

Special Meeting
July 30, 2007

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The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:04 p.m.

Present: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg (arrived at 6:10 p.m.), Morton (arrived at 6:07 p.m.), Mossar

CLOSED SESSION

1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Authority: Government Code Section 54956.8
Property: 2785 Park Boulevard, Palo Alto, CA, APN: 132-31-042
Negotiating Party: Bruce Knoblock, Essex Park Boulevard, LLC, a Delaware Limited Liability Company
City Negotiator: Frank Benest, Emily Harrison, Carl Yeats, Cara Silver, F. Gale Connor
Subject of Potential Negotiations: Price and Terms of Payment

2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Authority: Government Code Section 54956.8
Property: Los Altos Treatment Plant located at 1237 and 1275 N. San Antonio Avenue, City of Los Altos, County of Santa Clara, CA 94303-4312; Parcel Number 116-01-013
Negotiating Party: City of Los Altos, Robert Cole and Ron D. Packard
City Negotiator: Cara Silver, LaDoris Cordell and John Barton
Subject of Potential Negotiations: Price and Terms of Payment

Mayor Kishimoto stated no reportable action was taken.

Closed Session ended at 7:13 p.m.

ORAL COMMUNICATIONS

Tony Spitalari spoke regarding the firefighters' morale in Palo Alto and denial of flying flags at half-staff and use of a fire engine to attend memorial services.

Barry Marchisio spoke regarding honoring firefighters in memorial services.

Neil Holmdahl spoke regarding firefighters participating in memorial services.

David Shum, 3712 Orinda Drive, San Mateo, spoke regarding firefighters renting fire engine for services.

Wayne Swan, 290 Kellogg Avenue, spoke regarding traffic ways.

Greg Kerber, Birch Street, spoke regarding misconduct of the Police Department.

APPROVAL OF MINUTES

MOTION: Council Member Morton moved, seconded by Klein, to adopt the minutes of June 11, 2007 and June 18, 2007 as submitted.

MOTION PASSED 9-0.

CONSENT CALENDAR

Herb Borock spoke about Agenda Item No. 4. He stated it is inappropriate for the Council to appoint as City Manager Pro Tem someone who also is an appointee of the City Manager. He suggested Council substitute another name for City Manager Pro Tem or have a special meeting or closed session.

Bunny Good, P.O. Box 824, spoke regarding Agenda Item No. 7. She protested the creation of a \$100 fine for the sit-lie law.

Council Member Barton noted he had a conflict on Item No. 8 because one of the architecture firms being considered for the project was a firm he conducts business with.

Assistant City Manager Emily Harrison stated staff requested Item No. 6 be continued to August 6, 2007.

Mayor Kishimoto moved, seconded by Klein, to pull Item No. 9 from the Consent Calendar to become Item No. 11A.

Council Member Mossar asked the City Attorney to respond to Mr. Borock's comments regarding the City Manager Pro Tem appointment.

City Attorney Gary Baum stated the Charter requires that the City Manager or the Assistant City Manager attend all Council meetings and if that is not possible the Council appoint someone else to serve in that role. Staff requests in accordance with the Charter that the appointment of a City Manager Pro Tem is a temporary appointment and is not a dual office. Mr. Yeats will return to his prior position. This is simply a functional role that allows him to cover the Council meeting in the absence of the City Manager and Assistant City Manager.

MOTION: Council Member Morton moved, seconded by Mossar, to approve Consent Calendar Items 4, 5, 7, 8, 10, and 11.

3. This Item Has Been Intentionally Left Blank
4. Appointment of Carl Yeats as City Manager Pro Tem Effective August 6 through August 10, 2007
5. Approval of an Amendment to Contract S05111053 with Kutzmann and Associates to Add \$40,000 for Additional Plan Check Services and \$36,000 for Building Inspection Services for a Total Not-To-Exceed Amount of \$310,804
6. ~~Adoption of a Resolution Authorizing the City Manager to Sign and File a Financial Assistance Application for a State Revolving Fund Loan in an Amount Not to Exceed Twenty-Five Million Dollars from the State Water Resources Control Board on Behalf of the Palo Alto Regional Water Quality Control Plant for the Design and Construction of the Disinfection Facility"~~
7. Resolution 8740 entitled "Resolution of the Council of the City of Palo Alto Amending and Restating the Administrative Penalty Schedule and Civil Penalty Schedules for Certain Violations of the Palo Alto Municipal Code and the California Vehicle Code"
8. Approval of Contract with the KPA Group in the Amount of \$98,690 for Design Services for the Fire Stations 5 and 8 Improvements Project – Capital Improvement Program Project PF-01004
9. ~~4249 El Camino Real [07PLN-00172]: Request by Juniper Homes for Approval of a Final Map to Create Two Single Family Residential Parcels and a Remainder Lot~~
10. Approval of Amendment No. 1 to Contract No. C05105780 with TMAD Taylor & Gaines in the Amount of \$11,753 for a Total Not to Exceed Amount of \$123,506 for the Cubberley Community Center Electrical/Mechanical Upgrades Project – Capital Improvement Program Project PF-04010
11. Approval of a Contract with Alaniz Construction, Inc. in the Amount of \$232,635 for Resurfacing the Foothill Park Interpretive Center and Maintenance Yard Parking Lots, Capital Improvement Program Project OS-07002

MOTION PASSED for Items 4, 5, 7, 10 and 11: 9-0.

MOTION PASSED for Item 8: 8-0, Barton not participating.

AGENDA CHANGES, ADDITIONS, AND DELETIONS

11A. (Old #9) 4249 El Camino Real [07PLN-00172]: Request by Juniper Homes for Approval of a Final Map to Create Two Single Family Residential Parcels and a Remainder Lot

Mayor Kishimoto stated she pulled this item because the Elks Lodge is a piece of land currently in the process of being subdivided. She understood it would be subject to the Quimby Act and there would be dedicated parkland. She asked if there would be public access with the neighborhood on Wilkie Way that interlocked, which would include other housing and parkland. She said the Vice Mayor had suggested this item be moved in order to let the neighborhood know the Council would be discussing it.

MOTION: Mayor Kishimoto moved, seconded by Klein, to continue Item 9 to August 6, 2007.

Council Member Mossar asked for clarification.

Mayor Kishimoto replied one option is to make a Motion to direct staff to work with a developer to have easements that would connect the neighborhood and inner parcel, which includes the dedicated parkland. There would be a park in the middle, which would be accessible only to El Camino unless it is built in to Wilkie Way. It is a complicated issue and staff should return with options.

Council Member Cordell said she appreciated the information and supports continuing the item but did not think a week was sufficient time to notify the neighborhood.

Mayor Kishimoto asked staff if there is a problem bringing it back next week or postponing it until September.

Planning and Community Environment Director Steve Emslie said there would be a problem with carrying it over until September because it is a ministerial item. However, staff could bring it back next week.

Vice Mayor Klein asked if staff would be giving the neighborhood leaders and other people in the neighborhood informal notice.

Mr. Emslie stated staff had already engaged the neighborhood on this issue. The frontage on Wilkie is the subject of two final maps. A three- and a two-parcel map and a Final Map have come to Council. In the first map, which has already been approved and recorded, staff met with the neighborhood and raised the possibility of a connection to make sure that they did not overlook this possibility. Their final decision was that they did not want the

access. This has been their position throughout the duration of the entitlements.

Vice Mayor Klein said he wanted to make sure the residents had the right to address the Council.

Council Member Mossar said she agreed on the importance of the pedestrian bicycle connections for good community planning but the neighborhood has already said "no" to this project. She would not support continuing it.

Council Member Barton said he was confused because this has already been in front of the Council and is a ministerial item. The Council has an obligation to act. He asked City Attorney Gary Baum if it is correct that the Council has to approve this, short of making some findings. Pending the answer from the City Attorney on the process, he is inclined not to support the motion.

Mr. Baum replied a Final Map is a lot like a building permit. It is ministerial and as long as all the conditions are met, the City is required to approve it, just as the City Council is required to approve the Final Map as long as the conditions of approval have been met.

Mayor Kishimoto asked for clarification. She stated it is still an action of the City Council, which is why it is on the Consent Calendar. She would vote against it. She understood the applicant was willing to provide the easement. She felt it is bad policy to have a parkland right there. The children could look through the fence and see the parkland but they cannot go to the park unless they go about two full blocks. She would not support that kind of land use planning.

Council Member Beecham mentioned the inability to engage the public in a new discussion with one weeks notice.

Mayor Kishimoto said it would be a courtesy notice.

Council Member Beecham wondered if the intent was to really change where the public thinks we are going.

Council Member Morton asked if the applicant has agreed to allow the pass-through, if staff concurs and whether a week would be enough time to modify it to reflect a pass-through.

Mr. Emslie stated the neighborhood was given a chance to review the details of access. After that review, they said they did not want it. As a result, the developer was not going to agree to an access not supported by the neighborhood.

Council Member Morton inquired whether the neighborhood was being asked to change its position.

Mayor Kishimoto responded she did not know if the neighborhood would change its mind but this would give them notice so they could come and speak before Council.

Council Member Cordell inquired if the only way Council can vote “no” on this is if there is some factual basis.

Mr. Baum replied he did not have the subdivision map act findings in front of him but there have to be specific findings that the Final Map did not match the conditions of the Tentative Map in the project approval.

Council Member Cordell asked if Council has the Final Map.

Mr. Baum replied that is correct.

Council Member Cordell noted the indication is that the Final Map matches the Tentative Map.

Mr. Baum said yes and it must also match the conditions of approval.

Council Member Cordell asked if the conditions of approval are met and the Final Map matches the Tentative Map, there seems to be no legal way other than to approve the map.

Mr. Baum replied that is correct.

SUBSTITUTE MOTION: Council Member Beecham moved, seconded by Mossar, to approve staff and the Planning and Transportation Commission (PTC) recommendation to approve the proposed Final Map to create two single family residential parcels and a remainder lot.

SUBSTITUTE MOTION PASSED: 7-2, Drekmeier, Kishimoto no.

PUBLIC HEARINGS

12. 1st Reading - Adoption of an Ordinance Revising Title 18 (Zoning) of the Palo Alto Municipal Code to:

- a) Consolidate and revise Chapters 18.22, 18.24, and 18.26 into a new Chapter 18.13 (Multiple Family Residential Districts: RM-15, RM-30, and RM-40);

- b) Reorganize and revise Chapter 18.83 into new Chapters 18.52 (Off-Street Parking and Loading Regulations) and 18.54 (Parking Facility Design Standards);
- c) Consolidate and revise Chapters 18.32, 18.71, and 18.72 into a new Chapter 18.28 (Special Purpose Districts: PF, OS, and AC);
- d) Revise certain definitions in Chapter 18.04 (Definitions); and
- e) Revise miscellaneous zoning provisions, provide for clarifications and reformat the ordinance to be consistent with previously adopted chapters

Council Member Barton stated he would not participate in Item No. 12a) due to a conflict of interest because he had a potential client in RM-15 and RM-30; and he would not participate in 12b) due to a conflict of interest because he had a current client who would be affected by the off-street parking and loading regulation.

Council Member Cordell stated she would not participate in the hotel overlay for the Research Park and the Agriculture Conservation (AC) portion of Item 12 due to a conflict of interest because she was employed by Stanford University.

Vice Mayor Klein stated he would not participate in the hotel overlay for the Research Park and the Agriculture Conservation (AC) portion of Item 12 due to a conflict of interest because his wife was employed by Stanford University and noted he did not have a conflict on Open Space.

Council Member Mossar stated she would not participate in the hotel overlay for the Research Park and the Agriculture Conservation (AC) portion of Item 12 due to a conflict of interest because her husband was employed by Stanford University.

Vice Mayor Klein stated for the record he was one of the nine co-founders of the Open Space District in 1972. However, he never served on the Open District Board and was never employed by the Open Space District. He said he was a member of the Planning Commission when the original Open Space ordinance was passed in 1972.

Mr. Baum stated one matter needs to be separated out to allow it to proceed to the Stanford-conflicted Council Members. He has been informed the H overlay is designed to apply in part to the Stanford Research Park, the RP zone. In that piece of the H overlay there is a conflict. Also, there appears to be a conflict on the Agricultural (AC) zone, because it was recently confirmed the only parcels in the City zoned AC are owned by Stanford University. If there is something substantive going on there, then that would also be a conflict. This would separate the two pieces of the item. It might be simpler to make that a motion at the beginning for those two

items. It would mean not having the Stanford-conflicted Council Members participate.

Mayor Kishimoto inquired if all the public speakers could speak on everything including those items and then break it out when it comes to the vote.

Mr. Baum replied there would be a need to do some sort of breaking out for Council Member Barton.

Council Member Mossar noted she had asked this question and was told it was not a problem but she just wanted to confirm. She was not able to participate on the Arastra Gateway Project because Stanford owns property up the street. She asked if this was OS.

Mr. Baum replied that parcel is a PC zone.

Council Member Mossar restated it is Stanford property but not affected because there is Open Space zoning.

Mr. Baum stated there would be a single presentation by staff and a single public hearing with all the Council Members participating. It is too difficult to split up the two items.

Assistant Planning Director Curtis Williams stated this is the culmination of the Zoning Ordinance Update (ZOU). The intent of the ZOU update has been to implement Comprehensive Plan programs, to provide a more readable format for the document, to evaluate the use of form-based coding and to modernize code provisions as necessary. The ZOU has accomplished many things to date. The proposed changes fall into four categories: 1) the multi-family residential chapter; 2) parking; 3) the special purpose districts, which include public facilities, open space and agricultural conservation; and 4) a number of miscellaneous revisions to definitions and other code criteria. In terms of the multi-family section, there are changes proposed to provide additional flexibility for multi-family development when it is not adjacent to low density residential development. This would delete some of the daylight plane requirements, limit the size of parking spaces excluded from Floor Area Ratio (FAR), allow for tandem parking, allow for some minimal neighborhood and retail service uses in larger complexes, and provide contract based design criteria as in the commercial and some other zones. There is an implementation of the policy from the Housing Element for no net loss of rental units and a requirement for individual review where a single family two story home is built next to an existing single family home or zone. As far as parking standards and design, the existing chapter 1883 has been divided into two sections; one on the standards for the parking rates themselves and the other on the design which is the size of spaces and

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angles. The biggest change is the elimination of compact parking spaces and our current standard parking spaces. There will be what is called a unit class space, which is smaller than the standard and bigger than a compact space. Chapter 18.28 is a combination of three separate districts currently in different chapters: Public Facilities, Open Space and Agricultural Conservation. There are no substantive changes to the EF and AC zones but in the Open Space zone there are a few modifications that the Planning and Transportation Commission (P&TC) recommended. The most significant of these modifications includes definitions and criteria for impervious cover, which is not currently available. The Open Space zone limits impervious surfaces to 3.5 percent of the lot and, currently, there are no definitions for impervious cover. The P&TC and staff recommended that all paved surfaces, even if they are partially permeable, be counted as impervious with the exception of gravel driveways. The P&TC, in conjunction with the change to the language on impervious cover limitations, has suggested that we work with the residents of the Open Space area to explore some development criteria related to maximum house size and FAR and revisit the impervious cover issue. Staff's suggestion to the P&TC was that a Working Group be convened including a number of OS district owners, as well as OS advocates and some P&TC members. The Working Group would work with staff to look at some of these issues. The P&TC's concern was the way the impervious cover limitations have been interpreted in recent years. If the Council agrees, staff would come back to the P&TC within 90 days after adoption of this ordinance with a discussion of those items. It is hoped there would be an updated Zoning Ordinance packaged to Council and available to the public 30 days from the effective date of this ordinance. As the City Attorney mentioned, Council motions will need to break out the portion of Section 4, the special purpose districts, to separate the AC area and in Section 18, which is the hotel combining district relative to the Research Park.

Planning and Transportation Commissioner Arthur Keller thanked staff for working with the P&TC on this long, involved process. The P&TC agrees with staff that the issue of OS is something that requires further discussion with the OS Working Group. In terms of adjacencies, one theme that seems to be common is when building adjacent to low density residential RM-15 or R-1 or R-2 or RMD, those things should essentially mirror what is occurring on the residential side. In terms of parking spaces, it is clear that compact parking spaces have failed. That is one of the reasons for taking them away and replacing them with the idea of Transportation Demand Management programs for parking reduction, and encouraging green vehicles and green parking spaces. Regarding impervious cover and OS, when the ordinances were put together originally with respect to OS, the density limitations were only in terms of impervious cover, which is 3.5 percent of the area of the lot. The use of impervious cover as limiting the size of the development has slipped because of the development of semi-pervious materials. The P&TC

put in something initially that counts all semi-pervious materials for driveways as impervious except for gravel until it actually studies this in detail. The P&TC felt it was best to make that change as part of the process of incorporating the Comp Plan rules and guidelines for OS development, making that part of the OS ordinance.

Mayor Kishimoto acknowledged the meticulous job the Planning and Transportation Commission and staff have done.

Public Hearing was opened at 8:15 p.m.

Winter Dellenbach, LaPara, stated OS Zoning was not intended as a device to create large country estates but rather a device to protect wild habitat. Driveways and other surfaces covered by permeable materials change the land and affect the pattern of habitat in built up areas. Palo Alto's OS is worth saving.

Vincent Wood, 31105 Page Mill Road, said the California Government Code prohibits conflict of interest based on position of management with the business entities. Currently, two Council Members have a conflict of interest in regard to the Open Space criteria. Vice Mayor Klein is a founder of Mid-Peninsula Open Space and Council Member Drekmeier is currently the Director of Stanford Open Space Alliance. He urged the City Council to vote no in regard to the proposed ordinance change with the OS. The changes are unfair to property owners and will reduce the values of existing homes and land which will probably reduce tax revenues for the City.

Leonard Lehmann, 850 Los Trancos Road, Portola Valley stated he had two concerns about the revisions to the definition change of impervious cover within the OS. The process has been inappropriate given the substantive effects these proposed changes would have on property owners, and his second concern has to do with this being bad law. The impacts will vary widely among property owners but some property owners will be very substantially affected. He requested the Council exclude the definition change for impervious cover. The City would be best served by waiting for the OS Working Group to complete its recommendations in 90 days and then come back to the Council. The impervious cover definition is a very blunt instrument. The Council should be encouraging homeowners to use best materials and best building practices rather than just gravel.

Mike Carlton, 31107 Page Mill Road, Los Altos Hills stated the proposed changes severely impact property owners with small lots. He requested consideration of other approaches for small lots and possibly tiered approaches allowing greater percentages for small lots. He urged the Council to vote no on Item 12C and to allow the Working Group to report back before voting and get input from the property owners before making a

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decision.

Tony Tam, 4001 Page Mill Rd., Los Altos Hills urged the Council to vote no on the OS measures mainly because the Council is being asked to vote on immature measures. If a Working Group is to be composed, it should take place before regulations come to the Council. Consideration should also be given to the people who have been down-zoned.

Cathy Cartmell, 4001 Page Mill Road, Los Altos Hills, urged the Council to vote no on Item 12C. The OS District already has some of the strictest zoning in this region. If the City introduces interim rules, in the space of six months there will be three sets of different rules, which is not fair to residents in the Open Space District. She also objects to a change to the parking allowed within the setback and attaching undefined conditions of approval to the ordinance.

Mark Conroe, 805 Los Trancos, stated the proposed zoning code revisions would have a significant negative impact on all property owners in the OS District. He urged Council to slow down and allow time to consult with the property owners and study the impact of the proposed changes. The residents' main issue relates to the impervious coverage definition. There is widespread concern over these proposed changes as evidenced by a petition signed by 20 property owners in the OS District. Regarding the impervious coverage definition changes, he requested the Council allow Committee input, then study the impacts and propose a new definition in the next 90 days.

Richard Geiger, 714 E. Charleston Road, suggested allowing smaller lots, two or three acres and having more homes that are not so big. He urged a no vote, as there are many issues that need to be reviewed in detail before voting.

Herb Borock, P.O. Box 632, stated Council should set a maximum size lot in the OS District. Manufacturers of paving stones use slogans and call them pervious paving because a block of concrete is set a small distance away from another block of concrete. They allege the entire area that is paved will drain the water with that little space which is less than 10 percent. Also, he disagreed on the zoning text amendments being allowed by members of the public. Citizens should propose changes to zoning text amendments. Then once a year staff could bring them through to the P&TC and the Council with staff's recommendation, instead of making zone text amendments part of an application. He said the parking spaces should be full-size, 9 ft. by 18 ft. because cars are bigger now.

David Hopkins, 920 Laurel Glen Drive, stated three key points and urged a no vote: 1) the staff recommendations are more than just cleanup; rather,

they are proposing these zoning requirements; 2) These recommendations have significant impact on the land owners in the District but were not discussed with the land owners; and 3) There are many other ways to see that the legitimate concerns and needs of the City are met in regard to these proposed changes.

Joyce Fishman referred to her letter and asked Mr. Williams for clarification regarding the changes in the RM zone with respect to her single family home in RM-15.

Public Hearing was closed at 8:42 p.m.

MOTION: Council Member Beecham moved, seconded by Barton, to approve changes in the H Overlay, which applies to Hotels in the Research Park, and changes to the AC zoning.

Council Member Beecham stated he felt the hotel recommendations the Planning and Transportation Commission had reviewed are a reasonable approach to allow or encourage additional hotel use in the City.

Mayor Kishimoto reported there was a small clean-up to the AC that she has already discussed with staff. Page 73 of the proposed ordinance, Land Uses, Section 18.28.040, under Residential Uses, allows residential use and accessory buildings related to agricultural. Free-standing single family homes are not allowed which is the intent, but manufactured housing including mobile homes are allowed, which presumably would not have to be related to agricultural use. She would like to amend the Motion to eliminate the permitting of manufactured housing including mobile homes in the AC zoning. The intent of AC is to allow agriculture use and any small accessory buildings related to agriculture.

INCORPORATED INTO MOTION WITH CONSENT OF MAKER AND SECONDER to delete the permitted use for manufactured housing including mobile homes in Table 1 of section 18.28.040 of the AC Zoning.

Mayor Kishimoto referred to the hotel overlay which allows 2.0 Floor Area Ratio (FAR) in the Research Park in the RP zone. She asked how that compares to other hotel overlays.

Mr. Williams replied the 2.0 FAR is included in the commercial CS zone currently. He reminded Council the hotel overlay would have to go through an entire rezoning process to be included.

MOTION PASSED: 6-0 Cordell, Klein, Mossar not participating.

Mayor Kishimoto stated the Council would now take up Items 12a and 12b – the multi-family and the of-street parking regulations.

Council Member Kleinberg asked about the elimination of compact parking spaces. She said this appears to be a backwards policy to make provision for bigger cars because they do not fit into our compact spots.

Mr. Williams replied that staff and the Commission were looking at some provisions to allow for reduced parking if green priority vehicles are provided. This would include smaller vehicles, low emission, or no emission vehicles. There are provisions in the parking reductions to accommodate these vehicles. The compact spaces could be left in, but there is a concern that they are not being effectively used. As it is, they are not being enforced and monitored. He also pointed out that the unit class spaces will not necessarily address the huge vehicles, as they are smaller than our standard spaces.

Council Member Kleinberg stated since the spaces are smaller than standard, the big cars are still going to have trouble fitting in the spaces.

Council Member Mossar stated she understands the Comp Plan calls for preservation of rental units. However, she is troubled by the requirement that if property owners own three or more rental units, then rental units are all they can ever have at that location. She asked if Planning considered incentives for rental property owners to continue with rental units, or did it only look at the regulatory solution.

Mr. Williams replied it was just regulatory, essentially lifting that Comp Plan concept into the ordinance.

Council Member Mossar said she did not think property owners would be happy with the restriction. The restriction does not necessarily mean we maintain affordable units.

Council Member Cordell referred to Page 10, Chapter 18.13 which refers to the Below Market Rate (BMR) units and rental housing protection. Over the past two years, there have been comments from the public and some Council Members that BMR units, when added to developments, are not fully integrated into the residential areas. She did not see anything in this Chapter that indicates BMR units would be integrated into the housing development.

Mr. Williams replied staff is cognizant of that issue. The BMR requirements generally have a lot of detail to them. Staff has created a BMR study that will be coming to the Council. For now, staff has indicated that further details of the BMR program requirements will be part of what will be

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reviewed through the BMR study. Ultimately, there would be an ordinance to implement all the BMR requirements and it may or may not be in the zoning section.

Council Member Cordell said it would be easy to add a statement that says BMR units ought to be integrated into the development.

Chief Planning and Transportation Official Julie Caporgno noted that the BMR program is currently implemented through program H-36 in the Comp Plan. This goes into detail about BMR integration. Exceptions can be made depending upon the development. A good example is the Classics Community where the City got units included in the project and an in-lieu fee. The City can use this in-lieu fee toward the Alma substation project if that goes forward. That is why we want to include flexibility. The language Council Member Cordell is proposing would allow that but flexibility is necessary for other types of projects.

P&TC Member Keller stated in general when projects go before the P&TC, the BMR agreement has not yet been finalized. The PT&C does not get an opportunity to review the BMR agreements and, therefore, cannot make recommendations. In the future, the Commission is interested in reviewing the BMR process.

Council Member Cordell said she did not think this would involve a BMR agreement. There is already a statement that says BMR units are to be constructed. She was requesting some language that says such BMR units are to be fully integrated into the development unless for good cause.

City Manager Frank Benest stated staff has no problem saying it is the general policy of the City that BMR units are integrated into the general housing development, as long as there is recognition that there are certain kinds of situations where it makes sense not to do that.

Council Member Cordell stated she would like to make a Motion to add language that says that BMR units are to be fully integrated into the development unless there is good cause not to.

Mayor Kishimoto inquired if this is a vote on this one item only.

Mr. Emslie said he did not think Council needed to be that specific. In the BMR statement there will be an ordinance implementing a set of guidelines that would be more appropriate to illuminate the process.

Council Member Morton said people in this community are not pleased with the size of houses and projects. One example is the Rickey's Hyatt project. We are adopting recommendations that are going to impact the kinds of

housing in this community. People often feel zoning favors the rebuilds but does not protect the long-term residences. He asked to build in not only permission for development but protection for the existing residents and a way to preserve the community. He wondered how to save view space on El Camino when height is pushed to the street.

Mr. Emslie explained the urban design principles adopted and used by the Architectural Review Board (ARB) for El Camino favor moving mass of the buildings, especially on wide multi-lane arterials such as El Camino, closer to the street. This new urban concept goes away from the more suburban large setback and parking visible from the street. These are the design principles that the El Camino guidelines are based on.

Council Member Morton noted the policy direction of the Council would need to be changed. Regarding the parking space issue, he felt that the parking spaces should reflect what the people in the community drive and not some sort of theoretical view about what we think they should be permitted to drive.

Mayor Kishimoto mentioned one small change on Page 5, Attachment A, of the first ordinance. Table 2, third column, on the multi-family residential development table, calls for reducing the minimum front setbacks to 0 to 25 ft. which addresses the urbanist format that Planning and Community Environment Director Emslie mentioned. She sent an email asking for the definition of arterial roadway and asked whether it includes the residential arterials. Staff's response was no and they would be happy to clarify that in the table.

Mr. Williams said staff would revise the footnote to clarify it is just arterials, not residential arterials.

Council Member Kleinberg stated she favors the new urbanism and feels the Council has worked hard to create transit and pedestrian-oriented zones. She noted it would be useful for Council to talk about what redesigned and upgraded homes do for the community.

Council Member Mossar stated her concern that in the future people would not build rental units because the property could not be changed.

MOTION: Council Member Mossar moved, seconded by Kleinberg, to move staff recommendation for 12 a) and b) with amendments that language be added to section 18.13.040(g) to require BMR units to be fully integrated into the development unless good cause was shown for an exception; that Table 2 of section 18.13.040 be revised to clarify that arterial roadways do not include residential arterials and that subsection 18.13.040(g)(3) be

deleted relative to preserving rental units and for staff to return with alternative proposals for consideration.

Council Member Beecham said in terms of the new urbanism and, in particular, the design at the former Hyatt, he agreed it is imposing on the street. He pointed out the details of the design are in good part controlled by the ARB.

Council Member Morton said in order to represent the people who elected him, he would vote no on this.

Council Member Mossar added the ARB spent endless hours on the Rickey's Hyatt project. The ARB does not dictate design; however, they do everything in their power to encourage good design.

Vice Mayor Klein noted he would vote for the Motion. His recollection is that the City Council has at least twice, perhaps three times, down-zoned the amount of square footage that can be built on an R-1 lot. One of the most effective groups he has seen in the City was the citizen's group that was convened to look into this issue and develop the individual design programs. The program is very effective and it has been interesting to see how few times the citizens have appealed. In terms of house size, some of the grumbling from the community is resistance to change.

MOTION PASSED for 12a) and 12b): 7-1, Morton no, Barton not participating.

Council Member Morton stated this is an issue to hold the line until staff has the time to meet with neighbors and clarify further what the impacts will be on the OS. Council and staff want to ensure that what they do is right, take into account the impact on the smaller lots, and hear what the neighbors have to suggest.

MOTION: Council Member Morton moved, seconded by Beecham to adopt staff recommendations on 12c), d) and e).

Council Member Beecham asked when the City began to allow pervious surface to not be counted in the OS areas.

Mr. Williams said he thought it was eight or nine years ago.

Council Member Beecham stated in the past there was no exemption for permeable surface in the OS area. Staff, the P&TC, and the Council have been aware that an unintended consequence is that the paving on a large parcel can be changed to get much more square footage than had been historically possible. He believes the option before the Council tonight is the

right one. The other option would be to set an ordinance that states moving ahead with the Working Group process. The recommendations from that process would then be effective as of the date of what is passed tonight. In the testimony presented at the P&TC meeting, staff indicated there was one application on hand. They are not aware of any other applications in process, so that is not an issue.

Mr. Williams asked if the Motion would replace the section on impervious cover.

Council Member Beecham replied that is correct.

Mr. Williams stated that was reasonable. It can be written to say that any of those changes addressed subsequently would become effective on the date of this ordinance.

Council Member Beecham stated it is not a moratorium because we do not have the grounds for doing that. It puts homeowners at some uncertainty on what the ultimate regulation might be if they were to come in with an application in the next six months.

Council Member Kleinberg asked Mr. Williams if this had to do with impervious surfaces or if they were talking about the entire OS section, which will be looked at by the Working Group.

Council Member Beecham replied the main concern is on the impervious surface. He asked staff if there were comments on how well this might work.

Mr. Williams said the impervious cover specifics in here now would not be included. We would continue to treat that as we do now but with some understanding it would be addressed as part of the Working Group.

Council Member Beecham stated there was also the issue of listing explicitly the criteria in the Comp Plan.

Council Member Kleinberg said she would support the Motion to remove the OS section until such time as the Working Group can bring some recommendations. It needs to be retroactive to the adoption of the zoning update tonight.

Council Member Beecham asked if there was a legal issue.

Mr. Baum said essentially the standard is going to be the old standard. When Council passes the ordinance it is indicating, as a policy matter, that it is going to try and make it retroactive, which legally can only apply if a

building permit has not been issued and there have been no substantial funds expended. The intent is that it will apply retroactively to projects in the pipeline.

INCORPORATED INTO MOTION WITH CONSENT OF MAKER AND SECONDER to remove amendments to Open Space (OS) with direction to staff to work with the OS Working Group and return with new set of amendments for OS, effective on the date of adoption of the ZOU ordinance.

Council Member Beecham said he did not expect that this would come back to the Council until next year.

Council Member Kleinberg asked who would be on the Working Group.

Mr. Williams replied there are about six residents who are interested. A number of environmental organizations will also be contacted for representation, and two P&TC members will be appointed.

Vice Mayor Klein stated he did not think laws should be made this way. The changes in the OS zone as recommended by staff and the P&TC are not new. They are an update of present policies and a continuation of policies that have been in effect for over 30 years. As Council Member Beecham correctly pointed out, it is going to be at least in 2008 before this comes back to the Council. There may very well be someone who slips through the cracks and gets vested rights and the City should not run that risk. He would move a Substitute Motion that would say Council adopts the staff and P&TC recommendations with regard to c) minus AC zoning d) and e).

SUBSTITUTE MOTION: Vice Mayor Klein moved, seconded by Drekmeier, to approve staff and Planning and Transportation's recommendation for 12 c) minus AC zoning, d) and e).

Council Member Mossar said she had asked a question of staff about the deletion of the flood plain (F) district zone Section 18.75. She thought it was a possible opportunity to begin thinking about the land use challenges regarding science-based projections for the impacts of sea level rise on the Bay and the immediate expected increase in severe storms and storm surges. Staff had indicated in its response that should the Council want to keep this as a placeholder, it was fine to do so and that it recognized the importance of figuring these challenges out and there were other vehicles for doing it. She would like to keep the F designation as a reminder that it is something we have to deal with. She wondered if the maker of the Substitute Motion would be willing to include to not deleting the flood plain (F) district and encouraging staff as they move forward to deal with these issues of Global Climate Change.

INCORPORATED INTO SUBSTITUTE MOTION WITH CONSENT OF MAKER AND SECONDER to not delete the flood plain (F) district and to encourage staff and City officials to be mindful of Global Climate Change.

Council Member Mossar stated there is a serious issue with runoff and a lot of pervious surface is not much better than impervious surface. It is much cleaner to support staff and P&TC recommendations and, if the Working Group comes up with better ways, then changes could be made.

Council Member Barton said he agreed and he would combine his comments with Vice Mayor Klein's and Council Member Drekmeier's.

Council Member Cordell stated the fair way to do this is to get input from the public and then make the rules and let the public have a say. She would not support the Substitute Motion.

Council Member Kleinberg agreed with Council Member Cordell because it sets a bad precedent to adopt laws and ordinances that affect property rights or any other rights which are inherently defective. The people who have stood up and spoken about their property and the way it would impact their property show that this is not good legislation.

Council Member Beecham asked Mr. Baum for help on the protocol. He would like to separate the issue of the OS. He asked if that would be a motion or a request.

Mr. Baum said it could be handled either way. Council Member Beecham could request that the Mayor divide the motion. Should the Mayor decline to divide, then he could make it as a motion and the group can decide.

Mayor Kishimoto divided the motion for the purpose of voting.

SUBSTITUTE MOTION on Open Space

MOTION PASSED: 5-4, Beecham, Cordell, Kleinberg, Mossar, no.

SUBSTITUTE MOTION on remainder of 12 c), 12 d), and 12 e)

MOTION PASSED: 9-0.

Mayor Kishimoto thanked Mr. Emslie, Mr. Williams, Planning staff, and the P&TC for the six-year Zoning Ordinance Update process.

REPORTS OF OFFICIALS

13. Approval of an Acquisition and Development Agreement Between the City of Palo Alto, Eden Housing, Inc. and Community Housing Alliance, Inc. for the Proposed Alma Street Affordable Multi-Family Rental Housing Project

Mr. Benest stated that City staff, Eden Housing and the Community Housing Alliance (CHA) were pleased to present the Acquisition and Development Agreement for the Alma Street affordable development. In terms of project overview, the Housing Element identified this site for housing and the Council, in September 2006, authorized a family rental project for low-income households on the combined substation site and Ole Auto Repairs site after the Ole site was under purchase contract by the CHA. The Council also approved a predevelopment agreement among the three partners Eden, CHA and the City. The Acquisition and Development Agreement allows for the affordable family housing project. If the hardware store and the small office building choose to relocate and expand, then a larger vision can be implemented. The CHA has letters of intent from both the hardware store and the office owners to join in on this mixed use project. This would provide ground floor commercial along the whole block of Alma and it would most significantly expand affordable housing units over the ground floor from the original 53 to 101 affordable housing units for both families and seniors.

Rob Quigley, Architect, said the original project is a family housing project with 53 family units. Access to parking would be under the project. The expanded project would be 50 family units, about 1600 square feet of retail, 52 senior units, and about 6300 square feet of office and senior activities. This would build on the original Alma design guidelines and the SOFA II plan. There is intergenerational synergy in combining a seniors' project and a family housing project in the same vicinity. With unobstructed south sun, this project has the opportunity to be a role model in sustainability. A lot of rooftop area could be used to generate electricity.

Don Barr, Community Housing Alliance (CHA), stated CHA wants to take this concept of affordable work force housing in SOFA II and make it a reality. Families with very low incomes will be targeted. These are the people that make our businesses and our services and our health care services run. There are long waiting lists for affordable senior housing in this community and few units become available each year. That is why the vision was expanded to include the needs of both seniors and families and to have a project that combines retail space with affordable housing. In order to keep the rents down to these levels the CHA and the partner groups need to raise substantial funds. CHA believes that once this project is adopted in concept through this Agreement and the application permits start coming forward, it will be successful in raising these funds.

Linda Mandolini, Eden Housing, said last September they showed Council the math for the fall-back option which is to build 53 units of work force housing for families in the 30-35 percent of median income bracket. The total cost is about \$25 million. Funding sources have been identified to cover about \$21 million, which leaves a fundraising gap for CHA of about \$4.4 million. We have just heard from the tax credit allocation committee in Sacramento that the gap may actually go down because some rules have changed. If Council approves this tonight, we can move forward for at least 53 units. We would like to move forward with an even bigger project, which is for 50 units of family housing over commercial. That project costs slightly more because we would be building the expanded space for the hardware store. The hardware store would be paying an exchange of their land for the new space. The total cost is \$28 million and the gap funding required to do 50 units would be \$5.6 million. There would be 51 units of senior housing, with about 6,300 square feet of commercial space. Total sources of funds would be \$13 million. Our total cost would be about \$19 million, which would leave a gap of about \$5.5 million. Concept plans are being presented tonight, not final plans. If Council approves this tonight, we will be starting with design and neighborhood efforts, going to the ARB for preliminary review in October. The PC process would be started at the end of the year and then by February 2009, we would apply for tax credit funding. The reason this is put out to 2009 is that we have to be completely approved in order to apply for tax credits. The Ole site cannot be acquired until next summer and, therefore, the earliest to start the family housing financing would be late fall of next year. We would complete construction of the family housing in 2011, and start immediately thereafter on the senior housing after we relocate the hardware store.

Mr. Benest stated the recommendation is that the Council approve the Acquisition and Development Agreement and provide comments on the larger vision that has been suggested. This is an opportunity to develop affordable housing in the downtown, with green building design, close to transit and provide services for low income households. With the larger vision, there are additional benefits to preserve and expand neighborhood serving retail, to more fully implement the SOFA II Plan, provide a more vital street scape along Alma, and encourage intergenerational programming.

Mr. Emslie referred to Council questions regarding the 55-year term of the Agreement. This is consistent with the structure of tax increment financing. However, there are ways to extend the affordability. On Page 1 of the Agreement, Recital Section, Paragraph F, the Council would be asked to direct staff to include additional language that recognizes the CHA, Eden Housing and the City would work together to extend the term of affordability wherever feasible and allowed by the financing rules that would apply. There is specific language. If the Council provides that direction, staff could implement the language and proceed.

Mark Sabin, 533 Alberta Avenue, Sunnyvale, spoke in support of the Agreement and noted that these types of developments are particularly important for people who contribute to our daily well-being and the quality of life in this community.

Doris Petersen, 1803 Edgewood, President of the League of Women Voters of Palo Alto, stated that the League wholeheartedly supports approval of the Acquisition and Development Agreement.

Patricia Saffir, 2719 Bryant Street, urged approval of this Agreement and encouraged the larger vision. This current proposal provides affordable family housing and the possibility also exists for some desirable retail and needed affordable senior housing.

Litsie Indergand, 336 Ely Place, urged approval and said we can be as proud of this project as we are of the Opportunity Center.

Irene Sampson, 3992 Bibbits Drive, said this project is a good example of in-fill development located near public transportation, shopping and other services. She supports approval of this Agreement and moving forward.

Jeff Rensch, 741 Chimalus Drive, stated he hoped that Council would support the project in its "enriched" form.

Sally Probst, Coastland Drive, spoke in support of the project. She recommended good lighting in the underground from 800 High to the new housing.

Bena Chang, Santa Clara, stated this project will be an important step to ease the continual demand for affordable homes.

Robert Moss, 4010 Orme, said he agreed with the concept of the project but is concerned the City is being asked to pay \$4 million for .27 acres, which works out to about \$14 million per acre. Secondly, the report said that no money from the General Fund would be used. The substation is a General Fund asset. If the City is giving that to this project, then money from the General Fund is being used. That needs to be clarified.

Carol Lamont, 618 Kingsley Avenue, said the multi-use concept is excellent and a good way for the City to achieve its Housing Elements goal.

Council Member Drekmeier asked about the criteria on who can get into this facility. There are people who work hard to make Palo Alto a better community and do not make a lot of money. It seems this is a great reward

for them versus someone who is working in a restaurant and gets low wages.

Ms. Mandolini replied it is possible to have preferences. Eden has done preferences in many other communities and Council would have to tell Eden how to work that preference. It has to be fair and meet Fair Housing guidelines first. People could get a preference if they live, and/or work in Palo Alto or a complex point scoring order could be used.

Council Member Drekmeier asked at what point in the process this would take place.

Ms. Mandolini replied Council could ask staff as part of the vote tonight to work with Eden to create a preference. She did not know if one is in place for other projects. They could look at other preferences to see if they would be workable in this scenario. Staff told her that "live or work" is already in place so that would be easy to implement.

Council Member Drekmeier stated Alma Street seems dangerous because it is narrow and there is heavy traffic. People heading south who want to turn left onto one of the streets block the inside lane and people behind them try to zip over into the right hand lane. He wondered if the City has looked into doing something similar to Charleston on that stretch of Alma, basically two lanes and designated turn lanes.

Mr. Emslie stated this would be a three-lane section. A specific study has not been done on Alma but the principle that would apply to Charleston could also apply here. A lot of capacity is gained by removing the left turns from the travel lane and putting them into a center turn lane. It is possible to look at it, but it is not in our work program.

Council Member Drekmeier asked if the potential for green building that Mr. Benest mentioned was part of the plan.

Mr. Benest confirmed it was a keystone of the whole project. The original design with the family only project that Council saw last September incorporated green building.

Council Member Barton said this is a project that is a public/private partnership. It is an Agreement among the users on the block on how to do things, and it has great affordability. He was proud that Council was having this discussion. This is a community that values and understands the need for affordable housing.

MOTION: Council Member Barton moved, seconded by Morton, to approve staff recommendation to approve the Alma Street Affordable Multi-Family
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Rental Housing Project Acquisition and Development Agreement (ADA) between the City, Eden Housing and the Community Housing Alliance (CHA) with the modification to extend the term of affordability beyond 55 years as permitted by funding sources. The Agreement provides for the conveyance of the Alma Substation parcel to Eden Housing and CHA, a City loan of \$3 million for acquisition of the adjacent Ole's parcel and general parameters for future development of the combined site.

Council Member Morton said that most HUD and CDBG funding has the limitation that if the project ceases before the term is up, the funding returns to the City. He wondered if the same could be done with the land. If the use ceases within the 55 years or the extended period, then the land would return to the City. There is a concern that we do not want to particularly enrich somebody down the road.

Mr. Benest confirmed that if the affordable housing use ceases within the 55 years, the land ownership returns to the City.

Council Member Kleinberg asked if the project could be made allergen free with regard to the interior finishes and smoke free.

Ms. Mandolini stated that Eden had done one cigarette smoke-free building, which was a senior property in Dublin. It could be studied for a family property; however, this can be a leasing challenge because it would eliminate people who otherwise would be able to live in the property. Council Member Kleinberg said she strongly encouraged this to be a smoke-free environment particularly since there are vulnerable populations, such as children and seniors.

Ms. Mandolini stated that smoking areas have to be provided if it is a smoke free building because we cannot discriminate against somebody to move into the housing because they smoke cigarettes.

Council Member Kleinberg asked if this was a Federal law.

Ms. Mandolini replied she did not know what kind of law and would research it more. When smoke free housing was built in Dublin, they had to provide a smoking area.

Council Member Kleinberg inquired again about an allergy-free environment.

Mr. Quigley stated the normal process is to be very careful of the kinds of poisons that are emitted from more traditional building materials. An example of this would be vinyl asbestos tile. He does not specify or use this type of material because of the problems with that material. The building

also is not sealed perfectly on purpose so that there are certain air changes that help. He would investigate an allergy-free environment.

Council Member Kleinberg asked about community space and childcare because low income families with children may not be able to live there and go to work. She wondered if there would be some space set aside for either a small childcare facility or an arrangement with childcare in the neighborhood. She also asked if there was any kind of senior daycare and health care.

Mr. Quigley stated he looked at the issue of childcare downtown. All Saints Episcopal has a Palo Alto Community Childcare facility. There is the private childcare a few blocks away but it is very expensive. He spoke to the enrollment director at Bing Preschool, who advised there would be scholarships available to these families.

Council Member Kleinberg stated she raised the question because it is a major issue for working families. The childcare spaces in town have long waiting lists. While there might be scholarships available, she is concerned that there is not extra space for more kids.

Mr. Quigley said some large outdoor spaces and a fair number of community spaces are included in the family housing project. There is a large outdoor play area on the second level adjacent to the laundry room. On the fourth level, there is a large common outside area available for the children.

Mr. Barr referred to Council Member Kleinberg's questions about senior services. The project was not intended to be an assisted living type facility. It would be independent living but there would be supporting services for the seniors.

Council Member Kleinberg expressed concern about donating City land and wondered if that was required in order to qualify for some kind of funding.

Mr. Emslie replied that was correct. Staff looked into the possibility of a lease arrangement but funding options would not apply. The minimum lease term to be considered for funding would be 75 years and we are prevented by the Charter from leasing property for terms longer than 50 years.

Council Member Cordell stated it means a lot to her to know that this is truly going to be affordable housing.

Mayor Kishimoto stated the project is ambitious and complex and she is glad the community has the people and the resources to bring it together. She has concerns about giving away City land as Council Members Morton and Kleinberg mentioned and 55 years is not very long. Staff advised that the

draft ABAG number of low income housing was 846 units. Some of that might be on Stanford land.

Mr. Benest replied the per unit cost for senior units is around \$350,000.

Mayor Kishimoto stated she would support the project with the addition to make it affordable in perpetuity or as long as possible as much as the financing terms would allow.

Vice Mayor Klein said there was talk about the reversion and asked what section that was in. Also, Council discussed the LEED Silver Standard on this project. He asked Mr. Quigley if it was correct that he said he did not mind designing and building to that standard, but he did not want to apply for it because it was difficult and expensive. Since then, we have heard from a representative of the Build It Green Council who told us that is no longer the case. It is not as onerous and does not involve as many delays. He asked whether Mr. Quigley had similar experiences.

Mr. Quigley replied yes it has definitely become less expensive than it was when the program was originated; however, there still is expense for the policing and added bureaucratic work required to get the LEED certificate. He could not say exactly what the cost differences have been but he would definitely design to that standard. It is merely a question of whether the additional money goes into the project or goes toward the certificate.

Vice Mayor Klein said the point had been raised by the Build It Green representative that it is unfair to use their standards and not go through the process. It is the only way that a city can be assured of certification. He asked if there would be any objection to including requirements that this be built to LEED Silver Standards and go through the compliance process.

Mr. Quigley replied the LEED standards are intelligent and logical standards. He tried to meet those standards before LEED existed and would try and design a project as sustainable as possible within the budget. These projects are difficult to achieve with a budget. His personal opinion would be not to go forward with LEED. Even if the extra expense is only \$10,000, that money could go back into the project. However, he understands there are reasons, especially public reasons why the certificate might be valuable and worthwhile.

Vice Mayor Klein stated the tests are quite specific and he would move an amendment that adds a provision in the contract that this has to be certified with LEED Silver. He does not think the City should be involved in any project that does not meet that standard.

Mr. Barr stated before taking that step it is necessary to include a dollar value on it because if \$1.5 million is added to the project, he is not sure \$1.5 million could be raised for LEED certification. When building the Opportunity Center, the costs were substantially higher.

Mr. Benest reported this would be going to the ARB and the P&TC and back to the Council once the project is designed. Staff knows the Council's policy and general direction. Staff will look at exactly how much it costs and come back with a recommendation and the Council can decide if the gap is too big or if we can get the certification.

Vice Mayor Klein stated he was troubled by this because this is an Agreement. We have said it is a policy and then when the first major project comes along we waive it.

Mayor Kishimoto said it is coming back to the Council.

Mr. Benest commented this project depends upon a partnership with the City. There will be several recommendations coming back to Council and once there are the numbers and design for the project, plus feedback from the ARB and PT&C, Council can direct staff what it wants at that time.

Vice Mayor Klein asked the City Attorney what is being agreed on here.

Mr. Baum replied there are no requirements in the Agreement that he is aware of concerning compliance with LEED Standards.

Vice Mayor Klein asked how we are protected.

Mr. Benest responded the issue is whether we purchase the LEED certification.

Mayor Kishimoto suggest saying it is LEED equivalent.

Vice Mayor Klein replied he was not in favor of that.

Council Member Mossar stated the building is what is important, and the way it is built, not the certificate.

Mayor Kishimoto confirmed that the Motion is for certification.

AMENDMENT: Vice Mayor Klein moved, seconded by Drekmeier, to add a requirement to the contract that this project be certified to LEED Silver Requirement Standards and the compliance process be met.

AMENDMENT FAILED: 2-7, Drekmeier, Klein yes.

Sandy Sloan, Attorney for Housing Alliance and Eden Housing, said she could answer Vice Mayor Klein's question about the reversion. Ms. Sloan stated in the ADA on page 36, Section 8.5, discusses remedies and rights of termination by the City after conveyance and explains that if there is a default, the City has an option to purchase the site back and the purchase price is the balance then due under the City loan. The option agreement is one of the attachments. It is not an automatic reversion but it is an option to repurchase.

Vice Mayor Klein asked what happens in year 56.

Ms. Sloan replied, originally, the idea was it would be a 55-year Regulatory Agreement. She suggested that Mr. Emslie read the language that was worked out today, which should satisfy the lenders and also satisfy the City as far as extending it beyond the 55 years.

Vice Mayor Klein said the City Manager told Council the City gets the property back if this is no longer a housing project.

Mr. Emslie stated the reversion process is in Attachment 9, which is the form of the Regulatory Agreement that will be executed in this form because it is being approved as a part of this Agreement. Page 3, Attachment 9, at the bottom of the page, Paragraph 7, spells out the reversion process for the City acquiring the right to purchase. By forgiving the loan, the City would reacquire the property under the provisions of the Regulatory Agreement, Paragraph 7, Paragraphs A through D.

Council Member Morton asked if that means the City gets it back for nothing.

Mr. Emslie replied that is correct.

Council Morton asked if that could be amended so it would include any extension of usage.

Mr. Emslie said it could and, if we are able to structure the funding to get that extended, this would be amended to coincide with that same period.

Mr. Baum said there is no true reversionary interest.

Mayor Kishimoto pointed out that Article 6.12 says that within the 55 years the developer may not make any modifications to the use without prior written consent of the City.

Mr. Emslie responded the language that is being proposed would be in Paragraph F of the Recitals which is on the first page of the affordable
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housing rental project. Paragraph F would read in total as amended: *The City has agreed to provide the funding and to sell the City parcel to the developer for the purpose of the development of a long-term affordable multi-family rental housing project on the site and the developer has agreed to develop the site in accordance with this Agreement which also requires the site to be subject to a recorded City Regulatory Agreement that limits the occupancy and rents at the residential units developed on the site to serve levels of very low income households for a period of no less than an initial 55 years. Further restrictions, financing structures, and regulatory provisions as appropriate will be put in place prior to the City's conveyance of the City property to provide for a substantial extended term of affordability beyond the initial 55 years.*

Vice Mayor Klein stated he is concerned about the environment indemnity under Section 4.5.3 on Page 16. Council's experience with the Roth Building has made him leery of the City taking on obligations particularly when giving property away.

Mr. Benest said this indemnification was agreed to as part of the pre-development agreement the Council approved in September 2006 and staff has done due diligence including Phase I and II studies.

Vice Mayor Klein said if that was the case, the donee should accept that liability.

Mr. Benest reiterated this is a negotiated partnership and a part of their business negotiations. The Council approved this language in September 2006 and he is confident, given the Phase I Hazmat Study and the Phase II Hazmat Study, that this is a reasonable provision.

Council Member Kleinberg stated Section 4.5.3 refers just to the City parcel. Since it is next door to a piece of land being added, which is an auto repair shop, there could be subterranean leakage into the parcel. She asked if the studies have taken into account the contiguous parcel and any other toxics being indemnified for remediation clean-ups.

Mr. Emslie stated Phase I is non-invasive testing in which the records and permit history are checked. Phase II is actual drilling on the site. Phase II essentially cannot be completed for the Ole's property until much of the building is removed. Drilling is done in the areas where there may be suspected leakage. Also, there are limitations on the substation site. Once the site is clear, there may be some drilling yet to come.

Vice Mayor Klein noted Section 4.6.1, Page 17, talks of a variety of ways of handling closing costs and noted he is concerned about a project this size,

assuming that the costs might add up to \$100,000 or \$200,000. It is not clear where that money is coming from.

Mr. Benest stated all the costs associated with the transaction will be coming from non-General Fund housing-related funds. In order for this partnership to work, the CHA and Eden are going to have to raise \$10 million. Either we pay it at the front end or the back end. Again, this is a negotiated business provision. There is a gap of either \$10 million or \$5 million, depending on which project is chosen. We are trying to minimize that gap and since we are going to be one of the major funders, it was one of our deal points to facilitate this project.

Vice Mayor Klein stated he did not like backdoor facilitation. He would like to send the Agreement back to staff to renegotiate and limit our environment indemnity under Section 4.5.3 so that we are not exposed to things such as possible leaks from the Ole site and that we are not responsible for any environmental damage on the property.

Mr. Benest suggested Mr. Barr comment on the testing that done on the Ole's site.

Council Member Kleinberg said the City is agreeing to take on this liability when clearly the liability is unknown. However, she did not want to hold up the Agreement.

Vice Mayor Klein expressed his concern that Council is now bound by the preliminary actions it took last year.

Mayor Kishimoto stated she is concerned about the Ole's parcel and asked if that parcel is being indemnified by the City.

AMENDMENT: Vice Mayor Klein moved, seconded by Mayor Kishimoto, to send the Agreement back to staff to renegotiate and limit our environment indemnity under Section 4.5.3 so that we are not exposed to things such as possible leaks from the Ole site and that we are not responsible for any environmental damage on the property.

Mr. Emslie replied in these transactions the sellers are expected to deliver the property in a clean fashion. If any cleanup is required, typically that comes out of the final negotiated price. This is not unusual for a buyer/seller relationship on a reused site, especially if it is a site that has had industrial uses like the substation. The same assumptions are in place for the Ole's site.

Council Member Kleinberg noted that Mr. Emslie said it is customary in a seller relationship. However, the City is a donor, not a seller. She asked if there is anything customary in a donor relationship.

Mr. Emslie said there have been times in doing non-profit housing where the seller is also a contributor, but he could not recall any specific example.

Mr. Benest pointed out the CHA is purchasing the Ole's property. Ole's has agreed to deliver a clean site to the CHA and there has been extensive testing by the CHA.

Council Member Barton stated selling and giving land away are moot questions under the law. More importantly, there will be a two-story underground parking garage and if there are any toxic soils, they would be removed. The issues of any liability are extremely limited. This is not an area that has never been developed before. We cannot pass off our liability under Federal Law regarding the toxics issue. He appreciates Vice Mayor Klein's concern, but it is not a large issue.

Council Member Kleinberg asked Mr. Baum if he was familiar with Council Member Barton's version of Federal Law.

Mr. Baum replied this is much more complicated than that. Under the law, there is a tall liability when you own something. However, there can be a contractual change. The liability and indemnity can be moved around contractually.

Mr. Benest confirmed that Phase II has been done on the City's property as well as Ole's property.

Council Member Kleinberg stated she did not think Council wants to have such an open-ended liability and wondered if there was some kind of a cap that Council could reasonably agree on.

Council Member Mossar stated the problem is that an issue has been raised which is not inconsequential. Staff has said there was not testing and there was testing. She wondered if we could ask staff to respond to these questions and take final action next week. She would like to make a Substitute Motion to continue this item to next week and ask staff to provide thoughtful answers to the questions raised.

Council Member Beecham replied if liability is the only issue left on the Alma Street project then Council should go forward. He did not know if his colleagues have other issues.

SUBSTITUTE MOTION: Council Member Mossar moved, seconded by Beecham, to continue this item until August 6, 2007 with the public testimony closed.

SUBSTITUTE MOTION PASSED: 8-1, Barton no.

COUNCIL MATTERS

14. Colleague's Memo from Mayor Kishimoto and Council Members Beecham and Drekmeier Recommending the Council to Direct Staff to Explore the Feasibility of College Terrace Parking Permit Program

Council Member Kleinberg requested that this item be moved to next week.

Council Beecham suggested that public comment be taken tonight and Council's discussion moved to next week.

Council Member Barton stated he would not participate in Item No. 14 because he had a conflict of interest, as he has a client in the neighborhood.

Council Member Barton left the meeting at 11:20 p.m.

Pria Graves, 2130 Yale Street, stated as part of the 2000 General Use Permit the residents persuaded the County Supervisors to require Stanford to pay \$100,000 to the City to look into this problem. She understood that staff has some concerns about what enforcement and implementation would cost, but she did not think these are unsolvable problems.

David Struck, 980 College Avenue, said he disagreed with the permit parking system. He lives and works in the neighborhood and walks to work and his car is parked on the street in front of his house for three to four days at a time. He would have to get a permit in order to leave his car in front of his house.

John Haggerty, 1215 Stanford Avenue, stated he lives in one of the areas that would probably be considered heavily impacted but his personal feeling is that the permit system is a bad idea and is not worth the hassle.

Elina Haggerty, 1215 Stanford Avenue, asked what would happen when she had visitors. She was concerned they would get penalized for parking outside her home.

Faith Brigel, Birch Street, spoke in favor of the permit program. With Stanford building more housing on campus and charging for their parking, more students and employees have been parking in College Terrace.

Residents should not be penalized for wanting and needing to park close to their homes.

Steven Woodward, 1655 Stanford Avenue, said he wished to encourage the City to investigate the benefits of a residential parking permit program. This program, as considered so far by the College Terrace Working Group, includes the block-by-block buy-in and the availability of options that would make it fairly easy for residents to have guests visit their homes without incurring risk of parking tickets.

Greg Tanaka, 2290 Princeton Street, College Terrace Resident Association President, said as a result of feedback from the neighborhood, the College Terrace Board has voted to support resolving this problem.

Gary Fine, 2002 Columbia Street, said he finds Escondido School to be more of a problem than Stanford. It is necessary to take responsibility for our own choices and leave things alone.

Richard Tucker, Harvard Avenue, said he thinks the permit idea is extremely poor. Out of town guests could get a \$100 fine because their license number has not been registered with the Palo Alto Police.

Mayor Kishimoto noted this agenda Item would be continued to August 6, 2007 and the public testimony was closed.

COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Mossar noted she had a conversation with a small business owner in the South of Forest Area who expressed concerns about the BID, the lack of service the businesses in the area receive, and about the loss of revenue when there are events on University Avenue.

City Manager Benest commented staff and the BID were preparing a summary subsequent to the Promenade event to mitigate future problems.

Council Member Kleinberg stated the Brown Act allowed Council Members to ask questions of staff under Council Comments, Announcements and Reports from Conferences; the prohibition would be the question could not turn into a conversation and a debate.

Council Member Morton reported as the City's representative to the Airport Land Use Commission, he had attended the monthly meeting. The Palo Alto Land Use Comprehensive Plan is scheduled to begin discussions late this fall. Council Member Beecham responded to the manner in which an issue had been presented during Council Comments, Announcements and Reports from Conferences a couple of weeks prior.

CLOSED SESSION

15. CONFERENCE WITH CITY ATTORNEY – ANTICIPATED LITIGATION

Subject: Significant Exposure to Litigation on One Matter

Authority: Government Code Section 54956.9 (b)(3)(A)

MOTION: Council Member Motion moved, seconded by Klein, to continue Item 15 to August 6, 2007.

MOTION PASSED: 8-0, Barton absent.

ADJOURNMENT: The meeting adjourned at 11:45 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.

ATTEST:

APPROVED:

City Clerk

Mayor

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