

Special Meeting
November 17, 2003

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The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:02 p.m.

CITY COUNCIL

PRESENT: Beecham, Burch, Freeman, Kishimoto, Kleinberg, Lytle (arrived at 6:30 p.m.), Morton (arrived at 6:10 p.m.), Mossar, Ojakian

HISTORIC RESOURCES BOARD

PRESENT: Bernstein, Bunnenberg, Haviland, Makinen, Murden

ABSENT: Kohler

SPECIAL MEETING

1. Joint Meeting with the Historic Resources Board (HRB)
 - a. Discussion of Demolition of Historic Properties
 - b. Incentives for Preservation of Historic Properties
 - c. Discussion of Salvage/Use of Historic Buildings
 - d. Discussion of Public Outreach regarding Historic Resources Board success stories

No action required.

ADJOURNMENT: The meeting adjourned at 7:00 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:02 p.m.

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

Mayor Mossar noted a \$50,000 check from Trees for El Camino for the tree planting project on El Camino Real.

ORAL COMMUNICATIONS

Ed Power, 2254 Dartmouth Street, spoke regarding good government.

Tricia Dolkas, 412 Everett Avenue, spoke regarding Downtown traffic calming.

Carolyn Tucher, Palo Alto Art Center Foundation, spoke regarding cultural kaleidoscope grant funding from Citibank.

Greg Meyer, Citibank, spoke regarding cultural kaleidoscope grant funding from Citibank.

John A. Siegfried, spoke regarding lighting on City Hall Plaza.

Bob Moss, 4010 Orme Street, spoke regarding Planned Community (PC) Zoning.

SPECIAL ORDERS OF THE DAY

1. Presentation of the Region Environmental Engineer of the Year Award to Lindsay Joye

No action required.

2. Selection of Candidate to Interview for Historic Resource Board

MOTION: Council Member Morton moved, seconded by Burch, to agendaize the appointment of Patricia DiCicco for approval.

MOTION PASSED 8-1, Mossar "no."

APPROVAL OF MINUTES

City Clerk Donna Rogers requested the minutes from October 7, 2003, be removed from the agenda.

MOTION: Council Member Morton moved, seconded by Burch, to approve the minutes of October 14, 2003, as submitted.

MOTION PASSED 9-0.

CONSENT CALENDAR

Mayor Mossar would not participate in Item No. 8 due to a conflict of interest because her husband was employed Stanford University.

Council Member Lytle moved, seconded by Freeman, to remove Item No. 5 to become Item No. 10A.

MOTION: Council Member Morton moved, seconded by Burch, to approve Consent Calendar Items 3-4 and 6-10.

LEGISLATIVE

3. Approval of Resolution Electing to Establish a Health Benefit Vesting Requirement for Future Retirees Under the Public Employees' Medical and Hospital Care Act (PEMCHA) for Management & Professional Group

Resolution 8357 entitled "Resolution of the Council of the City of Palo Alto Electing to Establish a Health Benefit Vesting Requirement for Future Retirees from the Management and Professional Personnel and Council Appointed and Elected Officers Group Under the Public Employees' Medical And Hospital Care Act"

4. Approval of Resolution Fixing the Amount of the City's Contribution Under the Public Employees' Medical and Hospital Care Act (PEMHCA) Health Plans at the Specified Current PERS Choice Rates for Management and Professional Group

Resolution 8358 entitled "Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act with Respect to Management and Professional Personnel and Council Appointed and Elected Officers Group and Rescinding Resolution No. 8070"

6. Adoption of a Resolution Authorizing the City Manager to Apply for a Grant and Execute an Agreement with the California State Coastal Conservancy for Control of Non-Native Cordgrass in the City-Owned Baylands

Resolution 8359 entitled "Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Submit to the California State Coastal Conservancy a Grant Application for Funds Which the City Intends to Expend on Spartina Treatment and Eradication in the Palo Alto Baylands"

ADMINISTRATIVE

7. Approval of Appointment, Director of Community Services
8. Approval of an Assignment and Assumption Agreement Transferring Stanford Shopping Center Performance Responsibilities from Stanford to SPG Center, LLC Under the 1997 Development Agreement and the Annual Public Review of Compliance of Development Agreement with Stanford University for the Sand Hill Road Projects

Assignment and Assumption Agreement
Development Agreement and
Sand Hill Corridor Maintenance Agreement
Shopping Center Project

9. Contract Between the City of Palo Alto and C-Way Custodian Services in the Amount of \$371,640 per year to Provide Custodial Services at Listed City Facilities



10. Report on Bid Advisory Board Activities and Recommendation to Adopt a Resolution to Set the Place and Time for a Public Meeting (December 15, 2003) and Public Hearing (January 12, 2004) on the Establishment of a Downtown BID and Direct the Advisory Board to Prepare a Revised Report to City Council on the Proposed BID

Resolution 8360 entitled "Resolution of the Council of the City of Palo Alto Directing the Preparation of a Revised Report for Fiscal Year 2003-2004, and Directing That Notice be Given of a Rescheduled Public Meeting and Public Hearing in Connection With the Proposed Establishment of the Downtown Business Improvement District and the Proposed Levy of an Assessment Against Businesses Within Such District"

MOTION PASSED 9-0 for Item Nos. 1-4, 6, 7, and 9-10.

MOTION PASSED 8-0, for Item No. 8, Mossar "not participating."

AGENDA CHANGES, ADDITIONS, AND DELETIONS

10A. (Old Item No. 5) Adoption of a Resolution Authorizing the City Manager to Apply for a Grant and Execute an Agreement with the California Coastal Commission for a Grant for the Acquisition of the P.O.S.T. Arastradero Property, and Associated Actions Necessary for Raising Matching Funds

Council Member Lytle said the staff report (CMR:519:03) indicated the loan would be repaid using the City's newly adopted Parks and Recreation impact fees. She asked whether the City would bind themselves by taking that approach before a) getting a prioritization from the Parks and Recreation Commission (PARC) on the use of the impact fees; and b) whether or not it was the type of open space or parkland that was envisioned to be acquired using those fees.

City Manager Frank Benest said the park impact fee was focused on a more active park space. There was, however, a whole menu of ways in which the City would pursue in finding a match. If staff were successful with the grant application, they would return to the Council for final consideration.

Mayor Mossar said the City had tried valiantly over the past several years to purchase the Arastradero property but could not negotiate an agreement with the owner nor raise the cash during the time the property went into a bankruptcy sale. The Peninsula Open Space Trust (POST) was lofty and noble in lending the public the use of their funds for a short period of time to find a way for the property not to be developed for private use but held in perpetuity for the public's general use and completion of the Arastradero Preserve. She wanted to make sure the City took every opportunity to raise additional funding to help repay POST for their purchase of the property. She urged her colleagues to support the grant for the acquisition of the POST Arastradero Property. A private fund-raising effort had already been organized.

Council Member Kleinberg said the opportunity to complete the Arastradero Preserve was at the core and fiber of the community and was part of Palo Alto's tradition to preserve its greenbelt.

Council Member Freeman said the current balance of the park impact fees was \$148,000, of which the City was to pay back a large portion of the matching funds plus other possibilities. She asked what was the risk analysis of obtaining the matching funds of \$1.8 million without further impacting the General Fund.

Mr. Benest said staff believed if there were monies, which were contingent upon a match, it would help the fund-raising efforts immensely.

Mayor Mossar reminded her colleagues the item before them was a grant application not a motion to receive the money.

Council Member Freeman said she was in favor of the City receiving the grant, however she felt a fiscal responsibility to be able to pay a matching fund should the City receive it.

Herb Borock, P.O. Box 632, said the last time the City considered acquiring the Arastradero property, it could have been purchase for \$1.4 million. The Council believed at that time, if the City was to spend money on parkland it was better spent in the flatlands along the neighborhood and districts parks rather than spent on the Arastradero Preserve. He believed it was in the City's best interest to continue the policy that was implemented in 1977, whereby deeds of exchange of property were signed that allowed the purchase of the piece of property that included Arastradero Creek.

MOTION: Council Member Morton moved, seconded by Kleinberg, to approve the staff recommendation to approve the attached resolution to:

- Authorize the submittal of a grant application to the California State Coastal Commission for \$1,800,000 for the acquisition of the 13-acre Peninsula Open Space Trust (POST) Arastradero Property.
- Authorize the City Manager or his designee, as the person responsible for the administration of the grant, including certifications and any amendments, on behalf of the City.
- Authorize the City Manager to seek a no-interest, five-year loan in the amount of up to \$1,000,000 from the Coastal Commission to satisfy part of the City's matching contribution requirement.

Staff also recommends that Council authorize the Mayor to:

- Contact State legislators to request specified funding in the State of California budget from the 2002 Resources Bond Act (Proposition 40) for the acquisition of the POST property.
- Contact Santa Clara County Supervisors to request pass-through funding from the 2002 Resources Bond Act (Proposition 40) Per Capita grant program for the acquisition of the POST property.

Resolution 8361 entitled "Resolution of the Council of the City of Palo Alto Authorizing the City Manager to Submit a Grant Application to and Execute a Grant Agreement with the California State Coastal Conservancy for Funds Which the City Intends to Expend on Acquisition of the 13-Acre Arastradero Property Owned by the Peninsula Open Space Trust (Post)"

Council Member Freeman said the subject had arisen about removing the piles of soil dumped by Mrs. Bressler on the property. She understood if the soil were not cleaned up by the time the City purchased the property, the language of the application would provide the City with the flexibility to use the grant funds for both the land acquisition and any necessary restoration work. She inquired whether there was any provision suggesting that POST would clean up the property.

Interim City Attorney Wynne Furth said staff was presently in an enforcement effort, and those responsible would pay for the correction to the problem.

Council Member Lytle clarified the City would pursue other sources for repaying the loan other than using the Parks and Recreation Impact Fee, which was targeted for other park needs.

Mr. Benest said that was noted in the staff report. The nexus study focused on the use of those funds related to more active parks, which would pose a problem. Staff was taking a serious look at other sources of funds before returning to the Park Impact Fees.

Council Member Lytle expressed support for the resolution, looking for other sources of funding, and taking whatever risks were necessary to attempt to find grant funding.

MOTION PASSED 9-0.

Council Member Morton recognized Richard James in the audience who was promoted to the position of Community Service Director.

Director Community Services Richard James expressed appreciation to Frank Benest and Emily Harrison for their trust and confidence in his abilities, and Paul Thiltgen for his mentoring and for being a wonderful colleague and a true friend. He assured the Council that although the City was in challenging times, the Community Services staff was the best he had seen in his 24 years of city service.

PUBLIC HEARINGS

11. Public Hearing: The City Council will consider adoption of an ordinance modifying Palo Alto Municipal Code Chapter 16.52 (Flood Hazard Regulations) pertaining to the review of improvements to existing structures in the Special Flood Hazard Area. The ordinance will establish a definition for the term "market value" as used in the flood hazard regulations, clarify the health and safety exclusions from the flood hazard regulations, and modify

crawl space construction standards and expand the prohibition of basements for structures in the Special Flood Hazard Area. In connection with consideration of the definition of "market value," the City Council will consider approval of a methodology to establish the market value of an existing structure in the Special Flood Hazard Area as used to determine whether modifications to the structure constitute a "substantial improvement," which triggers application of special building requirements *(Item to be continued at the request of staff)*

~~Ordinance of the Council of the City of Palo Alto Amending Palo Alto Municipal Code Sections 16.52.040 and 16.52.130 of Chapter 16.52 Pertaining to Flood Hazard Regulations~~

MOTION: Council Member Kleinberg moved, seconded by Ojakian to continue the item to a date uncertain.

MOTION PASSED: 9-0.

- *12. Public Hearing: The City Council will consider an application by Stoecker & Northway Architects on behalf of Richard Kniss for Site and Design Review to allow installation of an orchard and garden as an agricultural/horticultural use, construction of a single-story accessory structure of approximately 1,277 square feet and installation of a retractable amateur radio antenna at 3875 Page Mill Road. Zone District: Open Space (OS). [03-D-01, 03-EIA-09].

**This item is quasi-judicial and subject to Council's Disclosure Policy*

Council Member Kishimoto noted she had driven by the site and spoke with Mr. Kniss. She had asked to see what the structure looked like and what was its size. She was told the structure was estimated to be 30 feet by 30 feet, but could expand to 36 feet by 36 feet.

Council Member Kleinberg noted she had driven by the site a few weeks prior and spoke with Mr. Kniss about the project.

Council Member Burch noted he had walked the property and spoke with Mr. Kniss.

Mayor Mossar, Vice Mayor Beecham, and Council Members Freeman, Lytle, Morton, and Ojakian had nothing to disclose.

Planner Steven Turner said the project before the Council that evening was a Site and Design Review for the establishment of an organic orchard and garden with accessory uses and facilities on a 10-acre site in the Open Space District (OS/D). Site and Design Reviews were required for all developments prior to securing any permit for construction of new uses and facilities. The

applicant's intent for the site was for agricultural use of a non-commercial nature, including an orchard and raised planting beds. Accessory to the use was a 1,277 square-foot structure, which contained a bathroom, storage and living areas. A covered porch was also included as part of the design of the structure. An excavated area under the structure would be used for equipment storage. In addition, a retractable antenna structure was also proposed for the site. The structure would retract to approximately 26 feet in height and extend to approximately 40 feet in height. An antenna array would also be placed on the structure with dimensions of approximately 30 feet by 30 feet. The Planning and Transportation Commission (P&TC) conducted a site visit at the project site on December 18, 2002, and held a public hearing on September 24, 2003. The P&TC review focused on the viability of the site as an orchard and a garden, the potential use of the building as a dwelling unit, and the visibility of the antenna and structure from Page Mill Road and neighboring properties. The P&TC voted to recommend approval of the project with the condition that only accessory uses be conducted in the building, and not be used as a full-time residence. The project was in compliance with Site and Design Review findings and the OS/D criteria of the Comprehensive (Comp) Plan. Thereby staff and the P&TC recommended approval of the Negative Declaration and the Site and Design Review.

Mayor Mossar declared the Public Hearing open.

John Northway, 437 Lytton Avenue, said the most unique aspect of the project involved the applicant's request to use approximately 8 percent of his entitlement. It was a small project that would allow the applicant to exercise his hobbies of organic gardening and ham radio operations. The placement of the antenna would not require the removal of many trees; however, there was the possibility of trees being trimmed or the removal of a Madrona tree.

Rick Kniss, 1985 Cowper Street, said when he acquired the land about three years prior, he was struck by its beauty and was looking to preserve it primarily as open space to engage in organic gardening, enjoy his hobbies, and protect the land.

Council Member Morton asked what the ratio was between how much the antenna could extend and retract.

Mr. Kniss said the antenna would be retracted 95 percent of the time at 25 to 26 feet. When the antenna was fully extended it would reach 40 feet.

Council Member Morton asked whether there were in-between height variances depending on the reception.

Mr. Kniss said the antenna could extend between 26 and 40 feet.

Council Member Freeman asked whether the accessory building would be used for residential purposes at any point.

Mr. Kniss said no. The accessory building would be used as shade from the elements and for storage.

Council Member Freeman asked whether the home-office would be included.

Mr. Kniss said no.

Council Member Freeman referred to Page 1 of Attachment "A" (CMR:515:03) of the Record of Land Use Approval that stated, "Accessory to this use would be a structure of approximately 1,227 square feet for storage of garden and orchard related equipment, and containing a bathroom and home office areas."

Mr. Kniss said the structure would have a bathroom and a sink. The rest of the space was an open area.

Council Member Freeman said the text related to "home-office" could be extracted from the Record.

Mr. Kniss said yes.

Council Member Burch said he imagined Mr. Kniss would need a table to set the ham radio on and a couple of chairs to sit in. Perhaps those items referred to the "home-office".

Mr. Kniss agreed.

Herb Borock, P.O. Box 632, said the proposed project was part of a four-lot subdivision, whereby the Council approved a Preliminary Parcel Map for the subdivision on July 17, 1978, under Resolution No. 5573. One of the conditions was a dedication of a one-foot wide non-access strip along the entire frontage of Page Mill Road, except for the two driveway openings indicated on the final map and could not find any indication of a non-access strip. He also questioned whether a Conditional Use Permit (CUP) was needed for the communication facility. When a communication device was erected without approval of the design of the device, it was hard to know what it would be 10 or 20 years down the road. It was the role of the Architectural Review Board (ARB) to review the design of a facility.

Jean McCown, 1717 Embarcadero Road, said she had looked at the questions raised by Mr. Borock before Mr. Kniss purchased the property to make sure the access questions were clear. There were areas on all the parcels that were designated for non-access, but each parcel was left with an area where a driveway could be put into the property. Staff commented effectively in the staff report (CMR:515:03) that an amateur ham radio antenna was not interpreted by the City of Palo Alto to be a communications facility that required a CUP.

Mayor Mossar declared the Public Hearing closed.

MOTION: Council Member Burch moved, seconded by Morton, to adopt Attachment "A" to CMR 515:03 and approve the staff and Planning and Transportation Commission recommendation to approve the following:

1. Negative Declaration, in accordance with the California Environmental Quality Act.
2. Site and Design Review application to allow installation of an orchard and garden as an agricultural use, construction of a single-story accessory structure of approximately 1,277 square feet and installation of a retractable amateur radio antenna.

Michael Griffith, Planning and Transportation Commission Chair, said some of the P&TC members who were present at the September 24, 2003, meeting commented on the lack of specific graphic information on the antenna array to be used. The P&TC did receive that evening a photograph of a ham radio antenna, which would be similar to the one Mr. Kniss was intending to use.

Interim City Attorney Wynne Furth said before the Council was a motion to adopt Attachment "A", which was described as an Action 2003 Record of the Council of the City of Palo Alto Land Use Approval, and had previously been done by minute motions.

Council Member Burch had previously walked the length of the property and was impressed by the site and how little impact there would be with the structure. He admired Mr. Kniss' use of the site and his intent to use it for an organic garden and orchard.

Council Member Morton expressed support for the motion. He said although the P&TC had concerns about the intrusion of the antenna, he trusted that Mr. Kniss would choose an antenna that fit the use of the property.

Council Member Lytle expressed support for the motion.

Council Member Kleinberg underscored the owner's intent was to touch upon the land carefully and to respect the environment. She said Mr. Kniss was a gourmet cook and already an amateur ham radio operator. The proposed project was an extension of his active and long-pursued hobbies.

Council Member Freeman expressed support for the motion.

Council Member Kishimoto expressed support for the motion although she had a concern about how a private radio antenna with dimensions of 36 feet by 36 feet going up to 40 feet was allowed without a CUP. She asked whether an antenna of similar dimensions was allowed elsewhere in Palo Alto without a CUP.

Mr. Turner said amateur radio facilities would be allowed in residential districts without a CUP. Commercial telecommunications facilities, such as cellular phone towers, were utility facilities and required CUP's in almost every zone district.

Council Member Kishimoto clarified the only limitation was the 40-foot height limit, which was met because of the 25-foot plus 15-foot antenna.

Mr. Turner said that was correct.

Council Member Kishimoto clarified the footprint of the antenna was not included because it was just the frame.

Mr. Turner said the antenna structure was a pull-type structure with a small foundation that was technically counted as an impervious surface.

Council Member Kishimoto said she was in favor of the motion.

Vice Mayor Beecham said there were a number of good comments made about ham radio operators in the United States. They had become a vital part of the emergency communication systems. When there were disasters in the U.S., ham radio operators were often the ones to get messages out and assist communications. He expressed support for the motion.

MOTION PASSED 9-0.

Council Matters

Mayor Mossar stated she would not participate in the next item that Vice Mayor Beecham was about to make a statement.

Vice Mayor Beecham spoke regarding the Application of Government Code Section 1090 to Contracts Made Between the City of Palo Alto and Stanford University after Council Member-Elect and Stanford Vice-Provost LaDoris H. Cordell Assumes Office.

BY A CONSENSUS OF THE COUNCIL the item would be agendized for the November 24, 2003, regular City Council meeting.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Ojakian noted his thanks and recognition to Mr. David Newman from Stanford University who was leaving Stanford.

Council Member Freeman congratulated the Utilities Department for online account access. She thanked and encouraged Police Chief Lynne Johnson on the minority outreach and demographic information. She sent her deepest sympathy to the Tachibana family.

Council Member Morton spoke regarding the BID item on the Consent Calendar.

Council Member Kishimoto gave her condolences to the Tachibana family.

CLOSED SESSION

The meeting adjourned to a Closed Session at 8:27 p.m.

13. Conference with City Attorney-Potential/Anticipated Litigation
Subject: Written Liability Claim against the City of Palo Alto by the East Palo Alto Sanitary District
Authority: Government Code sections 54946.9(b)(1) & (b)(3)(C)

The City Council met in Closed Session to discuss matters involving potential/anticipated litigation as described in Agenda Item No. 13.

Mayor Mossar announced there was no reportable action.

FINAL ADJOURNMENT: The meeting adjourned at 9:00 p.m.

ATTEST:

APPROVED:

City Clerk

Mayor

11/17/03

97-76

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.