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October 10, 2006

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10. Public Hearing - To consider the Adoption of an Ordinance Amending Section 18.10.070 "Second Dwelling Units" of the Palo Alto Municipal Code to Prohibit Individual Sale of Second Units in the RMD and R-2 zoning districts, and declaring the urgency thereof, to take effect immediately 17

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The City Council of the City of Palo Alto met on this date in the Council Conference Room at 6:05 p.m.

COUNCIL MEMBERS

Present: Barton, Cordell, Drekmeier, Kishimoto, Klein, Morton, Mossar

Absent: Beecham, Kleinberg

ARCHITECTURAL REVIEW BOARD

Present: Lee, Malone-Prichard, Solnick, Wasserman

Absent: Kornberg

STUDY SESSION

1. Joint Meeting with the Architectural Review Board regarding ARB issues

No Action Required.

ORAL COMMUNICATIONS

None

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

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:05 p.m.

Present: Barton, Cordell, Drekmeier, Kishimoto, Klein, Morton, Mossar

Absent: Beecham, Kleinberg

Vice Mayor Kishimoto noted the Closed Session, Item No. 11, would be cancelled.

SPECIAL ORDERS OF THE DAY

1. Item removed from the Agenda

No action required.

2. Appointment of Applicants to the Architectural Review Board

MOTION: Council Member Klein moved, seconded by Mossar, that David Solnick, Heather Trossman and Judith Wasserman be appointed by acclamation to the Architectural Review Board.

MOTION PASSED 7-0, Beecham, Kleinberg absent.

ORAL COMMUNICATIONS

John K. Abraham, 436 Ellsworth Place, spoke regarding demographics.

Monica Yeung Arima spoke regarding toilet water in her apartment building.

APPROVAL OF MINUTES

MOTION: Council Member Mossar moved, seconded by Morton, to approve the minutes of September 11, 2006 as submitted.

MOTION PASSED 7-0, Beecham, Kleinberg absent.

CONSENT CALENDAR

City Clerk Donna Rogers noted for the record that due to lack of a quorum, Item No. 3 could not be heard tonight and would be continued to October 16, 2006. Council Members Cordell, Klein and Mossar could not participate due to conflicts and Mayor Kleinberg and Council Member Beecham were absent.

MOTION: Council Member Morton moved, seconded by Klein, to approve Consent Calendar Items 4, 5, 7, and 8.

Council Member Barton stated he would not participate in Item No. 4, as he had a conflict of interest since his wife worked with two of the developers for the project, and requested to note he would be abstaining on the resolutions to support Propositions 86 and 89.

Council Member Mossar registered a no vote on Item No. 5.

MOTION: Council Member Klein moved, seconded by Kishimoto, to remove Item No. 6 from consent to become Item No. 8A.

~~3. Ordinance xxxx entitled "Ordinance of the Council of the City of Palo Alto Adding Section 22.08.400 to Chapter 22.08 (Park Dedications) of the Palo Alto Municipal Code to Dedicate For Park Purposes a 6.2 Acre Parcel of Land at the Corner of El Camino Real and Page Mill Road to be Known as the Stanford/Palo Alto Community Playing Fields for the Term of the City's Lease of Such Property"~~

4. Ordinance 4917 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (the Zoning Map) to Change the Classification of Property Known as 901 San Antonio Road: BUILD/BRIDGE Project from GM to PC Planned Community, a Comprehensive Plan Amendment to Change the Land Use Map from Light Industrial to Mixed Use, and a Below Market Rate Housing Plan"

Ordinance 4918 entitled "Ordinance of the Council of the City of Palo Alto Amending Section 18.08.040 of the Palo Alto Municipal Code (The Zoning Map) to Change the Classification of Property Known as 901 San Antonio Road: Taube-Koret Campus for Jewish Life Project from

GM to PC Planned Community, a Comprehensive Plan Amendment to Change the Land Use Map from Light Industrial to Mixed Use, a Variance from a Height Requirement, and a Below Market Rate Housing Plan”

5. Resolution 8651 entitled “Resolution of the Council of the City of Palo Alto to Support Proposition 1C – The Housing and Emergency Shelter Trust Fund Act of 2006”

Resolution 8652 entitled “Resolution of the Council of the City of Palo Alto to Support Proposition 1E – The Disaster Preparedness and Flood Prevention Act of 2006”

Resolution 8653 entitled “Resolution of the Council of the City of Palo Alto to Support Proposition 84 – The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006”

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Resolution 8656 entitled “Resolution of the Council of the City of Palo Alto to Oppose Proposition 90 – The Government Acquisition and Regulation of Private Property Initiative”

- ~~6. Resolution adopting a compensation plan for classified personnel (SEIU) and rescinding resolution nos. 8452, 8540, 8595, 8608, 8623~~

~~Resolution xxxx entitled “Resolution of the Council of the City of Palo Alto to Support Amending Section 1401 of the Merit System Rules and Regulations Regarding the Memorandum of Agreement between the City Of Palo Alto and Local 715, SEIU”~~

7. Confirmation of Appointment of Valerie Fong as Utilities Director and Approval of Employment Agreement
8. Approval of Scope of Work to Obtain Consultant Services to Advise the

City during the Procurement Process for a Solid Waste and Recyclable Material Collection Agreement

MOTION PASSED 6-0 for Item No. 4, Barton, not participating, Beecham, Kleinberg absent.

MOTION PASSED 6-1 for Item No. 5 (resolutions supporting Propositions 1C, 1E, 84 and opposing Proposition 90) Mossar no, Beecham, Kleinberg absent.

MOTION PASSED 5-1 for Item No. 5 (resolutions supporting Propositions 86 and 89) Mossar no, Barton abstaining, Beecham, Kleinberg absent.

MOTION PASSED 7-0 for Items 7 & 8, Beecham, Kleinberg absent.

City Manager Benest confirmed the appointment of Valerie Fong as Utilities Director and said her start date would be October 16, 2006. She would be formally introduced to the Council at the next City Council Meeting on October 16, 2006.

Council Member Mossar said she registered a "no" vote on Item No. 5 because the Council's policy for bringing legislative matters forward had not been followed.

8A. (Old No. 6.) Resolution 8657 entitled "Resolution of the Council of the City of Palo Alto to Support Amending Section 1401 of the Merit System Rules and Regulations Regarding the Memorandum of Agreement between the City Of Palo Alto and Local 715, SEIU"

Resolution 8658 entitled "Resolution of the Council of the City of Palo Alto Adopting a Compensation Plan for Classified Personnel (SEIU) and Rescinding Resolution nos. 8452, 8540, 8595, 8608, and 8623."

Council Member Klein noted he had asked to remove Item No. 6 from the consent calendar because the issue should be discussed with the public and not be passed as an item on the consent calendar.

Dick Rosenbaum, 757 Garland Drive, stated he was not in favor of the Council approving the SEIU agreement. He said the contract increased pension liabilities, did not effectively limit increases in health care costs for active employees, and exacerbated the problem of the unfunded liability for retiree health care costs.

Council Member Mossar said she registered a "no" vote on the item because the agreement granted benefits to City employees which few people in the

private sector could expect to get today. The City needed to switch from a negotiating environment where more was expected whenever contracts were negotiated. The City could not afford to grow in labor costs and needed to clamp down, minimize, and be more efficient.

Council Member Klein said the contract was not a great contract but it was a good contract. The benefit increase would cost the City 11 percent over three years or 3.5 percent per year which was slightly less than the inflation rate in the Bay Area. The increase in retirement benefits was in line with the Bay Area's industry retirement rates. The contract had a trade off in retirement benefits against reduced healthcare benefits and, in 20 years, the City would gain a savings of \$10 million in reduced healthcare costs compared to increased retirement benefits.

Council Member Cordell felt it was a fair contract and was in favor of the motion.

Vice Mayor Kishimoto registered a "no" vote on the item. She said in fiscal year 2001-02, total payroll expenditures went from 61 percent of the General Fund to 68 percent in 2004-05. A \$7 million increase in general fund payroll and a 5 percent reduction in general fund staffing resulted in less funds for infrastructure and a crunch on services. Staff needed to be more creative in delivering more services with less people.

MOTION: Council Member Cordell moved, seconded by Morton, to approve the Resolution adopting a compensation plan for classified personnel (SEIU) and rescinding Resolution nos. 8452, 8540, 8595, 8608, 8623 and Resolution to support amending Section 1401 of the Merit System Rules and Regulations regarding the Memorandum of Agreement between the City of Palo Alto and Local 715, SEIU.

Council Member Morton said the negotiation process was lengthy and he wanted the public to know the Council had negotiated with the SEIU union, the same Union that had been on strike with San Francisco hotel workers for a couple of years and with Stanford University for several months. The Union chose to take a small increase in salary and put more in the retirement benefits. The Council also negotiated placing a cap on future health care expenses. He urged the Council to support the motion.

MOTION PASSED 5-2 Kishimoto, Mossar no, Beecham, Kleinberg absent.

PUBLIC HEARINGS

- *9. Ordinance 4919 entitled "Ordinance of the Council of the City of Palo Alto hereby Amends a Planned Community (PC) Zone at 850 Webster Street (Channing House) [05PLN-00290], to Allow Construction of a Health Care Building and Underground Garage, and Approve a Variance for Daylight Plane Encroachments and a Negative Declaration for the Project, and a Resolution of Approval of Architectural Review Findings."

Resolution 8659 entitled "Resolution of the Council of the City of Palo Alto to Support Approving Architectural Review (05PLN-00) for 850 Webster Street – Channing House Health Care Building; Channing House, Applicant for Planned Community Zone Change PC-_____"

Ordinance 1st Reading entitled "Ordinance Approving a Negative Declaration and Amending Section 18.08.040 of the Palo Alto Municipal Code (the Zoning Map) to Change the Classification of Property Known as 850 Webster Street (Channing House) from PC Planned Community 4900 to PC Planned Community _____, to Allow Construction of a Health Care Building and Underground Garage, and Approve a Variance for Encroachments into a Special Daylight Plane Along Two Property Lines"

Director of Planning & Community Environment Steve Emslie introduced Planning Commissioner Paula Sandas and Architectural Review Board (ARB) Representative Judith Wasserman to answer questions.

Planning Manager Amy French gave a presentation as outlined in staff report (CMR: 383.06).

Vice Mayor Kishimoto declared the Public Hearing opened at 7:45 p.m.

John Northway, 437 Lytton Avenue, said Channing House was one of 78 licensed care facilities regulated by the State of California. Plans for the nursing home project started in 2001 and reduced the number of assisted-living beds from 48 to 27. Eight different studies were reviewed on how to get the building to work. Sixty-two percent of Channing House residents were from Palo Alto and Stanford communities and donated 700 volunteer hours per month to 40 different organizations. Outside organizations were

allowed to use the conference facilities. Channing House modified plans to meet their essential programs and the neighborhoods' concerns. He urged the Council to approve the variance application and planned community (PC) project.

Carl Braginsky, 850 Webster Street, spoke of the various alternatives in building a new health center within the existing building structure. Some options were to add to the rooftop, rearrange space on the second floor, convert portions of the third floor, purchase alternative property areas, convert additional apartments, lease space from other healthcare facilities in the City, or to build a one-story building with underground parking in the current parking lot. Another option was to do nothing but it was not feasible because a 40-year old facility was unmarketable to a waiting list of tenants and it was a critical issue to reform and modernize the health facilities. The Channing House was committed to maintain minimal disruption to the residents, as well as the neighborhood, and to do a good job.

Tom Brutting, 538 Ninth Street, Oakland, HKR Architects, said the existing floor plate of the current building was not appropriate for current healthcare standards. A slide presentation was given to show the area where the building was to take place and he explained the variance of daylight plane encroachments.

Herbert Hammerslough, 850 Webster Street, #420, President of the Residents' Association, said Channing House consisted of 247 residents. He urged the Council to support the project.

Bill McCormick, speaking on behalf of Larry Wertman, 547 Channing Avenue, indicated many of his neighbors did not receive public notice regarding the massive project. Approval of the project would intrude on his privacy and would cut off the sky view and sunlight from his home. He had concerns about the project narrowing the alleyway near his townhouse and would create less parking around the surrounding streets. He urged the Council to deny the variance.

Richard W. Lyman, 850 Webster Street, #728, said denying the project would crowd the Channing House residents into obsolete facilities and he asked the Council to approve the project.

Bill Preston, 1230 Hamilton Avenue, said the Channing House residents needed a modern health facility and he requested Council approval.

Carl Otto, 850 Webster St. #735, said the Channing House staff was hindered and handicapped in performing their jobs because of having to work in an obsolete facility.

Daniel Sneider, 803 Cowper Street, opposed the project and said it would change the character of the neighborhood. He had lived through construction issues during a two-year retrofit project of Channing House and he asked the City and Channing House to guarantee that such disruption not occur this time.

Elisabeth Rubinfien, 803 Cowper Street, opposed the project and spoke of the building design not fitting in with the neighborhood.

Ray Bacchetti, 850 Webster Street, #700, said the Channing House needed a new health center and he urged Council to approve the project.

Steve Ludvik, 541 Channing Avenue, spoke regarding the alleyway shared by his townhouse and Channing House. The private alleyway was 15 feet wide and too narrow to access internal traffic. He said the proposal would create a hazard in the neighborhood and asked the Council to deny the variance.

Kevin Sheehan, 525 Channing Avenue, said the project would create a massive structure and he asked the City be held accountable for the industrial construction that would occur.

Stephanie Munoz, 101 Alma, was not in favor of having a parking lot taking up open space and the invasion of the daylight plane.

Monica Yeung Arima, 1052 Bryant Street/837 Cowper Street, said the project was previously zoned PC and approved for a high-rise building with a condition to keep the parking lot. She was not in favor of having a building on the parking lot.

Vice Mayor Kishimoto declared the Public Hearing closed at 8:35 p.m.

Sandy Sloan, 110 Alma, Suite 210, Menlo Park, Channing House Attorney, clarified some of the comments. She said most of the residential properties in the Low Density Multiple-Family Residence District (RM15) and Medium Density Multiple-Family Residence District (RM30) zones did not meet the

current daylight plane for their zones. The building was a residential structure but was classified as commercial and the variance requested to include the corners did not meet the RM15 daylight plane. The Architectural Review Board (ARB) noted the new building would be a better transition in the neighborhood from the existing Channing House building. Channing Place was approved for a 15-foot alley in the back and Channing House created a 15-foot easement to Channing Place. The grant deed was an easement for ingress and egress and did not allow parking in the alley. Channing House agreed to widen the mouth of the alleyway to 20 feet to allow for truck accessibility. Channing House had a good proposal initially but after meeting with neighbors the plans were substantially modified. She urged the Council to support the proposal.

Vice Mayor Kishimoto said the item was quasi-judicial which meant the decision would be based on what was on the record. She said the Council did not have any facts to disclose that were not in the records.

Council Member Morton stated he had nothing to disclose but, for the record, during the 1980's and 1990's his in-laws resided at Channing House. During the 1970's, he helped try to save the historical Channing Grocery from townhouse development. He said the public had referred to the building as institutional and asked how the ARB handled transitional issues.

Judith Wasserman, ARB Representative, said the ARB continually faced these issues, such as transitions from one zone to another, from one site to another, which were issues of great concern. A transition was not intended to be the same as what existed on one side. The transition would be lost if the structure remained the same. The ARB felt the building would be built in the 21st Century and should have details compatible with the neighborhood. She read a statement from ARB representative David Solnick who could not be at the meeting. Mr. Solnick stated if the new building had residential uses its edges would need to conform to RM zoning. The use was officially not residential and clearly low impact and he did not feel the presence of caretakers should change the zoning regulations. If it was officially residential, it would need multiple balconies in order to satisfy private open space requirements and would impact privacy more than the current design.

Council Member Morton said a resident in the neighborhood had an issue of the solidity of the 26-foot high wall along the alley and if the wall had balconies it would have been more intrusive to the neighbors.

Ms. Wasserman confirmed there would be privacy issues if people sat in the balconies. It would be inappropriate to grandfather in a parking lot where zoning allowed a building.

Council Member Klein said the variance to the daylight plane compared to the RM15 zone was 107 square feet and asked what impact it would have on the surrounding neighbor in losing sunshine and daylight time.

Mr. Emslie said he was not prepared to give a quantitative answer but in his opinion the amount of daylight plane encroachment was negligible. To remove 107 square feet would not improve or deteriorate the visual experience of the building.

Council Member Klein asked what the impact would be if the City insisted on 107 square foot set back.

Tom Brutting, 538 Ninth Street, Oakland, said two beds would be lost in the assisted living portion and two beds in the skilled nursing portion. There was a portion of common space that would also be lost and skilled nursing would not be accepted, which would affect square footage requirements. The number of beds and support space for Channing House would not be met. Shadow studies were done on June 21 and December 21, 2005, to determine what impact the various angles of the building had on surrounding neighbors and it was found to be negligible.

Council Member Klein asked about State regulations regarding minimum requirements for the number of beds and the building ratio.

Mr. Brutting said the requirements focused more on the ratio. He said there was not a minimum requirement for the numbers of beds.

Council Member Cordell requested clarification regarding the Council being asked to adopt a PC ordinance and to grant a variance and, in order to accomplish the task, the Council had to make certain findings set forth in staff report (CMR:383:06). It was not a referendum on the Channing House and all parties agreed there was a need for the proposed medical facility. The issue was the design of a two-story, 32,185 square foot facility being appropriate for Channing House needs and for the surrounding neighborhood. The oppositions to the project were listed on pages 5 and 6 of the proposed ordinance. She raised concern regarding: 1) widening the mouth of the alley to 20 feet and posing traffic problems; 2) loss of privacy;

and 3) construction issues.

Mr. Emslie said the alley width and all aspects of circulation, loading, parking, adequate safety, site distance, clearances, ingress and egress had been reviewed and in agreement with the current configurations by the City's emergency personnel. Privacy measures were taken to reduce the direct visual line of sight by offsetting the building. The applicant had to prepare a logistics plan to handle construction related impacts.

Mr. Brutting said privacy issues were met in the plan for both floors in terms of movement and connection of the exterior building facing the neighbors by angling locations of windows to mitigate a direct view into neighboring properties.

Council Member Cordell said a member of the public questioned why the building had to be two stories instead of a single-level building.

Mr. Brutting said the assisted-living portion had a licensing designation and the existing floor plate was insufficient. The configuration of the proposed building was more appropriate for assisted-living than the existing floor plate.

Vice Mayor Kishimoto addressed Mr. Wertman's concern regarding the placement of windows being aligned to his property and whether a comparison was made to determine the direct view into his property.

Mr. Brutting said it had been done. He said the RM 15 daylight plane was met by setting the building back in conjunction with Mr. Wertman's building wall.

MOTION: Council Member Morton moved, seconded by Mossar, to approve the Planning and Transportation Commission (PTC), Architectural Review Board (ARB), and staff recommendation to:

1. Approve the Negative Declaration as revised;
2. Adopt the Planned Community Ordinance which will:
 - a. Amend the existing PC zone for 850 Webster Avenue, allowing the construction of a two-story, 32,185 square foot health care building providing 53 beds for skilled nursing and assisted-living residents and associated spaces for staff and residents, above a 16,437 square foot underground garage providing service

- functions and parking spaces for 37 vehicles and 22 bicycles;
 - b. Make findings for, and grant a variance for, exceptions to the special PC daylight planes set forth in PAMC 18.68.150(e) for second floor encroachments into the west and south side daylight planes; and
 - c. Formally approve the Negative Declaration.
3. Adopt the Resolution containing architectural review findings and conditions of approval.

Vice Mayor Kishimoto asked Mr. Brutting to elaborate on Council Member Klein's comment regarding ratio and how it would affect the facility.

Mr. Brutting said the facility would be smaller and less efficient.

Council Member Morton encouraged the construction crew to try to lessen the amount of construction dust and the placement of a utility pole. He asked that the motion include sensitivity to viewscape and minimize dust.

Council Member Mossar said ARB member David Solnick's comments were germane and to the point. The project did meet the daylight plane requirements for an RM30 building and the change in the daylight plane from the PC requirement was acceptable. The blueprint indicated a great improvement to the Homer Avenue tree scape. She was not in favor of parking lot expansion, which would not contribute to the fabric of a residential neighborhood. It was not specifically mentioned that there were extensive landscape plans along the neighbors' fences and agreement to work with each neighbor to provide favorable landscaping behind the individual properties. The proposal met the needs of the residents and enhanced the neighborhood.

Council Member Klein said the project would not have a negative impact on the neighborhood. The impact of the variance would be negligible and the alternative would seem to have a disproportionate impact on the viability of the project. He supported the motion.

MOTION TO AMEND: Vice Mayor Kishimoto moved, seconded by Drekmeier, that the project adhere to RM15 daylight plane on the side facing the RM15 property line.

Council Member Mossar said approval of the amendment would mean the project would need to go back through a redesign process.

Vice Mayor Kishimoto agreed it would need to be modified.

AMENDMENT FAILED 2-5 Cordell, Klein, Morton, Barton, Mossar voting no, Beecham, Kleinberg absent.

MOTION PASSED 7-0 Beecham, Kleinberg absent.

10. Public Hearing - To consider the Adoption of an Ordinance Amending Section 18.10.070 "Second Dwelling Units" of the Palo Alto Municipal Code to Prohibit Individual Sale of Second Units in the RMD and R-2 zoning districts, and declaring the urgency thereof, to take effect immediately

Ordinance Amending Section 18.10.070 of the PAMC Prohibiting Second Dwelling Units under Different Ownership from the Initial Dwelling Unit on an Interim Basis Pursuant to Government Code Section 65858 to take effect immediately

MOTION: Council Member Klein moved, seconded by Mossar, to continue Item No. 10 to a date certain of October 16, 2006.

MOTION PASSED 7-0 Beecham, Kleinberg absent.

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

MOTION: Council Member Mossar moved, seconded by Morton, that the issue of community design projects regarding public works and utilities return to Council for discussion.

MOTION PASSED 7-0 Beecham, Kleinberg absent.

Council Member Mossar reported on a recent trip to Phoenix on a National League of Cities Energy Environment and Natural Resources Steering Committee and the draft policy report was completed. Phoenix is a marvelous example of energy conservation.

Vice Mayor Kishimoto advised she finished number two in the 50's age group in the recent Moonlight Run. She referred to a letter included in the agenda packet, which was sent to the U.S. Fish and Wildlife regarding the San Francisquito Creek Waterbed requesting coordination with the Stanford Habitat Conservation Plan to ensure all options are considered to address the 100 year flood.

Council Member Morton reported the Black and White Ball was held this past

weekend and apparently was another amazing successful event.

Vice Mayor Kishimoto noted she attended the Black and White Ball and thanked Sunny and Dan Dykwel and everyone who worked hard on the event.

Council Member Barton congratulated Vice Mayor Kishimoto for chairing a good meeting this evening.

Council Member Drekmeier said he was at the Black and White Ball and it was extremely well organized and Lucie Stern Community Center looked brilliant.

CLOSED SESSION

Gary Baum announced the Closed Session was cancelled.

~~11. 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)~~

FINAL ADJOURNMENT: The meeting adjourned at 9:18 p.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.