

Special Meeting
February 3, 2003

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FINAL ADJOURNMENT: The meeting adjourned at 1:00 a.m. in memory of six-year-old Amy Malzbender, who lost her life in a tragic accident on January 28, 2003, and also in memory of the Columbia Shuttle astronauts who perished on February 1, 2003, during their re-entry to earth.	27

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:00 p.m.

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

CLOSED SESSION

1. Conference with City Attorney -- Existing Litigation
Subject: The Embarcadero Publishing Company dba Palo Alto Weekly v. The City of Palo Alto, The City Council of the City of Palo Alto
SCC#CV814137
Authority: Government Code section 54956.9(a)
2. Conference with City Attorney -- Existing Litigation
Subject: The San Jose Mercury News, Inc. v. The City of Palo Alto, The City Council of the City of Palo Alto, SCC # CV814216
Authority: Government Code section 54956.9(a)

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item Nos. 1 and 2.

Mayor Mossar announced that Item Nos. 1 and 2 would be continued as the last items on the regular City Council agenda that evening.

ADJOURNMENT: The meeting adjourned at 7:10 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:15 p.m.

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

ORAL COMMUNICATIONS

Pat Dwyer, Chief of Police, gave an update on the recent accident on Miranda Avenue.

Joe Kott, Chief Transportation Official, stated that his division worked closely with the Police Department to improve traffic safety in Palo Alto, particularly to provide safe roads and educate residents of safe travel practices. He encouraged citizen comments about any road traffic situations that might be problematic or unsafe.

Council Member Ojakian requested the City Council adjourn the meeting in memory of Amy Malzbender and send condolences to the family.

Art Kraemer, 1116 Forest Avenue, spoke regarding San Francisquito Creek.

Stanley R. Smith, 610 Wildwood Lane, spoke regarding creek flooding.

Mary Carey Schaefer, 742 DeSoto Drive, spoke regarding the fifth anniversary of the 1998 flood.

Walter Loewenstein, 515 Jefferson Drive, spoke regarding flooding.

Peter Drekmeier, 1325 Cowper Street, spoke regarding peace resolution.

Wayne Swan, 240 Kellogg Avenue, spoke regarding official plan lines.

Don Nielson, 850 Miranda, spoke regarding the Miranda Avenue accident.

Irvin Dawid, 753 Alma St. #126, spoke regarding crashes, not accidents.

APPROVAL OF MINUTES

MOTION: Council Member Ojakian moved, seconded by Freeman, to approve the minutes of November 18, 2002, as corrected, and the minutes of December 09, 2002, as submitted.

MOTION PASSED 9-0.

CONSENT CALENDAR

Mayor Mossar announced that Item No. 3 would be removed at the request of staff.

Council Member Lytle registered a "no" vote on Item No. 2.

Council Member Kishimoto registered a "no" vote on Item No. 2.

Council Member Freeman requested that Item No. 2 be removed to become Item No. 6A.

MOTION: Council Member Morton moved, seconded by Ojakian, to approve Consent Calendar Item Nos. 1 and 4.

LEGISLATIVE

1. Approval of a Resolution to Hold a Public Hearing to Consider Forming and Becoming a Member of the Bay Area Water Services Conservation Authority

Resolution 8265 entitled "Resolution of the Council of the City of Palo Alto Fixing the Time and Place of a Public Hearing on Whether to Form and Become a Member of the Bay Area Water Supply and Conservation Agency"

ADMINISTRATIVE

- ~~3. Cost Analysis and Timing for Internet Broadcasting of Council Meetings~~

4. Approving Increases in Palo Alto's Contribution Commitment Levels For FY2003, 2004, and 2005, to the Funding of Operation and Maintenance For the Central Valley Project Power Facilities and Authorizing the City Manager to Execute Exhibit C, Revision 5 to the Agreement

Resolution 8266 entitled "Resolution of the Council of the City of Palo Alto Approving Increases in Palo Alto's Contribution Commitment Levels For FY 2003, 2004 and 2005 to the Funding of Operation and Maintenance for the Central Valley Project Power Facilities and Authorizing the City Manager to Execute Exhibit C, Revision 5 to the Agreement"

MOTION PASSED 9-0 for Item Nos. 1 and 4.

PUBLIC HEARINGS



5. PUBLIC HEARING: The City Council will consider the application by High Street Partners, LLC for a zone change from Commercial Downtown Service with Pedestrian Overlay (CD-S(P)) district to Planned Community (PC) zone for property located at 800 High Street, a variance for a portion of the fourth floor that exceeds the City's height requirement, and certification of a Final Focused Environmental Impact Report for the project. The application will allow demolition of an existing approximately 17,600-square-foot building and allow the construction of approximately 96,000-square-foot building, including 61 residential units, approximately 1,900 square feet of neighborhood serving retail space, a subterranean parking garage and related site improvements (***This item is quasi-judicial and subject to Council's Disclosure Policy***)

Council Member Morton noted that previously he could not participate on the item, but was able to participate at the present time.

Director of Planning and Community Environment Steve Emslie gave an overview of the project and the issues related to the matter. He presented the Planning and Transportation Commission's (P&TC) recommendations for the mixed-use project. The project required extensive review by P&TC, Historic Resources Board (HRB), and the Architectural Review Board (ARB). The P&TC recommendations were in conjunction with the review and recommendations by the ARB and HRB. The P&TC recommended approval of the project with several modifications listed in the staff report (CMR 150:03). The modifications were incorporated in the draft plan community ordinance. The applicant submitted revised plans after the P&TC's recommendation. Staff's recommendations were based on the Original Plan since there was not an opportunity to assimilate the revisions into their recommendations. The Original Plan provided 50 market rate units and the revision provided 44.

Mayor Mossar asked for clarification on which plan was reviewed by P&TC.

Mr. Emslie replied the P&TC reviewed the Original Plan and he could not give recommendations on the Revised Plan since staff had not reviewed it. He confirmed with Marlene Pendergrast from the Palo Alto Housing Corporation (PAHC) that the price and configuration were consistent with the recommendations by P&TC. The maximum unit size was larger in the Revised Plan but similar to the Original Plan. There was a major difference in parking in the two plans. There were 63 parking spaces in the Original

Plan and the Revised Plan eliminated a number of public parking spaces and provided six surface parking spaces located adjacent to the alley. The total parking provided in the Original Plan was 201 and the proposed parking for the Revised Plan was 119. The open space provided was enhanced in the Revised Plan at the direction of the P&TC because they wanted Homer Plaza expanded for retail and a public gathering area. The P&TC also asked that the Channing Plaza be reconfigured so it would be clearly delineated as a high quality and unique public open space. The plans differed in the use of the alley that ran the width of the block between Homer and Channing Avenues. The Original Plan used the entire width of the alley going beyond the center line to the furthest left extremity of the alley, and the Revised Plan extended to the center of the alley. The essential issue was the provision of public parking as a primary public benefit. The applicant stated the project would be impractical if the project Floor Area Ratio (FAR) was reduced to less than 2.3:1. If the project was reduced to a 2.0:1 FAR, so parking could only be provided for the needs of the future residents and users of the retail space. Staff believed that the Comprehensive Plan (Comp Plan) encouraged transient-oriented design at the location and supported the construction of housing and mixed-use projects such as that envisioned by the Comp Plan. Numerous policy directions supported staff recommendations for the implementation of the project. Both plans included the demolition of the Family Service Laundry building, which was potentially eligible for state historic resources. That was a significant impact for California Environmental Quality Act (CEQA) purposes, which must be overridden as a significant unavoidable impact in the adoption of the Environmental Impact Report (EIR). The HRB reviewed the issue and commissioned the study of the practicality of reusing the Family Service Laundry building for retail. Bay Area Economics (Bay Area Economics) analyzed the use and concluded the baseline economics of the building as a stand alone building did not provide the financial return that would justify improvements.

Planning and Transportation Commissioner Karen Holman said the P&TC voted unanimously on the recommendations listed in the staff report (CMR 150:03). The P&TC did not make a recommendation for the removal of the second level of parking in consideration of other public benefits. The reduction of the 2.0:1 FAR received a lot of discussion. The P&TC determined, with the considerations they were making, reducing of the project down to 2.0:1 FAR, which was the SOFA CAP guideline established by the P&TC. She said the P&TC had numerous discussions on whether to recommend a project of that particular scale and whether it would comply with SOFA 2.

Lee I. Lippert, Chairperson, Architectural Review Board, said the Architectural Review Board (ARB) reviewed the project and voted

unanimously for approval subject to the conditions. The ARB's recommendation was to bring the project in line with the SOFA 2 CAP. . The recommendation was made before they viewed the massing model so their motion was framed on limited information. They subsequently reviewed the massing model and their recommendation was forwarded to P&TC.

Martin Bernstein, Chair, Historic Resources Board, said the Family Service Laundry building was a cultural resource and listed as eligible for the California Register. The HRB learned that buildings listed as eligible, or on the register in terms of CEQA, were equal in terms of stature. The two public benefits listed by the applicant were plazas at the corners of High Street and Channing Avenue and High Street and Homer Avenue. Another public benefit, which might have been considered, was the preservation of the Family Service Laundry building. The FAR by zoning was 1.0:1 for that particular property, and the applicant proposed a FAR of 2.0:1. A public benefit of preserving a historical and cultural resource could be an excellent exchange for that FAR. Prior to a lead agency issuing a statement of overriding concerns, such as allowing the demolition of a cultural resource, legally the record must show no alternatives to demolitions were feasible. That had to be measured by technical and economical feasibility studies and must have substantial, credible evidence, which was required for a statement of overriding concerns. He saw an increased interest for retail space such as what the Family Service Laundry building could offer because of the present economy. The HRB recommended a focus feasibility study be prepared by a preservation architect with structural engineering and rehabilitation economics expertise to determine the technical and economic feasibility of rehabilitating the Family Service Laundry Building. The HRB also recommended a historic structure report be prepared by each of the consultants to guide the rehabilitation of the building if Council decided to preserve the building.

Mayor Mossar announced the item was both legislative and quasi-judicial.

Council Member Kishimoto disclosed she had met with the applicant and consultant, Carol Jansen, viewed the site, and met with Larry Hasset from the Palo Alto Hardware store.

Council Member Lytle disclosed she had met with the applicant and consultant, Ms. Jansen.

Council Member Kleinberg disclosed she had met with the applicant and consultant, Ms. Jansen.

Council Member Beecham disclosed he had met with the applicant.

Council Member Burch disclosed he had met with the applicant and Mr. Hassett.

Council Member Morton disclosed he had met with the applicant, the consultant, Mr. Hassett, and he had two clients on the periphery of the project area.

Council Member Ojakian noted that he had not met with anyone.

Council Member Freeman disclosed she had met with the applicants, Ms. Jansen and Mr. Hassett.

Mayor Mossar disclosed she did not meet with the applicant or the consultant but did receive phone calls from Mr. Hassett.

Council Member Lytle said she was contacted by Tony Carrasco.

Council Member Kleinberg said she spoke to retail owners in the area and a representative of the Chamber of Commerce.

Mayor Mossar declared the Public Hearing open at 8:21 p.m.

Doug Ross, 909 Alma Street, represented Palo Alto High Street Partners, said he filed his application in January 2002 and the process had involved over 11 public hearings with the ARB, HRB, and P&TC. The initial application had 5 stories, 64 units and an FAR of 2.6:1. The project presented to the P&TC on January 15, 2003, contained 61 units, an FAR of 2.9:1 with three and four stories. The process had been long, but the responses from boards and commissions had helped make for a better project. He received unanimous support at recent board and commission meetings. The project had been reviewed in the context of the SOFA 2 Coordinated Area Plan. The P&TC approved the project subject to certain revisions that reflected their SOFA 2 recommendations and within the previous two weeks the design had been developed and shared with neighborhood groups and the Chamber of Commerce. The differences between the Original Plan and the Revised Plan were the reduction in the FAR from 2.29:1 to 2.06:1, seven less units, ten Below Market Rate (BMR) units, improvements to the Channing Avenue elevation, and the installation of an open plaza at Homer and Channing Avenues. The revisions resulted in changes to public amenities. Community amenities above and beyond the intrinsic value provided in housing located within proximity to Downtown services included 754 square feet of retail, and 18.5 percent BMR units. The SOFA 2 CAP required only two amenities but the Revised Plan provided a public open space on Channing and Homer Avenues and a much larger public plaza on Homer Avenue and High Street. The ramp at

High Street would provide access to the City-owned substation, which would allow future development and housing on the site. Both project options were feasible; only the increased FAR and higher unit count presented in the Original Plan supported the second level of parking. The lower FAR preferred by the P&TC allowed for the public plaza and improved transition on Homer Avenue. The two stood alone and the applicant could not provide the lower FAR and the additional parking. The economic study commissioned by the City for the SOFA 2 Coordinated Area Plan demonstrated that a 2.25:01 FAR project would not benefit the public.

Jon Worden, architect, presented slides of the Original Plan referred to as the current plan and the Revised Plan referred to as the January 30 Plan. The Revised Plan was in response to the P&TC comments to reduce the FAR and number of housing units. The Revised Plan met the P&TC recommendations. He also pointed out many of the architectural details of the Family Service Laundry building were incorporated into the Revised Plan.

Mayor Mossar noted she would not accept any additional speaker cards after 8:45 p.m.

David Bubenik, 420 Homer Avenue, said the plan was too one-sided because it demanded a huge investment from the City. He believed the Plan should serve the community and urged the Council to grant the application with the condition that the Family Service Laundry building be restored and used as transient oriented affordable housing to meet CEQA requirements. The recent SOFA development agreement provided a working precedent for preservation benefits as a condition of enhanced development allowance. The staff report (CMR:150:03) stated that retention of the Family Service Laundry building would impede the SOFA Plan objective of increased affordable housing and public parking. Increased public parking conflicted with the SOFA Plan and he strongly discouraged adding more parking to the area. He believed the City had a unique opportunity to preserve historic resources while addressing a contemporary need for affordable housing. He urged the Council to explore that possibility to achieve a proper benefit for the application.

Natalie Wells, 3259 Alma Street, said she concurred with the comments presented by Mr. Bubenik and Mr. Bernstein about saving the Family Service Laundry building.

Anne Houghteling, 293 Tennessee Lane, represented Palo Alto Stanford (PAST) Heritage said the Family Service Laundry building was a major historical landmark in the SOFA district. The SOFA Coordinated Area Plan gave special recognition to the value of the architectural and cultural

heritage and actively promoted the education and enjoyment of current and future citizens. On November 6, 2002, PAS Heritage adopted a resolution in support of historic preservation elements and the draft SOFA Coordinated Area Plan. The Council was thanked for recognizing the need to preserve Palo Alto's irreplaceable historic heritage and urged Council to preserve the Family Service Laundry building.

Mark Sabin, representing the Chamber of Commerce, said the Chamber had been looking at that particular project for some time because it provided an opportunity to provide housing near the Downtown area and public transportation. The January 30 Plan had elements that were problematic because the single-floor underground parking satisfied the parking needs of the residents, but contributed nothing to alleviate the current parking problem in that area. The street level parking in the alley behind the structure was inadequate because it was too far from the street to be easily accessible to the public. The High Street entrance to the underground parking was inappropriate because High Street was a one-way street. He presented a list of recommendations that he urged the Council to accept.

Sunny Dykwell said she was pleased with the number of BMR units proposed by the development. She urged the Council to accept the current plan because it would provide affordable housing units in Palo Alto.

Heather Trossman concurred with previous speakers. There were elements she liked on both plans and urged Council to accept the plan with 2.3:1 FAR and the underground parking.

John Tarlton resided and operated a business two blocks from the project. He said the community needed to address the benefits of the public because some of the previous approved projects did not. It would be a travesty to approve the Plan without approving the second level of parking. The marginal cost of adding additional parking would be a significant public benefit. He suggested two parking spaces for each residential unit. He agreed that housing was needed in the area, although it would negatively affect residents .

Barbara Gross, 729 Center Drive, said there were opposing opinions regarding the project, and no particular group should receive all the benefits without conceding something to another group. Palo Alto was mandated to build housing, and the 800 High Street project would provide additional housing. The area was already impacted by a parking deficit and existing businesses had done as much as possible to ease the parking problem. The current project could help alleviate the parking. The needs of the community should take precedence above everything else.

Wayne Swan, 240 Kellogg Avenue, said the City should approve the Plan, which was most consistent with adopted zoning regulations. The 800 High Street project did not meet existing zoning regulations. A variance was requested to exceed the 35-foot height limit. The need for housing was not a specific hardship worthy of granting a variance. The project did not comply with the SOFA 2 Coordinated Area Plan. A nearby project at 925 High Street satisfied the SOFA 2 CAP recommendations and did not require a variance.

Eric Hassett, representing his father, Larry Hasset, owner of Palo Alto Hardware, 875 Alma Street. The PC application, if approved, would put a hardship on their livelihood. He believed the issue was how to develop housing projects that were compatible with other elements that supported the community. He expressed concern for the impact parking would have on the area if the project were approved.

Laura Stuchinsky, Silicon Valley Manufacturing Group, strongly supported the 800 High Street development at the original proposed density. She believed the location was ideal for a compact development and would afford occupants with an array of local amenities.

Shiloh Ballard, Housing Action Coalition, supported the project.

Sally Probst, 735 Coastland Drive, supported the Plan with the 61 housing units and urged Council to move ahead by approving the project.

Joette Farrand, 724 Bryant Street, agreed housing was needed, but the proposed Plan was too massive for the area.

Carol Kiparsky, 800 Cowper Street, said she was concerned about the impact the project would have on existing business, in particular the hardware store. She urged the Council to re-evaluate the scope of the project.

Ian Irwin, 800 Cowper Street, rejected the pre-review of the project and said they should wait for the completion of the SOFA 2 Plan. He believed it would be wrong to approve the project before the SOFA 2 Plan was completed. He believed there were too many drawbacks to the project and urged Council not to grant the PC.

Elaine Meyer, 609 Kingsley Avenue, had followed the project since its inception and believed it would prove to be detrimental to the community. She urged the Council to return the project to staff before final approval.

Faith Bell, 536 Emerson Street, said developments that did not provide additional parking would be detrimental to existing small businesses. She urged the Council to consider the survival of existing businesses before making a final decision.

Irene Sampson, League of Women Voters, said the League supported the proposed development. The project was consistent with their efforts to increase housing, particularly in locations near public transit and services. SOFA served as a transition neighborhood between residential and Downtown businesses and some portions of the area were more suitable than others for higher density residential development. The League supported the proposal with the higher FAR and two levels of parking.

Carroll Harrington, 830 Melville, said she agreed with the remarks by Mr. Sabin, Ms. Gross, Ms. Probst, and Ms. Sampson.

Paul Kelleher, 426 Homer Avenue, said the applicant and opponents had reduced the project to the question of whether Council wanted more housing. The public benefits in both configurations were inadequate and did not justify the size of the project. The provision of BMRs was not sufficient public benefit to justify exceeding the zoning limits.

Bob Moss, 4010 Orme Street, said both proposals were inadequate. The Council needed to send the plan back to staff for further modifications. He suggested at least two or three of the one-bedroom BMR units be increased to two and offset that by limiting the number of market rate three - bedroom units. The City did not have a lack of market rate units. He also suggested that a number of underground parking spaces be dedicated for the public. He urged Council to approve the concept of the proposal and send it back to staff and the P&TC.

Beth Bunnenberg, Vice Chair, Historic Resources Board, 2351 Ramona Street, said one of the considerations of the HRB was whether the project was compatible with the neighborhood. She gave a background on the Family Service Laundry building and urged Council to preserve the building.

Hal Luft, 1020 Ramona Street, said Council faced a difficult problem with the need for housing, parking shortages, and the impact development would have on existing businesses. PC's were a way to offer private gain in exchange for public benefits. The essential problem facing Council was how much gain for how many benefits. The possible loss of the historic building was not a good tradeoff for additional housing.

Jean McCown, 1717 Embarcadero Road, said there were definite tradeoffs associated with the project. She urged Council to realistically review the

tradeoffs. There was not another site in the City that would better meet the needs of the City's comprehensive planned goals.

Ole Christensen, 801 Alma Street, said he owned a business adjacent to the project and was supportive of the need for affordable housing in the community. He believed the proposed projects were not feasible because the applicants had not asked to purchase the properties of adjacent property owners to construct underground parking. He suggested the project be returned to staff. No retail should be constructed in that area because it would create a greater parking problem for existing property owners.

Joy Ogawa, 2305 Yale Street, said Council voted to adopt a new housing element a few months prior for the City's Comp Plan. The housing element increased the required contribution of projects with five or more units by 5 percent. The Revised Plan included a BMR contribution that met the approval of the PAHC but did not provide additional parking. The choices Council was faced with was a project with extra parking or a project with lower FAR and BMR contributions that would fulfill the requirement of the Comp Plan. She urged the Council to keep the integrity of the BMR program intact.

Lynn Chiapella, 631 Colorado Avenue, said she and other members of the public were unaware of the new Plan until that evening. Public benefits had been severely compromised and public parking should not be a benefit. Every project that went before the Council stated there was no impact but that project presented an impact because there was inadequate parking. Council should not have to consider public parking as a public benefit when that should be a requirement of every project.

Curt Petersen, 909 Alma Street, asked whether it was the proper time for a rebuttal.

Mayor Mossar asked City Attorney Ariel Calonne to clarify whether Mr. Petersen should speak as an individual or a developer.

City Attorney Ariel Calonne replied that Mr. Petersen could present his rebuttal at that time.

Mr. Petersen clarified the existing building was not determined to be fully eligible as a historic building. He provided a structural engineering report in the past and it was never refuted. Building officials had visited the site and said the building was not worth saving, and it would be a challenging seismic upgrade. Recent economic studies supported the fact that tenant upgrades were not economically feasible. The economic study

commissioned by the City with a 2.25:01 FAR with self-parking, plus adding other public benefits, made the project impractical. The new proposal addressed the issue about the alleyway, which would be kept open during construction and a mutually beneficial plan would be worked out with neighbors. He asked the Council to make a decision that evening regarding the status of the project.

Mayor Mossar declared the Public Hearing closed at 9:52 p.m.

RECESS: 9:52 p.m. to 10:00 p.m.

Mayor Mossar asked Council whether they wanted to complete the agenda that evening.

MOTION: Council Member Morton moved, seconded by Ojakian, to continue Item No. 6A to the February 10, 2003, Regular City Council meeting.

MOTION PASSED 9-0.

Mr. Calonne said the public discussion of the PC benefit process raised serious concerns. It was unconstitutional for public benefit to be traded quid pro quo for extra square footage. The ordinance was written so the public benefits should primarily be intrinsic in the design of the project. Additional public benefits from previous years, which were extrinsic, included renovations to the City Hall Plaza, artwork, and finances for specific programs. Zoning was to protect public health and safety and that action became arbitrary and capricious if based solely on an offer of some sort of benefit.

Senior Assistant City Attorney Wynne Furth said the test for Council was whether the project, if approved, would be good for the City and would it implement comprehensive goals, which the City believed were important. The City relied on a PC zone system to do some of the implementation of the Comprehensive Plan. The City had densities that were identified in the Comp Plan for housing, which were said to be desirable in some situations, under some circumstances. The City relied on a PC process in order to be able to achieve projects that as a whole were desirable, not only for the City, but also for neighborhoods in which they would be located. Not only was it unconstitutional to sell zoning entitlements, it was unconstitutional to determine whether a zone was appropriate based upon how much profit the private developer made. The question for the developer was whether it was profitable for them to build, whereas, the question for the City was whether the project was desirable. There were other complications with a PC district. PC districts were initiated by applicants. If an applicant modified

or withdrew a proposal, a recommendation could not be made for approval. The City did not have the power to adopt a PC that the property owner did not wish to have on their property.

Council Member Morton asked what could the City impose on a PC. He was concerned about the plan presented that evening, which had not been reviewed by the ARB or P&TC. He said there should be at least 80 public parking spaces. Some of those might be available in the evening for residents but during the day, they should be made available to the public. He wanted to know whether that could be imposed and returned to staff. His main choice between the two proposals was the public parking issue.

Mr. Calonne replied that Council Member Morton correctly described the process. Council would propose what it wanted and staff, along with the applicant, would work to implement Council's recommendations. It was unfortunate that Council had to work in real time to resolve serious details and problems on a project.

Council Member Morton stated that area had to have adequate parking and he would support the proposal, which had public parking. He suggested Council set the number of parking spaces at 80 and that some of those numbers be used for commercial and residential. He also suggested that the number of parking spaces be defined by Council so that the issue would not have to be discussed again. He had concerns about access to the parking and suggested multiple access points, in particular access from Channing Avenue.

Mr. Emslie said they had not looked into having multiple accesses to the parking structure, but had looked at different points of access. They had sifted back from an alley access to a High Street access, in response to concerns from businesses that rendered the alley less serviceable as a loading area. High Street was viewed as a more superior location for that reason. The more access points, the more parking was lost.

Council Member Morton asked staff to consider an additional access to Channing Avenue for the convenience of local businesses. In viewing one of the public benefits for the January 30 Plan was a 1000 square feet of retail space, the amount of sales taxes generated from the additional retail space was minuscule.

Mr. Emslie said retail had not been identified as a public benefit but as an objective of the project that achieved an urban design goal of adding to the retail vitality of Homer Street.

Council Member Morton said as a tradeoff with the applicant was to consider trading additional retail use.

Vice Mayor Beecham asked whether the January 30 Plan complied with residential and retail parking code requirements.

Mr. Emslie said it did comply for both residential and retail parking onsite.

Vice Mayor Beecham asked if the public benefits proposed by the applicant were adequate.

Mr. Emslie said the P&TC's recommendation and staff's recommendation to the P&TC contained a substantial amount of public parking. Staff was favorably disposed on providing parking as a public benefit.

Vice Mayor Beecham verified that staff preferred the Current Plan versus the January 30^t Plan.

Mr. Emslie said that was correct; however, the developer said it could not be built as recommended, which had to be resolved.

Vice Mayor Beecham asked whether the current parking situation in the area was good or bad.

Mr. Emslie said there was a lot of long-term or unregulated parking that could be made more efficient by having shorter turnovers. Currently, parking was tolerable. The spillover parking into the neighborhood could be addressed by providing on-site parking. He felt as SOFA objectives were implemented, the demand for parking would increase if off-site parking was not provided.

Vice Mayor Beecham said that local businesses in the area had asked for more parking and wanted to know if parking in the area was currently inadequate for their customers.

Mr. Emslie said yes.

Vice Mayor Beecham asked whether the parcel owner was obligated to provide parking for other uses that currently do not have sufficient parking.

Mr. Emslie said no.

Vice Mayor Beecham asked how the Council should proceed with the January 30 Plan.

Ms. Furth said if Council wanted to adopt the January 30 Plan, it would need to return to the ARB and elements of changes desired would need to be identified. Three interrelated documents would need to be prepared. An Ordinance, CEQA permits, and plans and conditions. It would be possible to write the PC Ordinance to limit the further review to Site and Design element.

Council Member Lytle commented on four areas of the proposal. She said in terms of the environmental analysis, she would not adopt the Statement of Overriding Considerations on the historic structure and the benefit packet would need to include laundry building. She would not adopt a project that pressured local businesses with construction or with environmental determinations. The policy analyses, Policy L-5 and L-6, needed to be analyzed in the staff report (CMR:150:03). Part of preserving the historic building would breakdown the scale of the project to comply with Policy L-5 and L-6. She felt that was a good site for transit-oriented housing but not the best in relation to the train station. All housing would put extreme pressure on historic landmark buildings and local businesses. She was not in favor of the parkette concept as a public benefit.

Mayor Mossar said the incorporation of the Family Service Laundry building and analysis of reducing construction impacts and relaxing the parkette requirement were added..

Council Member Kishimoto asked whether the Homer building and the Historic building were comparable in size in terms of setback from Homer Avenue.

Mr. Worden said it was comparable in size in relationship to Homer Avenue, but not comparable size in terms of its length. The Family Services Laundry building extended five feet into the alley and all the way to the property line of High Street. The revised proposal sliced off a portion of the building in order to widen the alley and also sliced off a substantial portion of the building between High Street and one-third of the way down the block.

Council Member Kishimoto said the site design showed several residential buildings were close to the Palo Alto Hardware's loading dock. She wanted to know how many delivery trucks came daily, hours of delivery, and its impact to neighboring businesses.

Mr. Emslie said the noise analysis and the EIR took into account that the area was a commercial area. Mitigation measures were included to shield all units, both interior and exterior, to meet noise standards including the most sensitive hours.

Council Member Kishimoto asked that noise audit be included to the list. In reference to the Historic Resource, she said the record must show there were no feasible alternatives to rehabilitate or save the building. It was confirmed by the Architectural Resources Group (ARG) that it was a CEQA historic resource. The Chief Building Official had said the building was salvageable, even though the BAE analysis said it was not economically feasible to restore as a stand-alone project; however, the project was being evaluated as a one-acre, very large, mixed-used project. She wanted to know if staff could point out other substantial evidence in the public record that there were no other feasible alternatives to demolition of the building.

Mr. Emslie said the analysis concluded the building was a stand-alone and that it was not economically feasible for making improvements to save the building.

Matt Kowta, Bay Area Economics, said it was concluded that rehabilitation of the building would generate negative returns to the developer and was not considered financially feasible.

Council Member Kishimoto said she concurred with Council Member Lytle and would not support the Statement of Overriding Considerations on demolition of the historic project and to make one of the public benefits of retaining historic resource.

Council Member Ojakian wanted to confirm that the current plan and the January 30 Plan had been accepted by the applicant.

Ms. Furth said she understood the applicant did not find the alternative recommended by the P&TC acceptable.

Council Member Ojakian asked what the P&TC's reasoning was that lead the applicant to change their plan to the January 30 Plan.

Mr. Emslie said the changes were in direct response to the P&TC's direction to the applicant to reduce the height and increase the compatibility between the Channing Avenue elevation and the adjoining uses and to increase the public open space. The major difference between that and the P&TC's recommendation was they no longer provided public parking.

Council Member Ojakian asked if the electric transmission station on Alma Street had potentials of being developed into a housing site in the future.

City Manager Benest said yes. It was already included in the Utilities Department budget in terms of Capital Improvement Projects to move the station.

Council Member Ojakian said he assumed from reading in the staff report (CMR:150:03) that the development of the site could add additional housing units.

Mr. Benest said that was the assumption.

Council Member Ojakian said he did not concur with the P&TC and accepted the Current Plan, which was the applicant's Original Plan. He supported the Statement of Overriding Considerations because he felt the need for additional housing units.

MOTION: Council Member Ojakian moved, seconded by Burch, to 1) certify the Final Environmental Impact Report, including the program for mitigation, monitoring and reporting, based upon the findings in the California Environmental Quality Act (CEQA), as set forth in the Resolution that is Attachment A of CMR:150:03; and 2) approve a zone change from the existing Downtown Commercial Service with Pedestrian Overlay (CD-S(P)) to Planned Community (PC) and grant a variance from the Palo Alto Municipal Code, Section 18.68.150(b) to allow portions of the project within 150 feet of the Planned Community District at 901 Alma Street (PC-4389) to extend above 35 feet, as set forth in Attachments B and "N" (Ordinance and Resolution), including acceptance of the Statement of Overriding Considerations for CEQA purposes.

Resolution 8267 entitled "Resolution of the Council of the City of Palo Alto Certifying the Adequacy of the 800 High Street Final Environmental Impact Report and Making Findings Thereon Pursuant to the California Environmental Quality Act"

Ordinance 1st Reading 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 800 High Street From CD-S(P) To PC Planned Community and Approving a Variance from a Height Requirement "

Resolution 8268 entitled "Resolution of the Council of the City of Palo Alto Approving Architectural Review (02-PC-01) for 800 High Street (High Street Partners, LLC, Owner and Applicant) for Planned Community Zone Change PC 8267."

Council Member Ojikian reinforced that was a good housing site and the eleven BMR units were important. The mixed-use development could offset much less retail and more housing would give a net of almost 60 less jobs and increased housing. He felt the public benefits were significantly adequate.

Council Member Burch felt it was time to move on. He hoped reconfiguration would allow more three-bedroom units but would not provide two-parking spaces per unit. He also supported a transit-unit facility.

Council Member Freeman did not support the motion because she felt that Mr. Emslie's notice was a cursory review of the new project.

Mayor Mossar said the motion was to approve the current project and not the new project.

Council Member Freeman requested a description of the daylight plane mitigations for properties on the eastside of High Street.

Mr. Emslie said it allowed for some encroachment and was in compliance.

Council Member Freeman asked what the sale price was for one- two- and three-bedroom units.

Mr. Emslie said it was \$500 per square foot. The BMR units were restricted to price affordable to various income levels.

Counsel Member Morton said he liked the removal of the elevator towers in the January 30 Plan because it allowed for more external spaces. He asked what oversight the ARB had in the project and said he was concerned about the final quality of the materials and shape of the project.

Ms. Furth said one of the conditions the ARB and the PT&C had was the item would return to the ARB for further refinement and improvement of the open space.

Mr. Emslie said the PT&C also had concerns about finishes being high-quality and required that prior to the ending of the project that a third-party architect review and provide a report before permits were issued.

Council Morton asked whether the Current Plan included the Alma Street access for the future underground project.

Ms. Furth said it did include access to all properties along Alma Street.

Mr. Morton said he was referring to the public utility access.

Ms. Furth said that it was included.

Mayor Mossar suggested an amendment to direct staff to reassess short-term parking needs of retail businesses in the area and come up with a parking plan that allowed for significantly more short-term in- and out-parking for customer parking.

Ms. Furth asked if it was supplemental to any onsite parking and not in lieu of any onsite parking.

Mayor Mossar said it was not in lieu of any onsite parking.

INCORPORATED INTO MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct staff to reassess short term in/out parking needs of retail businesses in the area and come up with a parking plan that allows for significant additional customer parking.

Council Member Kleinberg said with added parking and sensitivity to the needs of the retailers, it enhanced the neighborhood and gave a framework to model higher-density housing where it was needed.

Council Member Beecham said he supported the motion for the Current Plan. It offered added parking, housing and BMR units.

Mayor Mossar briefly summarized the list and said adequate public parking had been addressed and additional access points of parking were also addressed in the proposal.

Ms. Furth clarified there were multiple subterranean access points and one surface access point.

Mr. Emslie clarified there were multiple pedestrian stairway access points and one vehicle access point from High Street that was under debate.

Mayor Mossar said to consider eliminating and reducing retail was not applicable to the motion; incorporating the Family Services Laundry building was also not an applicable option. Reducing and analyzing construction impacts was added to motion.

Council Member Ojakian assumed reducing and analyzing construction was part of the Public Works Department's regular process.

Ms. Furth said there was a specific condition added following the PT&C Hearing to minimize impacts during construction.

Mayor Mossar said relaxing the parkette standard was not applicable to this motion. A noise audit after completion of the project was not included in the motion.

Council Member Ojakian said the noise issues were difficult and should be discussed independently.

Council Freeman said what she was hearing from colleagues was a desire to make the January 30 Plan the main version and to add parking.

SUBSTITUTE MOTION: Council Member Freeman moved, seconded by Kishimoto, to use the January 30, 2003, version of the project as the base design, adding additional housing at the parkette site to replace the historic building with some semblance of historic perspective with housing above or at ground floor level depending on how seven additional units could be mapped out at the second level of underground parking to make it economically feasible, and parking will be divided into permit, short-term, and tenant parking at staff's discretion.

Council Member Freeman said the smaller scale plan had more open space. The actual design and creativity fitted the neighborhood well and increased housing. It limited BMR units by one unit and created three-bedroom BMR units to accommodate more families. It had more than one parking entrance and the transformer site was still accessible. However, parking was a problem, and she wanted to see make parking a public benefit. She suggested removal of the parkette and adding of more units, restoring the historic building by making it memorable, but allowing more units of housing.

Council Member Kishimoto asked the maker if she envisioned an entire second floor of parking.

Council Member Freeman asked for staff's direction on what would be best in designing second floor parking.

Mr. Emslie said partial floor parking was not cost-effective.

Council Member Freeman stated the project should have complete second floor parking.

Council Member Kishimoto said she would support the motion as a compromise. She asked the maker to add language to the motion to charge

for permit parking, free short-term customer parking, and residential parking to have an incentive to reduce the usage of cars.

Council Member Freeman said she would incorporate those items if staff had an optimal mix.

Council Member Lytle said should either motion pass, she encouraged the requirement of a payment for utilities and encouraged the applicant to retain a portion of the historic building should underground parking be installed.

Mr. Emslie said staff felt the substation site had potentials. The Request for Proposal (RFP) responder reviewed the site, found it suitable for development, and was willing to participate with the City.

Council Member Morton stated he would not support the substitute motion.

Council Member Beecham said he would support the motion if the maker accepted the permanent amendment to go back to a single level of parking. He felt the requirement for two-levels of parking with reduced density would prevent the project from moving forward.

Council Member Freeman asked for verification of the requirement in trying to find the economic feasibility of the potential parking issue.

Mr. Emslie said he understood the motion was to look at using the parkette on Channing Avenue as open space for housing, to consider converting the retail to housing making it a straight housing project, and whether there were sufficient economic factors working in favor to justify lower-level parking.

Council Member Freeman said the difference was seven units that would equal the density in numbers of units, which would allow lower-level parking.

Mayor Mossar said if the process were to redesign the project, it would need to return to the PT&C and staff for review.

Council Member Freeman said Council was trying to establish a feasible compromise.

Mayor Mossar said there was no language on the table for the motion that was concrete and asked Council Member Freeman to restate the motion.

SUBSTITUTE MOTION RESTATED: Council Member Freeman moved, seconded by Kishimoto, to use the January 30, 2003, version of the project as the base design, adding additional housing at the parkette site to replace the historic building with some semblance of historic perspective with housing above or at ground floor level depending on how seven additional units could be mapped out and add second level of underground parking to make it economically feasible, and parking will be divided into permit, short-term, and tenant parking at staff's discretion.

Council Member Beecham said what he was hearing from his colleague was to revert back to the Current Plan with the same number of units, two levels of parking, and to eliminate the parkette and retail.

SUBSTITUTE MOTION FAILED 3-6, Freeman, Kishimoto, Lytle "yes."

MOTION PASSED 6-3. Freeman, Kishimoto, Lytle "no."

REPORTS OF OFFICIALS

6. Recommendation to Appoint a Council Member to the Board of Directors of the San Francisco Bay Area Regional Water System Financing Authority

MOTION: Council Member Burch moved, seconded by Morton, to approve the staff and Utilities Advisory Commission recommendation to appoint a member of the City Council as a voting member of the board of directors of the San Francisco Bay Area Regional Water System Financing Authority. Such appointment shall continue at the pleasure of the Council, which reserves the power and right to appoint another individual at any time. Furthermore, that the voting member should be Vice Mayor Beecham.

Resolution 8269 entitled "Resolution of the Council of the City of Palo Alto Appointing a Council Member to the Board of Directors of the San Francisco Bay Area Regional Water System Financing Authority"

Council Member Freeman applauded Vice Mayor Beecham's work. She said there was not a current alternate liaison to the Utilities Advisory Commission (UAC) or alternate delegate to the Northern California Power Agency (NCPA) and, since Vice Mayor Beecham possessed all the knowledge in Utilities, she proposed spreading the knowledge to have multiple points of access to the information. She proposed selecting someone else and volunteered for the position.

Council Member Burch supported Council Member Freeman to be an alternate to Council Member Beecham.

Council Member Kleinberg asked what skill set Council Member Freeman had to offer in filling the position.

Council Member Freeman said she had good business acumen, asked tough questions, cared about the City, and would represent the will of the Council. She felt it was important to get a perspective that may not be one that has a history of education in Utilities, but she had a Bachelor of Science Degree and understood Science, Water, and the issues facing the Hetch-Hetchy Dam. She felt as a Council Member, a representative of Palo Alto, and an official elected by the people, made her a viable candidate for the position.

SUBSTITUTE MOTION: Council Member Lytle moved, seconded by Freeman, to appoint Council Member Freeman as a voting member of the Board of Directors of the San Francisco Bay Area Regional Water System Financing Authority.

SUBSTITUTE MOTION FAILED 3-6, Freeman, Kleinberg, Lytle "yes."

MOTION PASSED 9-0.

6A. (Old No. 2) Ordinance of the Council of the City of Palo Alto Amending Chapter 9.10 of Title 9 (Peace, Morals, and Safety) of the Palo Alto Municipal Code Regulating Noise in Order to Clarify the Restrictions on Construction, Demolition, or Repair Activities and the Restrictions on Public Street Cleaning in Business Districts"(1st Reading 1/21/03, Passed 5-4, Freeman, Kishimoto, Kleinberg, Lytle "no.")

Item continued to the February 10, 2003, Regular City Council meeting.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Ojakian requested the meeting be adjourned in memory of Amy Malzbender, who lost her life and asked that condolences be sent to her family.

Council Member Kishimoto noted Council Member Freeman raised a legitimate point of discussion of voting for Council Members for regional appointments.

Council Member Kleinberg request the astronauts who died in pursuit of knowledge and science be remembered at the close of the meeting.

Council Member Freeman noted there would be an exhibition of autographs of all 42 presidents of the United States at All Saints Episcopal Church on February 16 and 17, 2003.

CLOSED SESSION

The meeting adjourned at 11:37 p.m. to a Closed Session.

7. Conference with City Attorney - Existing Litigation
Subject: In re Enron Corp., Debtor, U.S. Bankruptcy Court, Southern District of New York; Case No.: 01-16034(AJG)
Authority: Government Code section 54956.9(a)

Item continued to the February 10, 2003, Regular City Council meeting.

CONTINUED DISCUSSION OF ITEM NOS. 1 AND 2 FROM THE 6:00 P.M. SPECIAL MEETING AGENDA

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item Nos. 1 and 2.

Mayor Mossar announced by a vote of 8-0-1, Lytle "abstaining" that the Council would proceed with a settlement on the two lawsuits described in Item Nos. 1 and 2.

FINAL ADJOURNMENT: The meeting adjourned at 1:00 a.m. in memory of six-year-old Amy Malzbender, who lost her life in a tragic accident on January 28, 2003, and also in memory of the Columbia Shuttle astronauts who perished on February 1, 2003, during their re-entry to earth.

ATTEST:

APPROVED:

City Clerk

Mayor

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