

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

TUESDAY, March 3, 2020

1. **CALL TO ORDER & ROLL CALL** – The meeting was called to order at 7:00 p.m. by Mayor Pierce in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Pierce, Vice Mayor Wan and Councilmembers Catalano, Diaz and Wolfe. Councilmembers absent: None. Staff present: City Manager Ikani Taumoepeau, City Attorney Mala Subramanian, Police Chief Elise Warren, Interim Community Development Director Dana Ayers, and City Clerk/HR Manager Janet Calderon.

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

3. **CONSENT CALENDAR**

Councilmember Catalano advised there is a typo in the February 19, 2020 minutes should read “Regional or State Agencies”.

It was moved by Councilmember Diaz, seconded by Councilmember Catalano, to approve the Consent Calendar as amended. (Passed; 5-0 vote).

- (a) Approved the minutes of the City Council’s regular meeting of February 18, 2020 and City Council’s special meeting of February 19, 2020.
- (b) Approved Financial Demands and Obligations of the City.

4. **RECOGNITIONS AND PRESENTATIONS** – None.

5. **REPORTS**

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

City Manager Taumoepeau advised last Wednesday at Oakhurst Country Club there was an irrigation water leak reported by Police staff. Maintenance staff reported to the scene to assist. He also provided an update on the Downtown Planter Box project expected to be completed prior to the upcoming Art & Wine Festival. Mr. Taumoepeau concluded his report noting the Maintenance staff has been assisting with the preparation of the upcoming Clayton Community Library Birthday.

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

Councilmember Diaz attended the vigil and funeral mass for former Police Sergeant Tim O'Hara was a judge at the Clayton Club's 20th Annual Chili cook-off, the Clayton Business and Community Association General Membership meeting, met with the City Manager, and Clayton Business and Community Association Art & Wine Committee meeting.

Councilmember Wolfe attended the Strategic Goal Setting Session, meeting with Planning Commissioner Cloven, met and emailed constituents, the Clayton Business and Community Association General Membership meeting, met with the City Manager, and announced the upcoming Clayton Community Library Birthday celebration taking place March 7.

Vice Mayor Wan attended the Library Foundation meeting announcing the upcoming Clayton Community Library Birthday celebration and Used Book Sale taking place April 3-5, advised two Boy Scouts from Troop 317 are in attendance this evening earning a merit badge, advised he received a letter from Marcie Longchamps who no longer feels safe attending the City Council Meetings, and received a letter from Mr. Jordan requesting his recusal from this evening, where Vice Mayor Wan has decided to decline Mr. Jordan's request.

Mayor Pierce added the City Attorney weighed in on Mr. Jordan's request and agreed Vice Mayor Wan does not have a conflict.

Councilmember Catalano attended the East Contra Costa County Habitat Conservancy Board meeting and announced the Clayton Business and Community Association Scholarship Program who reside in Clayton noting the deadline to submit applications is March 28, 2020.

Mayor Pierce did not provide a report.

(e) Other – None.

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

7. **PUBLIC HEARINGS**

(a) Public Hearing to Consider Appeals of the Approval by the Planning Commission of an Infill Exemption in Accordance with the California Environmental Quality Act (CEQA) for The Olivia on Marsh Creek, an 81-Unit Senior Rental Housing Development (ENV-01-17), and an Appeal of the No Decision Action by the Planning Commission of the Affordable Housing Density Bonus Application, Site Plan Review Permit, and Tree Removal Permit (DBA-01-19, SPR-04-17, TRP-24-17).

Councilmember Catalano disclosed ex parte communications with the parties.

Interim Community Development Director Dana Ayers presented the staff report.

City Attorney Subramanian presented a report on the California Density Bonus Laws.

Staff responded to clarifying questions of Council regarding California Density Bonus Laws.

Dan Hummer provided Randy Toch Attorney his time to speak. Mr. Toch noted the Density Bonus was not approved at the Planning Commission. He advised in order to reduce the number of required parking spaces from 180 to 117 the Developer would need to demonstrate the identifiable and actual cost reductions that go with reducing the number of parking spaces. Mr. Toch read an excerpt from Association of Environmental Professionals 2019 regarding case a Parking Environmental effect, *"The Court found parking impacts were not subject to CEQA review because this is an infill project near a high quality transit station. Public Resources Code Section 21099 specifically exempts parking impacts from CEQA review under those circumstances, the court noted there is some disagreement among the courts on the issue on whether parking is a CEQA impact, but concluded this did not matter in light of the clear application of 21099 to that project on that transit site."* Mr. Toch also referred to the Housing Element Implementation Project Initial Environmental Study/Mitigated Negative Declaration February 2012 states, *"all of the six project sites contain mature trees removal of which will conflict with local policies. The proposed project does not include direct development of the subject properties however future development of the subject properties could result in adverse impacts to trees. The City's tree protection ordinance requires submission of tree protection plan for trees greater than six inches in diameter which are located within 50 feet of a construction zone."* Mr. Toch also stated, *"The development of the six project sites in accordance with the proposed Multifamily High Density General Plan Land Use designation would change the existing visual settings from primarily vacant land and large lot single-family residential to urban areas consisting of multi-family high density residential developments."* Mr. Toch advised the project does not meet the streamline review and is not categorically exempt. He urged the City Council to reject the appeal of the Developer.

Irina Liskovich expressed her concerns of privacy, as the proposed project will allow the occupants the ability to look down into backyards and bedroom windows. Since December this project has been proposed restricted to 55+ occupants who will likely use public transportation, however it is not a requirement. She also advised the proposed project is too big for the lot. She advised an attorney was consulted for a second opinion. Ms. Liskovich urged the City Council to deny this project.

Kent Ipsen expressed his concerns of the project being too big for the parcel. Mr. Ipsen noted on January 26 a document was recorded showing Mr. Jordan the owner of Mr. Hoyer's property which allows approximately 40 more units per parcel making the project 6 acres, which does not qualify as an infill project. He requested the City Council realize the project is really 170 units.

Bill Jordan advised Mr. Steve Velyvis with Burke, Williams, and Sorensen, LLP will speak again this evening. Mr. Velyvis spoke about the density bonus law and housing accountability act, CEQA In-Fill Exemption and Attorney Toch's letter. He noted the project is consistent with the Clayton General Plan, Clayton Housing Element, Town Center Specific Plan, and Clayton Municipal Code Section 17.28 and 17.20. He further noted concessions must be granted if they provide cost reduction necessary to provide affordable housing units and waivers of development standards must be granted if the standards would physically preclude development at permitted density. He also spoke about the CEQA In-fill Exemption which met all of the requirements. Mr. Velyvis also referred to claims in Attorney Toch's letter without merit pertaining to being inconsistent with General Plan and Zoning, Density Bonus ignores Inclusionary Housing, Parking Concession not proven to result in cost reduction, project doesn't satisfy Site Plan factors, and CEQA in-fill exemption

inappropriate. Mr. Velyvis concluded by requesting the City Council to support staffs recommendation by denying CEQA appeals and affirm the Planning Commissions determination that the project is categorically exempt from CEQA under Class 32 in-fill exemption, grant applicant's appeal and approve Affordable Housing Density Bonus Application, Site Plan Review Permit and Tree Removal Permit.

Mayor Pierce requested clarification on "Piecemealing".

Sarah Owsowitz of Counsel of Best Best & Krieger, advised the term "Piecemealing" is derived on case law when a project has been spilt in two, so each project is reviewed and the impacts look less than if they were reviewed together they might look like they are more.

Mr. Toch added "*public resources 21159.27 prohibitions against piecemealing to qualify for exemptions - a project may not be divided into smaller projects to qualify for one or more exemptions pursuant to this article.*"

Mayor Pierce opened matter for public comments.

Jim Louchis expressed support for the project and would consider moving into one of the units. Mr. Louchis supports property owner's rights to build. He noted the development is in the County Connection Route 10 transit corridor.

Brian Buddell expressed his opposition to this project based on the potential piecemealing based on the purchase of adjacent property.

Robert Brenneman yielded his time.

Dana Pinault expressed her concerns regarding State mandates, traffic and parking impacts, and expected Condo conversions with no age restrictions.

Sonja Trauss YIMBY law, supports this project as it will help with the Bay Area housing shortage. She feels it will be illegal to deny this project.

Adam Harris understands the controversy on this project.

Mike James spoke about what community is and asked the community not to hate each other. He feels Clayton needs this type of housing to better Clayton.

Ed Moresi expressed his concerns of the height of the proposed project and parking issues.

Dee Vieira expressed her support of the project. She requested staff to confirm if the project will be age restricted.

Pete Laurence expressed his support of the project and read a portion of an article from *The Times*, March 27, 2011, "*The hidden treasure has caught the attention of national media, with Money Magazine ranking it number 87 out of 100 top cities in the country to live in 2009 – and Walking Magazine listing it as one of the top five for its size and trails.*"

Christine Muller expressed her concerns of the project as it is too big for the area. She would like the City to re-examine the traffic impact for quality of life.

Mayor Pierce closed public comment.

Following questions and deliberation by the City Council.

It was moved by Councilmember Catalano, seconded by Councilmember Wolfe, to adopt Resolution No. 06-2020 Denying the Appeals and Upholding the Planning Commission's Approval of an Infill Exemption in Accordance with the California Environmental Quality Act (CEQA) for the Olivia on Marsh Creek, an 81-Unit Senior Rental Housing Development (ENV-01-17). (Approved, 3-2 vote; Diaz and Wan, no)

It was moved by Councilmember Catalano, seconded by Mayor Pierce, to adopt Resolution No. 07-2020 Granting the Appeal and Approving the Affordable Housing Density Bonus Application (DBA-01-19), Site Plan Review (SPR-04-17), and Tree Removal Permit (TRP-24-17) for the Olivia on Marsh Creek Senior Housing Project. (Approved, 3-2 vote; Diaz and Wan, no)

8. **ACTION ITEMS** – None.

9. **COUNCIL ITEMS**

Councilmember Wolfe requested the possibility of displaying the "Pride Celebration" Flag in the City during the month of June and look at neighboring cities for their policies.

Councilmember Catalano advised she is also interested.

10. **CLOSED SESSION** – None.

11. **ADJOURNMENT**– on call by Mayor Pierce, the City Council adjourned its meeting at 11:47 p.m.

The next regularly scheduled meeting of the City Council will be March 17, 2020.

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Respectfully submitted,



Janet Calderon, City Clerk

APPROVED BY THE CLAYTON CITY COUNCIL


Julie Pierce, Mayor

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