

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, December 6, 2010

A Regular Session of the Piedmont City Council was held December 6, 2010, in the Veterans Memorial Building at 401 Highland Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on December 2, 2010.

CALL TO ORDER

Following a 6:30 p.m. Closed Session regarding the lease of City property at 777 Magnolia Avenue and discussion of potential litigation, held pursuant to Government Code Sections 54956.8 and 54956.9(b)(1)(B) & 54956.9(b)(1)(E), respectively, Mayor Barbieri called the meeting to order at 7:35 p.m. with the Pledge of Allegiance. The City Administrator announced that Agenda Item 4 (Consideration of a new Housing Element of the General Plan) has been continued to the January 3, 2011, Council meeting because information anticipated from the State Department of Housing and Community Development has not yet been received.

ROLL CALL

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

Staff: City Administrator Geoff Grote, City Attorney Tom Curry, Recreation Director Mark Delventhal, Fire Chief Edward Tubbs, Interim Public Works Director Chester Nakahara, City Planner Kate Black, Interim City Clerk John Tulloch and Recording Secretary Chris Harbert

CONSENT CALENDAR

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

Minutes

Approves as submitted Council meeting minutes of November 15, 2010

Resolution 98-10

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

Moved by Chiang, Seconded by Fujioka

Ayes: Barbieri, Chiang, Fujioka, Keating

Noes: None

Abstain: Wieler

Absent: None

PUBLIC FORUM

Alexander Magganas requested the Council to direct City staff to develop a policy and procedure for promoting public/private partnerships.

Peter Olborg urged the Council to approve, without further delay, a 10-year lease agreement with the Piedmont Swim Club for the continued operation and management of the community pool facility at 777 Magnolia Avenue.

Rick Schiller requested an update regarding the status of the City Council's Audit Subcommittee's final report concerning the Piedmont Hills Utility Undergrounding Project. The City Administrator responded that the 3-member

subcommittee are each preparing individual reports which will be then consolidated into a Final Report. It is anticipated that the three draft reports will be presented and discussed at the Subcommittee's next meeting, tentatively scheduled for January 27, 2011.

TOYS FOR TOTS

Fire Engineer John Tessandori announced that the Piedmont Fire Department is once again assisting the U.S. Marine Corps in collecting new, unwrapped toys for the Corps' annual *Toys for Tots* program. Toys can be left anytime at the Fire Department, Piedmont Shell Service Station and/or in the lobby of the reality office in the Wells Fargo Bank Building. This is the 25th year that Piedmont has participated in *Toys for Tots*.

REGULAR CALENDAR

The Council considered the following items of regular business.

Public Hearing: Moraga Canyon Sports Fields Project EIR, Response to Comments and EIR Certification

The Mayor opened the second public hearing for review of the formal certification of the Moraga Canyon Sports Fields Project Environmental Impact Report and the Response to Comments document. The first hearing was held November 15, 2010. The Recreation Director briefly summarized the history of the two projects (Blair Park Sports Field Complex and Coaches Playfield Synthetic Turf and Lighting) dating back to 2006, stated that the Draft EIR is complete and in compliance with the California Environmental Quality Act, and emphasized that certification of the EIR in no way indicates or assumes that project approval will occur -- project approval requires a completely separate Council consideration and action. The City Administrator added that the Council must make the following three findings in certifying the Final EIR:

- a. The Final EIR has been completed in compliance with CEQA
- b. The Council has reviewed and considered the information contained in the Final EIR prior to any Project approvals
- c. The Final EIR reflects the independent judgment and analysis of the City Council of the City of Piedmont, the lead agency for the Project

Malcom Sproul, Managing Partner of LSA and Associates, the City's consultant who prepared the Draft EIR, stated his belief that the Draft adequately addresses and responds to issues and comments raised during the Draft's preparation and public review process, as well as to comments made at the November 15 public hearing and correspondence received following that meeting. He highlighted the major issues raised on November 15th and in the subsequent correspondence, citing references in the Draft EIR wherein these issues were addressed.

In response to Council questions, Harold Freiman, the City's special legal counsel on this issue, stated that the Council has discretion to approve a project if it finds that the project is generally consistent with the General Plan and that the number of overriding concerns (7) contained in the EIR is not atypical.

Correspondence has been received from: Margaret Leong; Neil Teixeira; Brad Polvorosa; Rick Gallagher; Rick Schiller; Gayle Sells; David Hollander; Colby Lavin; Jeffrey Meredith; Justin Burden; Scott Pine; gio33388@yahoo.com;

Annie Reilly; Jeff Gao & Huiling Chiao; Valerie Fahey; Chris Ford; Jenny & Mike Lynn; Laura Katter; Rebecca Sternberg; Ronnie Baum; Megan Lavin; J. Michael Jumper; Elizabeth Becker; Erik Wolfers; Joe Wire; Claudia Harrison; Ephraim Greenwall; Donna Katzman; Kevin Paige; Michael Costello; Ellie Paige; Blair Paige; Dana Wiltsek; Alan Cohen; Wei Huey; S. Divitt; Friends of Moraga Canyon; Lisa Kaplan; Veronica Harris; Dan Marks; Laurence Gabie; Rissa Coplan; Gibson Scheid; John & Roberta Gomz; Melanie Robertson; Marjorie Blackwell; Leslie Quantz; M. Miller; Jo Loughran; Margaret & Tom Vinson; Mike Cameron; Stephen Abbanat; Margaret Ovenden; Tom Nemeth; Erik Housh; Laura Nemeth; Kevin Breen; Karen Silverberg; Marta de Pierris; Carl Goeriz; Geoffrey Henrikson; Kathleen Quenneville; Bob; Joannie Semitekole; Ineke van Zijl; Randy Wedding; Philip, Joan, Alex & Nico Liebscher; Steve Weiner; Paulette Traverso; Doug Vance; Ralph Kanz; Jane Holland; Narciso Jaramillo; Kathleen Hurley; Richard Raushenbush & Barbara Giuffre; Sarah Pearson & Evan Seevak; Garrett Keating; Eric Angstadt (on behalf of the City of Oakland); Al Peters; Barbara Peters

Public testimony was received from:

Margaret Ovenden, Alexander Magganas, Asif Sayeed, Michael Henn, Randy Wedding, Susan Kahn, Jill Broadhurst, Sandra Pohutsky, Winifred Walters, Al Peters, Libby Schaaf, Ray Catalano, Joannie Semitekole, Ralph Kanz, Marta de Pierris and Rick Schiller all spoke in opposition to EIR certification, with the following reasons cited: (1) its cursory analysis of pedestrian safety/traffic issues and potential alternative sites; (2) the lack of community involvement in the preparation of the Blair Park proposed design and the absence of community consensus as to the proposed project; (3) its failure to adequately assess and acknowledge the canyon effect on noise, measure existing noise levels in the area and consider the effect that replacing existing vegetation with retaining walls will have on noise levels; (4) the incorrect analysis that the proposed Blair Park sports fields could not be constructed at the present site of the City's Corporation Yard because of insufficient room -- Mr. Henn submitted an aerial photograph indicating that there is sufficient room to accommodate the Blair Project at the Corporation Yard. He felt that the EIR should address this reasonable alternative; (5) concurrence with the issues raised in the City of Oakland's letter of December 6, 2010, regarding the deficiencies of the EIR and its opposition to certification; (6) the EIR's failure to adequately address soil/excavation issues and impacts, to conduct soil testing when moisture levels are at their highest, to consider the fact that the proposed berm will be less strong than a retaining wall in case of earthquake and the failure to consider that when new fill is placed on top of the site's existing fill, the soil stability situation will be less stable than when the site was tested; (7) the EIR's incorrect identification of Moraga Avenue as a "class 3" bike route, when in fact there are no signs or pavement markings indicating that the roadway is being shared by vehicles and bicyclists; (8) the EIR's curt dismissal of an alternative plan for adding new field space by expanding Coaches Playfield; (9) the EIR's failure to explain why the findings/conclusions of the 1991 Turf Facilities Task Force that sports field development at Blair Park was "not worth the risk" is no longer

valid; (10) many EIR assumptions were based on inaccurate, incomplete or misleading information, such as basing the parking space requirements for Blair on Coaches Field; (11) based on tonight's testimony, it appears that many more youth sport participants will be using the Blair Park fields than indicated and evaluated in the EIR; and (12) the EIR's failure to adequately address impacts associated with unauthorized use, police services, traffic speeds and air pollution generated from parking lot car exhaust.

Several of the above speakers as well as Mark Therrell, Eva Denes, Robin Nasatir, Peggy Esposito, Janet Bilorusky, Nicolas Stamatakis, Mila Magallanes, Barbara Peters, Jim Semitekol, Morrisa Sherman, Rick Rowe and Aaron Salloway all spoke in opposition to the proposed sportsfield development at Blair Park, emphasizing: (1) the tremendous, adverse visual impact the project will have on the streetscape and neighborhood; (2) the significant increase in traffic flow along Moraga Avenue that will result; (3) the strong opposition to the soccer groups' attempts to impose their pipe-dream on the neighborhood; (4) the fact that safety issues could be better mitigated at alternative sites; (5) a belief that constructing a playfield at Blair Park will put children at significant risk in terms of traffic and pedestrian safety hazards as well as health issues from air pollution from nearby busy Moraga Avenue; (6) the project does not benefit the community as a whole but only a select group; (7) the loss in property value for surrounding homes; (8) the perceived lack of objectivity by past and present City Councils regarding this project; (9) the fact that alternative playfield sites have not been adequately explored and efforts should be undertaken to obtain field use agreements with other schools, organizations and/or agencies; (10) the potential for the Blair sports fields to become a fire/death trap in case of a major disaster; (11) the fact that the project is not economically viable and the City should focus on more pressing financial matters such as those associated with the Piedmont Hills Utility Undergrounding Project, the community swimming pool and garbage rates; (12) the potential that if approved, use levels at the Blair fields will undoubtedly increase over the years, to a level higher than that addressed in the EIR; (13) the absence to this point of any effort to work with the City of Oakland and surrounding neighbors in developing a mutually acceptable plan; (14) the fact that the City is now on "written notice" concerning its responsibility and liability for the following if the Blair Project is approved: accident, injury, disability, death, loss of property value, property damage, loss of emergency staging area and potential blockage to Moraga Avenue due to soil liquid faction; (15) the proposed crosswalk will not provide sufficient safety for pedestrians, especially children, because of limited sight distances and traffic volume and speeds; (16) concern over what guarantees have been provided by Blair Project proponents that sufficient funding is available to cover project construction and potential cost overruns and the consequences to City taxpayers if this funding is inadequate; (17) concerns over extensive hillside excavation and the potential for landslides and damage to surrounding homes and foundations from construction vibration and slope instability due to the removal of hundreds of trees; (18) the Blair Project conflicts with the City's General Plan; (19) the health and survivability of the park's oak trees which are not identified for removal will be threaten by

proximity of construction and changes in water table levels and drainage flow; (20) the failure of the EIR to address impacts on birds from the proposed field lighting at Coaches Playfield; and (21) Blair Park serves as an emergency "shoulder" along Moraga Avenue in the event of car trouble or accidents and was originally intended to accommodate an expansion of width of this section of Moraga/Hwy 13.

Kieran Turan narrated a computer-generated animation slide show indicating the Blair Park Project's visual impact on the site and surrounding neighborhood.

George Childs emphasized the divisiveness the Blair Park project has generated within the community, the irreparable harm this project has caused and the belief by many residents that EIR certification is a fait de accompli.

Jean Quirk inquired if Moraga Avenue's poor drainage situation and frequent flooding in heavy rains was addressed in the EIR and requested information concerning the project sidewalk.

Deborah Leland voiced support for the Blair Park Project but urged that: (1) existing traffic speeds along Moraga Avenue be lowered through significant traffic control measures; (2) consideration be given to installing a crosswalk at the intersection of Moraga and Maxwelton; and (3) careful consideration be given to the proposed location of the upper parking lot given its ingress/egress at the point where the speed limit on Moraga changes from 25 mph to 30 mph.

Simon Parmett supported EIR certification so that the final design of the Blair proposal can be developed with neighborhood input. He also suggested that the project consider installing a traffic signal light/pedestrian crossing at the Maxwelton/Moraga intersection.

Neil Teixeira voiced concern over non-resident use of Blair sports fields, noting that many cities, including Piedmont, have experienced serious problems with adult male soccer games. He also inquired regarding the source of funding for the special legal counsel retained on this matter and whether the City will be liable for legal fees in defense of any lawsuits filed opposing EIR certification and/or the Blair Park project.

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

Kim Rhody, Cordelia Tuan, Jim Ellis, Scott Ruegg, Heather Ruegg, Andy Ball, Lance Hanf, Mark Landheer, Nick Levinson, Mark Menke, Erik Housh, Clarence Mamuyac, Glyn Burge, Michael Lee, Valerie Matzger, Terry Tumey, Rick Smith, Jessica Berg and Murray Davis all voiced support for EIR certification, emphasizing: (1) that certification will allow the process to proceed and efforts to continue in refining a final project design for Blair Park that will benefit the entire community; (2) the critical need for additional

playfields to accommodate youth sports interest and demand within the community; (3) the benefits of the "green practices" included in the proposed design; (4) the importance of sport playfields in attracting and retaining young families in Piedmont; (5) the EIR is very detailed, thorough and responsive to public comment, thereby warranting certification; (6) the Blair Project represents the best use option for this underutilized property and poses no unusual or difficult construction issues; (7) there is overwhelming community support for the Blair proposal; (8) the traffic flow to be generated by the Blair Project is less than 1% of existing Moraga Avenue traffic volume -- an insignificant change; (9) the Blair Park Project will create a vibrant, community space that all residents can enjoy -- the project is a gift to the community; (10) there is a long history in Piedmont of initial, strong neighborhood opposition to proposed changes in the community, but when these projects have been approved and constructed, the opponents' worst fears never materialized and the projects have become much appreciated community assets, e.g., Beach Playfield, Witter Field, Coaches Playfield, Dracena Quarry, etc.; (11) EIR certification will recognize the significant financial investment proponents have made in behalf of the Blair Project and enable the process to proceed to the next step of building community consensus for the final design; and (12) the EIR has been prepared and reviewed by professional experts who have concluded that the documentation complies with CEQA requirements.

On a motion by the Vice Mayor, seconded by Councilmember Fujioka and unanimously carried, the Council agreed to extend tonight's meeting to 12:30 a.m. in order to complete agenda consideration.

During testimony, Joannie Semitekol pointed out an inconsistency in the Response to Comments document, noting that while page 1 states ". . . there are no significant environmental impacts that cannot be mitigated to a less than significant level," the EIR indicates that there are impacts in 11 categories that are found to be significant, of which 7 cannot be mitigated to a lesser than significant level and remain significant and unavoidable. Mr. Sproul apologized for the editing error, agreeing that the last sentence in the first paragraph of Section 1.1 of the Response to Comment should be revised to correctly indicate that there are significant, unavoidable impacts associated with this project.

Mr. Sproul also stated his professional opinion that all comments/concerns expressed tonight relate to topics that are addressed in the EIR documentation, with the exception of night field lighting impacts on birds. With regard to this issue, Mr. Sproul stated that because the use of field lights is proposed for very specific hours and only during certain times of the year, the lighting will have no significant impact. He added that the issue of night lighting was not raised during the scoping meeting nor during the official public comment period on the Draft EIR. Mr. Freiman confirmed that a final, detailed plan is not required in order to certify a project EIR and in fact it is better not to be pre-committed to a specific design for EIR purposes. It is only necessary to identify the potential impacts and possible mitigation measures associated with a project. Mr. Freiman was satisfied that no substantial legal issues were raised tonight that are

not already addressed in the EIR and Response to Comment documentation. He also explained the legal options and timeline under CEQA.

The Council, with the exception of Councilmember Keating, supported EIR certification, emphasizing once again that certification does not imply nor guarantee eventual project approval. Councilmember Fujioka advised Blair Project proponents of three conditions that would have to be satisfied before she could favorably consider project approval: (1) evidence that sufficient funds are available to cover the cost of project construction and maintenance; (2) a hold harmless or equivalent agreement indemnifying the City in event of any litigation associated with the project; and (3) a demonstrated effort made to work with opponents in developing a mutually agreeable design.

On a motion by the Vice Mayor, seconded by Councilmember Fujioka and unanimously carried, the Council agreed to extend tonight's meeting to 1:00 a.m. in order to complete agenda consideration.

Councilmember Keating opposed EIR certification, citing inadequate analysis related to traffic, noise, hydrology, parking and wildlife assessments. In particular, noting the absence of a wildlife inventory, the inadequacy of the traffic "gap" analysis, incomplete parking mitigation and noise assumption deficiencies and discrepancies. The Council majority believed that the EIR documentation was comprehensive and thorough in its evaluation of all concerns/issues and its certification would allow the project to proceed to the next step of City commission review and recommendation.

Resolution 99-10

WHEREAS, this City Council has received a Final Environmental Impact Report for the Moraga Canyon Sports Field Project ("FEIR") dated November 2010, inclusive of the Draft Environmental Impact Report for the Moraga Canyon Sports Field Project ("DEIR") dated June 2010, and also inclusive of the Response to Comments for the Moraga Canyon Sports Field Project ("RTC") and proposed text changes to the DEIR dated November 5, 2010; and

WHEREAS, this Resolution incorporates the FEIR herein by reference and as amended herein with regard to page 1 of the Response to Comments document; and

WHEREAS, the Moraga Canyon Sports Field Project ("Project") is defined in the FEIR; and

WHEREAS, on July 19, 2010, and August 2, 2010, the City Council held two duly-noticed public hearings on the DEIR consistent with Public Resources Code section 21092 and the corresponding California Environmental Quality Act Guidelines ("CEQA Guidelines"), and concluded said hearings on the latter date; and

WHEREAS, the official public comment period for the DEIR commenced on June 21, 2010, and ended on August 9, 2010, following due notice to the public and all applicable public agencies consistent with Public Resources Code section 21092 and the corresponding CEQA Guidelines; and

WHEREAS, during the public comment period the City of Piedmont received approximately 180 letters and emails regarding the DEIR, representing some 850 comments, which were in addition to the public testimony heard by the City Council at both public hearings on the DEIR; and

WHEREAS, following the close of the public comment period on August 9, 2010, the RTC was prepared to respond to all substantive comments received on the DEIR related to the environmental issues surrounding the Moraga Canyon Sports Field Project consistent with Public Resources Code section 21092.5 and the corresponding CEQA Guidelines; and

WHEREAS, on November 15, 2010, and December 6, 2010, the City Council held two publicly-noticed public hearings on the FEIR, inclusive of the RTC and the proposed text changes to the DEIR, and concluded said hearings on the latter date consistent with Public Resources Code section 2109.25 and the corresponding CEQA Guidelines; and

WHEREAS, the City Council has independently reviewed and considered the FEIR and has evaluated and considered all comments, written and oral, received from persons who have reviewed the DEIR and the FEIR.

NOW, THEREFORE, BE IT RESOLVED, the FEIR for the Moraga Canyon Sports Field Project ("Project") has been completed and is in compliance with the provisions of the California Environmental Quality Act, Public Resources Code section 21000, *et seq.* ("CEQA"), with the CEQA Guidelines and local guidelines for implementing CEQA, and all other applicable laws and regulations; and

FURTHER, BE IT RESOLVED, that the City Council finds and declares that the FEIR for the Project was presented to the City Council and that the City Council has independently reviewed and considered the information contained in the FEIR; and

FURTHER, BE IT RESOLVED, based upon its review of the FEIR, the City Council finds that the FEIR for the Project is an adequate assessment of the potentially significant environmental impacts of the Project, as described in the FEIR, and sets forth a reasonable range of alternatives to the Project; and

FURTHER, BE IT RESOLVED, that the City Council hereby certifies the FEIR as complete and adequate under CEQA, and certifies that the FEIR represents the independent judgment and analysis of the City Council.

Moved by Chiang, Seconded by Wieler

Ayes: Barbieri, Chiang, Fujioka, Wieler

Noes: Keating
Absent: None
(0187)

**Referral of the Moraga
Canyon Sports Fields
Project**

The City Administrator recommended that the certified Final EIR for the Moraga Canyon Sports Fields Project be referred to the City's Planning, Park and Recreation Commissions for review and recommendation. All commission hearings on the project would be publicly noticed and provide opportunities for public comment and input. He suggested that the commissions' consideration focus on the following in developing their recommendations to the City Council:

- Identified impacts and mitigations in the Final EIR and potential "overrides"
- Design elements
- Community demand versus neighborhood concerns
- Alternatives, including the single-field alternative in the Final EIR as well as those presented to the commissions. It was noted that while there is no funding available to develop alternative designs, staff is available to provide research assistance on behalf of alternative project proposals that the commissions may wish to consider.

Public testimony was received from:

Ray Catalano and Rick Schiller requested that commission consideration not be held concurrently but in the following sequence, allowing sufficient time between hearings so that each commission can benefit from the input from the other two: Recreation Commission, Park Commission and Planning Commission. They also requested that project story poles be erected in Blair Park so that the massing of the proposed development can be visually assessed.

The Council supported the proposed sequencing of commission hearings but preferred to leave it to the Planning Commission's discretion to determine if the erection of story poles should be required.

Resolution 100-10

RESOLVED, that the City Council refers the certified Final EIR for the Moraga Canyon Sports Fields Project to the Recreation, Park and Planning Commissions for review and recommendation, with the understanding that the City Administrator shall prepare the sequencing order in which this matter is considered by the above-referenced commissions and upon consultation with the Planning Commission make a determination as to whether project story poles should be erected in Blair Park.

Moved by Wieler, Seconded by Fujioka

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0187)

ANNOUNCEMENTS

Public Safety -- Councilmember Fujioka announced that the next meeting of the Public Safety Committee will be Thursday, December 16 at 5:30 p.m. She also encouraged residents to take advantage of the crime prevention tips posted on the Police Department's website, requested the Police Chief to re-release his *Holiday Safety Tips and Reminders* press article to the local press and requested residents interested in arranging for disaster preparedness/crime prevention neighborhood meetings to contact her to facilitate such requests.

Japanese Tea House -- The Vice Mayor reported on the November 18 tour of the City's newly renovated Japanese Tea House by Japan's Deputy Consul General, adding that 2012 will be the 100th anniversary of the introduction of cherry blossom trees to the U.S.

Holiday Lighting -- The Mayor thanked event organizers for another beautiful Christmas Tree and Menorah Lighting Ceremony in Piedmont Park to kick-off the holiday season.

Next Council Meeting -- will be January 3 at 7:30 p.m. The Council's regularly scheduled second meeting in December (December 20th) has been cancelled due to a lack of quorum.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 1:05 a.m.