

Special Meeting  
February 20, 2007

STUDY SESSION.....	3
1. Silicon Valley Regional Interoperability Project Status (SVRIP) Update.....	3
ADJOURNMENT: The meeting adjourned at 7:35 p.m.....	3
APPROVAL OF MINUTES.....	4
CONSENT CALENDAR .....	4
1. Ordinance 4935 entitled "Ordinance of the Council of the City of Palo <b>Adding</b> Chapter 2.07 to Title 2 of the Palo Alto Municipal Code to Prohibit Certain Former City Employees from Appearing Before the City for Third Parties for a Period of One Year After Leaving City Employment" .....	4
3. Finance Committee Recommendation on Changes to the Guideline Levels for the Utilities Rate Stabilization Reserves, and Utilities Emergency Plant Replacement Reserves .....	5
4. 705 and 711 Cowper Street: Approval of a Parcel Map with Exceptions to Subdivide a Formerly Merged Parcel and a Negative Declaration.....	5
AGENDA CHANGES, ADDITIONS, AND DELETIONS .....	5
4a. (Old Item No. 2.) Resolution 8692 entitled "Resolution of the Council of the City of Palo Alto Scheduling the City Council Vacation and Cancelling Council Meetings in Calendar Year 2007" .....	5
PUBLIC HEARINGS.....	7
5. Public Hearing: Consider Approval of a Record of Land Use Action upholding the Director's decision approving a preliminary parcel map to create two parcels from one parcel at 897 Barron Avenue. ....	7
6. Public Hearing: Consider Approval of a Record of Land Use Action for a Tentative Map to create two single family residential parcels and a remainder lot, and a Mitigated Negative Declaration at 4249 El Camino Real. ....	16

REPORTS OF OFFICIALS .....	17
7. Recommendation to Allocate \$5,000 from the Council Contingency to the Council Travel Budget.....	17
COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES .....	18
8. CONFERENCE WITH CITY ATTORNEY -- POTENTIAL/ANTICIPATED LITIGATION .....	18
FINAL ADJOURNMENT: The meeting adjourned at 10:00 p.m. ....	19

The City Council of the City of Palo Alto met on this date in the Council Chambers at 7:04 p.m.

Present: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg, Morton

Absent: Mossar

### STUDY SESSION

#### 1. Silicon Valley Regional Interoperability Project Status (SVRIP) Update

Palo Alto Police Department staff provided the City Council with an update on the Silicon Valley Regional Interoperability Project (SVRIP). The SVRIP initiative is a collaboration of the 30 first responder agencies in Santa Clara County working together to improve communications capabilities during day-to-day operations and emergencies. The Project operates under the general direction of the Santa Clara County/Cities Managers' Association, as well as the County Police and Fire Chief's. During the study session, City Council was briefed on the goals of the SVRIP, the five projects that make up the SVRIP, and funding strategies. The Council was also briefed on the legislative outreach efforts and the fact that the Project is receiving national focus as a "best practice for interoperability" region by the Department of Homeland Security.

**No action required.**

### ORAL COMMUNICATIONS

None.

ADJOURNMENT: The meeting adjourned at 7:35 p.m.

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Present: Barton, Beecham, Cordell, Drekmeier, Kishimoto, Klein, Kleinberg, Morton

Absent: Mossar

ORAL COMMUNICATIONS

None.

APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Barton, to approve the minutes of January 22 and January 29, 2007, as submitted.

**MOTION PASSED** 8-0 Mossar absent.

CONSENT CALENDAR

Vice Mayor Klein moved, seconded by Kleinberg, to remove Item No. 2 from the Consent Calendar to become Item 4a.

**MOTION:** Council Member Barton moved, seconded by Morton, to approve Consent Calendar Item Nos. 1, 3 and 4.

1. Ordinance 4935 entitled "Ordinance of the Council of the City of Palo **Adding** Chapter 2.07 to Title 2 of the Palo Alto Municipal Code to Prohibit Certain Former City Employees from Appearing Before the City for Third Parties for a Period of One Year After Leaving City Employment"
2. ~~Resolution xxxx entitled "Resolution of the Council of the City of Palo Alto Scheduling the City Council Vacation and Cancelling Council Meetings in Calendar Year 2007"~~

3. Finance Committee Recommendation on Changes to the Guideline Levels for the Utilities Rate Stabilization Reserves, and Utilities Emergency Plant Replacement Reserves
4. 705 and 711 Cowper Street: Approval of a Parcel Map with Exceptions to Subdivide a Formerly Merged Parcel and a Negative Declaration

**MOTION PASSED** 8-0 Mossar absent.

#### AGENDA CHANGES, ADDITIONS, AND DELETIONS

4a. (Old Item No. 2.) Resolution 8692 entitled "Resolution of the Council of the City of Palo Alto Scheduling the City Council Vacation and Cancelling Council Meetings in Calendar Year 2007"

Vice Mayor Klein recommended a discussion regarding the swearing in dates of newly elected Council Members prior to the first meeting of the year.

**MOTION:** Vice Mayor Klein moved, seconded by Kleinberg, to approve the resolution scheduling the Council Calendar with the following amendments: 1) the winter break dates of December 24, 2007 to January 4, 2008 would be finalized when the City Council made a decision on the date of swearing-in of newly elected Council Members; and 2) remove the July 4<sup>th</sup> Holiday from the resolution.

Vice Mayor Klein stated the new Council Members should be sworn in as early as possible.

Mayor Kishimoto recommended the issue of swearing-in the newly elected Council Members be scheduled for a Policy and Services Committee meeting.

Assistant City Manager Emily Harrison stated the meeting would be scheduled for April.

Herb Borock, P.O. Box 432, said there should be two separate meetings; one in early December (after council members are elected) to be sworn in and then a celebration later on.

Council Member Drekmeier questioned if the July 4 holiday, should have been Monday, July 2.

City Clerk Donna Rogers answered if the Council would cancel the meeting of July 2 (due to the holiday) it would be included in this resolution.

Council Member Drekmeier asked if there would be other similar holidays.

Ms. Rogers responded one holiday should not be recognized without the others. Therefore, it would be removed from the resolution.

Mayor Kishimoto suggested the first line of the resolution show what it is that would be removed for clarity.

City Attorney Gary Baum stated under the Charter, the earliest date the new Council would be sworn in would be January 1. California State Law stated any action taken on a holiday, would not be deemed an action. The earliest possible date, therefore, would be January 2.

Council Member Barton questioned whether the motion was to remove the swearing in of newly elected Council Members from the first meeting in January.

Vice Mayor Klein answered that would be correct.

Council Member Barton asked whether additional meetings would meet the Brown Act Noticing requirements.

**SUBSTITUTE MOTION:** Council Member Barton moved, seconded by Morton, to approve the resolution removing July 4 and allowing the City Council to adjust the schedule after the Policy and Services Committee recommendations in April.

Council Member Morton stated the Winter break would be between December 24 and January 4, and changes to the Council schedule would be made after the Policy and Services Committee met in April.

Council Member Kleinberg mentioned Columbus Day was not a widely recognized holiday.

Ms. Rogers added that City Hall is closed on Columbus Day.

Council Member Kleinberg replied City Hall would be closed, which is the reason the Council was not going to meet.

Ms. Rogers stated there are times when the Council would meet the day after a holiday, which would be a Special Meeting.

Council Member Kleinberg stated with City Hall closed, Columbus Day should not be considered vacation.

Ms. Rogers stated the resolution would be titled "Scheduling the Council Vacation and Cancelling of Council Meetings."

Mayor Kishimoto stated the Municipal Code required scheduling the annual summer vacation.

Ms. Rogers confirmed that was correct.

Council Member Barton stated meetings could always be added.

Vice Mayor Klein replied the Municipal Code required scheduling of the annual vacation only and, therefore, this item needed to be continued.

Mayor Kishimoto asked to vote on the summer break.

**SUBSTITUTE MOTION WITHDRAWN BY MAKER AND SECONDER.**

**SUBSTITUTE MOTION:** Mayor Kishimoto moved, seconded by Klein, to set the Council summer vacation for August 7, 2007 through September 7, 2007.

**SUBSTITUTE MOTION PASSED** 8-0 Mossar absent.

PUBLIC HEARINGS

5. Public Hearing: Consider Approval of a Record of Land Use Action upholding the Director's decision approving a preliminary parcel map to create two parcels from one parcel at 897 Barron Avenue.

Council Member Barton stated he would not be able to participate in this item due to an ethical conflict because he met with the owner of the property at a Directors' Hearing five and a half years ago.

Project Planner Russ Reich stated the applicant had worked with the City Arborist to maintain the location of the mature cedar tree. The current home would be relocated on the lot.

Assistant Director of Planning and Community Environment Curtis Williams added that property owners in the area requested rezoning of the area, which would defer this item until processing the rezoning item.

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

Mr. Reich reported Edward Demore was the official appellant except there would be multiple neighbors involved.

Odile Dijch-Bhodlkamkar, 3717 LaCalle Court, requested to speak on behalf of the neighborhood appellants.

Mayor Kishimoto asked the City Attorney whether the neighborhood would be allowed to choose a new appellant or whether the person previously named as the official appellant would be the speaker.

Mr. Baum said the appellants could choose the speaker, who needed to be a representative or a previously-named appellant.

Ms. Dijch-Bhodlkamkar stated the neighborhood would like to put the subdivision on hold until rezoning of the area for 10,000 square foot lots. She said many homeowners believed the process was flawed.

Council Member Beecham stated any other individuals who wanted to speak would have his or her own independent three minutes to speak.

Mayor Kishimoto noted there were no more speaker cards and, therefore, she would move on to the applicants.

Ha Nguyen, 897 Barron Avenue, urged approval of the subdivision, which is being requested to take care of their parents. There would be two small lots of approximately 8,000 square feet each and larger than the minimum 6,000 square foot lot size required by the zoning. He reviewed the data of two storey homes in the neighborhood.

Lieu Nguyen, 897 Barron Avenue, requested approval of the subdivision.

Mayor Kishimoto asked why the applicants would not want to make the corner lot larger to make more room to save the cedar trees.

Mr. Nguyen stated they would move the house from the current location to accommodate the cedar trees.

Mrs. Nguyen stated the new house would face the direction of Laguna Avenue for aesthetics.

Mayor Kishimoto asked Dave Dockter whether the moving of the house would save the tree.

Managing Arborist Dave Dockter stated he had reviewed the plan and if the recommended conditions were implemented the plan would be feasible.

Elizabeth Doyle, 3655 LaCalle Court, stated she opposed the subdivision.

Peter Waller stated he opposed the subdivision.

Ed Bugnion, 3675 LaCalle Court, stated he opposed the subdivision.



Ken Auerbach, 825 Matadero Avenue, stated he opposed the subdivision.

D. Christian Kalar, 3716 Laguna Avenue, stated he opposed the subdivision.

Mr. Nguyen asked to grant approval of the subdivision.

Ms. Dijch-Bhodlkamkar stated she opposed the subdivision.

Mayor Kishimoto declared the Public Hearing closed at 8:33 p.m.

Mayor Kishimoto inquired whether the City Attorney would like to summarize the findings for the Council.

Mr. Baum stated in order to deny the subdivision map, the Council would have to determine that one of the following issues is present: 1) the map is not consistent with the plans; 2) the design or improvement is not consistent with the plan; 3) the site is not suitable for the development; 4) the design will cause substantial environmental damage; 5) the design will cause health problems; or 6) the design would conflict with existing easements.

Council Member Cordell inquired whether stating the subdivision did not fit with the character of the neighborhood would be within the criteria to deny the subdivision.

Mr. Baum stated character would not be a requirement within the Subdivision Map Act.

Mr. Emslie agreed with the statement.

Council Member Cordell inquired whether the argument of the subdivision not fitting with the character of the neighborhood would be considered outside the denial criteria.

Mr. Baum responded the Council could not deny a subdivision on those grounds.

Council Member Cordell inquired whether the 10,000 square foot subdivision overlay had been pursued, and could that apply to the project.

Mr. Baum responded the Council would be allowed to change the zoning on any project prior to the issuance of a building permit. However, traditionally in the City of Palo Alto, any project in process could not be interrupted.

Council Member Cordell asked if there were a zoning change, would the applicant be grandfathered in.

Mr. Emslie replied that any pending application would be subject to zone changes.

Council Member Cordell questioned if it took more than one finding to deny the application. She stated she was concerned regarding the residents of Barron Park being unable to obtain proper information from the Planning Department and requested a report regarding the incident.

Mr. Emslie stated he would perform interviews with anyone who interacted with Planning staff and report further. He mentioned the Comprehensive Plan Policy, which related to neighborhood character.

Council Member Cordell stated the Comprehensive Plan Policy L-12 stated, "To preserve the character of residential neighborhoods by encouraging new or remodeled structures to be compatible with the neighborhood and adjacent structures."

Council Member Beecham asked whether the chart of the area from the applicant was accurate regarding the statement of the parcel being 600 feet from the trees.

Mr. Williams agreed with the statement.

Council Member Beecham stated there is a tree preservation ordinance protecting oak and redwood trees but not cedar trees.

**MOTION:** Council Member Beecham moved, seconded by Kleinberg, to approve the staff and the Planning and Transportation Commission's recommendation to deny the appeal and adopt a Record of Land Use Action to uphold the Director's approval of the preliminary parcel map to subdivide a single parcel at 897 Barron Avenue into two separate parcels and for staff to work with applicant to protect the tree on the site.

Vice Mayor Klein asked whether there was a standard requiring the Council to make a decision regarding whether the subdivision would be compatible with the character of the neighborhood.

Mr. Emslie stated this finding is consistent with standards in the area.

Vice Mayor Klein stated he understood the subdivision to be inconsistent with the character of the neighborhood.

Mr. Baum stated the Council needed to determine whether the subdivision is consistent with the general plan provisions.

Council Member Morton stated the site is not physically suitable for the proposed density of the development, as shown in the overlay map included with the application.

Mayor Kishimoto stated the Council would have to interpret whether two structures on the lot met the policies.

Mr. Baum stated that was correct.

Council Member Morton stated a finding is a legal step, but the basis of the finding is not a legal step.

Mr. Baum replied no evidence indicated the site would not be physically suitable for the proposed density of development. There was a question whether the proposed subdivision complied with the Comprehensive Plan.

Council Member Morton stated there was a scale issue.

Mr. Baum replied there were three or four different policies.

Council Member Morton asked if there would be an incompatibility of scale in the Santa Clara County recording books if the lots were divided.

Mr. Baum stated the basis of Council decision would be on one of Santa Clara County's Comprehensive Plan Policies.

Council Member Morton stated the subdivision would produce two lots that are out of scale with the neighborhood. Therefore, the subdivision is not compatible with the Comprehensive Plan.

Council Member Kleinberg asked for clarification on whether the square footage in question would be measured or estimated.

Council Member Morton stated the square footage was estimated.

Council Member Drekmeier asked the size of the existing home.

Mr. Reich answered 2500 square feet.

Council Member Drekmeier questioned whether the applicant could double the size of the house.

Mr. Williams stated yes.

Council Member Drekmeier stated there were eight other properties in the Los Robles Ridge area, which could be subdivided in the same way. He asked

whether there was a figure of the exact number of parcels in the City that could possibly be subdivided.

Mr. Emslie stated he did not have the figures.

Council Member Drekmeier stated more possible subdivisions could have a severe impact on the character of neighborhoods throughout the City.

Council Member Morton asked if this subdivision was denied, would the owners of the lot be able to build a granny unit.

Mr. Emslie replied yes because the lot was over the minimum size required for a granny unit.

Council Member Morton stated the parcel did not need to be subdivided to house other family members.

Mayor Kishimoto stated the lot lines define the character of the neighborhood and, on that basis, she would vote against this motion. She asked whether there were 8,000 square foot parcels on map R-1.

Mr. Williams answered yes. The proposed subdivision would be adjusted to meet that requirement.

Council Member Beecham asked whether a 16,000 square foot lot could have a 5,000 square foot structure.

Mr. Williams stated they estimated 5,600 square feet.

Council Member Beecham asked how large a structure could be on an 8,000 square foot lot.

Mr. Williams stated they estimated 3,000 square feet.

Council Member Beecham stated the Council decision should be based on the amount of land.

Council Member Drekmeier asked how large a granny unit could be built.

Mr. Williams replied 900 square foot.

Council Member Drekmeier stated the material presented by the appellants showed the square footage of the lots in the neighborhood. It appeared about 75 percent of the homes in the neighborhood had lot sizes larger than 10,000 square feet.

Mr. Williams stated the larger houses might be within that boundary.

Council Member Kleinberg asked how the law weighs property rights.

Mr. Baum stated a property owner could do what the code permits as long as the findings are met.

Council Member Kleinberg asked whether the findings should be looked at to make this decision.

Mr. Baum stated yes.

Vice Mayor Klein stated he opposed the subdivision.

Council Member Cordell asked, as property owners, what could be done to meet the needs of their family.

Mr. Emslie stated in the practice of subdivision and property rights there was no guarantee.

Council Member Cordell asked what options the property owner had to provide for their family members.

Mr. Williams stated the main unit had to be scaled back to make room for a second unit.

Council Member Cordell asked about the size of the second unit.

Mr. Williams stated 900 square feet.

Council Member Cordell asked how many people would live in the second unit.

Mr. Williams stated two sets of parents.

Samir Tuma, Planning & Transportation Commissioner, stated this would be an opportunity to work with the property owners to preserve the large cedar tree on the corner.

Council Member Kleinberg asked if Council denied the subdivision, would the property owners be free to do what they wish with the tree.

Mr. Emslie replied the tree was not an ordinance-protected tree.

Council Member Kleinberg asked whether the Council decided to negotiate the subdivision to include tree preservation, would that be included in the neighborhood character.

Mr. Emslie stated subdivisions may be conditioned to include preservation of the trees.

Council Member Kleinberg asked whether Council could decide based on the size of the house.

Mr. Emslie stated the square footage of the house would not be used to determine whether this subdivision was compatible with the Independent Review (IR) guidelines.

Council Member Kleinberg asked whether structural compatibility would be what neighborhood character is based upon.

Planning and Transportation Commissioner Tuma stated yes.

Council Member Morton asked whether the subdivision would be conditioned on retaining the existing house or saving the cedar tree.

Mr. Emslie replied the subdivision would not be conditioned on preserving the structure. However, conditions would apply to the cedar tree.

Council Member Morton stated there was no enforcement regarding the cedar tree.

Council Member Kleinberg asked for clarification.

Council Member Morton stated there would be conditions placed on the cedar tree but the conditions would be considered a best effort.

Council Member Kleinberg stated there could not be negotiations regarding the tree.

Mr. Emslie replied there would be conditions applied to the tree.

Council Member Beecham asked whether this lot would be allowed to have a 5,600 square foot house.

Mr. Emslie stated yes, unless there was an appeal.

Council Member Beecham asked whether there would be design review.

Mr. Emslie stated yes.

Council Member Beecham questioned if this subdivision were approved, could there be a new 5,600 square foot house built.

Mayor Kishimoto responded some residents would prefer a new 5,600 square foot house built there, rather than a subdivision.

Council Member Drekmeier questioned whether the property owner was asking to save the original house.

Mr. Emslie stated yes.

**MOTION FAILED** 3-4 Beecham, Cordell, Kleinberg yes, Barton not participating, Mossar absent.

**MOTION:** Mayor Kishimoto moved, seconded by Morton, to uphold the appeal.

**MOTION FAILED** 4-3 Drekmeier, Klein, Kishimoto, Morton yes, Barton not participating, Mossar absent.

Council Member Cordell stated this vote would be considered an action and what the Director recommends goes forward.

Mr. Baum responded this would be considered a failure to act.

Council Member Cordell asked how many times the Council could vote.

Mr. Baum stated voting could go on until the meeting is adjourned.

Council Member Morton said the meeting should be continued.

Council Member Kleinberg asked for a definition of an "act".

Mr. Baum replied an action is an affirmative denial or approval.

Council Member Kleinberg asked since there were not five votes, this action would not be considered an action.

Mr. Baum stated she was correct.

Council Member Kleinberg asked whether voting was considered acting.

Mr. Baum replied voting is considered the same as doing something without a quorum.

Council Member Kleinberg asked without an act, this item would go to a director's meeting.

Mr. Baum stated whether the meeting adjourned without acting or not, the director's decision would be final. The Permit Streamlining Act stated this item would have to be set to a new hearing.

Council Member Beecham asked whether this item would need a new hearing to wait for Council Member Mossar.

Council Member Klein asked what the time line was for this to be finalized.

Mr. Baum responded the first available date.

Mayor Kishimoto asked whether the subdivision would come back on the consent calendar.

**MOTION:** Council Member Morton moved, seconded by Kishimoto, to continue this item to February 26, 2007, with the public testimony closed.

Ms. Harrison gave several dates to set up the meeting.

Vice Mayor Klein asked whether anyone knew Council Member Mossar's Schedule.

City Clerk Donna Rogers responded there was no other date on the calendar that Council Member Mossar would be missing.

Council Member Beecham asked for clarification whether the public hearing would be closed.

Council Member Morton asked whether someone who had not spoken could speak at the next meeting.

Mayor Kishimoto stated the public testimony was closed and the meeting would be just for the Council Members discussion and vote.

**MOTION PASSED** 6-1 Beecham no, Barton not participating, Mossar absent.

6. Public Hearing: Consider Approval of a Record of Land Use Action for a Tentative Map to create two single family residential parcels and a remainder lot, and a Mitigated Negative Declaration at 4249 El Camino Real. *(Staff requests item to be continued to a date uncertain)*



**MOTION:** Vice Mayor Klein moved, seconded by Cordell, to approve the item to be continued to a date uncertain.

**MOTION PASSED** 7-0 Drekmeier, Mossar absent.

#### REPORTS OF OFFICIALS

7. Recommendation to Allocate \$5,000 from the Council Contingency to the Council Travel Budget

**MOTION:** Council Member Morton moved, seconded by Klein, to approve staff recommendation to allocate \$5,000 from the Council Contingency to augment the Council travel budget.

Council Member Cordell stated she did not support the motion.

Council Member Kleinberg asked whether the allocated \$5,000 would be just for Council Member Mossar's travel budget for the next six months.

Assistant City Manager Emily Harrison replied there were other travel requests.

Council Member Kleinberg stated she would like to have seen the allocation of funds.

Ms. Harrison stated there was no allocation of funds available.

City Clerk Donna Rogers replied some of the funds would be allocated for Council travel to the National League of Cities conference.

Council Member Kleinberg asked how much of the budget would be for Council Member Mossar's travel budget for the next six months.

Ms. Rogers estimated about \$2,000.

Ms. Harrison stated the staff proposal was for a more thorough discussion during the budget process for future budget years.

Mayor Kishimoto stated this was an interim step.

Council Member Kleinberg stated the Mayor approved out of town travel.

Ms. Rogers replied that all travel would come out of the same account for local and out of town business.

Council Member Kleinberg stated the allocation of the money was not up to the Mayor.

Council Member Beecham stated travel should not be paid out of the Council Member's pocket.

Mayor Kishimoto stated she supported the motion.

Council Member Cordell stated a travel budget of \$13,000 was sufficient and if there was any overage the Council Member should take personal responsibility. She asked whether the \$5,000 would take the Council through June 30.

Mayor Kishimoto stated she was correct.

Council Member Cordell stated the travel budget would be \$18,000 this year.

Mayor Kishimoto replied she was correct.

Council Member Kleinberg stated she supported the motion.

Herb Borock, P.O. Box 632, stated participation in the Council meetings were more important than travel.

**MOTION PASSED** 7-1 Cordell no, Mossar absent.

#### COUNCIL COMMENTS, ANNOUNCEMENTS, AND REPORTS FROM CONFERENCES

Council Member Cordell stated at the February 12 Council Meeting a vote was taken regarding the Junior Museum and Zoo. Unfortunately, some Council Members had information regarding this item not shared with all Council Members because a decision was made the information was not relevant to the discussion. She believed the Council's commitment to transparency and integrity in government suffered a setback with this action.

Mayor Kishimoto reminded Council Members there would be a Special Meeting at Roche on Wednesday, February 28 at 4 p.m.

Council adjourned to Closed Session at 9:55 p.m.

#### 8. CONFERENCE WITH CITY ATTORNEY -- POTENTIAL/ANTICIPATED LITIGATION

Subject: Written liability claim against the City of Palo Alto by County of Santa Clara

Authority: Government Code Section 54956.9(b)(1) & (b)(3)(C)

City Attorney Baum announced there was no reportable action taken in the Closed Session meeting. He also announced that previous approvals were finalized as follows: \$55,000 was the final settlement amount in the Newbury matter; and \$25,000 was the final settlement amount in the State Farm matter. Each item was previously approved unanimously by the City Council in closed session.

FINAL ADJOURNMENT: The meeting adjourned at 10:00 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.