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The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:32 p.m.

Present: Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg arrived at 5:45 p.m., Morton, Mossar

Absent: Barton

CLOSED SESSION

MOTION: Mayor Kishimoto moved, seconded by Klein, to move Item No. 14 to become Item No. 1a.

MOTION PASSED 8-0, Barton absent

1. CONFERENCE WITH LABOR NEGOTIATOR
Agency Designated Representative: John Shannon
Unrepresented Employee: City Manager Frank Benest
City Attorney Gary Baum
City Auditor Sharon Erickson
City Clerk Donna Rogers
Authority: Government Code section 54957.6(a)

Council Member Beecham stated he would not participate in the item due to a conflict of interest because his residence was within 500 feet of the property.

- 1a. (Old Item No. 14) CONFERENCE WITH CITY ATTORNEY – POTENTIAL/ANTICIPATED LITIGATION
Subject: Written liability claim against the City of Palo Alto by Lytton Associates, a California Limited Partnership
Authority: Government Code sections 54956.9(b)(1) & 54956.9(b)(3)(C)

Closed Session ended at 7:45 p.m.

Mayor Kishimoto stated no reportable action was taken.

ORAL COMMUNICATIONS

CONSENT CALENDAR

City Attorney Gary Baum noted that Item No. 4 would be split in two separate action items; Item 4.a would be with the Stanford component and

Item 4.b would be without the Stanford component.

Council Member Mossar asked for clarification on the agenda for Item no. 4. It was noted that Council Member Cordell, Klein and Mossar did not participate in the first reading without any indication the item was split.

City Clerk Donna Rogers stated that it was a clerical mistake.

Council Member Mossar asked that future items show the action of the item being split.

Ms. Rogers replied that she was correct.

MOTION: Vice Mayor Klein moved, seconded by Cordell, to move Item No. 2 from the Consent Calendar to become Item No. 10.b.

Council Member Morton stated the agenda reflected the wrong vote for agenda item no. 3. The vote should be reflected as 6-3 with Council Member Barton, Morton and Mossar voting no.

Council Member Mossar stated she would vote no on Agenda Item No. 3.

Council Member Morton stated he would vote no on Agenda Item No. 3.

Council Member Kleinberg stated she would vote no on Agenda Item No. 6.

Council Member Mossar stated she would not participate in Item 4.a due to a conflict of interest because her husband was employed by Stanford University.

Vice Mayor Klein noted he would not participate in Item 4.a due to a conflict of interest because his wife was employed by Stanford University.

Council Member Cordell stated she would not participate in Item 4.a due to a conflict of interest because she was employed by Stanford University.

Juleine Williams, 801 High Street, stated this was an important and positive move for the City and she supported the expansion of the Sit/Lie Ordinance.

MOTION: Council Member Beecham, seconded by Morton, to approve Consent Calendar Item Nos. 3 thru 10.

3. Ordinance 4955 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 9.48.025 (Sitting or Lying on University Avenue Public Sidewalks Prohibited) of Title 9 [Public Peace, Morals and

Safety] to Expand the Area Affected by the Section and to Add an Exemption for Bus Zones”

4. Ordinance 4958 entitled “Ordinance of the Council of the City of Palo Alto Establishing a Citywide Transportation Impact Fee and Amending the Palo Alto Municipal Code, Title 16 (Building Regulations) by Adding Chapter 16.59 - Citywide Transportation Impact Fee”
5. 901 San Antonio Road [06PLN-00369]: Request by Taube-Koret Campus for Jewish Life for Approval of a Final Map to Create One Mixed-Use Lot Containing 193 Multiple-Family Congregate Care and Assisted Living Condominium Units and a Community Center

Joint Recreational Use Agreement Between the Oshman Family Jewish Community Center and the City of Palo Alto

6. Approval of Parks and Recreation Commission Recommendation Regarding the Golf Course Preliminary Feasibility Study
7. Approval of Revisions to Sustainability Policy
8. Approval of Agreement with the Friends of Heritage Park, L.L.C., For the Design, Construction and Installation of Playground Facilities and Other Improvements at Heritage Park – Capital Improvement Program Project PG-07000
9. Approval of: First Amended and Restated Contract Between the City of Palo Alto and the City of Mountain View; Three Enterprise Fund Contracts: McGuire & Hester in the Amount of \$15,950,279, URS Corporation in the Amount of \$1,093,218, and Amendment 2 to RMC Water & Environment Contract C3151060 in the Amount of \$174,000, Totaling \$17,217,497; a State Revolving Fund Loan in the Amount of \$9,000,000; and
Resolution 8730 entitled “Resolution of the Council of the City of Palo Alto Administering a Capital Reserve Fund in Accordance with the State Water Resources Control Board’s Requirements of the State Revolving Fund Loan Program”;
Ordinance 4957 entitled “Ordinance of the Council of the City of Palo Alto Amending the Budget for the Fiscal Year 2006-07 to Provide an Additional Appropriation of \$4,137,300 to Capital Improvement Program (CIP) Project Number WQ-04010, Replace Existing Reclaimed Water Pipe”

10. Approval of a Policy and Services Committee Recommendation to Maintain the Council Term Commencement Following Election as the First Regular Meeting in January

MOTION PASSED for Item 3 6-2 Morton, Mossar no, Barton absent.

MOTION PASSED for Item 4.a 5-0 Cordell, Klein, Mossar not participating, Barton absent.

MOTION PASSED for items 4.b 5, 7 thru 10 8-0, Barton absent.

MOTION PASSED for item 6 7-1 Kleinberg no, Barton absent.

Council Member Kleinberg stated the advice from the golf course reconfiguration was from a large commercial golf course designer. She stated a Specialist in municipal golf courses should have been used and there was not a complete evaluation of the property. She stated there needed to be further evaluations for the recreational uses of the golf course.

MOTION: Mayor Kishimoto moved, seconded by Morton, to move Item 12.a to become Item No. 10.a.

MOTION PASSED 8-0, Barton absent.

- 10.a (Old Item 12.a) Review of Council Appointed Officer Evaluation Process and Direction for Future Evaluations

Vice Mayor Klein stated John Shannon was retiring on June 30, 2007 and had been asked for his advice on what the process should be on the Council Appointed Officer's (CAO) evaluations.

CPS Human Resource Service, John Shannon thanked the Council and the CAO's for the support over the years. The evaluations had achieved all of the basic objectives the Council and CAO's had set at the beginning of this process. The CAO Committee and CAO's should meet and talk about the process and systems to see whether there were things that should be modified in the future. He suggested modifications in the following ways: 1) expand the participants in the evaluation process; 2) refine the criteria; 3) streamline the process. He stated his advice would be to build on the successes in terms of the design of the process.

Mayor Kishimoto thanked him for his services.

No action taken.

10.b (Old No. 2) Ordinance 4956 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (the Zoning Map) to Change the Classification of Property Known as 3401, 3415 and 3445 Alma Street from PC Planned Community 1362 to PC Planned Community _____"

Vice Mayor Klein stated his concern was that the interior buildings were to be devoted to neighborhood serving retail space and the Ordinance allows uses beyond that.

MOTION: Vice Mayor Klein moved, seconded by Kleinberg, to approve the Ordinance and to include a statement that the three interior buildings be devoted to neighborhood serving retail uses.

Director of Planning Steve Emslie asked for clarification whether it was meant for the ground floor or for both stories.

Vice Mayor Klein stated the first floor would be retail and the second story would be neighborhood serving offices.

Council Member Cordell asked: 1) how the Ordinance differed from the Planning and Transportations view regarding ground floor retail; 2) does the Ordinance limit site and design review; 3) does the community benefit from this; and 4) where the dedicated parkland was located.

Council Member Kleinberg stated there was a need for retail services and she did agree the questions from Council Member Cordell needed to be answered.

Council Member Mossar stated this was on the agenda as a second reading, and she was not present at the last meeting. She stated that this should have been the first reading of a changed document.

City Attorney Gary Baum stated at the last meeting the Ordinance was altered and adopted by the Council as a first reading.

Robert Moss, 4010 Orme Street, stated the intent was to have retail stores on the ground floor not offices. The park was 75 hundred square feet when it was suppose to be 89 hundred square feet. He stated the below market rate (BMR) units were in the apartments and he opposed this type of segregation.

John McNellis expressed concern about the viability of the retail stores. The Ordinance gave flexibility as to what types of retail there would be in the area.

Jim Baer stated there was lack of clarity about the type of uses for the three rear buildings and there was no definition for neighborhood serving retail. He asked to establish the meaning of neighborhood serving retail.

Herb Borock, P.O. Box 632, said the development program was written differently than any other. He stated one of the residential units was removed and the floor ratio had not changed.

Len Filppu, 3621 Ramona Circle, stated the amendment was consistent with the vote and the compromise that was agreed to and the Friends of Alma Plaza supported the amendment.

Council Member Cordell clarified there were two votes on this project; one was five-four and the compromise vote was eight-zero.

Council Member Mossar commented that she was afraid the property owners or developers would not be able to find tenants for these properties and she did not support the motion.

Council Member Drekmeier stated changes should be made for a better project and maintains flexibility. He clarified the project was for ground floor retail and second floor services.

Council Member Morton asked how many more times this project would have to be changed and noted his concerns with the limitations with the developer.

Council Member Beecham asked what uses were allowed in neighborhood commercial (CN).

Mr. Emslie stated a small list would be personal services, retail services, grocery stores, eating and drinking establishments, restaurants, and neighborhood serving businesses.

Council Member Kleinberg asked whether it included medical and dental.

Mr. Emslie advised he would check.

Council Member Beecham stated he felt unprepared to revise this list of services and the only change he would support was the services allowed in a CN zone.

Vice Mayor Klein stated he thought it was clear the Council wanted neighborhood serving retail, which only required minor changes. He asked

that the list change by deleting: daycare, general business services, professional and general business offices, and private educational facilities.

Council Member Kleinberg requested that daycare services be left in the list.

Vice Mayor Klein stated he would leave daycare in if it were specified to not more than one building.

Council Member Kleinberg asked whether he was asking for not more than one third of the available ground floor space.

Vice Mayor Klein stated that was correct.

Mayor Kishimoto asked for clarification on what he wanted deleted.

Vice Mayor Klein stated he was eliminating general business services, professional and general business offices and private educational facilities.

Mayor Kishimoto asked whether he was keeping the requirement of the ground floor being retail.

Vice Mayor Klein stated she was correct and that they were defining what retail was.

City Clerk Donna Rogers asked for clarification whether the motion was to approve the Ordinance with the revisions.

Vice Mayor Klein stated she was correct.

Council Member Cordell stated they were not defining retail since retail was on the list.

Vice Mayor Klein stated they were defining the uses in these particular instances. He stated it should also state on the ground floor.

Mayor Kishimoto asked whether the site design went with the Tentative Map and whether the Fire Department had already reviewed the roads for access. She also stated there was one building that was deleted but the square footage was not reduced. She supported the motion.

Council Member Morton asked what would be eliminated by narrowing the general business services to neighborhood business services.

Mr. Emslie stated neighborhood business services would be available for use by neighbors where general business services would apply to citywide,

countywide or throughout the state. Accountants, financial planners or insurance agents would be defined as neighborhood services.

Council Member Morton asked whether the Palo Alto Daily Newspaper would be considered a neighborhood business service.

Mr. Emslie stated he was correct.

Council Member Morton asked if it was an office of a plumber whether it would count.

Mr. Emslie stated it is possible but he needed more specific information.

Council Member Beecham added on page six, section 5, it specified that Site and Design Review would go to the Planning and Transportation Commission (PTC) and the Architectural Review Board (ARB). It did not limit the review of either body.

Mr. Emslie stated regarding the ground floor retail, the Planning and Transportation Commission's recommendations were to follow the commercial neighborhood standards, which required a certain amount of square footage. The difference was this Ordinance allowed it in the basement, ground floor and upper floor. The Ordinance referenced the Development Plan because it accepted the building type, the mixed use building, the number of units and broad land use issues as being part of this approval. The additional review by the P&TC and the ARB would deal with all the details of the plan that were subject to Site and Design approval and the Council would approve the usage plan.

Mayor Kishimoto stated the Ordinance on page 5 read: "residential floor area ratio (FAR) shall be allowed at .54." She asked if this was correct.

Mr. Emslie stated the P&TC and the ARB would have the discretion to reduce the FAR.

Mayor Kishimoto asked whether the Ordinance read "shall."

Mr. Emslie stated this could be clarified to have the Site and Design include the proportional reduction based on the reduction in the units.

Mayor Kishimoto asked whether they could include the words "conditioned upon."

Mr. Emslie stated that it could.

Mayor Kishimoto asked if the Fire Department determined there needed to be more turning room for vehicles and one of the houses needed to be eliminated, would it become a vested right to build that many units of housing.

Mr. Emslie replied the Council would have the ability to make an amendment.

Mayor Kishimoto asked whether this was the Ordinance the Council was asked to adopt.

Mr. Emslie stated the Planned Community Ordinance provided for the Council to make amendments. Even though the numbers of units were set in an Ordinance, the recommendation would come to the Council and would be left to Council's discretion to change the Ordinance.

Mr. Baum stated the Ordinance was binding and created a framework for the P&TC and the ARB in which to operate. He added if the Council wanted to revise the Ordinance it should be added into the second reading.

Council Member Beecham asked if something needed to be added to the Ordinance would it be now or later.

Council Member Morton reminded the Council that at an earlier discussion regarding the below market rate (BMR) units it was decided for them to be rental units. He stated he wanted to leave the Developer the right to concentrate the BMR units in one area.

Planning & Transportation Commission Chair Karen Holman expressed the following: 1) How did this differ from the PT&C recommendation regarding ground floor retail; 2) Does the Ordinance limit Site and Design Review; 3) Would Attachment A referenced in the Ordinance, which was not available, still be considered binding; 4) Section 4(d)(9) stated "The applicant and staff may consider alternative configurations." Would that preclude the review or other reconsiderations by the P&TC and ARB in their Site and Design Review; 5) The P&TC recommended the community meeting room be considered as a public benefit and not counted as retail.

Mayor Kishimoto asked whether she was requesting the Development Plan for the project be reviewed first by the P&TC and then the ARB.

Ms. Holman replied if a project goes through ARB review first, it was hard to make changes.

Council Member Kleinberg stated there was an unacceptable amount of vagueness to this Ordinance.

Council Member Cordell stated there were revisions that would need to be made before approving the Ordinance.

Vice Mayor Klein stated the revisions were approved by the Council at the first reading and incorporated in this Ordinance.

Council Member Beecham asked Vice Mayor Klein to restate his motion.

SUBSTITUTE MOTION: Vice Mayor Klein moved, seconded by Kleinberg, to adopt the Ordinance with the following revisions: Delete from page 3, section 4.a(3): general business services, professional and general business offices, and private educational facilities, and that day care be allowed in one of the three commercial buildings (or the equivalent square footage). Also, on page 5, section 12, that the residential FAR of .54 be recalculated to give effect to removal of one of the detached homes as it appeared in prior drafts.

Council Member Kleinberg asked whether the guest parking could be established during the review process.

Mr. Emslie replied it was part of the Site and Design Review and would come back to the Council.

Council Member Kleinberg noted the Ordinance referred to Attachment A the "project" which was not attached.

Mr. Emslie stated it was the site plan that the Council reviewed at the first reading of the Ordinance, which would generally not be attached at the second reading.

Council Member Kleinberg asked whether the BMR units could be mixed throughout the project or whether they were required to be in one place.

Mr. Emslie stated the parameters of the Ordinance establish the location of the mixed use building, which included the 14 BMR units.

Council Member Kleinberg asked for clarification whether the units were all in one place.

Mr. Emslie stated she was correct.

Council Member Kleinberg asked whether it could be changed.

Mr. Emslie stated the P&TC could make a recommendation, although there was a definite testimony from the Palo Alto Housing Corporation that preferred the housing in this configuration.

Council Member Drekmeier asked whether the Maker of the Motion intended to include something on the Fire Department consultation.

Mr. Klein stated this should be considered as part of the review process.

Council Member Drekmeier asked the City Attorney whether there should be clarification.

Mr. Baum stated there was no need to include anything that was part of the review process.

Council Member Drekmeier asked for clarification whether there were three buildings or the equivalent to the square footage.

Vice Mayor Klein stated he wanted the three buildings.

Council Member Drekmeier asked whether there was flexibility with the buildings or if it had to be three buildings.

Mr. Emslie stated the proposal was to have three buildings and if the project could be improved, they can move forward with that recommendation to the Council.

Ms. Holman noted her concerns with Page 1, Section 1b, which read, "the proposed project depicted on Attachment A (the "Project"), as revised by conditions included in the Planned Community allowable land uses and required development standards, and subject to provision of the public benefits outlined below."

Mayor Kishimoto stated she did not support the motion as it was a binding document. She asked for this to be first reviewed by the P&TC and then by the ARB.

INCORPORATED INTO THE MOTION WITH CONSENT OF MAKER AND SECONDER to change Section 5(a) to have the Site and Design Review go to the Planning and Transportation Commission (P&TC) prior to going to the Architectural Review Board (ARB).

Council Member Morton asked once the Ordinance was revised would this be considered the second reading and then go forward to P&TC and ARB.

Mr. Emslie stated he was correct.

Council Member Mossar stated she was voting against the motion and there needed to be room for improvement and changes.

Council Member Beecham stated he supported the motion.

Vice Mayor Klein stated there should be language provided for the ground floor of the buildings. He asked to include on page three, paragraph three, "The following uses shall be permitted on the ground floor of the three neighborhood commercial buildings."

Council Member Kleinberg stated they did not need to have pedestrian access on the second floor.

Council Member Cordell questioned the eating and drinking services, retail services, banks and finance on the ground floor.

Vice Mayor Klein stated the idea had been stated that ground floor would be retail.

Mr. Emslie asked for clarification that the Motion would read that the uses on the ground floor should include eating and drinking, and retail services. The remaining uses, as modified, would include: banks, financial services, neighborhood business services, medical offices and commercial and recreation would be on the second floor.

Council Member Beecham asked to restrict the ground floor to retail services, eating and drinking.

Mayor Kishimoto asked whether he wanted it proposed as an amendment.

Council Member Kleinberg stated she did not accept that change of 4(a)(3), which would be constricting the developer.

Vice Mayor Klein stated this was where the Motion started.

Council Member Kleinberg stated she did not make the change to the Motion. She stated she did not want to differentiate for ground floor or second floor.

Mr. Emslie asked for clarification that the Motion was eating and drinking, retail services, daycare, not more than one of the buildings, banks and financial services, business services, medical offices and commercial recreation permitted on the first or second floor.

Council Member Kleinberg stated daycare should be one third of the available space.

Vice Mayor Klein stated it should be considered as neighborhood business services.

Mr. Emslie stated he was correct.

Council Member Morton stated if daycare was allowed on the main floor, he would support this Motion.

MOTION: Council Member Drekmeier moved, Morton seconded, to call for the question.

MOTION PASSED 8-0 Barton absent.

SUBSTITUTE MOTION PASSED 7-1 Mossar no, Barton absent.

AGENDA CHANGES, ADDITIONS, AND DELETIONS

Mayor Kishimoto stated Item No. 13 would be heard prior to Item No. 11.

COUNCIL MATTERS

Mayor Kishimoto moved Agenda Item No. 13 to be heard prior to Item No. 11, to become Item No. 10c

10c. (Old item No. 13)

Colleague's Memo from Mayor Yoriko Kishimoto and Council Members Bern Beecham and John Barton Requesting Approval of a Letter of Intent for Palo Alto to Host with Stanford University the Start of the Tour de California Race

Council Member Mossar stated she would not participate in the item due to a conflict of interest because her husband works at Stanford.

Council Member Cordell stated she would not participate in the item due to a conflict of interest because she works for Stanford.

Council Member Morton stated he would not participate in the item due to a conflict of interest because his wife works at Stanford.

Council Member Kishimoto stated the Tour of California was in their third year and the first two years were successful. AEG had agreed to share the financial risk with Stanford University and Palo Alto. She stated this event captured the Spirit of Palo Alto and Stanford, the green economy and a healthy life style.

Council Member Beecham stated the City expenses would be covered by the private contributions. The bike path did not go by any residential areas in Palo Alto or Stanford to minimize the impact on the citizens.

Jean McCown stated there was a mutual goal to keep the costs under control.

Chris Ewert stated Palo Alto would be the first city to take over the prologue from San Francisco, which would be an honor.

Joe Manning stated the Tour de California Race was a world-class cycling event and he urged the Council to approve this event.

Frank Scioscia stated this was a chance to witness something similar to the Tour de France in our City streets for our children and community members.

Glenn Rolensin stated the City of Palo Alto could have the single greatest cycling event in the Bay Area. The Tour de California stands for innovation and green and we were the epicenter of technology and the green movement.

Council Member Kleinberg asked whether the Chamber of Commerce had been included in terms of street closures and had the businesses been contacted regarding the streets being closed.

Mayor Kishimoto stated the Chamber of Commerce had been involved from the beginning but not all of the businesses had been consulted.

Council Member Kleinberg asked if liability issues had been determined.

City Attorney Gary Baum stated the letter agreement refers to these issues, which needed to be worked out before moving forward.

Council Member Kleinberg asked whether AEG would be liable.

Mr. Baum stated that was not their proposal and it would need to be negotiated.

Council Member Kleinberg asked whether this was subject to the Council's approval.

Mr. Baum replied it was.

City Manager Frank Benest added the letter anticipated the contract, and the Council would need to approve the contract.

Council Member Kleinberg asked whether this was considered a letter of intent to enter into negotiations.

Mr. Baum stated the City Attorney's Office had gone over liability issues and had discussed them with the Mayor and City Manager and the negotiations had already started.

Council Member Kleinberg stated she wanted to make sure something was included regarding financial exposure. She was excited to be a premier partner.

MOTION: Council Member Beecham moved, seconded by Morton, to authorize the Mayor and City Manager to sign a Letter of Intent, together with Stanford University, to co-host the Prologue of Tour of California, scheduled for Sunday, February 17, 2008 in Palo Alto.

Council Member Morton stated he hoped the local residents would get involved and that Palo Alto would get a multi-year contract for the Tour de California.

MOTION PASSED 5-0 Barton absent, Cordell, Klein, Mossar not participating.

PUBLIC HEARINGS

11. Public Hearing: 1st Reading - Adoption of an **Ordinance Amending Section 18.76.020 of Chapter 18.76 and Sections 18.77.020, 18.77.060 and 18.77.070 of Chapter 18.77 of Title 18 of the Palo Alto Municipal Code to Conform the Palo Alto Municipal Code to the California Digital Infrastructure and Video Competition Act of 2006**

Council Member Morton stated he would not participate in the item due to a conflict of interest because of family holdings in SBC and Comcast.

Council Member Mossar stated she would not participate in the item due to a conflict of interest because of family holdings in SBC and Comcast.

Director of Administrative Services Carl Yeats stated in 2006, the California Legislature enacted new franchising laws and under this law video service franchises were now granted by the State rather than local communities. In April, the Council approved changes to Title two and 12 of the Municipal Code covering the regulations of State Franchise holders. The staff and Planning and Transportation (P&TC) had recommended that the Council adopt an Ordinance amending Chapter 18.76 and 18.77 of Title 18 of the Palo Alto Municipal Code.

Mayor Kishimoto opened and closed the Public Hearing at 9:35 p.m.

MOTION: Council Member Beecham moved, seconded by Klein, to approve staff and the Planning and Transportation Commission's recommendation to adopt an ordinance amending Chapter 18.76 and 18.77 of Title 18 of the Palo Alto Municipal Code to conform the Architectural Review Process to the requirements of the California Digital Infrastructure and Video Competition Act of 2006, with the following modifications as noted in the Report from City Attorney: Removing the potential appeal of a staff ARB decision to the formal Architectural Review Board.

Mayor Kishimoto asked whether there was a requirement to have a master plan for the placement of the boxes.

Director of Planning Steve Emslie stated in the past the telecommunication companies were encouraged to provide a large number that could be processed as a unit. The last staff review was 32 permits at one time.

Mayor Kishimoto asked whether there was any indication of how many would be needed.

Mr. Emslie replied there was a possibility of tripling the amount of permits.

Mayor Kishimoto asked whether that was from one company.

Mr. Emslie replied it was through AT&T and the project was called "light speed."

Mayor Kishimoto asked if we could save space by combining the cabinets.

Mr. Yeats stated no.

Mayor Kishimoto asked what the process was for the use of the cabinets.

Mr. Emslie stated there was a staff level review and all of the permits went through this review.

Mayor Kishimoto asked about the timeline of the notices given out.

Mr. Emslie stated there was an arrangement made with AT&T to provide evidence; notices would go to surrounding neighbors and the planning staff would handle the neighborhood input. There would be a meeting with AT&T and the consulting landscape architect to look at options.

Mayor Kishimoto asked whether there was a mandatory notice.

Senior Assistant City Attorney Grant Kolling stated there was a provision for notice that was listed in the Ordinance.

Mr. Emslie stated the current process had been adapted to the Ordinance and staff had started to implement it.

Mr. Yeats added the Attorney's Office had left a memo "At Places", which would be added to the Ordinance.

MOTION PASSED 6-0 Barton absent, Morton, Mossar not participating.

REPORTS OF OFFICIALS

12. Request for Council Direction Concerning Citywide Ultra-High-Speed Broadband System Negotiations

Council Member Kleinberg stated she would not participate in the item due to a conflict of interest because her employer is funded by Google, which would appear as a conflict.

Council Member Morton stated he would not participate in the item due to a conflict of interest because of family holdings in SBC and Comcast.

Council Member Mossar stated she would not participate in the item due to a conflict of interest because of family holdings in SBC and Comcast.

Deputy Director of Administrative Services Joe Saccio stated staff, 180 Connect and the Mayor's Advisory Committee agree that if this project moved forward, a business plan and financing plan would be necessary to assess the economic liability of the project. The project would define what the City's financial contribution would be and a full assessment of assets that the City could contribute. The business plan would be used to gauge any

outside investments that could be made and any relationships and agreements between the parties. Included in the City Manager's Report (CMR) were the necessary resources; \$30,000 for the business study, outside legal advice, financial advice, scrutiny of the business plan, and a request for a consultant to review the City's assets.

Council Member Cordell asked how likely it would be that the cost for terminating negotiations would be 30 to 40 percent of the project cost.

Mr. Saccio stated the business plan would determine the costs for the City and the interest from other investors.

Council Member Cordell stated it was speculative.

Mr. Saccio replied yes it was also based on how much the City wanted to contribute to this project.

Council Member Cordell asked when the costs would become a reality.

Mr. Saccio stated it would be during the business planning stages.

Council Member Cordell asked when the City would have to pay some of these costs.

Mr. Saccio stated any extra costs would be identified during the business plan.

Vice Mayor Klein asked whether there were representatives from 180 Connect at the meeting.

Mr. Saccio stated the Vice President and a representative were available.

Vice Mayor Klein stated he had concern regarding the \$30,000 for development of a business plan. When 180 Connect submitted the response to our RFP, the \$30,000 was not discussed.

Mr. Saccio stated there was no cost in the proposal for the business plan.

Vice Mayor Klein asked why they changed their mind.

Mr. Saccio stated it was requested to cover their immediate expenses.

Vice Mayor Klein asked whether they wanted cash, guarantees of loans from the City or was the value placed on the City's assets.

Mr. Saccio stated it could be any combination.

Vice Mayor Klein stated he thought the City's RFP was clear and that the City was not going to be involved with cash, bonds or the equivalent.

Mr. Saccio stated the Colleague's Memo stated the City wanted to minimize its risk and look at existing assets to contribute toward this program. Whether it would be cash or assets had not been determined.

Vice Mayor Klein asked whether there had been a discussion regarding only assets.

Mr. Saccio stated no.

Vice Mayor Klein commented the response to the RFP from 180 Connect stated the Royal Bank of Canada (RBC) would handle the financing.

Mr. Saccio replied that was correct. He stated questions had been raised regarding that issue and there may be other investors involved. It was unclear what the RBC would do compared to other investors.

Vice Mayor Klein said he thought what was submitted from 180 Connect stated they had the resources available to provide all of the financing.

Mr. Saccio stated they had the resources available to find financing that was out there.

Vice Mayor Klein asked whether that was a fair account of what they had submitted in writing when they were selected.

Mr. Saccio stated when the proposal was originally received it seemed to be a total investment from the partners.

Director of Administrative Services Carl Yeats added the wording in the RFP was very clear regarding the financial commitment on the City's part.

Mayor Kishimoto stated the goals for the project were that the City would own 100 percent of the project, provisions of the services and a secondary goal for an open system network neutrality and minimal financial risk to the City. The original proposal stated the RBC Capital Markets fundraising could support the project without any additional assets or contributions from the City. The ability to raise full financial support would be achievable through identification of assets to be contributed on the project by the City. She asked whether the organization the City was signing with was RBC.

Mr. Saccio replied the partnership in terms of financing would be with RBC. 180 Connect would not have any investment in this project. 180 Connect

would be the builders, implementers, and operators of the project. PacketFront was another partner who provided the technical, electronic solutions and would not be investing.

Mayor Kishimoto asked who would write the business plan.

Mr. Saccio stated NorthStar, PacketFront and 180 Connect would work on it. NorthStar was primarily responsible for the business plan and the financial modeling.

Mayor Kishimoto asked how much of the General Fund would be at risk.

Mr. Yeats stated it would be hard to determine.

Mayor Kishimoto asked whether they could limit what could be put at risk.

Mr. Yeats replied they were attempting to limit the City's financial involvement.

Vice Mayor Klein stated \$15 to \$20 million was far in excess of a minimal investment.

Mr. Yeats stated that was what was presented. He stated he would not recommend committing \$15 million to this project with all the other City commitments.

Andy Poggio stated the \$15 million was not a fixed number.

Bob Harrington stated there was potential to come up with value for the partnership that would be in the zone of \$15 million.

Jeff Mazer, CFA, NorthStar Capital Partners, stated there were possible sources of credit enhancement and hard assets that the City could contribute to this project and may be possible to finance this entire project.

Council Member Beecham stated the PowerPoint presentation compared to the RFP were different. Cash guarantees were not mentioned. He asked whether the assets like dark fiber were of more value to the consortium or to the City.

Mr. Mazer stated the consortium could make them live assets.

Council Member Beecham asked if the City was to take the position that they were not ready to put up cash or guarantees, where would it leave the consortium.

Mr. Mazer stated he could not give a firm answer, but it would be difficult to arrange private financing without any contributions from the City.

Council Member Beecham asked what "any" included.

Mr. Mazer stated it meant the total assets that were being contributed.

Council Member Beecham stated it would just have to be figured out.

Mr. Mazer stated the first phase in the business plan was to do the assessment of the potential sources of contributions that could be made. RBC and NorthStar would then facilitate dialogue between the City and the capital markets to evaluate the financing.

Council Member Cordell asked whether the proposal was correct with stating that the head offices were in Calgary, Alberta and the operational headquarters were in New York.

Mr. Mazer stated that was not correct.

Council Member Cordell asked for clarification regarding the proposal stating those locations and the letterhead stating Idaho.

Mr. Mazer stated NorthStar was based in Denver and Boulder, Colorado.

Mayor Kishimoto asked what the relationship was between NorthStar and RBC.

Mr. Mazer stated NorthStar worked with RBC on a number of projects all over the United States to facilitate the financing of community based and municipal based broadband networks.

Council Member Kishimoto asked what other broadband networks they had worked on.

Mr. Mazer stated the consortium worked for Franklin County, Washington, Pasco and the Seattle Broadband Project.

Mayor Kishimoto asked if the City did not put up the \$30,000 and asked the consortium to do it, would it still be possible.

Mr. Mazer stated it would have to be discussed.

Mayor Kishimoto asked whether the proposal was based on the City eventually owning the system.

Mr. Mazer stated the goal was to take the parameters the City had set and work with those to create an optimal financial package.

Mayor Kishimoto asked the goal of the City was to limit the impact on the General Fund and to come back with a business plan that would fit.

Mr. Mazer stated their goal was to have a program the City was comfortable with and would sign off on.

Council Member Cordell asked what the status of the work was that they were doing in Franklin County and Pasco.

Mr. Mazer stated that 180 Connect was the lead participant in that project.

Council Member Cordell asked whether he was involved in that project.

Mr. Mazer replied he was but Mr. Jones would be able to give a fuller answer.

Council Member Cordell asked whether he knew the status.

Mr. Mazer stated the status was in the final contract phase.

Council Member Cordell asked whether he had worked on a project for a city where they had provided Ultra High Speed Broadband System without getting guarantees or cash from the city.

Mr. Mazer replied no.

Council Member Cordell asked whether it was likely in the project in Franklin County that there would be cash of some kind to make that project happen.

Mr. Mazer stated Franklin County was different in that the public utilities were involved in the project and the community was making the contribution of Automated Meter Readings (AMR).

Council Member Cordell stated she wanted to know how realistic this was with the Council not wanting to give guarantees.

Mr. Mazer stated in every project that involved outside financing the Capital Market makes the final determination. They wanted to push the decision process to an earlier stage to access the contributions and the financial package to get an early answer from the Capital Market. They wanted to limit the risk for Palo Alto with this project by taking the financial plan at an early stage.

Mayor Kishimoto stated one of their roles was to communicate the Palo Alto Fiber Optic Broadband story to the investors.

Mr. Mazer stated they were trying to communicate the strengths of the project to the investment community. There were several things to make this attractive to outside investors: 1) the assets like dark fiber; and 2) that Palo Alto was the perfect place to do this.

Thomas Jones, Vice President of 180 Connect, stated as a company they were very excited to be a part of this project.

Council Member Cordell enquired about their head offices being in Calgary and the operational headquarters being in New York with the letterhead stating Idaho.

Mr. Jones stated 180 Connect had 85 operating offices in the United States, and 22 states where they operated their Direct TV business. They were headquartered out of Calgary, Alberta, Canada, their operational corporate offices were in Long Island, New York and his own office was in Boise, Idaho.

Council Member Cordell asked out of the 85 offices how many of them dealt with Ultra High Speed Broadband.

Mr. Jones stated seven of them.

Council Member Cordell asked about the information the Council received about a racial discrimination lawsuit or claim out of New York. She stated when the bid was submitted the company did not disclose this claim. She asked about the status of this claim.

Mr. Jones stated the Judge had made an independent ruling against it and the ruling had been dropped. The issue was outlined in the March 7 letter to Council; there was an independent Judge's report with a cover letter outlining their position, and the final decision was based on what the Judge's report outlined.

Council Member Cordell asked whether this was from a retired Judge who was hired by his company to investigate this matter. She stated she read the report and was asking what the status of the claim was.

Mr. Jones stated the claim was no longer active against the company.

Council Member Cordell asked whether it was dismissed.

Mr. Jones stated the independent Judge's report caused it to become a dismissal and he could prepare another letter for the Council outlining the status.

Council Member Cordell stated she would like the letter.

Mr. Jones stated they handled the situation as best they could.

Mayor Kishimoto asked whether the City would be signing with RBC.

Mr. Jones stated the contract would be with 180 Connect and the RBC relationship would be facilitated through that contract.

Mr. Saccio stated it was not specified what the relationships were in any of the documents provided. It would be established during the business plan.

Mayor Kishimoto noted one of the attachments from 180 Connect states the relationship would be between the City and RBC.

Mr. Jones stated they acted as the project integrator and control funds through RBC to the project. There would be a contract with 180 Connect and through that contract, the process and preparation for the business plan to go forward, would then facilitate a contract with RBC for the completion of the financing package.

Mr. Baum stated the \$30,000 would be a contract with 180 Connect. RBC was a possible investor.

Mayor Kishimoto asked if they had any comments on the CMR expressing concerns about their financial stability.

Mr. Jones stated their company had extremely strong cash flows and there were additional expenses outlined on-line in the Q1 and Q2 reports for the 2007 year.

Mayor Kishimoto stated it was noted their balance sheet carried a deficit of \$74 million dollars on assets of \$169 million and asked whether that was accurate.

Mr. Jones stated those were recent Auditor figures.

Arthur Keller, 3881 Corina Way, stated the Green Ribbon Task force identified electronic ways of travel as an option for the City to consider to reduce Green House gases. Fiber to the Home would enable electronic alternatives to travel and he did not support this.

Jeff Hoel, 731 Colorado Avenue, asked for this to return at a time when more Council Members were present and he supported the Fiber to the Home.

William Zaumeg, 912 Clara Drive, stated Fiber to the Home would give the City unique facilities and he was in support.

Robert Moss, 4010 Orme Street, commented that within three to four years download speeds would need to be as high as 200 mega bites per second in order to handle HGTV and he did support this proposal.

Herb Borock P.O. Box 632 said it might be necessary to continue this item with so few Council Members present, who were able to vote.

Art Kraemer, 1116 Forest Avenue, stated the right of way was valuable and should not be played down and he supported Fiber to the Home.

City Manager Frank Benest clarified if the City contributed as an asset at any point the fiber ring financed through the utilities, the General Fund would have to pay it back.

Council Member Cordell stated she had originally been against doing business with 180 Connect because of the racial discrimination issue out of New York offices. There could be legal liability with companies that may pose problems for the City. She stated the financial risk right now was too great.

MOTION: Council Member Cordell moved to terminate negotiations with 180 Connect.

MOTION FAILED FOR LACK OF A SECOND.

Vice Mayor Klein noted he thought this should be returned at a different time to be able to have five votes.

Mr. Baum reminded the Council that because this was the precursor of a contract and an expenditure of funds, there needed to be five votes to approve the contract.

Vice Mayor Klein stated the City could get someone who would finance this project on the City's terms, which were set forth. He was disappointed by the request for \$30,000 for preparation of the business plan, which was not mentioned in the response to the RFP and he would not vote for that. The City had unique and valuable assets and would be the perfect place for Fiber to the Home.

Council Member Beecham stated he wanted to return this item for another night when Council Member Barton was available to participate in the discussion. He asked whether there was a date for this to return.

Assistant City Manager Emily Harrison stated the next available meeting was July 9, 2007, which could be accommodated on the agenda.

MOTION: Council Member Beecham moved, seconded by Drekmeier, to continue this item to the Council meeting of July 9, 2007.

MOTION PASSED 5-0 Barton absent, Kleinberg, Morton, Mossar not participating.

FINAL ADJOURNMENT: The meeting adjourned at 10:40 p.m.