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March 31, 2003

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:35 p.m.

PRESENT: Beecham, Burch arrived at 6:00 p.m., Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar

ABSENT: Ojakian

CLOSED SESSION

1. Public Employee Performance Evaluation  
Subject: City Clerk Donna Rogers  
Authority: Government Code section 54957

The City Council met in Closed Session to discuss matters involving public employee performance evaluation as described in Agenda Item No. 1.

**Mayor Mossar announced that no reportable action was taken on Agenda Item No. 1.**

ADJOURNMENT: The meeting adjourned at 6:40 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:45 p.m.

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar, Ojakian

SPECIAL MEETING

1. Tim Corrigan Presentation: South Bay Salt Pond Restoration Project from the State Coastal Conservancy

Clyde Morris, Refuge Manager, Don Edwards San Francisco Bay National Wildlife Refuge, said the acquisition of the South Bay Salt Pond occurred in March 2003. It included 16,500 acres of commercial salt ponds from Feed tidal or the salt making rights left over from the refuge property, and cost \$100 million. Most of the funds came from the State, while lesser portions came from the Fish and Wildlife Service and foundations. He showed a power point presentation outlining the breakdown of the restoration project. The interim management objectives included maintaining the habitat values for wildlife, ensuring the ponds were maintained in a way that did not interfere with long-term restoration, maintaining existing levels of flood protection, minimizing impacts to the bay and, where feasible, restoring several ponds with tidal influence. To prevent the buildup of saline during the five-year planning process, the State Coastal Conservancy anticipated retrofitting the ponds to allow for the continued flow of water between the specified ponds. The mission of the restoration project was to prepare a scientifically sound, public supportable restoration and public access plan that could be implemented at the end of five years.

Council Member Kleinberg clarified the \$10 million budget was for preparing the plan, which did not include the restoration work.

Mr. Morris said that was correct.

Council Member Kleinberg asked whether he anticipated receiving the additional \$2.5 million from the Federal government.

Mr. Morris said yes.

Council Member Kleinberg asked whether there was any idea of the cost of the restoration project.

Mr. Morris said the cost could not yet be determined because it was not known which parts of the project would be tidal and which were saline ponds. There was a Federal process for funding flood control through the Army Corps of Engineers.

Vice Mayor Beecham understood there was a community meeting being scheduled in Palo Alto.

Mr. Morris said there were three meetings scheduled in the Bay Area for the coming weeks. The meeting in Palo Alto was scheduled for Wednesday, April 9, 2003, at the Cubberley Community Center, from 9:30 a.m. to 12:30 p.m.

Council Member Burch said he was excited to see the restoration project take place.

Council Member Freeman asked what was the foam that could be seen along the Dumbarton Bridge.

Mr. Morris said the foam occurred when the high winds whipped up the water, which was a natural by-product of saline water.

ADJOURNMENT: The meeting adjourned at 7:05 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:06 p.m.

PRESENT: Vice Mayor Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle, Morton, Mossar, Ojakian

Mayor Mossar announced on March 20, 2003, the City of Palo Alto received \$1.5 million earmarked for 2003 from the Department of Energy's Federal Energy and Water Appropriations Bill for a photovoltaic, solar electric demonstration project. She thanked Congresswoman Eshoo, Senator Boxer, and Senator Feinstein for their continued support for the City of Palo Alto.

#### ORAL COMMUNICATIONS

Carlin Otto, 231 Whiteclem Drive, spoke regarding protecting a neighborhood.

Susie Thom, 753 Maplewood Place, spoke regarding Palo Altans for Government Effectiveness (PAGE) February 20 meeting summary.

Sophia Dhrymes, spoke regarding harassment toward property tenants and her.

Ed Power, 2254 Dartmouth Street, spoke regarding government.

Lisa Hendrickson, 450 Bryant Street, spoke regarding Avenidas.

Bunny Good, P.O. Box 824, Menlo Park, spoke regarding wrong legal advice by Richard Alexander in today's packet.

#### APPROVAL OF MINUTES

Mayor Mossar noted that City Clerk Donna Rogers requested the February 10, 2003, City Council minutes be removed from the agenda.

**MOTION:** Council Member Morton moved, seconded by Ojakian, to approve the minutes of February 3, 2003, as corrected and February 18, 2003, as submitted.

**MOTION PASSED** 9-0.

#### CONSENT CALENDAR

**MOTION:** Council Member Ojakian moved, seconded by Morton, to approve Consent Calendar Item Nos. 1 – 6.

ADMINISTRATIVE

1. Change Order No. 1 Between the City of Palo Alto and Sure Flow, Inc., DBA Roto Rooter in the Amount of \$28,000 to Increase the Total Contract to an Amount not to Exceed \$328,000
2. Amendment Between the City of Palo Alto and Athens Administrators in the Amount of \$75,000 to Extend Existing Contract for Workers' Compensation Claims Administration
3. Amendment Between the City of Palo Alto and Standard Insurance to Extend the Existing Contract for Group Life, Accidental Death and Dismemberment (AD&D) and Long Term Disability Insurance (LTD) for an Additional Two Months at a Cost of \$150,000
4. Contract Between the City of Palo Alto and Granite Rock Company, DBA Pavex Construction Division in the Amount of \$165,000 for the City Landfill Inert Solids Recycling Project
5. Council Review and Adoption of Report on Measures Taken to Alleviate Conditions Leading to Adoption of Interim Ordinance Prohibiting Establishment of New Ground Floor Office Uses in the Charleston Center and Midtown Shopping District
6. Approval of Subordination of Deed of Trust of Emergency Housing Consortium Property at 2011 Little Orchard Street, San Jose, to facilitate Expansion of Housing for the Homeless

**MOTION PASSED 9-0.**

AGENDA CHANGES, ADDITIONS, AND DELETIONS

REPORTS OF OFFICIALS

- 6a. City Clerk's Report on Sufficiency of Referendum Petitions Regarding Ordinance No. 4779 - Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (The Zoning Map) to Change the Classification of Property Known as 800 High Street From CD-S(P) To PC Planned Community and Approving a Variance from a Height Requirement; Council Reconsideration of Such Ordinance and Related Directions to Staff.

City Clerk Donna Rogers said the Referendum Petition regarding Ordinance No. 4779 was found sufficient by the Santa Clara County Registrar of Voters office containing 3,058 valid signatures. The required number of valid signatures per the Charter was 2,194, which represented 6 percent of the registered voters of the last General Municipal Election. The City Charter required the City Clerk to submit to the Council without delay the petitions once they were found sufficient. It then became the duty of the Council to reconsider the ordinance. If the Council failed to entirely repeal the ordinance, it was their duty to submit the question of approval or rejection to the electors at the next General Municipal Election scheduled for November 4, 2003, or at a Special Election to be held not less than 88 days from the date of the City Clerk's Certificate of Sufficiency. If the Council chose to place the Referendum Petition on the General Municipal Election of November 4, 2003, the cost would be approximately \$40,000. However, if they chose to place the item on a "stand-alone" election prior to November 4, 2003, the cost would be approximately \$322,000.

City Attorney Ariel Calonne said the Council's duty was to "reconsider" the ordinance. It implied more than simply a duty to repeal. Likewise, if the Council failed to repeal the ordinance, the matter would need to be submitted to the voters at the next General Municipal Election or at a Special Election. The ordinance would be suspended and inoperative until either the repeal or election. If the voters disapproved the ordinance, the Council could not adopt a "substantially similar" ordinance for a period of one year. The Palo Alto Municipal Code (PAMC) included a similar provision with respect to zone changes. The Council's options included: 1) immediate repeal of the 800 High Street Planned Community (PC) Zoning Ordinance; 2) immediate repeal of the ordinance while, at the same time, initiating a process to consider certain revisions to the ordinance. Initiating a process would require looking at how the PC zoning might work, as well as additional Planning and Transportation Commission (P&TC) hearings and opportunities for the public to be heard. The Council could not compel the property owners and applicants to submit to a particular project, however they could make suggestions. The revisions considered by the Council could not be "substantially similar". Although there were not specific rulings about what "substantially similar" meant, he interpreted the phrase to require a legislative determination by the Council. If the Council chose to move forward and attempt to revise the 800 High Street PC application, he suggested they state clearly why whatever revisions were chosen were "not substantially similar" to the one previously approved by Council. The Notice of Intent to Circulate Referendum Petition outlined seven bullet points, which were objections to the approved PC. If the Council agreed to go forward, they should use those bullet points as guidelines to define a different project; 3) submit the measure to the voters at a General Municipal or Special Election; and 4) not to immediately repeal the PC zone, but initiate

consideration of revised options at the P&TC or staff level. The Council could also choose to do nothing, in which case the City Clerk would need to take action before the election deadline set in early August.

Ms. Rogers clarified the last date for the Council to take action for the November 4, 2003, election was August 4, 2003.

Mr. Calonne said the Council would have a few months to allow consideration of other project options without having to go forward and repeal the 800 High Street approval.

Mayor Mossar asked whether the "not substantially similar" applied to the scenario.

Mr. Calonne said it did apply. If the Council went through a process of looking at other options for 800 High Street and could not conclude the new project was "not substantially similar", they could abandon those options and let the referendum go to the voters in November. In addition, if the Council decided to go forward and could not find a project that the applicant would agree upon, the original project could go forward. The only deadline for the Council to act upon was August 4, 2003. If the Council became incapable of acting on the matter, the City Clerk would need to take action.

Council Member Freeman asked whether the property owners would be able to submit new or substantially different plans if the Council voted to repeal the project.

Mr. Calonne said yes. The plans had to be "not substantially similar".

Council Member Freeman asked what was the technical difference between repealing the ordinance and asking for a "not substantially similar" plan, and holding off until the August deadline for other plans to come forward that were "not substantially similar".

Mr. Calonne said if the Council took immediate action to repeal the ordinance, they foreclosed on the option of putting the matter on the ballot.

Council Member Lytle asked how the Council could revise the ordinance if the Referendum Petition was deemed suspended and inoperative.

Mr. Calonne said the ordinance could be revised while simultaneously repealing and enacting when, and if, there was an acceptable revised project. The ordinance would remain suspended until it was repealed.

Council Member Lytle said the language was unclear. On one hand the Council would quit modifying the ordinance until an election was held. On the other hand, the Council would continue to modify the ordinance until an election was held. She asked how clear that would be to people if the Council continued to modify the ordinance while at the same time it was suspended.

Mr. Calonne said suspended and inoperative meant neither the City or the applicant could take any action to implement the previous legislation. He did not believe there was any prohibition of City staff, the applicant, or Boards and Commissions looking at what other options there might be while the previous approval was suspended.

Council Member Kishimoto asked for clarification of how Council consideration of the South of Forest Avenue Coordinated Area Plan, Phase 2 (SOFA 2) would fit into their actions. If one of the options was to immediately repeal 800 High Street and initiate the process to enact revised 800 High Street PC zoning, could the Council repeal the ordinance and direct staff to bring back SOFA 2 first, and then entertain a new PC ordinance.

Mr. Calonne said yes. The Council could initiate whatever process it wanted for 800 High Street, whether it was part of SOFA 2 or separate.

Mayor Mossar asked if at the end of the approval of SOFA 2 the appropriate PC was something that did not meet the "not substantially similar" test, would there be a year delay before something similar could be reconsidered.

Mr. Calonne said that was correct. It would be a year from the date of the Certificate of Sufficiency.

Mayor Mossar said if SOFA 2 was decided on a month later, would it still be an additional 11 months before anything could be done with the property, if the "not substantially similar" test was not met.

Vice Mayor Beecham asked for guidance on how the "not substantially similar" test would be determined.

Mr. Calonne said it was a good faith reasonableness test where the courts generally deferred to the legislative wisdom of the City Council. If litigation arose that challenged the Council's determination of "not substantially similar", the legal standard would be whether there was a rational basis for the Council's action. A court would defer to the Council's political and legislative wisdom on the issue. The concerns expressed in the Notice of Intent relating to the process were concerns that needed to be addressed. Size, use, and parking were the kinds of criteria a court would look at to determine whether it was "not substantially similar".

Council Member Morton asked whether the City had any exposure with respect to down zoning or limiting the rights of the developer when the plans were originally submitted.

Mr. Calonne said he did not believe so. The PC application was seeking an entitlement beyond what the current zoning on the property allowed. The Council was clearly in an area that had wide legislative freedom to do what they believed was in the City's interest.

Council Member Burch asked whether it was possible for the applicant to withdraw the current project and submit another one that was in keeping with the existing zoning.

Mr. Calonne said there was no legal restriction preventing the applicant from seeking building permits under the existing zoning whether or not the Council repealed the ordinance.

Council Member Burch clarified if the applicant withdrew the project the referendum was moot.

Mr. Calonne said that was not correct. The referendum would not be moot because the PC zoning conferred a legal right on the property and the Council would need to repeal that or let the voters take action on it.

Mayor Mossar declared the Public Hearing open.

Harold Justman, President of the University South Neighborhood Group (University South), 828 Ramona Street, said the University South Board unanimously voted to support the referendum of the 61-unit project at 800 High Street. The Board concluded in part that 800 High Street failed to provide for sufficient public benefits to the neighborhood residents. If the owners of the property could negotiate the approval by the Council of a 54-unit project, a divisive, protracted, and expensive referendum could be avoided. He supported further Council negotiation in-lieu of a referendum campaign.

Tom Jordan, 474 Churchill Avenue, said he believed it would be difficult for the Council to rework 800 High Street without doing SOFA 2 first. Planned Community zones were for troublesome pieces of property and 800 High Street was flat and rectangular with streets on three sides. He said "not substantially similar" generally meant something of significance that was noticeable and weighty. Any number of units that came closer to 60 than 26 would not be acceptable.

Janet Dafoe, 433 Kingsley Avenue, said the Council now had the opportunity to engage in an appropriate SOFA 2 planning process that was correct, comprehensive, and done in the manner it was promised. Approximately five years prior, the Council initiated a groundbreaking and collaborative plan to allow all the stakeholders in the SOFA community to develop a Coordinated Area Plan (CAP) through negotiation and compromise. The process was sabotaged and the resulting working group plan was never implemented. She urged the Council to complete the SOFA 2 planning process so the Peninsula Creamery project could be evaluated in the context of a vision for the community.

Sheri Furman, 3094 Greer Road, supported the referendum because the project was too big. She was not opposed to housing but the scale of the project.

Alden Romney, 935 Branston, San Carlos, representing Reach Fitness on High Street, said his business relied on street parking for its viability. If 800 High Street and built with only one layer of parking, it would have a negative impact on the viability of his business and other small businesses in the area. Two layers of parking, as outlined in the current plan, would mitigate the issues created by the complex.

Mark Sabin, 533 Alberta Avenue, Sunnyvale, said he looked at the census for Palo Alto and discovered 76 percent of the working residents fell into the management/professional category. Nationwide, that same category made up 33 percent of the workforce. The median price of housing in Palo Alto was \$865,000 for the first two months of 2003. Projects such as 800 High Street were an opportunity to allow an even larger segment of people to live in Palo Alto. It would also ensure that critical contributors to the City had a chance to live in the community where they made their contributions.

Dorothy Bender, 591 Military Way, said qualifying a referendum for an election ballot was not an easy thing. It required carefully following all the technical and legal requirements as well as some financial outlay to cover legal and printing costs. Mostly, it required a dedicated group effort.

Mike Alexander, 710 La Para Avenue, asked the Council to rescind the ordinance because it violated the spirit of the Comprehensive Plan (Comp Plan) in the area of transit-oriented development. Transit-oriented development was a planning concept intended to reduce reliance on cars. The clustering homes and businesses near mass-transit centers allowed fewer car trips for people to get things done. The City's Comp Plan recognized that increased density within 2,000 feet of train stations should be allowed. The same Comp Plan that proposed allowing 50 units per acre near transit centers also stated individual project performance standards

would be developed, including parking to ensure a significant portion of the residents used alternative modes of transportation. The 800 High Street project was the first, to his knowledge, to take advantage of the increased density proposed in the Comp Plan. Unfortunately, the developer, the Planning staff, and the Council, while having embraced higher density, ignored the use of incentives to reduce car usage.

Mike Rose, 1200 Dale Avenue, Mountain View, expressed support for the 800 High Street project.

Elaine Meyer, 609 Kingsley Avenue, University South Neighborhood Group and SOFA 2 Working Group, said the 800 High Street project was in the middle of the nine-block area that the Working Group had worked on. The project consisted of three modern apartment buildings: 55 to 60 feet tall, five stories, and a Floor Area Ratio (FAR) of 2.47. The Council and P&TC were urged not to allow the immense, block-long project to be considered until the SOFA 2 Plan was completed and approved.

Richard Brand, 281 Addison Avenue, said he did not want what happened with SOFA 1 to occur with SOFA 2. There was a divergence between an excellent community group, such as SOFA 2, chosen to come up with good recommendations along with recommendations from City staff. He believed 800 High Street was too high.

Patty Petrie, 165 Sibernardo, Sunnyvale, said she was on the Below Market Rate (BMR) housing list for seven years. During that time, she went from being number 246 to 99. She strongly believed more BMR units were needed in Palo Alto. It saddened her that she could not afford to live in the community she worked in.

Heather Trossman, 769 Garland Drive, urged the Council to vote for Option 3, as presented by the City Attorney. The Government Action Council of the Chamber of Commerce strongly supported diversion of the 800 High Street project with 60-plus units of housing, 10 units of BMR housing, and two levels of underground parking, of which 63 spaces would be dedicated for public use. She also urged the Council to vote for an effective continuance in hopes that further discussions might result in a compromise that precluded the need for a referendum, and allowed the project to move forward in a timely manner.

Kerry Yarkin, 135 Churchill Avenue, expressed concern about the City's PC zoning and believed the project should go to the voters.

Bob Moss, 4010 Orme Street, recommended the Council vote to rescind the ordinance and discuss with the developer a significantly scaled down version

of the project with more BMR units in proportion to the total number of units. He also suggested the developer build the project within the existing zoning requirements.

Council Member Burch said he recalled there were two votes taken at the February 3, 2003, Council Meeting. There was a vote in which three of the Council Members voted in favor of a project that had 54-units including seven BMR units, and two levels of parking. The vote was turned down on a 3-6 vote. He asked Mr. Moss whether he believed if the vote had passed there would not have been a need for a referendum.

Mr. Moss said the 54-unit project had not been reviewed by anyone. He recalled the motion was to send it back for consideration. The project had only one level of parking and it was unclear what the public benefit would have been from the PC.

David Schrum, 381 Oxford Avenue, expressed concern about the process. The project began with a set of assumptions that were fundamentally flawed. The incremental costs of such intense land use was borne by everyone in the community, which resulted in a shortage of playing fields, monies for libraries and other things the community cared about. He urged the Council to begin with the fundamental analysis of ecological impacts before proceeding to the superficial ones involving economic impacts.

Herb Borock, P.O. Box 632, said the Council should repeal the ordinance and initiate a rezoning to RM-40 to permit the developer to submit a new residential project, if they chose not to wait until the Council enacted new zoning for SOFA 2. In 1989, the Council established FAR limits in residential zones as the best definition of the maximum allowable bulk and mass of residential projects. The Comp Plan provided a bonus for projects with extra BMR units. He recalled a previous housing element that had a 25 percent bonus for a maximum FAR of 1.25. The current Comp Plan increased the percentage to 50 for a maximum FAR of 1.50.

Larry Hassett, Palo Alto Ace Hardware, 875 Alma Street, said the PC ordinance was clearly a flagrant misuse and abuse of the zoning. PC's were required to be compatible with their neighbors. Seven business owners who abutted the property at 800 High Street supported the referendum financially and by collecting signatures. He was in favor of wanting more affordable housing in Palo Alto, but it needed to be "in scale" and compatible with the area.

Joy Ogawa, 2305 Yale Street, said if the property owner wished to develop the property at 800 High Street prior to the SOFA 2 CAP being adopted, he could do so in conformance with existing zoning. Council should turn its

attention to adopting a SOFA 2 plan, honoring the plan of the Working Group.

Carol Jansen, 575 Hawthorne Avenue, said the project was driven substantially by the application of 800 High Street as a residential application. The process had become tilted toward the issues related to what residential development could occur under the SOFA 2 plan when, in reality, many of the controversial issues were related to the commercial provisions being proposed.

Doug Ross, 909 Alma Street, said he had spent 15 months in a number of public hearings to get the project approved. The Referendum Petition portrayed the housing project as the developer against the neighborhoods. People who were asked to sign the referendum were told a number of things: 1) the developer had violated the zoning ordinance, including the Comp Plan; 2) the project should have waited for the SOFA 2 CAP to finish; 3) the affordable housing component was not affordable; 4) the market rate units would cost over \$1 million; 5) local businesses were being run out of town; and 6) construction would take three years. Those statements were not an accurate reflection of the process or the project, which was why the preceding boards and commissions and the Council approved the project. He worked within the parameters of the Comp Plan and the housing element, offered significant public benefits, provided affordable and obtainable housing and met the majority of the SOFA 2 guidelines. A much-needed housing project raised questions of whether the City really supported more housing and, if so, how much and where. He urged the Council to consider the referendum carefully and see if there was another resolution to the matter.

Mayor Mossar declared the Public Hearing closed.

**MOTION:** Council Member Morton moved, seconded by Burch, to not immediately repeal the 800 High Street Planned Community (PC) Zoning District and to initiate consideration of revised PC options.

Council Member Morton said he supported the project solely because of the parking, which was a public benefit to the small businesses in the area. The community needed to work out where it wanted to go with respect to housing. It would be nice if the residents could separate their concerns about the Hyatt, Alma Plaza, Elks Lodge, and 800 High Street.

Council Member Burch said he favored the motion to see if there was a possibility of saving the project or some form of it. He would like to see the neighbors and the developer get together.

Council Member Kishimoto said all three options presented by the City Attorney were palatable. She believed there were a number of issues the project brought forth, which included transit-oriented development, how a PC should be designed and implemented, and housing and growth. However, she also saw the risk of potentially dividing the community. If a civil discourse was not possible, she favored sending the matter to the voters. She said the process and the project design were clearly flawed, which was an abuse of the PC process.

**SUBSTITUTE MOTION:** Council Member Kishimoto moved, seconded by Lytle, to immediately repeal the 800 High Street PC Zoning District and direct staff to bring the South of Forest Coordinated Area Plan, Phase 2 (SOFA 2) back to the Council for review and careful consideration of the Working Group, as well as the staff and Planning and Transportation Commission versions.

Mayor Mossar asked Council Member Kishimoto whether she meant to say bring the P&TC recommendations forward and not the SOFA 2 Plan Working Group recommendations.

Council Member Kishimoto said she wanted to bring the SOFA 2 Plans to the Council and specifically, give careful consideration to the Working Group plan, and well as the staff and P&TC versions.

Council Member Lytle concurred with the comments of Council Member Kishimoto and many of the residents and petition circulators.

Vice Mayor Beecham said the Referendum Petition did not ask the Council to rescind the ordinance. The Notice of Intent specified twice that the petition was for the purpose of placing the ordinance before the voters. He was opposed to Option 1.

Council Member Freeman said it was clear from the petitioners, the SOFA 1 and SOFA 2 processes ran into trouble. The Council was being asked to get the process right. She believed when a percentage of the Palo Altans said no, it was time to listen carefully, either by hearing from them that evening or hearing from them through a vote.

Mayor Mossar said she was comfortable taking the matter to the voters, as stated in the language of the Referendum Petition. She believed there was little the Council could do to change the project that would be sufficient. Although affordable housing was a major concern in Palo Alto, there was little public money available to build affordable housing. A strategy used in the private sector called for inclusionary zoning, whereby the private sector built market rate housing to help them subsidize the cost of BMR units. She

was not inclined to repeal the project. The project was one the Council had said it wanted over an office complex. She was willing to hold the project in abeyance in support of the original motion.

Council Member Kleinberg said the Council voted for some form of the project rather than waiting for the SOFA 2 final zoning changes. The Comp Plan and conventional wisdom said 800 High Street was a place to put higher density housing, however those who signed the Referendum Petition did not feel it was compatible. She hoped the vote on the Referendum Petition would not impact other projects in the City. She believed there was a good faith objection to the project, although she voted for it. She would like to see the neighbors given the chance to talk to the developer and let the developer work out a possible compromise. She did not feel it was in the best interest to rescind the ordinance that evening. She expressed her support for Option 3.

Council Member Freeman asked whether there was anything preventing SOFA 2 from coming to the Council before August 2003.

Chief Planning Official Lisa Grote said before the matter came before the Council, staff had a series of steps to take: 1) conduct a series of meetings with property owners in the area; 2) bring the plan to the Working Group based on the P&TC's direction; 3) return the matter to the P&TC-; and 4) submit the matter to the Council. Staff could conceivably have those steps completed by August 2003, however; she did not know the extent of all the needed conversations.

Council Member Freeman asked when was the last time the SOFA 2 Working Group had met.

Ms. Grote said the last SOFA Working Group meeting was on October 7, 2002. The Working Group referred the matter back to the P&TC and the staff in order to get a SOFA model built. The P&TC met on February 4, 2003, whereby they referred the matter back to the Working Group.

Council Member Freeman clarified it took approximately four months to get the model and return to the P&TC.

Ms. Grote said that was correct.

Council Member Freeman said it was approximately four months until August 2003.

Ms. Grote said in that time there would need to be Working Group meetings, property owner meetings, meetings with the P&TC, and then time to forward the matter to the Council.

Council Member Freeman asked whether it was possible to fast track SOFA 2 so Council could have the opportunity to get information from the Working Group before reworking the project.

City Manager Frank Benest said there were a number of other big issues, including the budget between now and June 2003. Council would need to tell staff, among all those issues, what was most important to focus on. The P&TC also had other projects lined up in addition to SOFA 2.

Council Member Freeman said the Council did not have a list of all the issues facing the Planning Department in order to make a determination of what should go first. She did not understand how the Council could make a decision on the building before having the plans. She asked how the Planning Department issues were ranked.

Mr. Benest said only one major issue could be placed on the Council or P&TC agenda per meeting. The Planning Department had Alma Plaza, Hyatt Rickey's Environmental Impact Report (EIR), 2300 East Bayshore, the Zoning Ordinance Update (ZOU), and California Environmental Quality Act (CEQA), to name a few.

Council Member Freeman asked how projects were prioritized.

Ms. Grote said the ZOU was part of the Council's Top 5 and had a high priority. It had many aspects to it including parking, urban design, and land use. Hyatt Rickey's was also a high priority project. The Final EIR had recently been released for comment. The Alma Plaza project was another high priority project that was ready to return to the Council.

Council Member Kleinberg said even if the SOFA 2 CAP did not return to the Council for review and adoption, the neighbors and the Working Group knew the general principles. She hoped there was a way for the Council to have a conversation regarding prioritizing projects at a future meeting.

Council Member Freeman expressed concern over why the Council would encourage groups to work on plans that had not yet been adopted.

Council Member Kishimoto said the number one responsibility of the Council was to set the agenda for the City. She recalled at the City Council priority setting the prior year, her comment about limiting the number of PC's per year because they tended to preempt the agenda and take time away from

the Council's forward planning. There were PC's in line, but the SOFA Working Group was a forward-looking plan that had been in process for approximately five years. She argued it was imperative for the Council to give priority to their commitment to forward planning that was made to the SOFA plan before acting on PC's.

Council Member Ojakian supported placing the Referendum Petition on the ballot. He said the site could accommodate both commercial and residential space; however he preferred just residential units, which would increase the number of BMR units and somewhat negate the City's current jobs/housing imbalance. He reminded everyone the SOFA 2 Working Group was put together by City staff, not appointed by the Council. Therefore, they were not obligated to the Council. He favored the proposed project being put on the 800 High Street site, even with the SOFA 2 CAP coming forward. There were two public benefits that had been overlooked: 1) the City would receive a better development fee because of the housing, which would go back into the community to allow for improved community facilities; and 2) the City had a connection to property they owned on Alma Street, which would allow for further development of the site with affordable housing. He was opposed to the substitute motion.

Mayor Mossar said there were presently bills in Sacramento that would allow cities to keep their Vehicle License Fee (VLF) Funds, and lower the voter threshold for transportation taxes, which would benefit Palo Alto. However, it required cities to agree to projects such as the one proposed at 800 High Street.

Council Member Lytle said she had heard sufficient lack of support for the motion and was willing to withdraw her second. She believed Option 2 was the next clearest option for the Council to take for purposes of public debate; however, she was willing to delay the election and support Option 3. It was imperative to find a way to consider the SOFA 2 CAP as soon as possible. While the one major item per agenda constraint was a Palo Alto tradition, she did not believe the Council had ever been able to complete any relatively large advance planning assignment without many special meetings. She recalled the scheduling of approximately eight additional meetings for the Sand Hill Road development and approximately 20 additional meetings for the Comp Plan. Based on past practice, it was fairly unrealistic to use the Council's normal agenda for zoning ordinance assignments, coordinated area plan assignments, or large development entitlements.

## **SUBSTITUTE MOTION WITHDRAWN BY MAKER AND SECONDER**

**AMENDMENT:** Council Member Lytle moved, seconded by Freeman, to direct staff to schedule necessary special meetings in order to accommodate hearing the SOFA 2 CAP recommendations in a timely fashion in order to possibly have decisions made by mid-July in advance of the August deadline for passage of a resolution to forward the Referendum to the November election.

Council Member Morton said he would not accept the amendment to his motion. He did not want to put that kind of burden on the City staff.

Mayor Mossar clarified it was unclear whether SOFA 2 would be finished by the August deadline; however, it did not mean it would not be brought to the Council before that time. Ms. Grote had indicated there were a number of public meetings that would occur before it came to the Council.

Council Member Morton clarified nothing the Council did that evening precluded a special election being held if the developer came forward within the 88-day timeframe and offered to bear the costs.

Mr. Calonne said that was correct. He understood the motion on the floor was to not immediately repeal and initiate consideration of revised options for the PC. If the Council changed their mind in the next few weeks, a special election could be scheduled.

Council Member Morton said he did not intend to preclude that option.

Mayor Mossar said when the motion was restated it would state the maker did not specify when the election would be held should the option be chosen.

Vice Mayor Beecham said the SOFA 2 project would need to come back to the community, the P&TC, and then to the Council for first and second readings of the ordinance. In order to do all of that in time for the August deadline, he suggested asking staff to return with a schedule to work out the options of looking at SOFA 2.

Council Member Lytle said Vice Mayor Beecham expanded on what she stated in her amendment, with staff being allowed some flexibility to develop a timeline.

Vice Mayor Beecham said the timeline ensured that the community and the Council could come up with an alternative to the proposed project.

Council Member Lytle accepted the changes of Vice Mayor Beecham.

**AMENDMENT RESTATED:** Council Member Lytle moved, seconded by Freeman to direct staff to return, preferably at the April 14, 2003, regular meeting.  
03/31/03

City Council meeting, with a timeline that would allow discussion of SOFA 2 in a manner that would enable Council to make a decision on 800 High Street before the first Council meeting in August 2003.

Mr. Benest said if the motion passed, staff would return to Council with a timeline as well as the implications for other issues on the agenda.

Council Member Freeman asked whether the amendment was just to get a timeline or to get a timeline that took the Council to an end point.

Vice Mayor Beecham said the latter.

Council Member Freeman stated she hoped her colleagues would hear the SOFA 2 CAP as well as give the Council the opportunity to make good on its two previous promises regarding SOFA.

Council Member Ojakian opposed the amendment. He said a more appropriate approach would be to have staff return to the Council with an informational report that showed all the various Planning Department projects and timelines.

Council Member Burch opposed the amendment. There was a motion on the table asking for the developer and the neighborhood to get together and see if an accommodation could be reached. If SOFA 2 became part of the mix, any possibility of a compromise would be distorted.

Mayor Mossar agreed with the comments of Council Member Burch.

**AMENDMENT AS RESTATED PASSED** 5-4, Burch, Morton, Mossar, Ojakian "no."

Vice Mayor Beecham expressed concern whether the Council or the community could come together on a smaller, economically viable project on the site. He desired to see housing built on the site, but feared the long-term alternative would be commercial. He was willing to work with the community and the developer to find a better solution.

Council Member Freeman said although Option 3 was not her first choice, she was willing to support the motion. She hoped the developer and neighborhood groups could earnestly reach some compromise; however, it was important to keep in mind the whole SOFA process in the negotiations.

Council Member Kishimoto expressed support for the motion.

Council Member Lytle agreed with most of the comments of Vice Mayor Beecham. However, she disagreed with his definition of economic viability. Economic viability should not be based on the project's speculative value.

**AMENDMENT:** Council Member Lytle moved, seconded by Vice Mayor Beecham, to eliminate the option of a special stand-alone election.

Council Member Morton expressed opposition to the amendment. He did not believe it was likely, but it should not be precluded either.

Mayor Mossar asked whether the amendment was lawful.

Mr. Calonne said yes. However, if between now and the deadline the Council decided to do a special "stand-alone" election, they could reconsider that option. He asked for clarification of the earliest date a special election could be held.

Ms. Rogers said the special election could not be held less than 88 days from the Clerk's date of sufficiency. The earliest date was June 21, 2003

Mr. Calonne said staff would assume Council would act in August 2003, if at all, on whether to place the matter on the ballot.

Vice Mayor Beecham clarified he made no definition of economic vitality.

Council Member Freeman said without the current amendment, the previous motion to go through the SOFA 2 CAP by the August timeline would be preempted. She asked for clarification on the issue.

Mr. Calonne said he understood from the main motion, the Council was staying silent as to whether to do a special election or not. The possibility was left open and would not preempt the amendment regarding a SOFA 2 timeline.

Council Member Freeman asked for clarification as to whether the Council's previous motion of getting a timeline from City staff, going through the SOFA 2 process, and having some type of decision before making a final decision on 800 High Street would occur.

Mayor Mossar said she did not believe the motion bound the Council to make a decision. It bound the staff to return with a timeline that would allow the Council to consider it.

Council Member Freeman asked whether there was an "end point".

Mayor Mossar said the matter was brought to the Council in October 2002, and the Council decided to spend more time and get additional data, and they may do that again.

Council Member Freeman clarified there was no "end point" necessarily.

Mayor Mossar said that was correct.

Vice Mayor Beecham said the previous motion directed staff to bring back a timeframe that would allow the Council, if followed, to get to an "end point".

**AMENDMENT PASSED** 7-2, Burch, Morton "no."

Council Member Kleinberg asked what standards would the developer, neighborhood groups, and stakeholders use to work with in coming to a potential compromise while waiting for the SOFA 2 CAP. She said it was important not to leave the meeting that evening without direction to the developer and neighborhood residents.

Mr. Calonne said the Referendum Petitioners were not in control of what was acceptable. The only guideline was "not substantially similar".

Council Member Kleinberg said it was possible for the Council to say they were looking for a good housing project in that neighborhood with as many BMR units as the private developer could pay for.

**BY A CONSENSUS OF THE COUNCIL** to address the remaining items to determine whether they would be heard that evening.

#### UNFINISHED BUSINESS

7. Policy and Services Committee Recommendation to Review and Approve Council Protocols *(Continued from March 10, 2003 - Public Testimony Closed)*

**MOTION:** Council Member Kleinberg moved, seconded by Freeman, to continue the item to date uncertain.

**MOTION PASSED** 9-0.

#### PUBLIC HEARINGS

8. Public Hearing: The City Council will consider an application by A & P Family Investments for a Comprehensive Plan Amendment and Rezoning of a 1.84-acre parcel located at 2300 East Bayshore Road to the Research/Office Park land use and LM(D)(3) zoning designations. The property is currently zoned Planned Community (restaurant) and

designated for service commercial uses in the Comprehensive Plan (*This item will be continued to a date certain at the request of staff*)

~~Resolution of the Council of the City of Palo Alto Amending the Land Use Map of the Palo Alto Comprehensive Plan to Change the Designation of a 1.84 Acre Parcel at 2300 East Bayshore Road from "Service Commercial" to "Research/Office Park"~~

~~Ordinance of the Council of the City of Palo Alto Amending the Zoning Map of the City of Palo Alto to Change the Designation of a 1.84 Acre Parcel at 2300 East Bayshore Road from "Planned Community" to LM(D)(3) "Limited Industrial with Combining Districts"~~

**MOTION:** Council Member Ojakian moved, seconded by Morton, that the item be continued to the April 14, 2003, regular City Council meeting.

**MOTION PASSED 9-0.**

City Attorney Ariel Calonne had asked the Council to continue Closed Session Item Nos. 10 through 12.

**MOTION:** Council Member Burch moved, seconded by Vice Mayor Beecham, to continue Closed Session Item Nos. 10 through 12 and only consider Item No. 13 that evening.

**MOTION PASSED 9-0.**

**MOTION:** Council Member Kleinberg moved, seconded by Burch, to continue discussion of Item No. 6A until after Item No. 9.

**MOTION PASSED 9-0.**

#### COUNCIL MATTERS

9. Mayor Mossar and Council Member Kleinberg re Resolution in Support of the Formation of a National Housing Trust

Poncho Guevara, Director of Housing and Government Affairs for Emergency Housing Consortium (EHC), 2011 Little Orchard Street, San Jose, said EHC was the largest provider of emergency shelter beds and services in Santa Clara County and one of the largest providers of transitional and permanent affordable housing for extremely low-income families. The lack of affordable housing in the Silicon Valley was of major concern and an element that threatened the County's economic vitality. He asked the Council to support the National Housing Trust Fund (NHTF) legislation. The NHTF was a realistic solution that would supply much needed, ongoing financing for affordable

housing throughout the United States. Over a 10-year period, the NHTF would use existing Federal Housing Administration (FHA) and Government National Mortgage Association (Ginnie Mae) surpluses to build and preserve over one-and-a-half million affordable homes. Seventy-five percent of the funds would be spent on housing affordable to households with incomes less than 30 percent of median income, while up to 25 percent of the funding would be used to create opportunities for home ownership, which was a new component being reintroduced in the legislation. The City of Palo had taken significant steps to create more affordable housing. It was now time for the federal government to step up its leadership in being able to provide resources. The goal of the EHC was to secure 100 endorsements to present to local and national delegations. He urged the Council to support the NHTF.

**MOTION:** Council Member Ojakian moved, seconded by Kleinberg, to ask staff to prepare a resolution in support of a National Housing Trust, to be signed by the Mayor and presented to the California Congressional Delegation.

**MOTION PASSED** 7-0, Burch, Freeman absent.

Council Member Kleinberg said she had worked with Mr. Guevara who had been in Palo Alto supporting the City's efforts to build affordable housing. He was one the great leaders and an asset in Santa Clara County in the effort to provide more affordable housing.

RECESS: 10:05 p.m. to 10:15 p.m.

### **CONTINUED DISCUSSION OF ITEM NO. 6a**

Council Member Kishimoto asked whether staff was being directed to go back and negotiate with some of the organizers of the Referendum Petition.

Mayor Mossar said no. That language was not in the amendment.

Council Member Kishimoto said the amendment read... "Initiate consideration of revised PC options". She asked whether the applicant was being asked to return with a different project.

Mayor Mossar said the amendment was asking the neighbors and stakeholders to work with the developer in trying to come up with an acceptable compromise.

Council Member Kishimoto clarified the applicant would consult with the appropriate parties and return with a modified proposal.

Mayor Mossar said the language offered the opportunity for all those who had interest and goodwill in the project to negotiate a compromise and bring a supported project to the Council. If that could not be done, the Referendum Petition would then be put on the ballot in November.

Council Member Lytle agreed with the comments of Council Member Kleinberg giving direction to staff, the applicant, and the community. She believed the Council needed to respond to the issues raised in the Referendum Petition, and suggested the language contained there would be a directing point.

Vice Mayor Beecham said he did not believe his colleagues would be able to clarify where a solution could be found that guided or directed the applicant or the community. It was best left in the hands of those motivated to do it.

Council Member Burch said the Notice of Intent to Circulate the Referendum Petition was a political document prepositioned by one body of people. He did not believe the issues raised in the petition should be the standard by which the applicant, neighborhood groups, and stakeholders had to negotiate.

Council Member Freeman said there was not currently a protocol in process for the two sides to meet and confer.

**AMENDMENT:** Council Member Freeman moved that Council provide a mediator for the two groups (developer and residents).

#### **AMENDMENT FAILED FOR LACK OF SECOND**

Council Member Freeman said the intent of her amendment was to figure out a mechanism for two disparate groups to meet and work on the project given to them by the Council.

Council Member Burch said he believed the members of University South would come together and meet with the developer, or choose to go straight to a November election.

Council Member Kleinberg said some type of facilitated conversation might be constructive, but there was more than just two parties involved in the matter. She suggested enlisting the neighborhood group to find a volunteer facilitator to get the matter moving, making sure to include all the stakeholders.

**AMENDMENT:** Council Member Freeman moved, seconded by Kishimoto, that the petitioners find a volunteer facilitator to conduct a meeting with all stakeholders to try to construct a compromise.

Council Member Kishimoto suggested soliciting the help of the Palo Alto Mediation Group. She asked whether their services were available to the City.

City Manager Frank Benest said yes. However, the key issue was whether there was a real, good faith intent.

City Attorney Ariel Calonne said the Council did not have the authority to compel any of the stakeholders to go into mediation. He suggested giving the applicant and proponents an opportunity to make a presentation to the Council on the Referendum Petition at the April 14, 2003 meeting.

Council Member Kishimoto clarified the applicant and/or the proponents had an idea of whether they could come up with a compromise.

Mr. Calonne suggested the Council simply allow them the opportunity.

#### **AMENDMENT WITHDRAWN BY MAKER AND SECONDER**

Council Member Kishimoto said there were incentives for both sides to negotiate in good faith. She suggested asking staff to help call a meeting together to assist the stakeholders in agreeing on a process for moving forward.

Mr. Benest said he did not believe it was proper for staff to call a meeting in that type of situation. If the various parties came forward and expressed to Council their desire to work in good faith, the Council could then direct staff to be supportive.

Mr. Calonne said the Referendum circulators could not negotiate in a way that delivered assurances to the applicant or the City.

Council Member Morton asked under what circumstances could the motion be voted on.

Mr. Calonne said the motion needed a call for previous question or closed debate with a second and a two-thirds vote for approval. If it were successful, the Council would immediately vote on the pending motion.

**MOTION FOR PREVIOUS QUESTION** moved by Council Member Morton, seconded by Burch.

**MOTION FOR PREVIOUS QUESTION PASSED** 7-2, Freeman, Ojikian "no."

**MOTION AS AMENDED PASSED 8-1, Mossar "no."**

CLOSED SESSION

The meeting adjourned at 10:40 p.m. to a Closed Session regarding Item No. 13 only.

- ~~10. Conference with City Attorney -- Potential Initiation of Litigation  
Subject: Potential Initiation of Litigation on One Matter  
Authority: Government Code Section 54956.9(c)~~
- ~~11. Conference with City Attorney -- Existing Litigation  
Subject: Eugenia Weiner v. City of Palo Alto, SCC#CV796572  
Authority: Government Code Section 54956.9(a)~~
- ~~12. Conference with City Attorney -- Existing Litigation  
Subject: Philip Gibson v. City of Palo Alto, et al., Santa Clara County Superior No.: CV805641  
Authority: Government Code section 54956.9(a)~~
- 13. Conference with City Attorney -- Existing Litigation  
Subject: Peggy Jo Kristensen v. The City of Palo Alto, Santa Clara County Superior Court No.: CV811269  
Authority: Government Code section 54956.9(a)

The City Council met in Closed Session to discuss matters involving potential litigation and existing litigation as described in Agenda Item No. 13.

**Mayor Mossar announced that no reportable action was taken on Agenda Item No. 13.**

FINAL ADJOURNMENT: The meeting adjourned at 10:43 p.m.

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

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