

PIEDMONT CITY COUNCIL

Regular Meeting Minutes for Monday, May 17, 2010

A Regular Session of the Piedmont City Council was held May 17, 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 May 13, 2010.

CALL TO ORDER Following a 7:00 p.m. Closed Session regarding Kurtin v. Piedmont litigation and discussion of the appointment of a public employee, held pursuant to Government Code Sections 54956.9(a) and 54957 respectively, Mayor Barbieri called the meeting to order at 7:40 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, City Attorney George Peyton, Finance Director Mark Bichsel, Recreation Director Mark Delventhal, Chief Building Official Chester Nakahara, City Planner Kate Black, Assistant Planner Kevin Jackson and Recording Secretary Chris Harbert

PRESENTATION Councilmember Fujioka presented PHS students Jonathan and Matt Wang with a proclamation designating the week of May 17, 2010, as *Jade Ribbon Hepatitis B Awareness Week* in Piedmont.

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

Minutes Approves as amended Council meeting minutes of May 3, 2010

Ordinance Approves the second reading of Ordinance 693 N.S. amending Section 3.7 of the City Code to limit portable furniture in Dracena Park and to make minor language changes to the section

Resolution Adopts a Resolution commending the following residents who will honored at the City's Annual Volunteer Reception on May 20, 2010:

Kate Breen	Teddy King
Mons Cedercreutz	Dana Kirby
Peter Fishel	Jonathan Levine
Mary Geong	Stephen Mills
Ryan Gilbert	Susan Ode
Robert Houser	

Import Mitigation Approves the termination, effective May 31, 2010, of the Interim

Fund

Construction and Demolition Debris Box Subsidy Program and the reallocation of this program's remaining allocated Import Mitigation funds provided by the Alameda County Waste Management Authority, approximately \$46,000, toward implementation of other recently completed and on-going waste diversion programs, including PUSD recycling and composting equipment program, the Outreach Materials Program, the development of the City's Climate Action Plan, and the implementation of the Recycling and Receptacle Plan for Piedmont's Parks and Public Spaces.

Resolution 43-10

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

Moved by Chiang, Seconded by Fujioka

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0705; 0890/X1100; 0705)

PUBLIC FORUM

Piedmont Garden Club Chairman Sue Herrick and Piedmont Beautification Foundation President Bobbe Stehr presented the City with checks in the amount of \$3,300 and \$2,010, respectively, to cover the cost of the Bufano Bear Sculpture Lighting Project in Crocker Park. The Mayor, on behalf of the Council and City, thanked Ms. Herrick and Ms. Stehr for the generosity of their organizations.

George Childs urged the Council to exercise fiscal restraint in minimizing expenditures in the City's FY 10-11 operation budget, only funding those projects and expenses which benefit the community at large and not levying the Municipal Services Tax for this coming year as a means for recovering costs incurred with the Piedmont Hills and Sea View/Hampton utility undergrounding districts.

REGULAR CALENDAR

The Council considered the following items of regular business:

**Piedmont Hills
Underground
Project Update**

The Chief Building Official and Finance Director highlighted the major points in their written status report regarding the Piedmont Hills Underground Construction Project for the period April 29 through May 12. In general, the project is proceeding on schedule and within the budget projected at the February 6 special meeting. It was noted that the joint trench work for the district has been completed and the City expects to receive Valley Utility's final billing later this week.

**Public Hearing:
Appeal of Planning
Commission Decision,
1078 Annerley Road**

The City Planner stated that residents Tom & Julia Fenske, David Anton & Serra Apaydin, Cynthia Gorman and Royce & Cheryl Charney have appealed the Planning Commission's April 12 "deemed approved" action conditionally approving Mr. and Mrs. Jack Caldwell's design review application to construct an upper level addition to their residence at 1078 Annerley Road. In addition, on April 22 the City Administrator initiated proceedings for a de novo review of

the Planning Commission's decision for two reasons: (1) the approval was "deemed approved" as a consequence of a 2/2 split vote; and (2) Council review of this application will provide the Commission with guidance concerning how the City Code definition of "view" should be applied and how "reasonably minimizes view . . . impacts on neighboring properties" should be interpreted.

Correspondence was received from: Jerry & Jan Kennelly; Nancy Wever & Paul Kenny; Craig Best; Billy & Christine Allen; Albert & Holly Raineri.

Public testimony was received from:

Jack & Jenna Caldwell stated that the proposed project will modernize their home to better meet their growing family's needs while preserving the home's attractive craftsman-style architecture. They agreed that some impact on Harvard properties' filtered views is inevitable but felt that the impact has been minimized by the current design and that the Harvard views will continue to change over time as trees grow and other homes and buildings in Piedmont and Oakland are modified. They urged the Council to balance the competing interest of their rights to improve their property with the preferences of neighbors to keep things the same.

Scott Donahue, Project Architect, agreed that the central issue with regard to the project is the view from Harvard properties. He stated that the proposed design was the best of all the other alternatives explored in terms of minimizing impacts on all neighbors and creating the best living arrangement for the applicants. He explained that the asymmetrical placement of the addition was intended to avoid a setback variance as well as lessen the addition's impact on the east side neighbor. He felt that the addition's asymmetrical design would not detract from the architectural quality or integrity of the home.

Tom & Julia Fenske submitted photographs and cited comments from Planning Commissioner Kellogg in support of their contention that the proposed addition fails to comply with the City's Design Review Guidelines and will negatively impact the value and enjoyment of their property. They stressed that their views of Lake Merritt and the Oakland Skyline from multiple points on their property greatly enhance the monetary value of their home as well as the enjoyment they receive living there. The Caldwell project will block these views and as a consequence unfairly transfer the monetary/enjoyment benefits of their property to the Caldwells. They urged that the Caldwells be granted a structure coverage variance to expand rearward rather than upward in order to satisfy their need for more living space.

David Anton, Serra Apaydin & Olivia Anton concurred with the Fenske's that significant views of Lake Merritt and the Oakland Skyline are tangible property value assets for Harvard properties and it is unfair for Harvard residents to lose this value in exchange for the Caldwell's gaining them. They urged that the

Caldwell's either expand rearward or significantly reduce the size of their master bedroom addition.

Cynthia Gorman concurred with previous speakers, stressing that the City Code requires the City to protect existing views, the Commission's 2/2 split vote which deemed the Caldwell's application approved is inappropriate and that design alternatives exist which will have less adverse impact on Harvard residents.

Deborah Ross requested the Council to uphold the Commission's approval, stating that the City benefits from improvements to its housing stock, the proposed addition is modest in size, the views from Harvard will only be marginally affected given the 200 ft. separation distance between properties and the project involves no variances.

Cheryl & Royce Charney voiced opposition to the unbalanced, lop-sided appearance of the addition and the presence of a large front window which will create privacy issues between themselves and the Caldwells. They also supported rearward expansion as a way of mitigating impacts on Harvard residents as well as eliminating the current "tacked on" appearance of the upper floor addition. Mrs. Charney requested that if upward expansion is to be allowed, the addition be reduced in size, centered on the existing house and the window be fixed with frosted glass to mitigate privacy intrusions.

Billy Allen concurred with Ms. Ross re the appropriateness of the Caldwell's project and disagreed with previous speakers that the proposed addition will have a significant impact on Harvard views or that it imposes privacy issues on the Charneys.

Michael Carter urged everyone to remember that they are members of one community.

Bobbe Stehr, Planning Commission Vice Chair, agreed that the City Administrator's review action provides an excellent opportunity for the Council to provide guidance to the Commission regarding the view issues raised by the Caldwell application. She stated that in reaching her decision in favor of application approval, she found that the Harvard property views of Lake Merritt and Oakland are quite distant, obscured by much closer views of trees, roofs and power lines and are only partially affected by the proposed construction. She further felt that Commissioner Kellogg's suggestion to slightly relocate the upper level addition would not significantly improve the Harvard view situation, a symmetrical versus asymmetrical design preference is a matter of personal taste rather than an architectural issue and that variance approval to allow a rearward expansion plan cannot be justified since it has been demonstrated that it is possible to add the desired living space without variance.

The Council supported remanding the Caldwell application back to the Planning Commission because the application did not receive a majority vote decision by the Commission. In making this remand, members of the Council expressed the following opinions:

View Considerations:

- assign more value to views from primary living areas with level-in/level out perspectives;
- skyline views that include historic landmarks, rather than just office buildings, should be considered significant and worthy of protection consideration;
- use the legal *reasonable person standard* in determining what constitutes a "significant view" and if a project has been designed in a way that reasonably minimizes view impacts on neighboring properties;
- some impact on existing views is acceptable given Piedmont's hilly topography. This impact can be permissible even on "significant views" if these views are from secondary rooms/locations;

Variance Considerations:

- use a common-sense approach to variance consideration and approval. If a variance will make a project better for the applicant, more architecturally pleasing and imposes no hardships/impacts on neighboring properties, it can be granted;
- use a more liberal interpretation and solution-oriented approach toward variance requests;

As to the Caldwell application in particular, the Council:

- was opposed to the rearward expansion option, agreeing that the loss of the Caldwell's small rear yard would be more detrimental than a reduction in Harvard property views;
- requested that the size of the proposed addition be re-examined in terms of its appropriateness relative to the size of the existing house;
- felt that the Caldwell project had less significant impact on views than other projects which have been approved in the City;
- voiced support for housing stock upgrades and felt that the Caldwell's design could be tweaked to provide greater protection to Harvard views;
- requested that any decision on the application reflect a majority vote of the Commission; and
- was of mixed opinion concerning whether the Harvard views were "significant views."

The Council further agreed to schedule in the future a joint meeting with the Commission to discuss planning issues in more detail.

Resolution 44-10

RESOLVED, that the City Council remands Mr. and Mrs. Jack Caldwell's design review application for proposed construction at 1078 Annerley Road back to the Planning Commission for a de novo review and final action by a majority vote decision, with attention to be given to:

- the guidance provided with regard to view and variance considerations;
- whether view impacts on Harvard properties have been reasonably minimized per a "reasonable person standard" of determination;
- utilizing a liberal approach toward variance approval;
- re-evaluating the appropriateness of the size of the addition;

Moved by Fujioka, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Keating, Wieler

Noes: None

Absent: None

(0080)

**Moraga Canyon
Sports Fields Project
Draft EIR**

The Recreation Director announced that the draft EIR prepared in connection with the proposed Moraga Canyon Sports Field Project will be released for public review and comment on June 18. CEQA requires a minimum of a 45-day review period to receive public comment on the draft. Staff is recommending that in connection with this public review, two public hearings be held before the Council. The issue before the Council tonight is whether these public hearings should be held in July or September. The following two scheduling scenarios were proposed: July 6 and July 18 or September 7 and 20. Comments received in writing and at these public hearings will constitute the comments which will be the basis of the formal *Response to Comments* document prepared by the City's EIR Consultant LSA & Associates. The *Response to Comments* document, once completed, will then become part of the Draft EIR which will then become the subject of additional public hearings. The City Administrator emphasized that the public hearings to be held in either July or September are strictly for receiving comments on the Draft EIR -- the hearings are not for certifying the EIR. He added that there will be no cost difference to the City whether the hearings are held in July or September.

Correspondence was received from: Rick Schiller; Dorothy Lee; Roy Chaney; Steve Schiller;

Public testimony was received from:

Ralph Catalano, George Childs, Joannie Semitekoll, Peggy Esposito, Lynn Dee, Cheryl Rowe, Barbara Peters and Rick Schiller supported holding the hearings in September to provide more time for residents and the City of Oakland to thoroughly review and comment on the Draft EIR. They stressed that many residents and city officials are on vacation during the summer, especially the week of July 4th, so a September schedule would allow more people to attend the hearings. In addition, Mr. Catalano requested that story poles be erected in

Blair Park so residents can better visualize the impacts of the proposed development.

Karen Sullivan, Glyn Burge, Steve Schiller, Terry Tumey and Mark Menke supported holding the hearings in July, stressing the benefits of expediting the completion of the EIR so that the merits and impacts of the proposed project can be thoroughly examined and discussed. They noted that residents can submit written comments regarding the draft if they are away on vacation and cannot attend the hearings.

The Council, with the exception of Councilmember Keating, agreed as to the benefits of completing the Draft EIR in a timely manner so that Council hearings on the certification of the Final EIR can occur before the end of the year. Therefore, the Council majority proposed a compromise hearing schedule, suggesting that the hearings be scheduled for July 19 and August 2. The Council felt that this schedule would accommodate vacation schedules, provide additional time for public comment and still allow the Council to consider EIR certification in November.

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

Councilmember Keating preferred the September hearing schedule for the reasons cited by the speakers in support of the September dates as well as his preference that the Council consider EIR certification next January rather than this November.

Resolution 45-10

RESOLVED, that the City Council directs that public hearings for the purpose of receiving public comment on the Draft EIR for the proposed Moraga Canyon Sports Field Project be held on the City Council meetings of July 19 and August 2 and that the public comment period for the Draft EIR be extended to August 9, 2010.

Moved by Wieler, Seconded by Chiang

Ayes: Barbieri, Chiang, Fujioka, Wieler

Noes: Keating

Absent: None

(0745/X0187)

COUNCIL REPORTS

Public Safety Committee -- Councilmember Fujioka reported on the Public Safety Committee's first meeting, noting that future meetings of this Committee will be held on the 4th Thursday of each month in the Council Chambers at 6:30 p.m..

SpotWaste.Org -- Councilmember Keating reported on last week's meeting of StopWaste.Org., including a briefing on the countywide home energy audit program.

ANNOUNCEMENTS

Budget Work Session -- The Mayor announced that the Council will hold a special work session to review the proposed FY 10-01 City budget on Saturday, May 22, at 9:00 a.m. in the EOC. All interested residents are invited to attend.

Volunteer Reception -- Councilmember Keating invited residents to attend the City's Annual Volunteer Reception at the Community Hall on May 20 to honor the volunteers listed in the consent calendar.

ADJOURNMENT

There being no further business, Mayor Barbieri adjourned the meeting at 11:15 p.m. in memory of Edward Friedman, former Mayor Abe Friedman's father, who passed away last week. On behalf of the Council, the Mayor offered his condolences to the friends and family of Mayor Friedman.