

Special Meeting  
November 20, 2006

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:03 p.m.

Present: Barton, Beecham, Cordell (arrived at 7:40 p.m.), Drekmeier, Kishimoto, Klein (arrived at 7:40 p.m.), Kleinberg, Morton, Mossar (arrived at 7:40 p.m.)

## STUDY SESSION

Mayor Kleinberg stated: 1) Council Member Cordell would not participate in Item No. 1 due to a conflict of interest because she was employed by Stanford University; 2) Council Member Klein would not participate in Item No. 1 due to a conflict of interest because his wife was employed by Stanford University; and 3) Council Member Mossar would not participate in Item No. 1 due to a conflict of interest because her husband was employed by Stanford University.

### 1. Presentation of Proposed Modernization and Expansion Project for Stanford Medical Center

The City Council conducted a study session with representatives from the Stanford Medical Center (SMC), who outlined preliminary plans for the replacement and expansion of the Main Hospital, the Lucile Packard Children's Hospital, the Stanford School of Medicine, and Hoover Pavilion.

The SMC representatives outlined current challenges, including the age of the structures, overcrowding, reduced patient privacy, undersized facilities, and reduced space for community physicians. To respond to these challenges, the SMC will be proposing a redevelopment plan to replace the Main hospital building with a larger, multi-story structure, expand the existing Lucile Packard Children's Hospital, replace the School of Medicine buildings, and expand Hoover Pavilion to accommodate medical office space. Key issues to be addressed during the review process are expected to include traffic and transportation, impacts on housing demand, building height, and density. Public outreach and communication will be an important component of the project throughout the review process and Stanford will incorporate outreach as a primary component of its program.

City Council members recognized the SMC as a major asset to the Palo Alto community and offered their support in continuing to work with Stanford to identify and address issues. Council members noted the size of the redevelopment project is such that it will impact the City with regards to housing, traffic, parks, schools, libraries, police and other City services. Some Council members indicated it will be important to understand the baseline impacts of the existing Medical Center to better understand the future impacts of the project, while others noted those impacts should be controlled and balanced with the community benefits of the project. Individual council members cited the need for a Medical Center Area Plan and Environmental Impact Report to fully understand the project and its impact on the City, a Transportation Demand Management (TDM) program to control traffic and reduce car trips on and off the site, and a sustainable/green building program for the new facilities. Housing needs generated by the project were also identified as a key issue for discussion.

The City Manager outlined the next steps for the project, which will include a request from staff for the Council to authorize staff to commence the process of review for the project, to begin negotiations on a Development Agreement and approval of a Reimbursement Agreement for payment of project costs. Staff would return to Council on December 18, 2006 with this request.

**No action required.**

### ORAL COMMUNICATIONS

Barbara Blasé, 356 Coleridge Avenue, spoke regarding 400 Channing Avenue and threats from a neighbor.

### CONSENT CALENDAR

**MOTION:** Council Member Morton moved, seconded by Kishimoto, to approve Agenda Item Nos. 2 through 8 on the Consent Calendar.

Vice Mayor Kishimoto registered a 'no' vote on Agenda Item No. 4.

Council Member Cordell noted she would not participate in Item No. 3 due to a conflict of interest because she was employed by Stanford University.

Council Member Klein noted he would not participate in Item No. 3 due to a conflict of interest because his wife was employed by Stanford University.

Council Member Mossar noted she would not participate in Item No. 3 due to a conflict of interest because her husband was employed by Stanford University.

2. Resolution 8666 entitled "Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act with Respect to Members of the Palo Alto Fire Chiefs' Association and Rescinding Resolution No. 8571"

Resolution 8667 entitled "Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act with Respect to Members of Local 1319, International Association of Fire Fighters and Rescinding Resolution No. 8569"

Resolution 8668 entitled "Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act with Respect to Management and Professional Personnel and Council Appointed and Elected Officers Group and Rescinding Resolution No. 8570"

Resolution 8669 entitled "Resolution of the Council of the City of Palo Alto Fixing the Employer's Contribution under the Public Employees' Medical and Hospital Care Act with Respect to Members of Local 715, Service Employees' International Union and Rescinding Resolution 8072"

3. **Ordinance 4925** entitled “**Ordinance of the Council of the City of Palo Alto Deleting Chapter 18.43 (Community Commercial) and Adding Portions of a New Chapter 18.16 (Neighborhood, Community, and Service Commercial Districts) of Title 18 (Zoning Ordinance) of the Palo Alto Municipal Code**”
4. **Ordinance 4924** entitled “**Ordinance of the Council of the City of Palo Alto Amending the Zoning Map of the City of Palo Alto to Change the Zone Designation for 1525 Arastradero Road from the Open Space (OS) Zone Designation to the Public Facility (PF) Zone Designation**”
5. Resolution 8670 entitled “Resolution of the Council of the City of Palo Alto Authorizing the City of Palo Alto to File a Water Recycling Facilities Planning Grant Application in the Amount of \$75,000 with the State Water Resources Control Board”
6. Resolution 8671 entitled “Resolution of the Council of the City of Palo Alto Amending the Conflict of Interest Code for Designated City Officers and Employees as Required by the Political Reform Act and Regulations of the Fair Political Practices Commission and Repealing Resolution No. 8476”
7. Resolution 8672 entitled “Resolution of the Council of the City of Palo Alto Adopting the San Francisco Bay Area Integrated Regional Water Management Plan”
8. Acceptance of Buffer Zone Protection Program (BZPP) Grant Funds in the Amount of \$47,287

**Ordinance 4926** entitled “**Ordinance of the Council of the City of Palo Alto Amending the Budget for Fiscal Year 2006-07 to Establish Capital Improvement Program Project Number PD-07001, SWAT Van Replacement and to Provide an Appropriation in the Amount of \$120,000**”

**MOTION PASSED** 9-0 for agenda items 2 and 5-8.

**MOTION PASSED** 6-0 for agenda item 3, Cordell, Klein, Mossar not participating.

**MOTION PASSED** 8-1 for agenda item 4, Kishimoto no.

#### **PUBLIC HEARINGS**

9. Public Hearing – To consider an Appeal of the Director’s decision to approve a Parcel Map requested by Brian Lee Wilson for condominium purposes to establish “air space rights” within the two existing buildings at 610 California Avenue [05PLN-00358] on a lot under common ownership. Environmental Assessment: Exempt from the provisions of CEQA. Zone District: RMD(NP)

Council Member Beecham noted he would not participate in the item due to his residence being located within the RMD(NP) Zone.

Assistant Director of Planning and Community Environment Curtis Williams said the project involved the division of a parcel map into two condominium 'air spaces' with single ownership of the land and buildings. The 'air space' within the second unit would be owned separately. The Council had previously heard and adopted an interim ordinance that would not allow that in the future under similar lots; however, the ordinance exempted the proposed parcel from application. Although the City Attorney advised staff it was permissible, the intent of the RMD zone indicated single ownership for individual properties. Staff attempted to remedy the situation with the urgency ordinance in Item 11 on the agenda that evening.

Mayor Kleinberg declared the Public Hearing opened at 7:50 p.m.

Pria Graves, 2130 Yale Street, said the intent of the RMD zone was to protect the historic structures while allowing a moderate increase in the number of rental units under tight restrictions with Historic Resources Board (HRB) and Architectural Review Board (ARB) review. The applicant's concept of separating the dwelling unit from the 'air space' inside it did not feel right.

Robert Moss, 4010 Orme Street, said when the RMD zone was created it was intended to be 'granny units' where one person owned both units. He urged to Council to vote against the appeal.

Brian Lee Wilson said his application was to create a two unit condo complex. There would be no changes in the physical structure or in the tenants or their leases. The Covenants, Conditions and Restrictions (CC&R) that regulated conduct would remain, but it would not replace or diminish the City's control of the property. The application was first approved at a Director's Hearing, and later upheld after a subsequent appeal. He supported both findings. He suggested the Council validate the findings and recommendations of City staff and the advisory board.

Herb Borock, P.O. Box 632, believed the purpose of the ordinance was for the two units and the 'air space' to remain under single ownership.

Joy Ogawa, Yale Street, said if the Council approved the application Mr. Wilson would have extraordinary rights no other property owner had been granted since 1983, and would not have access to in the future. She expressed opposition to granting a subdivision of the property.

Council Member Klein asked what the time limits were for the applicant and appellant.

City Attorney Gary Baum said the applicant and appellant were given ten minutes each, with five minute rebuttals.

Council Member Klein understood there was no written opinion from the City Attorney on the matter.

Mr. Baum said that was correct.

Council Member Klein asked for an explanation of staff's advice to the Planning and

Transportation Commission (P&TC).

Mr. Baum said the application was for a parcel map, which was governed by the Palo Alto Municipal Code (PAMC) as well as the Subdivision Map Act (SMA). The application complied with the State code, the present ordinance as written, as well as PAMC Section 21.12.090. The City generally exempted projects already underway although it was not a legal requirement.

Council Member Klein said if the situation had been posed to the Council or City staff in the 1980's, he believed the project would not have been approved for conversion. He inquired how it was now allowable.

Mr. Baum said the condo conversion ordinance only applied to units when there were three or more of them. Therefore the ordinance did not apply. In the event the Council desired to deny the appeal, they could only do so under the findings found in the SMA: 1) the project itself was not consistent with the City's general or specific plan; 2) the site was not physically suited for the type of density or proposed level of density; 3) the design improvements were likely to cause sustainable environmental harm; or 4) the design or type of subdivision improvements would conflict with public easements.

Mayor Kleinberg asked whether making any one of the findings would be sufficient to deny the project.

Mr. Baum said yes.

Council Member Morton said if the premise was a house could occupy 'air space' and that 'air space' was divided without dividing the lot, there could be two owners for the houses with one owner for the lot. He asked whether that was the logic being applied.

Director of Planning and Community Environment Steve Emslie said yes. The purpose for the urgency ordinance was to anticipate the 'air space' subdivision of land and would be applied to the RMD and R2 districts respectively.

Council Member Morton said perhaps the code did not recognize a situation such as 'air space'. In effect, it was a lot subdivision that would not otherwise be subdivided.

Mr. Emslie said, as indicated by the City Attorney's Office, the conflict in the RMD and R2 zones provided sufficient ambiguity which would increase the City's exposure to litigation.

Council Member Morton asked if there would be discussion about whether the owner envisioned splitting the second dwelling unit from the historic unit. He also inquired whether the owner was aware if he used the exception for the Historical Preservation Act he was bound to keep the property as a single unit.

Mr. Emslie said there was no evidence in the record indicating that topic was discussed.

Senior Planner Steven Turner said the ARB and HRB reviewed the addition of the second unit as well as the historic compatibility of the second unit with the first Category

2 structure. There was no specific discussion as to the future history of the two units.

Council Member Morton asked whether there was any presupposition by the owner that he would have 'air space' rights.

Mr. Baum said the PAMC as well as State law provided the owner the right to 'air space'.

Council Member Morton said the only reason the owner was allowed to build a second unit was because it was believed both units would be owned by a single individual.

Mr. Baum said it was not conditioned as such.

Council Member Morton asked whether the ordinance precluded the possibility of a second unit unless the applicant met specific exemption requirements.

Mr. Baum said the applicant's argument was that the City's ordinance was not specific to that issue.

Council Member Morton asked what constituted a subdivision that conflicted with public access or public easement, and if there was sufficient finding to deny the application.

Mr. Baum said no. The statute specifically referred to public easements, and a cross easement between two individual property owners was not a public easement by definition.

Council Member Morton said based on possible legal action and because of a loophole, which would be closed after the fact, the Council was being forced into doing something the ordinance never envisioned. He felt it was a wrong move.

Vice Mayor Kishimoto understood the parcel would remain under a single ownership.

Mr. Williams said yes.

Vice Mayor Kishimoto said when she asked about parking spaces the answer was the two spaces on the grounds would exist under common ownership.

Mr. Williams said the wording was incorrect. It was not common ownership it was one owner of the entire parcel and the other owner has the 'air space' of the other unit.

Vice Mayor Kishimoto recalled staff's comment regarding parking was if the subdivision was approved the onsite parking spaces, would exist under common ownership and existing access to both spaces would remain unchanged.

Mr. Williams said the parking spaces were under single ownership, similar to a homeowner's association (HOA), and there would be an easement for driveway access to the garage.

Mr. Emslie said typically in a condo 'air space' situation where there was not a fee



interest in the underlining land, the land was under single ownership 'in common' or by a group.

Mr. Baum said the HOA was considered to be an individual owner or single legal entity.

Vice Mayor Kishimoto clarified the owner of the land would be the HOA and not one person.

Mr. Baum said that was his understanding.

Council Member Morton said the application for the building of the house was not a condo unit. The condo was being created after the fact to justify the division.

Mr. Baum said that was correct.

Mayor Kleinberg indicated clarifying questions were still being presented.

Council Member Morton clarified there would only be one owner if the creation of a HOA was allowed after the fact.

Vice Mayor Kishimoto asked whether the intent of the RMD zone was to preserve the neighborhood rather than the historic home.

Mr. Emslie said the home would be subject to regulations related to Category 2 historic structures, which involved the demolition delay or the limit of the preservation of one unit.

Vice Mayor Kishimoto asked whether the intent of the ordinance carried any legal weight.

Mr. Baum said the ordinance as written allowed the exemption.

Dan Garber, Planning and Transportation Commissioner, said the ambiguity of the PAMC ultimately resulted in P&TC's support of staff's recommendation. The concerns of the three commissioners who opposed the motion did not support the applicant's request.

Pria Graves said the RMD code talked about a second dwelling unit. By definition, a second dwelling unit was a room or group of rooms intended for occupancy. The idea of separating the 'air space' inside a room from its intended occupancy was mind boggling. She expressed concern about the historic preservation, and felt the City had lost some leverage by allowing the two units to be subdivided even if the physical structure remained owned by a single or multiple person association. While the applicant stated the CC&Rs would protect the building, the City had no review or control over them. She encouraged the Council to overturn the application and uphold the appeal.

Brian Lee Wilson said the project was a traditional condo where the association was jointly owned. Maintenance expenses would be paid either from an operating account or a capital reserve fund depending on the type of expense, i.e. regular yard maintenance

or roof replacement. The two accounts would be funded by monthly HOA dues. The original plans submitted to the City had zero variances. They met the Floor Area Ratio (FAR), parking and setback requirements. The variances he received came as suggested revisions from Planning staff, their consulting architect and the ARB, which he accepted along with the minor variance required in order to implement the changes. The HOA would maintain the authority on how unit owners maintained their lawns or exterior paint.

Mayor Kleinberg declared the Public Hearing closed at 8:30 p.m.

**MOTION:** Council Member Barton moved, seconded by Kleinberg, to approve the Planning and Transportation Commission recommendations to deny the appeal and affirm the Director of Planning and Community Environment's decision to approve a parcel map at 610 California Avenue for condominium purposes to establish 'air space' rights within the two existing buildings.

Council Member Barton said while he would like to uphold the appeal, part of his obligation as a Council Member was to follow and uphold the law. He believed the applicant had the right to move forward with the project. The notion that item 11 was on the agenda that evening was proof of staff's belief the applicant had the right.

Mayor Kleinberg said while she was reluctant to move forward, the law seemed to allow the applicant to do so. It seemed unfair to make the applicant pay the price for the ineffective law previously passed. The ownership was on the City.

Council Member Morton said the Council was being asked to correct or mitigate some misinformation by staff. Reluctantly, staff needed to inform the developer the two units would need to be owned by a single individual with the second unit to remain a rental unit.

Council Member Cordell said the RMD language was written entirely using the term ownership of a dwelling unit, which was defined by a room or group of rooms. It was not clear to her if the Council voted to uphold the appeal they would be in violation of the law. A reasonable argument could be made the intent of the drafters of the ordinance was for it to apply to ownership of a dwelling unit not the "air space" or occupancy rights. While fairness was an issue and she expressed concern, the Council was restricted to four or five key points in determining whether to deny the appeal. Fairness was not one of them, and should not come into Council's deliberations.

Vice Mayor Kishimoto asked what guidance was given to the applicant and whether he was informed the ultimate decision was with the Council.

Mr. Emslie said he did not participate in any of the discussions; however, the goal of the Planning staff was to provide accurate responses. Responses involving a legal interpretation would include a consultation with the City Attorney's Office. He clarified staff remained neutral and provided the most accurate information.

Council Member Morton asked whether the first ground in which to uphold the appeal was if the decision to allow condo conversion was not in accord with the RMD(NP) zone.

Mr. Baum said that was correct.

Council Member Morton said if the wording was clear in the RMD(NP) zone that the dwelling units remained under single ownership, then dividing the units was inconsistent with the RMD(NP) zone and would be a basis for upholding the appeal.

Mr. Baum said since condos had long been recognized to create dwelling units it would be a different interpretation.

Council Member Morton said he agreed condos were dwelling units. He clarified the RMD(NP) zone was designed so the two dwelling units remained under single ownership. He clarified doing so was inconsistent with the ordinance.

**SUBSTITUTE MOTION:** Council Member Morton moved, seconded by Cordell, to uphold the appeal based upon the finding that allowing the division of air space is inconsistent with the intent of the RMD(NP) zone.

Council Member Morton said while staff's intent was to bring forth clarifying language in item 11, he did not believe it would close the loophole entirely. He also felt it was not the intent of the ordinance to allow such a project.

Mr. Baum said in the event the Substitute Motion passed, it would be useful for the Council to emphasize they were merely clarifying the original intent of the ordinance and not changing anything.

Council Member Barton inquired if the Council was required to make one of the four findings in order to uphold the appeal, how the original intent of the ordinance met one of those findings.

Mr. Baum said it would have to come under the finding it was not consistent with the applicable general or specific plan. It would also include addenda to Section 21.12.090 of the PAMC.

Council Member Cordell said if the project was denied the argument would be the correct interpretation of the ordinance was that a reasonable person would say ownership of a dwelling unit was indivisible.

Mayor Kleinberg was opposed to the Substitute Motion. She was mindful of possible litigation.

Council Member Klein was opposed to the Substitute Motion. He did not believe there would be a major physical impact on the neighborhood. He did not like the principle, but it posed relatively little harm which the community could absorb.

Council Member Mossar concurred with Council Member Klein.

**SUBSTITUTE MOTION FAILED** 2-6, Cordell, Morton yes, Beecham not participating.

**MOTION PASSED** 6-2, Cordell, Morton no, Beecham not participating.

- \*10. Public Hearing - To consider an Appeal by Court House Plaza Company of the Planning Director's denial of an application to allow the construction of a three story building to include 50,467 square feet for Research and Development space on the ground floor and 104,971 square feet for two floors of residential apartments totaling 84 units, plus a subterranean parking garage and related site improvements at 195 Page Mill Road, 2825, 2865, 2873, 2891 & 2901 Park Boulevard [05PLN-00281]. The project includes requests for Design Enhancement Exceptions to exceed the maximum allowable building height, encroach into the side and rear daylight plane, reduce the front and street side setbacks and increase the lot coverage Environmental Assessment: An Initial Study has been completed and a Draft Mitigated Negative Declaration has been prepared in accordance with California Environmental Quality Act (CEQA) requirements. Zone District: GM.

Mayor Kleinberg stated the matter was quasi-judicial and subject to Council's disclosure policy.

Council Member Beecham disclosed he spoke with neighbors on Emerson Street; however, he was not aware of any information they provided that was not in the public record.

Council Member Barton disclosed he spoke with the applicant and received no information not in the public record.

Mayor Kleinberg disclosed the same conversation as Council Member Barton.

Council Member Drekmeier disclosed the same conversation as Council Member Barton.

Council Member Cordell disclosed she spoke with the person who proposed the project and she took a site visit. She was not aware of any information that was not in the public record.

Assistant Director of Planning and Community Environment Curtis Williams said the project did not comply with either the zoning regulations for General Manufacturing (GM) that were currently in effect, nor with the GM(B) regulations in effect prior to the Council's change in those ordinances in October 2005. Staff was particularly concerned it was a cornerstone project in the Pedestrian and Transit Oriented Development (PTOD) area where the design of streetscapes, edge treatments and visibilities along Alma Street and the railroad area, as well as Park Boulevard were critical in establishing appropriate design patterns. Staff had provided alternative language to consider in making an attempt to comply with some of the spirit of the design criteria. The hope was to be able to recommend approval to the Council. The applicant did not concur with the alternative recommendations in the staff report (CMR:418:06). Staff's recommendation

was to deny the project as proposed.

David Solnick, Architectural Review Board Member, said the ARB voted to support the project with a number of substantial conditions. The positive aspect among the board members had to do with the mix of uses; an unusual mix of live and work space. The other strong positives were the rental housing units, the communal amenities that included a pool and community area, and the courtyard site plan. The ARB was less adamant about the architecture, the monolithic nature about the front and rear elevations, the impact to the residential neighborhood and across the railroad tracks. In summary, the ARB was supportive of the applicant's primary mission, which was to offer work space for small startups along with rental housing. He believed with Planning staff's suggestions and another round of review the project could be a positive addition to the City.

Council Member Klein asked how far apart the Planning staff was from the applicant in their recommendations regarding the rear wall.

Mr. Williams said staff's concern about the rear wall was its size; approximately 450 feet long by 40 feet high, which was more than a city block in downtown Palo Alto and longer than 800 High Street. Staff drew a diagram that suggested drops in height at certain points; however, the front elevation had a lot of articulation that could break up the wall. With regard to the interior courtyard, perhaps setting the upper two floors back would create an overhang into the courtyard. The architect indicated that was feasible.

Council Member Klein asked the position of the ARB.

Mr. Solnick said although he could not speak for the ARB because they had not seen the diagrams, what he had seen made a lot of sense and would improve the building substantially.

Council Member Morton asked whether the dropping would expose the neighbors across Alma Street to more light exposure.

Mr. Williams said he did not believe it would be anything significant.

Council Member Klein referred to mitigation measure (MM) #8 regarding a daytime parking study for different land uses. Mr. Hohbach's letter stated it was unnecessary and represented a requirement which had already been approved by the Planning Director.

Mr. Williams said the Planning Director had not approved any parking reduction on the project. The applicant needed to demonstrate assurance the number of hours autos parked for Research and Development (R&D) and residential use was sufficient enough to have some overlap, which was necessary for mixed use and to justify the 20 percent reduction. The parking spaces would need to be unassigned so the parking could be shared with the R&D and rental tenants.

Council Member Klein referred to MM#9, Transportation Demand Management (TDM) Plan, which included measures implemented and enforced to encourage alternative

transportation uses.

Mr. Williams said Mr. Hohbach made reference in his letter to proposing some measures within their development. Staff was not familiar with those, but anticipated reviewing them to make sure they had taken reasonable steps to provide access to transit or had adequate bicycle spaces.

Council Member Klein said the only significant issue was the rear wall. He asked how much of a change would occur to move from the wall as presently designed to the one articulated by staff.

Mr. Williams said staff believed it was feasible without losing any units or floor space. It would be a less imposing design, particularly on the Alma Street side. Working with the developer on the type of elevation they had on the Park Boulevard side for the second and third floors and applying it more on the back side could possibly work without having the differential in height.

Council Member Beecham asked staff to explain SB1818 and how that applied to the two concessions versus the applicant's one concession since the Below Market Rate (BMR) housing went above 10 percent.

City Attorney Gary Baum said under SB1818 in the event BMR units reached 10 percent, the City was required to provide a concession. If the BMR units reached 20 percent, the City was required to provide a second concession. The City defined a concession where mixed use was not allowed in the zone; therefore, mixed use was a concession. The FAR was .5 and the applicant had asked for 1.5, which was the second concession. The applicant argued that somehow FAR was additive; whereby, the components of a project were taken and added up. There was no density bonus requested, which led to some confusion.

Council Member Beecham understood from the staff report (CMR:418:06), the applicant filed the project under the GM application when perhaps it would have been better to file under the GM(B), which at that time allowed mixed use.

Mr. Williams said that was correct. The GM(B) would have allowed mixed use but it still had a FAR limitation of .5 and prohibited R&D.

Council Member Beecham clarified R&D was prohibited under GM(B), but by going under GM the applicant could include R&D. Therefore, a concession was required to do the mixed use under the GM zone.

Mr. Baum said it should be noted because the project was found in the City's Housing Element (HE) if the applicant were to drop the R&D, the project would be ministerial.

Council Member Drekmeier said he recalled reading the applicant had secured a ten foot easement from Caltrans. He did not remember seeing anything about a plan for screening.

Mr. Williams said the applicant presented a preliminary plan to the ARB, and one of the

conditions was for the applicant to return with more uniformed coverage of the wall along its length. He believed the applicant indicated there was a section that presented practical difficulties. Staff needed assurance they would receive documentation as part of the final conditions that the easement was long term.

Council Member Mossar referred to Mr. Hohbach's letter dated November 15, 2006, which stated "they have already agreed to an earlier staff to provide a traffic reducing TDM bulletin board at the rental office. Nothing further should be required". She asked whether location itself met the TDM requirements.

Mr. Williams said he assumed the location justified a parking reduction not so much that it justified TDM requirements. There was a provision in the code that allowed up to a 20 percent reduction in parking at the Director's discretion if an adequate TDM program was provided.

Council Member Mossar clarified staff wanted to verify the parking reductions were legitimate and whether the project that the Council was being asked to evaluate was based upon the GM zoning.

Mr. Williams said yes it was based upon the GM zoning.

Council Member Barton inquired whether the Director's opinion would change relative to the underlining zoning issues, i.e. setbacks, FAR, parking, and if staff was in full agreement with the applicant's mitigation measures.

Mr. Williams confirmed the Director's opinion would not change.

Council Member Mossar said the GM regulations changed on October 11, 2005. She inquired which GM zoning requirements were being used to evaluate the project.

Mr. Williams said the newly adopted zoning requirements were used.

Council Member Mossar asked whether the project was not a legal project until after October 2005.

Mr. Williams said it was. The applicant was provided the option of going under the GM(B) zone or going under the newly adopted regulations for GM.

Council Member Mossar referred to attachment B of the staff report (CMR:418:06). Footnote 2 read, "Under regulations in effect prior to October 11, 2006, mixed use was allowed in the GM zone at an FAR of 1.0." She was unclear which version of which zones were being discussed.

Mr. Williams said that footnote was added as a point of comparison.

Council Member Mossar said the application was filed on a certain date and the zoning being considered was GM. She asked whether the application for the project was filed prior to or after the changes to the GM zone.

Mr. Williams said the application was filed prior to the changes, but it was under the GM(B) zone not the GM zone.

Council Member Mossar said staff indicated the applicant wanted to use the GM zone.

Mr. Williams said yes the GM zone was preferred.

Council Member Mossar asked whether the applicant preferred the GM zone as it was going to be altered in the future or the GM zone at the time they filed their application.

Mr. Williams said when the Council took action in October 2005 the applicant was informed he could proceed under the GM zone in effect when the application was filed. He chose instead to go under the new GM zone regulations.

Council Member Morton clarified the recommendations from staff included: 1) articulation; 2) the parking study; 3) a TDM plan; and 4) a BMR increase. He asked if those were the issues that needed to be resolved in order for staff to support the project.

Mr. Williams said they included the components of the alternative.

Mayor Kleinberg declared the Public Hearing opened at 9:32 p.m.

Harold C. Hohbach, Court House Plaza Company, said he started the project seven years ago and began negotiating for the land in November 2005. Planning staff agreed to the 20 percent reduction in parking if there was a left turn lane. He was opposed to cutting down the wall because it would destroy the courtyard and subject the neighbors to extreme lighting and sound. He said the adoption of staff's recommendations would prevent the project from moving forward.

James Janz, Attorney for Courthouse Plaza Company, said the City was required to comply with Government Code (GC) Section 65195 (SB1818). SB1818 along with the Comprehensive Plan (Comp Plan) designation of the site as being on the City's housing inventory list allowed for the development of housing and mixed use on the site. The disagreement was on whether one or two concessions were needed for the project as proposed, and some of the mitigation measures. The staff was working with a new hybrid of housing and R&D together. Housing at 1.0 FAR was allowed as well as R&D at .5 FAR. He discussed the mitigation measures. MM#2 discussed edge treatment next to Caltrain and on the Alma Street side. Autos traveled at speeds of 30-40 miles per hour on Alma Street. There was already landscaping and vegetation between the roadway and Caltrain with additional vegetation and landscaping proposed between Caltrain and the project site. A pedestrian walking on the east side of Alma Street would only see the vegetation and landscaping across the street. He submitted the proposed mitigation measures would not provide relief to the single family homes on Emerson Street. MM#3 dealt with true environmental issues and was being addressed. MM#4, #5, #6, and #7 were transportation issues and were okay. MM#9 related to the TDM plan, which was inherent in the project. It was a mixed use project close to a transit station. He encouraged the Council to adopt the proposed findings.



Council Member Mossar asked Mr. Janz whether it was his understanding the applicant selected the updated version of the GM zone regulations for the project.

Mr. Janz said yes. He believed part of the analysis involved applying SB1818 and the housing site designation, which made it a moot question.

Council Member Mossar said it would be irrelevant based on the fact that mixed use was prohibited in the updated GM zone.

Mr. Janz said that was correct.

Council Member Beecham asked, in the event the Council sided with staff on the concessions issue, was the applicant willing to have a 20 percent BMR component.

Mr. Hohbach said that was a difficult question. It was a rental project and it would not be financially beneficial; however, if the Council voted to approve his project as it stood he agreed to accept the two concessions and have a 20 percent BMR component.

Terry Shuchat, 290 California Avenue, expressed support for the project. He said it would bring a nice mix of people to the area along California Avenue.

Pierre R. Schwob, 200 Sheridan Avenue, expressed support for Mr. Hohbach as his landlord and the project for its mixed use.

Sharon Rupp, 3045 Park Boulevard, said the project would provide needed affordable housing in Palo Alto. She was supportive of it moving forward.

Jack Kullman, 2536 Emerson Street, expressed concern the project would increase the noise level in his backyard and reduce the light plane. He was opposed to the project.

Debbie Kullman, 2536 Emerson Street, was opposed to the project as designed. It would loom over her neighborhood and look like any other big box project.

Jonathan Cranch, 2520 Emerson Street, urged the Council not to discard PTOD as it applied to 195 Page Mill Road. The proposed plan exceeded the old zoning requirements in many areas: allowing non-permitted uses; exceeding the FAR by as much as 200 percent; exceeding allowable heights; reducing or eliminating setbacks; reducing required parking spaces; and reducing the neighboring views.

Hannah Cranch, 2520 Emerson Street, concurred with Mr. Cranch.

Suzanne Bayley, 2553 Emerson Street, said the proposed project was unacceptable to the Emerson neighbors.

Carolynn Patten, 2535 Emerson Street, urged the Council to support the recommendation of the Planning staff as well as deny the alternative proposal that had been negotiated in the interim. Neither was consistent with the code or the Comp Plan.

Ione Hartley, 153 S. California Avenue, said the design exceptions were significant and would impact the look and feel of California Avenue. She urged the Council to deny the request for the exceptions to the regulations.

Brian Bayley, 2553 Emerson Street, said the project was a bad design, did not conform to the zoning regulations in the area, and should be rejected.

Jeff Schwartz, 345 Sheridan Avenue, spoke in favor of the project. It would encourage new residents to stay in Palo Alto and start new businesses.

Sanford Forte, 280 College Avenue, spoke in favor of the project. The setback with added greenery would add a sound dampening feature. Palo Alto was going to get bigger and the neighbors needed to come to some kind of compromise as projects came forth.

Marcus Wood, Emerson Street, spoke in favor of the project. The issue was whether Palo Alto wanted to build housing and if mixed use housing was appropriate. He favored the location, the type of project, and its proximity to retail and transportation.

Lena Tsakmaki, 2550 Emerson Street, provided a visual diagram for the Council. She was opposed to the project.

Robert Moss, 4010 Orme Street, urged the Council to accept staff's recommendation and deny the project.

Herb Borock, P.O. Box 632, urged the Council to deny the appeal. He said the Planning staff correctly determined the project did not meet the zoning code requirements for the project site and should not have been sent to the ARB.

Joy Ogawa, Yale Street, said at one time there were a number of existing retail shops and uses in the California Avenue area. The PTOD had a lot of emphasis on retail and gave direction on where the City would like to go.

Richard Campbell, Architect, Hoover Associates, said MM#2 had to do with the notches in the building or the loss of four units. It would also require an additional stair and elevator system. The site lines from Emerson Street showed the Agilent building was 51 feet tall while the proposed project was only 38 feet in height. The shape of the rear wall was flat with some indentations for the first level, which was 15 feet high. Above that, the two residential levels had offsets of nine feet that occurred every 80 feet. The R&D units abutted the property line while the setbacks for the residential units ranged from seven to 21 feet. He stated an acoustical engineer hired to review the project found the reflected sound from the back wall would be immeasurable.

Mr. Janz said the problem with Caltrain was not the noise it made as it came by but the sound of its horn. The horn could be heard from a great distance away. With regard to the visual effect, the lower right hand drawing against the wall showed renderings of photographs of the building from Emerson Street. It was hardly visible.

Mayor Kleinberg declared the Public Hearing closed at 10:30 p.m.

Council Member Beecham asked whether the Council had the option to ignore SB1818.

Mr. Baum said no. SB1818 could not be ignored. If the applicant was able to provide enough BMR units, or 10 percent, they were given one concession. If they provided 20 percent they automatically received two concessions. The concessions were delineated within the statute.

Council Member Beecham clarified it was not discretionary.

Mr. Baum said no. It was automatic.

Council Member Beecham referred to the noise impacts on page 9 of the staff report (CMR:418:06), which indicated an increase in ambient noise in the project vicinity above levels existing without the project. He said logic would indicate there would be some impact and asked why that was not the case.

Mr. Williams said the question was whether the project created noise levels that increased the ambient, not whether the noise level was higher for residents of the project. The project itself, other than the temporary construction impact, did not create noise impacts that increased the ambient level.

Council Member Beecham said the statement did not evaluate whether there was a reflection impact of noise.

Mr. Williams said the exposure of person or generations of noise in excess of standards was noted as potentially significant.

Council Member Beecham said one of the mitigation measures spoke about the people within the structure itself not those across Alma Street. He asked whether that was correct.

Mr. Williams said that was correct. The noise study indicated there would not be a significant noticeable increase in noise across Alma Street.

Council Member Beecham referred to the notches and indicated he did not see how that would significantly affect noise. He asked if that was the articulation in question.

Mr. Williams said no and added that, generally, mitigation measures were related to the residents and making sure they were protected. Staff did not feel it was necessary to provide mitigation measures relative to noise offsite.

Council Member Beecham clarified staff's analysis and opinion indicated there was no significant noise impact on the residents east of Alma Street.

**MOTION:** Council Member Beecham moved, seconded by Drekmeier, to approve the project with mitigation measures listed at the end of the Mitigated Negative Declaration with the exception of MM#2k (specifying redesign of the rear of the building via notches) and with 20 percent of the units as Below Market Rate units, with two concessions

(mixed use and floor area ratio), and the requested Design Enhancement Exceptions (DEEs).

Council Member Beecham said the application failed to meet the zoning code; however, Palo Alto was faced with SB1818 and GM zoning regulations. He did not believe the minimal articulation would do anything for the noise or the visual impact; however, providing additional BMR units to the City was important.

Council Member Drekmeier said he was pleased the applicant was willing to increase the number of BMR units to 20 percent. He was sympathetic to the neighbors' concerns about sound and massing, but did not believe the problems would be as drastic as the concern. He trusted that staff would work towards a good TDM plan.

Council Member Barton said, procedurally, he did not believe it was Council's job to approve the project that evening. It was to either uphold or not uphold the decision of the Planning Director. The project was not a requirement for Council to pass. SB1818 was non discretionary, but did not fully override the City's zoning ordinance. He said the project was non compliant on height, setbacks, FAR, lot coverage, and daylight planes. It was simply a question of whether the project was even close to compliance with the zoning ordinance, and he did not believe so. Further, he could not come up with the findings for the Design Enhancement Exceptions (DEE).

**SUBSTITUTE MOTION:** Council Member Barton moved, seconded by Mossar, to approve staff recommendations to uphold the Director of Planning and Community Environment's decision to deny the Major Architectural Review Board (ARB) application, finding that zoning ordinance requirements are not met, as outlined in the Draft Record of Land Use Action.

Council Member Mossar said while she favored the concept of the project, mixed use with rental housing, she could not support the project as proposed. She also disapproved of a long wall parallel to the Caltrain tracks, as it made for an unpleasant train experience.

Council Member Morton said it did not matter what development was proposed along the project site, it would be problematic. He favored having an enhanced replacement building with articulation already built into it. There were setbacks within the wall that prevented it from being a single solid wall. He trusted staff would ensure the landscaping was carefully studied. He expressed support for the original motion.

Vice Mayor Kishimoto expressed support for the Substitute Motion. While she favored mixed use with rental housing, one of the Comp Plan's policies was against massive, block long, and out of scale buildings. The setbacks were zero in some places with up to 17 feet in others areas. She did not believe it would be an attractive place to live.

Council Member Klein asked where the Council would be procedurally if the original motion passed.

Mr. Baum said it would be an instruction to staff to return with findings on the Consent Calendar for passage. Also, if the Substitute Motion prevailed he would request that the

Council articulate any concerns over aesthetics because there were a few cases that support aesthetics as a grounds for denial.

Council Member Klein asked if the original motion passed and there was an amendment that discussed the articulation of the wall facing the train tracks, would the item return to the ARB.

Mr. Williams said the project was already scheduled to return to the ARB to satisfy the eight or nine conditions, one of which had to do with the colors on the wall.

Council Member Klein asked whether there was any involvement from the P&TC on the matter.

Mr. Baum said the P&TC was not involved in the project.

Council Member Klein asked for an appropriate time to discuss the green standards application for LEAD certification.

Mr. Williams said the ARB most likely had already discussed that with the applicant. He was not aware of which program was proposed.

Mr. Solnick said he did not recall any specifics about green standards.

Mr. Emslie said it was normally dealt with at the initial application stage. The Council had the option to send that directive to the ARB if the original motion passed.

Council Member Klein said he favored the original motion and hoped to include further consideration by the ARB of an improvement to the sound wall and environmental standards for the project. He was disturbed by the shifting array of standards for the project. He concurred with Council Member Mossar regarding the appearance of the long wall.

Council Member Cordell asked if the original motion passed would findings be made that evening.

Mr. Baum said staff would take Council's comments, synthesize them, and place them with the code required finding. There were no adopted written findings that evening because staff recommended denial.

Council Member Cordell spoke in favor of the original motion, and concurred with the comments of Council Member Beecham.

Mayor Kleinberg concurred with the comments of Council Member Barton.

**SUBSTITUTE MOTION FAILED** 4-5, Barton, Kishimoto, Kleinberg, Mossar yes.

Council Member Beecham said he was willing to accept the suggestions from Council Member Klein to consider the green building standards and possibly the environmental measures to make the rear wall more invisible. The applicant indicated his willingness to

increase the BMR component to 20 percent without the notches. He favored additional articulation but not notches.

Council Member Klein said he did not favor any particular solution, but asked that the ARB take a careful look at whether any of his suggestions might be feasible.

Council Member Beecham expressed support for the incorporation.

**INCORPORATED INTO THE MOTION WITH CONSENT OF THE MAKER SECONDER** for the ARB to consider measures to improve the aesthetics of the rear wall parallel to the railroad tracks and to consider the environmental measures or green building standards of the project.

Mr. Baum asked whether the motion also included the parking exception.

Mr. Emslie said the DEE did not include the parking exception. It was within the Planning Director's authority.

**MOTION PASSED** 5-4, Barton, Kishimoto, Kleinberg, Mossar no.

11. Public Hearing - To consider the Extension to an Interim 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 for a period of 22 months and 15 days, and declaring the urgency thereof, to take effect immediately

**Ordinance 4927 entitled "Ordinance of the Council of the City of Palo Alto Extending Ordinance No. 4921 Amending Section 18.10.070 of the Palo Alto Municipal Code 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"**

Council Member Beecham noted he would not participate in the item due to his residence being located within the RMD(NP) Zone.

**MOTION:** Vice Mayor Kishimoto moved, seconded by Barton, to approve staff recommendations to adopt and extend the Interim Ordinance No. 4921 for a period of 22 months and 15 days (through October 15, 2008) prohibiting new air space condos for buildings within the RMD and R-2 zone districts and clarifying this is not a loophole that others may use.

Council Member Morton said he supported the motion with the understanding it was to clarify the ordinance and close the loophole.

Pria Graves, 2130 Yale Street, concurred with Council Member Morton. She said while there may come a time to discuss the possibility of allowing condos in the RMD zone, she hoped it was not that evening as the Council amended the current zoning for purposes of clarification.

Herb Borock, P.O. Box 632, expressed support for the urgency ordinance, but with the additional language it was a clarification of existing law.

**MOTION PASSED** 8-0, Beecham not participating.

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Drekmeier said he represented the City at the Shiloh Wind Farm last week, which was a wonderful experience.

Council Member Klein reported he hosted a delegation of Chinese local officials recently and City staff was extremely helpful.

Mayor Kleinberg requested the meeting tonight be adjourned in memory of Rabbi Sidney Akselrad, a civil rights activist and revered member of the community, who was the Rabbi of Congregation Beth Am for many years.

FINAL ADJOURNMENT: The meeting adjourned at 11:12 p.m. in memory of Rabbi Sidney Akselrad.

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.