

and attempted suicide. He felt Milpitas youth were excluded from participating with their parents in sports activities at the Sports Center.

Robert Marini, Milpitas resident, addressed the Council with comments on sewer rate calculation.

Rob Means, 1421 Yellowstone resident, addressed the Council regarding the McCandless property in the south end of the City and desire by the School District to purchase it to build a school. He noted actions of the District, Oversight Board, Santa Clara County and the City's actions.

Robert Lay, Milpitas resident, spoke about the McCandless property considered for a school in Transit Area of the City. He supported the School District buying that land from the City.

ANNOUNCEMENTS

Vice Mayor Polanski received a letter from Republic Services about street sweeping in November, but it was missing instructions on the back. She had read that the Lt. Gov. wanted legalization of marijuana, so she wanted an item on agenda to send a letter that the City was not in favor.

City Manager Tom Williams announced the city's annual event on Veterans Day Monday, November 11 at 9:00 AM, a ceremony at the City's Veterans Plaza, behind City Hall. This year would feature the 2nd Annual "Veteran of the Year" award, coordinated by the Milpitas Veterans Commission.

**ANNOUNCEMENT OF
CONFLICT OF INTEREST
AND CAMPAIGN
CONTRIBUTIONS**

City Attorney Ogaz asked City Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. No conflicts were reported.

Contributions were reported by the following:

Mayor Esteves received one contribution from Michael Preston.

Councilmember Giordano had received donations from Preston Pipelines.

Councilmember Gomez reported contributions from both from KB Home and Preston Pipeline in his current campaign for state assembly.

APPROVAL OF AGENDA

Motion: to approve the agenda, as submitted

City Manager Williams announced that the matter regarding South Main Senior Lifestyles project would be continued to November 19, 2013, although it had been noticed for a public hearing in the newspaper on this date.

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

CONSENT CALENDAR

Motion: to approve the Consent Calendar (items noted with *asterisk), as amended

Councilmember Giordano requested Item No. 5 off (Sport Center improvements) and Councilmember Montano requested Item No. 9 (Arts Commission in-kind grant awards) to be removed from consent.

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

- * 4. Odor Report Received the October 2013 odor control report.
- * 6. Commission Appointment Appointed Dau Do to the Community Advisory Commission as Alternate No. 4 to a term that will expire in January 2014, per recommendation of Mayor Esteves.
- * 7. Cancel Council Meeting Canceled the regularly scheduled December 17, 2013 City Council meeting.

*12. Investment Portfolio

Received the investment report for the quarter ended September 30, 2013.

*15. 5 Master Service Agreements for Planning

Approved five separate Master Environmental Consultant Agreements with the following firms/individuals: Amy Skewes-Cox, Environmental Science Associates, Lamphier-Gregory, LSA Associates, and RBF Consulting in the amount of \$1,000,000 and for a period of five years.

UNFINISHED BUSINESS

5. Design Concept for Milpitas Sports Center Project No. 3408

Councilmember Giordano would like to ask if staff would come back with feasibility for a soccer complex at the Milpitas Sports Center. She noted there were lots of dirt areas that could be transformed into playing areas for soccer or other sports.

Motion: 1) to direct staff to conduct a feasibility study for soccer field at the Milpitas Sports Center site, and 2) after considering options for the Milpitas Sports Center Facility Improvements, Project No. 3408, direct staff to proceed with the recommended design concept three (a complete reconstruction and reconfiguration of both the men's and women's locker rooms including new interior walls)

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

PUBLIC HEARINGS

1. Preston Properties/ KB Home Development Project

Planning Director Steve McHarris presented the proposed residential development project from KB Home on Preston Pipelines property, located just behind Main St., bounded on three sides by transportation/rail uses. The issue for consideration by the Council centered around land use and the health, safety and welfare of residents. The parcels were currently zoned as heavy industrial, and the owner requested to change it to multi-family use to build 213 homes to house 744 residents.

The General Plan Amendment was the main focus, although other actions were requested for the project to move forward. The proposed project was inconsistent with the Midtown Specific Plan and the General Plan. Hazardous railroad materials were identified (ferric chloride, gasoline, methanol) nearby along with reasons to be concerned for any leaks from containers traveling through the rail lines. Fire Marshal Albert Zamora detailed specific safety concerns from the Fire Department's point of view of health and safety issues with this site.

Staff and Planning Commission identified the major deficiencies, and inconsistencies on the land use. The draft and Final EIR were noted. Comments of opposition were received from the Milpitas Unified School District, the railroad, and adjacent neighbors.

Councilmember Giordano inquired about the density of this project and a recently approved one on Milpitas Blvd. She inquired about evacuation routes, if lower density would be useful, setbacks, and the distance to BART. She was open to a re-designed project here.

Councilmember Gomez said to look at the Mid-Town Specific Plan and a lot that did not happen. Main St. needed rooftops and he agreed with Ms. Giordano to look at a re-design. He asked about the Environmental Impact Report and whether the consultant was present.

Vice Mayor Polanski noted that BART would go west of heavy industrial, at the graded location. She wondered how frequently BART trains would go by there specifically.

Mayor Esteves asked if risks would remain if the number of residents were reduced. Mr. McHarris Steve said the same problems accessing the site for emergency evacuation

would exist. He asked if complaints were received by nearby residents adjacent to railroads in Milpitas and the Planning Director said yes, from Parc Metro residents recently. Mayor Esteves had received phone calls with complaints of railroad noise, too.

Councilmember Montano referred to tank cars with chemicals (in the EIR document) and asked the Fire Marshal about impacts, and what would occur if homes were there instead of rail activity. Her main concern was safety, regarding location of this proposed project. She thought it was not a safe place to raise a family, with too many inconsistencies.

Mr. Ray Panek of KB Home in San Mateo addressed the City Council, pointing out he had staff along with him for presentation on the "Preston Crossing" development project. He objected that the EIR's conclusions were not presented and that the consultant was not present, reviewing several report details. He also pointed out that the Planning Commission vote to deny the project was not unanimous, with only three members voting to recommend denial.

Mayor Esteves invited the applicant to speak, and sought to limit the speaking times, so the Council voted 3 to 2 to limit the applicant to 15 minutes total.

Mr. Panek further discussed items listed in the Errata in the Final EIR document.

Councilmember Giordano wondered about a 20-foot wall, with 150 feet setback with tall trees, if there were lower density detached-only homes. She was not in favor of the proposal in front of her. Mr. Panek thought her comments were the most positive ones made this evening.

Mayor Esteves opened the public hearing.

Ray Esparza, 11 year resident of Milpitas, supported the project and said it was a good idea for Milpitas. He remarked on a recently approved project, across the railroad on the other side, just off Milpitas Blvd.

Ricardo, a Milpitas resident, was in support of the project, which was good for the City. Mayor Esteves inquired about the yellow t-shirts that this man and others in the audience wore. The speaker explained it was for a local union.

Abraham Tavaleo, 1854 Morse Ct. resident, supported the project as a good improvement to the City, including streets and sidewalks.

Devan, a Palmer St. resident, supported the project since it would bring work.

A woman resident on Milpitas Blvd. did not hear any comments about the roads, and maintaining those roads to carry all the people moving here. What about an upgrade to Milpitas Police and Fire Departments? Council must consider crime going up, with more people added to the City.

Robert Marini, Milpitas resident, opposed the project since it marginalized his vote on utility service rates. It would increase traffic, with less police officers per 1,000 then. It also raised costs for utility services in the City.

Rob Means, 1421 Yellowstone resident, spoke of the corporate value of corporations to make money, such as KB Home. This was a bad place to put housing, basically.

Martha Lamdin, Mt. Diablo Ave. resident, spoke against any more additional housing in Milpitas, especially due to increased traffic lately.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES : 0

Councilmember Gomez wanted to hear from the EIR consultant on the project, and how impacts were to be mitigated. He urged deferral of consideration for one meeting, which he said was a motion, but there was not second made.

Vice Mayor Polanski remarked that Preston Pipelines was a good corporate citizen in this city and KB Home was a large corporation, having brought quality housing here in the past. But, realize that residents complain to City Council, not the developer or builder. She felt this was the worst location to propose new housing that she had ever seen, especially with three sides surrounded by heavy industrial use, including railroads.

Mayor Esteves agreed with remarks by the Vice Mayor, and felt there could be better locations for families to move into new homes in the City.

Councilmember Giordano would be voting against the motion for denial. She would not approve the project either, but would look for a re-design of this project to consider. She favored a detached home project rather than the multi-density design.

Councilmember Gomez would vote no, with concern he noted about the EIR.

Councilmember Montano felt the location of the project was where she objected, and remained concerned about the quality of life for residents.

Motion: to adopt Resolution No. 8308 denying the proposed development project by KB Home (Preston property at 133 Bothelo Lane) and all its related actions including no action on the Final Environmental Impact Report

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 3
NOES: 2 (Giordano and Gomez)

2. 2013 Storm Drain Master Plan

City Engineer/Public Works Director Jeff Moneda provided background on the draft Storm Drain Master Plan, explaining steps taken to arrive at this Public Hearing. Staff reviewed comments received, and had prepared the mitigation and monitoring reporting program.

The City's consultant Chuck Anderson from Schaaf & Wheeler introduced the Storm Drain Master Plan 2013, defining what was in the 10 chapters of the dense plan document. The total annual budget proposed was \$5 million. Recommended steps were reviewed with the City Council, including investigating a funding plan.

Councilmember Giordano inquired if the plan would change any of the homes impacted by the requirement for flood insurance and the consultant replied no.

Councilmember Montano asked staff how they kept storm drains clean. Mr. Moneda replied, with routine maintenance including maintenance of pumps.

Mayor Esteves, noting the \$5 million per year cost, wondered about potential loss to the City each time there was flooding.

Mr. Anderson said half of the cost was maintenance. The City's pump station was old but still operating okay. The Mayor responded that he needed further information to be able to analyze and prioritize funding.

Vice Mayor Polanski said those things were critical, and to put an amount toward infrastructure from any new funds the City may have in any budget year.

Councilmember Montano asked if there was no budget for operations and maintenance of storm drains. Mr. Moneda said it was a minimal amount with a need for more in the CIP in the future.

Next, the Mayor opened the public hearing.

Robert Marini, Milpitas resident, asked how the \$5 million budget was distributed to the citizens of Milpitas. Mr. Williams replied that there was no storm drain fee at this time while there was a connection fee only.

Motion: to close the public hearing

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES : 0

Motion: to adopt Resolution No. 8309 adopting the Mitigated Negative Declaration and the Mitigation & Monitoring Reporting Program, per California Environmental Quality Act, and approving the 2013 Storm Drain Master Plan

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

3. Establish Community Facilities District No. 2013-1

Finance Director Emma Karlen reviewed the reason that a new Community Facilities District was proposed for the Piper Montague subdistrict of the Transit Area Specific Plan area. Costs were to be shared by three developers for new public infrastructure in that area, via a cost-sharing agreement with those developers. The estimated costs for the infrastructure were \$5.6 million.

Mayor Esteves asked about Police and Fire services provided by funding from CFD. The Finance Director said that was handled by the existing CFD No. 2008-1.

Councilmember Giordano asked how the tax would be billed to owners. Ms. Karlen explained, if implemented, it would go onto property tax bills. The maximum tax per unit that could be collected was identified in the written report, and ranged from \$800 to \$1200 per unit per year, only assuming no reimbursement to the City by developers.

Next, Mayor Esteves opened the public hearing and heard no speakers.

(1) Motion: to close the public hearing

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(2) Motion: to adopt Resolution No. 8310 establishing Community Facilities District No. 2013-1 (Piper Montague) and taking other related actions

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

City Clerk Mary Lavelle canvassed the results of the election, and announced a vote of three property owner/voters in favor and zero opposed.

(3) Motion: to adopt Resolution No. 8311 declaring the results of the special election held on November 5, 2013 for the CFD No. 2013-1 (Piper Montague)

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Next, City Attorney Mike Ogaz read aloud the title of Ordinance No. 286, "An Ordinance of the City Council of the City of Milpitas Levying and Apportioning the Special Tax in Community Facilities District No. 2013-1 (Piper Montague)."

(4) Motion: to waive the first reading of Ordinance No. 286 beyond the title

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

(5) Motion: to introduce Ordinance No. 286 and direct staff to return on November 19, 2013 for Council adoption of the ordinance

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

UNFINISHED BUSINESS

Two items were approved on the consent calendar.

REPORTS OF OFFICERS

Three items were approved on the consent calendar.

8. Skate Park

Councilmember Carmen Montano was contacted by some youth who asked if the City could provide a skate park for their use. She asked Council to approve a feasibility study.

Vice Mayor Polanski recommended this study go through the Parks, Recreation and Cultural Resources Commission, including information on past skateboard parks and why those were incompatible with the neighborhood.

Councilmember Giordano agreed with the Vice Mayor, including reasons why the last one did not succeed and was closed. Activities for Milpitas youth were important.

Councilmember Montano additionally suggested taking the study to the Youth Advisory Commission.

Mayor Esteves was open to suggestions and referred to a past skate park, with neighbors opposed to kids staying out late and the noise. Benefit for youth was important, too. He invited speakers from the audience.

Speakers:

Martha Lamdin, mother and resident, thanked Councilmember Montano for bringing up this issue. She was concerned about safety of kids, where they were going to skateboard no matter what. They needed a safe place to go, and could include urban art to avoid graffiti. Skateboards, scooters and bicycles could be together at same location good. She would volunteer to serve on any Committee.

Mr. Gomez, a Yosemite Drive young resident, was a BMXer who felt a local skate park would be a safer place to bike than public sites used now, such as parking lots. He thanked the Council for putting this on agenda.

Robert Marini, Milpitas resident, said if the City sponsored it, this could be dangerous for the City in terms of liability if kids get hurt.

Frank, a Milpitas resident, felt the City could mitigate for liability. He was in favor of a new skate park for kids, and he used the one that was built in the past in Milpitas.

Linda, of Saturn Ct., expressed the need to have to do something for these kids rather than sitting around doing nothing. Parents could sign a waiver form, regarding liability.

A young resident of Mt. Diablo said kids were more likely to break their neck on public places than at a skate park where kids could be required to wear helmets.

Joshua, resident of Everglades, said it would be really nice if they had a skate park.

Mayor Esteves noted that many young people approached him about having a skate park, and their parents too. Safety would be very important.

Motion: to direct staff to do a feasibility study, looking into building a new skate park for youth, with future recommendations on this topic from both Parks, Recreation and Cultural Resources Commission and the Youth Advisory Commission, including the economic aspects

Motion/Second: Councilmember Montano/Councilmember Gomez

Motion carried by a vote of: AYES: 5
NOES: 0

8.5. Compaction Issue

Councilmember Armando Gomez requested an analysis on the salary compaction issue for management staff, where some staff earn less money than those they supervise. He wanted a report to identify problems, e.g. with Battalion Chiefs and Police Commanders, and provide recommendations to the Council.

Motion: to direct staff to prepare an analysis of the compaction issue, conduct a salary survey and return to Council with a recommendation

Motion/Second: Councilmember Gomez/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

9. Milpitas Arts Commission - Arts & Culture Grants

Councilmember Montano sought clarification on grant proposals, and asked if they had to have non-profit status. Recreation staff Renee Lorentzen replied no, while this process for in-kind services grants differed from the City Council policy for fee waiver/donation requirements.

Councilmember Montano felt that the four grantees on the list did not truly represent the wide diversity within the City of Milpitas. After staff described the outreach done to seek grant applications, the Councilmember stated she would like more extensive outreach next year to yield more applications.

Motion: per recommendation of the Milpitas Arts Commission, approve four Milpitas Arts and Culture Grants for in-kind performance space and City staff support to three local organizations and one individual, which could total a maximum of \$8,800 in value of in-kind services granted

Motion/Second: Vice Mayor Polanski/Councilmember Montano

Motion carried by a vote of: AYES: 5
NOES: 0

NEW BUSINESS

10. FY 2012-13 Year End Financial Status Report

Finance Director Emma Karlen presented a brief overview of the status of the City's finances at the close of the past Fiscal Year 2012-13. The main point she reported was a slight surplus at the conclusion of the fiscal year, rather than a deficit as anticipated.

Councilmember Giordano wanted to know if there was any shift in the future quarter, due to sales tax increase after the holidays. Ms. Karlen responded, not too much.

Motion: to receive the preliminary year's end (FY 2012-13) financial status report

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

11. First Quarter Financial Status

Finance Director Emma Karlen presented a brief overview of the first three months' finances of the City for the period July – September 2013. She noted that revenues were mostly on track compared to expenditures, so far.

Motion: to receive the first three months' FY 2013-14 financial status report

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ORDINANCES

13. Updated Building Code – Ordinance No. 65.142

Chief Building Official Keyvan Irannejad explained the newest California Building Standards would take affect January 1, 2014. Significant change was noted in the Green Building Standards, impact on those doing additions to residential property or on some non-industrial buildings. City Manager Williams emphasized the new state requirements, e.g. property owners must put in low-flow toilets if adding on, in any way, to a house. He asked Mr. Irannejad to further explain this Green Building Code requirement.

City Attorney Mike Ogaz read aloud the title of Ordinance No. 65.142, "An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapters 1, 2, 3, 3.5, 5, 6, 7, 11, 12, 13, 14, 15, 19, 20, 150 and 170 of Title II of the Milpitas Municipal Code."

Motion: to waive the first reading beyond the title of Ordinance No. 65.142

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 65.142 enacted as Chapters 1, Chapter 2, Chapter 3, Chapter 5, Chapter 6, Chapter 7, Chapter 8, Chapter 11, Chapter 12, Chapter 13, Chapter 14, Chapter 15, Chapter 19, Chapter 20, Chapter 150 and Chapter 170 of Title II of the Milpitas Municipal Code revising provisions for Building Regulations

Motion/Second: Councilmember Giordano/Vice Mayor Polanski

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 65.142 adopting by reference with certain amendments of the 2013 Editions of the California Building Code, California Residential Code, California Mechanical Code, California Electrical Code, California Plumbing Code, California Historical Building Code, California Green Building Standards Code, California Energy Code and California Existing Building Code, and 2012 Edition of the International Existing Building Code Appendix Chapters A2, A3, A4 and A5

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

14. Updated Fire Code –
Ordinance No. 113.23

Fire Marshal Albert Zamora expressed the need to adopt the 2013 California Fire Code, with any local amendments which, this year, were strictly format-related. No significant change to the local adoption of the code was required this time.

City Attorney Mike Ogaz read aloud title of Ordinance No. 113.23, “An Ordinance of the City Council of the City of Milpitas Repealing and Replacing Chapter 300 of Title V of the Milpitas Municipal Code Adopting the 2013 Edition of the California Fire Code and Specified Local Amendments.”

Motion: to waive the first reading beyond the title of Ordinance No. 113.23

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to introduce Ordinance No. 113.23, enacted as Chapter 300, Title V of the Milpitas Municipal Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

Motion: to set a public hearing at the next regularly scheduled Council Meeting on November 19, 2013 at 7:00 p.m. to consider adoption of Ordinance No. 113.23, adopting by reference with certain local amendments the 2013 Edition of the California Fire Code

Motion/Second: Vice Mayor Polanski/Councilmember Giordano

Motion carried by a vote of: AYES: 5
NOES: 0

ADJOURNMENT

Mayor Esteves adjourned the meeting at 10:57 PM.

The foregoing minutes were approved by the Milpitas City Council as submitted on November 19, 2013.


Mary Lavelle, Milpitas City Clerk