

**MINUTES  
OF THE  
REGULAR MEETING  
CLAYTON CITY COUNCIL**

**TUESDAY, November 15, 2016**

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:01 p.m. by Mayor Geller in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Geller, Vice Mayor Diaz and Councilmembers Haydon, Pierce and Shuey. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, Community Development Director Mindy Gentry, Assistant Planner Milan Sikela, and City Clerk/HR Manager Janet Brown.

2. **PLEDGE OF ALLEGIANCE** – led by Mayor Geller.

3. **CONSENT CALENDAR**

**It was moved by Councilmember Haydon, seconded by Councilmember Shuey, to approve the Consent Calendar as submitted. (Passed; 5-0 vote).**

- (a) Approved the minutes of the regular meeting of November 1, 2016.
- (b) Approved the Financial Demands and Obligations of the City.
- (c) Approved the City Council cancellation of its regularly scheduled Council meeting of January 3, 2017.
- (d) Adopted Resolution No. 53-2016 approving a one-time discretionary pay for performance award to the City Manager for calendar year 2016.

4. **RECOGNITIONS AND PRESENTATIONS**

- (a) Proclamation declaring November 17, 2016 as “Laurie Parker Day.”

Mayor Geller presented Ms. Parker a Proclamation declaring November 17, 2016 as “Laurie Parker” day in Clayton in recognition of her regional selection as a Warren W. Eukel “Teacher of the Year” awardee. Ms. Parker thanked the Mayor for the acknowledgement and Proclamation.

- (b) Certificates of Recognition to “Do the Right Thing” public school students selected for exemplifying the character trait of “Respect” for October 2016.

Mayor Geller and Diablo View Middle School Principal Patti Bannister presented Certificates to students Xander Friedman, Alysa Pelosi, and Vince Pelosi.

5. **REPORTS**

- (a) Planning Commission – No meeting held.
- (b) Trails and Landscaping Committee – No meeting held.
- (c) City Manager/Staff – No Report.

- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Vice Mayor Diaz thanked the community for its support of his re-election and he is looking forward to another 4 years of serving the Clayton community. Mr. Diaz attended the One Hundred Club of Contra Costa County's 32<sup>nd</sup> Annual Dinner, the Contra Costa County Mayors' Conference, and the Veterans of Foreign Wars Post 1525 Veterans Day celebration in Concord.

Councilmember Pierce also thanked the community for its support of her re-election for another 4-year term on the Clayton City Council. Ms. Pierce attended the Contra Costa Transportation Board meeting, the Associated Bay Area Governments Executive Board meeting, the Metropolitan Transportation Commission meeting, the Transportation Partnership and Cooperation (TRANSPAC) meeting, four joint meetings of the Associated Bay Area Governments and Metropolitan Transportation Commission meeting, and the Contra Costa County Mayors' Conference.

Councilmember Shuey congratulated Jim Diaz, Julie Pierce, and Tuija Catalano for their election to the Clayton City Council. He also thanked Howard Geller for his service on the Clayton City Council.

Councilmember Haydon also congratulated Jim Diaz, Julie Pierce, and Tuija Catalano for their election to the Clayton City Council. He invited the community to attend the City Council meeting of December 6<sup>th</sup> where Howard Geller will be recognized for his service on the Clayton City Council. Mr. Haydon attended the Contra Costa County Mayors' Conference, the Clayton Bocce Summer League finals, and the Veterans of Foreign Wars Post 1525 Veteran's Day celebration in Concord.

Mayor Geller advised that he voted in the recent election and congratulated Jim Diaz, Julie Pierce, and Tuija Catalano for their election to the Clayton City Council. Mayor Geller attended the Contra Costa County Mayors' Conference hosted by Clayton in November, the Veterans of Foreign Wars Post 1525 Veteran's Day celebration in Concord, and the Chapter 20 Blue Star Moms granite memorial dedication at Concord High School honoring former students killed in action during Operation Iraqi Freedom and Operation Enduring Freedom. Mayor Geller also advised he will be in attendance at the Warren W. Eukel Teacher Trust award dinner where Laurie Parker will be recognized for her accomplishments.

- (e) Other – None.

**6. PUBLIC COMMENT ON NON - AGENDA ITEMS – None.**

**7. PUBLIC HEARINGS**

- (a) Public Hearing to consider the Introduction and First Reading of a proposed City-initiated Ordinance No. 470 updating the *Clayton Municipal Code*, Title 17 Zoning, Section 17.80 – Water Conserving Landscape Guidelines, concerning City Water Efficient Landscaping standards and regulations, per state mandate.

Community Development Director Mindy Gentry presented the staff report noting back in September 2010 the City adopted an updated water conservation ordinance in response to the State Water Conservation in Landscaping Act of 2006 (AB 1881). The state law required all new and rehabilitated landscapes be designed and installed to meet the latest best practices for water efficiency. All cities and counties in California were required to adopt the state's model ordinance as written or develop their own ordinance that is at least as effective in conserving water. Clayton, in conjunction with other area cities, adopted an ordinance of its own. Generally, the thresholds established by the State applied to irrigated landscaped areas of 2,500 square feet or greater for developer-initiated projects and public projects, and 5,000 square feet or greater for owner-initiated single-family residential projects.

Governor Jerry Brown then proclaimed a State of Emergency throughout the State of California due to severe drought conditions and issued Executive Order B-29-15 calling for further revision of its Model Ordinance to increase water efficiency standards for new retrofitted landscapes, graywater usage, onsite storm water capture, and limiting the portion of landscapes that could be covered in turf. There is also jurisdictional requirement to report on the implementation and enforcement of local ordinances.

Ms. Gentry reviewed the significant proposed changes to Clayton's Ordinance by establishing lower thresholds on new landscaped areas associated with commercial, multifamily and single family projects from 2,500 square feet to 500 square feet, and on new owner-directed single family projects from 5,000 square feet to 500 square feet and rehabilitated owner-directed single family projects from 5,000 square feet to 2,500 square feet. She also indicated graywater irrigation systems are now allowed. Local jurisdictions are required to report on the implementation and enforcement of its local ordinance, noting the reduction of maximum-applied water allowances reduce the usage of high water-consumption plants such as turf. New landscape design requirements do not allow for more than 25% of the landscape used for residential turf and no turf is allowed in non-residential landscape areas, medians, or in areas narrower than 10 feet; compost must be incorporated in the soil prior to planting at a rate of 4 yards per 1,000 square feet and mulch depth has increased from 2 inches to 3 inches. Ms. Gentry advised the new laws incorporate irrigation requirements for dedicated water meters or submeters, pressure regulators, flow sensors that detect high flow, and master shut off valves in case of failures.

Councilmember Pierce inquired who is designated as the Landscape Auditor? Is that a staff member or somebody else?

Ms. Gentry responded the designated Landscape Auditor depends on the project. If it is a City-initiated project staff would have the ability to do that; if it is a developer-initiated project or single family homeowner, they must possibly hire someone, if it is warranted, who is certified as a Landscape Auditor to perform the actual audit.

Councilmember Pierce inquired if the City will charge a fee for compliance to make sure the Audit is completed? Ms. Gentry advised the homeowner must provide the City with that information. Councilmember Pierce asked about the Public Education and Signage water conservation requirement on model homes: will that be permanent or temporary signage? Ms. Gentry advised the intent is to have the signage displayed during the sale of the homes only, not permanent signage.

Mayor Geller opened the Public Hearing for comments; no public comments were offered, and Mayor Geller closed the Public Hearing.

**It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to have the City Clerk read Ordinance No. 470, by title and number only and waive further reading. (Passed; 5-0 vote).**

The City Clerk read Ordinance No. 470 by title and number only.

**It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to approve Ordinance No. 470 for Introduction with the finding the action will not result in a significant adverse impact on the environment. (Passed; 5-0 vote).**

- (b) Public Hearing to review and consider the following actions for the St. John's Episcopal Church/Southbrook Drive Mixed Use Planned Development Project, consisting of a three-lot subdivision for two-single family homes (APN: 118-101-022):
- 1) Consider adoption of the Final Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (ENV-01-15);
  - 2) Consider a General Plan Amendment to modify the land use designation of 0.41 acre of the project site from Institutional Density (ID) to Single Family Medium Density (MD) (GPA-01-15);
  - 3) Consider the Introduction and First Reading of an Ordinance to rezone the 2.77-acre project site from Agriculture (A) District to Planned Development District (PD) (ZOA-03-15); and
  - 4) Consider approval of the Development Plan (DP-01-15), Tentative Subdivision Map (MAP-01-15), Site Plan Review Permit (SPR-07-16), and Tree Removal Permit (TRP-37-15).

City Assistant Planner Milan Sikela presented the staff report noting several entitlements are required for approval of this project including an Environmental Review, General Plan Amendment, Rezone, Development Plan, Tentative Parcel Map, Site Plan Review Permit, and Tree Removal Permit. Mr. Sikela provided a description of the site location with Clayton Road bordering the project site on the south and Southbrook Drive bordering the project site on the north; he further gave a brief description of the buildings on the existing parcel. Mr. Sikela then outlined the steps needed to complete the Environmental Review including the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared in accordance with the California Environmental Quality Act (CEQA). The General Plan Amendment is a related request to change the undeveloped land use designation of 0.41 acres from Institutional Density (ID) to Single Family Medium Density (MD) to accommodate two proposed single-family residential lots. The Rezone will change the entire project site from Agricultural (A) District to Planned Development (PD) District to allow a mixed use Planned Development project consisting of the existing church and the 2 proposed single-family parcels.

The Development Plan will establish the development standards for the site, thereby allowing the proposed uses on the site. The Tentative Parcel Map will subdivide the existing 2.77-acre church property into 3 parcels consisting of the existing church parcel and, if approved, the 2 single family residential lots. The Site Plan Review Permit allows the review of the architecture and design of the 2 proposed residences, as well as the landscaping, fencing and retaining walls. The Tree Removal Permit allows the removal of 7 of the existing 10 trees to be replaced with newly planted trees, shrubs and groundcover.

Mr. Sikela reviewed the detailed maps of the proposed sites, the proposed 2 single-family residences, the elevation map, the proposed exterior single-family residences, the proposed floor plans of the residences, the house colors and materials, a photo of the

current site and a photo of the site with the 2 proposed single-family residences. Mr. Sikela also advised staff has provided a condition that trees shall be planted a minimum of 10 feet away from water, sewer, and storm drain lines. He further advised the City Engineer has inserted written conditions addressing safety issues relating to line-of-sight for vehicles entering and exiting the shared driveway and public right-of-way improvements. Mr. Sikela also received written determinations the proposed project complies with Contra Costa County Fire Protection District standards; the East Contra Costa County Habitat Conservation Plan/Natural Community Conservation Plan is not applicable to this project. And finally, he noted staff received one email expressing opposition to the project as a public comment.

Councilmember Pierce asked about the stormwater plans, knowing that C3 requires bio-retention areas and she was unable to find them on the map. Mr. Sikela advised the bio-retention areas are found on the upper right and left corners in the front of the lots down by Southbrook Drive as water will naturally drain to the north of the lots. The developer will have a layer of percolation materials laid down to prevent the water from flowing offsite.

Councilmember Haydon asked about the height of the retaining wall in the back of the property. Mr. Sikela responded the wall is 6' to 6 ½' tall at its highest point in the middle of the back, then it tapers downward.

Councilmember Haydon also asked about the public comment email staff received concerned with potential traffic impact to the neighborhood. Mr. Sikela advised the potential traffic impact was analyzed in the environmental documents and City Engineer is working with the applicant to comply with line-of-sight regulations, which standard is 12' back from the edge of the driveway.

Mayor Geller inquired about the 2' fence at the back of the lot bordering the church parking lot; he thought it should be taller for privacy and security reasons between the adjacent property owners. He also asked if there is enough room in the extra two parking spots at the end of the shared driveway to park and turn around a vehicle? Mr. Sikela responded at the Council's pleasure a condition can be added to increase the height of the fence bordering the church parking lot. He added there still needs discussion to occur between the applicant and the Fire Protection District regarding the private driveway bulb as there was some confusion as to the area being a shared residential driveway and not a fire access road.

Councilmember Pierce suggested a possible condition of keeping the area between the garage doors clear as these requirements are a part of areas of Oakhurst with shared driveways. Councilmember Shuey recommended the City leave that matter to be worked out between the property owners.

Mayor Geller opened the Public Hearing for comments.

Vidal Elzam, 5550 Southbrook Circle, inquired which trees are designated for removal? Mr. Sikela advised the three Valley Oak trees will remain on the property.

Mr. Elzam asked about the slope; since grading will need to occur, will the applicant take into account impacts to the adjoining properties? He also indicated there is a lot of wildlife on those lands presently and inquired if that wildlife will be relocated? Mayor Geller responded usually the wildlife will naturally re-locate when grading occurs.

Joe Rhodes, 33 Marquette Court, expressed concerns regarding the second story window location, noting the line of sight will eliminate the privacy of his backyard, bedroom, living room and office. Councilmember Pierce offered a possible solution of raising the windows above eye level so the surrounding neighbors would still have their

privacy. Such good neighbor features are incorporated all the time and she would like it added to the condition of approval on both sites. Councilmember Shuey inquired if such a condition was acceptable to the developer.

Armand Butticci, developer of the proposed project, advised he met with the neighbors regarding this project about 2 ½ years ago and recalls there was a different window proposed. Mr. Butticci advised he can take another look at the window and other options such as adding a tree for privacy purposes; his concern is restricting the size and height of a window in that large open room would detract from its overall ambience. Mr. Butticci indicated he will work with the neighbors to come up with a solution.

Mayor Geller closed the Public Hearing. City Council discussion ensued regarding site and design matters noted; there was general consensus with giving the developer and the existing neighbors additional time to work out agreeable solutions to the raised issues.

Mayor Geller re-opened the Public Hearing.

**It was moved by Councilmember Shuey, seconded by Councilmember Haydon, to continue the Public Hearing to the next regular City Council meeting of Tuesday, December 6, 2016. (Passed; 5-0 vote).**

8. **ACTION ITEMS** – None.

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION**

Mayor Geller announced the City Council will adjourn into a closed session to discuss the subject matter listed below [8:27 p.m.]:

- (a) *Government Code Section 54956.9(d)(2)* – Significant Exposure to Litigation. Conference with Legal Counsel: Anticipated Litigation (1 case).

Report out from Closed Session (8:33 p.m.)

Mayor Geller reported the City Council received information from its legal counsel regarding this matter but no reportable action was taken.

11. **ACTION ITEM**

- (a) Consider authorizing the Mayor to execute an amendment to the Oak Creek Canyon Tolling Agreement between the City of Clayton and West Coast Homebuilders to extend the limitations period to file a legal challenge.

City Attorney Mala Subramanian advised a request was received from West Coast Home Builders asking for a time extension for another six months to the Tolling Agreement which is set to expire tomorrow. The developer submitted an application pursuant to the Tolling Agreement but it has not been deemed complete by the City; they believe they can submit additional surveys and information within the next sixty days to deem their application as complete and considered within the proposed 180 day time

extension period. The request is to have the City Council approve and authorize the Mayor to sign the 6-month time extension of the Tolling Agreement.

Mayor Geller opened the matter to receive public comments.

Kevin English, Advance Planner for West Coast Home Builders, advised he is working with Clayton staff in regards to the required supplemental application documents and Ms. Gentry advised she felt they were enough documents submitted to keep the process going forward. One of the additional documents requiring submittal is the planning surveyor report which documents the types of wildlife (i.e., critters and insects) which must be avoided for impact during certain seasons.

**It was moved by Councilmember Pierce, seconded by Councilmember Shuey, to approve extending the existing Tolling Agreement for an additional six months as requested by West Coast Home Builders, and authorize the Mayor to sign on behalf of the City. (Passed; 5-0 vote).**

12. **ADJOURNMENT**– on call by Mayor Geller, the City Council adjourned its meeting at 8:38 p.m.

The next regularly scheduled meeting of the City Council will be December 6, 2016.

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Respectfully submitted,



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Janet Brown, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL



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Howard Geller, Mayor

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