember Keating resides at 148 Ricardo and the Deputy City Attorney voiced concern over a possible conflict of interest (financial or perceived bias) if Councilmember Keating participated in the discussion and action on this matter. To avoid the appearance of any conflict, the Deputy City Attorney suggested Councilmember Keating withdraw his motion, recuse himself from this matter and leave the Council Chambers; adding that if subsequent legal research verifies that there indeed is a conflict of interest, any Council action which Councilmember Keating participated in would be nullified. Councilmember Keating complied with the Deputy City Attorney's request.

The Council supported expanding preferential parking to include the five properties recommended by Mr. Wilson on a trial basis, pending a final decision on the matter. The Council requested that this issue be rescheduled for Council consideration in September to allow time for staff to: (1) ascertain whether the newly instituted use restrictions have resulted in decreased park/parking congestion; (2) examine other possible parking district options, such as a checker-board restriction pattern, different time limitations, ways to direct park users to park along the sides of the street bordering the park rather than in front of homes, etc.; and (3) obtain a legal opinion from the City Attorney as to whether Councilmember Keating can participate in the discussion and vote regarding this issue.

Resolution 75-10

RESOLVED, that the City Council expands the Artuna Avenue Preferential Parking District to include, on a trial basis, the properties at 157, 201, 205, 209 and 213 Ricardo Avenue, with the following parking restrictions applying to these five properties: weekdays, 4 p.m. to 9 p.m. and Saturday and Sunday, 10 a.m. to 6 p.m.

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Wieler

Noes: None

Recused: Keating

(0735)

**Public Hearing:
Draft EIR for
Moraga Canyon
Sports Fields Project**

In accordance with California Environmental Quality Act provisions, the Mayor opened the second of two public hearings to receive public comment on the Moraga Canyon Sports Fields Project Draft Environmental Impact Report (EIR). The first hearing was held July 19. As was done on July 19, the Mayor encouraged speakers to focus their comments on the adequacy of the Draft EIR.

Correspondence was received from: Richard Raushenbush; Susan Garbaino; Al Peters; Greg & Tina Girtman; Ross & Virginia Hambly; Joannie Semitekoll; Jonathan Quint; Marjorie Blackwell; Cheryl & Rick Rowe; Stephen Dee; Lynn Dee; Barbara Peters; Alan Cohen; Wei Huey; Judith Rosenberg; Thomas Eme; Virginia Preston; George Duncan; Richard Grasseti; Lisa Breuner; Carol Tanenbaum; Karen Silverberg; D.N. Cowles; Shirley Chen; Louis Goodman; Audrey Holt; Jon Adams; George Childs

Public testimony was received from:

Glyn Burge requested that the Draft EIR address the fact that there is a demand for additional sports field usage by City and Piedmont Unified School District recreational programs and classes in addition to the field needs of community sports groups and organizations. He requested that the Draft EIR reflect the current shortage of field space in Piedmont and the competition among sports teams and interests for sufficient field time to accommodate their needs.

Ray Catalano cited ambiguities in the Draft EIR appendices and their failure to adequately address: (1) how Blair Park access to and from Coaches Playfield will comply with Americans with Disability Act requirements; and (2) how either the City's General Plan will have to be amended to remove those policies which the proposed Blair Park project violate or the necessity for the Council to adopt an overriding consideration resolution, resulting in "spot general planning" which is illegal. He felt that these implications are not adequately addressed in the Draft.

Joannie Semitekoll requested that the Draft EIR address the projected loss of service level from the Maxwellton/Moraga intersection and not just from the project parking lot. She also inquired why Draft EIR traffic study appendix proposed modifications to the Maxwellton/Moraga intersection that were not discussed at neighborhood meetings nor included in the main text of the draft. She felt that while these modifications may improve traffic to and from the project parking lot, she was concerned that they may impede residents entering/exiting Maxwellton Road. She requested that the Draft respond to the following questions: (1) what does the reconstruction look like; (2) what are the implications for drivers coming from Maxwellton onto Moraga; and (3) was this reconstruction considered in the traffic study projections. She also reiterated her previous concerns that pedestrian safety is not adequately addressed in the Draft EIR.

Susan Kahn felt that the Draft EIR's traffic assumptions contained in the appendices were flawed relating to the parking lot (1) since they were based on only one traffic study, which failed to address player pick-up time congestion which coincides with afternoon commute hour traffic flow; (2) failed to acknowledge that east bound traffic has no dedicated turn lanes to facilitate traffic flow as is the case westbound; (3) failed to address loss of service level impacts on residential streets; and (4) ludicrous in suggesting that Piedmont monitor Harbord/Moraga intersection traffic flow and advise the City of Oakland as to whether a traffic signal light should be installed.

Audrey Holt felt the Draft EIR's assumptions about noise were unrealistic and incorrect. In particular, she stressed that because of canyon effect sound amplification, conversations and cheering at Coaches Playfield can be easily heard from her home. She requested that the Draft EIR acknowledge and analyze the canyon effect impact of noise.

Sandra Pohutsky inquired why the project's true traffic analysis was contained in the Draft appendices and not main text body, questioned whether using a traffic engineer from Southern California provided the best outcome given his unfamiliarity with Moraga Canyon side streets and relayed rumors circulating that during the traffic engineer's collection of data, Piedmont police officers stepped up speed enforcement along Moraga Avenue and "slow" traffic signs were posted along the roadway. She requested that a comparison be made between the dates of the traffic survey and police ticketing activity on Moraga. She also felt that the mitigation measures contained in the Draft EIR were insufficient to provide adequate pedestrian safety.

Peggy Esposito also felt that the Draft EIR failed to adequately address and mitigate pedestrian safety, both for pedestrians using the fields as well as general pedestrian traffic in the neighborhood. She felt that the project will result in more traffic flow which will threaten pedestrian safety, thus expose the City of Piedmont to greater risk of liability claims and judgments. She also felt that the project, with its large retaining walls, will create an aesthetic eyesore along Moraga Avenue.

George Childs submitted his comments concerning the inadequacies of the Draft EIR's appendices in writing, requesting that more mitigation measures be identified and a more thorough examination be conducted.

Lance Hanf stressed that youth sports is a core value of Piedmont families and emphasized that the proposed Blair Park project is necessary to sustain this value. He urged that the Council adopt a finding of overriding consideration and approve the Blair sports field project.

Rick Schiller requested that the Draft EIR address the potential of the City having to assign more police patrols along Moraga Avenue for traffic/speed enforcement as well as controlling unauthorized use of the new Blair playfields. He suggested that the Draft EIR include a "worst case scenario" analysis of the impacts such reassignments may have in terms of police presence in the rest of

the City and include a definition of "acceptable policing level." He also requested that the Draft EIR address how unauthorized use of the new playfields will be controlled.

Eric Havian submitted data evidencing significant increases in youth sport participation levels in Piedmont and the amount of field time available for team practice sessions and games in support of his contention that there is an acute shortage of playfields in Piedmont. He requested that this type of data be incorporated into the Draft EIR.

Kieran Turan criticized the Draft EIR's idealized and unrealistic depictions of field lighting conditions and visual impacts associated with the proposed installation of field lighting at Coaches Playfield.

Steve Schiller, Mark Landheer, Claudia Harrison, Bob Lally, Rick Smith, Ephraim Greenwol and Conna McCarthy all felt that the Draft EIR failed to adequately document the need for additional sports fields in Piedmont, the benefits additional playfields would provide to Piedmont families and the community at large both in terms of informal recreational use and organized team sport usage, the variety of sports that would benefit from the proposed new fields, the fact that Piedmont youths are currently at a competitive disadvantage because of a lack of practice opportunities and the reality that the new fields would lessen the necessity of Piedmont parents, kids and volunteers of having to drive long distances for sport activities.

Steve Shub voiced support for the Blair Park sports development project, stressing that Blair Park is essentially useless right now for any type of recreational or family activity.

David Holland felt that the proposed Blair Park project violated CalTrans and the City's General Plan traffic policies. He also felt that the Draft EIR failed to offer mitigation measures to offset woefully substandard levels of service acceptability at the Harbord/Moraga and Moraga/Estates intersections.

Leslie Silbergh felt that the Draft EIR was inadequate in terms of assessing traffic flow levels along Moraga Avenue, especially in cases of major emergencies. She requested that the new Fire Chief evaluate the impact the proposed Blair Park development would have on the City's emergency preparedness plan and response.

Alison Monroe urged baseball proponents to consider sites that have an expanse of flat ground as alternative locations for sports field development, suggesting in particular sites outside of Piedmont or the former EBMUD reservoir. She felt that Blair Park's topography was unsuitable for baseball and its natural setting should be preserved.

Lynn Dee complained about tonight's process, believing that the Mayor was allowing project proponents to speak to the benefits of the project rather than focus their remarks on the Draft EIR. She felt that the Draft EIR failed to

adequately address and mitigate traffic and pedestrian safety as well as identify and examine potential alternative sites for field development that would have less negative impact on surrounding neighborhoods.

After the close of public testimony, the Council discussed its concerns regarding the Draft EIR with Kristen Granback, LSA Project Manager (the City's environmental consultant). The following comments/concerns were expressed:

Councilmember Keating -- the Draft EIR's failure to address: (1) an assessment of the hours of and impacts from unscheduled use of the new Blair fields; (2) the need to add a "not applicable" category with regard to whether proposed improvements are consistent or potentially inconsistent with the City's General Plan; and (3) storm water flow. Councilmember Keating noted his intention to submit his concerns/questions in writing to LSA.

Councilmember Wieler -- requested that the Draft EIR provide: (1) more in-depth analysis of the need for additional sports fields in Piedmont and the usage levels on existing fields; and (2) a more comprehensive analysis of traffic, traffic alternatives and mitigation measures.

Councilmember Fujioka -- requested that the Draft EIR address noise impacts with more than just a one-day sampling. She felt that several noise sampling surveys were necessary in order to obtain a realistic average. She also advised that she had asked the City Attorney to examine if the significant impacts raised in the Draft EIR deviate from the General Plan and if there would be a need for the General Plan to be amended.

Vice Mayor Chiang -- requested that the Draft EIR provide: (1) more documentation regarding traffic issues; (2) address in more detail the issue of project inconsistencies with the City's General Plan; (3) determine if the number of proposed parking lot spaces is adequate; and (4) provide more than just a one-day sampling of noise impacts and address and/or measure the canyon effect on noise.

Mayor Barbieri -- requested that the Draft EIR address Americans with Disability Act issues related to crossing Moraga Avenue.

The Council also discussed with staff the EIR certification process and timetable, with Councilmember Keating requesting staff to consult with the City Attorney and report back as to whether the Moraga Canyon Sports Field Project can be forwarded to City commissions for review and comment prior to the certification of the EIR.

On a motion by the Vice Mayor, seconded by Councilmember Wieler and unanimously approved, the Council agreed to extend tonight's meeting to 11:15 p.m. in order to complete agenda consideration.

Energy Efficiency

The Assistant Planner provided updates regarding the status of four state

Grants

energy grant programs, noting in particular that: (1) grant funding under the Municipal Financing Program has been withdrawn in light of on-going litigation and violations of Federal Housing Finance Agency mortgage contracts; (2) grant funding under the California Comprehensive Residential Building Retrofit Program should become available at year's end; (3) \$58,369 in grant funding from the Energy Efficiency and Conservation Block Grant Program has been awarded to Piedmont for the installation of energy-efficient street lights; and (4) \$75,202 in grant funding has been awarded to Piedmont under the Small Cities Climate Action Partnership for use in financing energy efficiency programs and projects.

**PG&E Site at
408 Linda Avenue**

As discussed at the July 19th meeting, the City Planner recommended Council approval of: (1) a modification to the City's existing contract with LSA Associates to permit an alternative payment plan for the preparation of an Environmental Impact Report for the proposed redevelopment of the PG&E substation property at 408 Linda Avenue by Piedmont Station Limited Liability Corporation; and (2) an agreement between the City and Piedmont Station Limited Liability Corporation agreeing to the terms of the alternative, task-based payment plan for the preparation of its project's EIR. The City Planner stated that despite her repeated e-mails and phone calls to Piedmont Station representatives, there has been no response from Piedmont Station regarding the proposed payment agreement. The Council acknowledged that the task-based payment plan was prepared in response to a Piedmont Station request and therefore the Council was prepared to proceed with agreement approval. Councilmember Fujioka requested that the City Attorney determine if an "Attorney's Fees" clause should be included in the modification agreement with LSA Associates.

Resolution 76-10

RESOLVED, that the City Council approves the proposed modification to an existing Contract between the City and LSA Associates, on file in the City Clerk's Office, to permit an alternative payment plan for the preparation of an Environmental Impact Report, with the understanding that the City Attorney shall determine if any changes are required in the modified contract with regard to "Attorney's Fees" language; and

RESOLVED FURTHER, that the City Council approves the Agreement between the City and the Piedmont Station LLC, on file in the City Clerk's Office, agreeing to the terms of the alternative payment plan for the preparation of an Environmental Impact Report.

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0045)

ANNOUNCEMENTS

City Clerk Retirement Reception -- the public is invited to attend a reception for retiring City Clerk Ann Swift on Thursday, August 26 at the Community Hall

from 5:00 to 7:30 p.m. The cost of the reception is \$25.00 per person, which includes wine and refreshments.

On a motion by Councilmember Wieler, seconded by Councilmember Fujioka and unanimously approved, the Council agreed to extend tonight's meeting to 11:22 p.m. in order to complete agenda consideration.

FUTURE AGENDA ITEMS

Police Incident -- the Council agreed to include on the September 20th meeting agenda, a discussion of a March 11, 2010, incident involving a police stop of two African-American Piedmont High School students which has become the subject of considerable community interest and comment. The matter will be scheduled as an informational item (no Council action to be taken) with a report from the City Administrator and Acting Police Chief regarding the event and an opportunity for residents and the Council to comment publicly on the matter.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 11:20 p.m.