

ORAL COMMUNICATIONS 3

APPROVAL OF MINUTES 3

2. Confirmation of Nicholas Marinaro as Fire Chief 3

3. Amendment No. One to the Memorandum of Agreement Providing for the Implementation of the Santa Clara Valley Urban Runoff Pollution Prevention Program..... 3

3. (Old Item No. 1) Approval of a Resolution Proposing an Increase in the Monthly Storm Drainage Fee from \$4.25 to \$10.00 per Equivalent Residential Unit (ERU) and Approved and Related Resolution Establishing Procedures for a Protest Hearing and Ballot Proceeding for a Storm Drainage Fee Increase 4

4. Request for Council Direction to Proceed with Conceptual Design and Initiate a Combining Zoning District for the Civic Center Police (Public Safety) Building Project - Capital Improvement Program Project PE-98020 8

5. Public Hearing: The Council of the City of Palo Alto will Establish Underground Utility District Number 44. The Council Shall Hear all Protests and Receive Evidence for and Against the Action Herein Proposed, and When and Where They Shall Consider and Finally Determine Whether the Public Necessity, Health And Safety Require the Establishment of the District and the Removal of Poles, Overhead Wires, and Associated Overhead Structures, and the Underground Installation of Wires and Facilities for Supplying Electric, Communication and Similar or Associated Services in the District. All of the Area Encompassing the Areas Contiguous with Portions of 2500 Block Of Embarcadero Road and City Owned Baylands as More

Particularly Described on the Map Entitled "Underground Utility District Number 44."	13
*6. Public Hearing: The Council of the City of Palo Alto will Consider a Request by Lalita and Prasad Parimi for a Preliminary Parcel Map with Exceptions to Create a Two-Lot Subdivision Located at 792 Matadero Road. The Requested Exception Would Allow for Each Parcel to have a Width of 55.84 and 55.85 Feet Where 60 Feet is the Required Minimum Width. Environmental Assessment: an Environmental Assessment and Negative Declaration have been Prepared. Zone District: Single Family Residential District (R-1). [04PLN-00000-00012, 04PLN-00000-00085].	14
*7. Public Hearing: The Council of the City of Palo Alto to Consider a Request by Mark Migdal of the Two Towers Group for a Tentative Map to Create a Five-Lot Subdivision Located at 797 and 807 Matadero Avenue. Environmental Assessment: a Mitigated Negative Declaration has been Prepared. Zone District: Single Family Residential (R-1). [03-SUB-01, 03-EIA-03].	15
8. Colleagues Memo from Mayor Beecham and Vice Mayor Burch re Mayor's Ad Hoc Committee on Sales Tax Enhancement	26
9. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION.....	26
10. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION.....	26
11. CONFERENCE WITH LABOR NEGOTIATOR.....	27
FINAL ADJOURNMENT	27

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:03 p.m.

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

ORAL COMMUNICATIONS

Richard Alexander, 435 Santa Rita, urged the Council to withdraw the Storm Drain item from the Consent Calendar.

APPROVAL OF MINUTES

MOTION: Council Member Morton moved, seconded by Burch, to approve the minutes of November 8, 2004, as corrected.

MOTION PASSED 9-0.

CONSENT CALENDAR

Council Member Cordell moved, seconded by Kleinberg, to remove Item No. 1 from the Consent Calendar.

MOTION: Council Member Morton moved, seconded by Burch, to approve Consent Calendar Item Nos. 2 and 3.

ADMINISTRATIVE

2. Confirmation of Nicholas Marinaro as Fire Chief
3. Amendment No. One to the Memorandum of Agreement Providing for the Implementation of the Santa Clara Valley Urban Runoff Pollution Prevention Program

MOTION PASSED 9-0.

City Manager Frank Benest said he was pleased the Council approved his recommendation to accept Nicholas Marinaro as Fire Chief.

Fire Chief Nicholas Marinaro said he would serve the office of the Fire Chief with honor, integrity and distinction.

Vice Mayor Burch recognized Chief Marinaro's accomplishments.

Council Member Morton said the Chief was a role model. His appointment indicated it was possible to have a career in Palo Alto and serve oneself and the City with distinction.

Council Member Freeman said Chief Marinaro had an extensive and good reputation.

Council Member Kleinberg said it was a pleasure to see someone of Chief Marinaro's quality come up through the ranks to serve and be a member of the Palo Alto community.

AGENDA CHANGES, ADDITIONS, AND DELETIONS

3. (Old Item No. 1) Approval of a Resolution Proposing an Increase in the Monthly Storm Drainage Fee from \$4.25 to \$10.00 per Equivalent Residential Unit (ERU) and Approved and Related Resolution Establishing Procedures for a Protest Hearing and Ballot Proceeding for a Storm Drainage Fee Increase

Council Member Cordell said she pulled the item because she had continued concerns about holding the special election.

Council Member Kleinberg said she wanted to hear further details from the public.

Council Member Morton said he was concerned the measure could be passed, but believed the election should go forward.

Council Member Mossar said the type of storm drain system for the community would be determined by public vote on the fee increase.

Council Member Freeman said she had concerns about the residential survey conducted to obtain a general opinion about the fee. The measure would need to pass with 50 percent of the residents who voted.

Vice Mayor Burch said the Blue Ribbon Committee recommended increasing the monthly storm drainage fee.

Council Member Kishimoto said there were better packages of projects and information to convey to the public.

Larry Klein, 872 Seale Avenue, said there were neighborhoods with inadequate storm drains and the process should be moved forward.

Audrey Sullivan Jacobs, Palo Alto Chamber of Commerce, suggested minor language changes to the ballot so all aspects of the fee increase would be appropriately communicated to the community.

Herb Borock, P.O. Box 632, said he did not feel all residents should be asked to pay for deficient storm drainage in specific areas.

Leannah Hunt, 245 Lytton Avenue, said the storm drain system benefited the entire community.

John Melton, 369 Callaterra Place, urged the Council to support the fee increase and place it on the ballot.

MOTION: Vice Mayor Burch moved, seconded by Morton, to approve the staff recommendation to: 1) Adopt a resolution adopting the amount of the proposed Storm Drainage Fee increase, describing the storm drain capital improvements and program enhancements on which the proposed fee increase will be spent, if approved, and adopting a schedule for the protest hearing and mail ballot proceeding; and 2) Adopt a resolution establishing procedures for the protest hearing and mail ballot proceeding relative to the proposed increase in the Storm Drainage Fee.

Resolution 8483 entitled "Resolution of the Council of the City of Palo Alto Adopting the Amount of the Proposed Storm Drainage Fee Increase, Describing the Storm Drain Capital Improvements and Program Enhancements on Which the Proposed Fee will be Spent if Approved, and Adopting a Schedule for the Protest Hearing and Mail Ballot Proceeding on the Proposed Fee Increase"

Resolution 8484 entitled "Resolution of the Council of the City of Palo Alto Establishing Procedures for the Conduct of a Protest Hearing and Ballot Proceeding Relating to a Proposed Storm Drainage Fee Increase"

Council Member Ojakian asked staff why the \$800,000 had not been moved from the General Fund.

Director of Public Works Glenn Roberts said the General Fund had just recently made contributions to the Storm Drain Fund.

Council Member Ojakian said he felt it was important the City shared in the funding of the storm drain repairs with the public.

AMENDMENT: Council Member Ojakian moved, seconded by Freeman, to have \$800,000 taken from the General Fund and given to Storm Drain Fund on an annual basis.

Council Member Morton said he would not support the amendment to the motion.

Council Member Freeman said she hoped a reserve would be created.

Council Member Mossar said funds would not be available for other services if \$800,000 were dedicated to the Storm Drain Fund.

Council Member Cordell said it was not sensible to propose a fee, tax, or bond without receiving a sense of support from the community.

Council Member Morton said the community programs were funded by the General Fund and would be impacted by the reduction of \$800,000.

Council Member Kishimoto asked whether the \$800,000 would still be transferred out of the General Fund if the measure failed.

City Manager Frank Benest said \$800,000 had been taken out of the General Fund for several years and used for basic maintenance on the storm drain system.

Council Member Kishimoto believed some of the \$800,000 should be used for curbs and gutters to maintain the system.

Council Member Freeman said a reserve was desired and needed. There were areas where money could be saved; one of the areas could be the size of the City's staff.

Council Member Kleinberg said she did not believe the decision to transfer \$800,000 annually should be appended out of context to the main proposal.

Mr. Benest said the \$800,000 subsidy was not included in the budget going forward; the deficit would grow from \$5.2 million to \$6 million.

AMENDMENT FAILED 3-6, Freeman, Kishimoto, Ojakian yes.

Council Member Kleinberg said there was a responsibility to the community to do what was right for the greater good. She asked staff whether the wording for the ballot needed to be voted on by the Council.

Mr. Roberts said an entire page of information explaining the Equivalent Residential Unit (ERU) would appear on the ballot.

Council Member Kleinberg asked whether the acronym ERU was required by law to be included.

Mr. Roberts said it was the term used in the ordinance.

Council Member Kleinberg asked whether a restriction existed, which prohibited an explanation on the ballot that commercial and residential properties were included.

Mayor Beecham said the question was whether the wording could be more user-friendly.

Mr. Roberts said the ballot language would explain how it applied to commercial property, how it worked, and would include a list of specific projects.

Council Member Kleinberg asked the City Attorney whether the sentence the public would read on their ballot could include that the \$10 per ERU applied to commercial and residential properties.

City Attorney Gary Baum said it could.

Council Member Kleinberg said she would like to see the clarification.

Council Member Mossar said the motion should be passed first.

Council Member Kleinberg agreed.

Mayor Beecham said this was the only opportunity the community had to repair the storm drains.

MOTION PASSED 8-1, Cordell no.

MOTION: Council Member Kleinberg moved, seconded by Mossar, to direct staff to amend the ballot language to make it clear the fee applies to both residential and commercial/industrial properties.

Council Member Kishimoto wanted to add the word "decrease" after the word "increase" in the ballot wording.

Council Member Kleinberg said she would not accept it as a friendly amendment.

Council Member Freeman said there should be a clearer definition of the acronym ERU.

Council Member Kleinberg said there would be explanatory language.

Council Member Freeman asked whether the City's web page would have information to assist the public in understanding the process.

Mr. Roberts said there would be a link on the City's web site and also in the information mailed to the property owners.

Vice Mayor Burch asked whether the fee amount would be indicated on each individual's ballot.

Mr. Roberts said the fee amount would be on the notice received, not on the ballot.

Vice Mayor Burch said it would be indicated on the notice if it were one ERU.

Mr. Roberts believed the notice would indicate the dollar amount.

MOTION PASSED 9-0.

REPORTS OF OFFICIALS

4. Request for Council Direction to Proceed with Conceptual Design and Initiate a Combining Zoning District for the Civic Center Police (Public Safety) Building Project - Capital Improvement Program Project PE-98020

Council Member Morton stated he would not participate in the item due to a conflict of interest because he had a client in the area where there might be an impact.

Assistant City Manager Emily Harrison said the County Grand Jury Report indicated serious concerns with the building and its safety for employees and the work performed. She asked for the zoning change required to build on the current building site and, also, for completion of the conceptual design to finalize costs.

Police Chief Lynne Johnson said the building had not met the essential facility standards for a number of years. Storage of safety equipment was inadequate and unsafe. She provided a history of the project from the first needs assessment in 1985 to date.

Director of Public Works Glenn Roberts asked Council to provide staff direction to initiate a zone change and the ability to continue further design work.

George Browning, Sutherland Drive, said reconstruction of the Police building was needed.

Jean Wilcox, 4005 Sutherland Drive, suggested the current Council Chambers be used for the additional space needed by the Police Department and a new Council Chambers be built at the Downtown Library site.

Herb Borock, P.O. Box 632, suggested narrowing Forest Avenue and expanding 40 feet onto the Forest Avenue side of the building.

Joy Ogawa said the option of a new Police building at the Alma substation site at 841 Alma Street should be explored.

Elaine Meyer, 609 Kingsley Avenue, said the City should not build over the 50-foot height limit restriction.

Mike Shealy, 70 Waverley Oaks, said a facility should not stand in the way of the development of the Police force.

Council Member Kleinberg asked staff about the sites that had been considered.

Mr. Roberts said because the Police Department and the Council Chambers were physically interconnected, the Council Chambers had been listed as a remodel.

Council Member Kleinberg asked how long the Council would be displaced.

Mr. Roberts said additional conceptual engineering needed to be completed to answer that question.

Ms. Johnson said at the inception, the Council did not want the Police building to be in a residential area.

Council Member Kleinberg asked about the Alma substation site.

Mr. Roberts said staff had preliminary analysis of the Alma substation site. The size of the site was too small, did not have parking and had limited access.

Council Member Mossar asked whether purchasing existing real estate had been considered for a new Police building.

Ms. Harrison asked whether she was referring to a temporary relocation.

Council Member Mossar said she was speaking about a permanent relocation.

Ms. Harrison said the Essential Facility Standards (EFS) could not be met by any normal commercial building.

Council Member Mossar said remodeling an existing facility would not work.

Ms. Harrison said it would be expensive to remodel to EFS.

Council Member Mossar said she had concerns about the height limit.

Ms. Harrison said it was not staff's first choice to locate in the Civic Center. The cost of land was prohibitive; the best use of the resources would be to use land already owned.

Council Member Mossar stated she had concerns about the building.

Council Member Cordell said it was appropriate to go forward.

MOTION: Council Member Cordell moved, seconded by Ojakian, to approve the staff recommendation to direct staff to proceed with the conceptual design and initiate a combining zoning district for the Civic Center Police (Public Safety) Building Project, Capital Improvement Program Project PE-98020.

Council Member Ojakian said many sites had been rejected. Square footage had been gauged by determining services needed.

Council Member Kishimoto asked about the setback from the sidewalk.

Director of Planning and Community Environment Steve Emslie said there would be green space between the sidewalk and the building.

Council Member Kishimoto queried if the open space in the middle would be a glass atrium.

Senior Engineer Elizabeth Ames said the area would be open to let in the daylight.

Council Member Kishimoto asked about the overall process and the sequencing of the building design and the zoning change.

Mr. Emslie said if the Council initiated the zone change amendment, it would go to the Planning and Transportation Commission (P&TC). The P&TC would hold one or multiple public hearings and return with a recommendation to the City Council.

Council Member Kishimoto asked when the plan would go to the Architectural Review Board (ARB).

Mr. Emslie said the ARB would serve in an advisory role.

Council Member Kishimoto asked whether there were two actions; a building design and a zoning change.

Mr. Emslie confirmed.

Council Member Kishimoto said the ARB might be advisory for the zoning change.

Mr. Emslie said the design had been to the ARB for the conceptual design.

Council Member Kishimoto said the Council was being asked to authorize \$275,000 to proceed to 30 percent design. She questioned when the zoning change was initiated whether a signal was being sent to staff and the P&TC that the Council was authorizing the concept of building up to a 60-foot height.

Mr. Emslie said the Council would not be bound by the terms of the ultimate recommendations. The Council would be asking the P&TC and the ARB to study the issue and return to the Council with recommendations.

Council Member Kishimoto said the next step for Council would be a report back from the Police Department and Planning Division on the zoning change.

Mr. Roberts said staff would finalize with the consultant the additional fee to design to the 30 percent level. Staff would return to Council with that contract amendment for the additional work.

Vice Mayor Burch asked about eliminating Forest Avenue between the Civic Center block and the block to the south.

Mr. Roberts said the concept had been explored when site alternatives were being reviewed. There were major utility conflicts existing on Forest Avenue.

Vice Mayor Burch commented it would be prohibitively expensive.

Mr. Roberts confirmed. The logistics were prohibitive.

Mayor Beecham asked whether it would be too expensive if only the surface was built on and no underground parking was included.

Mr. Roberts confirmed. There was a utility governed by Interstate Commerce Commission regulations, which required access.

Council Member Kleinberg said she was concerned with the responsibility to provide excellent public safety services to the community.

Council Member Freeman said there was a lot of money already invested and the issue should go forward. She was concerned about spending more money on the design when the City did not have \$43 million for construction.

Ms. Harrison said it was unknown how much it would cost until there was a 30 percent design.

Ms. Johnson said Council had approved the \$275,000 in the previous Capital Improvement Program (CIP).

Ms. Harrison said \$800,000 had already been allocated.

Council Member Freeman said she had concerns about daylight planes, and when the information would be provided to Council.

Mr. Roberts said the daylight planes would be developed at the 30 percent design stage and the zone change process.

Council Member Freeman asked whether approval of further investigation gave the go ahead to increase the height limitation.

Mr. Roberts said it did not.

Mayor Beecham said Council was providing conceptual direction to develop further plans for Council to review.

Council Member Freeman said the height issue was a major concern.

Council Member Kishimoto said she supported the project going forward to the next step.

Council Member Mossar said after looking at the 30 percent drawings, her perception was the 60 feet height was not going away.

Mayor Beecham said the process had taken 20 years. An additional 50,000 square feet required the constraints and limits outlined by staff.

MOTION PASSED 8-0, Morton not participating.

PUBLIC HEARINGS

5. Public Hearing: The Council of the City of Palo Alto will Establish Underground Utility District Number 44. The Council Shall Hear all Protests and Receive Evidence for and Against the Action Herein Proposed, and When and Where They Shall Consider and Finally Determine Whether the Public Necessity, Health And Safety Require the Establishment of the District and the Removal of Poles, Overhead Wires, and Associated Overhead Structures, and the Underground Installation of Wires and Facilities for Supplying Electric, Communication and Similar or Associated Services in the District. All of the Area Encompassing the Areas Contiguous with Portions of 2500 Block Of Embarcadero Road and City Owned Baylands as More Particularly Described on the Map Entitled "Underground Utility District Number 44."

Mayor Beecham declared the Public Hearing open at 9:35 p.m. and after receiving no requests to speak, declared the Public Hearing closed.

MOTION: Council Member Mossar moved, seconded by Burch, to approve the staff recommendation to adopt the Ordinance to create Underground Utility District 44 and thereby amend section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code.

Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Section 12.16.020 of Chapter 12.16 of Title 12 of the Palo Alto Municipal Code by Establishing Underground Utility District No. 44"

MOTION PASSED 9-0.

- *6. Public Hearing: The Council of the City of Palo Alto will Consider a Request by Lalita and Prasad Parimi for a Preliminary Parcel Map with Exceptions to Create a Two-Lot Subdivision Located at 792 Matadero

Road. The Requested Exception Would Allow for Each Parcel to have a Width of 55.84 and 55.85 Feet Where 60 Feet is the Required Minimum Width. Environmental Assessment: an Environmental Assessment and Negative Declaration have been Prepared. Zone District: Single Family Residential District (R-1). [04PLN-00000-00012, 04PLN-00000-00085].

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

Associate Planner Russ Reich said even though the proposed lots would be narrower than the required width, they would be consistent with the existing lots in the neighborhood.

Mayor Beecham declared the Public Hearing open at 9:40 p.m.

Lalita and Prasad Parini said there were no special circumstances concerning the properties, no protected trees or habitat, and the properties were not adjacent to any creek. Mr. Parini said he would like to build two houses; each approximately 2,650 square feet on each property. All City guidelines would be followed during the construction.

Mayor Beecham declared the Public Hearing closed at 9:50 p.m.

MOTION: Council Member Freeman moved, seconded by Cordell, to approve the staff and Planning and Transportation Commission (P&TC) recommendation to: 1) approve the Negative Declaration (Attachment E to CMR:500:04), with a finding that the project will not result in significant environmental impacts; and 2) approve the preliminary Parcel Map based on the findings and conditions in the draft Record of Land Use Action (Attachment A).

Council Member Morton asked if the property was divided into two lots, would there be additional traffic and parking problems, and would a precedent be set for neighboring lots.

Director of Planning and Community Environment Steve Emslie said it was important to create lots that conformed to the City's minimum standards in order to meet the required parking standards. It was not foreseen that trip generation would increase traffic in the neighborhood.

Council Member Morton asked whether there would be a guarantee that the two houses would be one-story.

Mr. Emslie said there was no guarantee.

Council Member Morton asked whether that condition could be imposed.

Mr. Emslie said Council could initiate a single-story overlay, but staff would not recommend that action.

Council Member Morton asked whether Council could go before the Architectural Review Board (ARB)

Mr. Emslie said the ARB reviewed projects developed in conjunction with three or more units together.

Council Member Morton queried if there would be a legal way to impose the requirements.

Mr. Emslie said they would be legally required to have the appropriate Floor Area Ratio (FAR) for the size of the lot under the Zoning Ordinance and also an Individual Review (IR) if two stories were built.

MOTION PASSED 9-0.

- *7. Public Hearing: The Council of the City of Palo Alto to Consider a Request by Mark Migdal of the Two Towers Group for a Tentative Map to Create a Five-Lot Subdivision Located at 797 and 807 Matadero Avenue. Environmental Assessment: a Mitigated Negative Declaration has been Prepared. Zone District: Single Family Residential (R-1). [03-SUB-01, 03-EIA-03].

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

Mayor Beecham asked whether the Council had information that needed to be disclosed.

Council Member Cordell said she had a conversation with Owen Byrd who represented the property owner and did not receive any further information than what had been disclosed.

Council Member Kleinberg said she had a conversation with Owen Byrd, had e-mail communications with Doug Moran, and a conversation with Pat Byrd, who was a member of the Planning and Transportation Commission (P&TC). In all cases, she had asked clarifying questions. She also had a conversation with the City Attorney for legal issues.

Council Member Freeman said she had visited the property. While there, she met the next-door neighbors and Mr. Moran who lived across the street. She also spoke with the City Attorney regarding the legality.

Council Member Mossar said she spoke with Owen Byrd.

Director of Planning and Community Environment Steve Emslie said the recommendations from the P&TC and staff were different. In their Record of Land Use Action, the P&TC had legal findings that caused their recommendation to be denied. The staff's analysis found conforming units could be built on the project. There were two recommendations before the Council.

Planner Steven Turner said the existing site included three separate parcels adjacent to Matadero Creek in a single-family residential neighborhood. The five lots to be created would be zoned single-family residential. Each lot complied with the development standards for sites within the R-1 district, which included lot size, width, and depth and setback areas. Staff recommended approval of the project.

Mayor Beecham declared the Public Hearing open at 10:04 p.m.

Owen Byrd, 418 Florence Street, said he represented the applicant Mark Migdal. The Planning and Transportation Commissioners felt there was too much development on a site. He asked the Council to review the findings and believed it would lead to approval. The project conformed to all the regulations.

Council Member Mossar asked Mr. Byrd if the project were limited to three houses on three lots, what was his understanding regarding the setbacks required relative to the creek.

Mr. Byrd said the 52-foot setback would be required from the centerline of the creek. The Santa Clara Valley Water District (SCVWD) imposed a 32-foot easement; the Code enforced an additional 20 feet, which was a total of 52 feet.

Council Member Mossar asked whether the setback from the creek would be the same whether there were three houses or five houses.

Mr. Byrd confirmed.

Jean Wren, 800 Matadero Avenue, asked the Council to deny the project. The previous property owner kept large quantities of pesticides for his tree care service in the out buildings on the property. The spray equipment was cleaned and recharged on the property. Toxins had contaminated the upper layers of the soil and should not be disturbed.

Jim Sagorac said more moderately priced homes in Barron Park were needed. The proposed homes would be in character with the surrounding neighborhoods.

Gary Curtis said he was opposed to the development because there were too many houses too close to the existing trees on the property.

Anatol Kaganovich, 706 La Para Avenue, said he supported the request for the subdivision.

Anthony Ho, 137 Amanda Lane, Los Gatos, said all five lots would be able to accommodate three-bedroom homes.

Menachem Cohen, 830 Arroyo Court, said his home was one of a five-lot project similar to the proposed project. He supported the project.

Ken Aueobach, 825 Matadero Avenue, said he had concerns about five two-story houses crowded onto the lot and towering over the predominantly one-story houses in the neighborhood. He also had concerns about traffic and the destruction of the trees on the property.

Council Member Morton asked Mr. Aueobach whether he had concerns about the possibility of two-story houses or the possibility of five houses.

Mr. Aueobach said his major concern was creating a different look in the neighborhood.

Douglas B. Moran, 790 Matadero Avenue, said the Council had two questions to address: 1) the mitigated negative declaration, and 2) the deficient habitat report. It was the applicant's burden to demonstrate to a high degree of confidence that the proposed Subdivision Map would lead to a successful outcome. The applicant had failed to do that.

Council Member Mossar asked why the three parcels appeared to have special consideration for riparian habitat.

Mr. Moran noted the plan said conditions should be improved and mistakes not repeated.

Council Member Mossar asked why the property would be held to a different standard than other property.

Mr. Moran said there would be a lot of pressure on the setbacks because the backyards were small.

Council Member Mossar said setback requirements would remain the same.

Mr. Moran said the setbacks were a legal requirement.

Ariella Sherstinsky, 4162 King Arthur Court, said she supported the project. The homes would improve the appearance and blend with the neighborhood.

Bob Moss, 4010 Orme Street, said the P&TC should be supported. The only cul-de-sac similar to the current project was Julie Court, which was imposed on Barron Park 35 years prior by the County.

Council Member Morton asked Mr. Moss what was offensive about Julie Court.

Mr. Moss said Julie Court was narrow and had inadequate parking for guests whose cars spilled over onto Matadero Avenue.

Council Member Morton asked about guests visiting homes on Matadero Avenue and whether parking spilled out.

Mr. Moss said Julie Court had a problem because of the parking issue.

Ralph Osterling, 1650 Borel Place, San Mateo, said the riparian corridor and the associated values were thoroughly protected. The health of the trees and the weeds after the rain on the property indicated there was not a pesticide problem in the soil.

Prasad Parimi said headlights from cars coming out of the cul-de-sac would be directed toward his house.

Zina Kaganovich, 706 La Para Avenue, said Mark Migdal built beautiful homes and supported his plan.

Lubov Valetsky, 788 Encina Grande Drive, asked the Council to support the proposed subdivision.

Owen Byrd, 418 Florence Street, said the additional conditions proposed by staff regarding architectural review and soil testing was agreeable with them. The architectural review process would deliver homes of sufficient architectural variety to serve the neighborhood. There had not been evidence introduced that the habitat of the riparian corridor was at risk. He asked that the project be approved.

Vice Mayor Burch said there was reference to four and five bedrooms.

Mr. Byrd said what Vice Mayor Burch was looking at was a two-dimensional subdivision map. The rooms in the homes were issues to be addressed in the future.

Vice Mayor Burch said the applicant mentioned the project would contain three-bedroom houses.

Mr. Byrd said Mr. Midgal had not mentioned three-bedroom houses.

Mayor Beecham said the applicant had not made that testimony.

Mr. Byrd said he did not want to presume the bedroom count.

Mayor Beecham declared the Public Hearing closed at 10:50 p.m.

Planning and Transportation Commissioner Annette Bialson said the P&TC did not feel comfortable with five homes on the parcel.

Council Member Morton asked about lot size and density.

Mr. Emslie said the gross figure included the creek easement. The Code excluded creek easements from lot areas for building purposes.

Council Member Morton said he had a problem with the density at 792 Matadero Avenue when the split was acceptable, but with similar lot sizes across the street it became too dense. He asked for an explanation.

Ms. Bialson said there was concern about the size of the cul-de-sac and the protected trees on the parcel.

Council Member Morton said the arborist and the client's tree specialist had answered those concerns but not to the satisfaction of the P&TC.

Ms. Bialson confirmed. There was substantial public testimony the P&TC had listened to.

Council Member Morton asked how the traffic issue was measured.

Ms. Bialson said the generation of traffic was a minor issue. The impact would be caused from lack of parking on the cul-de-sac, which would force parking onto Matadero Avenue.

Council Member Morton said there were three houses where parking overflowed directly onto Matadero. He asked how it could be worse where there was a cul-de-sac where some of the traffic would be absorbed by the cul-de-sac.

Mr. Emslie said the volume was not an issue. The P&TC discussed the concern that additional pressure would be placed on Matadero Avenue because the cul-de-sac was full or too many curb cuts and not enough parking spaces. There was a safety concern because there was not a shoulder for parking.

Council Member Morton asked whether there would be the same concern with three houses on the exit off of Matadero Avenue.

Mr. Emslie said the parking would be a problem on the cul-de-sac.

Council Member Morton asked whether a single-story overlay would be imposed. He asked whether each of the units would be required to return to the Architectural Review Board (ARB).

Mr. Emslie said a single-story overlay would be restrictive, and staff would not recommend it.

Council Member Kishimoto asked Managing Arborist Dave Dockter the status of the site design on Lot 1 where the driveway came off Matadero Avenue.

Managing Arborist Dave Dockter said the preference, as discussed at the P&TC, was for the driveway to be off of the court. The roadway would be further away from the tree roots.

Council Member Kishimoto asked whether preference meant the City could permit it.

Mr. Dockter said it was preferable to not impact the tree roots. The driveway should be as far away from the tree as possible. A different type of design of driveway could be mitigated to preserve the tree roots, which would allow the driveway to come closer to the tree.

Council Member Kishimoto asked about a cantilevered driveway.

Mr. Dockter said the driveway could be a raised grade over the roots.

Council Member Kishimoto asked about the review of the root location and what the implications were for development.

Mr. Dockter said a specific tree preservation plan would need to be submitted for each of the five lots. There would be a minimum space for structures to occur within the proximity of the trees. The project arborist and staff would review the specific design, which would be dictated by the tree roots.

MOTION: Council Member Kishimoto moved, seconded by Freeman, to approve the Planning and Transportation Commission (P&TC) recommendation to deny the request for a Tentative Map to create a five-lot subdivision, as described in the Record of Land Use Action, Attachment A of CMR:504:04).

Council Member Kishimoto asked whether one finding that could not be met could be the basis of denial.

City Attorney Gary Baum confirmed.

Council Member Kishimoto said the site was not suitable for the proposed density of development.

Council Member Freeman questioned the concrete walk in the cul-de-sac in front of Lot 1.

Mr. Turner said the concrete walk would be removed.

Council Member Freeman said she had not seen a concrete walk when she visited the property. She questioned whether there would be a concrete walk around the cul-de-sac.

Mr. Turner said the applicant should be asked.

Mr. Emslie said the label "concrete walk" was to be removed.

Mayor Beecham asked whether there was a standard in Barron Park regarding sidewalks.

Mr. Emslie said there were pedestrian facilities in the cul-de-sac.

Council Member Freeman stated there would be sidewalks in the cul-de-sac.

Mr. Emslie said the sidewalks met the Barron Park standard.

Mr. Turner said there was rolled curbed area but no sidewalks.

Council Member Freeman said her concern was that the width of Emma Court was wider than Matadero Avenue. She asked about the Redwood trees that had been cut in the middle of the cul-de-sac.

Mr. Dockter said there were seven, five to seven-foot Redwood truncated trees. The trees did not have a top.

Mayor Beecham asked how the Redwood trees would affect the Council's decision that evening.

Mr. Dockter said they would not.

Mr. Emslie said the trees had been cut prior to the Tree Ordinance.

Council Member Freeman asked about the legal perspective.

Mr. Emslie said the trees were cut prior to the City regulating trees. The City Arborist needed to interpret how to apply the City's Tree Ordinance with the current site condition. It would not affect the approval of the subdivision.

Council Member Freeman asked for clarification that a subdivision could be approved that could not have a cul-de-sac because of protected Redwood trees.

Mr. Baum said the Redwood trees were no longer viable and would probably be replaced.

Mr. Dockter confirmed.

Council Member Kleinberg asked for explanation of the setbacks.

Mr. Turner said the Santa Clara County Water District (SCCWD) easement was 52 feet and the rear yard setback had a no-build easement.

Council Member Kleinberg said 52 feet was the easement.

Mr. Turner confirmed.

Council Member Kleinberg asked the City Attorney if the Council voted in favor of the motion, could the Council vote on another motion, which would indicate approval of a lesser project.

Mr. Baum said it would be more efficient to make a substitute motion and redesign and meet all the findings.

Council Member Kleinberg asked what if the majority of the Council agreed and one of the findings could not be made.

Mr. Baum said if there were changes, which would allow the project to meet a finding that should be completed first.

Council Member Kleinberg asked whether each finding would have to be reviewed.

Mr. Baum said each finding would not have to be reviewed. There had been only one finding presented.

Council Member Kleinberg said there could be others that were unknown. The maker of the motion said there only had to be a problem with one finding.

Mr. Baum said the maker of the motion had not stated that. He suggested to choose the one finding and fix the issue. If there were other issues, they were at her discretion to fix them.

Council Member Kleinberg said she did not disagree with the motion, but would like to propose that the Council approve a less dense project that met some of the policy requirements to make the findings to approve the Tentative Map.

Mayor Beecham asked whether a four-parcel map could be approved at that time.

Mr. Baum said he felt the Council had the ability to adjust the count of the lots, approve it that evening, and still make the findings.

SUBSTITUTE MOTION: Council Member Kleinberg moved that Council not approve the tentative map as submitted, but make findings to approve a tentative map of four parcels and consistent with staff's recommendations originally and require soil with remediation, as necessary.

Mr. Baum said it would need to be approved with four parcels and indicate any design changes necessary to meet the findings.

Council Member Kleinberg said she did not have the dimensions of the cul-de-sac. She requested dimensions prior to development, and concurred any residual toxic soil be removed.

Mr. Baum reiterated there should be appropriate remediation following soil samples.

SUBSTITUTE MOTION FAILED FOR LACK OF A SECOND

Council Member Mossar said she had trouble understanding three lots and three large two-story houses with individual review, cars and guests and on

street parking, and 52-foot setbacks and the cul-de-sac with five lots. She could not make a finding that the two were different. She supported the staff recommendation and would not support the motion.

SUBSTITUTE MOTION: Council Member Morton moved, seconded by Council Member Mossar, to support staff's recommendation to approve the Tentative Map, as described in the Record of Land Use Action, Attachment B. Further, to require soil samples with remediation as necessary.

~~ACTION NO. 2004-____~~
~~RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO~~
~~LAND USE ACTION FOR 797 & 807 MATADERO AVENUE:~~
~~TENTATIVE MAP 03 SUB 01 (MARK MIGDAL, APPLICANT)~~

Council Member Morton said he wanted to move forward.

Council Member Cordell asked whether the Council should be able to make the findings under the substitute motion.

Mayor Beecham said the findings should be in staff report CMR:504:04.

Council Member Cordell said it would be consistent with the document that Mr. Byrd gave the Council. She received confirmation that the findings were made for the five lots.

Council Member Kleinberg said she wanted to make a friendly amendment with regard to the soil samples and remediation if there were toxics.

Mayor Beecham said staff had indicated that the issue would go to the ARB.

Council Member Morton said the motion would include an explicit requirement that there be soil sampling done and appropriate remediation if there were negative findings.

Council Member Kishimoto said there was a question about the difference between three and five lots. The standard of review was questioned and whether the Council was reviewing a two-dimensional plan or being asked to review the two-dimensional plan knowing where the protected trees were and what the zoning would allow.

Mr. Emslie said staff had determined where the building pads would be, the setback daylight planes, and relationship to the trees.

Council Member Kishimoto asked whether second units would be allowed under the proposal.

Mr. Emslie said they would, provided they could meet all the requirements.

Council Member Kishimoto said she did not know how the subdivision could be approved when it was not known where the lines were.

Council Member Cordell asked if the motion went forward, would the Council be approving a subdivision of five on a cul-de-sac.

Mayor Beecham clarified the motion on the floor was to approve the Subdivision Map as submitted.

Council Member Cordell said the map included five parcels. The Council did not know how many homes would be built on the five parcels.

Mayor Beecham said there would be one home per parcel. It was yet to be decided whether there would be second homes allowed, per State requirements.

Council Member Cordell said there were potentially five homes.

Council Member Morton said the Council would approve five smaller houses, opposed to three larger houses.

Mr. Emslie said the floor area was appropriate to the lot size.

Council Member Kleinberg said she had concerns about the density. Five houses had concerned the more contiguous neighbors. She felt there would be a congestion problem. Three lots invited larger homes plus second units.

Council Member Ojakian said it was important to determine how the project would impact the neighborhood.

SUBSTITUTE MOTION FAILED 4-5, Burch, Kleinberg, Morton, Mossar yes.

SUBSTITUTE MOTION: Council Member Cordell moved, seconded by Kleinberg, to deny the applicants Tentative Map application and return to the Planning and Transportation Commission (P&TC) with direction for the Tentative Map for four parcels with soil remediation.

Mr. Emslie said the Planning Land Use Attorney had advised the P&TC there were difficulties modifying a map from a dais. The advice was to reject the map and allow the applicant to propose a smaller subdivision. He and the City Attorney tried to explore a way in which the Council could refer the map

back to the P&TC with specific instructions for them to return with a four-lot subdivision.

Mayor Beecham asked whether the Council could vote on a four lot that evening.

Mr. Baum said they could vote on a four lot but, in order to get over the objections of the applicants attorney, it would be advisable to refer the project back to the P&TC with directions for four parcels.

Mr. Emslie said the City Subdivision Ordinance established the P&TC as the recommending body.

Council Member Cordell said she would like to see the applicant go forward. She would like to see it return to the P&TC. The Tentative Map would be denied.

Mr. Baum said the first map should be denied.

SUBSTITUTE MOTION PASSED 8-1, Beecham no.

COUNCIL MATTERS

8. Colleagues Memo from Mayor Beecham and Vice Mayor Burch re Mayor's Ad Hoc Committee on Sales Tax Enhancement

BY A CONSENSUS OF THE COUNCIL to establish a new ad hoc committee to identify and examine policies and administrative actions appropriate to enhance Palo Alto's retail sales tax base by attracting the right mix of new retail businesses to Palo Alto.

CLOSED SESSION

The meeting adjourned at 11:50 p.m. to a Closed Session.

City Attorney Gary Baum noted that Item Nos. 9 and 10 would be continued to December 13, 2004, regular City Council meeting.

- ~~9. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION
Subject: Ina Jekel and Lance Jekel v. City of Palo Alto, et al.; SCC #1-03-CV-010476
Authority: Government Code section 54956.9(a)~~

- ~~10. CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION~~

~~Subject: Telik, Inc., et al. v. City of Palo Alto, et al., Santa Clara Superior 1-04-CV-027100~~
~~Authority: Government Code section 54956.9(a)~~

11. CONFERENCE WITH LABOR NEGOTIATOR
Agency Negotiator: John Shannon
Unrepresented Employees: City Manager, City Clerk, City Auditor
Authority: Government Code section 54957.6(a)

The City Council met in Closed Session to discuss matters regarding labor negotiation, as described in Agenda Item No. 11.

Mayor Beecham announced there was no reportable action taken.

FINAL ADJOURNMENT: The meeting adjourned at 12:15 a.m.

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.