

MINUTES
OF THE
REGULAR MEETING
CLAYTON CITY COUNCIL

TUESDAY, May 5, 2015

1. **CALL TO ORDER & ROLL CALL** –the meeting was called to order at 7:00 p.m. by Mayor Shuey in Hoyer Hall, Clayton Community Library, 6125 Clayton Road, Clayton, CA. Councilmembers present: Mayor Shuey, Vice Mayor Geller and Councilmembers Diaz, Haydon and Pierce. Councilmembers absent: None. Staff present: City Manager Gary Napper, City Attorney Mala Subramanian, City Clerk/HR Manager Janet Brown, City Engineer Rick Angrisani, and Community Development Director Charlie Mullen.

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

3. **CONSENT CALENDAR**

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

(a) Approved the minutes of the regular meeting of April 21, 2015.

(b) Approved Financial Demands and Obligations of the City.

(c) Adopted Resolution No. 13-2015 directing the preparation of an Engineer's Report for calculation of the real property tax assessments in FY 2015-16 for the Diablo Estates at Clayton Benefit Assessment District (BAD).

(e) Adopted Resolution No. 14-2015 approving Addendum No. 1 to the base Memorandum of Agreement with the Clayton Police Officers' Association effective May 5, 2015 through June 30, 2015, unless replaced sooner by mutual agreement.

4. **RECOGNITIONS AND PRESENTATIONS**

(a) Certificate of Recognition to John Blatter, Troop 492, Muir District, Mt. Diablo Silverado Council of the Boy Scouts of America, for his Eagle Scout Project construction and installation of a shade structure in the Clayton Dog Park.

Mayor Shuey presented a Certificate to Eagle Scout candidate John Blatter from Boy Scout Troop 492. During a photo slideshow about the project at the Clayton Dog Park, John explained the planning and installation process for the shade structure.

- (b) Certificates of Recognition to “Do The Right Thing” public school students selected for exemplifying the character trait of “Integrity” during the months of March and April 2015.

Mayor Shuey and Mt. Diablo Elementary School Principal Irene Keenan and Teachers Mrs. Carcamo and Karen Osterkamp recognized students Dylan Gordillo-Wright and Erin Robinson.

Mayor Shuey and Diablo View Middle School Principal Patti Bannister and Teacher Mrs. Cherepy recognized Diyar Kudrat and Julia Deely.

Mayor Shuey and Clayton Valley Charter High School Teacher Mr. Rosewell recognized Alyssa Van Horn, Ashlyn Givens and Samuel Sidhu.

- (c) Kickoff of Clayton’s Certified Farmers’ Market for 2015
“Opening Day” is Saturday, May 9th (8:00 am – Noon each Saturday on Diablo Street)
(Jessica Millender, Regional Manager, Pacific Coast Farmers’ Market Association)

Jessica Millender, Regional Manager, introduced Jennifer Diggs, Clayton’s Certified Farmers’ Market Manager for the 2015 season. Ms. Diggs summarized verbally and by a PowerPoint presentation its 2014 Pacific Coast Farmers’ Market Annual Report for Clayton’s certified farmers’ market.

Ms. Millender and Ms. Diggs presented Mayor Shuey and the City Council with baskets of fresh produce and flowers to share.

Mayor Shuey confirmed the Market’s 2015 start date of May 9th is from 8:00 am to Noon, and it is located on Diablo Street between Main and Center Streets.

5. REPORTS

- (a) Planning Commission – No meeting held.
(b) Trails and Landscaping Committee – No meeting held.
(c) City Manager/Staff – City Manager Gary Napper reported the State Department of Finance recently released its 2015 estimations of population for each city and county in California. Its estimated population for the City of Clayton is 11,288. In 2014, the estimated population was calculated to be 11,209. Mr. Napper advised city population numbers enhance some revenue subventions due the City by state, federal and certain regional governments yet some City annual organization membership fees are also determined by population figures and therefore can cause additional monetary increases.
- (d) City Council - Reports from Council liaisons to Regional Committees, Commissions and Boards.

Councilmember Haydon attended the general membership meeting of the Clayton Business and Community Association.

Councilmember Pierce attended a meeting of the Metropolitan Transportation Commission. She also attended the Clayton Cleans Up! event hosted by the *Clayton Pioneer*, the Gardens Tour hosted by the Clayton Historical Society, and the Clayton Business and Community Association's annual Art and Wine Festival.

Councilmember Diaz attended the general membership meeting of the Clayton Business and Community Association. He was also in attendance at Clayton Cleans Up!, Clayton Business and Community Association's annual Art and Wine Festival, and a League of California Cities event at Campo di Bocce in Livermore. Councilmember Diaz announced he will not be in attendance at the next City Council meeting as he was asked to be an honor guard at the upcoming 60th Anniversary of Disneyland.

Vice Mayor Geller attended a general membership meeting of the Clayton Business and Community Association, and represented Clayton in the East Contra Costa Conservancy meeting. He also attended the Clayton Cleans Up! event, and the Clayton Business and Community Association's annual Art and Wine Festival. Mr. Geller announced the 2015 Saturday Concerts in The Grove have returned with "Department of Rock" as the season opener on May 9th.

Mayor Shuey attended the Clayton Cleans Up! Event and thanked the *Clayton Pioneer* for their continued efforts. He also attended the Clayton Business and Community Association's annual Art and Wine Festival. He advised proceeds from the Art and Wine Festival are reinvested in the Clayton community supporting various projects, local organizations, schools, and scholarships. He also encouraged anyone looking to become a member of the Clayton Business and Community Association to check out their website at claytoncbca.org for more information.

(e) Other – None.

6. PUBLIC COMMENT ON NON - AGENDA ITEMS

Marcy Moss expressed her concerns about safety and security in Clayton's downtown area, specifically The Grove Park, sharing that her son was recently attacked there by another youth. It is her observation that recent activity that has occurred in the area generally increased over time, including vandalism, selling of drugs, bullying and violence; it has made the downtown area undesirable. Mrs. Moss thanked the Clayton Police Department for their increased efforts in patrolling the area; however, additional police presence is needed to include foot patrol and driving around the park. One of the reasons Mrs. Moss and her family moved to Clayton was the area was known as a safe small city.

Mayor Shuey acknowledged his awareness of the incident that took place involving Mrs. Moss' son; he suggested assistance from the Parent Faculty Clubs at Mt. Diablo Elementary and Diablo View Middle schools. They may be able to arrange adult monitoring or have adult presence at The Grove Park after school, especially on early-release school days on Wednesdays and Fridays.

Chief of Police Chris Thorsen acknowledged the incident that occurred to Mrs. Moss's son, although technically it was not at The Grove Park but in the downtown area, along with some of her other concerns of recent activity. Chief Thorsen provided a brief history of the staffing levels at the Clayton Police Department and a snapshot of the Clayton Police Department events that occurred on the day Mrs. Moss' son was assaulted. He further clarified that no one called the Clayton Police Department about the incident; rather, while Clayton police were on patrol they noticed a couple of girls upset near the park and pulled over to find out what happened. Chief Thorsen concluded by noting "safe" does not mean a crime free environment. However, Clayton had only 2 Part 1 crimes in all of 2014.

Mayor Shuey asked if Clayton police officers are present in The Grove Park and surrounding downtown area on patrol after school days on Wednesday and Friday? Chief Thorsen advised officers are indeed on patrol in the downtown area and The Grove Park during after school hours, especially on Wednesdays and Fridays as those areas are the busiest times in the downtown. However, at any time they can be called away by other reported activity. He also added the simplest solution for the community is to save the Police Department telephone number into one's cellular phone so it will be easier to notify the Police Department to report incidents as they occur.

Mayor Shuey added the City Council is unable to take action on this item as it is not an agenda item. He highly recommended parents should consider making more of a presence in the downtown area after school hours.

Vice Mayor Geller thanked the Clayton Police Department for their hard work and asked if the police cadets could be available to patrol the downtown area? Chief Thorsen advised the cadets are not much older than high school students, and reminded the community to please call the Police and not attempt to take matters into their own hands.

Mayor Shuey advised when The Grove Park was in development stages sight-lines and low fences were considerations for police officer visibility from patrol cars. He also added recurring vandalism to the gazebo in The Grove Park has increased with slats being broken frequently and trash and litter worse every Friday.

Councilmember Pierce thanked Mrs. Moss for bringing her concerns to the City Council and the City will follow up with any appropriate solutions.

7. **PUBLIC HEARINGS** – None.

8. **ACTION ITEMS**

- (a) Consider the adoption of Resolution No. 15-2015 awarding a low-bid contract to MCK Services, Inc. in the amount of \$867,373.21 for construction of the 2015-16 Neighborhood Street Pavement Rehabilitation Project (CIP No. 10424).

City Engineer Rick Angrisani presented the staff report noting at the Clayton City Council meeting of February 17, 2015 the City Council directed staff regarding which streets should be included in the 2015-16 Neighborhood Street Pavement Rehabilitation Project based on the industry standard Pavement Condition Index. On April 17, 2015 the City Clerk opened three bids received for the advertised public works project with the lowest bid coming in from MCK Services, Inc. in the amount of \$867,373.21. The bid included paving work, ADA improvements for \$79,200, replacement of Contra Costa Water District valve cans for \$21,735, and the net amount for paving related work for \$766,438.21. The low bid pavement cost was approximately \$78,000.00 higher than the original estimate. The funding shortfall is also exacerbated by the \$79,200.00 for the required ADA curb ramp improvements now mandated by federal law whenever an adjacent street is repaved. To compensate for the funding shortfall, two candidate streets with the highest Pavement Condition Index, Haviland Place and Miwok Way, will be removed from the 2015-16 Neighborhood Street Rehabilitation list at this time. The project is expected to commence the last week of May 2015 with completion expected by the end of July 2015.

Mayor Shuey asked for clarification of the funding resources? City Engineer Rick Angrisani advised funds for the project will come from Gas Tax \$350,807, Measure J per capita and 28A monies totaling \$377,152, the City's ADA compliance program \$28,000 (CIP Project No. 10394A), and Contra Costa Water District will pay for the \$18,270 water valve can work only.

Councilmember Haydon asked if any of the work proposed will occur in the current Fiscal Year? Councilmember Pierce clarified the Measure J funding resource comes from the half cent sales tax passed by voters in 2004, which covers more than half of the estimated project amount. She is also proud our City has one of the highest Pavement Condition Index ratings in Contra Costa County (PCI of 83), and she appreciates the diligence of the City Council and staff in maintaining the streets for betterment of the community; citizens can see their tax dollars at work.

Mayor Shuey asked City Attorney Mala Subramanian if the contract included with the staff report was up to date with current regulations? City Attorney Mala Subramanian responded she reviewed the contract and confirmed it is up to date with current regulations.

Mayor Shuey opened the item to receive public comments; no public comments were offered.

It was moved by Councilmember Pierce, seconded by Councilmember Haydon, to adopt the Resolution approving and authorizing the execution of a contract in the amount of \$867,373.21 with MCK Services, Inc. for the 2015 Pavement Rehabilitation Project (CIP Project No. 10424). (Passed; 5-0 vote).

- (b) Consider Resolutions authorizing participation in the State of California Property Assessed Clean Energy (PACE) Programs within the city of Clayton, consisting of the CaliforniaFirst, the Figtree, and the HERO Programs.

Community Development Director Charlie Mullen presented the staff report noting one of the City of Clayton's 2015 – 2023 Housing Element Goals is to encourage and maintain energy efficiency in new and existing housing stock and explore home energy and water efficiency improvement financing opportunities available through PACE Programs such as HERO or Figtree. In 2008 the State of California approved Assembly Bill 811 amending the Improvement Act of 1911, allowing cities and counties to establish voluntary contractual assessment programs to fund an array of conservation and renewable energy projects proposed by private real property owners. PACE programs allow residential and commercial property owners located within a participating district to finance up to 100% of the cost for energy and water efficiency and renewable energy projects with little or no up-front costs, and then pay it off overtime as a voluntary property tax assessment through their existing property tax bill. A PACE program is merely one financing option to conventional loans or cash payments for such improvements. In order for private property owners in a jurisdiction to access PACE financing, the jurisdiction must create or join an existing special tax district which specifically authorizes contracts between that special tax district's PACE program administrator and property owners seeking PACE financing.

Mr. Mullen advised that all three PACE program operators were invited to send representatives to attend the City Council meeting this evening to provide answers to any questions the City Council may have about their programs. Only Ms. Oriana Yanes, a representative from the HERO program, is in attendance this evening.

Vice Mayor Geller expressed his concerns of homeowners potentially over extending themselves financially on a loan for energy saving improvements based on their home equity.

Oriana Yanes, a representative from the HERO program, advised the financing portion of the HERO program is designed to work within the current financial means of the homeowners. She outlined several of the qualifications required for consideration such as not being late with current property tax payments in the last twelve months, current equity of the home must be at least 10% of the value, and no active bankruptcies in the past seven years. Ms. Yanes advised about 70% of the initially-interested buyers qualify for HERO financing and some of the interest from the loan is tax deductible.

Councilmember Haydon asked if other Energy Efficient Home Loans are available? Ms. Yanes advised there are indeed other financing options available to the consumer.

Mayor Shuey asked if the JPA the City is required to join is ever sued, must the City provide the funds for its defense or will the JPA indemnify member cities? City Attorney Mala Subramanian advised Indemnification language is included in the contract with each PACE program. Ms. Subramanian advised she can answer for the Figtree program but her law firm represents the HERO program in Riverside and that presents a conflict of interest for her to advise the Council regarding the HERO program. Further staff research will need to be conducted regarding the question of City indemnity by Joint Powers Agreements. If that is the pleasure of the City Council, staff could provide the JPA responses at the next regular City Council meeting.

Mayor Shuey advised he would like to continue this item for clarification of indemnification of the City by the special district or the JPA facilitating the PACE programs before making a decision whether this City should provide its citizens with the State of California Property Assessed Clean Energy Program options.

City Manager Gary Napper noted it may not be likely such indemnity will be offered by the parent JPA or special district and in that event it will be a policy decision for the City Council whether the community benefit is worth the potential risk or exposure.

Mayor Shuey opened the item to receive public comments; no public comments were offered.

No formal action was taken on this item. The item was continued to the next regular City Council meeting.

- (c) Continued discussion of current land use designation(s) for ground floor land uses and alternative(s) for possible amendments to the City's General Plan Zoning Code, and/or Town Center Specific Plan concerning public and privately-owned real properties in the Clayton Town Center (downtown).

City Manager Gary Napper referred the City Council to the overhead display of a property owner map of the Clayton downtown area; the City owns several parcels in the downtown area with several marketed for sale. He indicated the City Council recently renewed its contract with Transwestern commercial brokerage following one year of listing and the City did receive a few offers involving limited retail commercial land uses on ground floor adjacent to the street but incorporating other types of residential use on the remaining portions of land. Given Transwestern's extensive outreach to retailers, potential commercial investors indicate the property locations are remote and removed from major retailers and preferred population numbers. The policy question before the City Council is if it is willing to allow for different uses on ground floor other than what the property is zoned for, and if so what types of land uses would be of consideration? Mr. Napper then introduced Mr. Colby Mikulich, Vice President handling commercial retail with Transwestern, and Mr. Matt Hatfield with Transwestern, for further input and response to Council questions.

Colby Mikulich advised the properties available in Clayton are about 1/5th the size preferred by today's retailers. Mr. Mikulich attends the International Conferences of Shopping Centers which allows for immediate face-to-face meetings with potential retailers on available properties; unfortunately, the lack of population density is a huge issue with the properties listed in Clayton. The population density is typically based on a 1-5 mile radius and insufficient numbers exist to attract commercial retailers.

Vice Mayor Geller asked if it would be okay to discuss the offers that have been presented to the Council Sub-Committee on Economic Development and City staff? City Attorney Mala Subramanian advised the City Council itself must vote and agree to talk about land offers received before releasing any closed session information. City Manager Napper referenced the Brown Act which expressly

allows a City Council to discuss real property offers in closed session so as not to disturb sensitive negotiations and confidentialities. Councilmember Pierce indicated she would not choose to discuss the particulars of the offers received publicly but did add each offer did not fully comply with specific Town Center uses.

Mr. Mikulich advised new construction retail costs approximately \$350 per square foot to build, while an existing structure costs approximately \$165 to \$250 per square foot.

Councilmember Pierce asked how the City Council should go from here; offers received to date were not the vision it was looking for yet the property has not been developed for the last 25 years. Will the property become more viable in the next 10 – 20 years? She expressed concerns of the unreimbursed expenses for Transwestern to continue marketing the City properties for commercial land uses not attracting any retail developers, and thought a better route might be to have developers make suggestions for the development of the City's properties.

Mr. Mikulich added communication is a priority when asking venue developers what they can bring to the City; he expressed the continued interest of Tranwestern to represent the City on these opportunities.

Mayor Shuey invited former Mayor Pete Laurence to provide his input on the Town Center. Mr. Laurence inquired on the listing price of the available properties?

City Manager Napper advised no price was specifically set on the City -owned parcels as the City wanted to be open to negotiate any possibility. The City has approximately \$1.044 million invested in the larger parcel which was purchased from the Clayton Community Church; the three smaller parcels on Oak Street were acquired long ago by the City and have an entitled mixed use development plan approved by the City through its former Redevelopment Agency.

Mayor Shuey added the Council Sub-Committee on Economic Development decided not to list a price to allow the opportunity for more options on the properties.

Pete Laurence responded no wonder no offers have been made; who would buy a home that did not list a price? He advised the vision of the Council for the Town Center was to not become a Walnut Creek or Concord; rather, keep the downtown community friendly for events such as the 4th of July parade, Clayton Business and Community Association's annual Art and Wine and other community events which currently draw thousands of people to Clayton. He does not favor the idea of changing the feel of the downtown area; the City should be promoting this area as a starting point for hikers and the variety of trail systems available, we are still coming out of an economic recession and it would be shortsighted to sell now; wait another 3-4 years until 2019 and people will be knocking down the door to get property in Clayton for retail. He is against any ground floor space for residential.

Councilmember Haydon would like to keep the focus on the City owned parcels and find a way to make them more marketable for additional revenue.

Vice Mayor Geller referred a timeline of City studies of the Downtown distributed by staff at this meeting noting numerous contractual studies have already been conducted on the downtown: December 1988 a Market Analysis/Study for the Town Center Specific Plan; July 1998 a study on economic development potentials; December 1998 land use/site analyses; and September 2008 Downtown Retail Study Report and Recommendations (paid by Clayton Redevelopment Agency). He prefers to listen to today's experts and their ideas on a viable downtown. The City has built a wonderful park to draw the community to the downtown and Lemke built a shopping center. He posed several questions regarding the Town Center: Would retail survive? Stay open? How much retail does Clayton need? Would there be any other mixed uses that we would consider?

Pete Laurence responded when those discussions of the downtown area occurred, sewers and other improvements were not in place.

Councilmember Diaz would like to continue the current process with Transwestern and would encourage more input and rational decisions on how to proceed.

Mayor Shuey likes the idea of asking the developers present suggestions for the development of the properties to the Council Sub-Committee on Economic Development or the City Council.

Mr. Mikulich indicated Transwestern will shortly attend an upcoming International Shopping Center convention in Las Vegas and will still market the City-owned available properties in downtown Clayton at the convention.

Councilmember Haydon understands the community's sensitivity to the Clayton downtown area and would like suggested uses to be initially presented to the Council Sub-Committee on Economic Development with a report to the City Council and community input on any changes made to the Town Center plan.

Mayor Shuey opened the item to receive public comments; no further public comments were offered.

No formal action was taken on this item; there was general Council consensus to allow Transwestern to market the City-owned properties for other uses and potentials.

9. **COUNCIL ITEMS** – None.

10. **CLOSED SESSION**

- (a) *Government Code Section 54957.6*, Conference with Labor Negotiator.
Instructions to City-designated labor negotiator: City Manager
Employee Organization: Clayton Police Officers' Association (CPOA)

On announcement by Mayor Shuey, the City Council went into Closed Session for the purpose noted above at 9:30 p.m.

Report Out from Closed Session (10:24 p.m.): Mayor Shuey reported the City Council received information from its negotiator and gave general direction to staff.

11. **CONTINUE REGULAR MEETING**

It was moved by Councilmember Pierce, seconded by Councilmember Haydon, that the City Council continue this Closed Session matter to an Adjourned Regular Meeting to be held in the 1st Floor Conference Room of Clayton City Hall, 6000 Heritage Trail, Clayton, CA, on Tuesday May 12, 2015 at 9:00 a.m. (Passed, 5-0 vote).

12. **ADJOURNMENT**— on call by Mayor Shuey, the City Council adjourned this meeting at 10:25 p.m. to Tuesday, May 12, 2015 at 9:00 a.m. in the 1st Floor Conference Room of Clayton City Hall.

The next regularly scheduled City Council meeting is May 19, 2015.

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Respectfully submitted,



Janet Brown, City Clerk

APPROVED BY CLAYTON CITY COUNCIL



David T. Shuey, Mayor

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