

## PIEDMONT CITY COUNCIL

### Regular Meeting Minutes for Monday, October 19, 2015

A Regular Session of the Piedmont City Council was held October 19, 2015, 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 October 15, 2015.

#### CALL TO ORDER

The City Council met at 7:00 p.m. in Closed Session for (i) conference with legal counsel to discuss anticipated litigation, significant exposure to litigation, held pursuant to Government Code Section 54956.9(d)(1). Following the 7:00 p.m. Closed Session, Mayor Fujioka called the meeting to order at 7:32 p.m. with the Pledge of Allegiance.

#### ROLL CALL

Present: Mayor Margaret Fujioka, Vice Mayor Jeff Wieler and Councilmembers Teddy Gray King, Robert McBain, and Tim Rood

Staff: City Administrator Paul Benoit, City Attorney Michelle Marchetta Kenyon, Planning Director Kate Black, City Engineer John Wanger, Finance Director Erick Cheung, Senior Planner Kevin Jackson, and City Clerk John Tulloch

#### PUBLIC FORUM

Ray Perman, 217 San Carlos Avenue, discussed the need to plan for seismic safety. He stated there had been 220 earthquakes in the last 14 days. He requested continued work on decentralized response to earthquakes. He stated it was necessary for citizen response.

#### REGULAR CALENDAR

The Council considered the following items of regular business:

##### Minutes

The following amendments were requested to the September 21, 2015 minutes:

- Page 2, 6<sup>th</sup> line down, should read “City of Piedmont, Piedmont Connect”
- Page 3, 2<sup>nd</sup> paragraph, 4<sup>th</sup> line down should read “transient occupancy taxes”
- Page 3, 4<sup>th</sup> paragraph, Jane Kline’s comment should read “getting a home business permit”
- Change “designations” to “destinations” on Page 4

The following amendments were requested to the October 5, 2015 minutes:

- On Page 2 “terms of the approval” should read “terms of approval”
- Page 7, IT Consultant, should read “IT consultant and Task Force are diligently working”

##### Resolution 100-15

RESOLVED, that the City Council approves its meeting minutes for the Regular Session on September 21, 2015 and October 5, 2015, as amended.

Moved by Rood, Seconded by King

Ayes: Fujioka, King, McBain, Rood, Wieler

Noes: None

*(Note: Councilmember McBain abstained from the vote approving the October 5, 2015, Council minutes)*

#### Public Hearing:

Prior to the discussion beginning on this item, Vice Mayor Wieler noted an ex

**Planning Commission  
139 Lexford Road**

parte communication with appellant Samantha Nobles-Block. He stated Ms. Nobles-Block recapitulated the statements and contentions made in the appeal letter. Councilmember Rood also indicated that he received a call from project architect Kirk Peterson to see if he had any questions about the project. Vice Mayor Wieler and Councilmember Rood indicated that their contacts would not affect their deliberation or decision on the project.

Planning Director Kate Black stated the matter before the Council was an appeal of the Planning Commission's September 14<sup>th</sup> action to approve an application to construct a 4,437 square foot single family house at 139 Lexford Road. She explained that the property had been the subject of numerous applications from a prior property owner which were approved and upheld on appeal but were never constructed. Ms. Black stated the current design was similar to two previously approved designs.

Ms. Black discussed the California Environmental Quality Act (CEQA) guidelines and categorical exemptions for projects such as this one. She stated the Planning Commission reviewed the materials and determined there was not a significant effect on the environment.

Ms. Black also stated the Planning Commission considered the design review guidelines and neighborhood compatibility and found the project to be acceptable. She discussed the standard Conditions of Approval approved by the Planning Commission. Where the prior approvals of this project had required a project completion security in the amount of 125% of the project cost, the conditions of approval for this application required a Site Safety Security in the amount of \$50,000. Ms. Black explained the purpose of the Site Safety Security was to ensure the site was protected if the project was not completed. She explained the difference between the prior security requirement for completion of the home, and the current Site Safety Security requirement. She noted that the Site Safety Security could be increased by the City should different site conditions be discovered, during the building permit process. Ms. Black noted that site conditions and construction methods are typically developed during the building permit review stage and not during conceptual design review.

City Attorney Michelle Marchetta Kenyon outlined the legal framework for acting on the appeal. She further discussed the requirements for finding a categorical exemption under the California Environmental Quality Act (CEQA).

Planning Commissioner Behrens discussed the effort spent on review of the project. He stated the 28 conditions of approval provided protection for the homeowners. He further stated the Commission respected the safety concerns of Mr. and Mrs. Block. Commissioner Behrens discussed the independent third party engineering reviews for construction safety and stated that the Commission felt that the project was attractive and minimized impacts to the neighbors. He also stated the Commission's belief that the protections afforded in the Conditions of Approval would adequately protect the neighbors' properties.

City Engineer John Wanger stated that he had reviewed the applicants' and appellants' engineering reports and the response letter provided by the applicants. He stated neither the reports nor the letter calls into question the ability to construct a house on the site. He confirmed that staff will conduct a thorough review of plans and reports submitted to obtain a building permit and if any concerns arise, plan changes will be required prior to approval of the

plans and issuance of a building permit. With regard to the amount of the Site Safety Security, he explained that plan review would determine whether the amount would need to be increased based upon specific information.

Mr. Wanger indicated he had no reservations in stating that anticipated rock excavation will require heavy equipment and potential noise and vibration issues and that the concerns were adequately addressed in the conditions of approval 4(c), 7 and 11 of the proposed conditions. He stated the conditions of approval required vibration monitoring and should the project exceed limits, construction would be halted and compliance required. Planning Director Black stated Condition 11 required sound and vibration mitigation plan review and independent peer review. Mr. Wanger also indicated that he believed the site conditions were generally the same as they were in 2007.

**Public testimony** was received from:

Appellant Stuart Block, 87 Huntleigh Road, expressed concern that despite the history, the developer has not shown how 4 million pounds of hard, fractured bedrock will be removed. He suggested the City review the excavation plans prior to approval. He stated the lot at 139 Lexford Road was not a typical lot. He requested Alan Kropp's letter be reviewed, which concludes that the sites used by the Planning Commission to justify the change to Site Safety Security were not comparable. He requested, prior to approval, the developer detail excavation and permanent site stabilization plans. He suggested setting the Site Safety Security at the amount required for permanent stabilization and increasing the insurance requirements to account for the decade of property appreciation.

Alan Kropp, Appellant's geotechnical engineer, stated the site was steep, hard and required large excavation. He stated it was different from the list of houses the City established as comparable. He discussed the rock and potential for drilling refusal. He stated the excavation and shoring were estimated at \$500,000. He discussed the potential of shears and fractures breaking off. He stated the property had unique circumstances making it unusual from the other properties.

Appellant Chris Van Gundy, 132 Lexford Road, questioned whether the Commission's findings went against the weight of the evidence. He stated the steep slopes, required 200-300 dump trucks of rock and refusal at six feet were significant environmental effects due to unusual circumstances. He stated there was a prior landslide, resulting in damage to the property at 87 Huntleigh Road. He questioned why there was a rush to approval. He suggested additional study before approval and digging. He discussed the evidence determining the significant environmental effects. He expressed concern for his property and requested protection. He stated there were significant environmental effects due to unusual circumstances.

Kirk Peterson, Applicant's project architect, stated the Planning Commission had approved the design in 2007 and again in September 2015. He stated the proposal conformed to the Design Guidelines, and required no variances. He discussed the design features and massing pushed into the hill. He stated denial of the appeal would be consistent with the City's standard of care. He stated the design was buildable. He stated they would study ways to reduce retaining wall and excavation requirements. He explained that a different design could have been done but would have required variances.

Dean Affeldt, Applicant's principal engineering geologist with Purcell Rhoades and Associates, discussed excavatability, construction vibrations and slope stability. He discussed vibration levels and stated they would not be damaging to surrounding property. He discussed review of excavation during grading. He stated the City had no information about a landslide. He stated Mr. Block was describing a surface flow, such as a mudslide.

David Levy, Applicant's attorney, stated they agreed with the City Attorney's CEQA analysis of exemption. He stated there were not unusual circumstances and if there were, they would not lead to significant environmental impacts. He stated temporary impacts were not significant impacts. He stated the steepness of the slope was shared by the neighboring homes. He discussed forthcoming independent reviews.

Mark Berres and Jeanne Berres, of 130 Somerset Road, urged the Council to overturn the decision of the Planning Commission, expressing concern for the personal safety for the residents, construction workers, and neighboring property. They suggested the conditions applied in 2008 be followed and increased for inflation. A concern was also raised about the impact to the neighborhood of the construction of this new home.

Mayor Fujioka closed the Public Hearing.

Council discussed the appeal at length, including if the project was found to not be categorically exempt from CEQA, whether a mitigated negative declaration rather than a full environmental impact report (EIR) would be required. Planning Director Black confirmed that environmental work would not involve assessment of financial risk to the owner or neighboring properties.

Their discussion included the difficulties with living adjacent to a construction project. Councilmembers agreed that staff would increase bonds and insurance to a level adequate for protection of residents and the site. The Council noted confidence in the independent review process. The Council concurred that the CEQA analysis was appropriate and there were no unusual circumstances, resulting in significant environmental impacts. The Council indicated their belief that the Commission had not rushed to judgment and it was comfortable with its decision.

**Resolution 101-15**

WHEREAS, the Property Owner is requesting construction of a new single-family residence at 139 Lexford Road, Piedmont, California; and

WHEREAS, the Piedmont Planning Commission unanimously approved the application #15-0129 on September 14, 2015, and the approval was appealed by the Property Owners of 132 Lexford Road and 87 Huntleigh Road; and

WHEREAS, in connection with said appeal, the Piedmont City Council reviewed the application, plans, and any and all testimony and documentation submitted in connection with such application and appeal, and visited the subject property.

RESOLVED, that the City Council, after a hearing on the matter, does hereby resolve, declare, determine and order as follows:

1) The current application at 139 Lexford Road qualifies for the Class 3 Categorical Exemption under the California Environmental Quality Act that

applies to most single family construction projects in California and adopts the Planning Commission's findings 1 through 8 by reference.

2) The Council denies the appeal and upholds the Planning Commission's September 14, 2015 approval of a Design Review application for the construction of a new single-family residence at 139 Lexford Road, subject to the Commission's conditions of approval 1 through 28 by reference.

3) Adopts findings 1 through 5 for design review and Residential Design Guidelines compliance approval by reference.

Moved by Rood, Seconded by McBain

Ayes: Fujioka, King, McBain, Rood, Wieler

Noes: None

Absent: None

**Information Technology  
Strategic Plan**

City Administrator Benoit explained that Mayor Fujioka proposed a Citywide initiative to improve technology and citizen access to government. He stated the City Council invited Rick Kitson, Public Affairs Director of the City of Cupertino to perform a high level, general review of Piedmont's technology systems and opportunities for improvement. Mr. Kitson concluded that the City, over a number of years, had not made the necessary investments to adequately support its technology needs. The City Administrator indicated that Mr. Kitson was surprised that the network actually worked as well as it does, and commended City Clerk Tulloch for his IT work.

Following Mr. Kitson's review, the Council authorized the issuance of an RFP for an Information Technology (IT) Strategic Plan and selected ClientFirst Technology Consulting to conduct an in depth review. Council also appointed a Task Force to work with the consultant. Mr. Benoit indicated the City had not dedicated sufficient resources to maintain or improve technology resources and discussed the impacts of underinvestment. He stated the initial focus of the proposed plan is improved technology infrastructure, which would be followed by implementation of improvements to make the City's network more user friendly for residents and staff.

Tom Jakobsen, Senior Partner, ClientFirst Consulting Group, explained the methodology in developing the plan. He stated many application, infrastructure and operational improvements were necessary to fill the large technical deficit. He commended the IT staff. He presented the assessment findings, strategies, goals and objectives. He discussed the high-priority projects including infrastructure improvements, application improvements, and land management. He presented historical spending, benchmark recommendations and a proposed budget for the 5-year plan.

**Public Testimony** was received from:

Adam Schwartz, IT Task Force Member, summarized the process including discovery, evaluating, prioritizing, and understanding the recommendations. He indicated support for the proposed plan.

Garrett Keating suggested the redesign of the City's web site include provisions for additional public records in several categories to be available. He further suggested a community survey needs assessment for website features be

conducted. He suggested allowing public dialogue, such as blogs, on the City website.

The Council commended Mr. Jakobsen, the Information Technology Task Force, and staff for their work on the plan. Council indicated support for the plan but expressed concern over the fiscal impact. The Council discussed the benefits of the transparency and public accessibility that will come from implementation of the plan. Councilmembers agreed with the need to bring the City's network infrastructure up to date in order to improve efficiency, provide technologies to foster improved communication between the City and residents.

Councilmembers acknowledged that additional investment is needed and requested that the Budget Advisory and Financial Planning Committee opine on the financial impact of the plan.

**Resolution 102-15**

RESOLVED that the City Council approves the five-year strategic plan subject to possible modifications.

Moved by Wieler, Seconded by King

Ayes: Fujioka, King, McBain, Rood, Wieler

Noes: None

Absent: None

**Length of Parcel Tax**

At its meeting of October 5<sup>th</sup>, Mayor Fujioka requested the Council consider tasking the Budget Advisory and Financial Planning Committee to provide Council with an opinion on the proper duration for the Municipal Services Special Tax (Parcel Tax). City Administrator Benoit stated historical information on the Municipal Services Special Tax had been provided to the Committee, which is already examining the need for continuance of the tax as well as the appropriate tax rate.

Council agreed that directing the Budget Advisory and Financial Planning Committee to examine the duration of the tax was wholly appropriate.

Individual Councilmembers expressed hesitation at the tax lasting for longer than four years, but still wished to hear the opinion of the Committee on the matter.

**Resolution 103-15**

RESOLVED, that as a part of its periodic examination of the need for the Municipal Services Special Tax, the City Council directs the Budget Advisory and Financial Planning Committee to provide a recommendation on the duration of the tax.

Moved by Wieler, Seconded by King

Ayes: Fujioka, King, McBain, Rood, Wieler

Noes: None

Absent: None

**REPORTS AND  
ANNOUNCEMENTS**

Recreation Department – Councilmember King announced that the Recreation Department's Family Triathlon was a success and that its haunted house will be open for three days at the end of October. She stated the Recreation Commission would be considering the plans for the Hampton Field project on October 21, 2015.

Home Energy and Water Conservation Quick Start – Mayor Fujioka stated she spoke at the Home Energy and Water Conservation Quick Start sponsored by

Piedmont Connect on October 6 at Piedmont Middle School. She indicated the event was a great success and was well attended by residents.

Map Your Neighborhood – Mayor Fujioka stated she co-hosted a Map Your Neighborhood meeting on October 8. She stated she would be helping organize a smaller meeting in her neighborhood and encouraged the Councilmembers to host meetings.

East Bay Municipal Utility District – Councilmember Rood reminded residents the due to the drought, EBMUD had imposed fines on excessive water users. He reminded Piedmonters to be vigilant of their water use in these dry times.

**FUTURE AGENDA ITEMS**

There were no requests for future agenda items.

**ADJOURNMENT**

There being no further business, Mayor Fujioka adjourned the meeting at 9:48 p.m.