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FINAL ADJOURNMENT .....240

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

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Kleinberg, Morton (arrived at 6:12 p.m.), Mossar

ABSENT: Ojakian

STUDY SESSION

1. Storm Drainage System

Director of Public Works Glenn Roberts gave a PowerPoint presentation that provided an overview of the workings of the City's storm drain system and a description of the specific conditions in Palo Alto that make effective drainage more difficult. Mr. Roberts' presentation described the make-up and function of the City's storm drain system, the topographical and development-related obstacles to drainage, the findings and recommendations of two storm drain infrastructure studies, and next steps to be taken by the Finance Committee and Council to address storm drain needs.

**No action required.**

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

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

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Kleinberg, Morton, Mossar

ABSENT: Ojakian

#### ORAL COMMUNICATIONS

Lynn Chiapella, 631 Colorado Avenue, spoke regarding the impact of growth, which was inconveniencing residents. The requirements for Planned Communities (PC) had not been maintained.

Richard J. Herndon, 410 Marion Avenue, spoke regarding Underground Utility District No. 38 between Oregon Expressway and High Street. He stated the lack of City staff coordination caused newly installed curbs, gutters and sidewalks to be torn up for undergrounding work.

#### APPROVAL OF MINUTES

**MOTION:** Council Member Morton moved, seconded by Kleinberg, to approve the minutes of January 12, 2004, as submitted.

**MOTION PASSED** 8-0, Ojakian absent.

#### CONSENT CALENDAR

**MOTION:** Council Member Morton moved, seconded by Mossar, to approve Consent Calendar Item Nos. 1-3.

#### ADMINISTRATIVE



1. Amendment No. 1 to Agreement S2138047 with Arkin-Tilt Architects in the Amount of \$43,522 for Construction Administration Services for the Arastradero Gateway Facility (Capital Improvement Program Project OS98012)

2. Request for Authorization to Increase the Amount of the Existing Contract for Legal Services with the Law Firm of Morgan Lewis & Bockius, No. S3152984



3. Contract Between the City of Palo Alto and Philip Henry Architecture in the Amount of \$360,944 for Design Services for the Animal Shelter Expansion and Renovation Project – Capital Improvement Program Project PE-04014/10306

**MOTION PASSED** 8-0, Ojakian absent.

PUBLIC HEARINGS

- \*4. Public Hearing: The City Council will consider an appeal by Alan B. Rogers of approvals for a Variance and Conditional Use Permit [03-V-20 and 03-CUP-18] and Architectural Review [03-ARB-102, 03-EIA-14] for development in the Public Facilities Zoning District located at 795 El Camino Real, requested by the Palo Alto Medical Foundation. The Conditional Use Permit would allow a 41,500 square foot expansion of the existing conditional use (outpatient medical office facility) in a new building (the Clark Building). The Variance would allow a reduced street setback for the new four-level parking structure (14.4 feet, where 20 feet is required) and an increased total site coverage (31.2% where 30% is the maximum site coverage).

*\*This item was quasi-judicial and subject to Council's Disclosure Policy*

Council Member Cordell said she was a member of the Community Working Group that had taken a position on the item. She would not participate due to a conflict of interest and said the City Attorney concurred with her decision.

Planning Manager Lisa Grote said additional development on the Palo Alto Medical Foundation (PAMF) property needed a Conditional Use Permit (CUP) and an Architectural Review. The Director of Planning and Community Environment approved the CUP and Architectural Review, as well as a parking structure. An adjacent property owner appealed the approval.

Planning and Transportation Commissioner Patrick Burt said the Commission's purview was limited to the appeal and the cut-through traffic at the Town and Country Village Shopping Center at El Camino Real and Embarcadero Road.

Alan Rogers, Appellant and owner of the property, said he did not want the PAMF employees to park in the vicinity of his property.

David Jury, Applicant for PAMF, stated he and the design team were available to answer questions.

Council Member Kleinberg had a conversation over a year ago with executives from PAMF about the potential for the Clark Building and recently had a phone call from Dr. David Druker, PAMF Director.

Council Member Freeman said she had a message on her answering machine from Dr. Druker.

Council Member Mossar attended an executive session with members of the executive staff of PAMF for a preliminary discussion.

Council Member Kishimoto declared she also had participated in a briefing from the PAMF Director one-year prior and had received a telephone message.

Council Member Morton said his firm was an auditor for the Community Working Group about three years prior. He declared he had a phone conversation with Dr. Druker.

Vice Mayor Burch declared he had a brief conversation with Dr. Druker.

Council Member Kishimoto said the Council was reviewing the CUP and responding to the appeal. When Building D and the parking structure were excluded, the intention was the new building would be reviewed under the CUP.

Ms. Grote said a condition stated the buildings would be reviewed under the CUP. It came to the Council as an appeal.

Council Member Kishimoto said she wanted to comment on the CUP.

Ms. Grote said she believed once an appeal was made, Council could comment on the items the appellant brought forward.

Interim City Attorney Wynne Furth said the Council would be able to comment on the items. PAMF had a vested right to its existing improvements and operations under the existing CUP.

Council Member Kishimoto said Building D and the parking structure had been deferred because of community concerns. She wanted staff to work with PAMF to make the Transportation Demand Management (TDM) program effective. She expressed concern regarding housing and trips generated at peak-hours.

Ms. Grote said the applicants had an extensive TDM program in place.

Mr. Jury said the TDM program consisted of reserved parking spaces for carpools and bus and train pass payments. The program had a locker and reward system for bicycle riders. The Program was operating at a 9 percent participation rate.

Council Member Kishimoto asked whether he was a member of the ECO pass and asked what percentage of the transit passes were paid.

David Jury said he would work with staff to provide that information.

Council Member Kishimoto asked whether the usage percentage could be improved to reduce the impact of the building.

Mr. Jury said he was willing to try.

Council Member Mossar asked when the effectiveness of the TDM program was calculated. She asked what employees were counted and whether off-site employees were included.

Mr. Jury said off-site employees were not included.

Council Member Mossar asked how many employees were moved off-site to the West Bayshore site.

Mr. Jury said he believed there were approximately 100 employees at that site.

Council Member Mossar said she had concerns for those employees as they did not have transit.

Mr. Jury said employees were offered carpools, bicycle lockers, and assistance with transit passes.

Council Member Kishimoto asked whether the row of trees to be planted at PAMF would screen the building from Homer Avenue.

Managing Arborist Dave Docktor said provision for landscaping had been made on the eastern side of Building D. He confirmed there were tall trees planned, which would be visible from Homer Avenue.

Council Member Kishimoto said the parking structure would also be visible.

Mr. Docktor said the parking structure had a row of existing Coast Redwood trees, which would obscure the parking structure in the future. The trees would not completely screen the building, as there was limited room between Building D and the Homer Avenue undercrossing circle.

Council Member Kishimoto asked whether a greater setback would be needed for more trees or would the current setback accommodate larger trees.

Mr. Docktor said he believed there was enough room for more trees in the landscaped area.

Council Member Mossar said the approved project opened up a view corridor.

Ms. Grote said there was a row of trees included in the Homer Tunnel Project along Alma Street.

Council Member Morton stated he would deny the appeal.

**MOTION:** Council Member Kishimoto moved, seconded by Freeman, to direct staff to include a condition to require more effective vegetative screenings.

Council Member Kishimoto said the view from Homer Avenue needed improvement.

Council Member Freeman said more trees should be added if the staff felt there was potential and room.

Council Member Mossar asked whether staff and the Architectural Review Board (ARB) had reviewed the landscape plan.

Ms. Grote said staff and the ARB found the landscape plan to be sufficient to screen the new buildings.

Council Member Mossar said she trusted all issues had been reviewed and Council had received the best judgment.

Council Member Morton said the applicants knew Council would like more landscaping.

**MOTION FAILED** 2-5, Freeman, Kishimoto "yes," Cordell "not participating."

**MOTION:** Council Member Kishimoto moved to require PAMF to submit a revised Transportation Demand Management (TDM) Plan subject to staff approval prior to issuing permits, with a goal of achieving higher rates of TDM, and to direct staff to work with the Palo Alto Medical Foundation.

Director of Planning and Transportation Steve Emslie said prior to permits being issued, PAMF should be required to submit a revised TDM program for staff approval.

### **MOTION DIED FOR LACK OF A SECOND**

Council Member Kleinberg said the problems created by the development were outweighed by the benefits.

Council Member Freeman asked whether staff would answer questions about the process when a design was changed from the original Environmental Impact Report (EIR).

Ms. Grote said an addendum to the EIR would be made for any changes.

Ms. Furth said the design would not need additional documentation if there were no environmental effects created.

Council Member Freeman asked whether the new management of the Town and Country Shopping Village would have input into the project.

Mr. Emslie said the new managers had been on-site. There had been an overlap between the owner/manager and the new property manager.



Council Member Freeman said it appeared Building D was an outpatient treatment building and she questioned if patients were treated at the facility

Mr. Emslie said the facility was not a hospital where patients stayed overnight. The facility housed medical offices and a wellness center.

Council Member Freeman asked about Mr. Roger's flooding issues.

Ms. Grote said the Public Works Department had evaluated the flooding. The installation of an oversized storm pipe had been placed underground to provide assurance the surrounding properties would not flood.

Council Member Freeman said the pipe was designed for the larger scale project when it was installed and inquired where it went and also if the area was considered a flood zone

Mr. Emslie said the pipe drained into the City's storm drain system and it was not in a Federal Emergency Management Agency (FEMA) identified flood zone.

Council Member Mossar asked who put the TDM Palo Alto Medical Foundation at places that evening.

Mr. Emslie said staff put the item at places.

Council Member Mossar asked whether it was put at places to show what had been approved.

Ms. Grote said it was to show what had been originally discussed and a brief overview of some of the items included in the existing TDM program.

Council Member Mossar said PAMF had a requirement to have a TDM program. She asked staff whether the requirements should be expanded to include all employees of the PAMF working within the Palo Alto boundaries.

Mr. Emslie said the City Attorney indicated staff would work with them to expand the requirements, but would not make it a requirement of the permit.

Council Member Mossar said she encouraged PAMF to acknowledge and honor the transportation needs of the off-site employees.

Mr. Jury said he would be willing to do so.

Council Member Morton stated he did not believe the landscaping and traffic management should be in a Conditional Use Permit (CUP).

Vice Mayor Burch said the building should be made as green as possible.

Mayor Beecham said the environmental impacts for the issues had been considered.

**MOTION:** Council Member Morton moved, seconded by Burch, to approve the staff and Planning and Transportation Commission recommendation to adopt the Record of Land Use Action (Attachment A of CMR:155:04) to: 1) Deny the appeal (Attachment B); 2) Uphold the Director of Planning and Community Environment's (Director's) approvals of the Conditional Use Permit 03-CUP-18 and Variance 03-V-20 (Attachment C); and 3) Uphold the Director's approval (Attachment D) of the Architectural Review Board (ARB) application (file 03-ARB-102), which was based upon conditions of approval contained therein, and upon the associated addendum (Attachment F) to the 1996 EIR.

**MOTION PASSED** 7-0, Ojakian absent, Cordell "not participating."

**RECESS: 8:25 to 8:35 p.m.**

- \*5. Public Hearing: The City Council will consider an application by Cartmell/Tam Architects on behalf of David Ditzel for Site and Design Review to allow a 1,677 square foot addition to an existing 3,433 single-family residence located at 4010 Page Mill Road and construction of a new swimming pool, including a request for the following variances: a 29'6" side yard setback where a 30' setback is required, construction of an exterior stairway and landing having a 46' front yard setback and construction of a new garage having a 69' front yard setback where a 200' setback is required, and a total impervious area of 13.5%, where 3.5% is normally the maximum allowed. Zone District: Open Space (OS). Environmental Assessment: A Negative Declaration has been prepared. File Nos. 03-D-10, 03-EIA-15, 03-V-15. *(Continued from 11/24/2003)*

*\*This item was quasi-judicial and subject to Council's Disclosure Policy*

Council Member Morton said he had no disclosures.

Council Member Kishimoto said she and Council Member Freeman viewed the site.

Council Member Kleinberg said she drove past the project and spoke to a Planning Commissioner.

Project Planner Steven Turner said the project was before the Council for site and design review.

Council Member Cordell disclosed she had discussed the matter with a Commissioner.

Council Member Morton asked whether the paving stones changed the impervious area.

Mr. Turner said the choice of the permeable paving system reduced the amount of impervious surfaces.

Council Member Morton asked whether the percentages changed the subject description or was the 13.5 percent a reflection of the choice of impervious matter.

Mr. Turner said the use of the system reduced the amount of pervious surfaces. The 13.5 percent included the building footprint and the non-pervious portions.

Council Member Morton said the system would not be included in the calculation. Ordinarily there was a 3.5 percent impervious surface. Due to the choice of materials for the driveway, there would be a 13.5 percent impervious section after the reduction.

Mr. Turner said with the new system change to the driveway, there would be less impervious surface on the site.

Mayor Beecham declared the public hearing open.

Applicant David Ditzel, property owner, said solutions to all the concerns had been addressed.

Kathy Cartmell, Cartmell/Tam Architects, said she hoped the project met with the Council's approval.

Timothy J. Drabik, 3995 Page Mill Road, said, as a neighbor, he approved of the project and believed the variance should be granted.

Joy Ogawa, Yale Street, had concerns regarding the lot coverage that was four times the maximum allowed in the Open Space (OS) District. The size of a house on a one-acre lot should not be allowed to be the same size as a house on a ten-acre lot.

John Baca, 484 Oxford Street, said any increase of impervious surface should be looked at carefully.

Dorothy Bender, 591 Military Way, said policies had not been followed on the project. There was no protection of the scenic right-of-way along Page Mill Road.

Mayor Beecham declared the public hearing closed.

Mr. Burt said the staff report (CMR: 156:04) reflected the position of the majority of the Commissioners as well as the minority viewpoints.

Council Member Mossar asked about replacement of vegetation and the trimming of the vegetation along Page Mill Road.

Director of Planning and Community Environment Steve Emslie said the Council could include a condition for ongoing maintenance of landscape screening for the duration of the project.

Managing Arborist David Docktor said the County performed a 10-year safety vegetation clearing along Page Mill Road.

Council Member Mossar questioned the disassembly and storage of the greenhouse during off-season growing months.

Mr. Turner said the structure was classified as temporary and was used as a greenhouse. It did not have a foundation; it was made of metal tubing and was covered with fabric material.

Council Member Mossar said there should be stipulations for the greenhouse structure that stated it could not be permanent and would be disassembled for part of the year.

Mr. Turner said that was appropriate.

Council Member Kleinberg asked whether the stipulation could be enforced and at what cost to staff.

Mr. Turner said staff would need to inspect the site on a regular basis.

Council Member Mossar said a stipulation should be added that the property owners maintain vegetative screening throughout the life of the permit. All references to the greenhouse should be dropped.

Council Member Morton said staff should not have to determine whether the greenhouse should be dismantled.

Council Member Kleinberg asked Commissioner Burt his position on the greenhouse and its visibility in the OS District.

Mr. Burt said the greenhouse was a non-conforming structure made of materials that were contrasting to the natural habitat. The visibility of the structure from the OS District was a concern.

Council Member Kleinberg said there was special zoning in the OS District. The proximity of the non-conforming structure created an intrusion into the visual corridor. Variances in the OS District should be for specific living needs.

Council Member Cordell said she was concerned about the policy issues. She disagreed that different sized lots should be treated similarly. She noted the Planning Commission had recommended the variances simply because they had been requested.

Council Member Freeman asked staff about regulations for the turnaround in the driveway grading and the swimming pool area.

Chief Planning Official Lisa Grote said the open space policies called for minimized grading to balance cut and fill.

Council Member Freeman asked about the regulations imposed on the grandfathered property, which was within the 200-foot setback regulation.

Ms. Grote said major modifications required a variance application with a grandfathered situation. The lot was small and within a special 200-foot setback.

Council Member Freeman asked for the final decision on the new storage shed.

Mr. Emslie he said the storage shed needed to be removed prior to finalization of the project.

Council Member Freeman said both the storage shed and the greenhouse were visible from the road. The property was engulfed in the 200-foot setback and special precautions should be taken to keep the view as clean as possible.

Council Member Kishimoto said a one-acre lot was larger than the average Palo Alto lot, and a 3,400 square-foot home was larger than average.

Vice Mayor Burch said what could be done on a ten-acre lot should not affect what could be done on a one-acre lot.

Mayor Beecham said the issue was the expansion on the property.

**MOTION:** Council Member Mossar moved, seconded by Morton, to approve the staff and Planning and Transportation Commission recommendation to approve the: 1) Negative Declaration, in accordance with the California Environmental Quality Act; 2) Variance to allow 13.5 percent lot coverage and setback encroachments as described in the Draft Record of Land Use Action; and 3) Site and Design Review application to allow construction of a residential addition in the Open Space district.

**MOTION FAILED** 6-2, Mossar, Morton "yes", Ojakian absent.

Interim City Attorney Wynne Furth said the applicant was entitled to have a Statement of Findings of fact and conclusions based on the Council's analysis.

Mayor Beecham stated staff would be directed to return with a Statement of Findings of Fact and a revised record of land use action reflecting the basis for the decision.

Ms. Furth said the applicant and the individuals who spoke that evening would be advised of the date when the item would return.

\*6. ~~Public Hearing: The City Council will consider a request by TOPOS Architecture on behalf of Jeff and Mary Thomas for Site and Design review of the construction of a new single family residence within the Open Space zoning district located at 3849 Page Mill Road. An Initial~~

~~Environmental Assessment study has been prepared and a Mitigated Negative Declaration is proposed in accordance with California Environmental Quality Act (CEQA) Guidelines.~~

~~\*This item was quasi-judicial and subject to Council's Disclosure Policy~~

**MOTION:** Council Member Morton moved, seconded by Mossar, to continue the item to a date uncertain.

**MOTION PASSED** 8-0, Ojakian absent.

#### CLOSED SESSION

The meeting adjourned to a Closed Session at 9:30 p.m.

7. Conference with City Attorney -- Existing Litigation  
Subject: Amanda Martin and Mark Cairns vs. City of Palo Alto, et al;  
SCC #CV812386  
Authority: Government Code section 54956.9(a)

Council Member Morton said his family owned shares in Safeway stock. The City Attorney had advised him there was not a conflict, but reconsidered her opinion. Based on her advice, while technically not required, he would not participate in Item Nos. 7 and 8.

The City Council met in Closed Session to discuss matters involving existing litigation as described in Agenda Item No. 7.

**Mayor Beecham announced there was no reportable action.**

The City Council reconvened at 10:25 p.m.

#### UNFINISHED BUSINESS

8. Public Hearing: The City Council will consider an ordinance amending Section 18.01.060 of the Palo Alto Municipal Code (the Zoning Code), which relates to the City Attorney's authorization to initiate and prosecute criminal and civil actions to abate zoning violations as public nuisances. The ordinance will clarify the code section's intent that the City Attorney be permitted, rather than mandated, to initiate civil actions to abate zoning violations. *(Continued from 2/2/04)*

~~Ordinance of the Council of the City of Palo Alto Amending Title 18 (Zoning), Chapter 18.01 (Adoption, Purposes and Enforcement), Section 18.01.60 (Noncompliance a Public Nuisance) of the Palo Alto Municipal Code Relating to the City Attorney's Authorization to Initiate and Prosecute Criminal and Civil Actions to Abate Zoning Violations as Public Nuisances~~

Interim City Attorney Wynne Furth said Council had directed staff to advise whether the recourse for citizens to address nuisance problems was adequate under the City's procedures and codes.

Director of Planning and Community Environment Steve Emslie said staff agreed with the Planning and Transportation Commission's (P&TC) recommendations based on the two reports prepared by the Auditor's office.

Ms. Furth said the P&TC noted there was a goal for the best code enforcement manageable within codes and budget.

Mayor Beecham declared the public hearing open for individuals who did not speak two weeks prior.

Jim Thalmann, 3887 La Selva Drive, said discretion had not been applied consistently, which created a detrimental impact to his neighborhood.

**MOTION:** Council Member Cordell moved, seconded by Kleinberg, to not take action at this time, but to refer the item to the Policy and Services (P&S) Committee to be guided by certain suggestions and recommendations of the Council.

Council Member Cordell said she believed prosecuting agencies should have the ability to be discretionary. She asked the P&S Committee to consider safeguards that complaints pursued by the City were based on objective criteria.

Council Member Kleinberg suggested the P&S Committee be asked to recommend specific objective criteria to ensure consistency and fairness.

Council Member Mossar stated individuals should not direct the City to file lawsuits. The matter should be referred to the P&S Committee and a set of guidelines should be developed. The City had a history of enforcing the ordinance on a discretionary basis.

Council Member Kishimoto believed referring the matter to the P&S Committee would allow for a conscientious approach.

Council Member Freeman asked the P&S Committee to ensure litigation discretion was the only issue and not code enforcement discretion.

Vice Mayor Burch said there were complaints that were nuisances and complaints that were valid, and there had to be discretion to decide which they were.

Council Member Cordell said she made the motion but was not taking a position on the current litigation.

Mayor Beecham said it had been a clear policy and practice of the community to use discretion.

**MOTION PASSED** 7-0, Ojakian absent, Morton "not participating."

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman said her intermittent employment with the Palo Alto Unified School District (PAUSD) had been analyzed by the Interim City Attorney, and it had been determined that she was not allowed to vote on contracts involving the PAUSD. Therefore, she requested to be replaced on the City/School Liaison Committee.

Council Member Kishimoto asked Director of Planning and Community Environment Steve Emslie for the status report on the review of California Environmental Quality Act (CEQA) standards and procedures.

Mr. Emslie noted the CEQA thresholds and standardizations would be brought to the Council in connection with preparation of the Environmental Impact Report (EIR) for the Mayfield site development agreement, which would be a good model to use.

Council Member Kishimoto asked about paving in the Open Space (OS) District and permeable pavers' ability to absorb 1.1 inches of water per hour.

Mr. Emslie stated it was a case where technology had caught up with regulatory factors for impermeability and the fire rating required for emergency access.

Planning Commissioner Patrick Burt advised at the most recent hearing on OS developments on Los Trancos Road, the Commission requested staff to accelerate the open space component of the Zoning Ordinance Update (ZOU).

Council Member Mossar strongly objected to testing changes to CEQA on the Mayfield site, since two Council Members would not be participating in that decision. Staff was requested to reconsider using the Mayfield site as an opportunity for CEQA standards.

Mayor Beecham said based on Council Member Freeman's inability to participate on PAUSD contracts, Vice Mayor Burch would now be appointed as a member of the City/School Liaison Committee. Mayor Beecham invited colleagues to the Northern California Power Agency (NCPA) meeting in Palo Alto the next week. The bill to resolve the Government Code Section 1090 issue between Stanford and Palo Alto was passed unanimously by the Assembly and was now on its way to the Governor.

Council Member Kleinberg noted it was Palo Alto's legislation that brought the legislature together.

FINAL ADJOURNMENT: The meeting adjourned at 11:05 p.m.



ATTEST:

APPROVED:

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City Clerk

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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.