

MINUTES



**PARKS & RECREATION COMMISSION
SPECIAL MEETING
November 13, 2003
Palo Alto City Hall
City Council Chambers
250 Hamilton Avenue**

Commissioners Present: Ann Cribbs, William Garvey, Ellie Gioumousis, Jennifer Hagan, Edie Keating and Lynn Torin

Commissioners Absent: Judith Steiner

Others Present: Wynne Furth, Acting City Attorney and William Fellman, Real Estate Manager, Vic Ojakian, City Council Liaison

Staff Present: Dan Williams, Paul Thiltgen, Richard James, Kate Rooney, Dawn Calvert, Virginia Gibbons

CALL TO ORDER: Meeting called to order by Bill Garvey at 7:05 pm

ROLL CALL: Conducted by Virginia Gibbons

AGENDA CHANGES, REQUESTS, and DELETIONS: None

ORAL COMMUNICATIONS:

Paul Thiltgen addressed the Commission regarding his pending retirement thanking the Commission for all the work and effort they have put in. He stated that this especially came through as staff talked about the Terman issue, how the Commission took a stand, and that everyone was really pleased with the Commission's work on the issue. Paul thanked the Commission for all the work that will be done in the future, stating that there will be many things coming up that will require the Commission's input. Paul continued by stating that he will only be here another month and did not think it appropriate to just go wondering off in the distance without personally talking to them. He went on to say that he'd had fun and enjoyed working with them over the past four years and that the City of Palo Alto needed to have a Commission of this type. For those up for renewal, he hoped they would come forward and be a part of the Commission again because their efforts will be really important. Paul concluded by thanking the Commission and wishing them good luck.



APPROVED

Commissioner Torin responded, thanking Paul as the person who had gotten the Commission started, continued to act as staff support for several years, and was invaluable in how much he had done for the Commission and the people that enjoy the Palo Alto community. Commissioner Torin went on to say that Paul had contributed immensely and immeasurably to the city of Palo Alto by his years of service, devotion and contribution, and that as one individual, she wished to say thank you.

BUSINESS

1. **Approval of draft minutes of October 28, 2003 Regular Meeting.** The minutes were approved pending two changes: the addition of Commissioner Anne Cribbs to the attendee list and clarification of a vote by Ellie Gioumousis.
2. **Updating the Greer Park Master Plan.** Richard James introduced Kate Rooney to the Commission as the Project Manager for the Greer Park Master Plan and went on to give some background information on this issue. He explained that the fields issues were reviewed very seriously by the Athletic Field Advisory Committee whose recommendations were forwarded to the Commission. The Commission considered the recommendations, and agreed with them. They were approved and forwarded to the City Council, who then reviewed the recommendations and conceptually approved them.

One of those ideas was to take the 1.5 undeveloped acres at Greer Park and turn it into a grass or synthetic turf field. In order to proceed, it is necessary to change the Greer Park Master Plan. The original master plan has undergone changes over the years. The undeveloped acreage was at first intended to be a community center and that changed in the 80's to tennis courts. Since that time, nothing has been done. Staff is now asking the Commission to go forward with the process of changing the master plan and to hold public hearings with neighbors and users of the park to receive their input and formulate a recommendation as to whether or not the master plan can be changed. Staff is asking that this time be scheduled, either at a special meeting or at the January 2004 regular meeting, and then the Commission make a recommendation on whether or not to change the master plan to athletic fields instead of tennis courts.

A question and answer session ensued with the Commissioners asking for clarification of the map and the acreage in question. Richard clarified the map issues and explained that the focus is only on the 1.5 acres of undeveloped land in Greer Park.

MOTION: Commissioner Hagan made a motion to hold public hearings as requested by staff. Motion seconded by Commissioner Cribbs. FOR: 6 (Cribbs, Garvey, Gioumousis, Hagan, Keating); AGAINST: 0



APPROVED

This item will be placed on the January 2004 regular meeting agenda and a notice of public hearings will be posted within throughout Greer Park and the Mitchell Park Community Center, and tennis groups will be notified.

Oral Communications

1. Tom Jordan, 474 Churchill Avenue: I am against staff recommendation to move this ordinance (minor exchange of dedicated parkland) on to City Council for enactment because it violates the City Charter. In 1965, this was passed when people voted on the Charter. It was explicit that nothing can be done regarding the parks without a vote of the people. Ordinance cannot change the Charter.

The appendix attached to the Charter is not part of the Charter. It is for reference and details the sequence that must be followed to make changes to any park. There are sixteen sections to the appendix. The only section that does not pertain to election procedures is the section that the City Attorney's office refers to as this minor exchange. They are using a section that does not apply.

As enacted and in the mind of everyone in 1965, is that the City Council cannot do anything with parks (disposing of, etc.) except by vote of the people. Approving this ordinance would permit the City Council to dispose (exchange) of parkland contrary to the Charter.

There is a way to do this, but if you do it this way, it will be messy and make a lot of people angry. There are better ways. Number one would be for the school district to move its property off the parkland. The second way, Council should put this ordinance in front of the voters to add to the Charter. If it's drawn tightly enough, I'm not sure there will be much opposition. I'm not opposed to efficiency, but I am opposed to wrong procedures and this is the wrong procedure and not the way to go.

2. Emily Renzel, 1056 Forest: I agree with Tom Jordan's remarks. I'd like to read from a extemporaneous statement made by Enid Pearson in 1965 when this matter was going before the voters. "Palo Alto parks must be protected by Charter amendment, not by ordinances that can be amended by the Council alone..... Changes must be made by the electorate." I'd like to reiterate that Tom Jordan's remarks be heeded and park procedures be followed.
3. Herb Borock, PO Box 632: I agree with Tom Jordan. The 1965 Charter contained a lot of words, the 1969 amendment condensed the Charter and changed the number of votes required to have the Council place removing something from park dedication on the ballot. State law of 2/3 votes that was included in the 1965 Charter, was amended in the 1969 Charter revision making that a majority vote. The reference to state law is only on how to hold the election.

Ariel Calonne's prior statements impeach his statements in the staff report for the Parks and Recreation Commission. Both statements relate to the 13 acre Bressler property. City



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Council minutes of November 15, 1990, the bottom of page 65-28 and the top of 65-29, Mayor Cobb asked if Council didn't dedicate the 77 acres across the road from the Bressler property, could Council do a property exchange if land weren't already dedicated. Mr. Calonne said he believed that once the property was dedicated, that the effect of the 1969 amendments to the Charter were to require a vote of the electorate for any process, which would undedicate the dedicated park property.

Again on March 25, 1991, Council minutes page 66-18, Councilmember Kniss asked for clarification regarding a swap issue. Mr. Calonne stated that the City Charter contained a reference to a California government code provision purported to allow a minor exchange of parkland for contiguous property. He opined those provisions in state law were not part of the City Charter and therefore, not applicable. Once dedicated, he did not believe Council had the authority to undedicate without a vote of the people. Councilmember Kniss clarified that any swap proposal would still require a vote of the people? Mr. Calonne stated that was correct. The language of the Charter is clear.

3. **Minor exchanges of Dedicated Parkland and Walter Hayes/Rinconada Park Encroachment.** William Fellman (Real Estate Manager) explained to the Commission that two items were combined together in Item #3. The first part of the issue is to clarify the code section to implement Article VIII of the City Charter and the second part of the issue is to rectify a problem created by the school district when they encroached into City parkland. This encroachment amounts to 8,405 square feet, or about 1/5 acre.

Commissioner Garvey asked Wynne Furth (Acting City Attorney) for the City Attorney's viewpoint on the issue.

Ms. Furth stated that we do believe the City Council can elect to adopt this procedure and then implement it. It is important to keep in mind that the issue is not whether or not the voters should be allowed to approve such a swap; the issue is how would you get it to the voters. If council elects not to adopt an ordinance like this, then our recommendation would be that when they want to do such a minor swap, they go directly to the voters. The alternative is to do what we do to most alterations of parkland, and that is to prepare an ordinance. The reason we have an ordinance for park improvements is that all ordinances can be subject to referendum, so in that case there are concerned citizens who wish to have this presented to the voters, we can do so.

State law that set this up was designed to protect parkland. They distinguish between procedures for disposing/abandoning parks and essentially minor adjustments. The State did not define minor. What City Council is seeking, is guidance from you on; if you think it's a good idea to have a provision regarding land swaps, do you think minor should be more specifically defined? Second, whatever the process the City Council believes is appropriate here, do you think this is an appropriate occasion for land swap?

APPROVED

It's always complicated when there's a disagreement on legal powers. The City Council picks its counsel (City Attorney) and you, as Commissioners for the City, are entitled to rely on their (City Attorney) advice. So you are entitled to say that assuming this is correct, what would we (the Commission) recommend?

Commissioner Garvey asked if Council decided to amend the City Charter to allow the City Council the discretion to swap parkland, what would be the process, timing, etc.?

Ms. Furth explained that they would place a Charter amendment on the ballot and it would be scheduled for an election, probably at the next election.

Vic Ojakian (City Council Liaison) commented that he concurred with the City Attorney's statement and went on to say that it is his hope that the Parks and Recreation Commission (as the Council's advisory body) would hear this issue and provide an explanation as to why, or why not the Council should have the ability to swap minor portions of parkland.

Commissioner Hagan asked if she understood the City Attorney to say that the Commission has the option of ignoring the Charter because there is an opportunity for referendum of ordinances?

Ms. Furth stated no, that the Commission is entitled to an understanding of the Attorney's advice, and that if the Commission disagrees with the advice, they are entitled to do so. It could not be the advice of the Attorney to ignore the Charter and that the City Attorney's advice is consistent with the Charter.

Commissioner Gioumouisis remarked that anything going to be permanently changed could "open a big can of worms" and went on to say that she would like to see the Charter strictly held to, that it had been a hard fought battle for the parks ordinance and a valuable ordinance to have. She continued that she would be in favor of postponing the issue and having the amendment ordinance along with the regular election.

Commissioner Garvey stated that he believed in streamlining the process and giving Council the ability to swap minor portions of parkland and that it made enormous sense. However, with everything depending on legal issues, it appears that park and recreation land in Palo Alto are so scarce that they need to be thoughtfully well protected. He recommended that the Commission recommend to the City Council that an amendment to the City Charter be put in front of the voters, which allows Council to make minor parkland decisions. This issue is so important, despite legal advice the voters ought to weigh in.

Ms. Furth stated that the Attorney's Office has no recommendation on whether the Commission should be for or against the issue. The advice is only about whether or not the City Council should have the choice to make. The Attorney's Office does not have an opinion on whether or not this is desirable.

APPROVED

Commissioner Hagan had previously passed out two documents from Enid Pearson that were delivered to the PARC's July 2003 meeting. Commissioner Hagan explained that the letter reflects Ms. Pearson's understanding of the initiative when it was originally passed and what the legislative history was behind the passage of the ordinance. The second document containing two pages, noted that it came from the minutes of the regular meeting of City Council dated March 25, 1991, page 14. It is the discussion referenced by Mr. Borock between Councilmember Kniss and City Attorney Ariel Calonne. Commissioner Hagan suggested that the Commission take the advise of counsel in 1991 when the City Attorney stated to City Council that land swaps were not provided for by the Charter.

Commissioner Hagan read into the record, "Councilmember Kniss asked for clarification regarding the swap issue, City Attorney Ariel Calonne said the City Charter contained a reference to the California government provision which purported to allow an exchange of minor portions of dedicated park land for contiguous properties. He opined that the provision of state law were not part of the City Charter and therefore, not applicable. Once dedicated, he did not believe the Council had the authority to undedicated through any means without the vote of the people," and went on to say that the ordinance now being proposed is 100% contrary to Mr. Calonne's 1991 interpretation.

Commissioner Hagan went on to say that we have legislative history before us and that since we have the interpretation the City Attorney made to City Council in 1991, we should not approve this ordinance as proposed today.

Commissioner Keating asked Commissioner Hagan if she felt that there should not be an ability by Council to do land swaps and if she thought it would be against the interest of the City to change this?

Commissioner Hagan responded that in her opinion the City Council does not have the authority and that it can only be done by the majority vote. Commissioner Hagan went on to state that she is not making any statement about whether or not it would be in the interest of the City, only that the City is asking for the wrong procedure at the current time.

Commissioner Cribbs remarked that it is her feeling is that a Charter amendment is the way to go.

Commissioner Torin felt that the public comments were most persuasive, but stated that she is not persuaded by the question of the size of the land swap. In her mind is the question of the precedent set by such a land swap. The Commissioner stated that they (PARC) had been clearly instructed by the Council and that it is not the Commission's prerogative to make any decisions regarding the legalities or illegalities of the issue. This is a serious matter regardless of the size and that the Council should take a look at this again and look at the precedence this sets.

APPROVED

MOTION: Commissioner Garvey made a motion to recommend that Council do not adopt the ordinance in front of us this evening. If Council deems it appropriate for them (Council) to have the ability to make minor land swaps of dedicated parkland, that Council put it in front of the voters as a revision to the City Charter.

Commissioner Hagan requested that the motion be broken into two recommendations, which was seconded by Commissioner Torin.

MOTION: Commissioner Garvey made a motion to recommend that Council do not adopt the ordinance in front of us this evening. Motion seconded by Commissioner Hagan. FOR: 6 (Cribbs, Garvey, Gioumouis, Hagan, Keating, Torin); AGAINST: 0

MOTION: Commissioner Garvey made a motion to recommend that If Council deems it appropriate for Council to have the ability to make minor land swaps of dedicated parkland, that Council pursue it by putting the issue it in front of the voters as a revision to the City Charter.

Commissioner Gioumouis commented by reading from Enid Pearson's statement, "What we the authors of the park dedication had in mind was to make very sure that it would be very hard to eliminate, exchange or change parkland without a vote of the people. Commissioner Gioumouis then stated that the ordinances are very clear, no changes of use, no swaps of land, no matter how small without a vote of the people. Commissioner Gioumouis stated that she agreed with the ordinance that she would vote against this recommendation.

Commissioner Torin stated that she does not recommend that council go ahead with this ordinance as proposed.

The commission continued with a discussion of their views of the issue including the definition of minor swaps and giving Council this authority. Commissioner Torin asked Ms. Furth, "did I understand you to state that Council has that power now?"

Ms. Furth responded yes. That the Commission has adopted a motion saying essentially that whether Council has the power or not, this issue is so important that it should be done by a Charter amendment if Council is going to do it. The Attorney's Office does not disagree on that point. If the voters of this city want to authorize Council to do minor land swaps, the voters can do that. Mr. Ojikian was asking for the Commission's view on having the properly defined land exchange power. The alternative to that is to decide on a case-by-case basis. Either alternative would go on the ballot.

Commissioner Keating offered a substitute motion at which, Commissioner Garvey withdrew his prior motion.

APPROVED

MOTION: Commissioner Keating made a motion to recommend that City Council pursue a Charter amendment that enables them to have the ability to swap minor amounts of parkland with minor to be defined either as currently proposed or more strictly. Motion seconded by Commissioner Garvey. FOR: 6 (Garvey, Hagan, Keating, Torin); AGAINST: 2 (Cribbs and Gioumouis)

AGENDA FOR JANUARY 27, 2004 MEETING

1. Public Hearings on Greer Park Master Plan

ANNOUNCEMENTS

Commissioner Garvey announced that he will not reapply for a seat on the Commission at the expiration of his term. He thanked staff and the Commission for their years of support and hard work and stated that he enjoyed working with staff and Council liaisons during his time as a Commissioner.

ADJOURNMENT

Meeting adjourned at 8:15 pm.

