

Special Meeting
June 19, 2006

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ADJOURNMENT: The meeting adjourned at 12:15 a.m. 34

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:03 p.m.

PRESENT: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg (arrived at 5:07 p.m.), Morton (arrived at 5:07 p.m.), Mossar

CLOSED SESSION

MOTION: Council Member Beecham moved, seconded by Drekmeier, to move Item No. 18 from the Special Meeting agenda beginning at 6:00 p.m. to become CLOSED SESSION Item No. 2

Council Member Klein could not participate on Item No. 2 because his firm represents The Embarcadero Publishing Company.

MOTION PASSED 6-0, Kleinberg, Morton absent, Klein not participating.

1. CONFERENCE WITH LABOR NEGOTIATOR
City Manager and his designees pursuant to Merit Rules and Regulations (Frank Benest, Emily Harrison, Russ Carlsen, Carl Yeats, Darrell Murray, Lalo Perez, Sandra Blanch, Gary Baum)
Employee Organization: Local 1319, International Association of Fire Fighters
Authority: Government Code Section 54957.6(a)

Council Member Klein left the meeting at 5:40 p.m.

2. (Old Item 18) CONFERENCE WITH CITY ATTORNEY -- EXISTING LITIGATION
Subject: The Embarcadero Publishing Company, dba The Palo Alto Weekly v. The City of Palo Alto, SCC #1-05-CV-049362
Authority: Government Code section 54956.9(a)

Mayor Kleinberg announced there was no reportable action taken.

ADJOURNMENT: The meeting adjourned at 5:55 p.m.

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:10 p.m.

PRESENT: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg, Morton, Mossar

STUDY SESSION

1. Public Safety Building Blue Ribbon Task Force Report

The Blue Ribbon Task Force Co-Chairs Vic Ojakian and Lanie Wheeler presented their report to the City Council.

- Introduction and Background: On December 12, 2005, City Council made the decision to authorize the formation of the BRTF, which would include a cross section of community members. In 2006, the City Council identifies a public safety building as a priority. Between January and June 2006, the BRTF visited other public safety buildings, used subcommittees, conducted 13 meetings and held two public meetings. The BRTF's goal was to produce a report in June 2006.
- Need: The BRTF strongly recommends a new public safety building as the current building is marginally adequate for the users and functions. The current facility was built before earthquake building codes and does not meet "essential services" standards. Since the building was built, there are new or newly recognized types of criminal activity and law enforcement obligations, (like DNA safeguarding) etc. Staffing has also increased since the building was built.
- Size: The BRTF conducted an analysis of the current building and its functionality, as well as reviewed space recommendations provided by staff and architect specializing in public safety facilities. The BRTF visited other public safety facilities. After thorough analysis, the proposed building size was 49,600 square feet.
- Site: An evaluation was conducted based on agreed criteria: parking, certain geologic conditions, vehicular access on two sides, proximity to other public safety functions, centrally located, doesn't produce excess burden on neighboring uses, not adding unduly to costs. The BRTF evaluated 28 sites, which was then reduced to six and then to four. The BRTF has selected the Park Boulevard site as the preferred site and then alternative sites are: existing public parking lots on either

Gilman or California Avenues and renovate and expand the existing building.

- **Cost Analysis:** After researching the options, the BRTF found that new construction costs are more favorable compared to renovation or replacing parking. All cost ranges provided are estimations based on real items and we shouldn't budget on these costs. The BRTF recommends that an expert panel of architects, contractors, project managers and others meet to determine more precise costs.
- **Financing:** The BRTF has reviewed various financing tools and approaches, but defers to the City Council on the most appropriate approach. The options researched were General Obligation (GO) bonds, Certificates of Participation (COPs) and a parcel tax. The BRTF recommends Council to consider using rental savings/revenues if current facility is vacated for debt financing. Also recommended is that staff begin discussions with Stanford University on capital costs contribution for the Communications Center.

Co-Chairs Ojakian and Wheeler thanked the BRTF members for their hard work and dedication to the project. Special thanks were given to Ray Bacchetti who drafted the report to Council. Co-Chairs Ojakian and Wheeler thanked staff for their quick response and thorough job on the project and conveyed they should all be highly commended for their work. Michael Ross, RossDrulisCusenbery Architects, Inc., was also thanked for his invaluable assistance and education provided to the BRTF throughout the process.

The Website for the project is www.cityofpaloalto.org/publicsafetybuilding.

Mayor Kleinberg thanked the BRTF for a thorough summary report and noted appreciation to members for giving so much time to this project.

Jim Burch, 177 Hemlock Court, expressed his gratitude to the members of the Blue Ribbon Task Force, who represented diverse and expert opinions and worked together. The Blue Ribbon Task Force strongly recommended the City proceed expeditiously to build a new Public Safety building. Palo Alto had an outstanding Police Department and needed the facilities and tools to do the necessary work.

George Browning, Sutherland, said he attended all the Blue Ribbon Task Force meetings and was impressed the way the Task Force performed. People should be aware that all the services the City had were centrally located through the Dispatch/Communication Center, and the building was a Public Safety building. The Council might be bombarded by people who had not read the report and had opinions about the police and whether the

building was needed. The Council needed to be aware that opinions were not facts. The building was needed.

Robert Moss, 4010 Orme Street, said the Blue Ribbon Task Force worked thoroughly, thoughtfully, and carefully, to develop a report that should convince almost everyone in the City. People who looked at the report rationally would understand the need for the building and the rationale for the size and location. The report addressed potential offsite use, specifically for records, property evidence, and the warehouse. Storage items could be moved offsite. A conference room was necessary and could also be used for remote information transfer. Staff might want to consider retaining a small portion of the existing police station for a Downtown Police facility.

Doris Dahlgren, 360 Sheridan Avenue, #111, was pleased to see that the Council seemed eager to do some innovative thinking. The Council was urged to be supportive of the fact that Chief Johnson stresses improvements in the Department relating to education and making the Public Safety Building a magnet where people felt comfortable.

No action required.

SPECIAL ORDERS OF THE DAY

1a. Proclamation Honoring Brian Martin for His Achievements

Mayor Kleinberg said the City was honoring Brian Martin in the sport of Luge. A proclamation was read and then presented to Mr. Martin.

Council Member Morton said Canopy was going to plant a tree in Mr. Martin's Honor.

Brian Martin thanked the Council for the proclamation and for honoring him for his accomplishments.

2. Appointment of Applicants to the Utilities Advisory Commission (UAC)

FIRST ROUND OF VOTING FOR UTILITIES ADVISORY COMMISSION

VOTING FOR DEXTER DAWES

Barton, Beecham, Drekmeier,
Kishimoto, Klein, Kleinberg,
Morton, Mossar

VOTING FOR ROMARAO DIGUMARTHI

Cordell

VOTING FOR MARILYN KELLER

Barton, Beecham, Cordell,
Drekmeier, Kishimoto, Klein,
Kleinberg, Morton, Mossar

VOTING FOR WALTER LOWENSTEIN

Morton

VOTING FOR DICK ROSENBAUM

Barton, Beecham, Cordell,
Drekmeier, Kishimoto, Klein,
Kleinberg, Morton, Mossar

City Clerk Donna Rogers announced on the 1st ballot, Dick Rosenbaum with nine votes, and Dexter Dawes and Marilyn Keller with eight votes were appointed to the Utilities Advisory Committee for three-year terms ending June 30, 2009.

Mayor Kleinberg thanked those who applied and expressed appreciation to their willingness to serve on Boards and Commissions.

3. Resolution 8625 entitled, "Resolution Expressing Appreciation to Glen Bethel Upon His Retirement"

Mayor Kleinberg read the resolution and presented it to Glen Bethel.

MOTION: Council Member Morton moved, seconded by Barton, to approve Resolution Expressing Appreciation to Glen Bethel Upon His Retirement.

MOTION PASSED 9-0.

Director of Public Works Glenn Roberts said in addition to the service he provided to Palo Alto, Mr. Bethel helped ensure the quality of water in San Francisco Bay. Mr. Bethel was an instrument technician who kept the systems running, was trusted by his fellow employees to maintain the systems, and was a commuter (riding his bike to work before there was a commuter program in Palo Alto.)

Glen Bethel thanked the Council for honoring him with the Resolution.

ORAL COMMUNICATIONS

Herb Borock, P.O. Box 632, spoke regarding regular Council meetings.

CONSENT CALENDAR

Council Member Barton said a letter was placed at the Council Member's places prior to the meeting. The letter was from a member of the public suggesting he had a conflict of interest in Item No. 4. The author of the
06/19/06

letter was incorrect in the statement that his amendment to the motion regarding exempting affordable housing would affect his wife's company that had a pending project. The project pending was a market rate project and not an affordable project. His wife was a salaried employee and it was not reasonable to assume her income would be affected.

Council Member Mossar stated she would not participate in the approval of Agenda Item No. 6 due to family holdings of telecommunications stock and because she is an employee of the Media Center.

Council Member Morton stated he would not participate in the approval of Agenda Item No. 6 due to family holdings of telecommunications stock.

Mayor Kleinberg stated she would not participate in the approval of Agenda Item No. 6 due to her employment with Joint Venture Silicon Valley Network, which was involved in a number of telecommunications efforts.

MOTION: Council Member Mossar moved, seconded by Klein, to move Item No. 12 from the Consent Calendar to become Item No. 17A.

Dennis Martin, Home Builders Association of Northern California, 69 Lester Avenue, San Jose, spoke about the proposed second reading of the ordinance in Item No. 4.

Herb Borock, P.O. Box 632, requested that agenda Item No. 6 be removed from the Consent Calendar in order to amend the resolution, and referred to Item No. 13 for a pre-screening request stating this request can only be made by the landowner or with consent of the landowner.

City Attorney Gary Baum said with regard to Item No. 4, the extension over five years was consistent with the provisions of the Quimby Act. On the credit provision, staff believed that what the Council ultimately passed was legally acceptable. An Attorney General's opinion appeared to place some of what the City did in question but did not make it unacceptable.

Council Member Mossar questioned whether Mr. Baum indicated the ordinance, as drafted, put the City in a difficult position.

Mr. Baum said the issue about the extension of time for expenditure was well within the purview of the Quimby Act. The second issue raised by Mr. Martin was the credit in lieu. The original drafting of the ordinance included a credit in lieu, which was deleted by the Council. Staff believed that version was acceptable although the Attorney General's opinion called into question some of the in lieu approach.

MOTION: Council Member Klein moved, seconded by Mossar, to approve Consent Calendar Items Nos. 4 through 11, 13 and 13a.

4. **Ordinance 4907 entitled "Ordinance of the Council of the City of Palo Alto Approves Adding Chapter 21.50 [Park Land Dedication or Fees in Lieu Thereof] to Title 21 [Subdivisions and other Divisions of Land] and Amending Section 16.58.030 [Exemptions] of Chapter 16.58 [Development Impact Fees for Parks, Community Centers and Libraries]"** *(1st Reading, 6/05/2006, Passed 8-0, Mossar absent)*
5. **Ordinance 1st Reading entitled "Ordinance of the Council of the City of Palo Alto Amending Sections 12.16.010 thru 12.16.100 Revising the Administrative Procedures Governing the Formation of Underground Utility Districts"**
6. Resolution No. 8626 entitled "Resolution of the Council of the City Of Palo Alto on Behalf of the Joint Powers and Itself for Telecommunications Services and Vital City Interests"
7. Approval of a One-Year Contract in the Amount of \$249,000 with Gregory B. Bragg & Associates for Workers' Compensation Claims Administration Services and Authorization for Contract Extensions for Two Additional Years
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~~12. Approval of Ad Hoc Committee on Revenue Enhancement Strategy~~

13. Request by Keenan Land Company for a Council Level Preliminary Review "Prescreening" to Review Pre-Application Plans for a Planned Community Project at 135 Hamilton Avenue

13A. Approval of an Enterprise Fund Contract with RMC Water and Environment Corporation in the Amount of \$299,940 for the Preparation of a Disinfection Facility Plan for the Regional Water Quality Control Plant (Wastewater Treatment Fund FY 05-06)

MOTION PASSED 9-0 for item nos. 4, 5, 7-11, 13 and 13A.

MOTION PASSED 6-0 for Item No. 6, Kleinberg, Morton, Mossar not participating.

REPORTS OF OFFICIALS

14. City Council Acceptance of the City Auditor's Review of Palo Alto Airport's Financial Condition and Comments on Santa Clara County's Proposed Business Plan for the Airport, and Direction to the City Manager to Convey Comments to the County.

Sharon Erickson reported 39 years ago the City leased the Palo Alto Airport (Airport) to Santa Clara County (County) for a term of 50 years for a total payment of \$25. In exchange for the rental rate, the County agreed to operate the Airport and the revenue from the Airport operations would be used for continuing operations, maintenance, and capital improvements at the Airport. Eleven years remain on the lease. Earlier in the year, the County drafted business plans and updated its master plans for the three county-run airports: Reed-Hillview, South County, and Palo Alto. The proposed business plan for Palo Alto highlighted Airport deficits and proposed to dramatically increase tie-down fees. The proposed plan also suggested terminating the lease before 2017, if possible, and limiting future capital investment to essential projects only. As a result of the proposal, the Auditor's Office was asked to review the Airport's financial statements, evaluate the County's allocation of expenses and overhead to the Airport and evaluate whether or not the Airport was making money. The analysis of the Auditor's Office of the financial statements, County documents, and City records, indicated that Palo Alto Airport operations generated more than \$400,000 in adjusted net income during the prior 37 years. The money was used to offset the County's original investment of approximately \$1 million and the County's losses in the start-up years of the lease. The Airport has generated positive income in 21 of the prior 24 years, in spite of the fact the Airport covered nearly one third of the County's pooled Airport costs. The County's pooled

and overhead costs accounted for more than 40 percent of the Airport's operating expense. The Auditor's Office did not identify any inappropriate expenses during the review. The Auditor's Office remained concerned that the overhead rate was high and, under the County's proposal, Palo Alto tie-down fees would increase by 30 percent, compared to three percent proposed increases at the two other County-run airports. Palo Alto's tie-down fees would be higher than nearby airports, which would potentially drive business away from the Airport. Given the recent profitability of the Airport, and with potential cost containment in the future, it was possible the County's remaining outstanding advance could be settled prior to the lease expiring in 2017 with smaller, more moderate increases in tie-down fees. Between the current time and 2017, a number of other factors might impact the Airport. The factors included the San Francisquito Creek flood control study and improvement, potential advent of very light jets, and development of air taxi services at the Airport or other facilities. After 2017, opportunities existed to increase revenue after the County's subleases with leases of two fixed space operators expired. Palo Alto Airport was a regional resource and served a regional clientele, the Civil Air Patrol, and Stanford Lifeflight operations. Operating at the Airport was within the rules and responsibilities of the County. Continuing the lease arrangement was in the City's best interest. The Auditor's Office recommended the Council authorize the City Manager to notify the Board of Supervisors, as follows: (1) The City supports moderate increases in tie-down fees at the Palo Alto Airport, but the fees should be competitive with fees at nearby airports; (2) Because it is a regional resource, the City expects and encourages the County to continue operating the Airport per the terms of the lease through at least 2017; and (3) The County has benefited from operating the Palo Alto Airport, and should continue to maintain and improve Airport facilities per Federal Aviation Administration (FAA) regulations. The City has agreed to provide grant assurances when necessary. The Joint City-County Community Relations Committee reviewed the County's proposed business plan and, on June 13, 2006, voted to endorse the recommendations in the Auditor's Report. The Santa Clara County Airport Commission would hold a hearing on the proposed business plan for the Palo Alto Airport and the tie-down fee increases on August 1, 2006. The County Land Use Committee would hold a hearing on August 17, 2006. The City's potential recommendation would be forwarded to that meeting. The Board of Supervisors would hold a hearing on September 12 on the business plan and proposed tie-down fees.

Council Member Morton said the City Auditor questioned whether two items were appropriately charged to the Airport expenditures: 1) 1973 charge of \$194,500 for the realigning of Embarcadero Road; and 2) the 2005-06 amount of \$125,000 did not show up on the worksheet. Staff was asked whether the money would be charged against the balance in the Capital

Fund if the Council was to request, and the County agreed, to reverse the amounts.

Ms. Erickson said at the time the improvements were made to Embarcadero Road, the City's understanding was that the improvements benefited both the Yacht Harbor and the Airport. The County assumed the responsibility. Staff's question was whether Airport users needed to bear the full cost. If the charges were reversed, a credit would be shown.

Council Member Morton said since certain members of County staff made an issue of whether or not the Airport was profitable, it was hard to argue the situation was bleak when the County recovered its initial investment. Palo Alto should indicate that the County review the issue and credit the funds back to the City's balance, if appropriate.

Council Member Barton referred to Tables 2 and 3 in the City Auditor's Report, dated June 6, 2006, and noted there was a wide range in the pooled County costs allocated to each airport, with Reed-Hillview paying more than half. Staff was asked how that might affect overhead expenses.

Ms. Erickson said the formula took into account the number of operations staff at the airports, the number of take-offs and landings, the number of aircraft based at the airport, and the number of principles. Staff looked at the effect of moving different factors around but could not come to a firm conclusion that there was anything inappropriate or wrong. The net conclusion was that Palo Alto paid approximately one third of the County's pooled central cost to run airports.

Council Member Barton said if Reed-Hillview had a lot more staff and its County cost allocated higher, Reed-Hillview should also have a higher pooled overhead expense component.

Ms. Erickson said the actual direct staff who worked at Reed-Hillview was charged as direct expense to Reed-Hillview. Staff at the Palo Alto Airport was charged as direct expense to Airport. The pooled County cost included a portion of labor, accounting staff, Director of Roads and Airports, and the Director of Airports.

Council Member Cordell said one issue was that the lease was up in 2017 and clarified the County had a right not to renew the lease.

Ms. Erickson said that was correct.

Council Member Cordell said another issue was the County's desire to increase the tie-down fees. Staff was asked whether the City had any leverage regarding how high the County could increase the fees.

Ms. Erickson said her reading of the lease was the County had the right to operate the Airport and charge the fees it wanted.

Council Member Morton said factors such as take-offs and landings might shift costs more towards Palo Alto than South County. Accountants and Auditors might raise the question about the facility and square footage and whether the land or the site was more appropriate for the allocation. The Auditor's Office was asked whether there might be other factors that would be more fair to Palo Alto in terms of the allocation.

Ms. Erickson said Palo Alto paid a third of the County's cost. If the County said they would be willing to terminate the lease, staff questioned whether the County was willing to cut a third of the central cost. The Auditor's Office wanted to apply pressure to the County and make it clear the City of Palo Alto was watching the overhead costs and would continue to ask questions.

Council Member Morton said the County might want to impose raising the tie-down fees and agree to let the City build more facilities. The County seemed to think it had power to make decisions about setting up additional hangars and rentable space.

City Attorney Gary Baum said the lease was old and not a model of clarity; however, there were two cases that said the City did not lose its land use control or its police power over the Airport merely because it was the lessor. The first case was the City of Malibu vs. Santa Monica Mountains Conservancy and the second case was the City of Burbank vs. Burbank/Glendale/Pasadena Airport. In both instances, the Courts determined because the cities were lessors, it did not mean they gave up rights.

Council Member Beecham said the City Auditor mentioned the overhead was approximately 41 percent of the City's cost and asked whether that was the same as the other two airports, as a percent of their costs.

Ms. Erickson said Palo Alto's was higher but she was unsure by how much.

Council Member Beecham said he presumed the overhead was higher and asked whether that was because the City had lower costs otherwise or a revenue difference from the other airports. The response from the County, on the second page of the Auditor's Report, stated if it did not have the Palo Alto Airport lease, the County's overhead cost would drop significantly. If the

County were able to decrease the cost because the service no longer existed, that would not be overhead.

Ms. Erickson said some of the costs were labor based. The costs were spread over the other two airports. The County indicated it would reduce the number of central staff if it were to terminate the Palo Alto Airport operations.

Council Member Beecham questioned whether there was a market-based reason for proposing a 30 percent increase to Palo Alto Airport versus three percent for the other airports.

Ms. Erickson said the County believed the Airport might lose tenants because of the fee increase. The other airports generated more revenue from hangars and other activities on airport grounds than the Palo Alto Airport.

Council Member Beecham asked whether other airports had any land costs or depreciation in their cost base.

Ms. Erickson said the County owned the land in both the other cases, but booked depreciation at all the airports. The Auditor's Office disputed depreciation since the outstanding advance was a cash question, and depreciation did not factor in.

Vice Mayor Kishimoto clarified the Business Plan from the County recommended the City be required to submit all future AIP Capital grants.

Ms. Erickson said the Council had agreed to provide assurances to the grants, and the County expected future grants would work the same.

Vice Mayor Kishimoto asked about the work in preparing the grants.

Ms. Erickson said it was her understanding the County would continue to prepare the grant documents.

City Manager Frank Benest said he was concerned about continuing to encourage and advocate the County put the capital needs of the Airport on its list each year. Palo Alto made the commitment to support and guarantee those needs. Given the County's present position of not continuing after the end of the lease, his concern was that the County would continue to look for funding during the interim period.

Council Member Mossar said her concern was the County repeatedly said it wanted out of the business in 2017, but kept coming forward with capital

needs and asking the City to participate more fully in funding the capital needs. The City needed to have a discussion on the issue.

Mayor Kleinberg said she and Council Member Mossar had served on various airport-related commissions and committees. Everything she knew from conversations, questions, and discussions indicated the County does not want to operate the Airport. The question was whether the County made any real effort to make sure the Airport was cost neutral to them. There was no general support in the airplane world for closing the Airport. There were community members who offered to step up and develop a business plan in order to begin exploring how the City might continue to run the Airport. Business people came to the Council to say they wanted to be involved. The City's Comprehensive Plan (Comp Plan) supported the Airport.

David Creemer, 4065 Campana Drive, City appointee to the Joint Community Relations Committee (JCRC) on the Airport, said the City should ask the County about costs at the airports. The costs were largely proportional to the number of aircraft based at the airport and not to the number of operations. The Council was encouraged to read the term "outstanding advance," which was carefully explained in the report. The City did not owe the County money. The JCRC endorsed the recommendations of the City Auditor.

Chuck Byer, 1170 Hamilton Avenue, Palo Alto Airport Association (PAAA), said the PAAA expressed its general support for the audit report completed by the City Auditor and largely agreed with the conclusion, in that the Airport was self sustaining with the current fee structure. The County continued with its obligations under the lease until 2017. If a modest tie-down fee increase was required to meet reasonable County fiscal requirements, the PAAA would consider supporting the fee depending on the nature of the County's proposal. The fees should be competitive with other airports in the surrounding area. The City should continue to make the required Federal grant assurances related to projects with Federal Aviation Administration (FAA) funding. The PAAA requested City staff establish a committee to plan the Airport's future after the lease expired in 2017.

Wayne Martin, 3687 Bryant Street, said he did not find the audit to be particularly clarifying other than a few tables that laid out the gross financials. Approximately 35-40 years prior, Palo Alto made a decision to give away 17 acres of land to the County, for which no financial recompense was foreseen. He encouraged Council to go with the County's recommendation to get out of the airport business and start looking at how the land could be used effectively for the benefit of everyone.

Mayor Kleinberg asked whether the Auditor's figure of 23 percent of residents who used the Airport included locally cited business uses.

Ms. Erickson said there were 78 tenants, which was 23 percent of the Airport's 335 tenants. The Auditor's Office was unable to get information on users.

Mayor Kleinberg clarified there might have been Palo Alto based businesses and Palo Alto residents that use the Airport but were not counted in the percentage.

Ms. Erickson said that was correct.

Emily Renzel, 1056 Forest Avenue, supported the Auditor's Report and recommendations but cautioned the Council regarding Council Member Mossar's comments about obligations as the City signed onto grant applications. Her understanding was when the City signed onto a grant application, the City guaranteed the Airport to be operated for the duration of the lease. The Council needed more information as to the obligations taken on by the City. The Baylands Master Plan tried to constrain the impacts on the Baylands, which limited the number of tie-downs and projections on operations.

MOTION: Council Member Morton moved, seconded by Kishimoto, to accept the Auditor's report and authorize the City Manager to notify the Santa Clara County Board of Supervisors, as follows:

- 1) The City of Palo Alto supports moderate increases in tie-down fees at the Palo Alto Airport, but the fees should be competitive with fees at nearby airports.
- 2) Because it is a regional resource, the City expects and encourages the County to continue operating the Airport per the terms of the lease.
- 3) An audit conducted by the City of Palo Alto indicates the County has benefited from operating the Palo Alto Airport. The City of Palo Alto requests that the County continue to maintain and improve Airport facilities per Federal Aviation Administration (FAA) regulations. The City has currently agreed to provide grant assurances when necessary. ~~The City has agreed to provide grant assurances when necessary.~~

Council Member Morton said the Airport is a regional resource, and Palo Alto was not ready to walk away from it. There was no guarantee that in 2017 the County would still recommend withdrawing from the Airport. The current County staff was under budget pressures. The City had a lease and needed

to ask the County to live up to the terms of the lease and be reasonable with its request regarding tie-down fees.

Vice Mayor Kishimoto clarified the motion included accepting the report.

Council Member Klein said that was correct.

Council Member Klein recommended that the last sentence in item 3 of the motion be deleted.

Council Member Morton agreed.

MOTION PASSED 9-0.

MOTION: Vice Mayor Kishimoto moved, seconded by Drekmeier, to authorize the City Manager to have staff return with a recommended timeline and process to develop a post-2017 plan for the Airport.

Council Member Barton questioned whether the City needed to prepare a timeline for beyond 2017 when there were other things before the Council.

Mayor Kleinberg asked whether Vice Mayor Kishimoto intended to state a deadline.

Vice Mayor Kishimoto said she did not ask for a date.

Mr. Benest said the Council had an enormous agenda of priority items in the current year's work plan. The Council had not suggested a time, but he did not want to misrepresent the fact that staff would not move on the item in the near term.

Vice Mayor Kishimoto said her motion was that staff returns with a recommended timeline and process.

Mr. Benest said he did not believe the County was submitting a grant application for the Palo Alto Airport in the coming year.

Ms. Erickson said her understanding was the County had only minor capital projects proposed during the next few years.

Vice Mayor Kishimoto said the intent of her motion was to have the Council know that someone was thinking about a timeline for developing a plan.

Council Member Mossar said the staff was fully occupied for the next several years and she was not interested in adding something to the list that staff would not have an opportunity to deal with.

Council Member Klein said identifying a timeline required staff work. The problem was important but there were other problems that needed to be worked on at the current time.

Council Member Beecham said the Palo Alto aviation community should work on the issue because they were experts on how to make the Airport economically successful.

MOTION WITHDRAWN BY MAKER AND SECONDER.

MOTION: Council Member Klein moved, seconded by Cordell, to continue Item Nos. 16, 17 and 17A to the next Council meeting of June 26, 2006.

MOTION PASSED 9-0.

PUBLIC HEARINGS

- *15. Public Hearing – Consideration of Appeals by Gina Fallon et al, Susan Fineberg et al, William Chapman III, M.D., and Michael Hmelar of the Director of Planning and Community Environment’s Approval of an Architectural Review Board Application and Design Enhancement Exception Requested by Classic Communities on Behalf of West Bayshore Associates for the Demolition of Two Office Buildings and the Development of 96 Residential Units on a 6.5 Acre Parcel in the Research Office and Limited Manufacturing (ROLM) Zone District at 3270 West Bayshore Road [06-AP-03, 04, 05, 06]. Environmental Assessment: A Negative Declaration was Prepared.

Mayor Kleinberg declared the Public Hearing opened at 9:15 p.m.

Gina Fallon, 994 Loma Verde Avenue, said the City needed to look at what was happening to the quality of life of Palo Alto residents. The City process included the environmental check that was part of the Architectural Review Board (ARB) staff report. The report ignored the Comprehensive Plan (Comp Plan) Environmental Impact Report (EIR) guidelines and that the issue was greater than one development application or one project. If the environmental checklist had been filled out with more forethought, the project would have had a full environmental report and would have gone in front of the Planning and Transportation Commission (P&TC). Her request was the project be denied, and there be a Citywide moratorium on conversions of commercial to residential until further environmental analysis

was done, as required by the California Environmental Quality Act (CEQA) and an updated Comp Plan was enacted.

Kirsten Powell, 255 W. Julian St., San Jose, speaking on behalf of Susan Fineberg, said she submitted a letter outlining concerns, as well as a handout at places that summarized the relevant portions of the Comp Plan and the EIR. CEQA required the City to prepare an EIR whenever substantial evidence supported a fair argument that a project would result in significant impacts on the environment. The Negative Declaration did not adequately address the cumulative impacts of development, but merely proclaimed there were no impacts associated with the project without considering environmental documentation on record with the City. Specifically, the Comp Plan had an EIR that outlined growth caps. Her understanding was staff believed the Comp Plan did not have growth caps but the EIR did. The EIR considered 2,454 units and determined that, based on those units, there would be significant impacts on transportation, circulation, public services, and parking. As an alternative to the project, the Comp Plan EIR considered a higher density project of 2,549 units. The alternative was rejected because it would further skew the jobs/housing imbalance and result in additional, unavoidable impacts. Staff projected by 2006, there would be approximately 2,000 units built under the Comp Plan; however, her belief was there would be approximately 3,000 units. The project before the Council had a significant and unavoidable impact as contemplated by the EIR. The Council was considering impacts related to noise, traffic, air quality, toxins and groundwaters, geology, and seismic hazards. In a Colleague's Memo, the Mayor, Vice Mayor and Council Member Cordell asked that the work plan be brought forward to address the deficiencies or the extensive growth that occurred in the City. The City was complimented for doing so but the concern was the City could not ignore its obligations under CEQA by going forward with the work plan. Each specific project had to be analyzed for the impacts. The negative declaration was inadequate, and an EIR was required. The Council was asked to deny the project on that basis. The project requested design exceptions, and there were specific requirements in order to do so. The Council was asked that no exceptions be allowed that put residential close to incompatible uses and not allow tandem parking, which had a detrimental impact on the neighborhood.

Susan Fineberg, 3498 Janice Way, asked the Council to uphold the citizens' appeal of approval of the development and to declare a two-year Citywide moratorium on the conversion of commercial properties to residences. A petition detailing the reasons for the request was signed by 127 Palo Alto residents. The City Clerk had a copy of the petition for each Council Member. The reasons for asking that the project not be approved were as follows: the Comp Plan did not foresee any residential units being built in the area around Bayshore; there was no EIR done on the project, nor were any

additional environmental analyses triggered at 75 percent of the projected growth in the EIR of the Comp Plan; the residential units exceeded the level of environmental impacts; the cumulative impacts of the 931 approved and projected units in south Palo Alto needed cumulative review; there were seismic geologic soil and flood hazards on site that should require an EIR prior to approval; the design enhancement exceptions were not supported by uniqueness on the site and should be denied; and the negative impacts of the project were not acceptable. The ARB process yielded an exterior design that required discussion. The moratorium on conversion from commercial to residential gave the City time to update the Comp Plan and the EIRs, and allowed the City to conduct project and Citywide analysis and prepare an area plan that would be impacted by the high level of development. The City was asked to implement a program in the Planning Department where it would track all the units being built and revise the public notice requirements when the project was large. There was no public discussion of whether housing belonged next to Highway 101. The project did not go to the P&TC. At the March 16, 2006, ARB meeting, the project was approved by a vote of 3-2-0. There were issues relating to the impacts on schools and many questions about whether the demographer's numbers were realistic. The Comp Plan policy N-39 encouraged the location of land use in areas with compatible noise environments. The guideline for the maximum outdoor noise levels in residential areas was 60 decibels. The highway generated 80 decibels. After mitigations, the exterior noise levels on the property would exceed City standards. The sites near Highway 101 would expose residents to freeway noise, noise of the adjacent property where DataSafe was currently located, and would be precedent setting. The R-30 districts allowed for maximum of 30 units per acre; however, at 6.5 acres, that would yield an allowed maximum of 195 units on the property. Accounting for setback and parking requirements, height limitations, floor area ratios, existing trees, and roads, a parcel built with 30 units per acre might yield units that were 900 square feet. Due to market conditions rather than concessions to neighbors, the developer brought down the number of units so the units were large enough to be attractive to potential buyers.

William Chapman, 3583 Louis Road, presented an overhead, which was part of a staff report that dealt with schools. The project proposed 15 houses with 4-5 bedrooms each, which would generate 30 children. Statistics said the other 81 townhouses would have only five children. The statistics were erroneous. The citing of CEQA was wrong. The regulation indicated if more school rooms or schools themselves were required, the project had a significant environmental effect and an EIR was required. The information was presented at the ARB hearing on March 16, 2006. Member Grace Lee suggested he go to the City Council and state that it was not an ARB matter. If the City were to use the State Allocation Board figure of 0.7 children per house, the result was a figure of 67. An excerpt from Barb Mitchell indicated,

"The good news is the City Council and school board have the same values for reflective planning and excellent schools. The City/School Liaison Committee is offering a useful joint forum for surfacing those common interests, generating pooled data and suggestions for the City Council and the school board." On April 26, they decided to include housing growth/student yield issues as a focus area for this year. The Council was asked to turn down the application and uphold the appeal.

Michael Hmelar, 3144 Maddox Drive, said he felt the ARB failed in the process. During the prior year, many of the Maddox Drive residents supported the specific project other than the density related concerns, which were addressed, and the visual composition of the structure, which was viewed by everyone except the ARB as being primarily influenced by the ARB. The neighbors' input was summarily disregarded by the ARB in each of its review meetings.

Scott Ward, Classic Communities, urged the Council to adopt the staff recommendations to deny the appeals; to uphold the Planning and Community Development Director's decision to uphold the ARB approval of the project; to support the ARB's approval of the process; to abide by the Zoning Ordinance Amendment effective December 2005 after the application was completed; to honor long-standing Council precedence to process grandfathered projects in accordance with Zoning authority; and to respect the well established process of ARB review. Based on the existing zoning, the proposed residential use was a principally permitted use that the applicant was entitled to. Multi-family residential uses were permitted in the ROLM district at that time, prior to the implementation of the ordinance. One of two identified applications had been processed under permitted use regulations by the Council. The density of the proposed development with 96 units was less than half of the maximum allowed. The proposed density of approximately 14.75 units per acre was almost 20 percent less than the 17.25 units per acre recently approved by the Council. The proposed development had the highest level of Below Market Rate (BMR) units of any recently approved project. The project had 10 onsite BMR units and \$4.5 million in lieu fees would be paid. The proposed development improved the adjacent, underutilized City-owned Sterling Canal property into an attractive pedestrian/bicycle path. The improvements included construction of a sound wall separating West Bayshore Road from the freeway, orientation of the residential buildings to front on West Bayshore, retaining the mature trees that aligned the West Bayshore frontage, and providing dedicated right turn lanes at the West Bayshore/Loma Verde intersection. The proposed development had a well conceived plan, which organized the homes around two large open space areas and featured an unusual diversity of home types, including single-family, townhouses, and condominium units. The proposed development, located within the boundaries of the Midtown

Residents Association, was reviewed and evaluated on multiple occasions by the Association leadership and membership, as well as by the Maddox Avenue neighbors. The application was determined to be complete prior to adoption of the zoning ordinance amendment in October 2005. The proposed project was one of two applications explicitly identified as a pipeline project to be processed pursuant to the pre-October zoning ordinance. The processing of one of the pipeline applications was completed in accordance with the provisions of the amended ordinance. It was processed as a permitted use and not as a conditionally permitted use. The tentative subdivision map was approved by a 9-0 vote of the Council. The City Attorney's Office shared the interpretation of the applicability of the ordinance to the application. The Zoning Ordinance revision had an impact on the level of residential development activity in the City. No new applications for residential development in a limited manufacturing zone had been filed and none were likely to be filed given the undefined nature of the conditional use permit criteria and that staff discouraged such applications. The fear of the project setting a precedent for the balance of West Bayshore was unfounded. Water and wastewater impact fees had quadrupled. The Park In Lieu fee tripled, and the School Impact fee was proposed to increase by ten percent. Throughout the 15 month period, housing was consistently identified as the number one issue for Silicon Valley companies. The project was consistent with the zoning requirements, except for the relatively minor Design Enhancement Exceptions (DEE) that were open for review. Based on the extensive analysis conducted by City staff and its consultants, there were no significant unmitigatable environmental impacts, as the standards of significance had been consistently applied to other recently approved applications. The applicant's legal counsel advised in a case in which the application is consistent with the zoning, and in an appropriately supported negative declaration, the only appropriate area of appeal on an ARB determination was with respect to design. The record on impact was clear. There was no Comp Plan residential growth limit for the development to violate. The proposed development would reduce the potential traffic generated by the property if it were built out and utilized as a light manufacturing facility, as documented by the City's traffic consultant. The Palo Alto Unified School District's (PAUSD) consultant determined the proposed development would generate approximately 30 students, which was lower than the 44 estimated by the Planning Staff. The PAUSD programmed that increase into its projections and was determined it was in a position to manage the increase. In order to sustain the appeal with respect to project impact, the Council needed to find that the conclusions of the Planning Staff and its traffic consultants, the Public Works Staff and its Civil Engineering consultants, the PAUSD staff and its student generation consultants, were less informed and had less merit than the conclusions of the appellant, which were not supported by any third party or professional analyses. With respect to the design of the project, which was the only

appropriate area of inquiry and appeal, the design was well conceived because it addressed many substantial objectives. The objectives were all hallmarks of good design, but design qualities were largely in the eye of the beholder. The ARB made it clear that it preferred more contemporary designs that did not reference "any historic styles or other periods of architecture." It was not by accident that most of the recently approved developments, including 928 East Meadow, had more modern designs. Since the ARB was acting at the Council's behest, the presumption was the Council was comfortable with or supported the design direction, or the Council did not want to be in the business of determining design standards. Classic Communities believed it was incumbent on the Council to honor the process and reject the appeal applications. Sustaining an appeal based on design placed the City on the regrettable path toward community based, contextual only design. Design conflicts between professional bodies and neighborhood groups would become common place, and the disputes had to be resolved by the Council. If the Council chose to sustain the appeal, the only basis for which there was grounds was design, the Council was asked to attach a condition notifying the ARB that it was out of touch with the Council's preferred design direction, and the contextual design was not only preferred but was required. That would make it easier on both the ARB and applicants. Classic Communities believed that making the findings with respect to the DEEs, given their limited scope, was relatively simple based on having made similar findings for other projects with more DEEs. Classic Communities made a number of concessions and changes throughout the process in order to address neighbor's issues and wanted to continue in that effort. Classic Communities would be open to redesigning or eliminating the community building at the corner of West Bayshore and Loma Verde. The City of Palo Alto had not grown appreciably since 1960 and declined in population since 2000. Palo Alto was a community that, historically, prided itself on being forward thinking and, with respect to the economy, was all about being futuristic. The Council was urged to reject the appeals.

Planning and Community Development Director Steve Emslie said the staff report (CMR:226:06) mentioned the site was zoned Research Office Limited Manufacturing (ROLM). The zone was modified in the fall of 2005 at staff's recommendation to remove housing as a permitted use and require housing as a conditionally permitted use, which was a discretionary permit that required findings ultimately by the City Council. Unrestricted housing without forethought and planning was not in the best interest of the community. Staff was aware of Comp Plan policies that encouraged housing and responded to reducing the City's housing/jobs imbalance. The 1998 Comp Plan acknowledged the trend and supported the inclusion of housing in all the zones. The Comp Plan required environmental review. The Comp Plan did not set housing policy. The analysis was done and assumptions were made about where growth was likely to occur in order for impacts to be

quantified, but a policy was not established. The Comp Plan EIR made a recommendation that, when a threshold of 75 percent of growth was reached through approved projects, a reevaluation was done. The 75 percent growth was reached last year, and the Council directed staff to begin the process of updating both the Comp Plan policies related to the further expansion of housing at the exclusion of retail and commercial, as well as an update of the growth assumptions in the Comp Plan EIR. Staff put together an aggressive program to bring back changes to both the Comp Plan and Comp Plan EIR quickly to reorder priorities to address the serious community concerns. Staff believed the process would address the communities concern about continued maintenance of the high quality of life, schools, and infrastructure in the community. The grounds of the appeal were based on the ARB's approval process, which was limited to the site plan architecture, building massing, and style. The general land use concerns of the City were important but were not the subject of the appeal.

David Solnick, ARB Member, said from the early schemes, the applicant made substantial improvements, including directing more traffic onto West Bayshore versus Loma Verde, consolidating open space into larger, more usable areas, and transitioning the density at the Sterling Canal to higher density at West Bayshore. With regard to building architecture, the ARB took context seriously. The site had four edges: one had a buffered residential edge, two had commercial edges, and one was a transportation corridor. Only one of the four edges had representation at any of the ARB hearings. The ARB's approach to design review was not based on dictating style but on encouraging design integrity, using modern, sustainable materials, and considering the larger context. The ARB was divided on the project. The detailing did not carry the simplicity of the modern design. In place of ornament, modern design needed to have quality materials and refined detailing. The elevation and soundwall were scheduled to go back to the ARB on consent.

Greg Schmid, 3428 Janice Way, spoke about Classic Communities as part of a program of parcelization and said it was incumbent for the Council to articulate a vision.

Stiv Ostenberg, 994 Loma Verde, spoke about his awareness of the project during a meeting with the Midtown Homeowners Association. The Association thought the project was out of character with the neighborhood. The Palo Verde Association was formed and at a meeting 90 percent of the people present opposed the project.

Marie Wolbach, 3427 Greer Road, spoke about the impacts of the project and noted concerns included inadequate opportunity for public discussion or

negotiations with the developer, density of project, impact on schools, building style, and environmental issues of a large project close to a creek.

Sally Probst, representing League of Women Voters of Palo Alto, spoke about the League's letter which urged the Council to deny the appeals of the ARB's approval of the Classic Communities development.

Smita Joshi, 851 E. Meadow Drive, President, Palo Verde Residents Association, said civic awareness and activism has increased in her neighborhood since the creation of the Association. The Board did not take a position with respect to the petitions. Association members raised concerns regarding density, overcrowding at schools, lack of nearby public transportation and retail, and the strain on libraries, and parks.

Charles Mousseau, 903 E. Meadow Drive, said people felt their opinions were not represented. Appeals raised valid points which needed to be heard.

Boris Foelsch, 3694 Louis Road, spoke about Trumark Developments which he felt lacked public notice. Concerns included impact on schools, libraries, and environmental issues.

Robert Moss, 4010 Orme Street, noted errors and omissions in the project. The Council lacked information on the project, noting that Appendix F in the staff report (CMR:226:06) was a brief summary of the ARB hearing, and the Council needed verbatim minutes to understand what actually happened at the hearing. The Council was urged to defer any action on the item until it had further information.

Rita Sodos, 3612 Arbutus Avenue, expressed concern regarding traffic and impact on schools.

Elaine Meyer, 609 Kingsley Avenue, referred to the Design Enhancement Exceptions, which were meant to apply to minor changes in a design. The Comp Plan EIR projected 2,454 units, but the actual number of approved projects was 3,550 units. Projects not listed included Stanford/Mayfield, the Oaks Project, the Alma Street Substation, and the Fry's site.

Irvin Dawid, 753 Alma Street, Apt. 126, stated the project met the clear infill criteria. The California Building Industry Association (CBIA) and other business groups countered that environmental rules were routinely used to the advantage of those who did not want new development in their neighborhood or community. The only environmental issue that concerned him was air quality, which was not mentioned.

Shiloh Ballard, Housing Action Coalition, 224 Airport Parkway, San Jose, said the Housing Action Coalition supported the proposal, and the Council was urged to deny the appeal.

Ms. Fallon said the ARB approved the project with a 3-2 vote. The appellants attended every meeting and voiced concerns from the beginning regarding the design.

Vice Mayor Kishimoto asked whether the appellant was limited to speaking only on the design issue.

Mr. Baum said the appellant could speak on anything.

Ms. Fallon said she asked the Council to act as the public's vote and, hopefully, sway the close vote by the ARB. The principles of CEQA were valid and the Council needed to consider the impact developments had on the community without passing applications because they followed a process. Palo Alto lacked a real bond between the City and the PAUSD. The East Meadow Circle area was a prime candidate for an elementary school for the growing community. The Council was urged to grant the appeal and reject the application.

Ms. Fineberg urged the Council to start the process to have an area plan in order to have a holistic approach to the changes that would happen.

Ms. Powell said the applicant indicated the use was permitted as a right, based on the zoning in effect at the time of application. Since that time, the Council determined it was no longer a compatible use in the area. Council was asked why it would grant exceptions to a project that it now determined was no longer compatible with the area. One of the goals of the Comp Plan was that the project be consistent and compatible with the surrounding area. The point of an appeal process was for the Council to consider the actions of the ARB to determine if the project is appropriate and in the best interest of the neighborhood and community. The neighbors were asking the Council to question the actions of the ARB and determine whether or not the project was appropriate. The EIR had a growth cap and indicated there would be significant impacts if the numbers were exceeded. The numbers had been exceeded, and the Council needed to consider what additional units would mean.

Mr. Chapman asked whether the Council heard Mr. Ward say that the PAUSD Board sent the City an estimate of the number of students in the project, which was reduced to 30. The PAUSD demographer did not send the figure of 30 but sent information to the City staff which listed .70 per unit for subsidized units. The City department made the error and changed .70 to

.15 and came up with 29 kids instead of 39.7, which was what the PAUSD's figure would have been.

Mr. Hmelar said the concern was why the ARB process formally sought input from adjacent neighbors yet failed to represent the neighbors' unified opinion. The process was broken and needed to be fixed in order to get the project completed.

Mr. Ward said a series of meetings with the Midtown Residents Association were held in April, August, and October 2005. There were no representatives from the Palo Verde Neighborhood Association in attendance and concerns were first conveyed about the development in February 2006. The question of compatibility and consistency of design was what ARB was charged with. The ARB approved the development on a 3-2 vote. The two dissenting votes made a statement about design details and had questions about specifications presented in the plan set. The staff report (CMR:226:06) indicated that the PAUSD demographer estimated the project would yield 29.25 children beginning in 2009, which was less than the 44 estimate indicated in the environmental analysis. The Council was urged to reject the appeals. Classic Communities was convinced there was no merit in terms of the environmental impact issues.

Mayor Kleinberg declared the Public Hearing closed at 11:25 p.m.

Mayor Kleinberg questioned whether there was an option to put over any decision to another meeting after the public hearing was closed.

Mr. Baum said yes, keeping in mind the Permit Streamlining Policy.

Assistant City Manager Emily Harrison said if deliberations were continued, the item could be continued to July 10, 2006.

MOTION: Council Member Klein moved, seconded by Cordell, to continue this item to July 10, 2006.

Vice Mayor Kishimoto said she would not be available on July 10, 2006, but wanted to make comments.

Mr. Baum said the comments could be made at the present meeting or put "at places" on July 10, 2006.

Council Member Barton clarified if the item were continued and the public hearing closed, the only discussion would be that of the Council.

Mr. Baum said that was correct.

Council Member Barton said the Council should move forward with a decision at the current meeting.

Council Member Beecham said he was prepared to continue the discussion at the current meeting.

Council Member Morton said he favored going forward and making a decision.

Council Member Mossar said the Council should decide to go no later than midnight and, if a decision was not reached at that time, the discussion would be continued.

MOTION FAILED 2-7, Cordell, Klein voting yes.

Mr. Baum said the Council could determine that the DEE was appropriate and make findings or determine it was not appropriate. Government Code Section 65996(b) stated that local agencies were prohibited from using the inadequacy of school facilities as a basis for denying or conditioning approval of any legislative or adjudicative act involving the planning, use, or development of real property. Therefore, the Council may not use the school district issue as the sole reason to deny the project. In the event the Council had an issue with the design, the project could be referred to the Director, the ARB or the Planning and Transportation Commission (P&TC). With regard to CEQA issues raised, the Comp Plan EIR had been addressed by the Council's adoption of a Comp Plan revision and EIR. An issue was raised about the negative declaration, which was based upon prior Council direction. With a baseline of 100,000+ square feet of an office building, a Negative Declaration in the project was defensible.

Vice Mayor Kishimoto said the proposed development would cause less peak hour traffic but there were other impacts.

Mr. Baum said the determination whether the Negative Declaration was sufficient or not was ultimately up to the Council; however, from a legal point of view, the determination made by staff and recommended was that approval of the Negative Declaration was sufficient.

Council Member Cordell clarified if actual and projected housing was higher than the development caps considered in the Comp Plan's EIR, additional environmental impacts had to be considered, and the Council needed to consider the cumulative impacts of past, present, and probable future projects.

Mr. Baum said the EIR made recommendations that once the 75 percent threshold was exceeded, the City undertook additional environmental analysis, which was done. The Council did not adopt a cap. The Comp Plan did not have a cap and, technically, the EIR did not have a cap. Adequate analysis was done, and there was no need for an EIR for a 96-unit project. The cumulative impacts were addressed through the Comp Plan EIR.

Council Member Mossar said the housing numbers used were outside the City of Palo Alto's jurisdiction. The numbers used to argue the City was significantly over the housing numbers included housing on the Stanford campus.

Mr. Baum said he did not see how it applied because it was not part of the City's environmental analysis.

MOTION: Council Member Barton moved, seconded by Beecham, to deny the appeals and uphold the decision by the Director of Planning and Community Environment (Director) to approve the Architectural Review Board (ARB) application for 3270 West Bayshore Road, "Classic Communities", including the Design Enhancement Exception (DEE) requests and Negative Declaration.

Council Member Barton said he found the Comp Plan, CEQA and zoning issues were not compelling and the project was less than half the allowable density. Approving any element of the appeal undermined the Council's process relative to the ARB and relative to what potentially could be the fallout in terms of what was appealed and how often things got appealed to the Council. The Council did not want to become the arbitrator of architectural taste in the community. In the fall of 2005, the Council limited the right to build housing in the subject zone but accepted the projects in the pipeline. Exempting a project publicly in October 2005 and then denying it was extremely unwise. Taking exception to the nature of the architecture was ironic in a town where Joseph Eichler built half the homes, which were ultra modern at that time. The project was reasonable and contextual.

Mr. Solnick said the ARB did not have lack of unanimity about the DEEs. The daylight plane was easily supported and only affected the commercial zone to the north. The tandem parking was seen frequently and had the benefit of lowering the amount of hardscape as it was a more efficient use of parking and provided a variety of garage doors.

Council Member Beecham said the issues were about the impact on schools, the overall cumulative impact of the project versus overall City resources, and architecture. Staff was asked about the response from the PAUSD on the project.

Mr. Emslie said staff assumed the demographer who was engaged by the PAUSD spoke on behalf of the PAUSD. Their projections were less than what the EIR included.

Council Member Beecham asked whether the PAUSD had an opinion or recommendation.

Mr. Emslie said the PAUSD felt the increase anticipated could be accommodated within the schools.

Council Member Beecham said he agreed with many of the comments about the architecture, noting it was not what he would like to see but he did not want the Council involved with redesign.

SUBSTITUTE MOTION: Council Member Beecham moved, seconded by Drekmeier, to deny the appeals and uphold the decision by the Director of Planning and Community Environment (Director) to approve the Architectural Review Board (ARB) application for 3270 West Bayshore Rd., "Classic Communities", including the Design Enhancement Exception (DEE) requests and Negative Declaration and to send this back to staff to work with the applicant to develop a more residentially traditional architectural design by keeping respect for sustainable materials and features.

Council Member Beecham said he did not favor corrugated sheet metal on housing. The drawings submitted for the project were unattractive. A more traditional approach would be more acceptable to the community.

Mayor Kleinberg said the Council was asked to approve a design approval process, but the motion was to send the project back for more design.

Mr. Baum said his understanding of the motion was to deny the appeal, approve the project, send it back for ultimate design approval by the Director, and approve the DEE.

Mayor Kleinberg clarified the aesthetics were not being approved.

Mr. Baum said that was correct.

Council Member Morton said the materials and style were not at the core of the issue. Each of the speakers said the individual developments were approved in the community without adequately weighing the cumulative impact. That would not be solved by sending the application back to the ARB or by tinkering with the construction materials. The Substitute Motion was not supported.

Vice Mayor Kishimoto clarified the calculation of children per unit should have been .7 rather than .15.

Mr. Emslie said .7 was correct for the BMR, but the City recently executed a BMR agreement that cut the number of BMRs in half. Ten BMRs were being provided and the in lieu fee was provided for the rest of the units.

Vice Mayor Kishimoto said the issues were the schools, the Comp Plan, and the DEE process. With regard to the schools and Comp Plan, the Council agreed to do an update on the Comp Plan. On a quasi-judicial basis, the Council was not allowed to deny a certain project only on school issues. The PAUSD felt it was responsible to accommodate whatever the Council decided. Citizens needed to hold the Council accountable for the planning for schools and the impact on schools. The DEE on the side yard issue was a concern, noting she did not see the findings for it. A mitigated Negative Declaration would have allowed more mitigation to be negotiated with the applicant. The ARB's 3-2 vote did not show up in the staff report (CMR:226:06) and would be helpful in the future. The Substitute Motion was not supported.

Council Member Mossar supported the original motion. The Council's job was to approve projects from a community and a legal perspective.

Council Member Klein said the appeal only applied to the design elements. Many comments heard applied to land use. The importance of procedure was emphasized. The City had an obligation to citizens and developers to play by the rules and not change the rules midstream. The Substitute Motion was not supported. A City/School Liaison Committee meeting would be held on June 28, 2006. The main discussion would be the demographer's numbers.

Council Member Cordell said the 600 foot noticing rule needed to be revisited because there were many individuals who lived in proximity but did not get notice. The matter was quasi-judicial, and the Council was to look at procedural and legal issues. The hearing was objective, and the Council was to see if certain criteria and rules were followed. If the rules and criteria were followed, the appeal would be denied. The arguments on both sides of the issue were considered. The arguments expressed in the June 15, 2006, letter authored by Ms. Powell were compelling, well reasoned and very persuasive. A fair argument could be made that the project might have a significant environmental impact due to the cumulative impact of past, present, and proposed housing, which mandated the preparation of an EIR. The finding that the site was unique, so as to permit a DEE, was unsupportable based upon the record. The appeal was supported.

Mayor Kleinberg agreed with the ARB that there was an opportunity when the matter went back to work more on the design. Architectural design was not the business of the Council. The main motion was supported with an acknowledgement to those who asked the Council to override the approval. The Council was limited by what it could do.

SUBSTITUTE MOTION FAILED 1-8, Beecham voting yes.

Council Member Barton clarified whether the findings needed to be incorporated into the motion or whether they were included, by the nature of the recommendation.

Mr. Baum said the findings were included and the Council was adopting attachment K.

AMENDMENT TO THE MOTION: Vice Mayor Kishimoto moved to not approve the Design Enhancement Exception (DEE) for the side yard encroachment.

Amendment failed for lack of second.

MOTION PASSED 8-1, Cordell voting no.

COUNCIL MATTERS

~~16. Colleagues Memo from Vice Mayor Kishimoto and Council Members Cordell and Drekmeier Regarding Endorsement of a Resolution Supporting the Reform of the Redistricting Process in California Through a New Independent Commission~~

~~17. Colleagues Memo from Council Members Beecham, Drekmeier and Mossar Requesting the Direction to the Parks and Recreation Commission to Consider the Needs and Opportunities for Additional or Enhanced Water Recreation Access and/or Facilities and to Identify Ways in Which Palo Alto Might Support the San Francisco Bay Water Trail.~~

~~17A. (Old #12.) Approval of Ad Hoc Committee on Revenue Enhancement Strategy~~

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Mossar reported she attended the National League of Cities Energy, Environmental, and Natural Resources Committee meeting in Cambridge, Massachusetts, in May 2006. The focus was on Green Buildings

and global warming, and the Committee agreed to take a policy statement to the League confirming the problem of global warming must be solved within the next ten years.

Vice Mayor Kishimoto commented on No. Item 5 stating if property owners cannot afford the Underground Utility Districts, the Council might need to reconsider.

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.