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December 5, 2005

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The Council of the City of Palo Alto met on this date in the Council Chambers at 5:00 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Morton (arrived at 5:10 p.m.), Mossar, Ojakian

ABSENT: Kleinberg

CLOSED SESSION

1. PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Title: City Manager Frank Benest
City Attorney Gary M. Baum
City Auditor Sharon Erickson
City Clerk Donna Rogers
Authority: Government Code section 54957(b)(1)

1A. CONFERENCE WITH LABOR NEGOTIATOR

Agency Negotiator: John Shannon
Unrepresented Employee: City Manager Frank Benest
City Attorney Gary M. Baum
City Auditor Sharon Erickson
City Clerk Donna Rogers
Authority: Government Code section 54957.6(a)

The Council met in Closed Session to discuss matters regarding existing and anticipated litigation as described in Agenda Item Nos. 1 and 2.

Mayor Burch announced there was no reportable action taken.

The Council reconvened into open session at 6:00 p.m.

PRESENT: Beecham, Burch, Cordell, Freeman, Kishimoto, Kleinberg, Morton (arrived at 7:15 p.m.), Mossar, Ojakian

STUDY SESSION

2. Emergency Preparedness

The After Action Report of the earthquake exercise conducted in April was distributed and discussed with Council by Officer Ken Dueker. Emergency preparedness priorities identified by the Emergency Preparedness Working Group and Steering Committee were reported to Council by Fire Chief Nick

Marinero and Assistant City Manager Emily Harrison. Emergency Manager Barbara Cimino discussed her response to the Gulf Coast Region and what should be implemented in Palo Alto to strengthen disaster preparedness and response.

SPECIAL ORDERS OF THE DAY

3. Proclamation for Hewlett Packard Garage Commemoration Day

Gary Fazzino, 126 Kellogg, said Palo Alto will always be the birthplace of Silicon Valley because of Bill Hewlett and Dave Packard and the famous garage. Hewlett-Packard spent approximately 16-months restoring the garage and the house to ensure the historic structures would be preserved and available to Palo Altans for generations to come.

Sid Espinosa, 3000 Hanover, said he had the pleasure of working on the restoration project. It was a massive undertaking with a very tight timeline. The house was lifted from its old foundation and a new foundation constructed. The structure was taken down to its studs and meticulously restored. Interesting discoveries were made during the project. Historic documents were found in the house, original wallpaper was buried behind walls, and original doors and windows were found in the attic and basement. Special thanks to Director of Planning and Environment Steve Emslie, Planner Dennis Backlund and City staff for their contribution in getting the project completed in time.

Project Reporter Deb Hudson, 3000 Hanover, said after five months of extensive research she found a portrait of Dr. John Spencer, who previously owned the house Bill Hewlett and Dave Packard had rented. Dr. Spencer's portrait was the only photograph missing from the City's mayoral portrait collection. He was the City's mayor from 1909 to 1911. Dr. Spencer was born to a prominent family in Sacramento, California, educated in the east, received a medical degree from Columbia University, studied under Lewis Pastor, practiced in San Francisco, taught at the University of California and served as president of the San Francisco Medical Society. She presented the City with Dr. Spencer's photograph.

Mayor Burch said a Proclamation would be presented at the rededication ceremony on Addison Street.

ORAL COMMUNICATIONS

John K. Abraham, 736 Ellsworth Place, spoke regarding the demographic report.

Robert Moss, 4010 Orme Street, spoke regarding the vocal minorities.

Carter McCoy, 1536 San Antonio Avenue, spoke regarding the need for more taxi cabs on Friday and Saturday night in downtown Palo Alto.

Dieter Folta, Erstwild Court, spoke regarding disability requirements in the City not being met.

Sylvia Smitham, 2514 Birch Street, thanked the Council for their hard work.

Stephanie Munoz, 101 Alma, spoke regarding disaster preparedness.

Annette Ross, 2103 Amherst Street, spoke regarding filing a police report.

APPROVAL OF MINUTES

MOTION: Council Member Morton moved, seconded by Mossar, to adopt the minutes of October 24, 2005.

MOTION PASSED 9-0.

CONSENT CALENDAR

Mayor Burch said the procedure for Item No. 7 and No. 8 was identical. Under the Palo Alto Municipal Code, Section 18.77.075 (g), the Council's options were as follows: 1) to pass the Item on the Consent Calendar and uphold the decision from the Director's Hearing; or 2) the Council may, upon the motion and an affirmative vote of four Council Members to remove the item from the Consent Calendar. Should the matter be removed from the Consent Calendar, the Council had only one option to set the matter for a new public hearing at a future date. It could be done upon a majority vote of the Council. The only issue the public could speak to during this evening's meeting was whether or not the Council would leave the matter on the Consent Calendar or have it removed from the Consent Calendar and set for a future hearing. The limitation also applied to Council Members' comments.

Council Member Freeman raised concern regarding the possibility of a Brown Act violation. The Agenda stated items under the Consent Calendar would be voted on in one motion unless removed from the Calendar by two Council Members. Public notification indicated two Council Member votes were required but the regulation stated four Council Member votes were required.

City Attorney Baum said it was not a problem because there were no

requirements for listing the votes. Ordinance 18.77.075 (g) 2 was the regulation which referred to four votes being required.

Vice Mayor Kleinberg asked the City Attorney to clarify the difference between the two requirements.

Mr. Baum said in an effort to streamline the Individual Review (IR) process, the Council passed an Ordinance requiring four votes to remove an IR item from Consent. An initial review followed by a Director's Hearing, consisted of a public hearing and a notice prior to a full and complete hearing.

Mayor Burch said if the item was removed from Consent, the public would need to be heard at tonight's meeting as well as a future hearing.

Mr. Baum said that was correct. The Brown Act required the public to be able to speak on every item listed on the agenda.

Council Member Morton asked to separate the Consent Calendar and vote on Items No. 5, 6, 9 and 9A.

Herb Borock, P.O. Box 632, spoke regarding agenda Item No.4 and asked to delay the enactment until the 50 foot, right-of-way of Arastradero Road from the park dedication, was omitted.

Mayor Burch said due to the large volume of speakers on Item No. 7, he asked colleagues to proceed by voting separately on each item.

MOTION: Council Member Morton moved, seconded by Ojakian, to approve agenda item #4

4. Ordinance 4886 entitled "Ordinance of the Council of the City of Palo Alto Adding Section 22.08.331 of Chapter 22.08 [Park Dedications] of Title 2 of the Palo Alto Municipal Code to Dedicate a 13.27 Acre Parcel of Land [Parcel 3] Formerly Known as the Arastradero Gateway Preserve" *(1st Reading 11/14/05, Passed 9-0)*

MOTION PASSED 9-0.

MOTION: Council Member Ojakian moved, seconded by Kishimoto, to approve agenda Item Nos. 5, 6, 9 and 9A.

Council Member Freeman registered a no vote on Agenda Item Nos. 6 and 9A.

5. Finance Committee Recommendation to Approve the Auditor's Office Quarterly Report as of September 30, 2005
6. Approval of Contract Amendment for \$60,000, with a Total Contract Amount Not to Exceed \$165,000 with Mike Miller for Consulting Services Related to the Utilities Re-Structuring Plan
9. Approval of a Purchase Order with Ditch Witch Sales Bay Area, Inc. in the Amount of \$299,238 for the Purchase of Two Directional Boring Machines
- 9A. Approval of a Purchase Order with Peterson Tractor Company in the Amount of \$940,755 for the Purchase of a Waste-Handling (Landfill) Compactor and Waste-Handling Crawler-Dozer

MOTION PASSED 9-0 for agenda Item Nos. 5 and 9.

MOTION PASSED 8-1 for agenda item 6 and 9A, Freeman voting no.

MOTION: Vice Mayor Kleinberg moved, seconded by Mossar, to approve Agenda Item No. 7.

SUBSTITUTE MOTION: Council Member Morton moved to pull Agenda Item No. 7 to hold over to a public hearing in 2006.

7. 455 Santa Rita Avenue [05APL-00002]: Appeal by Nancy and Richard Alexander and Worth and Andy Ludwick of the Director of Planning and Community Environment's Approval of a Single Family Individual Review Application for an Addition to the Existing Two-Story Residence Resulting in an Overall Height of 32 Feet Eight Inches Tall Owned by Lynn Brown and Robert Stefanski. Zone: R-1 (929). Environmental Assessment: Exempt from the California Environmental Quality Act per Section 15303

SUBSTITUTE MOTION FAILED FOR LACK OF SECOND

Hank Barry, 1950 Tasso Street, was in support of the Stefanski's application. It had been approved twice and should remain on the Consent Calendar.

John Northway, 437 Lytton Avenue, said Santa Rita Avenue was a sensitive street and asked the item be heard.

Richard Alexander, 435 Santa Rita Avenue, asked the item be removed from Consent. The Planning Department's findings considered the houses on

either side of the project. The adopted guidelines were intended to preserve the unique character of neighborhoods and two houses were not considered a neighborhood. The findings did not mention the proposed greenhouse having direct view into the bedrooms and bathrooms on the first and second floor. The Planning Department indicated first floors were not in the guidelines. Page 14 of the guidelines discussed the first floor plan violated privacy and page 15 stated a solution to the violation. With regard to the greenhouse, the Planning Department did not follow the guidelines as they applied to first floor invasion of privacy. Over 400 Palo Altans had written the Council not wanting third-story additions in their town. The Director of Planning and Community Environment did not conduct the Director's Hearing but on November 3, 2005, approved the project. The action violated the process of "he who decides must hear" set forth by the United States Supreme Court in California. He requested a full public hearing regarding the third floor additions.

Nancy Alexander, 435 Santa Rita, asked the item be removed from the Consent Calendar and be reviewed at a public hearing.

Steve Pogue, 175 Avila Street, was in support of leaving the item on the Consent Calendar.

Lynn Brown, 455 Santa Rita Avenue, asked no further hearing be made on her plans to remodel. She based her request on the following: 1) to improve the light plane situation, new windows would be placed in the new roof; 2) the square footage and the footprint were reduced considerably; 3) the planned project had been reviewed numerous times under unbelievable scrutiny, approved twice and was fully compliant; and 4) in an effort to please the Alexander's, the plans went beyond the City's requirement in terms of privacy mitigation.

Harry Hartzel, 490 Santa Rita Avenue, was in favor of the project. It was consistent with the character of the adjoining houses and enhanced the neighborhood.

Mary Goodspeed, 450 Santa Rita, supported approval of the project.

Dana Fenwick, 1975 Bryant Street, supported moving the project forward. It enhanced the neighborhood and improved the value of her property.

Harry Plant, 228 Seale Avenue, requested the item remain on the Consent Calendar.

John Koval, 492 Tennyson Avenue, supported the project. It added

character to the neighborhood and the environment.

Cathy Crane-Moley, 1930 Bryant Street, said the project was found to be in compliance twice. She supported the project and asked the item remain on the Consent Calendar.

Gregg Cook, 1630 Escobita Avenue, asked to keep the item on the Consent Calendar.

Carol Rosenberg, 2350 Ramona Street, asked Council to approve the project.

Gina Maya, 450 Seale Avenue, said the planned project would enhance the neighborhood and to move forward with the project.

Stephanie Hewitt, 2112 Cowper Street, supported the remodeling plans, which would contribute to the aesthetic harmony of the neighborhood.

Ronni Kerrins, 3280 Clifton Court, supported the project and asked the item remain on the Consent Calendar.

Stuart Berman, 2180 Cowper Street, asked the item remain on the Consent Calendar.

Don Lundgren, 481 Washington, was in support of the project and urged the Council's approval.

Ilene Sotnik supported the project.

Darren Neuman, 1301 Parkinson Avenue, asked the item remain on the Consent Calendar.

Robert Moss, 4010 Orme Street, asked the item be removed and be forwarded to the Architectural Review Board (ARB) and returned to Council for discussion.

Michael Griffin, 344 Poe Street, asked the item be removed and to give consideration to the implications of a monster homes policy.

Jaspi Sandhu, 842 Southampton Drive, requested the item remain on the Consent Calendar.

Tony Hughes, 839 Northampton Drive, supported the project and found the plans to be consistent with City's guidelines. He asked the item remain on

the Consent Calendar.

Chris Tucher, 2167 Lincoln Avenue, supported the project.

Malinda Parry, 2020 Cowper Street, had privacy concerns and asked the item be removed from the Consent Calendar.

Bret Kerrins, 3280 Clifton Court, was in support of the project.

Beth Rosenthal, 585 E. Crescent Drive, had privacy issues and asked the item be removed from the Consent Calendar.

Bob Stefanski, 455 Santa Rita Avenue, said the plans were not for a monster home. The square footage had been reduced by 36 square feet and the light planes improved to allow better lighting to the neighbors.

Council Member Freeman needed clarification on what she was allowed to speak to at this point.

Mr. Baum said she was limited to whether the item should or should not remain on the Consent Calendar.

Council Member Freeman asked if she could speak to the motion.

Mr. Baum explained the motion was to pass the Consent Calendar, which implied leaving the item on the Consent Calendar.

Council Member Morton asked whether the Council could speak to the motion.

Mayor Burch said a motion could be made to remove the item or to state a yes or no vote to keep the item on the Consent Calendar.

Council Member Freeman clarified the Council could not make verbal comments unless the item was removed from the Consent Calendar.

Mayor Burch said the item could be removed in order to reschedule to a date uncertain.

Council Member Freeman asked when the item would return for discussion.

Assistant City Manager Harrison said assuming it was rescheduled, the tentative date would be January 30, 2006.

Council Member Freeman said she would not make a motion since she would no longer be on the Council at that time.

Council Member Kishimoto said since the topic was of great interest to the Community, she suggested the Mayor allow the Council to speak to the item.

Mayor Burch said comments would be allowed during Council Comments section.

Council Member Kishimoto asked whether people would need to stay until Council Comments portion of the meeting.

Council Member Cordell referred to the City Council's Procedures Handbook and said II-3, Number 5, stated under the heading of Consent Calendar: "Council Comments. No discussion or debate shall be permitted upon items upon the Consent Calendar, however, any council member may request his or her vote be recorded as a 'no' or 'not participating' due to a specified conflict of interest on any individual items. Council members may also explain their 'no' vote at the end of the Consent Calendar with a three-minute time limit. Council members may also submit statements in writing to City Clerk before action is taken." The rules specified council members were limited to whether or not a motion was made and to move forward from that point.

MOTION PASSED: 7-2 Freeman, Morton voting no.

Council Member Ojakian asked at what point could Council direct staff to bring back data on a particular item.

Mr. Baum said the appropriate time would be during Council Comments and he echoed Council Member Cordell's comment confirming each council member was given the opportunity to speak on a 'no' vote at the end of the Consent Calendar.

MOTION: Vice Mayor Kleinberg moved, seconded by Mossar, to approve Agenda Item No. 8.

8. 1531 Hamilton Avenue [APL-00003]: Appeal by Steve and Laurie Mullen, 10 Phillips Road, of the Director of Planning and Community Environment's Approval of a Single Family Individual Review Application for a New Two-Story Residence Owned by David Yen and Fanny Ching, 1531 Hamilton Avenue. *Zone: R-1.* Environmental Assessment: Exempt from the California Environmental Quality Act per Section 15303.

Steve Mullen, 10 Phillips Road, said neighboring homeowners had submitted in writing to the Council to remove the item from the Consent Calendar and he asked for a public hearing regarding lost privacy and the high visual impact of a two-story home in a one-story neighborhood. The City's consulting architect recommendations to achieve conformity were not implemented and restricted the plans in meeting the Individual Review (IR) guidelines. The architectural report, renderings of the home, and streetscape photos of Hamilton Avenue, along with the letters opposing the project, were provided. The applicant had made nominal revisions to the roof pitch and the architectural details, and reduced the second floor height from 9 feet to 8 feet. The consulting architect stated the home was too large in mass and scale and the upper floor was too wide and required modification. A public hearing provided the opportunity to review the process and help the consulting architect obtain solid guidance. The consultant's report would be the benchmark used to approve the process.

Jason Matlof, 1420 Byron, asked the Council to deny the appeal.

Rita Ousterhout, 726 Ashby Drive, was in support of the approved project. She said the home was suitable in the surrounding neighborhood that consisted of one and two-storey homes.

Carleen Arie Ito, 950 Amarillo Avenue, asked to have the item remain on the Consent Calendar.

Jenny Kuan, 2888 Ramona Street, asked that the item remain on the Consent Calendar. She said the Yen's design was sensitive to how it would impact surrounding neighbors in meeting the guidelines.

Mike Farn, 551 Maybell Avenue, was in favor of keeping the item on the consent calendar. He raised concern of the City's lengthy approval process.

David Yen, 1531 Hamilton Avenue, urged the Council to uphold the Planning Director's decision and to keep the item on the Consent Calendar for the following reasons: 1) the plans were in compliance with the law; 2) they were flexible in making required changes in satisfying the City's consulting architect and modifications were made to satisfy the majority of the neighbors who opposed the earlier design; 3) after the continued Director's Hearing, they worked in making the second round of changes to satisfy the neighbors initially opposed to the design. He questioned which neighbors Mr. Mullen was referring to since he received support from the three neighbors directly across from his property, the side neighbor, and the two neighbors with two-story homes located behind his property.

Elizabeth Wong, 1849 Webster Street, was in support of Mr. Yen's proposal, which had been approved by the City three times and she asked the Council to approve the project.

Pete Moffat, 1518 Hamilton Avenue, said involved neighbors worked with Mr. Yen to redesign the project to meet their concerns and were happy with the results. Mr. Mullen was not a participant and did not take advantage of the opportunity to voice his concerns directly to the Yens. He asked the item remain on the Consent Calendar.

Jack Moses, 226 Lowell Avenue, said the Yens had gone to extremes to satisfy the neighborhood's concerns and the item should remain on the Consent Calendar.

Nancy Staggs, 1526 Hamilton Avenue, was in support of the Yen's proposal.

Justin Wang, 3480 Thomas Drive, said the Yens had followed all the rules, made changes to accommodate neighbors, and he was puzzled by Mr. Mullen's opposition since he was given the opportunity early on to voice his concerns directly to the Yens. He urged the Council to approve the Yen's project.

Greg Lee, 1012 Forest Avenue, was in support to leave the item on the Consent Calendar.

Richard Cook, 681 Rhodes Drive, asked the item remain on the Consent Calendar.

Ronni Kerrins, 3280 Clifton Court, asked the item be left on the Consent Calendar and be approved.

Bret Kerrins, 3280 Clifton Court, echoed Ronni Kerrins' request.

MOTION PASSED: 9-0

Council Member Freeman explained her "no" votes as follows:

- 1) Agenda Item No. 6 because there had been so much already spent on consultant costs for the Utilities' investigation, and she wanted to see the City Manager take charge and make decisions rather than continue using consultants.
- 2) Agenda Item No. 9a because the lifetime of the waste-handling

crawler-dozer equipment would outlast the lifetime of the landfill, which was not fiscally responsible. She questioned the option of renting the equipment instead of purchasing it.

- 3) Agenda Item No. 7 because Council Members' comments on items were limited to the end of the Consent Calendar when the public had left. She recommended mediation between the Stefanski/Brown and Alexander families. She believed both sides should be heard carefully and that staff should develop a matrix that showed all development decisions with associated regulations and guidelines. It would expedite the decision making process whether staff had covered everything or not.

PUBLIC HEARINGS

10. Public Hearing: Consideration of a Request by DR Horton Homebuilders on Behalf of Hyatt Equities, Inc. for a Tentative Map to Merge Two Existing Parcels and Subdivide the Resulting 15.84 Acre Site into Eleven Single-Family Lots and One Multiple-Family Lot for the Development of a Previously Approved Single-Family and Multiple-Family Condominium Project Located at 4219 El Camino Real [05PLN-00235]. The Tentative Map also includes the creation of a New Public Street Between 4219 and 4249 El Camino Real. This Road Would not Extend to Wilkie Way. Environmental Assessment: An Environmental Impact Report was certified by the City Council in June 2004. Zone District: CS(H), CS(L).

Planning and Community Environment Director Steve Emslie said the tentative map was limited in its review. The site and design was approved by the Architectural Review Board (ARB). The item was appealed to the Council and disposed of by the Council. The item was a technical followup of the tentative sub-division map; the first of a two-step process in the State of California to divide land. Staff recommended the finds be present and the tentative map be consistent with the ARB's approval of the site and design. Reference was made to a memo distributed at the meeting regarding a technical amendment to the motion that provided clarity concerning the cost sharing for the shared driveway between the property owners.

Mayor Burch said the matter before the Council was to approve the Tentative Map.

Mr. Emslie said that was correct.

MOTION: Council Member Morton moved, seconded by Kishimoto, to

approve the staff and Planning and Transportation Commission's recommendation regarding the proposed Tentative Map to merge two parcels and subdivide the resulting 15.84 acre site into eleven single-family lots and one multiple-family lot for the development of a previously approved single-family and multiple-family condominium project, based upon the findings and conditions contained within the Record of Land Use Action, which includes the cost sharing for the shared driveway between the property owners.

Public Hearing opened at 8:53 p.m.

Carlin Otto, 231 Whitclem Court, represented the Charleston Meadows Neighborhood Association and requested the tentative map be approved for the redevelopment of the old Hyatt Ricky's property. There were three main features the association had negotiated: 1) no pedestrian vehicular access between the high density area of the development and Wilkie Way; 2) single-family residences on standard size lots along Wilkie Way; and 3) preservation of mature trees on Wilkie Way and Charleston Road.

Eric Stietzel, 239 Whitclem Court, echoed Ms. Carlin's comments.

Herb Borock, P.O. Box 632, said the zoning and comprehensive Land Use Map should be changed to reflect the residential development. He suggested putting in multiple-family and single-family Land Use Map designations and putting in RM-30 and R-1 zoning districts and retain the landscape combining district. Commercial designation would permit hotels underneath residential project.

Public Hearing closed at 8:57 p.m.

Council Member Kishimoto asked whether there was a no-pedestrian access from the multi-family housing area to Wilkie Way and bicycle access to the Wilkie Way bike bridge.

Mr. Emslie said the only access was for emergency vehicles from the multi-family project to Wilkie Way.

Council Member Kishimoto asked where the emergency vehicle access was located.

Mr. Emslie said it was a shared driveway between two homes gaining access to Wilkie Way.

Project Manager Mary Grace Houlihan with DR Horton said there was a

pedestrian and bicycle pathway through the project with a connection from the multi-family area at the corner of Wilkie Way and West Charleston Road.

MOTION PASSED 9-0.

11. Public Hearing: Consideration of an Application by the City of Palo Alto Public Works Department for the Site and Design Review and Design Enhancement Exception for a Palo Alto Utilities/Department of Energy (DOE) Photovoltaic Demonstration Project Consisting of 10 Solar Trackers and Two Photovoltaic Carports to be Located Next to the City's Municipal Service Center at 3201 East Bayshore Road (05PLN-00255). Zone District: PF(D). Environmental Assessment: DOE Lead Agency for NEPA Exclusion; CEQA Categorical Exemption Section 15303.

Planning Manager John Lusardi presented the staff report (CMR: 438:05) and noted two changes to Attachment A: 1) Page 1, paragraph E, to reflect the Planning and Transportation Commission's (P&TC) recommendation to approve the carport panels and deny the trackers; and 2) To delete the Architectural Review Board (ARB) review in Paragraph F because ARB did not have a formal review of the project.

Council Member Mossar said she was aware of the ARB not having a formal review but asked whether ARB reviewed the project and made comments.

Mr. Lusardi said the ARB reviewed the project and contents of a Study Session and made recommendations before the P&TC review. A formal review would need to happen after the P&TC's review and recommendations.

Council Member Mossar asked whether the Council was entitled to a summary of the Study Session.

Mr. Lusardi said Judith Wasserman from ARB was present and could provide the summary information.

Assistant Public Works Director Mike Sartor gave an overview of the project. He said staff had been working with Department of Energy (DOE) since September 2003 to implement the Photovoltaic (PV) Solar Project. The City received a \$1.4 million dollars DOE grant and was matched by another \$1.4 million from the Cities Utilities Department for a total of a \$2.8 million dollar project. The selected photovoltaic installation would provide a variety of PV technology in locations and taking advantage of optimum sun exposure. The City's Municipal Service Center (MSC) was selected as one of the project sites. PV panels would be installed at the Cubberley Community Center and

at the Bayland's Interpretive Center with education displays for public interest. PV panels would be installed at the MSC employee parking area to demonstrate PV use along with shade and energy generation. PV trackers would be installed in front of the MSC to demonstrate a more effective form of photovoltaic to track the sun for maximum energy generation. Based on the P&TC's concerns about the tracker proposal, an alternate tracker installation was proposed to install five panels instead of the recommended ten. It addressed most of the Baylands' concerns while employing the innovative PV technology presence along the freeway to enhance the public's awareness of the project.

David Arkin, Arkin Tilt Architects, gave an overview and presentation of the proposed PV trackers for the MSC site. He said the MSC site presented a visible location in meeting the goal of increasing PV awareness. The project included two other sites. The Baylands Center would produce about 25,000 kWh/year and Cubberley Community Center would generate 48,000 kWh/year, enough for more than six homes and the rooftop panels would power at least 21 homes. There were two proposals for the MSC, which included a carport that doubled as a support structure and would generate 153 kWh/year, enough to power over 20 homes and the five tracking arrays, initially 10 in the first proposal. Depending on the selected design, it could power between 2.5 to 8 different homes. The trackers were approximately the size of a call box or speed limit sign and smaller than a tree. The carport structures would provide shade and would hold tracking arrays. Sixteen panels would be placed on the site. Each panel size was initially 15 square feet in size and reduced to 10 feet by 15 feet.

Council Member Mossar questioned the size of the trackers since they did not look similar to a traffic sign in the graphics.

Mr. Arkin said from the perspective of a car on the freeway, visually they would be similar to a traffic sign.

Commissioner Daniel Garber said the project generated a tremendous amount of discussion with the P&TC. It covered the project's potential impact on the MSC site and future uses including the proposed auto mall, whether alternative locations for the trackers had been significantly researched, the impact on wildlife, how trackers would be maintained and used including in power outages, size and useful life of the panels, signage components being viewed along the two highways, appropriate placement of the panels in relation to Baylands and the MSC. The P&TC supported having the PV system in Palo Alto but did not recommend the project for the following primary reasons: 1) The trackers did not support the Baylands design principles and the key issue was that the vertical elements of the

trackers were not consistent with low and horizontal elements in the Baylands; and 2) The P&TC was not convinced that more appropriate locations had been fully explored. The Commission did recommend the PV arrays over the carports.

Council Member Morton asked whether other locations had been considered.

Mr. Garber said the locations discussed were Cubberley, the Police Station, MSC and Greer Park.

Judith Wasserman, 751 Southhampton Drive, said she could not represent the ARB on this matter because they did not vote. She read an excerpt from a previous board member, Drew Maran, stating he was in support of the MSC trackers and the project was a non-intrusive addition along an unattractive stretch of freeway. The location promoted renewable energy with an innovative display to define the City's position on solar power and it deserved support of the Council. She agreed with Mr. Maran's comments in principle but was in favor of the smaller size tracking arrays to help lessen the impact of unsightly panels.

David Coale, 766 Josina Avenue, was in favor of installing the 10 PV trackers in front of the MSC site. It was good advertising and sent a message that Palo Alto was serious about renewable energy and sustainability.

Herb Borock, P.O. Box 632, felt the Site and Design Review should not have been placed before the Council and instead forwarded to the ARB for review. The process before the Planning Commission was also incorrect because an attempt was made to make a substitute motion and incorrect advice was given to the Commission.

Emily Renzel, 1056 Forest, suggested installing the unsightly trackers behind the buildings at the MSC. She said the trackers would generate 56,922 kW/yr, which was only 9 percent or approximately 1.1 percent of solar element of renewable power of the entire PV proposal. The same amount of energy could be generated either at the Cubberley site or by placing additional carports at the MSC. She urged Council to deny installation of the trackers.

Mayor Burch said the issue before Council tonight was to approve the trackers and carport design located at the MSC site and not the portions of the project located at Cubberley and the Baylands.

Mr. Lusardi said that was correct.

Council Member Kishimoto asked whether installation on school property was permissible if it were to be used jointly with the City.

Mr. Sartor said the Department of Energy (DOE) specifically stated the grant was to be used at City of Palo Alto facilities but did not include school sites.

Council Member Kishimoto asked what the requirements were for the visibility.

Mr. Sartor said the grant encouraged educational opportunities.

MOTION: Council Member Kishimoto moved, seconded by Freeman, to approve the Planning and Transportation Commission's recommendation to (1) deny the site and design review and design enhancement exception for 10 photovoltaic (pv) tracker arrays located at the City's Municipal Service Center (MSC), as part of the City of Palo Alto Utilities Photovoltaic Demonstration project, and (2) approve the site and design review for the two photovoltaic carports at the MSC, based upon the findings and conditions in the Record of Land Use Action.

Council Member Kishimoto agreed with Ms. Renzel's comment regarding the unsightliness of the trackers at the MSC and suggested finding creative ways to achieve a more attractive design.

Council Member Freeman asked whether all the findings were made.

Mr. Lusardi said the P&TC found one was not compatible with the guidelines and denied the MSC site. Staff felt the Record of Land Use Actions reflected findings appropriate for the Council's approval.

Council Member Freeman asked whether the DOE excluded partnerships where jurisdictions overlapped. Specifically, could the City partner with a school district that was paying the City for its utilities.

Mr. Sartor did not feel the grant was that specific.

Council Member Freeman said she was not satisfied a partnership with the school had been thoroughly vetted through the DOE and asked whether it had been discussed with the City/School Liaison Committee.

Mr. Sartor said one of the concerns regarding partnership was the maintenance aspects of the grant program. The City would be responsible for maintaining the trackers for 30 years. A maintenance agreement with

the School District could be problematic.

Council Member Freeman felt further investigation in a joint partnership with the School District could be beneficial.

City Manager Benest said the grant did not exclude partnerships but specified the PV system had to be on City's facilities. He was conforming to grant guidelines but did not oppose investigating the possibility of partnerships in the future.

Council Member Morton asked how much of the grant would be lost if trackers were denied.

Mr. Sartor said there would be no loss in the grant. Additional panels would be installed at either the Cubberley site or on the carports.

Council Member Morton said the public relations effect would be lost if panels were placed elsewhere.

Mr. Sartor said application of another technology or variety of PV uses would be lost. All other systems were static systems at a fixed angle to the sun. The trackers would generate 35 percent more energy since they tracked the sun to maximize the PV output.

Council Member Morton said the main loss was the demonstration effect of the project.

Mr. Sartor said that was correct.

Council Member Morton asked what would happen to the PV system should the MSC site become an auto dealership.

Mr. Sartor said the carport installation and trackers could be relocated but it was unknown if the auto dealership would want to keep the PV system.

Council Member Morton said he supported the main motion but wanted to look into funding the trackers.

SUBSTITUTE MOTION: Council Member Mossar moved, seconded by Morton, to send the proposals for the tracker arrays located at the City's Municipal Service Center (MSC), as part of the City of Palo Alto Utilities Photovoltaic Demonstration project, to the ARB for review and recommendations to the Council, and to approve the site and design review for the two photovoltaic carports at the MSC, based upon the findings and

conditions in the Record of Land Use Action (Attachment A).

Vice Mayor Kleinberg supported the substitute motion because it was important in terms of sustainability and promoting clean energy sources. She was interested in seeing the outcome of the ARB's review on how trackers would match the Baylands Master Plan. She was not in favor of forwarding the item to the City/School Liaison Committee and was concerned about trackers on school property interfering with the playgrounds. She suggested the rooftop applications on school properties.

Council Member Cordell said the pictures of the panels looked interesting and she did not find them to be unsightly. She was interested in seeing the ARB's formal review. Visibility of the trackers sent a message Palo Alto was a community concerned about solar energy. She supported the substitute motion.

Council Member Beecham echoed Council Member Cordell's comments and looked forward to having the ARB find a good solution. He supported the substitute motion.

Mayor Burch supported the substitute motion and suggested the possibility of placing the trackers at locations where they could be observed in motion. He suggested three panels at the MSC site and three at a park or near the Duck Pond.

Council Member Kishimoto said the amount of money being invested for the system would be the same amount of electricity being produced without having to intrude in the Baylands. There was no trade off in energy and she felt it was not the place to make an aesthetic change. She was in favor of solar energy and open to hearing creative solutions from the ARB or the Public Art Commission (PAC). She did not support the substitute motion.

Council Member Freeman said she was not against alternative energy sources and echoed Council Member Kishimoto's comments. She clarified use of trackers at schools was not the issue but the use of photovoltaic on rooftops of the schools. She did not support the substitute motion.

Council Mossar clarified her motion was not to look at alternative sites and for the ARB to evaluate the proposal placed before the Council.

Council Member Morton had concerns of sending the tracker component to the ARB and jeopardizing the educational opportunity requirement of the grant and not meeting the grant timeline.

Mr. Sartor said the educational component would not be affected. A meter would be displayed outside the Baylands Interpretive Center to run backwards to indicate how power was being generated instead of being used. The plan was to proceed with the design and anticipate the installation at Cubberley, Baylands Interpretive Center and the carports. DOE granted an extension on completing the program through June 30, 2007, and there would be time to look at trackers.

Council Member Beecham said there were comments regarding the high cost of the project. He clarified the project was experimental and the purpose of the DOE grant was for monies dedicated for unusual projects for the general public's benefit. The electricity would be generated during the peak hours in the summer when energy cost would be at the highest and he wanted the public to know the project cost was not out of line.

SUBSTITUTE MOTION PASSED 6-3 Freeman, Kishimoto, Ojakian voting no.

12. Public Hearing: Consideration of a Request by Trumark Companies on Behalf of Batton Associates, LLC and HDP Associates for a Vesting Tentative Map for a Proposed Residential Infill Development Located at 1101 East Meadow Drive and 1010 East Meadow Circle [05-PLN-00289]. *(Staff requests item to be continued, by Council Motion, to 01/30/2006)*

MOTION: Vice Mayor Kleinberg moved, seconded by Morton, to approve the staff recommendation to continue the above item to January 30, 2006.

MOTION PASSED 9-0.

REPORTS OF COMMITTEES AND COMMISSIONS

13. Recommendation from Council Appointed Officers (CAO) Committee to Approve Request for Contract Amendment by Baum, Benest, Erickson, Rogers

MOTION: Council Member Mossar moved, seconded by Morton, to approve the request for a contract amendment by Baum, Benest, Erickson and Rogers, which would prevent without-cause termination of any CAO during the 90-day period after new Council Members take office.

Council Member Mossar said Consultant John Shannon assured the CAO Committee the provision was common in the State of California and considered reasonable. The CAO Committee concurred.

Council Member Morton supported Council Member Mossar's comments.

Herb Borock, P.O. Box 632, stated the recommendation proposed no termination would occur or be effective within five months after a Municipal Election. The employment agreement traded severance pay for "at will" employment. He asked whether severance pay would be less if employment were guaranteed that was no longer employment "at will" for a period of time. It gave CAO's who were concerned that newly elected council members would put together votes to terminate their employment five months to seek and find a new job at the same time they received the severance pay.

Roger Pierno, 1200 College Avenue, said the CAO's were highly compensated with great severance packages. The proposed package would handcuff the Council even if there were no changes in the Council Members. The item was not adequately noticed in the Agenda because it did not state the purpose of the amendment and the public was not made aware of what was being considered. He urged the Council to not approve the recommendation.

Robert Moss, 4010 Orme Street, said newly elected Council Members having to wait a 90-day period to make changes in CAOs would create a poor environment for all concerned. He urged the Council to reject the proposal.

Council Member Cordell needed clarification regarding a conflict in the language used between the memorandum and the amendment to the employment agreement.

Council Member Mossar said the language used was about "new" council members.

Mr. Baum asked Council Member Cordell to provide the appropriate language.

Council Member Cordell said "the commencement of a new term of office for any 'new' council member." It would apply to an elected and an appointed new member.

Council Member Mossar said she would accept the amendment and request the change be applied to all four CAO contracts.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER that the agreements be revised in Section 1 to add the word "new" prior to City Council member

Council Member Beecham concurred with the new language.

Council Member Kishimoto said one of the most important jobs of the Council was to hire, evaluate, and terminate a CAO. She felt the 90-days provided a cooling off period and allowed the Council to terminate a CAO with cause at anytime.

MOTION PASSED 8-1 Freeman no.

COUNCIL COMMENTS, QUESTIONS, AND ANNOUNCEMENTS

Council Member Freeman noted that Dieter Folta had several Americans with Disabilities (ADA) issues with the City and asked what was being done to follow up.

Vice Mayor Kleinberg noted this past week she was elected President of the Peninsula Division of the League of California Cities at a reception for newly elected and re-elected city officials.

Council Member Kishimoto spoke regarding Item No. 7 and noted the appellants brought up a number of relevant issues, as well as the letter from Annette Glanckopf.

MOTION: Council Member Kishimoto moved, seconded by Ojakian, for the issue of Individual Review Guidelines to return to Council for discussion at a date uncertain.

MOTION PASSED 8-0, Mossar absent.

Council Member Beecham congratulated Vice Mayor Kleinberg on being elected the Peninsula League President, and noted the San Francisco Public Utilities Commission (SFPUC) approved the Water System Improvement Plan (WSIP), which committed \$4.3 billion to upgrade the Hetch-Hetchy water system over the next ten years to make it reliable for seismic issues, drought and overall supply.

Council Member Cordell revisited the ADA issues mentioned earlier in the meeting by Dieter Folta and hoped the new City Council could look more closely at those issues next year.

Vice Mayor Kleinberg noted the Human Relations Commission (HRC) was the body that looked into ADA issues.

Mayor Burch said the City is on record favoring a moratorium of the State death penalty and he planned on forwarding a letter to the Governor.

FINAL ADJOURNMENT: The meeting adjourned at 10:15 p.m.