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September 15, 2008

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ADJOURNMENT: The meeting adjourned at 12:10 a.m..... 34

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:03 p.m.

Present: Barton, Burt, Drekmeier, Espinosa, Kishimoto, Klein, Morton arrived at 6:35 p.m., Schmid arrived at 6:05 p.m., Yeh arrived at 6:25 p.m.

Absent:

STUDY SESSION

1. Status Update on Elements of the Wildland Fire Management Plan.

Consultants, Carol Rice (WRM) and Cheryl Miller (Amphion), presented a summary and status report on their project to update the Foothills Fuel Management Plan (FFMP). The scope of the project entails fire hazard identification and suggested mitigation measures in the City areas west of Foothill Expressway/Junipero Serra Boulevard (known as the Wildland Urban Interface (WUI)). The specific focus was on fuel-load reduction and related treatments in; 1) Foothills Park, 2) Pearson-Arastradero Preserve, and 3) key infrastructure, such as water tanks and evacuation routes.

In accordance with best practices, the consultants explained that they will seek to minimize environmental impact from fire hazard reduction treatments by; 1) only treating about ten percent of park lands, 2) using optimized techniques (grazing or hand crews), and 3) timing the treatments so as to minimize impact on ecosystems. Palo Alto Fire Station 8 staffing was under review and will be presented at the final presentation to Council later this year.

SPECIAL ORDERS OF THE DAY

2. Resolution 8854 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to John Stichter Upon His Retirement".

MOTION: Council Member Espinosa moved, seconded by Council Member Barton to approve the Resolution for John Stichter.

MOTION PASSED: 9-0

Police Chief, Lynne Johnson spoke on Mr. Stichter's career with the City.

John Stichter thanked the Council and expressed his blessing in having had the opportunity to work for the City of Palo Alto.

3. Resolution 8855 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Abby Boyd Upon Her Retirement".

MOTION: Council Member Schmid moved, seconded by Council Member Barton to approve the Resolution for Abby Boyd.

MOTION PASSED: 9-0

4. Resolution 8856 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to Clem Keyes Upon His Retirement".

MOTION: Council Member Barton moved, seconded by Council Member Espinosa to approve the Resolution for Clem Keyes.

MOTION PASSED: 9-0

Police Chief, Lynne Johnson spoke as to Mr. Keyes' career with the City.

Clem Keyes expressed his appreciation for the Resolution.

Ms. Johnson spoke to his act of heroism, when he rescued the man from a burning car, which incidentally occurred on his way to work.

ORAL COMMUNICATIONS

Richard Brand, 281 Addison Avenue, spoke regarding Bicycle Boulevard repairs at Homer and Bryant.

Carlin Otto, 231 Whitlem Court, spoke regarding parking for housing by the old Ricky's Hyatt and the routine overflow of parking from Arbor Real.

Lynn Chiapella, 631 Colorado Avenue, spoke regarding Design Enhancement Exceptions (DEE), Municipal Codes and Zoning Ordinances for architects.

APPROVAL OF MINUTES

MOTION: Council Member Morton moved, seconded by Council Member Barton to approve the minutes of July 14, 21, 28, and August 4, 2008.

MOTION PASSED: 9-0

CONSENT CALENDAR

Karen Harwell, 1335 Dana, spoke in favor of Agenda Item No. 7, on population and climate challenges, and the need for community responsibility.

MOTION: Council Member Morton moved, seconded by Council Member Espinosa to approve Consent Calendar Item Nos. 5-17.

5. Resolution 8857 entitled "Resolution of the Council of the City of Palo Alto Approving the Customer Identification and Credit Information Protection Program in Compliance with the Fair and Accurate Credit Transactions Act of 2003".
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MOTION PASSED: 9-0

Mayor Klein asked the Council if they have had any outside contact on Agenda Item No. 18 and No.19.

Council Member Barton stated he had spoken to the architect on Agenda Item No.19 but had no information beyond what was in the packet.

PUBLIC HEARINGS

18. Consideration of Approval of a Mitigated Negative Declaration, Site and Design Review, Conditional Use Permit and Record of Land Use Action for a New Spa and Fitness Facility, Below Grade Parking, Tennis Court, and Other Site Improvements Located at 3000 Alexis Drive.

Public Hearing opened at 7:54 p.m.

Interim Director of Planning and Community Environment Curtis Williams summarized the request for Site Design Review and the Conditional Use Permit for the project. The Architectural Review Board (ARB) and the Planning and Transportation Commission (P&TC) reviewed and recommended the approval to Council. A letter to Council from an attorney for the neighborhood related to the California Environmental Quality Act (CEQA), had deferred the project to this date in order to adequately respond. He went over the four key points of the Mitigated Negative Declaration and summarized that three of the points were traffic-related, and one was hydrology-related. The Traffic Engineer for the Applicant was comfortable with the traffic analysis. He noted the trips generated applied to the 24-hour fitness facility which was open to the general public, which provided the only real available trip generation rates. The issue on hydrology was that the impervious cover exceeded the allowable limitations.

City Attorney, Gary Baum stated the letter contained a number of legal and factual errors. He spoke to the referral in the letter to the Negative Declaration as improperly deferring development of transportation and management plans, since CEQA provided the mitigation measures which specified the performance standard to mitigate a significant effect on the project. He stated that mitigation measures could specify a future time to meet CEQA criteria as long as the agency committed itself or project proponents to ultimately satisfy performance standards. Mitigation measure No. 4 required the Applicant to develop a Traffic Demand Management (TDM) plan which staff must ultimately approve. The Applicant was also required to submit annual reports for five years to document the effectiveness of their measures and list any program modifications. Additional comments in the letter regarding land use, hydrology and water quality impacts had basis to suggest that the project would have significant

impact in those areas. The golf course was compliant with zoning since its original development. The City had not ignored any potential impacts and was determined that the project would decrease runoff rather than increase it. The project would also reduce the amount of runoff to neighboring properties by thirty percent, which addressed a separate concern. An Environmental Impact Report (EIR) was not required unless there was substantial evidence of such an impact by the proposed project, which there was not, and that the letter did not amount to substantial evidence. He stressed that Council only consider actual facts in order to make reasonable assumptions predicated on those facts, and expert opinions supported by facts.

Planning & Transportation Commission Member, Arthur Keller stated the Planning & Transportation Commission (P&TC) approved the site and design review and recommended approval of the Conditional Use Permit.

Council Member Kishimoto asked about the five-year monitoring and what would happen after the five years, and whether or not this required a more formal mitigation monitoring program.

Mr. Williams stated the five-year monitoring was not required, but was added to collect data in order to assess the programs effectiveness. Should problems arise, there would be a chance to address it and adequate time to make an assessment.

Council Member Kishimoto asked if this was a required part of the documentation.

Mr. Williams stated it did not need to be part of the documentation to Council, but did need to be done by staff in mitigation monitoring.

Mr. Baum stated it was within Council purview to extend the time period and that mitigation monitoring did not need to extend beyond that period.

Council Member Kishimoto asked what they were to say to a citizen who felt the traffic was picking up, and whether or not a traffic reduction program would still be in place, or what options the citizen might have.

Mr. Williams suggested making it known to citizens that they had the advantage of a Conditional Use Permit, which could be revisited if there were conditions not being addressed through that process.

Mr. Baum stated it could happen at any time, as in any code enforcement situation and that with any other type of use, especially with the Conditional

Use Permit. In an extraordinary circumstance Council had the power to revoke the permit or alter it at a future date.

Mr. Williams stated two efforts were underway to address the possibility, one being the code enforcement section developing a list of all of the Conditional Use Permits and a tracking system on an annual basis, and any red flags being checked out with a site inspection. The second effort related to TDM programs with a dozen or more projects in these programs, but there had not been a database or process for accessing their impacts. A completed draft of this database would be finalized in order to develop a program to allow assessment on an annual and five-year basis.

Council Member Schmid spoke to traffic issues and noted that part of the application process was to increase social club memberships by forty percent. He stated the increase would create a traffic impact and asked why the TDM did not pair target goals in traffic with the increase in membership.

Mr. Williams stated that could be done, although they did not find it necessary. One of the mitigation measures might be that they do not exceed 180 members until an impact was reviewed.

Council Member Schmid stated water runoff was currently over legal requirements, but noted the runoff went into two separate ponds. He cited merit in keeping the water up the hill rather than flooding the flatlands, and asked if there was any thought about using the two ponds as captures in heavy rains.

Mr. Williams stated at least one pond was being provided to capture what would have run directly off the property. The delayed release achieved the thirty percent reduced rate of discharge downstream. This was part of the regrading near the driving range and ponds.

Council Member Morton noted the facility upgrades would bring in more people and questioned how the traffic would be managed.

Mr. Williams stated that was a question for Council as to how to balance the traffic concerns. Options existed for staggering programs and classes, or providing incentives for employees to carpool in order to minimize the impact, and that posed little or no impact on the members of the club.

Council Member Morton clarified that the project would not make a huge impact on traffic numbers.

Council Member Yeh asked about fire access requirements and the building's fire resistance.

Mr. Williams stated the Fire Department would need to speak to the specific details, but had done their review and were generally comfortable with the project. Access was adequate with paved in and out surfaces and access to remote areas on-site.

Mr. Baum stated he had also spoken with the Fire Marshal, who stated that the conditions were not well written, although they were understood, and that basically there were some fire access issues with the project. As a consequence, where new access could not be built, there would be a bulking of the fire resistance to the structure with construction techniques, stand pipes and hydrants, and sprinkler changes that would be done to offset the risks, but that those measures would add square footage to the building.

Mayor Klein posed a question, via a written communication, as to whether or not a copy of the Mitigated Negative Declaration should have been sent to the Town of Los Altos Hills.

Mr. Williams stated notification would have been necessary if any of the project was within 600 feet of Los Altos Hills properties and such a notice was sent to properties within those boundaries.

Public Hearing opened at 7:54 p.m.

Don Rose, past President of Palo Alto Hills, gave a brief overview and history of the club, founded in 1958 in the undeveloped hills of Palo Alto, which was built for members and guests to enjoy golf, swimming, tennis, dining and social events. He stated the residential area grew around the already established club. He cited the club's limits were 425 proprietary members/shareholders and 200 social members, with nonmember access to events, and a number of nonprofit organization users. The club maintained open communications with the Neighborhood Association and acts as a fire safe zone for the community in the event of natural disasters. The club project had been reviewed with the association members in detail in October and December of 2006. The club had also met with the immediate neighbors on an individual basis. He stated expansion meant increased expectations for exercise facilities, opportunities for family oriented events and options for family dining. The club's pool facility and infrastructure were fifty years old, outdated, and in need of major renovation to meet state standards for events and member participation for swim programs. He stated they were short one tennis court in order to meet the club-to-club requirement for matches and that the summer youth program would make use of the third

court. He noted that neighboring clubs already had the upgrades and services.

Cody Anderson Wasney Architects representative, Chris Wasney presented an outline of the club property, approximate 125.5 acres, borders, corner lot, developed portions of the club, existing conditions, clubhouse, three tiers of parking, driving range, swimming area and the south end where they will be doing the major innovations. He reminded Council, that there were no houses, trees or landscaping at the time of the club's inception. He went through the site and architectural improvements regarding the pool, main clubhouse, the proposed addition to the south end, tennis courts, driving range corner, and a modest improvement project to extend the driving range. Excavation spoils would be used to regrade the driving range in order to pull the tees further south, with soil distribution in a thin layer over the course itself from the nine hole to the driving range. The additional tennis court would be a grass court. He cited architectural improvements to include the clubhouse, locker rooms, ballroom and pro shop. The Architectural Review Board (ARB) and Planning & Transportation Commission (P&TC) unanimously approved the project. He reinforced that major renovations were to be made in family fitness and recreation and stressed the fact that the renovations would essentially nestle into the existing area with minimal elevations and landscaping to decrease neighboring property concerns.

David Geery, 420 Sand Hill Road, spoke on the project and the much needed modernization of the club.

Jan Terry, 925 Laurel Glen Drive, spoke in support of the project and the neighborhood's need for renewal, especially the pool complex.

Arthur F. Coon, 1331 N. California Boulevard, 5th Floor, Walnut Creek, stated the project was not adequately reviewed.

P. Srinagash, 819 Sutter Avenue, spoke about the human impact of the club and what it meant to club members in positive respects.

Dan Smith, 5311 Lowry Road, Union City, spoke to the staff's overlooking the substantial evidence regarding traffic and reviewed the numbers.

Steve Saperstein, 3089 Country Club Court, spoke to issues of noise abatement during reconstruction and as the club continued to function.

David O'Brien, 13651 Paseo Del Roble, Los Altos Hills, spoke on the issue of maintenance noises from the club and improvements needed in the area.

Francis J. Crosson, M.D. 1491 Hamilton Avenue, urged an affirmative vote on the improvements since the club was an asset to the community.

Nicole Nadim, 2927 Alexis Drive, and Jill Dempsey, 2987 Alexis Drive, were children who attended the club, and spoke in support of the growth.

Camille Elmuril, 67 Atbuelo Way, Los Altos and Maggie Munro, 300 Blue Oak Lane, Los Altos, were young members of the club who spoke in favor of the project.

Shirley Chiu Li, 3 Patricia Place, Menlo Park, supported the project.

Hans von Clemms and Cole Miller, 3130 Alexis Drive were youth members who spoke in support of the project and importance of the club.

Sandra Nadim, 2927 Alexis Drive, spoke on the country club's positive efforts during fire disasters and the need for the current modifications.

Anna von Clemm, 3130 Alexis Drive, spoke regarding the pool and the need for renovations to meet diving and safety requirements.

John Herr, 1450 Dana Avenue, spoke regarding the family needs for the club and the necessity for the improvements.

Mark Nadim, 2927 Alexis Drive, spoke regarding his opinion that the traffic to the club was not a problem. He was in support of the club expansion and renovation.

Peter von Clemm, 3130 Alexis Drive, reiterated that the club was a great neighbor and spoke in support of the project.

Herb Borock, P.O. Box 632, spoke about his legal questions that had been posed earlier to the City Attorney about the Town of Los Altos Hills, traffic concerns, mitigations, the Conditional Use Permit, noise, tennis courts, lights, lots, site development regulations, code citations and environmental regulations.

Sal Giovannotto, 3090 Alexis Drive, spoke to rules applying to everyone in the country club, the traffic concerns, and the need for more public review.

Dirk Zander noted that starting the golf course work after 8:00 a.m. would seriously hinder club operations and that most courses in the area start at 6:00 a.m. He had, however, instructed the superintendent to start work on the interior of the course in an effort to reach outlying areas near residences

later in the morning.

Gay Lawrence Pang, Pang Engineers, stated they had submitted letters in June, July and September of 2008 as a response to the August 2007 traffic report. The traffic report addressed the importance of level of service at critical intersections, queuing issues and freeway operations. The best available information on trip generation was used and went beyond what was normally analyzed for an expansion. He discussed average daily traffic use for the area and the number of trips were not reaching anywhere near capacity.

Public Hearing closed at 8:50 p.m.

Interim Director of Planning and Community Environment, Curtis Williams stated the reason the noise issue and noise mitigation measures were not included in the Use Permit was because there was an existing condition which stated compliance to the Noise Ordinance. He verified they had heard from several neighbors and if Council desired, they would draft language relative to hours for heavy use equipment. He pointed out several places in the documented mitigation measure where the building was referred to in varied square footage measurements of 16,276 and 28,000. He verified that the 28,000 figure included the underground parking.

City Attorney, Gary Baum stated the Office of Planning and Research (OPR) issued an opinion on compliance issues and he believed they have dealt with greenhouse gas concerns. One remaining issue of confusion was essentially adopting a mitigation monitoring plan. He stated the mitigation monitoring plan was already in effect, and the triggers of the mitigation measures had already been incorporated. He reiterated that to the extent they were required; they were adopting a true mitigation monitoring plan with the five-year reporting plan.

Council Member Morton was in support of the project.

MOTION: Council Member Morton moved, seconded by Council Member Barton to approve 1) the Mitigated Negative Declaration, prepared for the property located at 3000 Alexis Drive, in accordance with the California Environmental Quality Act, and 2) Record a Land Use Action approving a Site and Design Review and Conditional Use Permit applications to allow the construction of a new spa and fitness facility, and other site improvements subject to the findings and conditions of approval contained in the draft Record of Land Use Action. Staff is directed to correct the bullet point numbering under Mitigation Measure No. Four to be A, B, C, and D.

Council Member Barton noted that the traffic concerns were clearly built into the plan with caps established for club attendance and activities. He stated it was a positive project from an architectural point of view and said he had heard good things from club neighbors who were also in support of the project.

Vice Mayor Drekmeier stated his support of the Motion and wished to encourage the club to do whatever it could to offset greenhouse gas concerns posed by traffic by looking into solar water heating, rebates and other cost-effective energy efficiency measures.

AMENDMENT: Council Member Schmid moved, seconded by Council Member Kishimoto to add a sentence on Mitigation Measure No. Four that stated the applicant would work with the Planning Department to set targets for transportation that were in line with the increase in membership.

Council Member Schmid noted his support for the expansion and club rebuilding as a neighborhood asset. The ability to manage the traffic concerns were a key element in moving forward.

Council Member Kishimoto stated support for the club expansion and stressed the importance of being mindful of development in open space areas.

Mr. Williams suggested the direction to go with the Motion might be, after they talk about monitoring reports provided at the five year mark, that there be a specific requirement that social membership not increase above 175 members unless performance targets had been met with the TDM program. He stated this midway checkpoint would verify their compliance before they could proceed in membership.

Council Member Schmid asked where the language would be inserted in the Motion.

Mr. Williams suggested insertion under Mitigation No. 4, near the end, after submission of monitoring reports.

Maker and Secunder of the Amendment modified the Amendment as follows:

AMENDMENT: Council Member Schmid moved, seconded by Council Member Kishimoto to 1) add a sentence in Mitigation Measure No. Four that states the applicant will work with the Planning Department to set targets for transportation that are in line with the increase in membership, and 2) add a sentence before the last sentence in Mitigation Measure No. Four that in no

event shall social membership increase above 175 members unless monitoring demonstrates that the performance targets have been met with the Transportation Demand Management (TDM) Program.

Council Member Morton stated his unwillingness to accept these artificial limits.

Council Member Burt stated he thought it was a clear and reasonable approach and was in support of the Amendment.

Council Member Barton encouraged a vote against the Amendment and stated he thought the mitigation original wording was sufficient. He said the Amendment was counterproductive, since they could cap membership, but the club could respond by having more public events for revenue which would bring in more traffic.

Council Member Kishimoto stated the Amendment would have an impact on whether or not the traffic plan would be effective or not.

AMENDMENT PASSED: 6-3 Barton, Klein, Morton no.

Council Member Burt stated that staff brought the project to Council later than scheduled due to concerns over addressing legal issues adequately. His understanding was that the project came to Council in order to address the appellant issues. He cited guidelines in the Comprehensive Plan for lot canopies and noted on the overhead view of the renovations the canopies appeared to be lacking. He encouraged a design respecting the open space areas, which the club had done in the past.

Council Member Espinosa expressed confidence that the noise and traffic issues had been addressed and was in support of staff's recommendations.

Mr. Baum asked for directions to be included to clean up Condition No. 3 so that it would read alphabetically.

Mayor Klein agreed.

AMENDED MOTION PASSED: 9-0

19. Consideration of Appeal of Director's Approval of an Architectural Review Application for a Four Story Commercial Mixed Use Retail/Office Building, Including, Design Enhancement Exceptions to Exceed the Maximum Height and Floor Area, and a Variance

Application for an Encroachment into the Bryant Street Special Setback at 278 University Avenue.

Interim Director of Planning and Community Environment, Curtis Williams stated an appeal was received for the Director's decision for approval of the major architectural review of the four-story retail and office mixed use building which included the Design Enhancement Exceptions (DEE) for height to exclude the basement square footage from the Floor Area Ratio (FAR) calculations and to include a three-foot encroachment variance into the seven-foot special setback along Bryant Street. The Architectural Review Board (ARB) recommended approval in June of 2008. The Planning and Transportation Commission (P&TC) recommended approval of the Variance in July of 2008. The Zoning Code had a provision for nonconforming buildings that already encroached on setbacks in the downtown district in that they could be rebuilt along those nonconforming standards if no other deviations existed. The reason the Applicant was asking for a Variance was because there were two DEE's requested with deviations which required a Variance. The proposed height DEE for the building was up to fifty-five feet and the Appellant thought this should not be disallowed. The ARB felt the increased height would break up mass and minimized visibility of the upper floor. The Appellant felt the basement floor should be included in the square footage above grade and that the DEE should not be used to increase floor area. He cited this as a unique issue to the project due to building code changes and that basement areas in commercial buildings were allowed to be excluded if deemed not useable by the Planning Director at less than seven feet in ceiling height. He stated the areas could be used for storage and equipment. He stated design reasons were to locate equipment in the basement, off the rooftops, lowering the height limits since no screening would be needed and in order to make a more green building. A last issue was whether or not to include the basement floor in the bonus floor area even though it was a new structure and not a remodel or an existing structure. He stated seismic bonuses allowed for a 2,500 square foot or twenty-five percent increase in building size as a bonus available to applicants on an upgrade with a distinction in the past between rehabilitation and retrofitting a structure versus demolition.

Staff and the ARB recommended denial of the appeal and upheld the approval of the DEE's and the Variance.

Architectural Review Board Member, Clare Malone-Prichard briefly went through the reasons that the ARB made the decisions on Variance setbacks, visibility to the area and providing larger sidewalk width. The Applicant proposed to have a four-foot additional setback which the ARB felt provided ample room for view and sidewalk width. She discussed the DEE's for height

and how they looked at the higher height for retail use in order to enliven the area, but this was at the back of the building and not particularly visible from the street. The third item, the basement area, was a matter of practicalities in that this area was not a space for office or retail use.

Planning and Transportation Commission Member, Arthur Keller stated in July of 2008 the Commission considered the appeal of the Variance and voted four in favor of denying the appeal and granting the Variance. He stated three members were not in favor, and that the four who favored felt the project was a good design. The four-foot setback was a significant improvement. Those opposed to the Variance felt findings for granting the Variance had not been met. He stated the Commission had purview over the Variance but not the DEE. He stated since this was a streamlined process it would be worthwhile in the future to look at whether the process had gone too far in the application of the Comprehensive Plan. He questioned whether the DEE appeals should go through the Planning and Transportation Commission (P&TC).

Vice Mayor Drekmeier asked for clarification on setbacks, height Variances and DEE's.

Mr. Williams said the Zoning Code stated an encroachment into a special setback could only be granted with a Variance and not a DEE. General or residential setbacks in zoning had provisions to allow for encroachment in that process for DEEs.

Vice Mayor Drekmeier asked if they had found out why there was an extra setback on Bryant.

Mr. Williams stated there was nothing clear on the Downtown Design Guidelines.

Mr. Keller stated the two cross streets, Bryant and Waverly, had a narrow approach to University Avenue. He stated it was safe to speculate the setback was allowed to clear the view of oncoming traffic approaching the main street.

Vice Mayor Drekmeier asked if the setbacks came after the existing building.

Mr. Williams stated yes.

Vice Mayor Drekmeier asked if the first story for commercial was so high that it bumped up all the other height specifications.

Mr. Williams stated generally there was issue when the first story of a commercial building being higher than first floor residential sites. It was impossible to fit a four-story commercial building below fifty feet.

Vice Mayor Drekmeier asked what the height would be for the first floor.

Mr. Williams stated in this particular incident they were looking at designing the first two floors for potential commercial use.

Vice Mayor Drekmeier asked if there were buildings with second-floor retail.

Mr. Williams stated he was not aware that there was anything like that, other than restaurants with a mezzanine or commercial buildings.

Vice Mayor Drekmeier asked if second-floor retail would necessarily have to be fifteen feet.

Mr. Williams stated it would not.

Vice Mayor Drekmeier asked if there was any means of encouraging housing.

Mr. Williams stated mixed use residential was allowed downtown but there was the primary concern of parking since it must be on-site. This would be difficult to manage without reduced parking rates or other options.

Vice Mayor Drekmeier asked if the building utilities were on the rooftop were they considered as floor area ration (FAR).

Mr. Williams stated buildings and utilities were allowed to exceed by fifteen feet in roof height and did not count against the FAR.

Vice Mayor Drekmeier asked for clarification on the seismic bonus.

Mr. Williams stated buildings were surveyed and classed as 1, 2 or 3 in seismic hazard. The buildings on this list which proposed upgrades in retrofit or demolition, could take the square footage from the existing building at twenty-five percent as a bonus (or 2,500 square feet) beyond what was otherwise allowed by code, with a maximum 3-to-1 FAR in downtown not to be exceeded by those bonuses.

Vice Mayor Drekmeier noted this process as an incentive to replace more dangerous buildings but asked if the basement FAR was counted.

Mr. Williams stated the FAR was counted towards that unless it was deemed,

not habitable, and less than seven feet in height.

Vice Mayor Drekmeier asked whether it counted if it was used for building utilities.

Mr. Williams stated it would without the Design Enhancement Exceptions (DEE), which was what they were requesting. The Applicant was proposing to use that space for essentially mechanical equipment needs and not office or other space. He stated it would not be counted if it was seven feet or less.

Vice Mayor Drekmeier asked if it needed to be brought up to code in order to be used.

Mr. Williams stated yes, the new construction would have to be to the current code requirement of eight feet in access for height.

Council Member Burt stated the project forced Council to face a number of issues. He asked if there were any examples of an FAR and a whole floor being allowed or a significant height exemption under a DEE.

Mr. Williams stated he did not believe so and that this was not a floor. Sixty percent of the structure was habitable space but not an architectural element.

Council Member Burt asked why this portion of the project came as a Variance rather than a DEE which was intended for minor architectural elements.

Mr. Williams stated there were strong design reasons.

Council Member Burt asked if the staff had made any estimate on equipment and whether or not they needed the entire basement to house it.

Mr. Williams stated they had no specifics on that and there were no conditions restricting the use.

Council Member Burt stated that beyond the DEE, he was more interested in whether or not they should allow basements for other purposes in trying to enhance street level retail. He suggested this might be considered on a policy basis. He asked if an area was exempted would there be an impact fee required for that area.

Mr. Williams stated he would check on the impact fee language.

Council Member Burt asked if there were other instances where seismic bonuses had not counted against the FAR.

Mr. Williams stated he would find out.

Council Member Burt stated it was odd for the basement to qualify as an exemption for seismic bonus and not qualify for FAR exemption.

Council Member Morton asked if these had to be DEE's to be allowed, and if they were determined to be Variances, does the terminology matter, with one being legal and one not being legal.

Mr. Williams stated the terminology mattered in terms of the findings required. He stated both required that there be some unusual circumstances making it difficult to achieve without the exception, but the DEE criteria required enhanced design.

Council Member Morton asked if a Variance could have a design enhancement.

Mr. Williams stated the Variance also has to show that there was a hardship situation if it was not approved.

Council Member Morton asked if there were multiple street corners with setbacks and if one of those was intruded upon would that set a precedent.

Mr. Williams stated he did not believe so since they were looking at four street corners as they relate physically to the project and that the three other properties were not as narrow or constrained.

Council Member Morton asked if this was a unique change to the street corner.

Mr. Williams replied yes.

Council Member Morton asked whether the change to the street corner would bring the area into conformance.

Mr. Williams stated yes.

Council Member Morton asked about the merit of commercial main floors being more successful with higher ceilings.

Mr. Williams stated most commercial buildings had fairly high ceilings, starting generally at fourteen feet.

Council Member Morton asked if staff had any concerns about the basement space being seen as limited to mechanical use or retail storage.

Mr. Williams stated the code currently listed it as unusable space because it was less than seven feet in height.

Council Member Morton clarified once the area was deemed for mechanical equipment and or retail space it could not be altered for other uses in the future.

Mr. Williams stated that was correct.

Council Member Kishimoto asked about the Design Enhancement Exceptions (DEE's) and the Floor Area Ratios (FAR) exceptions for the basement. She stated the DEE Ordinance read a DEE could not be given to increase floor area. Staff had also mentioned the Director could exempt an area from being usable by calling it unusable. The Ordinance read it had to be unusable and used specifically for Americans with Disabilities Act (ADA), seismic or energy efficiency.

Mr. Williams asked whether she was looking at the definition for the floor area.

Council Member Kishimoto stated no, she had looked at the Municipal Code in section 18 although did not recall the exact sub-section.

Mr. Williams elected staff to review the section and report back.

Council Member Barton asked for clarification regarding the basements inhabibility. There were code regulations for height, ventilation and natural light. The area in question did not meet these requirements and therefore would not be habitable.

Mr. Williams concurred that the basement did not meet the required code regulations for habitability.

Mayor Klein asked if this was an unreinforced basement. In the history of Palo Alto there had been thirty-five unreinforced basements he questioned how many remained.

Mr. Williams stated yes the project had an unreinforced basement. He

clarified there were approximately twelve unreinforced basements remaining in the city.

Mayor Klein stated the FAR bonuses were in place as a community benefit to encourage the replacement or reduction of unreinforced basements. He asked for clarification on the extra five-foot of height needed and what would become of the design without this height Variance.

Mr. Williams stated he anticipated there would be a three-story building with the third story covering most of that floor. He stated the ARB would probably still require there be a setback to provide some relief.

Mayor Klein asked what the total square footage for the building was.

Mr. Williams stated it was approximately 18,000.

Mayor Klein stated this would reduce it between 100 and 1,000 square feet. He asked what the plans for the height of the first floor retail were. He asked how this project compared to the buildings along University Avenue and the side streets.

Mr. Williams stated it might be slightly higher than the first floor of most buildings that have been in existence for awhile.

Mayor Klein stated he had not heard anything about Leadership in Energy and Environmental Design (LEED) standards and asked where they were in respect to this building.

Mr. Williams stated they are complying with LEED Silver and he thought they were aiming for Gold.

Mayor Klein asked if this was in any of the documents because it was not part of the Building Code.

Mr. Williams stated he was correct and that there was a condition the Applicant comply with the Regulations for Green Buildings. He stated that in the definitions for the gross floor area there were inclusions for nonresidential developments, commercial or industrial developments with some of these areas of unusable space being basements, cellar or attic areas as deemed by the Director of Planning and Community Environment.

Council Member Yeh asked for additional height clarifications for all floors and asked what the functionality was for the additional five feet the Applicant requested. He asked staff for guidance where the DEE was

considered exclusively or in project aggregate. He asked for specifics on how this would be approached.

Mr. Williams suggested no one-way to approach it and agreed to its multiplicity. He cited, however, that one different aspect of the basement space was the DEE for an additional 5,000 feet of additional floor area, and that was not what staff saw it as.

Council Member Yeh noted the canopy in the visual which seemed to limit the perception of height at ten feet versus a maximum of a fifteen-foot floor and asked what the functional purpose was of the canopy.

Mr. Williams stated it was most appropriate to ask that of the Project Architect.

Council Member Burt stated in his experience, rooftop equipment would not require 5,600 square feet of space solely for that purpose. He questioned why this was a full basement rather than a fractional one.

Mr. Williams did not know the structural reason but stated there were some other things such as areas for garbage in the basement.

Council Member Burt asked if retail storage under other code requirements would be permissible in a basement like the one in the plan.

Mr. Williams stated it would be permissible if the height was less than seven feet, but not if it is over that, and then it would count as floor area.

Council Member Burt stated it was his understanding that by code restrictions this area could be used for equipment only.

Mr. Williams stated no, it was just if it was deemed not useable, it generally was not habitable.

Council Member Burt asked then, if under general code restrictions it would be useful for any other office functions or retail offices.

Mr. Williams stated a retail office would be allowed and it would be counted as floor area.

Council Member Burt asked if there were other code restrictions preventing it from being used for other functions.

Mr. Williams stated no, there was not.

Council Member Burt stated conceptually he was open to the basement issue, but was uncomfortable with it coming forward as a DEE. He stated the basement would be exempt from parking concerns because it was not counted as part of the FAR. He questioned the shrinking floor heights of the building. If the floor to ceiling heights per floor were uniform, they would not be in need of a height Variance or DEE.

Mr. Williams stated the Project Architect should respond to that question.

Council Member Burt asked the staff about the larger policy questions around exemptions and whether Council needed to revisit them.

Mr. Williams stated that discussion had already been done at the Commission level with a Study Session about DEE's and Variances and other types of exceptions. He felt towards the end of the year staff could return to Council to develop, if necessary, Ordinance changes.

Council Member Burt stated that added to the complexity for Applicants, but was good government and provided transparency for the public.

Public Hearing opened at 10:15 p.m.

Appellant, Lynn Chiapella, 631 Colorado, stated she had been to the library on several occasions on a number of projects with special exemptions that seemed to violate the Design Enhancement Exemptions (DEE) and required Variance regulations. She stated no one could find reference to the special setbacks in the Code and that all the libraries were missing the Palo Alto Municipal Code. She was concerned everyone would forget the DEE's and the space would become useable. She felt the special setback was to align the streets and increase the vitality of the downtown area. She used the corner project as example, but had carefully studied other projects with similar situations who did not ask for the basement exemption. She was concerned about the height DEE and could not figure out the floor-to-floor height scheme. She noted that second floor retail was not often successful with the floors later turning into offices so the height justifications should not be made. She supported the fifty-foot height limit on downtown buildings. She disagreed with the basement DEE and stated it was being stretched beyond its means with the current application being to give the basement space to upper floors, when the basement floor was still being used but not counted. She stated the process had gotten very convoluted as it moved from Council to Planning Commission and to each Board with the different issues, and she hoped for clarification on the process.

Applicant representative, Ken Hayes, Hayes Group Architects presented the project and stated its goals. He spoke to the Variance requests for special setbacks, the DEE request for height increases and the DEE request to exclude the basement floor in the FAR, giving examples and reasoning behind each request.

Richard Brand, 281 Addison Avenue, noted his concerns about the Bicycle Boulevard with safety and visibility issues.

Judith Wasserman, 751 Southampton Drive, responded to the negative comments about the project and DEE's made in the newspaper.

Emily Renzel, 1056 Forest, spoke on the past Downtown and Golden Triangle studies and current zoning parameters that required compliance.

Robert Moss, 4010 Orme Street, talked about the height limits not being a DEE issue, but for the Planning Commission as a Variance, and should be dealt accordingly.

Elaine Meyer, 609 Kingsley Avenue, spoke on how far the Planning Commission was going and stated it being time for the Council to rein things in. The special circumstances were over the top and were being used to get around zoning and create a precedent.

Herb Borock, P.O. Box 632, stated the hearing was quasi-judicial and the Council, in looking at setbacks, needed to review it the same way that a Judge would.

Ms. Chiapella pointed out the increasing number of DEE's in combination with other exemptions. She questioned that the notices in the paper were often times not correct which kept the public in the dark. She gave examples of problems with traffic overflow and stated the people in the community were paying a high price with ongoing developments, with lesser landscaping and felt all of this was symptomatic of larger problems.

Mr. Hayes noted the size differences between the University Avenue project and the project at hand. With regard to the basement issue and usable floor space, he stated this space was indeed large and would contain not only mechanicals but would also have an accessible shower in an effort to achieve LEED Silver. He spoke to the seismic bonus and named four other projects involved in such bonuses. He was adamant the below grade flooring could not be brought to grade for assessment, but it could be used in the FAR calculation for seismic bonuses. He spoke to the TDR issues and to the ceiling height variations from floor-to-floor. He hoped Council would support

the project.

Public Hearing closed at 11:03 p.m.

Mayor Klein stated prior to the Motion, Council would go through the four issues.

HEIGHT

Council Member Barton stressed the height issue and its modest increase in keeping with the Comprehensive Plan. He stated from a gross planning point of view, the FAR affected the City the most and was compliant. The Applicant was not putting a bigger building on the site in exchange for the height to meet the setbacks. If they were to take the basement Variance out, the building would essentially be higher, with the equipment and the screens being put on the roof. He stated the current plan was consistent with the Comprehensive Plan for the City and would have minimal impact on the community.

Council Member Morton stated that if there was any leftover space in the basement, beyond that used for equipment, it could be retail storage, which would be the only restriction on this space. He agreed with the mechanicals being underground as opposed to adding height to the building. This was a design enhancement factor, whether it was a Variance or not, and therefore considerable reason to approve the height item.

Council Member Kishimoto stressed that citywide height limits were an important growth cap for the downtown area and had been successful to date. She did not see this as an aesthetic issue but an impact issue on overall land use balances, traffic and parking. The DEE's and Variances in the project had increased the useable space, which increased traffic and parking. She was sympathetic to the design goals which emphasized the unique architecture, corner issues and plaza design, but again stressed that the resulting useable space brought with it the traffic and parking concerns for the downtown area.

Vice Mayor Drekmeier cited the height limit as the biggest overall concern of all four points being discussed. He noted it was a trade-off between, in that if the building was held at fifty feet, there would be more mass on the street, which lent to benefits in setting the building back. He wondered if there were still a way to go to four stories and keep it within the height limits.

Council Member Burt voiced concern over exempting the height issue if they were to comply with the Downtown Design Guidelines which were supposed

to be part of the ARB approval process. He voiced concern on the basement issue in that, in order to rule on the basement for a DEE, they had to look at the findings and not the outcome of what they would like to see, since these outcomes must be per Code. If taken literally, there was a stronger case for a Variance than a DEE. One of the basis for the additional height requirement was to enable a possible second-floor retail. Unless the Applicant abided by the conditions, they may get the height but not necessarily the retail. He stated that attracting retail may not be an adequate reason to disregard the height issue. He also stated that it may be important in the future of the downtown Codes for Council and the Commissions to discuss whether a partial or non-visible final floor should be exempt by a few feet in height. He stated this should not be addressed as a DEE, since DEE's could become the basis of precedents.

Council Member Yeh stated he wished to understand from the Applicant's perspective what drives the need for the fifteen-foot first floor. He noted there was no data presented to suggest that a higher ceiling would or would not increase retail. He asked about the canopy as a DEE finding since it visually reduced the height perception. He understood there might be a clear business need presented in this part of the application, but still felt the building could thrive with the reduced height within the regulations, unless he was presented with further information otherwise.

Mayor Klein reminded Council that the fifty-foot height limit was part of the Brightline tooling used in order to limit the amount of growth downtown along with other tools such as the FAR. He stated these tools and limits made it possible to develop the downtown area without looking at every project on an adhoc basis. He stated the fifty-foot limit did have significant importance from a design approach. He stated the current argument seemed to be driven by the second-floor retail option, but if retail did not ultimately work out, the floor would be open and empty. He stressed that this and other tools were what the owners and developers had to work with as options and he saw no reason to exceed those set limits in this case.

Council Member Schmid stated it was a good time to step back and review the Comprehensive Plan. He stated the height issue on this current project was of concern to him and that it was important to reduce the number of DEE's or Variances being sought. He stated the broader issue was process; as the City grows and expands the Council needs to be aware of the precedents being set.

Council Member Espinosa agreed that the Comprehensive Plan issues merited further discussion at a later date. He stated he agreed with the staff and ARB that the increased height would enhance the building design and

that denying the Variance would result in a lesser building from a design standpoint.

Council Member Barton stated the project met with zoning requirements in terms of the FAR. He stated the applicant was trying to holistically balance the project in keeping with the Zoning Ordinance while also considering the Comprehensive Plan. He stated he was willing to give on the height issue in exchange for a step massing of the building in keeping with the Comprehensive Plan.

Council Member Kishimoto stated an Applicant was not always due to have all the maximums available in the Zoning Code. She stated the square footage, basement exemptions and height issues were up for discussion, and it was legitimate to say the world is changing, which may require changes in future FAR's, but this would be a separate discussion beyond tonight's Council matters.

Council Member Morton asked for a repeat view of the Applicant's slide on the basement configuration and stressed to Council colleagues that without the basement plan they would ultimately get a far lesser building in exchange, by having what could be in the basement put back onto the roof, which would not be a fair trade-off for the community at large.

Mayor Klein stated the project had an excellent Architect, and was safe to assume that the final building would be of high quality in either way that Council ruled and the City would not be left with an inferior building in the end. He stated they should not approach this with the idea that the design would suffer on the outcome.

SETBACK ENCROACHMENT

Vice Mayor Drekmeier stated he was comfortable with the proposed four-foot setback versus the seven-foot setback.

Council Member Kishimoto stated she was open to proposed change by the Applicant, but questioned the legalities and asked if Council could proceed legally on the decision. She asked for clarification on the fact that they could not make a decision unless they could make legal findings of fact.

Mr. Baum stated she was correct in that Council could not just be comfortable with it within themselves, but must base their decision on legitimate, by law, findings. There must be legitimate reasoning behind the findings, whether it be for DEE's or Variances, each with solely different findings.

Council Member Kishimoto asked if they were going to make a larger Motion and since the majority voted against the height issue, would that mean they were basically upholding the appeal, and it would go back for a new project.

Mayor Klein stated that was his understanding.

Council Member Kishimoto stated if that was the case, a more simple Motion could be made, although they may wish to weigh in quickly on the other items.

Mayor Klein agreed and felt it would be derelict to not weigh in on the other items prior to the Motion and asked for Council guidance.

Council Member Morton asked if this was the odd building out on that corner, would this mean they were conforming it to the rest of the buildings.

Mr. Williams stated that was correct, but stressed the importance of looking at the lot configuration in its actuality and narrow width.

Council Member Burt stated he accepted the Variance on the setback from a design standpoint but continued to disagree on the position that you can not choose not to follow a rule just because you do not understand it. He stressed that the written rules needed to be followed and Council did not have the discretionary power on what to keep or throw out with regard to rules.

Mayor Klein stated he was in favor of the Variance as requested and did not wish to repeat the reasoning which had already been stated by prior Council members, and could make the findings on the issue.

FAR EXEMPTION & SEISMIC BONUS

Council Member Barton stated he was comfortable with the seismic bonuses in that there were some compelling notions that they would get better buildings. As to the FAR exemptions, what was not in the basement that ended up on the roof would add in perceived height because of screening measures. This equipment was better off in the basement.

Council Member Schmid stated he had no problems with the seismic bonus, but was hesitant on the basement issue since it may set a precedent in which residential projects may wish for the same basement FAR exemption, and that required further study.

Vice Mayor Drekmeier supported the reuse of the basement.

Council Member Burt stated this was not solely a policy issue, in that there were clear guidelines on DEE's, which were for minor exceptions. He stated it was an entire floor they were speaking about, and he would be open to consider that as a Variance, as it was improper to consider approval as a DEE. He stated if this was a full height floor under a DEE it would count towards the FAR, so he could not properly consider this as a DEE.

Mayor Klein stated that if the majority of Council agreed, he would be open to the use issue as a Variance and encouraged the Applicant to handle it in that way. He suggested making a condition that the Variance be machinery and utilities with everything in the basement, so that nothing was on the roof.

Council Member Morton stated if the condition restricted the FAR by making the basement non-useable other than for mechanicals or retail storage, whether it was a DEE or a Variance was merely in the terminology.

Council Member Kishimoto supported the seismic bonuses, but stated she wished to know the impacts of the basement and useable space issues on the balance of the downtown area.

Council Member Barton stated approval of this approach would not allow the ARB or Planning & Transportation Commission (P&TC) to re-review or change the project from a DEE to a Variance.

Mr. Baum stated that in denying the project, you could not approve component pieces unless it was directed to come back to Council.

Mayor Klein stated that he understood it as, if they upheld the appeal on a key part of the property, the Applicant would do the redesign to a significant degree.

City Manager, James Keene stated the question was seemed to be what the right process was to affect the conditions. He stated it helped in the process if everyone understood how Council saw this project in order to work it through with the Applicant for approval.

Council Member Morton stated the Applicant was willing to limit the height to fifty-feet if the project would pass tonight.

Mayor Klein stated proper procedure dictated the design had to be presented and approved through the ARB, and he asked if staff agreed.

Mr. Williams agreed any changes to the design needed to be heard by the ARB.

Council Member Espinosa stated whether this project returned as a DEE or Variance, he hoped the basement would be used.

Mayor Klein stated they were ready for a Motion which would be to limit the space to fifty-feet and then suggest to the ARB and the P&TC that Council was favorably inclined towards the sidewalk Variance and the treatment of the FAR exemption and seismic bonus. He stated whether they would ultimately be treated as DEE's or a Variance remained a future discussion. He stressed there should be a strong recommendation or condition that the basement be used only for mechanical equipment and or retail storage.

Council Member Kishimoto reiterated that she supported the seismic bonus calculation but had confusion on the basement exemption.

Council Member Burt expressed concern over how explicit the recommendations were to the Boards and Commissions, and asked why it would be sent back to the ARB if Council was going to tell them the exact outcome.

Mayor Klein stated there were many reasons, and that there was no choice but to send it back. He stated he tried to use open, deliberate language.

Council Member Morton asked the City Attorney if they could deny the appeal and restrict the height to fifty-feet, but also be explicit that they put in approval without limitations.

Mr. Baum stated the appeal would have to be upheld and then the project could be approved with changes.

Council Member Morton asked if that was in effect what they were doing, and if they were not just sending it back to go through the whole process.

Mr. Baum added they were planning to come back to Council with a Record of Land Use Action denying this project, so that there would be a complete record.

Council Member Morton asked if they could uphold the appeal with restrictions on height and let it go forward.

Mr. Baum stated they could deny the appeal with limitations on height, but essentially pass the project.

Mayor Klein stated he did not know what the project looked like with the height cut out.

Council Member Schmid agreed on not understanding what the project would look like and that they were giving the Applicant freedom to determine this with the height restrictions.

MOTION: Mayor Klein moved, seconded by Vice Mayor Drekmeier to uphold the appeal height limit of fifty-feet, provide guidance to the Architectural Review Board and Planning and Transportation Commission to favor Variance on sidewalk width; cancellation of the seismic bonus and use of the basement adding the restriction that the basement only be used for mechanical equipment and storage.

Mr. Keller stated there was not a particular stated directive on whether or not to use a Variance or DEE.

Mayor Klein stated he wanted to hear more about that from staff and the Commissions.

Mr. Keller asked if he was directing them to look at changes of the setback rules in general, and asked whether he wanted the Planning and Transportation Commission to explore the issue and give further recommendations.

Mayor Klein stated he would leave this up to them since it was not his policy as Mayor to load general issues onto a specific Agenda item.

MOTION PASSED: 9-0

Council Member Morton left the Council meeting at 12:00 midnight.

COUNCIL MATTERS

20. Colleagues Memo from Mayor Klein and Council Member Kishimoto Request to Agendize Discussion of Measure B, BART Sales Tax Measure.

MOTION: Council Member Kishimoto moved, seconded by Mayor Klein to agendize discussion of Measure B, BART Sales Tax Measure on the October 6, 2008 Council Agenda.

Council Member Espinosa voiced support of the Motion, expressed concern and asked for clarification on the Santa Clara County Valley Transportation Authority (VTA).

MOTION PASSED: 8-0 Morton absent

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Vice Mayor Drekmeier reported that he attended the Stanford Community Resources Group meeting. He attended the Water and Flood Commission meeting. They stated they would like to do a project possibly at Arastradero Park Preserve, to protect the Red Legged Frog habitat. He stated he also supports World Music Day and that this issue will be coming to the Council at a later date. He attended a meeting with the FRED Group, who are concerned with the proposed changes to Oregon Expressway at Middlefield Road.

Mayor Klein reported that Vice Mayor Drekmeier was appointed by the Santa Clara County Cities Association to be the north county representative on the County Recycling and Waste Commission. He and several staff members had a meeting with the Southeast England Government Commission, their discussion centered on environmental and economic matters. He also attended the Santa Clara County Cities Association meeting where their discussion centered on the upcoming election.

ADJOURNMENT: The meeting adjourned at 12:10 a.m.

ATTEST:

APPROVED:

City Clerk

Mayor

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