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

PRESENT: Barton, Drekmeier, Espinosa, Kishimoto, Klein, Morton arrived at 6:10 p.m., Schmid, Yeh arrived at 6:15 p.m.

ABSENT: Burt

1. Interviews of Applicants for Unexpired Term of Heather Trossman on the Architectural Review Board Ending September 30, 2009.

### CLOSED SESSION

Herb Borock, PO Box spoke regarding the Council going into closed session on Item Number Three and certain aspects of that item should not be discussed in a closed session.

City Attorney Gary Baum stated the Closed Session would be limited to discussion on price and terms of payment only.

City Council adjourned into Closed Session at 6:11 p.m.

2. CONFERENCE WITH LABOR NEGOTIATOR

Agency Negotiator: City Manager and his designees pursuant to Merit Rules and Regulations (Frank Benest, Russ Carlsen, Darrell Murray, Eddie Kreisberg, Lalo Perez, Sandra Blanch)  
Employee Organization: Service Employees International Union  
Authority: Government Code Section 54957.6(a)

3. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Authority: Government Code Section 54956.8  
Property: 3281 E. Bayshore Road, APN 8-5-005  
Negotiating Party: John Anderson, AR Automotive, LLC dba Anderson Honda  
City Negotiator: Frank Benest, Bill Fellman, Susan Barnes, Lalo Perez, Donald Larkin  
Subject of Potential Negotiations: Price and Terms of Lease

### **Mayor Klein advised no reportable action taken**

The Council resumed in the Chambers at 7:30 p.m.

## ORAL COMMUNICATIONS

Walter Sedriks, 325 Waverly Street spoke regarding Palo Alto Police treatment toward the citizens.

Donald Remsen, 20 Kirby Place spoke regarding his support for the Children's Theatre.

Art Liberman, 751 Chimalus Avenue, spoke regarding CPI (Communications & Power Industries Inc.) and the Title 19 Hazardous Materials & Research Park Zoning.

Suzan Stewart, 1550 Middlefield Road spoke regarding her support for the Children's Theatre.

Katharine Saunders, 3289 Maddox Drive spoke regarding her support for the Children's Theatre.

John K. Abraham, 736 Ellsworth Place spoke regarding Palo Alto Police Department demographics.

Marie Huang, 2293 Princeton Street spoke regarding her support for the Children's Theatre.

Kathleen Walkup, 233 Marmona, Menlo Park, spoke regarding her support for the Children's Theatre.

Jeremy Erman, Cowper Street spoke regarding his support for the Children's Theatre.

Martin Bernstein spoke regarding banning plastic bags in Palo Alto.

Greg Kerber, Birch Street, corrected his statement regarding the appreciation rate of his Below Market Rate (BMR) unit which had increased to \$48,600.

## APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Council Member Kishimoto, to approve the minutes of January 22 and February 4, 2008 as submitted.

**MOTION PASSED:** 8-0, Burt absent

## CONSENT CALENDAR

**MOTION:** Council Member Morton moved, seconded by Council Member Barton to approve Consent Calendar Items 4, 5.

4. Ordinance 5000 "Ordinance of the Council of the City of Palo Alto Adding Chapter 18.14 ("Below Market Rate Housing Program") to Title 18 ("Zoning") of the Palo Alto Municipal Code".
5. Resolution 8809 "Resolution of the Council of the City of Palo Alto Summarily Vacating a Public Service Easement for Utilities at 1401 Parkinson Avenue".

**MOTION PASSED:** 8-0, Burt absent

### UNFINISHED BUSINESS

6. Policy and Services Committee Recommendations for Approval of Updated Below Market Rate (BMR) Program. (continued from March 17, 2008)

Estelle Chalfin, 432 High Street, #302 spoke regarding the BMR units and the dues and maintenance fees.

Director of Planning and Community Environment, Steve Emslie stated Staff was recommending new ownership units would be entitled to full Consumer Price Index (CPI). Staff would institute a maintenance credit program for owners who were under the reduced CPI formula to maintain the units. Staff recommended creating a deferred payment loan program to allow very low-income BMR owners access to loans. Those loans would not be payable until the sale of the unit enabling access to housing funds to maintain their unit. The issue identified for the Council's consideration was the requirement to lower the threshold for BMR requirements down to three units of multi-family and three units of single-family. The recommendation for the maintenance bonus program would be a \$1,500 dollar per year credit applied, per year of ownership.

Mayor Klein asked whether the Council would be voting on all of the things on Attachment A in the City Manager's Report (CMR).

Mr. Emslie stated that was Staff's recommendation.

Mayor Klein stated he was concerned with the recommendations that stated they were subject to further study.

Mr. Emslie stated that the recommendations in the CMR noted as further study issues should be to the Housing Element Update being initiated for completion in 2009.

Mayor Klein asked for clarification of what exactly the Council was voting on.

Mr. Emslie stated that it was Staff's recommendation to include these items in the policy analysis for the Housing Element.

Council Member Barton asked if the Council asked to proceed with an Area Median Income (AMI) approach rather than a CPI approach should Council send it back to Staff to study further.

Mr. Emslie stated Staff would recommend sending it back for further analysis and then return to the Council with a formula based on the AMI formula.

Council Member Barton asked if the analysis would delay the schedule.

Mr. Emslie stated it would not amount to serious delay to the implementation of the recommendations.

Mayor Klein stated he wanted to separate the voting of the Staff recommendations.

Council Member Kishimoto stated that the recommendations raised issues. In the last 40 years, we have only produced an average of 7.5 BMR units per year. More market rate housing has been created. It appears there had been trouble meeting the low/very low-income level housing.

Mr. Emslie stated that there were numerous recommendations in the study that were necessary to facilitate the effective administration of the program. Staff could return to the Council prior to the initiation of the Housing Element to set the scope of service.

Council Member Yeh stated that the CMR stated that units must be resold in a timely manner and he asked what the timeframe was.

Mr. Emslie stated that the program had five months total from the time the unit became available to the conclusion.

Council Member Yeh stated that assuming there were no improvements made to a BMR unit and the owner decided not to go along with the low interest rate loan, what was the estimate for how long that unit may be on the market.

Mr. Emslie stated that Staff estimated about 20 percent of the units had issues regarding timeliness because of a variety of issues and deferred maintenance.

Council Member Yeh asked what would happen if the City were to take title of the units and what the timeframe and costs would be.

Mr. Emslie stated that due to escalating construction costs, it would be somewhere around 40–50 thousand dollars and would take an additional six months.

Council Member Morton stated that many of the owners view this more as an investment partnership. If the unit were valued at market price then it would be taken out of the BMR program.

Mr. Emslie stated that if the costs escalated to the point where the unit became market, then it would be lost to the BMR program unless the City invested additional housing funds into writing that unit cost down.

Council Member Morton asked whether the new units on the old Palo Alto medical site were rentals that were able to subsidize rent for people.

Mr. Emslie stated that was correct.

Council Member Morton stated if we converted the BMR units into rental units, we would be combining one program into another.

Mr. Emslie stated the program had always included both rental and ownership opportunities.

Council Member Morton stated if the Council decided upon a two thousand dollar per year credit per unit then the difference of the one-third CPI would be \$171,200 versus \$129,200. He asked whether that would basically go to the current holder of the housing contract.

Mr. Emslie stated that was correct.

Council Member Morton asked whether that was an indirect way of recognizing that we had a housing contract and rewarded long term owners for keeping their units in good maintenance.

Mr. Emslie stated that was correct.

Council Member Schmid stated there were many different reasons to buy rather than rent: 1) a fixed rate mortgage, which would give a flat rate repayment; 2) tax credits could pay 20 to 25 percent of your rent; 3) once a purchased unit is sold it makes a nice investment; 4) after the house is paid off you pay only association dues. He stated that one of the policy implications was the BMR program should shift more of the resources to affordable rental housing.

Mayor Klein asked Mr. Emslie if under the appreciation formula were there more alternatives than what was shown in the slides.

Mr. Emslie stated these were a summary of recommendations and the Council did have the choice to apply the full CPI to the units.

**MOTION:** Council Member Morton moved, seconded by Vice Mayor Drekmeier to direct Staff to adopt the formula of one third Consumer Price Index (CPI), plus resale price, plus annual maintenance and replacement credit up to \$2,000 per year or full CPI to 2008 or whichever is lower.

Mayor Klein asked for clarification regarding the Motion whether he was asking for both the CPI and the maintenance credit going forward.

Mr. Emslie stated that the maintenance credits would just apply to the current owners for the one-third CPI and there would be no maintenance program, which had full CPI.

Mayor Klein asked whether that was the Motion.

Council Member Morton stated that going forward it would be with full CPI and for the previous owners we would give them a maintenance credit of 2,000 dollars per year.

Mayor Klein stated that would produce more than the retroactive CPI.

Council Member Morton stated only for those units where there has been a concern to keep the unit at a quality maintenance level. There would be no need to reward the owners who had not maintained their units.

Mayor Klein stated he was concerned with the people who would be coming out ahead of CPI.

Council Member Morton stated in the last twenty years units have gone from \$150,000 to \$750,000 and in those situations, maintaining the unit was something they should be rewarded for with maintenance dollars.

Vice Mayor Drekmeier asked for the Maker of the Motion to consider a \$2,000 maintenance credit up to the full CPI.

Council Member Morton stated he would support that.

Council Member Schmid stated that AMI was a better measure for our program than the CPI. CPI was only related to either affordability or the cost of housing and in the past, it had not worked. He asked to substitute the

AMI for the County which was directly related to housing affordability in Santa Clara County.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to use full Annual Medium Income (AMI) program in lieu of CPI formula from 2008 on, which will be brought back to Council at a later date.

Council Member Morton stated that would mean we would start as of today with the Medium Income levels as published by the County. Those annual changes would be the measure of the future appreciation in the housing contract.

Mr. Emslie stated that was correct.

Council Member Morton asked if we could adopt this policy and leave open the question of whether it would be a change of AMI or CPI and resolve that issue depending on future Staff input.

Mayor Klein asked for clarification if we could use AMI for past and future.

Council Member Schmid stated no.

Mayor Klein asked whether we would use CPI up until the date we adopt this and only use AMI going forward.

Council Member Schmid stated that was correct.

Mr. Emslie stated that Staff understood that they will use AMI as a way to calculate affordability in the future and CPI would apply to the existing units.

Council Member Morton asked whether it would only be to calculate the CPI cap.

Mr. Emslie stated it was understood that CPI would be used to calculate the cap for the bonus program.

Council Member Schmid stated it was his understanding that Association of Bay Area Government (ABAG) uses the AMI to calculate the income levels.

Mr. Emslie stated that many cities had used this calculation and the problem was it was subject to radical change and could create unintended consequences because the income levels in the County did fluctuate regularly. Staff could return with a formula that was based on AMI.

Council Member Kishimoto stated that the recommendation to peg future price increases based on AMI was exactly what the Keyser Marston Associates, Inc. (KMA) study had recommended. She asked if Staff would be coming back with data for Council to vote on.

Mr. Emslie stated that Staff would provide a specific recommendation that could come back on the Consent Calendar and confirm the use of the formula.

Council Member Kishimoto asked whether Mr. Emslie could summarize what the incentives and requirements were with the upgrading of the units.

Mr. Emslie stated the credits would still be based on CPI for the existing units and AMI for the future.

Council Member Kishimoto stated she had expected higher incentives and requirements for maintaining the units.

Mr. Emslie stated that all of the BMR units had standards for maintenance. Staff would explore and include in the follow up recommendations to ensure higher levels of maintenance for newer units in the AMI formula.

Council Member Barton stated from a policy point of view, it would be to try to maintain these units in the 80 to 120 percent of AMI. He stated he was concerned with the period of time where CPI could be significantly higher than AMI and asked when this would return to Council.

Council Member Espinosa asked what Staff would research differently to reach a different conclusion.

Mr. Emslie stated that Staff had not anticipated any of the administrative issues that the formula KMA had prepared based on AMI. Staff would like to make sure that the adjustments were fitting and achieve the desired outcome.

City Attorney Gary Baum stated the City Attorney's Office would need to review anything that was prepared.

Mayor Klein expressed his concern regarding people who may want to sell their units. He stated the first part of the formula was fixed and easy to calculate and he did not want to see that part delayed and asked to divide the Motion.

Mr. Emslie stated it was possible.

Mr. Baum stated it was not necessary to divide the Motion.

Mayor Klein stated his concern was with the switch over from CPI to AMI for the people who own right now and want to sell right now.

Mr. Emslie stated that Staff understood the Council's direction.

Vice Mayor Drekmeier asked if AMI was a countywide figure.

Mr. Emslie stated yes.

Vice Mayor Drekmeier asked if that was just Santa Clara County.

Mr. Emslie stated yes.

Council Member Morton stated that the first part of the policy would state that we were directing Staff to revise the appreciation formula to AMI going forward with the final wording to be presented to the Council.

**MOTION PASSED:** 8-0, Burt absent

**MOTION:** Council Member Morton moved, seconded by Council Member Barton to improve the condition of the existing older BMR housing stock by creating a deferred payment renovation loan program for very low-income BMR owners.

Council Member Morton stated that there were new owners in the BMR program facing major assessments with no easy way to fund. We would be enabling them to participate in a housing contract, and the costs would be deferred and taken into consideration on the sale of the unit.

**MOTION PASSED:** 8-0, Burt absent

**MOTION:** Council Member Morton moved, seconded by Council Member Barton to lower the threshold for the BMR requirement to 3 new units or 3 single family lots from the current 5.

Mr. Emslie stated that any current application would use the existing threshold and any new application for development that came in after the Council's action would be subject to the lower threshold for three units rather than the current five.

Mayor Klein asked how that would affect a three-unit Developer.

Mr. Emslie stated they would be subject to an in-lieu fee calculated based on a percentage of the sales price.

Mayor Klein asked what the percentage was.

Mr. Emslie stated it was seven and a half percent of the sales price of the home or unit.

Mayor Klein stated the in-lieu fund would add 35 thousand dollars to the cost of the unit.

Mr. Emslie stated yes.

Council Member Schmid stated the in-lieu fee had a financial benefit to the Developer using the in-lieu payment and would need further justification. The in-lieu fees need an appropriate adjustment to make it equal to the cost of building.

Mayor Klein asked to make that a separate Motion.

Council Member Morton stated that we were not shifting from unit contributions. This would be for smaller developments where the required percentage would not require us to get a BMR unit and would not affect the larger developments. He did not intend his Motion to be an in-lieu fee because that would be problematic.

Council Member Barton stated this would bring more funds into our in-lieu fee and help create additional units. It would be reasonable to be concerned with those who are developing smaller projects.

Council Member Yeh asked in regards to developers whether Staff had a sense of proportionate impact of who would be developing the smaller unit projects versus the larger projects.

Mr. Emslie stated that they had received requests for smaller units where there were duplexes, three and four unit complexes, which tend to be smaller local developments instead of the big publicly traded developers who handle the bigger projects.

Council Member Yeh asked whether there were concerns with the lower threshold and a greater burden being placed on those particular developers.

Mr. Emslie stated that the units go for the market rate, which has been more than enough to handle the in-lieu payment from a small development.

Council Member Yeh stated his concern was having an unintended consequence for the larger projects if for some reason developers found this an unfriendly development on the policy front.

Council Member Espinosa asked regarding bench marking for other Cities on this last point and what we saw in the Bay Area for other jurisdictions who have lowered this down to a three-unit threshold.

Mr. Emslie stated it was estimated that about 30 percent of jurisdictions that had BMR inclusionary housing requirements have applied fees or dedication of units at five or fewer. We would be par with about 30 percent of the Cities that did inclusionary housing.

**MOTION PASSED:** 8-0, Burt absent

**MOTION:** Council Member Schmid moved, seconded by Council Member Kishimoto to direct Staff to study Policy # 1.I.1. which reads "Consultants found that in-lieu fees are a financial benefit to the developer and that the methodology needs further adjustment to bring those fees in-line with development costs.

Mr. Baum asked for clarification whether that was direction to Staff to study and return to Council.

Mayor Klein stated it should be direction to Staff to study the issue and return with it.

Mr. Emslie stated it was in the overall recommendation to return with that.

Council Member Morton asked whether the Council was asking Staff to return and provide us with their opinion on whether or not converting to a complete in-lieu fee program was advisable.

Mr. Emslie stated the consultants had recommended that the in-lieu fee was too low.

Council Member Morton stated the in-lieu fee was seven percent and for the larger developments they would be paying 15 percent or more. We are asking Staff to return with a proper level of the in-lieu fee.

Council Member Espinosa asked for clarification whether this was already in the plan.

Mr. Emslie stated it was but Council comments were always welcome on any Staff recommendation.

**MOTION PASSED:** 8-0, Burt absent

**MOTION:** Council Member Barton moved, seconded by Council Member Morton to approve remaining Staff supported items in Attachment A to CMR 173:08;

- 1.a.) Recommendations Related to Appreciation and Calculation of the Resale Price; Continue to Emphasize the Goal of Permanent Affordability of BMR Units
- 1.b Recommendations on the Term of the Ownership BMR Deed Restrictions & Rental BMR Regulatory Agreements
- 1.c. Recommendations to Improve the Condition of the Existing, Older BMR Housing Stock with the Provision of Limited City Financial Assistance to Very Low Income BMR Owners of Such Units
- 1.d. Increase Efficiency of Program Administration, Clarify Rules & Improve Owner Understanding
- 1.e. Eliminate the "Cost-Based" Pricing Exception Clause for New BMR Units in Program H-36; Continue to Base Newly Built BMR Prices Only on the Mortgage Affordability Formula
- 1.f. Require a Customized Analysis of the BMR Obligation for Unusual Housing Product Types or Unique Proposals
- 1.g. Clarify the City's Priorities for Satisfaction by Developers of the BMR Requirement
- 1.h. Lower the Threshold for the BMR Requirement for Five Units to Three Units or Residential Parcels
- 1.i Conduct Further Technical Study the BMR In-lieu Fee Formula
- 1.j. Miscellaneous Changes in Program H-36 Provisions for Incorporation into BMR Ordinance
- 1.k. BMR Rental Program: Specific Policy for Rental BMRs

Council Member Barton stated there were another 25 Staff supported items and were about things that were going to return in the work plan for the Comprehensive Plan (Comp. Plan). These were items that had been through Policy and Services (P&S) and/or the Planning and Transportation Commission (P&TC) multiple times.

Council Member Schmid stated that one item he would like to discuss was Attachment A, Page 4, 1.d)2. There was a division between Staff and the P&TC over local preferences and the waiting lists. He asked if the current methodology of the waiting list make it impossible for new entrees into the City to participate in our BMR program. He added that as the Stanford issue was addressed are we expanding employment or eliminating workers coming from out of town to participate in our BMR program.

**AMENDMENT:** Council Member Schmid moved, seconded by XXX to have Staff explore the Planning and Transportation Commission evaluation of preference point system BMR qualifications.

**AMENDMENT FAILED FOR LACK OF SECOND.**

**MOTION PASSED:** 8-0, Burt absent

Break taken at 9:05 p.m., returning at 9:15 p.m.

## REPORTS OF OFFICIALS

### 7. Approval of Ideal Candidate Profile for City Manager Position

Bob Murray, Murray & Associates stated their firm had sent out the draft profile and they had received some comments back.

Tommy Fehrenbach, Chamber of Commerce, 638 Middlefield Road spoke regarding the Chamber of Commerce's support for the development of a program to educate future community leaders who understand collaborative government for the common good.

Herb Borock, P.O. Box 632 spoke regarding the 12 items included in the compensation and an additional eight items that recently began that he found questionable.

Council Member Barton asked Mr. Murray to clarify who he had spoken to in the community.

Mr. Murray stated he spent two days speaking to the Council Members, residents of Palo Alto and the two individuals that each Council Member chose for him to speak to.

Mayor Klein asked if he received any surprises.

Mr. Murray stated he did not anticipate the intensity of the comments in regards to civic engagement and how important that was to some people.

Vice Mayor Drekmeier read comments from Council Member Burt who was unable to attend the meeting: 1) regarding community involvement he asked for a person who values input and participation from the community; 2) regarding embracing technology he asked for a clearer name like technology that allows innovation in government.

Council Member Kishimoto stated that some of the wording would need to be strengthened regarding engagement.

Council Member Schmid stated that the individual we were looking for was referred to as a "seasoned individual" and asked for a more active term.

Council Member Espinosa stated that the brochure that was presented was focused primarily on the community challenges on large development projects and the ideal candidate on these particular values. He was not sure if there were enough emphasis placed on the need for an understanding of the significant financial situation in regards to infrastructure and the backlog.

Council Member Yeh asked if candidates would comprehend the many issues within our community from the brochure.

Mr. Murray stated the brochure might drive the wrong people away and the candidates were better informed with a better sense of if they were up to this job.

Mayor Klein stated that was precisely what he wanted Mr. Murray to get out of the two days of meeting with the community.

**MOTION:** Council Member Barton moved, seconded by Council Member Morton to accept the draft brochure for the City Manager position presented by Bob Murray & Associates incorporating comments from the meeting.

**MOTION PASSED:** 8-0, Burt absent

#### PUBLIC HEARINGS

8. Approval of a Tentative Map and Record of Land Use Action to Create Six Residential Condominium Units on a .57 Acre Lot at 433 West Meadow Drive.

Assistant Director of Planning Curtis Williams stated that the Architectural Review Board (ARB) had approved the site layout and home design. The Planning and Transportation Commission (P&TC) recommended approval of the project.

Council Member Morton asked whether the private streets were made wide enough for our garbage collection.

Mr. Williams stated that was something that Public Works looked at as part of their review.

Council Member Morton stated that the Fire Department often had posts that could be removed to allow them to get in and out.

Mr. Williams stated that Palo Alto Sanitation Company (PASCO) could not do that.

Council Member Morton expressed his concern with forcing a special pickup because the normal truck could not get in.

Vice Mayor Drekmeier read the City Manager's Report (CMR), Attachment D, Section H. Sub-section b) Hydrology and Water Quality "Substantially deplete groundwater supplies or interfere substantially with groundwater recharge" and it was marked as a less than significant impact. He asked if there was any impact at all because of basements.

Mr. Williams stated Staff tried not to use "no impact" when there were run-off issues but this was not specific to the basement issue.

Public Hearing was opened and closed with no speakers.

**MOTION:** Council Member Espinosa moved, seconded by Council Member Morton to approve the Tentative Map and Record of Land Use to create six residential condominium units on a .57 acre lot at 433 West Meadow Drive.

**MOTION PASSED:** 8-0, Burt absent

9. Approval of 1) a Tentative Map and a Record of Land Use Action to Subdivide the Elks Lodge Site (4249 and 4251 El Camino Real) into Two Lots; and 2) a Vesting Tentative Map and a Record of Land Use Action for 4249 El Camino Real to Subdivide the Residential Lot into a 45 Unit Common Interest Development.

Director of Planning Steve Emslie stated that Council had continued the two-lot subdivision at the Public Hearing in January, which would have created the property definition between the Elks Lodge and Summerhill's condominium project. Since then the condominium map had been reviewed through the Planning and Transportation Commission (P&TC) and was now presented to the Council to take action on both the two-lot subdivision and the condominium project. The two projects would then return to the Council in the form of final maps and these actions would be on the Council's Consent Calendar with no public hearing required. The Tentative Maps for both projects conforms with the Zoning and the Comprehensive Plan (Comp. Plan). The zoning and the housing elements identified a maximum of 97 units and more than half of those units are proposed. The Comp. Plan clearly indicates this site as well as the housing element as residential. The plan as addressed by the developer through their revised proposal facilitates bike and pedestrian access through the site and provides ample landscaping and site amenities for a quality environment. Private streets were supported by the Comp. Plan and the developer has offered to place public easements over these streets. The local Homeowners Association would maintain these streets and the public would be allowed access like any other street in the community. He added that there was a suggested amendment to the

condominium map and the two-lot subdivision that the City require that the sub-divider defend and indemnify the City any claim or action brought within the 90-day period to challenge the approval by the City concerning a subdivision. The Planning Department and the City Attorney's Office recommended the Council's action, if this was approved, to include the subdivision map to include this condition.

City Attorney Gary Baum stated the Summerhill project and the Elks project were before the Council for a Tentative Map approval. Summerhill had filed a vesting Tentative Map which placed additional constraints on the City. There were three primary legal issues: 1) the stated desire for wide public streets while the Comp. Plan did not have a requirement for public streets; 2) Summerhill required an easement on the adjacent Dinah's property and legally the City would have to buy the easement; 3) the approval of the Tentative Map. These projects were consistent with the Comp. Plan. The site was suited to the proposed density of development. The design has not shown in the Environmental Analysis to cause substantial damage, and the design did not conflict with public easements for access. Both the Planning Department and the Attorney's Office were unable to make findings for denial of this map based upon this criteria and the Council must make findings based on evidence to deny the Tentative Maps.

Arthur Keller, Planning and Transportation Commission stated that the Comp. Plan did not prohibit private streets. However, the Comp Plan does indicate the nature of what streets should be. It indicated that the rights of ways were wider, including sidewalks and street amenities and their concern was with the street widths in general. There was a public easement on the parkland that was owned by the residents.

Clare Malone-Prichard, Architectural Review Board (ARB) stated that the ARB had recommended approval of this project. The ARB wanted to have a location for future access for a public easement.

Council Member Morton asked Staff whether the future path point of connection was where the future access would be.

Ms. Malone-Prichard stated that was what was envisioned as future access.

Council Member Morton asked whether it was possible if Dinah's was redeveloped, that there might be access on the south side of Elks Lodge.

Ms. Malone-Prichard stated that was correct.

Council Member Morton asked for clarification on the Summerhill Homes Tentative Map for the future path point of connection.

Mr. Emslie stated the Summerhill project provided a pedestrian walkway that ends at the property line which would stay the same. However, the input from the Council in January stated there was a strong desire to have access to the park, which Summerhill had provided by connecting at a shorter distance from Wilkie Way on the far south end of the property.

Council Member Morton asked if the Council wanted the pedestrian access to go all the way to the future path would the City have to get an easement or a condemnation for the area from Wilkie Way back to the future path.

Mr. Emslie stated that was correct.

Council Member Morton asked if we could get both paths in hopes that we might want pedestrian access all the way to the future path as well as the alternate path connection.

Mr. Emslie stated he had spoken to the developer and would leave both options open. The Staff had strongly favored the alternate path connection access.

Council Member Morton asked for clarification that there would not be pedestrian access.

Mr. Emslie stated that was correct.

Council Member Morton asked why we would not want to go all the way to the end of the street.

Mr. Baum stated in order to do Eminent Domain we would need to demonstrate a public purpose. There may be a question for condemning the entire strip when we could achieve the same thing with a smaller strip. He would like to seek the advice of outside Counsel on Eminent Domain the Eminent Domain Council to make sure.

Council Member Morton asked if we could request the Eminent Domain Council to verify that.

Mr. Baum stated we could request that by friendly negotiation then it would be a great deal easier.

Council Member Morton stated that in the letter that was presented to Council it was a suggestion that the shorter area be decided upon within 12 months.

Vice Mayor Drekmeier stated that each house had a two car garage and he asked if there was any requirements for people to park in their garage and how would that be enforced.

Mr. Emslie stated the City had no requirements but the applicant might have a restriction that required it.

Council Member Kishimoto asked how many guest parking spaces there were.

Mr. Emslie stated they would look up the answer.

Council Member Kishimoto stated that regarding the traffic study, the amount of time to get off of Deodar Street would be over 200 seconds and asked if Staff was able to take a look at that. If a traffic signal would be deemed to be justified there, who would pay for it.

Mr. Emslie stated that Staff had looked at the traffic study and the Negative Declaration. The applicants report, and the independent review. There were no significant delays or impacts as a result of this project. The critical factor in delays in a non-signalized intersection was the gap analysis and the traffic engineers predicted how much space there would be to provide a safe left turn in and out of the site. Their analysis stated that they were within acceptable ranges for cars to get in and out at the peak hours and asked for ongoing monitoring of this intersection. Based on the volume of traffic a traffic signal was not warranted but it would be Caltrans responsibility to install the signal.

Council Member Kishimoto asked for clarification that left hand turns were still allowed but they anticipated an average of 200-second delays for each vehicle.

Mr. Emslie stated that the 200-second delay was the absolute worst case and in most cases, it would be much less than that because of the gap analysis that was provided.

Council Member Kishimoto asked whether there had been enough analysis done for them to have room for a U-turn.

Mr. Emslie stated he was not sure.

Council Member Kishimoto asked whether the Developer would contribute to a future signal.

Mr. Emslie stated that a signal was not warranted.

Council Member Kishimoto asked whether a signal would ever be expected.

Mr. Emslie stated if a signal became warranted it would be because of incremental growth in the traffic.

Mr. Williams answered Council Member Kishimoto's question from earlier that 15 parking spaces were required for guest parking spaces which was one for every three units.

Council Member Kishimoto asked whether we could make conditions of redevelopment to allow forward thinking with the Elks Lodge and Dinah's projects.

Mr. Emslie stated the way we acquired the Deodar Street Easements right-of-way, was done incrementally. The City has half of the street from the former Ricky's owner with no participation on the part of the Elks other than to consent to the project. In this case, the Elks development was still pending and that was something that could be looked at when the Elks property develops in terms of access.

Council Member Yeh asked whether we would know what the boundaries would look like at this point.

Mr. Emslie clarified that he was asking regarding the proposed Summerhill project.

Council Member Yeh stated yes.

Mr. Emslie stated yes and the Applicant was prepared to give us an overview of the design.

Council Member Yeh asked whether that would be true on the other side as well at the Wilkie Way Subdivision.

Mr. Emslie stated yes.

Council Member Yeh asked if the alternate path connection was approved who would assume the costs of maintaining that path.

Mr. Emslie stated the developers are proposing to include that in the maintenance that the Homeowners Association would be responsible.

Council Member Yeh asked how far along Elks Lodge was in their site design.

Mr. Emslie stated they had done a preliminary review with the ARB, which was done before they made their application and had not made their formal application.

Council Member Yeh asked whether underground parking was part of that discussion.

Mr. Emslie stated yes that was in the proposal.

Public Hearing was opened at 10:20 p.m.

Elaine Breeze, SummerHill Homes, 277 California Avenue, Applicant stated they were requesting approval for the Tentative Map to Subdivide the Elks Lodge property into two lots and a Vesting Tentative Map to create 45 multi-family residential condominium units, private streets and a dedicated parkland on a portion of the Elks Lodge property. In addition, the approval of the associated Records of Land Use as recommended in the Staff report in conformance with the City of Palo Alto Municipal Code and the Subdivision Map Act. The first subdivision was the split of the two lots for the new lodge and the second was for the 45 unit multi-family subdivision. She clarified that they would retain the parkland and offered it with public access easements. The Home Owners Association would be responsible for the maintenance of it.

Council Member Kishimoto asked whether Ms. Breeze could explain the Deodar entrance.

Ms. Breeze stated coming off Deodar, which was an open public plaza area, there were public access easements. There were street trees in the foreground and Redwoods in the background.

Council Member Morton expressed his concern with getting most of the high school traffic on Charleston Road and across town. He asked whether it was possible to decide to have one of the paths for walkers and one path for bikers.

Ms. Breeze stated they would be prepared to do that.

Council Member Morton asked for clarification if the Council wanted both paths would they need a full 12 months.

Ms. Breeze clarified that the 12 months only related to the alternate path connection.

Vice Mayor Drekmeier asked whether there were trees where the main entry drive, Street A met the Dinah's property.

Ms. Breeze stated that the City could have the right to remove them but the goal would be to plant something that someone could walk or bike underneath.

Council Member Espinosa thanked the Applicant for working so hard to get to a place where the City was happy with their development.

Carlin Otto, President Charleston Meadows Neighborhood Association, 231 Whitclem Court spoke regarding their neighborhood being against any type of public access that would enable overflow parking from the Elks or the new housing.

Bob Fleck, President of Palo Alto Elks, 4249 El Camino Real spoke regarding his support for the Summerhill's project and asked to approve the Tentative Map to subdivide the Elks site into two lots.

Lane Liroff, 4221 Wilkie Way stated he did not support the pedestrian access due to the overflow of parking and traffic problems.

Burt Endsley, 15 Roosevelt Circle, spoke regarding the Council needing to be responsive to the concerns of neighbors regarding any new development project.

Andy Faber, Land Use Attorney for SummerHill, 10 Almaden Boulevard, San Jose stated under the Subdivision Map Act, this project was to be considered on its merits under the existing plan and existing zoning. He asked the Council to approve both Tentative Maps under consideration.

Eric Stietzel, 239 Whitclem Court spoke regarding the promise they received from the City regarding no access except with emergency vehicles from the developments between Wilkie Way and El Camino Real.

Chop Keenan, 700 Emerson Street spoke regarding the Elks reinvesting the money from this sale into a new facility.

Kevin Wu, 4248 Wilkie Way spoke regarding his concerns with the public access and possible overflow from parking.

Roger Kohler, 4291 Wilkie Way spoke regarding the promise that was received from the Council regarding no public access through that area.

Jean Olmsted, 240 West Charleston spoke regarding parking problems not being related to public access.

Robert Moss, 4010 Orme Street spoke regarding the park should be a public park paid for by the public not by the Homeowners Association.

Herb Borock, P.O. Box 632 spoke regarding the issues with the public and private streets and the rights of access.

Ms. Breeze stated that all City requirements had been met and they hoped that they would respect the process that they had engaged with and recognize that there were larger policy issues that would be looked at in the future.

Public Hearing was closed at 11:10 p.m.

**MOTION:** Mayor Klein moved, seconded by Council Member Barton to continue this item to April 7, 2008.

Council Member Schmid asked for an explanation regarding the promise given by the Council.

Mr. Emslie stated that in the process leading up to the approval of the Ricky's Hyatt project there were consultations about ways to make the project fit into the neighborhood. Lack of public access was one of the issues communicated and it was presented as a condition of the project approval to the Council. The environmental documents reflected that and there was not an Ordinance or law made that was binding on the Council.

Vice Mayor Drekmeier stated he wanted to finalize this project and did not support the Motion.

Council Member Morton stated he would rather defer agenda items 10 through 13 and take that time to finish this item.

Council Member Espinosa stated he would not support the Motion for the same reasons.

Council Member Kishimoto stated she supported finishing the item.

**MOTION FAILED:** 2-6, Klein, Barton yes, Burt absent

**MOTION:** Council Member Barton moved, seconded by Council Member Espinosa to approve Staff recommendations to Approve 1) a Tentative Map and a Record of Land Use Action to Subdivide the Elks Lodge Site (4249 and 4251 El Camino Real) into Two Lots; and 2) a Vesting Tentative Map and a Record of Land Use Action for 4249 El Camino Real to Subdivide the Residential Lot into a 45 Unit Common Interest Development.

Council Member Barton stated this was an item, which was constrained, and the City Attorney laid out that we were compelled to approve this.

Council Member Espinosa stated that the points that were made had other points of discussion that this Council would need to revisit such as public versus private streets, widths of streets and public access.

Council Member Kishimoto asked if the Motion included the future path point of connection and the alternate path connection easements.

Council Member Barton stated it included the map that was in the application.

Council Member Kishimoto asked Staff to clarify if it included the acceptance of the two connections and the one-year to negotiate.

Mr. Emslie stated the Staff recommendation was to approve the map but with the condition to add the applicant's proposal to add the alternate path connection, which was, an added condition in the Motion.

**INCORPORATED INTO THE MOTION:** Staff's recommendation to approve the map with the condition to add the Applicant's proposal to add the alternate path connection.

Council Member Kishimoto asked for clarification that the alternate path connection was added but not the future path point of connection.

Mr. Emslie stated the future path point of connection was already there.

Council Member Kishimoto asked who would do the maintenance for the park.

Mr. Emslie stated the Developer would fund the capital improvements and the ongoing maintenance would be part of the maintenance of the grounds from the Homeowners Association.

Council Member Kishimoto asked if there was a playground to be built, would the Homeowners Association take care of that.

Mr. Emslie stated the Homeowners Association would be building all of the improvements.

Council Member Kishimoto asked if improvements to the public park would be a public process.

Mr. Emslie stated it would be a publicly dedicated park so it would be subject to the requirements for public process.

Council Member Kishimoto stated there was some confusion with the right of way and the width of the streets. She disagreed with the comments from the City Attorney and Staff that there were no Comp. Plan policies that the Council could disagree with that these did not meet. She referred to parts of the Comp. Plan to prove her objection. The City had gone a long way through this process and did support this process moving forward. She added that she remembered the promise from the Council and asked how many housing units that project was.

Mr. Emslie stated it was 181 housing units.

Council Member Kishimoto stated that no neighborhood was immune from any spill over parking and she would be supportive of a neighborhood permit parking system. There was no promise made by the Council as a whole.

Council Member Schmid asked to follow up on Council Member Kishimoto's references to the Comp. Plan. There was inadequate parking inside the development. Neighbors were concerned with overflow parking which lead to restrictions of access. The Comp. Plan should help us resolve these dilemmas and the Council should use it as a guide.

**AMENDMENT:** Council Member Schmid motioned, seconded by Council Member Morton that within the next month there be a public session with City Council, Planning and Transportation Commission, and Staff to answer the question what have we learned from the Elks project and the City Comprehensive Plan.

Council Member Morton stated that Staff understood that if we adopt the Alternate Path Connection that we are also directing Staff to acquire an easement. He clarified that he was asking Staff to get an easement for both paths.

Mayor Klein stated that this would be reviewed with the revisions of the Comp. Plan. He would vote against the Amendment.

**AMENDMENT FAILED:** 4-4, Kishimoto, Morton, Schmid, Yeh yes, Burt absent

Council Member Yeh stated he supported the main Motion.

Vice Mayor Drekmeier asked whether the Motion included the public access easement over the streets within the development.

Council Member Barton stated it did.

Vice Mayor Drekmeier wanted to have the Applicant be responsible for the construction of the park but the maintenance be the responsibility of the City. This would turn this into a community park and not a private park.

City Attorney Gary Baum stated this would be imposing additional costs to the City, which were unnecessary.

City Manager Frank Benest stated the City was trying to minimize any additional financial responsibilities and did not recommend that.

Mr. Baum stated the primary beneficiary was the Homeowners Association.

Council Member Barton stated he was inclined to support the City Manager's financial view on that.

Council Member Morton asked at what point could we pose an easement of half a street on the Southside of the Elks Lodge.

Mr. Emslie stated the Elks Lodge property has not made a formal application.

Council Member Morton stated that we were still separating a lot.

Mr. Emslie stated that there was a second driveway that accesses El Camino Real in addition to Deodar Street. That would be a site issue that would go through the Architectural Review Board (ARB) and unless it was appealed, it would not return to the Council.

Council Member Morton stated if we wanted that option to be available would we have to add that as a condition of the lot separation.

Mr. Emslie stated that could be a direction to ARB and have them address that in their review.

Council Member Morton stated he wanted to consider that easement and make it a condition of the lot division.

Mr. Baum suggested to direct the ARB to examine the issue.

Council Member Morton stated he was concerned regarding the future path point of connection. He asked if Staff needed Council's direction to look at an easement along that corridor.

Mr. Emslie stated that was a discussion under Agenda Item Number 10.

Council Member Morton asked to request an easement for half of a street along the Southside of the Elks Lodge.

Mr. Baum stated he did not believe that was possible but we could direct the ARB to analyze this.

**MOTION TO AMEND:** Council Member Morton moved, seconded by Council Member Schmid to direct the Architectural Review Board and Staff to analyze the feasibility of an additional right turn lane taken out of the Elks Lodge property.

**AMENDMENT FAILED:** 3-5, Kishimoto, Morton, Schmid yes, Burt absent

**INCORPORATED INTO MOTION TO ADD:** 1) a condition to specify that Government Code Section 66574.9 provides that a City may require that a sub-divider defend, indemnify, and hold harmless a city, and its officers and employees against any claim or action brought within 90 day time period provided for in Government Code Section 66499.37 to challenge an approval by the city concerning a subdivision; 2) the second pedestrian access to the park, per the applicant's proposal; and 3) the offer of public access easements over all of the streets, per the applicant's proposal.

Council Member Kishimoto asked for clarification that we are not including a direction to Staff to negotiate an easement on the Dinah's property.

Mayor Klein stated that was Item Number 10.

Council Member Kishimoto stated that was a condition on her vote and asked for clarification from the Maker of the Motion.

Council Member Barton stated that was not included because that was conversation for Item Number 10.

Council Member Kishimoto stated he suggested on voting on agenda Item Number 10 first, otherwise she would be forced to vote against this agenda item.

Council Member Morton stated that we were willing to allow both paths and if we move forward to agenda item 10 with the understanding that the Applicant had agreed to that, Staff could come back if the applicant withdrew that.

Mr. Baum stated it would become a condition of approval because we were given an offer and we had accepted it.

Council Member Morton asked if our problem would be how the offer was implemented. He added that he shared in Council Member Kishimoto's concern but he would trust the offer of the Applicant.

Vice Mayor Drekmeier stated that if we did get to Item Number 10 all we could do was ask Staff to explore access and return to Council.

Mayor Klein stated he supported the Motion and was concerned about our process and our laws. He stated that the Council would have to uphold the law and the applicant has applied with all of the zoning rules.

**MOTION PASSED:** 6-2 Kishimoto, Schmid no, Burt absent

Council Member Morton asked to defer all of the remaining items on the agenda to a later date.

Mayor Klein stated he would like to continue these items to the next meeting.

Mr. Baum asked whether Item Number 11 needed to be dealt with now since the event would be in April.

11. Colleagues Memo from Mayor Klein and Council Members Kishimoto and Barton Regarding Authorization to Host Youth and Business Tri-City Summit: Preparing the Next Generation

Council Member Barton stated that this was an attempt to bring college students who live in East Palo Alto and East Menlo Park into jobs in Palo Alto.

**MOTION:** Council Member Barton moved, seconded by Mayor Klein to Authorize Staff to move forward to Host Youth and Business Tri-City Summit: Preparing the Next Generation.

Council Member Schmid stated he thought it was a great idea and a wonderful opportunity.

Council Member Espinosa asked for clarification of the costs.

City Manager Frank Benest stated the costs would be less than \$1,000 with Staff time from each City.

**MOTION PASSED:** 8-0, Burt absent

10. Proposal to Assign Staff to Review Potential Access from Wilkie Way to SummerHill/Elks Lodge Project

12. Proposal to Assign Staff to Review Potential Changes to the Process for the Architecture Review Board (ARB) Review of Large Projects
13. Proposal to Assign Staff to Review the Pros and Cons of Requiring Public vs. Private Streets (including clearance for refuse hauling)

**MOTION:** Council Member Morton moved, seconded by Mayor Klein to continue items 10, 12 and 13 to April 7, 2008.

**MOTION PASSED:** 8-0, Burt absent

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Espinosa discussed the art work being installed on the outside of City Hall. He also spoke regarding the growing concern of prescription drugs being dumped into the public water sources.

Vice Mayor Drekmeier stated his empathy for the gentleman who received a parking ticket after the street cleaning had taken place.

Council Member Morton spoke regarding attending the Santa Clara County Airport Land Use Committee. His term was ending, and that if no one has any objections he would continue to represent Palo Alto on the committee for the next 18 months.

Mayor Klein spoke regarding the National League of Cities inviting him as the Mayor of Palo Alto to participate in a conference in Nanning, China, April 23-25, 2008.

ADJOURNMENT: The meeting was adjourned at 12:08 a.m.

ATTEST:

APPROVED:

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City Clerk

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Mayor

NOTE: Sense minutes (synopsis) are prepared in accordance with Palo Alto Municipal Code Sections 2.04.180(a) and (b). The City Council and Standing Committee meeting tapes are made solely for the purpose of facilitating the preparation of the minutes of the meetings. City Council and Standing Committee meeting tapes are recycled 90 days from the date of the meeting. The tapes are available for members of the public to listen to during regular office hours.