TO:                   HONORABLE CITY COUNCIL
FROM:                CITY MANAGER                   DEPARTMENT: PLANNING AND
                           COMMUNITY ENVIRONMENT
DATE:                APRIL 16, 2007
SUBJECT:             MENLO EQUITIES PROJECT AT 260 HOMER AVENUE

This is an informational report and no Council action is required.

BACKGROUND
This informational report has been prepared in response to the oral communications Council
received on April 3, 2007 from Dr. Frank Altick, owner of the dental building adjacent to the
Menlo Equities project at 260 Homer Avenue. The concern expressed by Dr. Altick involved an
underground shoring system used by Menlo Equities in the construction of their basement
parking garage.

The project at 260 Homer Avenue is being developed by Menlo Equities and involves
construction of a new multi-story mixed-use building with two levels of underground parking
that connects to an existing single level underground garage to the south that was built by the
Palo Alto Housing Corporation as part of their affordable housing project. The excavation for
the 260 Homer project is greater than 30’ deep. To protect the worksite and adjacent properties
and public rights-of-way, Menlo Equities’ contractor, Webcor, designed and installed a shoring
system consisting of drilled steel piles that frame wood lagging, which are then secured with a
series of horizontally drilled anchoring devices or “tiebacks”. The tiebacks consist of roughly 8”
diameter holes in which reinforcing steel is placed and are then filled with a cement/grout
mixture. The length of the tiebacks varies between 10 and 20 feet. This shoring system was
designed by a structural engineer employed by the subcontractor working for Webcor who then
installed the shoring system.

Plans for the shoring system were submitted to Public Works to check for any utility conflicts in
the public rights-of-way. They were not submitted to the Building Division, nor were they
required to be. It has been the past practice of the Building Division not to require the
submission or approval of shoring plans as they are not considered a part of the building and
there are no codes against which they can be checked or that apply. Rather, they are considered
to be a contractor method for securing the site in order to comply with applicable workplace
safety (OSHA) regulations and Civil Code requirements that pertain to the protection of
properties adjacent to excavations.
The Street Work Permit issued by Public Works provided the authority for the contractor to install the tie-backs in the public rights-of-way. For excavations of this type, this is a commonly used method of shoring.

**DISCUSSION**

In late February, Dr. Altick contacted the City to question whether any approvals had been granted to allow for construction activity to occur on his property. He was responding to a contact made by someone working on behalf of Webcor who told him that it was necessary for some work to be performed on his property. At that time, the building plans for 260 Homer were checked and it was verified that there was nothing on the approved plans indicating work beyond the property lines. On or about March 12, 2007, Dr. Altick again contacted the City to express concerns about the tie-backs that he saw being installed underneath his property. He inquired whether the City had granted permission for this work to which he was told “no.” A City Building Inspector was then dispatched to the site on March 14, 2007, and a Stop Work Order was issued on that date to allow for an opportunity to understand what was being done and under whose authority. Prior to this time, there were no inspections of the project by the City as none had been scheduled nor were any required.

On March 21, 2007, a meeting was convened by the Planning Director with Dr. Altick and his representatives and two representatives of Menlo Equities. At the conclusion of the meeting, Menlo Equities agreed to provide Dr. Altick with information pertaining to the shoring system design, the project geotechnical report, and to allow for an inspection of the job site by Dr. Altick’s own structural engineer. Menlo Equities further agreed to repair any obvious damage caused to Dr. Altick’s building by their construction and to provide reimbursement to Dr. Altick for the cost of employing additional experts to review the plans, reports and construction on his behalf. On March 23 a meeting was held at the job site with representatives of Menlo Equities, Webcor, several sub-contractors and Dr. Altick’s structural engineer. At the end of the meeting, several individuals, including Dr. Altick’s structural engineer, went down into the excavation to inspect the shoring system along the common boundary between Dr. Altick’s property and 260 Homer. Since then, the City has received copies of various correspondences between Dr. Altick’s representatives and Menlo Equities, which appear to indicate continuing communications between both sides in an effort to settle their differences. On March 22, 2007, the City’s Stop Work Order was lifted in its entirety.

This issue is governed by Civil Code Section 832 which prohibits an adjacent owner from undermining the property they are next to. Essentially this is a civil dispute between the two neighboring property owners and largely outside of the City’s jurisdiction. The parties will need to work this problem out between themselves.

We will be creating a working group to coordinate between Public Works, Planning and Building to determine if the City needs to alter its approach to excavations that affect the public right of way. However, our review of these circumstances reveals that the City acted properly when presented by this neighbor to neighbor dispute.