



**MONTE SERENO CITY COUNCIL  
MINUTES**

**August 4, 2009**

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**REGULAR MEETING CALLED TO ORDER**

At 7:30 p.m., Mayor Wright called the meeting to order.

**PLEDGE OF ALLIEGIENCE**

**ROLL CALL**

Present: Council Members Anstandig, Garner, Malloy, Perry, and Mayor Wright

Absent: None

Staff Present: City Manager Loventhal, City Attorney Powell, Associate Planner McGranahan and City Clerk Chelemengos

**ORDERS OF THE DAY**

No changes were made.

**ORAL COMMUNICATIONS**

Carlos Novillo, Los Gatos, spoke with regard to litigation and complained about construction outside the allowable work hours as well as the keeping of chickens on a property located on Poppy Lane.

Ray Davis, Los Gatos, spoke with regard to broadcasting the Council meetings and pollution produced by a company in the county near the City of Cupertino.

**WRITTEN COMMUNICATIONS**

None

Council Member Anstandig requested that Item # 1 be removed from the Consent Calendar stating that he had been absent, but would like to vote on the remainder of the Consent Calendar.

**CONSENT CALENDAR**

1. Approve Minutes of July 21, 2009 City Council Meeting

Mayor Wright moved to approve the minutes. The motion was seconded by Council Member Garner and the motion passed with a 4-0 vote. Council Member Anstandig abstained.

2. Approve Warrant List in the amount of \$130,458.70
3. Consider Master Agreement and Program Supplement for the Federally Funded Daves Avenue Overlay Project
4. Award Bid and Authorize City Manager to Execute Contract for 2009/2010 Daves Avenue Overlay Project

Council Member Perry moved to approve the Consent Calendar Items 2 through 4. The motion was seconded by Council Member Malloy and the motion passed with a 5-0 vote.

### **PUBLIC HEARINGS**

5. SS-09-21 and V-09-04 - 18510 Hillview Drive - Property Owner: Holden

The applicant requests approval for a Site Development Permit for an addition to a second story deck, an addition of 121 sq. ft. to the first floor of an existing two story residence and an existing non-conforming 400 sq. ft. garage. The applicant also requests a Variance to allow reconstruction of an existing non-conforming deck with a front yard setback of 14 feet where 25 feet is required and a side yard setback of 7 feet where 15 feet is required and for an existing non-conforming garage with a front yard setback of 5 feet where 25 feet is required. The applications were previously reviewed and recommended for approval by the Site and Architecture Commission.

Associate Planner McGranahan provided a staff report and answered questions from the Council.

City Attorney Powell spoke with regard to the Variance procedure. She stated that no building permits have been located for the deck to prove that the deck was built legally. Therefore, she explained, the City considers the deck illegal nonconforming, which requires the owner to seek a Variance to rebuild the deck as a legal non-conforming structure.

Council Member Perry disagreed with the Attorney's opinion with regard to the necessity of the Variance to make the deck legal non-conforming. He stated that he thinks the applicant should be allowed to maintain the deck without obtaining a Variance and that the City should have to bear the burden of proof that the deck was built without a permit.

City Manager Loventhal explained that regardless of whether the deck was built with or without permits, the deck is non-conforming to today's setback requirements and since the owner wants to replace/rebuild more than 75% of the structure, a Variance is needed. City Manager Loventhal then explained that the request for the garage Variance is necessary to allow for modifications in the future. He stated that applying for the Variance now, without pending construction plans, was an attempt to streamline the process and eliminate the need for the owner to have to submit another Variance fee and go through the Variance process again, should he want to repair or rebuild the garage in the future.

Mr. Holden, applicant, provided information on the subject deck and stated that the deck is old and unsafe. He further explained that he would like to obtain a Variance for all non-conforming portions of the house in the event of a fire or some other catastrophe in order to be allowed to rebuild the house and garage if needed.

At 8:05 p.m., the Public Hearing was opened.

Mike Amini, Craftsman Guild, spoke with regard to Monte Sereno's procedures. He stated that the Council should allow more decisions to be made at staff level to expedite construction projects.

Since there was no one else wishing to speak, the Public Hearing was closed at 8:07 p.m.

Mayor Wright clarified that a Variance is dictated by state law and required to come before City Council.

There was Council discussion.

Council Member Garner inquired if there was another feasible location for a garage. She also inquired about fire department access and safety issues with the location of the garage. Council Member Garner went through the Variance findings and stated that she could make the findings.

Mayor Wright stated that he could not make the last finding and could not support a Variance for the entire house and garage absent development plans.

Council Member Anstandig inquired about the duration of a Variance.

City Manager Loventhal explained that a Variance runs with the land and answered question from the Council with regard to the non-conforming nature of the building and issues relative to rebuilding should the structures be destroyed.

Associate Planner McGranahan provided information on the project and the requested Variance.

Council Member Malloy stated that she had no problem with a Variance for the deck, but could not support a Variance for the other existing nonconformities.

Council Member Perry stated that in the case of a fire or other destructive disaster, he would like to see the applicant be able to rebuild the house, but that he cannot support a Variance for something not yet planned. He spoke in support of the Variance for the deck.

In response to Council Member Anstandig's question, City Attorney Powell explained that a blanket Variance for the garage and house would allow for reconstruction of garage/house if destroyed.

Mayor Wright moved to deny the Variance request for the garage. The motion was seconded by Council Member Malloy and the motion passed with a 3-2 vote. Council Members Anstandig and Garner voted No.

Council Member Malloy made the required findings and moved that the City Council grant the Site Development Permit (SS-09-21) for an addition of 121 sq. ft. on the first floor of an existing two-story residence and a Variance (V-09-04) for the front yard setback of 14' for the deck where 25' is required and a side yard setback of 7' for the deck where 15' is required. The motion was seconded by Mayor Wright and passed with a 5-0 vote.

## **UNFINISHED BUSINESS**

### 3. Discuss Civic Facility Master Plan Process

City Manager Loventhal provided background information on the Civic Master Plan and introduced Pamela Anderson Brule of Anderson Brule Architects.

Pamela Andersen-Brule, Architect, provided a presentation on the Master Plan project and answered questions from the Council.

There was Council consensus to direct staff to draft a contract, for future consideration by the Council, to begin Phase II of the Civic Facility Master Plan.

### 4. Discuss Potential Annexation Process for Unincorporated Urban Pockets

City Manager Loventhal provided a staff report and background information on the potential annexation of county pockets. He discussed property tax revenue and costs relative to repairing and maintaining the infrastructure. City Manager Loventhal also provided information on the annexation process and answered questions from the Council.

John Lamber, Matilija, spoke in favor of annexation. He stated that he had purchased property with the intention that the annexation would eventually happen.

Jo Ann Peth, resident, expressed concern with the Council considering the matter two years after the matter had been met with such great opposition. She stated that the annexation would be a significant impact to the City and urged the Council not to proceed with annexation until the residents of those County parcels request annexation. She stated that the matter should be widely publicized and all involved be allowed to comment on the matter. She stated that to annex the properties without the property owners consent would be undemocratic.

Mayor Wright stated that Cupertino and Saratoga have proceeded with annexation. He further stated that there have been changes since the matter was last considered and that there is less opposition. Mayor Wright noted that annexation is a goal of the Council and that he feels the right time to annex may be now.

Council Member Malloy inquired about the West Road area and if the County could be convinced to repair the road as a part of an agreement to annex. She stated that she suspected the County might withhold services to the County residents to pressure them into accepting annexation. She stated that she feels that the City would benefit from annexing the pockets by gaining control over development and that the residents would also benefit from the added services and protection. She spoke in favor of moving forward with the process to gather input from the residents.

Council Member Anstandig stated that he could support exploring the issue of annexation and gathering input from the affected property owners. However, he stated that he did not feel that the matter needed to be rushed.

Council Member Perry agreed with Council Member Anstandig's comments. He stated that he has not taken a position on annexation, but would like the opportunity to discuss the issue with the residents.

Council Member Garner expressed concern about the financial impact an annexation would have on the City. She stated that she recalled the strong opposition voiced two years ago, and in light of the recent negative press, she is cautious about opening up another issue that may be a potentially negative subject. She stated that should the Council choose to pursue the matter, she would not be in favor of fast tracking the matter and urged the Council to give ample amount of time for public consideration and input. She reported that she had received two phone calls expressing opposition.

Council Member Anstandig agreed that he too would like more information on the associated costs to the City.

Council Member Garner requested that Council direct staff to provide notices to not only the property owners whose property is subject to annexation and those within 300 feet, but to all the property owners of Monte Sereno, since annexation would impact the City as a whole.

Mayor Wright suggested that at the September 1 Council meeting the staff provide information on the costs associated with the subject annexation and that a public hearing on the matter be scheduled for September 15.

Following discussion, there was consensus to accept Mayor Wright's suggestion to consider financial analysis of the annexation on September 1 and hold the first public hearing on September 15 and direct staff to provide notices to the property owners whose property is subject to annexation, those properties within 300 feet and all Monte Sereno property owners.

#### **NEW BUSINESS – None**

#### **COMMITTEE/COMMISSION REPORTS**

The Council Members reported on their various committees/commissions as assigned.

#### **CITY MANAGER'S REPORT**

City Manager Loventhal reported on various administrative matters.

At 9:51 p.m., Mayor Wright adjourned the open session to closed session.

**CLOSED SESSION**

Pursuant to Government Code Section 54956.9 (a) the Council will meet in Closed Session to Discuss Existing Litigation –

- Padgett et.al. vs. Loventhal et.al. (C04-03946JW) United States District Court for Northern District of California, San Jose Division

**RECONVENE TO OPEN SESSION**

At 10:27 p.m. the meeting was reconvened to Open Session.

**REPORT ON ACTION TAKEN DURING CLOSED SESSION**

Mayor Wright reported that there was nothing to report

**ADJOURNMENT**

At 10:27 p.m., Mayor Wright adjourned the meeting to 7:30 p.m., Tuesday, August 18, 2009 to be held in the City Council Chambers located at 18041 Saratoga-Los Gatos Road, Monte Sereno, and California.

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A. Curtis Wright, Mayor

ATTEST:

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Andrea M. Chelemengos, City Clerk