

Regular Meeting
December 9, 2003

1. Oral Communications..... 2

3. Preservation Incentives for City-Owned Historic Structures..... 2

2. Ordinance Authorizing the Exchange of Minor Portions of Park Land for Contiguous Lands in Order to Implement Article VIII of the Palo Alto City Charter and Proposal for Walter Hays School/Rinconada Park – Property Exchange with Palo Alto Unified School District and Amendment to Park Boundary Lines 7

4. Discussion for Future Meeting Schedules and Agendas 10

ADJOURNMENT: Meeting adjourned at 9:05 p.m..... 10

Chairperson Burch called the meeting to order at 7:05 p.m. in the Council Conference Room, 250 Hamilton Avenue, Palo Alto, California.

Present: Burch, Kleinberg, Lytle, Ojakian

1. Oral Communications

None.

BY A CONSENSUS OF THE COUNCIL to move Item No. 3 forward ahead of Item No. 2.

3. Preservation Incentives for City-Owned Historic Structures

Director of Planning and Community Environment Steve Emslie reviewed the staff report (CMR:555:03), dated December 9, 2003. Staff believed the preservation incentives were an exciting way to further enhance historic preservation and enable the City to achieve broader cultural goals of preserving City-owned buildings and supporting nonprofit groups that had an interest in furthering the City's cultural and historic nature. Timing was appropriate. Communities such as Palo Alto had a great deal invested in its publicly-owned historic buildings. Palo Alto had a transfer development rights (TDR) program for approximately 10 years for historic preservation and for seismic upgrades. Staff was excited to work on the City-owned Historic Building Incentive Program.

Interim City Attorney Wynne Furth said the proposal was interesting. Staff looked at many similar open space conservation. The sites from which rights were transferred usually did not come into public ownership. Rights of the owner were given up. If the City were to transfer development rights from one of its sites and covenant it with a third property, the City gave up something substantial.

Beth Bunnenberg, Historic Resources Board (HRB) Chair, 2351 Ramona Street, said she was delighted to see the incentives going to the Policy and Services (P&S) Committee. Several Downtown buildings were saved by the ability to upgrade buildings with a financial incentive. The HRB encouraged the Council to think about expanding incentives. The City had a unique opportunity toward preserving a historic structure without making a direct appropriation of money. The idea of a nonprofit group was an ideal type of public-private partnership. The HRB supported the proposal.

Jim Baer, 532 Channing Avenue, said the 1986 Downtown Ordinance established seismic and historic upgrade bonuses including a tagline that suggested creating TDRs. Subsequently, there was implementation after the new Varsity Theatre. The new Varsity Theatre did both historic and seismic bonuses. Under former staff member, Nancy Lytle, the TDR Ordinance was managed through the process with enormous constraint. The concern was not to have receiver sites create impacts on neighbors. The consequence was that only one project had a TDR accomplished. Staff needed to be given the opportunity to create a workable, and with a potential for value, TDR. Staff should be allowed to work on the pool of users and the appropriate controls for maximum square footage.

Gail Woolley 1685 Mariposa, urged the P&S Committee to support the staff recommendation. The TDR tool had been around for quite a while in the field of historic preservation and was used several times in Palo Alto. The proposal was a great public benefit.

Karen Holman said constraints were placed on City-owned properties. The City had the opportunity to act as an example to private-party owners. The opportunity existed to make the process open and public.

Council Member Kleinberg said the City Attorney's Memorandum, dated December 4, 2003, raised issues that the P&S Committee needed to discuss. Referring to page 4, item no. 1, she noted the conclusion was the City Council could make a determination on a case-by-case basis or the eligible site or sites could be part of the enabling ordinance. The staff was asked to provide information on the pros and cons of the two options.

Ms. Furth said it was good to have principles that applied to categories. Designations could be made early if there were obvious examples that fit in, and there could be a procedure for designating additional buildings later.

Mr. Emslie said designating an initial list was important. Value was gained by broadcasting the buildings to be looked at. An ongoing oversight of the list was important as well as a mechanism for review. The HRB would be a great trustee of the list.

Ms. Furth assumed the list of City-owned buildings might be categorized as historic for the California Environmental Quality Act (CEQA).

Council Member Kleinberg said some buildings did not have rights to transfer. She asked staff about a potential bonus density.

Mr. Emslie said staff looked at parody with the existing program.

Ms. Furth said known City historic buildings could be ranked in terms of the importance of their preservation.

Council Member Kleinberg said her preference was for a supplementary list and, with assistance of the HRB, done on a case-by-case basis.

Council Member Ojakian asked why only the Downtown area was involved.

Mr. Emslie responded that the Downtown was the traditional receiver site that did not tend to impact neighborhoods and where the infrastructure existed.

Council Member Kleinberg asked whether Mr. Emslie meant the sender site or the receiver site.

Mr. Emslie said he meant the receiver site.

Ms. Furth said the Downtown had two maximum Floor Area Ratios (FARs). One FAR was allowed under the base zoning and another that was allowed with transferable development credit. Receiving districts needed to be zoned. A CEQA analysis would analyze the potential impact in terms of City buildings and the transfer of development rights. Downtown was zoned to accommodate the program.

Council Member Lytle said the only area allowed by the ordinance was the Downtown district because it was considered to be the commercial of the City and a good place to put mass, height, and bulk. The program could be reevaluated to allow for higher density.

Council Member Ojakian said he did not see a good reason to limit the TDR if there were an opportunity to use the TDR somewhere else.

Ms. Furth said the task of creating the program would be complicated because rezoning in other sites was necessary.

Council Member Ojakian said it was helpful to know the list of buildings and what the potential TDRs would be.

Mr. Emslie said staff could look at areas, other than the Downtown, to see what development potential existed under existing zoning.

Ms. Furth said upzoning was needed in order to accommodate TDRs.

Council Member Kleinberg clarified if there were more flexibility in the receiver site, the value of the TDRs was increased.

Ms. Furth responded if the number of eligible buyers were increased, the unit cost increased. Rezoning in the receiver sites needed to be consistent with the Comprehensive Plan (Comp Plan).

Council Member Lytle asked which buildings were clearly high value historic properties.

Ms. Bunnenberg responded the buildings included the Lucie Stern Community Center and the Children's Library, the Water Tower, the Williams House, the Roth Building, the Sea Scout Base, and the Senior Center, the Main Library, and the Gamble House.

Council Member Lytle asked whether there was a potential that the City might demolish any of the historic buildings.

Ms. Furth said the action would tie the hands of future City Councils. The City would enter into an agreement to put a historic preservation covenant on its property, which would be covenanted to a third party.

Council Member Kleinberg referred to pages 4 and 5 of the City Attorney's Memorandum, dated December 4, 2003, and asked what guidance could be given for the SOFA 2 TDR to insure more housing Downtown.

Mr. Baer said the Core CDC had the ability to add up to 1.0 FAR of housing under existing zoning. The same was true in the CDS, SOFA zone.

Mr. Emslie said there were other disincentives. Densities were high enough to promote having large units.

Ms. Furth said she and Mr. Emslie felt strongly that TDRs should not be rezonings, but should be a way of implementing zoning in the receiver site. Shaping was important in the zoning for the receiver sites.

Council Member Kleinberg referred to page 5, item no. 3 in the City Attorney's memorandum, dated December 4, 2003, regarding "which sites should be eligible for 'receiver' sites." Guidance from staff was requested regarding pros or cons.

Mr. Emslie said expanding receiver sites required upzoning.

Council Member Kleinberg said the Council might find places, through the Zoning Ordinance update, where it wanted to promote more retail.

Mr. Emslie said the issue of overdevelopment would be raised.

Ms. Furth said the Council would get the best return from focusing on one or two areas and developing the practice.

Council Member Kleinberg referred to page 5, item no. 5 in the City Attorney's memorandum, dated December 4, 2003, regarding "how should TDRs be marketed." It occurred to her that part of creating the market was the timing issue. The question was raised about the TDR not being used.

Ms. Furth said time needed to be provided over which the rights could be used. Using the Children's Library as an example, the City Council would first adopt a TDR program, designating the Children's Library as an eligible sender site. The general outlines for the process of making the TDR available would have been decided by an auction or request for proposals. The Council would select the best proposal, and staff would be directed to negotiate a development agreement.

Council Member Kleinberg said she was interested in enforcement, which was the conservation easement would be transferred to a nonprofit organization that then had the right to sue the City if it did not do what it said it would do. The lack of stability of some of the nonprofits was a concern.

Ms. Furth said the development agreement would be assigned to another 501(c)(3) or a government agency if there were a problem with the nonprofit.

MOTION: Council Member Ojakian moved, seconded by Kleinberg, that the Policy and Services Committee recommend to the City Council implementation of a City-owned Historic Building Incentive Program

Council Member Ojakian said the City set a good example by preserving its own buildings. A list of which buildings needed to be provided, including the transfer amounts.

Council Member Kleinberg hoped the Council could build in flexibility in terms of duration, the relationship and complimentary nature of it to the Zoning Ordinance update, in terms of timing and implementation of some of the Zoning Ordinance update issues. The list of sender sites should be supplementary to the implementation ordinance that went to the Council.

Ms. Furth said that would be done as part of the CEQA analysis.

Council Member Kleinberg said the HRB should to be involved as an advisor.

Council Member Lytle reinforced that staff be given leeway on the bonus formula and that the receiver sites be coordinated with the Zoning Ordinance update. The program should not be entered into without a guarantee by some entity and backed up by a permanent conservancy.

MOTION PASSED 4-0.

2. Ordinance Authorizing the Exchange of Minor Portions of Park Land for Contiguous Lands in Order to Implement Article VIII of the Palo Alto City Charter and Proposal for Walter Hays School/Rinconada Park – Property Exchange with Palo Alto Unified School District and Amendment to Park Boundary Lines

Real Estate Manager Bill Fellman explained that the item before the Policy and Services (P&S) Committee contained three items: (1) A recommendation to Council to establish an enabling ordinance to allow exchanges of minor portions of park land for contiguous lands in order to implement Article VIII of the Palo Alto City Charter (Charter); (2) the District proposal to exchange Walter Hays School land for Rinconada Park land; and (3) Amendment of a park boundary. Staff requested that the P&S Committee approve the amendment to the park boundary to correct an error in the meets and bounds description. The exchange of lands was included to show what a minor exchange would be. The enabling ordinance implemented the provisions of State law governing elections and procedures for park dedication and abandonment, which was incorporated into Article VIII of the Charter. Staff recommended that "minor" be defined, and that the definition be no more that four percent of the total park area or one acre of land, whichever is less. Four alternatives were suggested: (1) that the P&S Committee recommend the full Council adopt the enabling ordinance allowing for the exchange of minor park land; (2) that the P&S Committee recommend the full Council present the enabling ordinance to the voters for their approval; (3) that the P&S Committee recommend the Council take only the District's proposal to exchange Walter Hays School property for Rinconada Park land to the voters for the approval; and (4) that the P&S Committee recommend the Council require the Palo Alto Unified School District (PAUSD) to remove the encroachments. The PAUSD verbally indicated it would participate in the cost of the ballot measure if the measure were only for the Walter Hays encroachment, and the PAUSD would not participate if the ballot measure was for the enabling ordinance.

Dr. Bob Golton, Deputy Superintendent, Palo Alto Unified School District (PAUSD), said the PAUSD was at fault because, while it did not correctly understand the boundary, the portables and playground encroached on parkland.

The PAUSD believed the trade was equitable and appealed to the City Council to approve the trade.

Tom Jordan, 474 Churchill Avenue, said once the mistake was made, the cost to the PAUSD of correcting the mistake was the same. If the City chose to relieve the PAUSD of the cost, the City also absorbed some cost. The ordinance was illegal, and citizens in the City would fight it. The PAUSD should correct their mistake. The trade was fair, but the procedure was not right. Article VIII of the Charter was clear that no disposition of property could be made without a vote of the people. Attachment A demonstrated procedures in case of an election. The Charter specified, "Any election and related procedures under Article VIII shall conform to the provisions." There were 17 sections in Attachment A, of which 14 were procedural. One of the remaining three was what former City Attorney Ariel Calonne sought to build on for minor exchanges, which did not apply to the Charter. There were four indicators to show why the section did not apply: the testimony in the record of earlier proceedings by Enid Pearson; an exchange was made at the airport in the early 1960s which was put to the vote of the people; the proceedings of the 1968 Charter Review Committee, which resulted in no exchanges of land without a vote of the people; and former City Attorney Ariel Calonne gave the same advice to the Council in the early 1990s. The matter needed to go to the voters.

Jennifer Hagan, Parks and Recreation Commissioner, 350 Cambridge Avenue, said the Parks and Recreation Commission (PARC) extensively reviewed the matter on November 12, 2003, and voted unanimously to reject the proposed ordinance because the procedure for the enabling ordinance was not legal and was a violation of the Charter. The PARC urged the P&S Committee to send the message to the City Council, thereby honoring the PARC's recommendation.

Interim City Attorney Wynne Furth said there were two survey errors on the PAUSD site. The park, as it presently existed, did not close, and there were no defined boundaries for the park. The PAUSD built, looking at improvements on the ground. A survey was prepared when a fence was requested, at which point the line in the records was realized. A school building was not an appropriate park use. The Charter was amended twice to preserve and protect Palo Alto's parks to make sure they were used for park purposes. The question arose as to whether a small boundary adjustment, swapping equal land value and area, amounted to disposing of parkland. The responsibility landed on the Council.

The Charter incorporated language about elections and other procedures. The Chapter specified, "Lands owned or controlled by the City, which will be used for park, playground, and recreation purposes, shall be dedicated by ordinance, and land dedicated for those purposes, shall not be sold or otherwise disposed of, nor shall its use be abandoned or discontinued except pursuant to majority vote of the electorate. Any election and related procedures under Article VIII shall conform to provisions set forth in General Law as it existed January 1, 1965." The General Law talked about not getting rid of or abandoning City parks without following a set of procedures, including an election. The General Law started out by accepting one type of removal of parkland for park purposes, and that was an exchange, or land swap. There was no definitive word until the matter went to a judge.

MOTION: Council Member Kleinberg moved, seconded by Lytle, to seek voter approval of a Charter Amendment to exchange minor portions of parkland for contiguous lands of an equal or greater area or value in order to implement Article VIII of the Palo Alto City Charter, to include in next regular Municipal Election in November 2005 for voter approval.

Council Member Kleinberg said the reality was a small land swap. Precedent was created by not following the letter of the law. The history of the law was that it was created out of a lack of adherence by the community to park preservation. There were many years of discussion and an evolution of value in the community. The result was the park dedication ordinance. Concern was expressed about the cost of a special election.

Council Member Lytle agreed with the approach to go to the voters. The Park Charter Ordinance needed to be updated to reflect the current interpretation of uses that were allowed on parkland as well as handling the minor exchange of property issue in the way voters of the community intended when the Charter was written.

Council Member Ojakian said he would not support the motion. Item number 3 needed to be dealt with separately. A decision should be made on the school land without going to the voters.

Chairperson Burch said he did not believe the people who passed the law dreamed the Council would face such a minor issue.

Council Member Kleinberg said former City Attorney Ariel Calonne was clear that the City did not have the power, by ordinance, to alter the Charter. There was nothing in the record that gave flexibility.

Chairperson Burch said he supported the motion.

Council Member Lytle said the amendment gave the Council minor flexibility. The public could be persuaded if the Council talked about it in terms of general consistency with State law.

MOTION PASSED 3-1, Ojakian "no."

MOTION: Council Member Kleinberg moved, seconded by Ojakian, that the Policy and Services Committee recommend to the City Council to adopt an ordinance clarifying the Rinconada Park boundary line near the Junior Museum and Girl Scout House.

MOTION PASSED 4-0.

4. Discussion for Future Meeting Schedules and Agendas

ADJOURNMENT: Meeting adjourned at 9:05 p.m.

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.