



CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting
June 4, 2012

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:36 P.M.

Present: Burt, Espinosa, Holman, Klein, Price, Scharff, Schmid, Shepherd, Yeh

Absent:

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATORS
City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Lalo Perez, David Ramberg, Kathryn Shen, Sandra Blanch, Marcie Scott, Darrell Murray)
Employee Organization: Service Employees International Union, (SEIU) Local 521
Authority: Government Code Section 54957.6(a)
2. CONFERENCE WITH LABOR NEGOTIATORS
City Designated Representatives: City Manager and his designees pursuant to Merit System Rules and Regulations (James Keene, Pamela Antil, Lalo Perez, Joe Saccio, Kathryn Shen, Sandra Blanch, Marcie Scott, Darrell Murray)
Unrepresented Employee Group: Management, Professional and Confidential Employees
Authority: Government Code Section 54957.6(a)
3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS
Property: Santa Clara County Assessor's Parcel Number 182-46-006, Palo Alto
Agency negotiator: Steve Emslie, Lalo Perez, Hamid Ghaemmaghani
Negotiating parties: John Arillaga
Under negotiation: Price and terms of payment

Council Member Burt left the meeting at 7:15 P.M.

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The City Council reconvened from the Closed Sessions at 7:15 P.M. and Mayor Yeh announced no reportable action.

SPECIAL ORDERS OF THE DAY

4. Gunn High School Robotics Team Presentation

Mayor Yeh advised that the Gunn High School Robotics Team presentation would not be heard that evening because of final examinations. He stated the presentation would be rescheduled for a future date.

CITY MANAGER COMMENTS

City Manager, James Keene, reported that a community meeting regarding the preliminary designs of Rinconada Park had been scheduled for June 5, 2012 at 2:30 p.m. at the Lucie Stern Center, and a community meeting regarding the Magical Bridge Playground had been scheduled for June 6, 2012 at 6:30 P.M. in Room H1 at the Cubberley Community Center. He stated the Magical Bridge Playground would be a new part of Mitchell Park specifically designed for children and adults with special needs. He also reminded the public to pay attention to wildlife encounters in the open space. The Open Space Division received a number of reports that there were several aggressive, territorial coyote encounters between visitors with dogs in the west end of the Pearson-Arastradero Preserve. Because of that several trails were temporarily closed to dogs. He said that if a mountain lion was encountered to make loud noises and fight back if attacked. More information on the trail closures could be found on the Palo Alto webpage.

APPROVAL OF MINUTES

MOTION: Council Member Shepherd moved, seconded by Council Member Klein to approve the minutes of February 21 and March 5, 2012.

MOTION PASSED: 8-1 Burt not participating

ORAL COMMUNICATIONS

Omar Chatty said that he worked in Palo Alto and lived in San Jose. He said that the eighth person of 2012 died related to Caltrain. That was the 24th person killed since the beginning of 2011 and 184th since January 1995. The latest was killed on May 30, 2012, in San Mateo. Palo Alto lost one person and Menlo Park lost two in 2012. He said that they needed to consider the future and that it would be ten years before they could replace Caltrain

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stations and close the 28 mile gap. He urged the Council to consider Bay Area Rapid Transit (BART) for that 28 mile gap. He wanted the Rail Committee and other parts of the City to consider BART. BART would also reduce greenhouse gasses.

Council Member Burt returned at 7:35 P.M.

CONSENT CALENDAR

MOTION: Council Member Shepherd moved, seconded by Council Member Klein to pull Agenda Item Nos. 5, 6, and 7, to become Agenda Item Nos. 15a, 15b, and 15c respectively.

Council Member Klein registered a no vote on Agenda Item No. 9.

MOTION: Council Member Klein moved, seconded by Council Member Schmid to pull Agenda Item No. 10, to become Agenda Item No. 15d.

MOTION: Council Member Holman moved, seconded by Vice Mayor Scharff to continue Agenda Item No. 12 to June 11, 2012.

MOTION: Council Member Espinosa moved, seconded by Council Member Schmid to approve Agenda Item Nos. 8, 9, 11, 13-15.

Omar Chatty spoke regarding Agenda Item No. 9. He said that there was no mention of Bay Area Rapid Transit (BART) in the Agenda Item to be considered by the Rail Committee and there was no more preeminent rail system in the Bay Area than BART. He asked the City Council to include BART in its Rail Study. He stated that BART was an improvement on Caltrain.

~~5. Approval of a Contract with VOX Network Solutions for Implementation Services Relating to Installation of Avaya Telecommunications System.~~

~~6. Approval of Purchase Order for Acquisition of Hewlett Packard Company Network Switching Equipment.~~

~~7. Approval of a Contract with Radovich Corp. Dba Cal Coast Telecom for the Re-Cabling of City Facilities in Preparation for a Unified Communications System~~

8. Appointment of Paul Goldstein as the Palo Alto Bicycle Advisory Committee Representative to the Valley Transportation Authority's Bicycle and Pedestrian Advisory Committee.

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9. Approval of a Contract Amendment to Extend BMS Design Group Contract (C11138343) to Extend the Term and Add \$25,000 for the Palo Alto Rail Corridor Study.
- ~~10. Submittal of Mitchell Park Library and Community Center Monthly Construction Contract Report.~~
11. Approval of Amendment No. One to Agreement with Palo Alto Unified School District for the Provision of Fiscal Services by City to School District for the PAUSD 2012 Summer Enrichment Program and Provide Collaborative After-School Summer Programs.
- ~~12. 2nd Reading: Adoption of an Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (The Zoning Map) to Change the Classification of Property Located at 335 and 355 Alma Street from CD C(P) and CN N(P) to PC Planned Community Zone (PC) for a Mixed Office and Retail, Four Story, 50 Foot Tall Building (and a 70 Foot Tall Corner Tower Feature) on the Former Shell Station Site. The Project Includes Exceptions to the Daylight Plane and 35 Foot Height Limit Within 150 Feet of Residential Property. (First Reading May 14, 2012 - Passed 7-2).~~
13. Approval of an Agreement with the Town of Los Altos Hills and the County of Santa Clara for the Recovery of Two-Thirds of the Costs(\$33,334) for Improvements at Page Mill Road & Buena Vista Avenue-Moody Road.
14. Resolution 9255 Approving a Professional Services Agreement between the Northern California Power Agency and the Cities of Alameda, Palo Alto and Santa Clara for Electric Transmission, Generation and Regulatory Consulting Services.
15. Resolution 9254 Calling General Municipal Election-Tuesday, November 6, 2012.

MOTION PASSED for Agenda Item Nos. 8, 11, 13-15: 9-0

MOTION PASSED for Agenda Item No. 9: 8-1 Klein no

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AGENDA CHANGES, ADDITIONS, AND DELETIONS

- 15a. (Former Agenda Item No. 5) Approval of a Contract with VOX Network Solutions for Implementation Services Relating to Installation of Avaya Telecommunications System.
- 15b. (Former Agenda Item No. 6) Approval of Purchase Order for Acquisition of Hewlett Packard Company Network Switching Equipment.
- 15c. (Former Agenda Item No. 7) Approval of a Contract with Radovich Crop. Dba Cal Coast Telecom for the Re-Cabling of City Facilities in Preparation for a Unified Communications System.

James Keene, City Manager, stated it was best to take Agenda Item Nos. 15a-15c together and to lead with a presentation from Jonathan Reichental and the consultant.

Council Member Shepherd said that she knew that the phone system was in distress but the three contracts were approximately \$1.8 million and there were 850 employees so the math showed it to be quite an improvement for each desk station. She wanted to understand what it was the City was getting, upgrading, and why the technology was necessary.

Jonathan Reichental, Chief Information Officer, stated Staff was excited to propose replacement of the City's telecommunications system. The current system was 25 years old and would be replaced with a state of the art voice over IP system. The project was sizable. The City had old and aging cabling throughout many of its buildings so they were replacing cabling in 17 buildings. Some buildings did not need the cabling replaced because they were new or because they were small enough that the existing cabling was adequate. He explained that the current phone system was not adequate and that he received many complaints from Staff about how parts of the system did not function. He said that they would replace more than just telephones; they were putting in a state of the art telecommunications system that was a long term investment with significant new capabilities. They were replacing old handsets, the infrastructure, and the switches on each floor in every building. Those boxes supported the wireless future as there had to be a wired background to create a wireless network. The cost of ownership should drop the longer the City owned the system. He explained that the current system was both expensive to maintain and highly risky.

Chuck Vondra, Communications Strategies Founder, explained that Communications Strategies was a 25 year old independent communications

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company from Northern California. He said that they had worked with other California cities as well as private organizations. They had worked on the project for two years beginning with the budgeting phase where they interviewed people, inspected buildings, looked at the City's challenges, met with departmental representatives and put together the project budget. The average life of a phone system was about eight to 10 years. The City's was 25 years old so the City had tripled the life expectancy of that system. The voicemail system was even older and was so far beyond manufacturer support that they were concerned that it would not last until the project was completed. Phone systems had evolved and were now integrated with data storage and infrastructure. Palo Alto needed both new phones and a new data network. Therefore, the \$1.8 million included a phone system for everyone in the City, a new Local Area Network (LAN) infrastructure that was 100 times faster than the City's current network. The cable infrastructure was also very old and would not support current technology. The actual telephone system was approximately a third of the total cost. He stated that the project represented the total cost of ownership and included support, maintenance, hardware, and a minimum of five year but up to lifetime warranty on the components. One of the big advantages of voice over IP was the ability to have mobility or single number reach. The Utilities Department fielded many calls and would have the ability to process more calls in a more expeditious manner and with better metrics and reporting on how customers were serviced. Another advantage to the system was improved public interaction with residents. The system allowed for hot desking and integrated messaging. Voice over IP was technology that most cities were implementing.

Council Member Schmid said the Council spent a significant amount of time thinking about infrastructure and attempting to develop strategies about where the City might be in the future. He asked if they were integrating their plans on building the network, the switches, and the devices in places the City was currently in, or where the City might be in a few years. Secondly he asked if they were integrating the capabilities of the City's fiber optic network.

Mr. Vondra said that all of the network switches they would purchase would be state of the art HP LAN switches which would drive gigabyte speed, which was 100 times faster than the City's current infrastructure. He said that they did not want to replace a 10 year old system with a 5 year old system. They saw it as an opportunity to be forward thinking and build the infrastructure for an additional ten years. He stated that extra cabling would be run on each floor to anticipate the wireless access points that would be installed in the future. Part of the cost of the project was the cable need to support the City's wireless vision. They were depending on the fiber optic

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network to tie the City buildings together. He explained that currently the City had leased circuits from the phone company tying together its voice service. They estimated the City would save approximately \$100,000 per year by canceling leased circuits and moving the service to the City's fiber optic network.

Mr. Reichental added that the new system ran on the same technology as the internet. Currently the City was constrained and unable to extend its telephone system or wireless. When the City expanded in the future, it would build onto the standard technology acquired through the project. He explained this was the baseline phase and they were not implementing any of the real cutting edge items immediately. Within 12 months they could implement more because the infrastructure would be in place. He said that there would be broader support for using smart phones as primary devices and seamless wireless access in City buildings. He expected that any visitor could connect on any floor as needed in the future.

Mr. Keene clarified that the project established a true network. That meant when new facilities came online they would be able to be integrated into the system. One exception was the Cubberley Complex because of the questions regarding the improvements and maintenance.

Council Member Schmid confirmed that the project would help facilitate any moves if in the future the City moved the Utilities Service Center or the Emergency Response Service to a different location.

Mr. Reichental clarified that Cubberley would receive new telephones but the cabling was not going to be replaced in the current phase of the project.

MOTION: Council Member Espinosa moved, seconded by Council Member Klein to approve:

Agenda Item No. 15a: to authorize the City Manager or his designee to execute contract C12144216 with Vox Network Solutions Inc., a Delaware Corporation for a total contract price not to exceed \$760,506.87 for the following items:

1. Purchase and implement an Avaya Voice Over Internet Protocol (VoIP) phone system.
2. Purchase five years of maintenance and support services for that VOIP system.
3. Select and execute one or more of the options listed in the contract.
4. Negotiate and execute one or more change orders to the contract not exceeding 10% of the contract price for additional but unforeseen work which may develop during the term of this contract, the total

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value of which shall not exceed \$836,558.00.

Agenda Item No. 15b: to approve the Purchase Order with Decotech Systems, Inc., a California Corporation for the purchase of Hewlett Packard Company network switching equipment and authorize the City Manager or his designee to execute Purchase Order 4512001030 for the purchase of the equipment in the amount of \$598,867.

Agenda Item No. 15c: to approve, and authorize the City Manager or his designee to execute, contract C12144295 with Radovich Corp. dba Cal Coast Telecom for a total contract price not to exceed \$452,007 for the following items:

1. Install 1059 workstation location cabling, providing all necessary materials, and terminate, label, and test each of those locations
2. Install all necessary backbone cabling, providing all necessary materials, and terminate, label, and test each of those locations
3. Provide and install all necessary racks in designated equipment rooms
4. Remove and recycle existing station cables and associated termination hardware from each building; and
5. Execute one or more change orders, if any, to the contract not exceeding 15% of the contract price or \$67,800 for additional but unforeseen work which may develop during the term of this contract, the total value of the contract and change orders of which shall not exceed \$519,807.

Council Member Espinosa pointed out that the City had facilities spread out across the community and when one thought about infrastructure development it was clear that it was a monumental task to wire Palo Alto. He appreciated the clarifications and the work done. He found the project to be price appropriate.

Council Member Klein referred to the \$100,000 cost savings and asked if there were further cost savings produced by the new system.

Mr. Vondra said there were, but they were not as noteworthy as the \$100,000 previously mentioned. He said they found many cities had saved on labor costs because technicians were not needed since remote support was easy. That was an indirect cost savings that the City would realize. The ability to have cell phones tie into the wireless network saved cellular minutes. They did not spend time and money looking into the additional cost savings as the \$100,000 was the noteworthy savings.

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Council Member Klein suggested they not use the phrase "telephone system." He stated that Agenda Item 7 referred to a "unified communications system". He thought that was appropriate and explained why the City was spending so much money.

Council Member Shepherd confirmed the switches and cabling would support items such as video conferencing.

Mr. Reichental said it would. He wanted to provide the exact number of the magnitude they were increasing the bandwidth by.

Mr. Vondra said that in many cases it would be 100 times faster. As the City's cabling was different in many buildings, it would be 100 times faster in the areas that had older cabling and 10 times faster in the areas that had newer cabling. He confirmed that the new system was designed to support high definition video, voice, data, high speed data, and image transfer.

Council Member Holman asked for examples of things the new communications system could do at the Development Center that they could not currently do.

Mr. Vondra said that the Planning Department generally worked out of the office and reaching those Staff members would be much easier under the new system. He said that someone could call a Planner's number and the Planner could direct his phone to ring his cell phone or wherever he was working. The Planning Department would be more mobile and more effective in terms of their communications.

Mr. Keene said that as the City moved toward more CAD design, plan review, online plan submittal, and other similar things it would be important for the City to maintain that infrastructure. He said that they had people in other buildings involved in plan review and the new system would allow them to send more volume of data and graphics for development project review.

Mayor Yeh said he was excited about the project moving forward and assuming passage he hoped it moved forward quickly.

MOTION PASSED: 9-0

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15d. (Former Agenda Item No. 10) Submittal of Mitchell Park Library and Community Center Monthly Construction Contract Report.

Council Member Klein stated he had numerous concerns and questions that were outlined in an e-mail. He also discussed those concerns with the City Manager and Staff earlier in the day and invited Mr. Keene to speak prior to asking his questions.

James Keene, City Manager, provided a report requested by the Council. He noted that the Staff was not able to deal with every issue the City had faced in the report and that some of the discussions would require a closed session with the City Attorney due to pending litigation. They had previously scheduled a Closed Session for July 2, 2012, and Staff was working with outside consultants and the City Attorney for a session on June 18, 2012. He said that the Mitchell Park Library and Community Center construction began in September 2010 with a contract completion date of April 29, 2012. In 2011 there were a series of issues that were previously reported to Council, including subcontractor coordination issues, exterior wall framing, enhanced building insulation and waterproofing, all of which led to construction delays. Staff's last report to Council estimated the completion would be late 2012, which was a delay of six to eight months over the originally contract completion date. Since that report the contractor Flintco and its subcontractor Fast Glass fell further behind on installing windows and weatherproofing the building. As noted in the monthly report, the contractor's most recent estimate of building completion was May 2013, which was a full year past the original contract completion date. Staff was working hard to minimize further delays, but they had revised their estimated completion date to be consistent with the contractor. He estimated the facility would open to the public in spring 2013. Staff wanted to emphasize to the Council and the public that there had been significant delays and that the City was displeased with the contractors performance to date. The City had scrutinized all expenditures and requests for additional time extensions. The latest report showed the activity and response on behalf of the City as it related to change order requests by the contractor. The building was complex in design and its incorporated potential for reaching the highest level of sustainability ranking Leadership in Energy and Environmental Design (LEED) Platinum had contributed to the challenges on the project but the City's contractor and consultants bore the responsibility. He said that it was a complicated problem which he expected to be resolved in mediation or arbitration following completion of the building. The City Attorney had brought in a legal team with experience in construction litigation to ensure the City's legal and financial interests were preserved. One of the challenges Staff had in reporting was that they used standard industry measures on tracking project completion and the latest report

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stated the building complex was 72 percent complete. That calculation was based on the amount of money that the City spent as a percentage of the contract amount, which was a standard industry measure for computing completion percentages. He said that they could also compute it based on the amount of time which had past as a percentage of the contractor's current estimated completion date, which put the project at 65 percent complete. He stressed that those numbers were variable and what was important was focusing on cost and completion. Staff's primary focus was building completion. Once that was achieved, the focus would shift to further determining the level of responsibility each of the City contractors and consultants bore for the delays and associated costs. The Council had raised concerns about the schedule and sharing the status with the public. Staff felt that an estimate of spring 2013 completion was a good estimate even though it was a year past the contracted date.

Molly Stump, City Attorney, said that they would hold a Closed Session and that would be the best forum for the Council to be briefed on the relative risks and responsibilities in what really was a pre-dispute or dispute mode that the project was progressing under. Staff could answer initial questions but wanted the Council Members to note that the Closed Session was available shortly for a full briefing from a litigation risk perspective.

Mr. Keene added that depending on the nature of Council's questions they could defer to the Closed Session. They wanted the contract attorneys and other professionals who were assisting the City with the matter present to meet with Council, which was why they were now targeting June 18, 2012.

Council Member Klein said that he understood the purpose of Closed Sessions, but thought they were limited to those situations to protect the City's legal interests. He hoped the City Attorney would act as a referee if any members of the City Council or potential answers from Staff would potentially harm the City legally. He thought they needed to be open with the Public as it was their money. The City and Council were supposed to be good fiduciaries for it and the public deserved to hear as much information as possible. He said that a Closed Session was fine, but that it was not a substitute for what he thought they needed to have now, which was more detail on the project in a public forum. The Staff Report referred to upcoming events and listed the Exterior Wall Dry in & Finishes for the Teen Center May 16th, Community Center June 1st, and the Library June 7th. He asked if those dates were on target.

Phil Bobel, Assistant Public Works Director, explained the term dry in meant the building was fully weather protected. Because of a heavier than expected

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rainy season those dates had not been met the windows were not fully in place.

Council Member Klein asked what the current status was.

Mr. Bobel said a situation with the subcontractor Fast Glass and the contractor's inability to manage the situation led to a delay of three to four months in window installation.

Council Member Klein asked if new dates had been set.

Mr. Bobel said there were and stated that was what they were currently focusing on with the contractor. The latest date agreed upon was July 17, 2012 for full dry in and the starting of sheetrock installation. He said that was not included in the report as it was just decided.

Council Member Klein asked if the same subcontractor was scheduled to do the work in mid-July.

Mr. Bobel said yes, that the same subcontractor was scheduled to put the windows in. That had to be done prior to July 17th.

Council Member Klein said on Page 210 of the Council packet it stated that the contractor planned to ask for a one year extension. He asked if Mr. Bobel could speak to the timeframe, the incentive for the City to agree, and Staff's attitude toward the request.

Mr. Bobel apologized and explained it was loose language. There was no document from the contractor called an extension request. The City had a contract with the contractor which specified that the construction would be complete on April 29, 2012. The latest schedule from the contractor said the building would be complete in May 2013, which was just over a year beyond the contracted date.

Council Member Klein said that Page 210 in Council's packet contained something called "Mitchell Park Library and Community Center Management Summary March/April 2012" and the last line said, "Contractor plans to ask for one year extension." He confirmed that was the same thing Mr. Bobel had just described.

Mr. Bobel said yes. He stated the contractor owed the City monthly schedules and what he referred to was the latest schedule the contractor submitted.

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Mr. Keene asked Mr. Bobel to explain the origin of the report.

Mr. Bobel said the page referred to by Council Member Klein was prepared by the construction contractor, Greg Smith of Turner Construction Management. He apologized for the wording, but that was the one year period they referred to.

Council Member Klein asked if Turner or Mr. Bobel or Flintco was confident about the May 2013 completion date.

Mr. Bobel said that many experts they had conferred with believed that it should be possible for a good contractor to bring it in ahead of the May 2013 target.

Council Member Klein requested a brief description of Flintco. He asked if they were a public company and what their annual revenue was.

Mr. Bobel was not sure if Flintco was a public company. He said it was a very large construction firm based in Oklahoma with a local office in Sacramento. He believed they were in the top 50 of construction contractors nationwide.

Council Member Klein asked Ms. Stump about the legal team she had referred to. He asked if it was a new legal team, or if it was one that had been presented to Council previously.

Ms. Stump said they had previously worked with a construction specialist. They had now brought on a construction litigator who had deep experience in mediation and arbitration in anticipation that the City may need to utilize those forms to resolve the project fully.

Council Member Klein asked when the new counsel was contracted.

Ms. Stump said about six weeks ago.

Council Member Shepherd indicated she would hold some of her questions for the Closed Session. She stated that it was in the report that Staff was no longer signing change orders. She asked if they could have more information on that or if that was something that would be discussed in Closed Session.

Ms. Stump said that was a complex topic and there was a significant amount of evolution in the treatment of the change orders as the project progressed. She said they were working closely with the construction specialist attorneys to put the City in the best place with respect to that issue. She said that

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they would like to brief the Council fully on the options and approaches that the City had taken and planned to take going forward when they met in Closed Session. She said that further public education might be appropriate after that.

Council Member Shepherd said she wanted to make sure that the public was informed throughout the process. She was proud of the way the City had handled the matter as they had put the right mechanisms in place in order to get the building finished. She noted that building completion and public open date were not the same day.

Mr. Bobel said that there would be several months from completion of construction to the date when the building was open to the public. He said they were looking at ways to overlap things to shorten that timeframe. There were two dates. Some of the documents went back and forth between the completion of construction and open to the public dates. He said they were trying to minimize the difference by looking at what activities they could start ahead of completion of construction.

Mr. Keene added that Staff did not think the contractor's estimated completion date was accurate for where the building was and when it could be done. They were repeatedly disappointed in the contractor's performance in meeting the construction schedule and he took Council's advice seriously about the City being upfront with the community. Based on that, Staff was going along with the contractor's estimate while still pushing to shorten the completion date in any way possible.

Council Member Schmid said that he was not as interested in responsibility as he was in scheduling and progress. He stated that Council had received periodic reports concerning progress over the last year. Sometimes the reports were monthly and other times they were bi-monthly. He said that if one looked at the date of the report and the goal of Certificate of Occupancy, it started out a year ago saying 13 months and it had varied between 10 and 13 months since that time. The current report in Council's packet said 11 months without a good explanation of any progress or problems. There was no substantive response Council could make to what was going on or to the credibility of future dates. He asked if the Certificate of Occupancy date would continue to be pushed out. It would be helpful if Staff put the matter on the Consent Calendar that there be a description of what took place since the last report. As it stood, all Council received was reports of dates that continually were pushed out. He encouraged more substance regarding what exactly was going on. The public perception was that nothing had been accomplished in the last 12 months.

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Mr. Bobel said they could work to hit the points Council Member Schmid mentioned. He thought the reports, especially the page mentioned by Council Member Klein, had not been what Council needed and Staff would revamp that and complete the reports themselves.

Mr. Keene said it was not a substitute for the report, but it had been awhile since Council had a tour of the site. He said that there were many things that had happened and there was an open invitation for them to schedule an onsite tour, which he thought was a good idea.

Vice Mayor Scharff thought it was unfortunate the contractor had not lived up to its promises.

MOTION: Vice Mayor Scharff moved, seconded by Council Member Shepherd to: 1) accept this update on the Mitchell Park Library and Community Center (MPL&CC) construction contract change orders; 2) and direct Staff to continue to submit bi-monthly reports to Council and to take related actions which Council may direct.

Council Member Shepherd said she had thought about how the City should communicate and manage the project. She stated that it was hard to manage a construction project in the public sector. She appreciated the comments about more complete monthly reports and looked forward to the Closed Session and the next steps that would help the community follow the City's actions.

Council Member Espinosa asked if Staff had recommendations for wording that could be added if an Amendment was made to the Motion that would both set the date for the Closed Session and for any kind of reporting that could come out after that. He hoped that in addition to accepting the update and continuing to receive monthly reports there would be a commitment that Staff would return with additional information that could be shared publicly.

Ms. Stump recommended that Council direct Staff to schedule a Closed Session as soon as feasible within the month of June 2012. With respect to additional reporting items, she thought Council could direct the Staff to return at the next reporting item with recommendation to further clarify and explain to the public the procedures that were being followed, applied to the project and were being undertaken by Staff to ensure completion and appropriate protection for public funds.

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INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct Staff to schedule a Closed Session on this item as soon as feasible within the month of June.

Council Member Klein had additional suggested language for the Motion. He said it was following up on Council Member Schmid's ideas. He said that the monthly report to Council should have additional sections up front regarding progress made since last report. Specifically, he wanted sections regarding setbacks since the last report and on upcoming milestones or dates to be met in the coming month. He thought that was useful to the Council and the general public.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to: 1) direct Staff to return at the next reporting cycle to further clarify to the public procedures undertaken by Staff to incur completion of the project: and 2) add additional sections upfront to the bi-monthly report: progress made since the last report, setbacks, if any, since the last report, and upcoming milestones to be met in the next bi-monthly reporting period.

Ms. Stump said that Staff had discussions about the need to take the time to carefully draft the Motions which were often complex. She said that writing them out was a nice tool for transparency and that Staff needed to be careful that Motions were accurately drafted so that what the Council voted on was in fact what was intended. She knew that took additional time and patience and Staff appreciated that.

Council Member Schmid said the Staff recommendation mentioned monthly reports. The reports Council received had varied, sometimes they were monthly and sometimes they were bi-monthly. If they opted for bi-monthly that would mean the next report to Council would be due in August, which was a vacation month. He thought they ought to clarify that the first report should be before the Council break.

Mr. Keene agreed and said that the next report would be given on July 23, 2012.

Council Member Schmid thought that specific date should be included in the Motion.

Mr. Bobel said that would work. He noted that the report Council had that evening was the March/April report, so the July 23, 2012 report would be the May/June report.

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INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the next reporting time be July 23, 2012.

Council Member Shepherd confirmed that bi-monthly reports were what had been previously agreed on. She thought they should keep it as bi-monthly with the next report coming on July 23, 2012.

MOTION PASSED: 9-0

ACTION ITEMS

16. Public Hearing: Appeal Of An Architectural Review Approval And A Record Of Land Use Action Regarding the Director's Architectural Review Approval Of A Three Story Development Consisting Of 84 Rental Residential Units In 104,971 Square Feet Within The Upper Floors, 50,467 S.F. Ground Floor Research And Development Area, Subterranean And Surface Parking Facilities, And Offsite Improvements, With Two Concessions Under State Housing Density Bonus Law (GC65915), and Approval of a Mitigated Negative Declaration, On A 2.5 Acre Parcel At 195 Page Mill Road And 2865 Park Boulevard, * Quasi-Judicial.

Curtis Williams, Planning & Community Environment Director, noted that the proper process was for the Appellant to speak before the Applicant on an Appeal.

Amy French, Planning & Community Environment Acting Assistant Director, said the Park Plaza Project was a three story mixed use building on a 2.5 acre parcel at 195 Page Mill Road and 2865 Park Boulevard. The residential component had a Floor Area Ratio (FAR) of 1.02 to 1. The ground floor research and development component was a .48 to 1 FAR. The 84 residential units were rental units and included 17 Below Market Rate (BMR) units, which was 20 percent of the total for which two concessions under Government Code 65915 were requested. The project included a subterranean parking garage, surface parking lot, fountain, pedestrian amenities along Park Boulevard, street trees, bulb-outs, and a left turn stacking lane on Park Boulevard to access Page Mill Road. The Architectural Review Board (ARB) recommended the current project on a 3 to 2 vote in 2011, and had recommended a similar project in 2006. On October 3, 2011 Council reviewed the project which had a tentative map included that allowed for condominiums. The map was later withdrawn. The Council directed the Applicant to proceed with the same project only with a rezone request to pedestrian transit oriented development. The Applicant rejected the rezoning, and instead requested final Council action on the quasi-judicial

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ARB application in process following the appeal of Director's decision. The City Council had been requested to review and act on the Mitigated Negative Declaration (MND). The California Environmental Quality Act (CEQA) document addressed the potential for vapor intrusion to the satisfaction of the Regional Water Quality Control Board. A recent Board letter, which was Attachment L, Page 831, confirmed that the Environmental Protection Agency (EPA) indicated the mitigation measures were protective. To supplement the mitigation measures, they addressed biohazards and a baseline air quality testing. She stated that the Council should consider only the ARB findings in order to make a decision on the Application. The two Record of Land Use Actions (ROLUA) were provided to allow the Council to choose an approval or denial. Both ROLUA's contained ARB findings and Comprehensive Plan policies. The interpretation of Comp Plan policies L5, L14, and L49 was the distinction for the Comp Plan policies. She said that concluded her presentation and that she knew both the Appellant and Applicant were present.

Bob Moss, Appellant, hoped that the Council would kill the project. He reminded the Council that the project did not comply with the Zoning Ordinance, the Comprehensive Plan, or good planning and land use. It was strange that Council was only supposed to consider what the ARB said because the Planning & Transportation Commission (P&TC) reviewed the project and overwhelmingly rejected it. They rejected the claim that the project met most of the identified Comprehensive Plan policies. Normally it was the P&TC and not the ARB that decided issues regarding land use. He said that the P&TC had complained in the past that they were overlooked and bypassed. Council should send the project back to the P&TC. The ARB should only review design issues. The claim was made that the ARB approved the project unanimously. In 2006 the ARB requested the Applicant to return with corrected problems. He said that those problems were never resolved. The last time the ARB reviewed the project it was approved on a 3 to 2 vote, and it was very contentious. The project failed the basic test of compliance, compatibility, and looking appropriate in a residential zone. There were numerous changes in the past six months that the Council needed to be aware of. Mr. Larkin had made a presentation to the P&TC several months prior that pointed out that they were not required to grant all of the modifications in zoning that were requested. Mr. Larkin said that the Applicant was not allowed to have housing in the General Manufacturing (GM) zone, and the Applicant said he wanted 84 units. The City was not required to give the Applicant all 84 units. The fact that no housing was allowed in the GM zone meant that any housing that was allowed was a concession. He said that 20 or 30 units would be a concession. He said that Council could reduce the number of units and non-compliance with zoning and still provide concessions according to Government Code 65950. Second

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and most important was the complete failure to comply with CEQA and to provide adequate protection against public health and safety. He attended a number of conferences and had dealt with toxic sites since 1988. For 16 years he was a member of the Moffett Field Restoration Advisory Board, working intimately with the EPA on the toxics in Mountain View. The EPA would have far more intense restrictions on a development such as the project at issue. There would not be an underground garage because the garage went within a foot or two of the aquifer. Second, EPA stated repeatedly that it required indoor air sampling in residential locations, which were required to be done over a period of time of at least five years. The Regional Water Quality Control Board (Water Board) repeatedly refused to require indoor air sampling in the residential portion of the property. He said that was a violation of standard practice. The Water Board demonstrated repeatedly over the past 7 to 8 years that it was not qualified to have oversight on toxic sites in Palo Alto. In June 2011 the EPA met with the Water Board and attempted to get the Water Board to come into compliance with EPA policies for handling vapor intrusion and toxics. After extensive discussions, the EPA left frustrated. One of the claims made was that the attenuation factor naturally rising from the ground water in the soil into the building was as much as three orders of magnitude. The EPA had found that depending on the weather, rainfall, changes in the elevation of the groundwater that the attenuation factor could change by more than an order of magnitude, as much as three orders of magnitude inside the building. Finally, the City had said that they had a MND, which showed they would be compliant based on what the Water Board said. He had repeatedly pointed out that the Water Board was not capable of providing valid data. The court order of September 10, 2007, by Judge Nichols said, "Point three, the City is to set aside in its entirety its decision to approve the Park Plaza Project. The City and all of its officers and employees, agents, and assigns are further ordered to suspend and refrain from authorizing any and all demolition, excavation, construction, or any other project related activities that could relate in any change in alteration to the physical environment until the City has reconsidered its approval of Park Plaza and brought it back into compliance with CEQA and you have to bring it to the court and the court has to verify compliance."

James Jans, Applicant said he was an attorney who represented the Hohbach Reality Company Limited Partnership on the project since 2006. He stated that they had on the screen a view of the project which showed the Park Boulevard facade from the tower at Page Mill Road at the left going down along Park. That was one of the views that was in the package sent to Council that provided real life view of what the project would look like. As Council was aware, when the project was last before it in October of 2011, the Council did not approve or deny the project, but directed the Applicant to

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rezone the site under Pedestrian and Transit Oriented Development (PTOD) and pursue the project under that zoning scheme. They looked at the potential for the development of the project under PTOD and reached the conclusion that by using the same 20 percent affordable units as currently planned the project could be built using incentives included in the PTOD Ordinance as well as those under the State Housing Density Bonus Statute to come out with virtually the same project. He realized that suggestion was only theoretical. He said that the project would have to go through the Planning and Transportation Commission (P&TC), the ARB, and the City Council before it became final. As it took four years since the project was reinitiated under the zoning scheme used when it was initially approved by the Council in 2006, there was no reason to think that it would take any less time under the PTOD. Therefore the Applicant concluded that it made no sense to spend the additional time, money, and energy to develop a new PTOD project when they had a virtual PTOD project already in consideration. The Applicant requested that the Council either approve or disapprove the project. Richard Campbell, the Project Architect with Hoover Associates and the Applicant's Mitigation Consultant, Dr. Sigrida Reinis with Treadwell and Rollo were present to answer questions. He introduced Mr. August, a former adversary of Harold Hohbach's, who was present to provide his unique perspective on the issues related to the project.

Andrew August said he was not a land use lawyer and was not present to address the details of the project or to respond to the Appellant's points. As a trial lawyer he lived by process and procedure. He was very familiar with the six year plus process that Mr. Hohbach had been through since the Council approved the project. Upon his review, the process the project had been through since 2006 gave government a bad name. Six years after the project was approved by the Council's predecessors they were looking at incalculably more time if Mr. Hohbach had to start over again through the PTOD process. He said the Council was on the cusp of a great opportunity to create a new, vibrant, exciting, pedestrian centered project that would help meet State mandated housing requirements. The Council could pioneer creative mixed-use development that addressed housing, transit issues and facilitated logical infill developments or it could choose to return to the developments of the 1980's and 1990's with ubiquitous box buildings surrounded by parking lots. He noted that Mr. Hohbach, who had recently suffered a stroke, was at a point where he had no alternative if the project was denied but to develop the site as a 50,000 square foot building with surface parking that he was grandfathered in to build. Finally, and importantly to the Appellant's point, the Council could seize the opportunity to rely on the resources it had with its incredibly respected and highly professional ARB. The Council must be guided by principles of fairness and benefit to the community, not personal desires. He implored the Council to

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look at the 12 years and what occurred through the process and consider the remarkable unfairness to Mr. Hohbach. He urged the Council to approve the project. The people who would live and work in the building could use many forms of transportation. The project was approved six years ago and the Appellant's lawsuit should have been a brief delay as he lost on every issue except for the MND with respect to the now 40 year old Hewlett Packard (HP) variant plume. The City made a mistake in amending the MND, which was the sole basis for the Appellant's supposed victory. The City compounded its mistake by not simply recirculating the MND but instead requiring Mr. Hohbach to again resubmit an entirely new application. The Council was presented with an opportunity to remedy the impact of those decisions. The current application was submitted four years prior and achieved the dual goals of meeting the City's Comprehensive Plan and satisfying the State's housing mandates including 20 percent affordable housing. The project was consistent with the City's Plan, programs, policies, and goals and provided significant public access. It was a public transportation centric project. It provided rental housing for those working nearby. He said that they needed to create jobs and provide affordable housing while removing vehicles from the street and the project accomplished that. He felt the notion of due process had been abandoned and that resulted in an unjustifiably lengthy and inexplicable process. In considering the extent and duration of the vetting of the project, it was painfully clear that the desires of the few were elevated over the benefit to the many. He implored the Council to install fairness and public benefit back into the process and approve the project.

Council Member Klein disclosed that he had spoken to the Applicant and Mr. Jans, but did not learn anything that was not in the public record.

Council Member Espinosa disclosed that he spoke with Mr. Jans several months prior and did not learn anything that was not disclosed in the information Council received.

Council Member Price disclosed she met with Mr. Jans but did not receive additional information other than what the Council had before it that evening.

Council Member Schmid disclosed he spoke with the Applicant as well and discussed materials that were publicly available.

Mayor Yeh disclosed that he also met with Mr. Jans and went through materials that were in the public record and on the City's website.

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Vice Mayor Scharff disclosed that he spoke with Mr. Jans and had not learned anything that was not publicly available.

Council Member Shepherd disclosed that she met with the Applicant and his attorney and had not learned anything that was not in the packet.

Council Member Burt disclosed that he met with Mr. Jans and the Applicant's architects two months prior and had not received any materials that were not publicly available. He also received a call from Mr. Jans the past week and he requested that he be allowed to share conceptual modifications to the project that attempted to address some portion of the concerns expressed by himself and other members of the Council at the October of 2011 Council Meeting. He explained to Mr. Jans that there were Council protocols that did not permit the additional materials to be disseminated to the Council without being in the packet for project approval. He declined to meet with Mr. Jans regarding the substance of the modifications. He said that he was going to ask the Applicant to share with the Council some sense of the direction of the modifications so the Council could determine whether they wanted to schedule a subsequent hearing on the merits.

Mayor Yeh indicated that as disclosures were complete he was returning to Council for preliminary questions.

Council Member Burt asked the Applicant to share the concepts of the modifications that they were considering so that the Council could determine if they merited enough response to their previously expressed concerns so they might schedule a follow up hearing for consideration.

Mr. Jans said they had discussed ideas but they did not have changes that they were currently requesting. He was unaware of the relatively recent Council procedure on bringing new materials to Council Members. Once he learned about it, he agreed with Council Member Burt's conclusion not to review anything that was not already presented. Their concern was that if the project was approved that they be able to begin construction before the rainy season. The Applicant was willing to share the ideas with Staff, but wanted assurance that it would not result in continuing months of delay.

Council Member Burt asked Staff if Council heard enough that evening and wanted to schedule a hearing to review the modifications when that could be scheduled.

Mr. Williams said it should take approximately a month for Staff to review the modifications and provide the Council with feedback.

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Council Member Burt said in trying to abide by Council's protocols and being fair to the Applicant they had a dilemma. He could not receive the materials prior to that evening's meeting and through whatever misunderstanding Mr. Jans had not provided the materials to Staff in advance of the meeting. He saw two alternatives. First, Mr. Jans describe conceptually the modifications suggested so the Council could determine if they seemed to address the concerns to a degree that would at least warrant the follow up hearing. Second, that they decline to share the information and the Council made their up or down decision. He asked if Mr. Jans wanted to share the concepts.

Mr. Jans asked if the discussion would continue that evening.

Council Member Burt said he assumed the Council would hear them and then deliberate on whether the changes warranted the Council requesting that the item return with the more specifics to the changes within the next month.

Mr. Jans described the modifications as concepts that helped to open the interior courtyard to the outside to make it more appealing or attractive to passersby.

Council Member Schmid said one of the issues raised was the health and safety with the toxic plume. The issue had come to Council several times over the last several years and would probably come again. He thought it was an important City issue that needed to be dealt with effectively and with best knowledge. With the Appellant and the consultant hired by the Applicant debating issues what became important were the official stances of the regulatory bodies. He understood there was some discussion over whether the Water Board or the EPA was the relevant standard setter. He noted that in the materials provided, on packet page 831-832, which was the official response of the Water Board there were three statements made. At the bottom of page 831 it said, "The Water Board acknowledges they became aware of the Endicott Study" which he believed was an EPA study, "and we have discussed the results internally. We expect to apply the lower screening levels to the forthcoming vapor intrusion evaluation." On the middle of page 832 they said, "When we do the initial pre-occupant and ongoing indoor sampling we will review it, be reviewing the results with US EPA to determine the frequency of additional samples." He said that near the bottom of page 833 they said, "The Water Board will review the indoor air tests with US EPA and will determine if additional testing needs to be conducted." That implied that the Water Board acknowledged a differential between itself and the EPA and explicitly said that they would review their standards and work with the EPA. He said they had heard that the agencies had not worked well in the past. He asked what the Staff could do to assure

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there was a valid and concrete review process that was open and available to the public.

Mr. Williams said the Staff believed that there was currently a much closer working relationship between the two agencies. The letter was an acknowledgement that the Water Board had consulted with the EPA and they believed that the EPA was consistent with their determination. Additionally, Staff indicated and the P&TC suggested that there would be indoor air quality sampling on all floors, not just in the garage and reporting out on that. He emphasized that they had not relied entirely on the consultant for the Applicant's report. Staff relied primarily on the Water Board, but the City also had its own environmental consultant that completed a peer review of everything. The City's consultant was comfortable and felt that the combination of the full vapor barrier and active ventilation system was more than what was typically warranted. Staff felt that being on the conservative side was appropriate to require those. The Applicant agreed, and he thought it created an acceptance level for the EPA as well. He said that he was not qualified to adjudicate between the numbers. The City relied on a combination of the Water Board and the City's Consultant who had spoken with Council at length the last time the project was on the agenda. Both felt that the methods of mitigation were adequate to address the issue.

Council Member Schmid said what he read in the notes was that the Water Board acknowledged that the EPA in its recent studies had argued for tighter screening levels. They said, "We will review with them," but that term was not very strong and he wondered what kind of oversight the City had over the process.

Mr. Williams said he was afraid the City had very little oversight in terms of the process between the State and the Federal agency. He thought that while the Appellant may prefer that the EPA be the governing agency there was no dispute as to who the governing agency was, it was the Water Board. The Appellant indicated that in some places the EPA had eliminated the lower agency and thought it was more appropriate for them do that, but they had not done that in this case. Staff was comfortable, but he thought that the City trying to impose itself between the two agencies was problematic.

Council Member Schmid said the wording used by the Water Board was "We expect to apply these lower screening levels and to review them with the EPA." He asked if that was a public review that was available to the public.

Mr. Williams said he imagined the information would be available to the public, but that it was not a publicly debated decision.

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Council Member Shepherd asked if the project would return to the ARB for final approval of the design if it was approved by Council.

Mr. Williams said the ARB had conditions regarding details such as colors and architectural details, but the substantive issues had been addressed, so the project would return to a subcommittee of two members of the ARB. He stated that was a typical process the ARB had to review details after the initial approval.

Council Member Shepherd asked if the Applicant made changes if it could go through that process with the ARB without coming back to Council.

Mr. Williams thought that depended on what the nature of the changes were. If it was a minor change then Council could direct Staff or the ARB subcommittee to review it, but if it was more substantive then they could require full ARB review.

Council Member Shepherd confirmed that the project itself would still be maintained as an approved project.

Mr. Williams said that was correct.

Vice Mayor Scharff said when he read the letter from the Regional Water Quality Control Board what he took away from it was that they believed that the project was protective of public health. He understood that to mean that the Water Board did not think there was an issue on the project at all with vapor intrusion. He asked if that was a fair statement.

Mr. Williams said that it was. He thought the Water Board indicated the EPA felt that as well.

Vice Mayor Scharff said that they seemed to go further than that when they said there was a vapor intrusion contingency which they said "given the anticipated attenuation by the Ventilation Inspection Management and Service (VIMS) alone we do not anticipate indoor air levels of concern, but if levels of concern are detected however the sub-slab ventilation portion of the VIMS can be converted into an active ventilation system." He stated there was a backup if it turned out there was an issue.

Mr. Williams said that was correct and the Applicant had committed in the City's conditions of approval that if necessary they would install an active ventilation system.

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Vice Mayor Scharff asked if the drawing shown earlier was a fair representation of what the project would look like.

Mr. Williams said it adequately represented the building design and articulation.

Vice Mayor Scharff said when he attended the Regional Housing Needs Allocation (RHNA) Committee meetings it was interesting how difficult it was to get moderate income housing built. There was a big push by RHNA to build moderate income housing. He asked if this project would qualify as moderate income housing under the RHNA Allocation as it was rental and given the density.

Mr. Williams thought it did. He said the Council would see it in the Housing Element. The Housing Community Development Department (HCD) was looking for densities that were over 20 units per acre as affordable units. He thought they were giving the credit when the density was at that level and the project had 40 units per acre.

Council Member Klein said Mr. Moss quoted Mr. Larkin as saying, "Concession to allow housing in a zone where housing normally is prohibited can be met by following a fraction of the number of requested units." He asked if that was correct.

Don Larkin, Assistant City Attorney, said he did not recall saying that. He thought there was a misunderstanding. Some communities had set what was allowable by right as a concession and then if an Applicant asked for a concession beyond what the community set, then they had to show a justification for the concession. He thought that was what Mr. Moss was referring to.

Council Member Klein asked Mr. Larkin what they could do that evening.

Mr. Larkin said the way the density bonus law worked was that an Applicant could request a concession and then they had to make a minimal showing that the concession was necessary to provide the level of affordable housing proposed. The Applicant in this project did that with the prior project, but then the burden shifted to the City to show that the concession was not required in order to provide the housing. The City had not done that and would probably need to conduct a study to show that the concession was not required in order to provide the level of affordable housing that was being proposed.

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Council Member Klein said that would involve the City in the economics of the project.

Mr. Larkin said that was correct.

Council Member Klein confirmed that five or six years earlier the Applicant had completed an economic study and no one questioned it.

Mr. Larkin said that was correct, the Applicant prepared an economic study for the original proposal in 2006.

Council Member Klein said the Applicant stated that what they proposed was similar to what would be allowed under the PTOD. He asked if the Staff had studied if that was true.

Mr. Williams said that the primary difference between the project and what was allowed under the PTOD was the nonresidential portion of the project would be cut in half. So it would allow about 25,000 square feet of non-residential instead of 50,000. It would allow all of the residential components. The residential was allowed at a 1.0 FAR, which was what they proposed; the non-residential was at .25 and could go to .35 if the rest was retail. The only other area the Staff identified was in a PTOD there was a five foot setback and a daylight plane at the Caltrain right of way. The current proposal encroached into those somewhat, and the Applicant was unwilling to make that change.

Council Member Klein said Staff's recommendation to the Council was a non-recommendation. He felt that was rare and asked why there was a non-recommendation and if Council could push for a recommendation.

Mr. Williams said they came to Council last time with a recommendation for approval of the project. They heard good comments about some of the visual architectural aspects of the project that perhaps could be improved. He said that much of it stemmed from approval over Staff's denial recommendation back in 2006. Staff felt that evening that there were some aesthetic judgments to be made as to whether the project was ready to move forward. Staff believed that the use and intensity was appropriate in the location and thought the only real question was if the project was to scale or if the architecture was too massive. Staff was comfortable with it and felt like it could move forward. There were some improvements they discussed and other things on the margin that could help further, but if pressed Staff would recommend approval.

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Council Member Klein said that in response to Council Member Burt's questions Mr. Jans talked about opening the structure so the inner courtyard would be more visible from Park Boulevard. He asked if that was correct.

Mr. Jans said that the idea was to modify the entrances that were currently in the project to induce more pedestrian traffic.

Council Member Klein confirmed the modifications would not change the basic size of the project.

Mr. Jans replied that was correct.

Council Member Klein confirmed it would be the same number of units and square feet.

Mr. Jans said that it depended on what the change was, but one thing they looked at reduced the square footage of the Research and Development (R&D) by about 500 square feet. He asked if he could comment on Mr. William's answer to an earlier question.

Mayor Yeh said he could respond.

Mr. Jans said that Mr. Williams was correct, .25 was the maximum you could get for the R&D use under the PTOD. Part of his analysis was that they still had the incentives under the State Housing Density Bonus Law and they could use one of those to get more FAR for the R&D portion.

Council Member Klein said that Mr. Jans meant it was the same as PTOD plus.

Council Member Holman asked Staff if the project had physically changed since it was last before Council in October of 2011.

Mr. Williams said it had not changed.

Council Member Holman confirmed that there were no changes or responses to prior ARB comments or Council Member comments on a 7-0 vote to send it back to PTOD in the last seven months.

Mr. Williams said there were no changes other than withdrawing the tentative map, so it was now a rental project. He said the Applicant was scheduled a number of times to return to Council, but that had been delayed primarily by their further requests.

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Council Member Holman said that she had to respond to the picture shown earlier. The plans showed that the tower was 20 foot taller than the rest of the building. She thought the picture was not a fair representation of that because the building was 40 feet with a 60 foot tower.

Ms. French said with the tower it would be 59 feet and then the parapet also stuck up above the 40 foot roof, so it was slightly less than 20 feet. The 40 foot measurement was to the roof, not to the parapet. She also noted that one's view in the photo was not that of a pedestrian.

Council Member Holman said that the basis for the concessions was the BMR units. She said the City did not know where they would be located or what square footage they were in relation to the other units. She asked if that was correct.

Ms. French said the City's Housing Planner did have discussions with the Applicant about the BMR units.

Mr. Williams apologized because he did not ask the Housing Planner if he had a rough sense of where the units were. He said that the Applicant might know if they had determined the specific BMR units.

Council Member Price said she had questions about rental housing in Palo Alto. She asked if Staff could refresh the Council on owner occupied versus rental housing. She wondered if there were percentages that could be shared.

Mr. Williams said that it was basically split in Palo Alto. He believed approximately 48 percent of the housing was rental housing which had existed for a long time. In the last decade there was virtually no rental housing other than the non-profit affordable housing like the Tree House Apartment built. He said it was rare that they saw a multi-family rental project.

Council Member Price said she did not recall a rental project going forward while she had been on the Council. She asked what the timing was for a significant rental housing project within the City in the last two decades.

Mr. Williams said the ones that came to mind were the affordable housing projects like the Tree House and the 801 Alma Street Project, which were rentals. The Bridge Housing Project was senior rentals. Most of the other projects were townhomes or single family homes that the City had seen in the last decade.

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Council Member Price stated within the project proposal and in the Staff report there was a case made that the cost of producing R&D is certainly less than housing. She asked if the project proponents could make some comments about the mix of R&D and housing.

Mr. Jans said the mix in terms of square footage was dictated by the amount of R&D space that was in the buildings that preexisted on the site, which had since been torn down. He was not sure how they arrived at 84 units of housing.

Mr. Campbell, Project Architect with Hoover Associates. He said that the square footage for the R&D was a result of several factors. First, the buildings that were there before were around 50,000 square feet and they used that number for the R&D. Additionally, using the setbacks and some of the design considerations resulted in a single story R&D space of around 50,000 square feet. If they wanted to increase that it would have ended up being a multistory R&D space, which they did not want.

Council Member Burt said that the Applicant made a claim that they could get the additional .25 FAR of R&D based upon one of the concessions that they were entitled to. He asked if Mr. Williams and the City Attorney agreed with that.

Mr. Williams said that he understood what the Applicant said. It appeared to be the case, but they would have had to argue that through a discretionary rezoning process, which was legislative. Under that process the Council had more discretion to say no to the zoning itself.

Council Member Burt clarified that there were references to concerns that he had raised at the prior hearing related to aesthetics. Those were not about style and appearance, they were about mass and scale and street face interface. Those were not subjective things; they were related to the physical construction of the building and its impacts. He wanted to make that distinction.

Council Member Espinosa said the last time the project was before the Council several members discussed the pedestrian scale of the building and how the design impacted the feel of the street. He asked Staff to explain what would happen if the Council wanted to look at alternative approaches.

Ms. Stump thought that they had discussed the Applicant returning to work with the Staff to explore changes in detail and then the Staff would bring the item back to Council. At that point the Council could approve it or make the determination to send it back to the ARB.

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Mr. Williams agreed. If the Council said the main parameters of the project were acceptable but wanted additional work done on the façade then Staff would work with the Applicant. He thought Staff's goal was to do something within the context of a minor ARB review.

Council Member Espinosa asked if there were other things aside from the massing and scale from Park Boulevard that was discussed with the Applicant.

Mr. Williams said that was the primary discussion, which mostly had to do with making the building feel a little more broken up instead of one big piece.

Council Member Espinosa asked if there was a timeline that Staff would anticipate if that was the approach taken by Council.

Mr. Williams said it depended on how involved the proposed changes were. As it stood Staff could accomplish the work within a month if the Applicant was prompt in meeting with Staff and providing drawings.

Mayor Yeh stated that the Public Hearing opened at 9:37 P.M.

Bena Chang was present on behalf of the Silicon Valley Leadership Group, which was a public policy trade association that represented over 375 members in Silicon Valley. They surveyed their companies every year and asked what the top business competitiveness challenges in Silicon Valley were. She said every year housing was considered the top impediment. It was clear that issue needed to be addressed. It was difficult for companies to attract and maintain employees. She stated that they needed to maximize key infill sites such as the one where the project was proposed. She stated that future residents of the site would have access to the retail on California Avenue and to the Caltrain Station. They encouraged Council to approve the Park Plaza proposal.

Irvin Dawid of Alma Street said he hoped Council had received his letter, which he had sent in late. Palo Alto did not have that many examples of mixed use. He stated that was one of the reasons he was disappointed that they lost the top floor residential units at the Lytton Gateway. He did not know of any modern buildings that had good residential mixed use except for the Presidential Apartments on University Avenue. He said most residential mixed units like 800 High had a little café on the ground floor. Most developments only had a token retail unit. He thought this was a great opportunity for Palo Alto. With the whole appeal Mr. Hohbach was viewed as

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the person who was being put in the spotlight. He thought that was a mistake, what was on the spotlight was 84 units of housing and the question was if the City was serious about bringing in more housing. If the City was, then the Council would approve the 84 units. He urged the Council to approve the proposal.

Geoff Dale echoed the Silicon Valley Leadership Group, the Santa Clara Housing Action Coalition as well as Mr. Dawid. He thought this project was an excellent opportunity for adding well designed residential to Palo Alto and the neighborhood. He lived and worked in the project area and had the opportunity to lead a low carbon impact life because of it. It was a wonderful walking neighborhood where people's needs were met. He said he wanted to see that brought into other people's lives. He thought the R&D was an excellent way of transitioning what was there and adding the residential. There were many combinations and synergies there if Council looked at the surrounding buildings they would see that the architecture fit in very well. He thought the project was micromanaged and it was time to let it be built. It was economic development that was needed for the area and the City. The empty lot that sat there was only a mild improvement over the ramshackle warehouses and R&D spaces that previously existed. The neighborhood was going through a revitalization with very exciting companies that needed the extra space. He asked the Council to approve the project.

Herb Borock urged Council to deny the project and take no action on the Mitigated Negative Declaration. He said they focused on the fair argument based on substantial evidence from Mr. Moss regarding toxics. There was an additional fair argument based on substantial evidence from Joy Ogawa on transportation inadequacies and aesthetics. He said he would provide that to the Council in the form of a letter after he finished speaking along with additional items. The project did not meet the requirement for a mixed use concession from Government Code 65915 because mixed use must be compatible with the housing. It was defined in the PTOD zoning that compatible R&D for housing uses in the limited industrial land use zone was .25. The project was almost double at .48, so therefore they could find that it did not receive a mixed use concession. He said he was also providing Council with a copy of Mr. Hohbach's letter and the Ordinance Council adopted at his request for 2650 Birch, which was also in the project's neighborhood. In that letter Mr. Hohbach said that a PTOD zoning with a FAR of 1.25 would create an economically viable project. He said it was not possible to increase that PTOD to the project because the mixed use violated the compatibility requirement for mixed use in State law. Mr. Jans had provided information at 395 Page Mill Road, which was across Park Boulevard from the project, but neglected to show the site area. The site

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area was more than four times the project's site area. The FAR of the proposed project was three times the FAR of 395 Page Mill Road. He believed the denial of the project should make reference to the fact that a mixed use concession was not allowed because the .48 R&D was not compatible and the project violated the Comprehensive Plan because it was incompatible with the project across the street which had an FAR of one third the amount.

Mayor Yeh closed the Public Hearing at 9:46 P.M.

Council Member Holman thought what was challenging about the project was that it was a site with many opportunities.

Mayor Yeh interrupted Council Member Holman to provide the Appellant three minutes to respond to the points raised in the Public Hearing.

Mr. Moss disagreed that the project met the requirements of CEQA. He read the remainder of Judge Nichol's ruling, stating that "Under Public Resources Code 2168.9b, this Court will retain jurisdiction over the City's proceedings by way of a return of this preemptory writ of mandate until the Court has determined that the City has complied with the provisions of CEQA." He said that in order to approve the project or anything similar the City had to make a finding that it complied with CEQA and submit the justifications to the Court at which time he would submit his objections. He said that when Mr. Jans stated that the Judge rejected everything except the procedural matter, what the Judge actually said was because the procedural matter was so obviously false the others issues were irrelevant and moot. The Judge never decided on those issues. He also emphasized that when the case went to court the toxics issues were not discussed. When it returned to Court, they would be discussed. The City had no way of regulating what was done by the owner of the property to measure vapor intrusion and verify that everything was fine. One of the dangers of the proposal was that when they measured vapor intrusion in the garage they could report to the City that the garage was fine. He explained the toxic levels allowed in the garage were six times higher than what was allowed in the residential area. In the residential area exposure for as little as three weeks would probably cause birth defects. Exposure in the garage or in an industrial area could go on for years. The response to the testing could be positive, but they would only be referring to an area which was not inhabited and was governed by a looser requirement. He said that the Council could allow housing on the site provided that there was no underground garage and if the density was reduced accordingly so that there would be adequate parking. There were ways the City could mitigate the potential dangers of vapor intrusion. If the

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Council did not then it violated CEQA and placed people's health and safety at risk.

Mr. Larkin said much had been made of the barium plume underneath the property, which had been there at least 40 years. He said it covered a huge area of that part of Palo Alto and the underground water flow continued northeasterly to the Page Mill Road underpass where it was pumped out and dumped into Matadero Creek where it was exposed to everyone. He said they retained a mitigation expert that initially designed a sub slab ventilation system which the Water Board found adequate. On top of that by request of the City they agreed to do a full vapor barrier covering the entire property. They also agreed to make the ventilation system active rather than passive and they agreed to air testing on all the levels. He said that Mr. Moss turned in several e-mails prior to the Council meeting and the Applicant's consultant, Dr. Reinis, commented on that. He provided those comments for the record.

Council Member Holman said it was a site with promise. It was a large scale site located near transit. The Applicant was not responsive to ARB comments for change. It was seven months since the Applicant was at Council with statements of wanting the project to return as a PTOD at a smaller size. There were issues of compatibility and transition that were brought up and concerns about the appropriate use and design components. She stated those were findings 2, 3 and 5. She said the concerns had not been addressed; it was still one large project. She said there seemed to be a disconnect in some of the commercial projects that went through the ARB between what the community was looking to see and what was seen in the residential developments. She did not believe this project would receive favorable comments about its look and feel if it were built as currently designed.

MOTION: Council Member Holman moved, seconded by Council Member Schmid to approve Staff recommendation to deny the Architectural Review Application (uphold the appeal) by approving the Record of Land Use Action for Denial. If Council acts to deny the project, no action on the Mitigated Negative Declaration is required. Additionally, Findings 1, 2, 3, and 5 cannot be made.

Council Member Holman thought that it could have been a very good project if there had been some direction taken to break it into smaller scale components. She said it looked like big box housing. As far as compatibility and transition, she thought the ARB members that voted for the project went by memory because there were no context drawings or photos in the materials provided. She personally had a reaction to the project and an

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analytical response to the project. She did not think it would be popular with the public if built as designed.

Council Member Schmid pointed particularly to policy L49 in the Comprehensive Plan. The goal was to design buildings that revitalized streets and public spaces and enhanced the sense of community and personal safety. He thought the goal of a mixed use project; even a fairly dense mixed use project in the area made sense and fit in with the needs. He pointed to the discussion at the ARB meeting and Commissioner Lew's point about how a building that was 250 feet by 450 feet with unbroken length of façade was too long. He stated that if the project was on a downtown block such as Alma Street it would not be approved. It was too big and too much of the same module. He thought that while it met many of the City's goals, was in the appropriate spot for a denser building, and was moving the direction of mixed use, the massing and scale of it seemed to be incompatible with the goals of the Comprehensive Plan.

Vice Mayor Scharff said he would not support the Motion. He thought the project provided needed rental housing. He thought the City had an opportunity to bring rental housing to Palo Alto when rents were rising. It seemed that the issue was between having a 50,000 square foot R&D building and having a mixed use building. The City's policies, especially for the location which was transit oriented indicated that it should be a mixed use property. Policy B2 said, "Support a strong independence between existing commercial centers and the surrounding neighborhoods as a way of encouraging economic vitality." The housing next to the R&D would result in people living and working there and reduce carbon and greenhouse gas emissions. He noted the site was near transportation and said that those were all things the Council had looked for. There was also a policy to develop the Cal/Ventura area as a mixed use district with diverse land uses with two to three story buildings. The project clearly met that and noted that they had recently designated the area as the only Priority Development Area (PDA) in the City for housing. He said that if they denied the first housing project in the area that came to the Council it did not seem as though they were following their policies. Moderate housing was difficult to come by and the project provided it. In terms of making land use decisions that encouraged walking, bicycling, and public transit use the project was near the Caltrain Station and was walkable to California Avenue. The way the City supported retail was to put housing near it. His only concern regarding the project was that it was not opened up. He was intrigued with the Applicant's comments that they could work with Staff to open the design. He thought the notion of taking a month to work with Staff was a positive thing. He wanted to ask Staff how that would work, if they would

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have a condition to approval that said to work with Staff and return in a month.

Mr. Williams said he would not suggest a condition of approval. He said it sounded as though it was a substantive enough issue that Council should see it before it was approved. They could approve the Negative Declaration, although there was no need to do that until the project returned to Council. He suggested that Council direct Staff to work toward breaking up the mass of the building and to return to the Council within a month with revised designs. He thought if the Council went that route that it would be helpful to indicate that was the issue so that they did not return talking about toxics or parking lots.

Mayor Yeh left the meeting at 10:04 P.M.

Vice Mayor Scharff asked if Mr. Williams suggested tentative approval with a return on the design issue.

Mr. Williams said that a tentative approval was fine with him, but he did not know if that had any bearing.

Vice Mayor Scharff asked if they should continue the matter for a month. He asked if that was a better approach.

Ms. Stump thought it probably was and thought it was also helpful to designate a date. She said it was contingent on the Applicant working promptly with the Planning Staff so that Staff had the opportunity to respond to the Council. She said they could identify a date that evening so that they ensured the matter returned promptly.

Vice Mayor Scharff asked the Applicant how they felt about returning within a month with the understanding that Council Members who voted for the project did so in good faith with the notion that if the Applicant returned with a design that was opened up that they would have tentative support.

Mr. Jans said they agreed.

Ms. Stump said that Mr. Williams suggested that the Staff work with the Clerk's office at the agenda planning meeting and identify an appropriate date within June or the first meeting in July.

Mr. Williams said he expected the date to be June 25th or July 2nd.

SUBSTITUTE MOTION: Vice Mayor Scharff moved, seconded by Council Member Price to continue this item to June 25, 2012.

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Vice Mayor Scharff said he it was a good project that could be opened up, which would make a big difference in terms of resolving Council Member and community concerns. He hoped the Applicant would work with the Staff to come up with something that architecturally made sense.

Council Member Price was pleased to second the Substitute Motion and concurred with the comments made by Vice Mayor Scharff. She said the review process was lengthy and thought the project largely addressed the elements of the Comprehensive Plan and supported the Housing Element. She thought one of the compelling points was the opportunity for a mixed use project that combined R&D and rental housing. Rental housing was needed in Palo Alto. The project supported many of the concepts they discussed such as diverse land use and economic vitality. The California corridor could benefit from additional street traffic, pedestrian vitality, and the fact that residents could purchase goods and services on California Avenue. The project was close to transit opportunities. The fact that there was a Transportation Demand Management (TDM) program associated with the project made sense. She thought it was a major improvement to the visual quality of the blocks in the immediate area. She said that if you went to the site in the morning there were people going from Caltrain to the AOL site and the project provided additional opportunities for residents as well as employees. She said that the Council wanted both jobs and housing in the community and a variety of both. The design provided articulation which she thought was useful. She supported the idea of coming back and really exploring more aggressively opening up the area to the courtyard. The courtyard was a real advantage for the residents and the employees in the building, but she thought there could be a connection or a visual connection that could be more attractive. She supported the findings and the quality of the MND and the earlier and ongoing ARB application. She thought it was an opportunity and noted they talked about sustainability and the project was an opportunity to provide that. Council Member Espinosa said he supported the Substitute Motion for the reasons stated by Council Member Price. He encouraged the Applicant to take the feedback given at the last Council meeting about the sort of fortress nature of the design seriously. He thought the courtyard was wonderful for residents, but for people going down the street it really created a mass and scale that was overwhelming. He encouraged the architect to work closely with Staff and really think about how the pedestrian friendly streetscape could be improved. He looked forward to the return of the project.

Council Member Burt supported the concept of providing the Applicant additional opportunity to address the concerns that were articulated by the Council at the last meeting, which were really embodied by the findings on Council packet page 377 and 378. He was concerned that Council Member

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Espinosa's points were not reflected in the Motion. Unless those additional expectations were in the Motion, the items were being asked for but not required. He explained his support for the Motion was contingent on the Applicant agreeing in concept to more substantive changes than merely what they talked about of opening up the access to the courtyard. He asked the Applicant if they were willing to address more substantive changes than merely what was described earlier that evening. He said this was a Pedestrian and Transit Oriented District (PTOD), so the question was in that district, did that mean Council was enabling development that was adjacent to a pedestrian environment, but the development itself was not supporting that environment other than locating workers and residents near a pedestrian environment. The concept of the PTOD zone was both aspects, that they put density closer to pedestrian and transit facilities, but also that the structures themselves further the urban design elements. What they did not have in the project was a greater public space that bred a pedestrian approach. He said it was a mass and scale that was not conducive to a pedestrian environment, but he did not expect great changes to that. He asked if the Applicant had enough time to confer so they could answer his question.

Mr. Jans said he thought it was difficult for the Applicant to agree to something without knowing what that was.

Council Member Burt said he would clarify. He meant that the Applicant was willing to address issues beyond what Mr. Jans stated earlier that evening about the modifications considered conceptually to date, which was opening the courtyard somewhat, and address some of the other concerns. He said it was somewhat open ended and gave the Applicant some latitude in response. Too little changes and the Council may not be able to make the findings on June 25th, so approval dependent on genuine intentions to attempt to address the issues. He did not want to attempt to stipulate precise design changes and so that was what the Applicant had to work out with Staff over the next three to four weeks.

Mr. Jans said it was difficult for him to respond to that.

Council Member Burt said if Mr. Jans did not respond, he would not support the Motion.

Mr. Jans said he understood, but the Applicant went through the architectural review process with the people that presumably should have addressed the architectural issues. He was reluctant to bring design issues to the City Council. He said the Applicant was willing to work with Staff and discuss items that were discussed that evening.

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Council Member Burt asked if he was willing to discuss items beyond what he had previously stated that evening.

Mr. Jans said they could discuss them but he could not commit to anything.

Council Member Burt said in regard to the ARB, Council did value the input, but were the decision making body.

Mr. Jans said he understood.

Council Member Burt said he did not want to speak beyond what he asked and what the Applicant stated. He said that it was not that the Applicant agreed in concept to the changes, it was that the Applicant would consider a variety of changes including what was discussed with the expectation that substantive changes would occur beyond what they offered that evening.

INCORPORATED INTO THE SUBSTITUTE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the applicant consider a variety of changes to the project with the expectation that substantive changes will occur beyond what was offered tonight. Suggested Concepts to be considered should include and not be limited to: 1) Development that facilitates pedestrian environment, 2) Public space that supports public activity, 3) Each unit having clear relationship to residential units to the public street, and 4) Transitional elements to adjacent buildings and uses.

Council Member Shepherd asked for clarification of what the Motion meant.

Ms. Stump said what she heard the Council doing was expressing a substantial intention to approve the project subject to the Applicant working with the Staff over the next month to consider additional changes along the lines described by Vice Mayor Scharff and Council Member Burt.

Council Member Shepherd confirmed that Council was not expected to agree to what the Applicant brought back.

Ms. Stump said no decision was being made that evening under the Motion except to continue the item and consider it again on June 25, 2012.

Council Member Shepherd was concerned with the Motion because it continued a very long process. She knew the area well and there were many pedestrians and bicyclists but it was not a pretty area. She acknowledged it needed redevelopment and stated it was very connected to the California Avenue area. The AOL building across the street had buses that dropped off the workers who just streamed across the street. She said she was trying to figure out at what threshold the Motion would explain

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whether the Applicant had done enough so that the Council could give them a level of confidence that the project would be approved. At that point she understood that the City was in between Comprehensive Plans and it seemed that Council approved the project in 2006, then there was a lawsuit and returned in the current form. She asked if it was the same project in 2006.

Mr. Williams said yes.

Council Member Shepherd said she supported the Motion but was disappointed that the Council was not giving more assurance that the project would be accepted on June 25, 2012. She thought the project represented a vast improvement over what was currently at the site. She said it was such a substantive change that it might be difficult to transition into and she was concerned about that.

Council Member Burt made a point of order. He clarified the intent of the Motion, which was slightly different than what the City Attorney described. His understanding of the Amendment was that the Council was not conveying an intention to approve. It was a willingness to evaluate approval on June 25, 2012, contingent on the Applicant addressing the issues raised by the Council that evening.

Vice Mayor Scharff thought that legally it was basically what the City Attorney suggested originally, which was that it should be continued to a date certain. He thought if a Council Member was not going to vote for the project under any circumstances then they should vote against the Motion.

Council Member Burt agreed, but stated that was not an intention to approve, it was a willingness to consider approval on that date. He said that he was truly open to considering approval on that date based upon how the Applicant returns. That did not indicate he determined an intention.

Vice Mayor Scharff agreed.

Council Member Shepherd thought the project design had been through much iteration and her concern was this would not necessarily improve the project. She asked Mr. Williams what his opinion was of substantive change.

Mr. Williams said he understood the difference between small adjustments versus substantially addressing it. It meant not just addressing articulation of the walls, it meant truly having places where there were openings created that did not currently exist or open spaces that were provided that were indentations from the sidewalk as opposed to further articulation of the building. He said that what it did not mean was breaking the project into

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two or three buildings, which would be something that they would look at if it came in fresh under PTOD zoning.

Council Member Shepherd said that was her concern that the Council was going to make decisions on design features. She asked if that was what would happen.

Mr. Williams said ultimately yes, it was.

Council Member Shepherd asked if it would happen without the ARB looking at the project.

Mr. Williams said yes, that was generally true, but they would have to see how substantive the changes were. If Council was comfortable with the project not returning to the ARB, then that was what would happen. From what he understood of the Motion it was something that hopefully Council could act on. He said that if there were details for ARB to look at for a minor review that could happen.

Council Member Shepherd said those were her serious concerns about the Motion. The fact that Council was getting involved in the process of commissions to make the decisions coming forward. She found herself in a spot she did not want to be. The Applicant wanted an up or down vote, and the Council was not giving them that, but was giving them a continuation. She said that if it moved the project forward she would vote for the Motion in the form it was presented.

Council Member Schmid said he supported the Motion as long as it contained the words "substantive changes." He thought it was disappointing that between the Council meeting of October 03, 2011 to date there was very little change. He heard his Colleagues say that the issue of breaking up was extremely important. He suggested if the Applicant wanted ideas of what the substantive changes might be there was something called Leadership in Energy and Environmental Design (LEED) neighborhood development where they had looked at examples in a number of California cities of getting a pedestrian open large scale development. The issues there were given relative weights and points for concrete things such as multiple accesses to a block like building, offering small public spaces, inducing people into landscaped areas, not just a wider access point to a residential parking facility, but an invitation to be a part of a neighborhood. He said if the Applicant could do that design he would assume it would make changes in square feet, but if they presented ideas to break up the block and invite pedestrians in he would support the project when it returned.

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Council Member Klein stated that he was on the Council during all six of the years the project was discussed. He agreed with Council Member Shepherd that they ended up in a very messy place. He thought the Council was going to end up being its own ARB, but that was better than voting the project up or down. He thought that was better for the Applicant as well, because if a straight up or down vote was forced that evening the Applicant would probably lose. He regretted that the Applicant did not accept Council's suggestion to go through the PTOD process without the bonus. He was impressed with the changes made to the Motion by Council Member Burt, which gave the Applicant some sense of approval. He interpreted the Substitute Motion also to mean that the Applicant really needed to make concessions. He heard the design concerns expressed by his Colleagues and agreed with them. He thought they also meant that the Applicant would have to reduce the size of the buildings in some way, as Mr. Jans said opening it would reduce the R&D by 500 square feet. He thought it may need to be reduced further. Council Member Holman referred to the fact that the community has indicated it did not want large buildings that seemed fortress like. He was concerned that the changes needed for approval of the Council would take more than what was possible by June 25, 2012. However, he hoped that if it was not on time Staff would return to ask for a few more weeks. The Council's last meeting was July 23, 2012, and then it was away for more than a month. Those were his concerns, but he thought they were worth the effort because the alternatives were a R&D building which was not in anyone's interest or continuing litigation. He said the litigation could be inevitable either way, but he would prefer seeing them reach an agreement and get a project going that met the concerns of the Applicant and what the Council perceived as the needs of the community. With those concerns, he indicated he would vote yes on the Motion.

Council Member Holman confirmed the project would return in three weeks and that the Council was not making a commitment to confirm. She was concerned about what they would likely see in only three weeks. She said that Council Member Klein and Council Member Shepherd had both mentioned this messy state the Council was in and asked if the Council would continue the matter again. She asked if they were committing to taking a direction on June 24, 2012.

Mr. Williams hoped Staff would bring to Council something that would not be architectural level detail in terms of the drawings, but something that represented what the changes would be and enumerated them at a specific enough level for the Council to know if that was where they wanted the project to go. He said the details of materials and colors would not happen in the next few weeks. If they could bring forward enough information for the Council to determine it was comfortable to approve the project then the

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subsequent process would be determined. He said that Council Member Holman was correct, that in the short timeframe they would not come up with the changes and the architectural level detail. He thought they could develop something that showed what the concepts were and what it would generally look like in order to determine if that was something the Council felt was substantive.

Council Member Holman said she felt almost angry because it was almost seven months since the Applicant was before the Council and she felt offended for the Staff because they were sending Staff well intentioned back out to get a better outcome. She had heard ARB members say that they did not say no often enough. This project was a close vote. The ARB did not say that they got good projects; they said that they got good enough projects. She said Palo Alto deserved better. When the project returned to the Council, she thought there were other parameters that had gotten lost that evening. For example she was concerned about parking. When the project returned, she presumed they were still acting under the Appeal. There were comments at the last Council meeting about parking, the setback, and other issues that were very hard to track if they were addressed at all. She said whatever way she voted that evening, it was not going to be done happily.

Council Member Price said that the Council had not discussed architecture. She asked if that was implicit in the Motion, because everything implied design and architectural treatment but there was no specific statement.

Council Member Burt said that he did not know how anything would be achieved other than architecturally. It was so implicit that he did not understand what Council Member Price meant.

Council Member Price said usually when they were talking about projects they said, "Architectural treatment and design will incorporate these concepts." She asked if her Colleagues felt the modification was useful. She personally thought it was.

Vice Mayor Scharff said he did not find it necessary.

Council Member Holman said she wanted to be clear that she was not angry with her colleagues. She appreciated the attempts to make improvements to the project.

SUBSTITUTE MOTION AS AMENDED PASSED: 8-0 Yeh absent

Council took a break from 10:49 P.M. until 11:00 P.M.

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17. Approval of Budget and Schedule for Technical Analysis of Hazardous Materials Implications for Zoning at Industrial Locations and for Plating Shop Operations at Communications and Power Industries (CPI) at 811 Hansen Way.

Curtis Williams, Planning & Community Environment Director, said on April 23, 2012, the Council discussed issues related to hazardous materials and the Communications and Power Industries (CPI) site and directed that Staff return within 30 days with a budget and schedule moving forward to prepare technical analysis as well as broader analysis of the City's zoning requirements related to hazardous materials and locations. Staff recommended that Council authorize them to retain contract services of up to \$35,000 to conduct an assessment of the CPI plating shop operation. There was a risk assessment that Council had seen on a couple of other occasions but the funds were to update that with the City's own consultant and included an evaluation of alternative methodologies and best practices that would relate to those operations. He said it would also prepare technical support information to evaluate the proximity and quantities of hazardous materials to residential areas. Part of the study was to return to Council with recommendations from a zoning perspective of what kind of changes might be appropriate to better protect residents and public health in the future. Staff believed that \$35,000 was adequate. They spoke to several consultants about the type of work and was comfortable that they had a consultant that had independence from the industry. He said there were consultants with regulatory backgrounds that tended to focus on work for public agencies. Staff estimated a six month timeframe under Council's direction to return with both the technical analysis of plating operations as well as what they thought was appropriate in terms of the zoning and amortization issues. At that point if Staff felt it was appropriate to move forward, they would recommend that Council initiate and set out the parameters for what type of amendments they may initiate. The Staff report also indicated that there was considerable Staff time from several departments involved, but they were prepared to undertake it and meet the timeframe with the caveat that the technical study required cooperation from CPI. He hoped CPI would provide documents in an expeditious manner, but that was something that might affect the timeframe. Staff recommended that Council authorize the \$35,000, which was funded from consultant services and was in the budget for the remainder of the year.

Arthur Lieberman thanked the Staff for the effort they made in coming up with the plan as outlined in the Staff Report. Specifically he was pleased with the statements emphasizing independence of the consultant. The important points for residents aside from independence were the technical competence of the consultant and the ability to be able to assess the

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potential offsite consequences of an incident or the use of the hazardous materials at CPI, the transparency of the process so that residents were aware of what was going on as it occurred, and having the study completed within the outlined timeframe. He said it required the cooperation of CPI, which he hoped they would offer. He noted that it did not happen with the amortization study, which turned a two month project into a two year project. He added that he wanted the consultant to meet with residents, particularly those that lived adjacent to CPI to view firsthand the proximity of their homes to the areas where the hazardous materials was used and hazardous waste was stored. He thought the other recommendations in the Staff report as to the zoning and land use and the appropriate siting of hazardous materials facilities near residential zones would be very valuable to the City. He thought this was a topic the City needed to understand and that the study would be helpful.

Jeff Dean wanted to thank the Staff for their work on the proposal. He said that they were very anxious to get the project moving and asked the Council to approve the recommendation. He said residents were displeased with the amortization study because it took so long. He asked the Council to consider that if the study was not completed in approximately nine months that they request an update from Staff.

Sandy Sloan said her business was on Alma Street in Menlo Park. She was present on behalf of CPI, since CPI's Primary Attorney, who had written Council several letters, was unable to attend that evening's meeting. CPI supported the Staff recommendation and thought it was essential the City had accurate, independent information in order to evaluate the plating shop.

Bob Moss agreed that adopting the Staff report and hiring the consultant was a good idea. He thought what Mr. Lieberman commented on explained the issues and that Council needed an authoritative evaluation of the issues and the situation. He commented that in the event that the result of the study and discussion a decision was made that they should amortize out the use of toxics on the site, he wanted to point out that amortizing uses was not new in Palo Alto. In 1978 the zoning was changed significantly and a number of locations along El Camino Real were identified to be changed from commercial to residential and they were put under amortization ranging from 20 to 25 years depending on when they had been constructed. He said that every site was amortized within the required period. How long the amortization period ought to be would be determined when the consultant returned with his recommendations. He told Council that if amortization was one of the recommendations, there was no reason to fear adopting it.

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D. A. Mitchell concurred with the City's five action strategy model. He had worked with Stanford's Dean on Sustainability 3.0 issues for several weeks and expected the process to take up to three years. Most of his activities had been in engagement and invigoration which were preparatory for activation and mobilization. As a volunteer firefighter he was interested in the hazmat issues and anticipated being of assistance.

Council Member Klein asked Staff if the assignment to the potential consultant included a peer review of the work done by CPI's consultant.

Mr. Williams said that it did, and it also was for an independent analysis of the consultant's own. He said that language could be added.

MOTION: Council Member Burt moved, seconded by Council Member Shepherd to accept Staff recommendation to authorize Staff to retain contract services of up to \$35,000 to: (1) conduct an assessment of CPI's plating shop operation, including evaluation of both past reports and methodologies related to CPI's operations and "best practices" and current operations; and (2) prepare technical support information related to zoning, amortization, and hazardous materials issues. City Staff also will identify potential Zoning and Fire Code amendments, if appropriate, with input from the selected consultant. Furthermore, should the consultant study fall behind, the Council will receive a report updating on the status prior to the 6 month completion date, and the consultant will conduct a peer review study of CPI consultant work.

Council Member Burt said the Staff had done a good follow up on the issue. He was pleased that it seemed focused and was glad that the City was addressing the concerns of the neighborhood and that CPI was embracing the study as well.

Council Member Shepherd said item number three of the original Motion was to look at other ordinances from other communities in order to see if there were good best practices. She asked if that would also be included.

Mr. Williams answered yes and stated that was primarily Staff's role rather than the consultants.

Council Member Shepherd said she was pleased the matter had returned to Council so quickly and assumed it would pass so the City could move forward.

MOTION PASSED: 8-0 Yeh absent

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COUNCIL MEMBER QUESTIONS, COMMENTS, AND ANNOUNCEMENTS

Council Member Price reported on attending the 1st Annual Heroes Award ceremony given by the Santa Clara County Mental Health Board on May 23, 2012. She also attended a PTA council event on June 1, 2012. She reminded everyone that there is a health element of the Santa Clara County General Plan and she encouraged everyone to participate in the survey.

Council Member Burt stated he was in Berlin, Germany a week and half ago, where he was a guest speaker on urban sustainability at the Atlantic Bridge Conference. He also had meetings with the Mayor of Heidelberg, Germany.

ADJOURNMENT: The meeting was adjourned at 11:19 P.M.