

**MEETING MINUTES
CITY OF MILPITAS**

Minutes of: Regular Meeting of Milpitas City Council
Date: Tuesday, December 5, 2017
Time: 5:30 PM Closed Session
7:00 PM Open Session
Location: Council Chambers, Milpitas City Hall,
455 East Calaveras Blvd., Milpitas

- CALL TO ORDER** Mayor Tran called the meeting to order at 5:35 PM. City Clerk Mary Lavelle called the roll.
- PRESENT:** Mayor Tran, Vice Mayor Grilli, Councilmember Phan
- ABSENT:** Councilmembers Barbadillo and Nuñez were absent at roll call. Mr. Nuñez arrived at 5:36 PM and Mr. Barbadillo arrived in the Closed Session.
- CLOSED SESSION** City Council convened in Closed Session to discuss labor negotiations, litigation and personnel matters, as listed on the agenda. City Attorney Chris Diaz said that Mayor Tran would recuse himself on Closed Session agenda item (e).
- City Council then convened in Open Session at 7:09 PM with all members present.
- ANNOUNCEMENT** City Attorney Chris Diaz stated there was no reportable action out of Closed Session.
- PLEDGE** Boy Scouts Troop No. 92 presented the flags and led the pledge of allegiance.
- INVOCATION** Mayor Tran offered a prayer to start the meeting. Vice Mayor Grilli asked for a moment of silence and to adjourn the meeting in memory of retired Milpitas Police Sergeant Joe Candelaria, who had recently passed away.
- PRESENTATION** Mayor Tran requested Evelyn Chua to come to the podium. She had served as Chair of the Citizens Task Force on Water Rates. The Mayor and Mrs. Chua presented certificates to all members who had served on the Task Force.
- Members of Milpitas Historical Society including the “Milpitas Monster” character made a presentation of a donation check to the Milpitas Fire Department Explorers, following a fundraising showing of the film at Cinemark Cinemas at The Great Mall.
- Office of Emergency Services staff Toni Charlop presented certificates to the Milpitas Student Fire Explorers and adult volunteers for efforts at the Milpitas Fire Department.
- PUBLIC FORUM** Rob Means, Milpitas resident, spoke to the Council about a notice from scientists recently issued on global warming.
- Nellie Cabuslay, Vice President of Milpitas Executive Lions Club, would like to have on a Council agenda the 4th annual “Celebrating Differences” event and to ask the City Council to co-sponsor the event, expected to be held in March 2018.
- Voltaire Montemayor, Milpitas resident, commented on the new garbage bins. There were pros and cons, and he was in favor, while noting that sorting was a challenge during the transition.
- Robert Marini, Milpitas resident, felt there was more information about water rates for those who were on the Task Force. He thanked the Mayor for the certificate.
- Carmen Montano, Milpitas resident, invited all to a celebration of Our Lady of Guadalupe for a Special Mass on Tuesday, December 12 at 7:00 AM at St. John’s Catholic Church.

Tom Valore, Milpitas resident, said regarding the Water Rates Task Force, he'd like to periodically get a report on the recommendations that the task force gave to the City Council.

ANNOUNCEMENTS

Acting City Manager Steve Pangelinan invited the Economic Development Director to the podium to announce a workshop scheduled for Tuesday, December 12, at 6:30 PM, when the City and County would host "Going Green" featuring Silicon Valley Clean Energy (for new electricity provider options), outreach by Milpitas Sanitation Inc. and energy efficiency rebates for residents in the City.

Vice Mayor Grilli mentioned that the South Bay Odor Stakeholders group met quarterly, and Council had not had a report from that group ever. Its next meeting would be in February and she would like to hear a report with an overview and feedback. In January, staff (City Attorney) would return with proposed Just Cause Eviction and "source of income discrimination" ordinances.

Councilmember Nuñez reported that he had attended a Sunnyhills meeting, which met to address the rent control issue, and he'd heard an exceptional presentation. Perhaps, that organization and speaker could come to City Council to provide information. Mr. Nuñez had a check to donate back to the City from VTA which he gave to staff. On the prior Saturday, Mr. Nuñez went to the Santa Clara Valley Medical Center's Sobrato Pavilion grand opening, an exceptional facility with a new therapy unit. He highlighted that former Supervisor Pete McHugh was instrumental in starting the funding for that therapy rehab facility.

ANNOUNCEMENT OF CONFLICT OF INTEREST AND CAMPAIGN CONTRIBUTIONS

City Attorney Diaz asked Councilmembers if they had any personal conflicts of interest or reportable campaign contributions. Mr. Diaz stated that Vice Mayor Grilli would recuse herself from item no. 11 (fee waiver) because her husband was a Board member of the Kiwanis Club.

APPROVAL OF AGENDA

Motion: to approve the meeting agenda, as submitted

Councilmember Nuñez requested to ensure that items where people were present to give a presentation would be heard first.

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

CONSENT CALENDAR

The Mayor and City Attorney requested Councilmembers to state aloud which items they wished to place onto the consent calendar list.

Mayor Tran: items no. 5, 7, 11, 12, 16 and 17. Councilmember Nuñez: items no. 9, 10 and 15. He wanted to hear no. 5.

Vice Mayor Grilli asked to keep agenda item no. 1 (calendar) off consent, and to add item no. 2 (meeting minutes). Councilmember Phan: items no. 6, 13, and 19.

Resident Rob Means came forward stating he wanted to hear items no. 6 and no. 13.

Vice Mayor Grilli said she wanted to hear the CAP update (no. 6), so leave it off consent. Mayor Tran wanted to hear item no. 13 for discussion.

Motion: to approve the consent calendar consisting of agenda items no. 2, 7, 9, 10, 11, 12, 15, 16, 17 and 19

Motion/Second: Councilmember Nuñez/Councilmember Barbadillo

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

The order of topics for discussion was then reviewed and re-arranged a bit.

1. Council Calendar

Vice Mayor Grilli wanted to make a request for January. The very first regular meeting scheduled was for Tuesday, January 2, 2018. She suggested to cancel it (or perhaps move it to the following week January 9). Other Councilmembers supported her idea.

Vice Mayor Grilli asked staff to schedule this on the next Council agenda.

Motion: to accept City Council calendar for December 2017

Motion/Second: Vice Mayor Grilli/Councilmember Nuñez

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

*2. Meeting Minutes

Approved City Council meeting minutes of November 21, 2017.

PUBLIC HEARING

3. 808 S. Main St.

Planning Director Brad Misner provided a review of past action of the Planning Commission and explanation of why the actions were needed to be approved by the City Council for the development project proposed at 808 South Main Street. He provided history of the project for residential building on the site on S. Main Street, even though the Planning Commission recommended denial to Council. Staff said the project was fully compliant with the MidTown Specific Plan, so the planners recommended approval of the project.

Next, the applicant was invited to speak.

Daniel Sell was the architect for the project owner. He did not agree with Planning Commission that having commercial all on the first floor of this development was appropriate. As noted, the project was compliant with the MidTown Specific and General Plans.

Next, Mayor Tran opened the public hearing.

Robert Marini, resident, thought it was interesting that the City by-passed the Planning Commission. There was a shortage of affordable housing in Milpitas, so he wondered how many of these units would be for low income families.

Voltaire Montemayor, resident, spoke about proximity of the project to various sites in Milpitas.

Rob Means, resident, felt the City was not keeping up with peers in terms of affordable housing requirements. There was too much parking and probably did not need commercial spaces here.

(1) Motion: to close the public hearing following three speakers

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

Mayor Tran felt this corner lot needed to be developed, as it was an eyesore. It was about timing and the MidTown Specific Plan. This would be a signature project, a gateway into Milpitas. He thought the Planning Commission decision made sense. Parking was an issue and he agreed with the first floor commercial space concept. He would support four or five stories up in new development. The Mayor asked staff about noise levels and mitigations needed, and to confirm the amount toward an affordable housing fund.

Vice Mayor Grilli asked the total amount going to affordable housing. Staff would have to learn the total construction figure amount to respond to her question. She spoke about the Planning Commission decision, when only four members were present at their meeting when just three

recommended denial. She had concerns about parking spaces. Mr. Misner spoke of differences between traditional retail and small neighborhood commercial retail spaces.

Economic Development Director Bitbadal came to the podium, supporting comments from the Planning Director regarding retail spaces in the city. Community need should be determined.

Councilmember Nuñez referred to comments by Rob Means and alternate transportation in the future (driverless cars). He agreed that building higher than three stories would be appropriate. He was confused by a comment in the staff report that the Planning Commission found that the project was inconsistent with guiding principles of the General Plan. He asked the City Attorney for legal guidance. He did not want to wait 18 months for changes in the MidTown Plan for this project developer to wait for that. Applicant had followed rules that the City gave them.

The applicant's representative said he would like to have a decision on this project, after two years of work to date, and wanted to move forward.

Councilmember Phan asked staff if the Commission's decision to go opposite the staff recommendation was unusual and staff replied yes. Mr. Phan felt the project would be okay without commercial added to it, so it was admirable that the applicant offered to add some. This applicant had been courteous and patient with the City.

Councilmember Barbadillo wanted to lay out facts, which lead him to object to the recommendation. The Planning Commission's decision mattered a lot. He gave lengthy comments on policy, adopted rules, and regulations to abide by. He noted that with trends, vision, plans for Main Street, they must not take the Planning Commission decision lightly. There was discretion to be exercised by City Council.

Mayor Tran asked about CUPs for this project, and for the MidTown Specific Plan. Staff explained there were two requests for Conditional Use Permits for two purposes (set back deviation and one dwelling unit to have tandem parking).

Mayor Tran wanted to know the impact to the school district. Mr. Misner said it was hard to know exactly, but he could guess only. The Mayor said that was critical.

Vice Mayor Grilli said the Mayor should ask the MUSD Superintendent, as Mrs. Grilli said she had not been on the School Board in three years. The number of students in this project was perhaps not a big impact otherwise school officials would be present.

Councilmember Nuñez asked the City Attorney if the General Plan was a policy document. The City Attorney replied that it was a top level policy document along with the Specific Plans followed by the zoning ordinance. Land use designation must be complied with by a developer. Mr. Nuñez was a firm believer in community input on all decisions. He spoke about Planning Commissioners and their qualifications to make land use decisions.

(2) Motion: to adopt Resolution No. 8727 adopting the Vesting Tentative Map, Site Development Permit, Conditional Use Permit and Environmental Assessment for the project at 808 S. Main Street, subject to the Conditions of Approval and one extra 1,787 sq. ft. commercial condo space on 1.09 acre site in the MidTown Specific Plan

Mayor Tran asked the Police Chief his opinion about traffic at that location. Chief Pangelinan said he would have to pull the data on traffic accidents, but he was not aware of a cluster of significant numbers at this development site, even with Dave & Buster's nearby.

Motion/Second: Councilmember Nuñez/Councilmember Phan

Motion carried by a vote of: AYES: 3
NOES: 2 (Barbadillo, Tran)

Councilmember Nuñez said he wanted to have a meeting jointly with the Planning Commission.

UNFINISHED BUSINESS

4. General Fund Balance

This item was not heard and would be continued.

5. Senior Lifestyles Development 1504-1620 South Main Street

Acting City Engineer Steve Erickson expressed the request for Council to approve three agreements relative to Senior Lifestyles, senior assisted living proposed project on Main Street.

Councilmember Nuñez asked the City Attorney if he had any further responses to Council. Mr. Diaz commented on legal review of the documents that was done. He looked at the project as a whole. He had reviewed all steps of the project, as a former redevelopment deal in the City. The Attorney even reached out to those former employees who'd worked on it in the past, and his colleagues believed this to be similar to many standard development proposals.

Councilmember Nuñez wanted to be sure due diligence had been done, and he was satisfied that it was, based on comments from the City Attorney.

Councilmember Phan asked staff for clarification on the staff recommendation. At the Planning Commission meeting (in the past) for the parcel map decision, he requested to know the rationale on that. Mr. Misner explained that the parcel map differed from a tract map. The vesting map that went with the project was already approved by the previous City Council. The Planning Commission voted unanimously to approve the map. He explained tentative and vesting project maps. Mr. Phan said he had "unresolved concerns" and "was not at ease" with the final review.

Staff recommended that the City Council approve the Subdivision Improvement Agreement, the Public Street Maintenance Agreement and the Fee Reimbursement Agreement for a 199-unit senior assisted living rental residential development known as Senior Lifestyle at 1504-1620 South Main Street by Milpitas Phase I, LP. However, no motion by any member of the Council was made to do so.

City Attorney Chris Diaz recommended bringing this matter back at the next regular meeting. If there were questions of staff, he urged to get those answered, so that the City Council would come back at the next meeting on this matter to vote on the three agreements for the project.

Following this item, Vice Mayor Grilli said she wanted to complete agenda item no. 8.

6. Update on CAP

This item was not heard and would be continued.

REPORTS

*7. Approve New Park Name

Per City Council Facilities Naming Subcommittee, approved naming a new park in the Transit Area as the "Augustus Rathbone Park."

8. Commissioner Appointment method

Councilmember Nuñez expressed that he would like to see two Councilmembers to go on a new Council subcommittee to review Commission applications and then to recommend to the Mayor the residents to serve on Commissions.

Vice Mayor Grilli agreed with that concept.

Councilmember Phan wanted to nominate Vice Mayor Grilli and Councilmember Barbadillo to be on the Council Subcommittee. Councilmember Barbadillo did not immediately accept and would prefer to carry the appointment of the two Councilmembers to a future agenda.

Mayor Tran wanted to nominate those same two Councilmembers. The recommendation would move to the next City Council meeting. No vote was taken.

NEW BUSINESS

*9. Approve Final Map for Siena Project

Approved Final Map Tract No. 10420, a 73-unit Residential Condominiums at 600 Amalfi Loop (Siena) by LS-Milpitas, LLC, including acceptance of offers of dedications as stated and

depicted on the final map upon completion and acceptance of improvements; and, authorized the City Manager to execute the Subdivision Improvement Agreement.

- *10. 1st Qtr. Financial Report Received the City’s financial status report for the three months ended September 30, 2017.
- *11. Fee Waiver Request from Kiwanis Club Waived the City fee of \$700 for the Kiwanis Club rental of Community Center Auditorium for a fundraising event on Friday, February 9, 2018.
- Vice Mayor Grilli recused herself from this matter, so the vote was 4 Ayes and 1 Abstain.

ORDINANCE

- *12. Adopt Ordinance Waived the second reading and adopted Ordinance No. 48.21 amending Title V, Chapter 200 of the Milpitas Municipal Code regarding solid waste management.

RESOLUTIONS

- 13. Resolution - overcrossing** Transportation Engineer Steve Chan introduced a presentation on the proposed Pedestrian Overcrossing (POC) on Montague Expressway at Piper Drive to be constructed in cooperation with Santa Clara Valley Transportation Authority (VTA). Mr. Chan displayed the concept design, described expected costs and the timeline for design, engineering and construction of the POC. The newest design displayed no middle support structure, rather it was an overcrossing all the way across Montague, and would be structurally sound as well as aesthetically pleasing.

Mayor Tran asked when he would be able to walk over the “bridge” and staff said construction would start in 2019 and completion would be after that. Mr. Chan explained it was termed an overcrossing, as a bridge is a structure that went over water.

Councilmember Barbadillo talked about the relinquishment of public highways to local governments and the responsibility for maintenance, once completed.

City Attorney Diaz asked the staff if it was okay to amend the draft Resolution to include that taking ownership of the POC was dependent on having an agreement between the City along with the County and VTA.

Councilmember Phan wanted to know if there was any time frame on the ownership action. Mr. Chan replied that it could impact the construction schedule. Mr. Phan commented on the important relationship the City had with VTA, the County and other agencies. He urged more continuing conversations on this matter, and Mayor Tran agreed with Mr. Phan’s idea.

The Mayor next invited the VTA speaker. Mr. Jim Lawson from VTA addressed the Council, explaining that this matter had been discussed since 2012, noting the POC was not required of the BART project so figuring how to get it built and to pay for it had to be determined and decided. He respectfully requested the Council not delay the vote on this evening’s requested action, or it might not get built.

Mayor Tran allowed speakers from the audience.

Rob Means, Milpitas resident, spoke about the cost of the POC, starting from \$9 million to current costs estimated as a \$15 million project. It was only 200 feet for that crossing. If it had been planned as PRT (personal rapid transit that he promoted), it would be much less expensive.

Jim Sullivan, of SCS Development, the owners who were currently building the large complex “The Edge” near this site, discussed activity on Montague. It was an urban design, near the BART station. SCS really liked the new look of the POC, without the center structural beam.

Voltaire Montemayor, Milpitas resident, spoke about the overcrossing design and concern for the balance and weight of the structure.

Several Councilmembers expressed their favoring the POC and its design and wanted to prioritize the project.

Motion: to adopt Resolution No. 8728 authorizing the City to assume ownership and maintenance roles for the Montague Expressway Pedestrian Overcrossing at Piper Drive and authorizing the City Engineer to execute ownership and maintenance documentation for the Overcrossing

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

Motion carried by a vote of: AYES: 4
NOES: 1 (Barbadillo)

After the vote on this item, at 10:15 PM, the Mayor announced that City Council would take a short break. Council re-convened at 10:33 PM.

14. Resolution – VTA projects Councilmember Nuñez wanted to provide context as to why this item was before the Council. He gave some history.

Transportation Engineer Steve Chan introduced Mr. Jim Lawson from Santa Clara Valley Transportation Authority (VTA) to describe the projects for Milpitas on Calaveras Blvd./ Highway 237 that were proposed to be funded to solve some immediate congestion on that state roadway. There were ongoing efforts through Milpitas leadership to address these challenges. He explained the use of Measure B (2016) funds and introduced Mr. Greg Gonzalez, VTA engineer on the projects - highway program manager.

\$1 million in funds from Measure B were allocated for Highway 237 corridor improvements as a start (per study) in FY 2018-19. Such work could take up to 10 years. Calaveras Boulevard Widening was on target for study as a proposed project with measure B funds. Mr. Gonzalez listed three potential near-term projects:

1. McCarthy Blvd. HOV Bypass – cost \$300,000
2. Calaveras Blvd. Slip Ramp HOV Bypass, with widening - \$800,000
3. Calaveras Blvd. Corridor Improvement Study - \$500,000

Mayor Tran commented on the projects and available funds to be spent. He sought some study of Calaveras Blvd and Abbott area, going into the Manor neighborhood. There was room for improvement there and resources were needed.

Councilmember Nuñez commented on the projects described. He thanked the VTA Engineer for coming to the meeting and for the presentation.

Vice Mayor Grilli thanked VTA staff for information at this meeting and at other meetings too. Just widening the 237 bridge/overcrossing was not sufficient, as she understood from the engineer's explanation. She urged continuing to work with City staff on ideas, especially to find funding for the major study that was needed.

Councilmember Phan thanked VTA staff. He referred to state Assemblymember Kansen Chu, and wondered about his input on this project and process. Mr. Lawson responded to Mr. Phan, stating he looked forward to the three projects as described.

Councilmember Nuñez asked the status of Measure B, due to a lawsuit. He described steps in the lawsuit, which was pending a decision on appeal.

Next, Mayor Tran invited speakers from the audience.

Rob Means, Milpitas resident, asked for some before/after studies on these projects, which were to allow drivers to access the freeways faster. Feedback and results were needed.

Tom Valore, Milpitas resident, thought citizens were promised in Measure B that the widening of Calaveras Blvd. Bridge overcrossing was included with those funds.

Voltaire Montemayor, resident, talked about the bottleneck at the center of town.

Following the presentation by VTA staff on State Route 237 regarding three potential SR237 improvement projects, City Council took the following action.

Motion: to direct staff to coordinate with Santa Clara VTA to implement preferred SR237 improvement projects; and, to adopt Resolution No. 8729 declaring SR237 improvement projects in Milpitas as the highest priority transportation projects for the City

Motion/Second: Councilmember Nuñez/Vice Mayor Grilli

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

Councilmember Nuñez also was looking for funding for the \$500,000 study for all areas, related to Highway 237 since local people cannot easily use 237 for their own. VTA's Mr. Lawson recommended working with VTA staff and to come back on that item.

- *15. Resolution Adopted Resolution No. 8730 initially accepting Jose Higuera Adobe Park Renovations, Project No. 5097; and authorized reduction of the performance bond to \$198,892.76 which shall be in effect for the duration of the one year warranty period; and granting authorization to the City Engineer to release the performance bond after the one-year warranty period without further City Council action provided all warranty work was completed to the satisfaction of the City Engineer.
- *16. Resolution Adopted Resolution No. 8731 approving the sole source purchase of two JWC Environmental Channel Monster Model CDD6020 Grinders from MISCOWater for the not-to-exceed amount of \$225,600, subject to any minor revision of the terms and conditions deemed necessary by the City Attorney.
- *17. Resolution Adopted Resolution No. 8732 amending the Classification Plan to adjust salary ranges for City of Milpitas Part-Time Temporary Classifications effective December 24, 2017, to reflect the changes in the Milpitas Minimum Wage, per Ordinance No. 292.
- 18. Resolution – AB1600 fees This item was not heard and would be continued.

AGREEMENT

- *19. Amendment No. 7 Approved and authorized the City Manager to execute Amendment No. 7 to the Consulting Services Agreement with Mott MacDonald, LLC to increase compensation in the additional amount of \$157,000, and to extend the term to June 30, 2018, associated with land development projects.

REPORTS of MAYOR & COUNCILMEMBERS

None.

ADJOURNMENT

Mayor Tran adjourned the regular meeting at 11:36 PM in memory of Mr. Joe Candelaria.

The foregoing minutes were approved by Milpitas City Council on December 19, 2017.

Mary Lavelle
Milpitas City Clerk