



**MILLBRAE CITY COUNCIL
MINUTES
October 10, 2017**

CALL TO ORDER MILLBRAE CITY COUNCIL

Mayor Holober called the meeting to order at 7:00 p.m.

ROLL CALL: Mayor Reuben D. Holober, Vice Mayor Gina Papan, Councilmembers Ann Schneider and Wayne Lee. Councilmember Anne Oliva was excused.

PLEDGE OF ALLEGIANCE TO THE U.S. FLAG

1. **CEREMONIAL/PRESENTATION**

- Presentation by the Millbrae Education Foundation

President Maura LeBron-Hsieh and Immediate Past President Karen Bettucchi presented on the Foundation's fundraising, goals and accomplishment this past year.

2. **AGENDA OVERVIEW/STAFF BRIEFING**

- Report of Bills and Claims

Deputy City Manager Mark Raffaelli reviewed the agenda items. He updated the Council on the following items:

- Central County Fire Dept. sent 9 personnel to the fire in Napa;
- September 26th was SMC Alert Day. The City is encouraging people to sign up for SMC Alerts;
- The final Millbrae Community Center workshop will be held on October 24th.

Councilmember Schneider reported e-mail problems and requested that Stepford fix the problems. Vice Mayor Papan asked for item 9 to be continued until all Councilmembers are present. Mayor Holober requested that item 5 be pulled for public comment.

3. **APPROVAL OF MINUTES**

- NONE

4. **ORAL REPORT FROM CITY COMMITTEE/COMMISSION CHAIRS**

- NONE

PUBLIC COMMUNICATION

Laurel Pascual, Union City resident, spoke about sanctuary cities.

Wynn Greich, Hayward resident, spoke about chloramine in the water.

Robert Macario, Millbrae resident, spoke about a flooding issue on Landing Lane.

Paul Harrell, Millbrae resident, announced the Meadows School e-waste event on October 21st.

CONSENT CALENDAR

5. Approval of a Special Event Permit for the Korean Culture Festival on October 21, 2017 and a Waiver of Facility Rental Fees

Begin public comment.

Sun Ok Hwang, representing the Peninsula Korean American Parents Association, spoke about the 4th Annual Korean Cultural Festival on October 24th and invited everyone to attend.

End public comment.

6. Resolution No. 17-51 Awarding a Construction Contract to Express Plumbing for the Upper Lateral Pilot Program in the Amount of \$252,000
7. Resolution No. 17-52 Authorizing the City Manager to Execute a Professional Service Agreement with GHD for On-Call Engineering Service Not to Exceed Aggregate Amounts of \$500,000 for Civil Engineering Services and Execute Addenda to Increase Each of West Yost Associates and CSG On-Call Contracts by \$250,000
8. Resolution No. 17-53 Authorizing an Agreement with Stepford, Inc. for Information Technology Support and Related Services in an Amount Not to Exceed \$150,000

Upon a motion/second by Papan/Lee Consent Calendar Items 5, 6, 7, and 8 were unanimously approved.

9. Confirmation of the 2017/2018 Mayor/Vice Mayor Rotation

Consent Calendar item 9 was pulled off the agenda and continued to a future meeting when all Councilmembers are present.

PUBLIC HEARING

10. Appeal of a Planning Commission Decision to Deny the Appeal of an Approved Design Review (Staff Level) to Allow a First Floor Remodel/Addition and Construction of a Second Floor Located in a Single-Family (R-1) Zoning District at 452 Lomita Avenue

Community Development Director Ward presented the report. There were five primary concerns from the appellants. Staff provided responses to each of these concerns, and processing issues have been remedied. She stated that staff is recommending Option A, not Option B as identified at the bottom of pages 1 and 5 of the agenda report, and to include the modified special condition E as stated in the report.

Begin public comment.

The appellant, Areti Seymour, and her attorney, Elena Rivkin, stated that the applicants bypassed having a design review and there was no public hearing before work began. They stated that the contractor's license has expired and that there are issues about the windows and the shadow study. The appellant is asking that the applicant move the second story addition to the center or discontinue building a second floor.

The applicant, Zi Ye, her architect, and her contractor spoke. They stated that there are no windows on the property line. They made corrections to the 2015 drawings so there will be no windows and no peeping through the property. The second floor is seventeen feet away from the property line. They stated that the appellant never provided a shadow study, and that they did not do any not work without a permit.

The Mayor opened public hearing.

Begin public comment.

Weining Man, San Bruno resident, spoke in favor of the applicant who has been her neighbor since 2009. She is very kind and has two school-aged children.

Deng Liu, Millbrae resident, spoke in favor of the applicant. Their children go to the same dancing school and the applicant's kids are attached to the Millbrae neighborhood.

Evan Skakos, Millbrae resident and daughter of the appellant, spoke in favor of her parents who are very fair and understanding people with many friends in the neighborhood.

George Lynch, Millbrae resident, spoke about how the applicant did not go through the design review process. Even though he lives four doors away on Santa Florita, he was not notified. He feels deceived.

Ingrid Richard, Millbrae resident, said that she resides behind the applicant's property and that she received the plans before the project was started. She was concerned about windows and privacy, but she was told there would not be any windows on the north side. She has no objections.

Mingyu Fang, Millbrae resident, spoke in favor of the applicant's project moving forward.

Debra Ann Nwora, spoke in favor of the applicants who are her friends and they are very good people.

Jenny Zang, San Bruno resident, spoke in favor of the applicant because the applicant's two children need privacy and they need their own bedrooms.

Chungpo Fang, Millbrae resident, spoke in favor of the applicant because his kids go to soccer class with the applicant's kids.

Dennis Acosta, Millbrae resident, said he lives two houses to the east of the applicant's house and he was home when the second story went up. He called his neighbors because none of them knew about the second story. City staff was irresponsible in issuing a second permit without looking at the first permit. His issue is not about the owners; the architect and builder tried to circumvent the process purposely. Staff did not catch these attempts.

Upon a motion/second by Papan/Lee, the City Council closed the public hearing.

City Attorney Cassman requested that the public hearing remain open during the discussion. Mayor Holober agreed, and the public hearing remained open.

Zi Ye, the owner of 452 Lomita Avenue spoke. She stated that the final permit was submitted as a whole project and was approved by the Planning Department. The Planning Commission approved her project. All forms were sent out in late 2015. Her architect met with every adjacent neighbor in late

2015 including 448 Lomita Avenue. Without hearing anything back from neighbors, her architect contacted them again. It has been almost a year since her construction was cut off and the rainy season is right around the corner. Last year they covered the roof and used plastic sheets to cover the floor during the rain. From January to April (more than 100 days), the Planning Commission meeting could not be scheduled because they were waiting for the appellant to submit the shadow study. The appellant submitted seven pictures taken on a cell phone in a week. She asked that the City Council help her.

Council inquired:

- Address the notifications;
- Were any of the appellant's recommendations taken into account;
- In June, the Planning Commission said to add windows and some people have said there are no windows. Are the windows on the side or the back of the house? Are windows facing the neighbor's property? Are there windows on the second level;
- Does the second floor have a seventeen foot setback;
- Is there a fence between the windows on the first floor and the house next door;
- When the neighborhood was notified, were they notified of the first project or the second project (the second story)? Was notification done before or after the framing started;
- What happened? What is the staff issue ;
- Do we have a tracking system for permits;
- There was an allegation made that the builder was building without a license;
- If the notification and error did not occur, would the Planning Commission approve this project;
- What is staff's recommendation?

Staff responded:

- Consultation forms are provided by the applicant to adjacent neighbors. They were provided but were not returned in the same amount of time. The timeline shows almost all of them were returned within a reasonable amount of time except the appellant's which was returned almost a year after it shows receipt of being given. The notification for the May 1st and the June 5th Planning Commission meeting included neighborhood noticing, the placard on site, and the general circulation of the newspaper. The notification process for the consultation forms was followed;
- The appellant's requests were to shift the entire second floor to the center of the property and they argued that the shadow study did not include potential impact in the December morning hours, but there was no data to support this;
- Initially there were no second story windows, but the Planning Commission thought that it looked a little odd because the ground floor has windows and the upper floor that was presented on May 1st did not. So, in the conditions of approval, the Planning Commission required that the applicant add the windows. The windows are in the rear;
- Yes, there is a five foot ground floor setback and a twelve foot upper floor setback. Originally it had been an attic. It had been a projection, so that has been removed from the plan set that was provided on June 5th;
- Yes, there is a six foot fence between the windows on the first floor and the house next door;
- Neighbors were notified of the second project. They were notified back in 2015. Neighbors were contacted in advance of the permit approval. Construction on Phase one and Phase two started at the same time. The applicant waited until Phase two was approved before starting work;
- When the second building permit was issued and staff received notification from the neighbor that both of the permits were being constructed at the same time, we stopped the work because those were considered significant. If it were just the ground floor addition, it

would have gone through. The second building permit was not caught as an aggregate and cumulative to the first permit. Both of those together are significant. If the second permit were to be less than 500 sq. ft., we would have gone through the process. Under Ordinance 750 we are supposed to try to resolve neighbor complaints. If we cannot, we bring it forward to the Planning Commission. What was missed here and what staff is trying to acknowledge is that the process of bringing those two together didn't happen the way they should have. They were issued separately. Once it was identified that they were issued separately and it was significant, the neighbors brought it forward. We were able to stop, evaluate where the error was, and move forward to comply with our Municipal Code which is bring it forward to the Planning Commission. This was not handled in the best way. We have measures in place. Now our Building and Fire Codes, adopted in Nov. 2016, catch these types of incremental permits. Building permits that are submitted over a two year period are viewed as a collective and would constitute a significant project to go to the Planning Commission. So we are not going to see these types of issues happen in the future;

- Yes, with our new software we can track permits. If someone replaces windows then later replaces dry rot, the software would alert staff that there are multiple permits. This was not in place before. This project occurred before these measures were in place;
- They contractor was renewing their license;
- The Planning Commission approved the project and denied the appeal;
- Staff recommends that the City Council uphold the Planning Commission's decision and deny the appeal.

Upon a motion/second by Lee/Schneider, the Council closed the public hearing.

City Attorney Cassman stated that staff is recommending that the applicant re-submit their applications so staff can confirm the 500 feet.

Council asked how long this process would take.

Community Development Director Ward stated that the Planning review should be completed within a couple of days.

Community Development Director Ward clarified that Option A is to deny the appeal, without prejudice, by upholding the Planning Commission denial, including the conditions of approval. Staff is also recommending that, in addition, Special Condition E: that that the project be modified to ensure that the applicant submits plans that show an addition that is less than 500 square feet be included as part of the recommendation.

The Mayor requested that the City Attorney reiterate what is being voted on. City Attorney Cassman stated that we are going to deny the appeal without prejudice, uphold the Planning Commission denial of this appeal and in so doing we are going to require that the applicant re-submit their application plan sheets A1 and A3 so we can have a final calculation of the FAR and confirm that the second story addition is 500 feet or less.

Council asked staff to clarify if there was any circumventing of the process because an allegation was made to that effect. Community Development Director Ward stated that she heard the allegation but she cannot confirm if that was the case or not.

Upon a motion/second by Lee/Holober the City Council denied the appeal without prejudice and upheld the Planning Commission denial of the appeal and the conditions as previously stated passed with a vote of 3:1. Councilmember Schneider dissented and Councilmember Oliva was excused.

EXISTING BUSINESS

NONE

NEW BUSINESS

11. Appointments to City Commissions and Committees and Discussion Regarding the Economic Vitality Advisory Committee

Upon a motion/second by Lee/Schneider the Council unanimously appointed Barbara Whiteley to a four year term on the Cultural Arts Committee and appointed Robert G. Gottschalk to a four year term on the Sister Cities Commission.

Council reported that the Economic Vitality Advisory Committee has had a hard time achieving quorum over the last couple of years. Candidates have been interviewed but none of them are business owners in downtown Millbrae. Part of the Committee's work plan is to participate in the development of a Business Improvement District (BID). If we can get the BID going, we can get people to attend the meetings. Council directed staff to put the formation of a BID on the meeting agenda for the next Economic Vitality Advisory Committee meeting.

COUNCIL COMMENTS

Mayor Holober:

- Attended the Caltrain Local Policymakers Group meeting. There is an online survey regarding the electric train design where the public can provide input;
- He asked that everyone keep Ian Morris, his family, and his father, Robert Morris, a Millbrae resident, in their thoughts. Ian was hit by a car last week at Taylor and El Camino and our thoughts are for his full recovery.

Vice Mayor Papan:

- Announced the Halloween costume drop off bin in the City Hall lobby. It is for kids who cannot afford costumes;
- Reminded everyone of the importance of signing up for SMC alerts on their phone and e-mail in case of an emergency;
- Requested that the Mayor adjourn tonight's meeting in memory of Carolyn Livengood; she was a wonderful community advocate;
- Announced that Chris Pallas who served on the San Bruno City Council for many years passed away; services are on Thursday and Friday.

Councilmember Schneider:

- Announced that San Francisco International Airport has set aside \$1 million a year to work on insulation programs for homes;
- Announced the Meadows Turkey Trot on Sunday, November 19th;
- Announced the Millbrae Lion's Marinated Crab Feed at St. Dunstan is on October 21st.

Councilmember Lee:

- No comments.

ADJOURN CITY COUNCIL

There being no further business to discuss, the City Council adjourned at 9:32 p.m. in memory of Carolyn Livengood, a longtime news correspondent for the San Mateo Times, the San Jose Mercury News, the San Mateo Daily Journal, and the Patch.

/s/ Angela Louis
City Clerk

/s/ Gina Papan
Mayor