



PLANNING COMMISSION MINUTES

October 4, 2010

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:00 p.m.

ROLL CALL – Bressler (Vice Chair), Eiref (Absent), Ferrick, Kadvany, Keith, O'Malley (Chair), Riggs

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner, Megan Fisher, Associate Planner; Thomas Rogers, Associate Planner

A. REPORTS AND ANNOUNCEMENTS

Planner Chow said that the agenda was organized differently so that some of what had been listed under "Commission Business" previously was now listed under "Reports and Announcements." She said these items were reports only and if there was a desire for Commission discussion that the specific discussion would need to be properly noticed and agendaized with a more specific description on a future Commission agenda. She said this all related to meeting the intent of the Brown Act. She said she would be developing a future item for the Commission to discuss this topic.

1. El Camino Real/Downtown Specific Plan (Phase II) Process

Planner Rogers said staff was in the process of scheduling the first Commission project subcommittee meeting (Bressler, Ferrick, Riggs). He said the subcommittee and staff would develop an agenda, schedule and other details, which would be provided to the full Commission. He said that Commissioner Kadvany had indicated he had a one-way communication related to this item.

Commissioner Kadvany provided the Commission with photos taken from Google maps that were shared at a meeting related to development in downtown Mountain View. He said there were different heights and staging of stories in those buildings and were an example of a creative approach to building density.

2. Burgess Gymnastics Center at 501 Laurel Street – October 5, 2010 City Council

Planner Chow said the Burgess Gymnastics Center project would be presented to the City Council on October 5, 2010.

3. Appeal of proposed application at 240 University Drive – tentatively scheduled for October 26, 2010

Planner Chow said an appeal of the proposed Heritage Tree Removal Permit for the project at 240 University Drive was tentatively scheduled for October 26, 2010.

4. Appeal of proposed BevMo application at 700 El Camino Real – tentatively scheduled for November 9, 2010

Planner Chow said an appeal of the proposed BevMo application at 700 Camino Real was tentatively scheduled for November 9, 2010.

5. Announcement and Reminder about the October 12, 2010 City of Menlo Park Commissioners Appreciation Event

Planner Chow thanked the Commissioners for responding to the October 12, 2010 Commissioners Appreciation Event.

She announced two additional events that might be of interest to the Commission: the San Mateo County “Active Living Symposium” and a “Housing Symposium” presented by San Mateo County Board Supervisor Gordon’s office.

Commissioner Bressler asked why “Reports and Announcements” were moved to the front of the agenda. Planner Chow said there was still discussion as to where this item should be placed on the agenda. She said for this meeting they had put the item at the front of the agenda so that Planner Rogers might be available for the El Camino Real/Downtown Specific Plan (Phase II) process item. Commissioner Bressler asked about the concern related to discussion under this item. Planner Chow said that there had been instances wherein discussion of items listed under “Reports and Announcements” had occurred. She said to meet the intent of the Brown Act that those discussions needed to be scheduled for future agendas and appropriately noticed to indicate the intent of the discussion.

B. PUBLIC COMMENTS

There were none.

C. CONSENT

1. Approval of minutes from the September 20, 2010 Planning Commission meeting.

Commissioner Riggs asked that the minutes be pulled as he had comments that he had not been able to send to staff prior to the meeting. He said on page 4, the last paragraph, the sentence read: *Mr. Tripoli said he was proposing a very thin long stone with a limestone slate metal look....* Commissioner Riggs said he thought the applicant meant materials rather than “metal look.” He said more importantly in the next sentence that reads: *Commissioner Riggs said that the proposed synthetic stone was not rectangular, slightly irregular and would be placed without grout.* Commissioner Riggs said that he recalled confirming with Mr. Tripoli that the proposed synthetic stone was not rectangular, etc. He said it was for that reason that he had proposed a more regular and traditional stone. He said the next sentence in the minutes was not in line with his thinking or comments: *He said he would prefer a random description of stone over something more traditional.* He said a more appropriate statement might be that he had indicated a preference for a more traditional type of applied stone. He said on page 6, under project-specific condition 4.a, it seemed to indicate that more information was wanted on the proposed stone material but in fact it should read that alternative stone materials would be presented by the applicant and reviewed by staff. He said the last full paragraph on page 20 stated: *...of the particularly high windows on the north and south elevations with a view toward the very attractive Arrillaga family gym.* He said the phrase “with a view toward” had been used by him several times but was not in context in the minutes. He suggested replacing “with a view toward” with “having similar design qualities as.” He noted a second place where that replacement of words would be applicable on page 21, last full paragraph, where it was stated: *.... of the particularly high windows on the north and south elevations ~~with a view toward~~ to have similar design qualities as the very attractive Arrillaga family gym.* He said it was applicable again on page 23, 2nd paragraph, which stated: *Commission Action: M/S Riggs/Ferrick to recommend the findings for architectural control as stated subject to reconsideration of the exterior materials and the fenestration, particularly the high windows on the north and south elevations ~~with a view toward~~ to have similar design qualities as the very attractive Arrillaga family gym.* He said the intent of the discussion between Commissioner Kadvany and him related to ventilation was more appropriately described as the adequacy of the natural ventilation features and not the ventilation per se. He suggested inserting the word “natural” before “ventilation” in the last paragraph on page 28, and noted that the Commission had not reviewed the mechanical ventilation systems.

Commissioner Ferrick said on page 21, the first paragraph the sentence - *Commissioner Ferrick said she could not use the antiquated design as a reason to not make the findings, but she could make the findings if there was a redesign* – was

awkward, and suggested changing to: **Commissioner Ferrick said she could still make the findings even if there was no redesign.**

Commissioner Bressler said on page 31, the 2nd paragraph was a summation of a great deal of discussion. He suggested changing the paragraph: *Commissioner Bressler said he agreed and was concerned that the subcommittee had not ~~anything met~~ in a long time and that **the Specific Plan would be presented as a finished document.** ~~they would be presented with a something that was done.~~ He said ~~they~~ **the Specific Plan needs to be carefully reviewed** ~~ed to give this plan the time it needed as this would be a plan for the next 30 years at least.~~*

Commissioner Keith said on page 13, the third paragraph from the bottom, she had asked a question, the answer to which was not recorded, and she would like that added into the minutes related to whether Menlo Park residents had priority for classes. She said on page 15, top of the page, the first sentence should be amended to read: *She said **the new gym layout** ~~this would alleviate this problem.~~* She said on the same page, in the very long paragraph, 11 lines from the end of the paragraph, the line should be amended: *Commissioner Keith said it was surprising that only one person showed up to the **noticed community meeting to discuss the gym.*** She said in the same paragraph, the 7th and 8th lines from the end of the same paragraph, should be amended: *He said ~~they were~~ **the City was** slurry sealing and striping the parking lot. Commissioner Keith asked how much that **would cost the City.***

Commissioner Kadvany said on page 31, 4th paragraph from the top, the 3rd line from the bottom, could be modified to be clearer: *He said there had to be a process so the concepts about how this plan would work could be repeated, **communicated and understood.***

Commissioner Riggs asked whether the City Council who would receive these minutes because the Burgess Gymnastics Center item was on the Council agenda the next evening would also receive these corrections and highlights. Planner Chow said that the Council would be advised of the changes to the minutes in staff's presentation to the Council.

Commission Action: M/S Ferrick/Riggs to approve the minutes of the September 20, 2010 Planning Commission meeting as amended.

Motion carried 6-0 with Commissioner Eiref absent.

D. PUBLIC HEARING

1. **Use Permit/Jon Jang/970 Altschul Avenue:** Request for a use permit for first-story and second-story additions to an existing nonconforming single-story structure that would exceed 50 percent of the existing floor area, on a substandard lot with regard to lot width in the R-1-S (Single-Family Suburban) zoning district. The proposed modifications would also exceed 50 percent of the value of the existing non-conforming structure. The proposed remodeling and expansion are considered to be equivalent to a new structure. In addition, a use permit is required for excavation (removal of more than 12 inches of dirt) within the required front and side setbacks for landscaping improvements. The construction of the proposed residence would require the removal of two heritage size trees, a 53.7-inch diameter blue gum in fair condition and a 22.2-inch diameter Monterey pine in poor condition.

Staff Comment: Planner Fisher said staff had no additional comments.

Public Comment: Mr. Jon Jang, project architect, said the staff report was thorough. He reemphasized that one of the issues that triggered the use permit was the 50 percent valuation for the addition of a second story. He said in this instance the second story was an observatory and minimal in size. He said the 30-foot driveway easement was a hardship for the property.

Ms. Sara Leake, Menlo Park, said she was representing herself and neighbors whose yards were near the project's yard. She said the observatory might be higher than their tree line and asked that there might be a story pole to show them if there would be a privacy impact.

Chair O'Malley closed the public hearing.

Questions of the Applicant: Commissioner Riggs asked what finishes would be used in the area under the cantilevered platform for the reel. Mr. Jang said it would be a finished appearance.

Commissioner Keith asked about the genesis of the design. Mr. Jang said the property owner is an avid astronomer.

Commissioner Kadvany asked about the public speaker's concern. Mr. Jang said he was not clear what her concern was. Commissioner Keith asked what the distance between the structure and the rear fence was. Planner Fisher referred to area plan B.2 and said it appeared to be about 90-feet to the rear fence line, about 70-feet from the new addition to the closest house on Prospect, and another 50-feet to the observatory, for a total of 150-feet separation distance between the observatory and the neighbors' property line.

Commission Comment: Commissioner Bressler said the height was well within the allowable limit and would not loom over any adjacent properties. Commissioner Riggs moved to make the findings and approve the use permit. He said the materials and forms were attractive and the second story while unusual was attractive and integrated into the residence. Commissioner Keith said she would second the motion noting that the height was 24-feet where the maximum allowable was 28-feet.

Commission Action: M/S Riggs/Keith to make the findings and approve the use permit as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Jonathan Jang Architect, consisting of 10 plan sheets, dated received September 3, 2010, and approved by the Planning Commission on October 4, 2010, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
 - e. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for the review and approval of the Engineering Division.

- f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to issuance of a grading, demolition or building permit.
- g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance.
- 4. Approve the use permit subject to the following **project specific** condition:
 - a. Simultaneous with the submittal of a complete building permit application, the applicant shall revise the site plan to show the rear, left side addition within the allowable building setbacks and shall revise the roof plan to show the roof overhang for the bay window encroaching no more than three feet into the left side setback, subject to review and approval by the Planning Division.

Motion carried 6-0 with Commissioner Eiref absent.

- 2. **Use Permit Extension/Samuel L. Wright, III/885 Oak Grove Avenue:** Request for an extension of a use permit originally granted in 1989 and extended in 1995, 2000, and 2005 for non-retail uses to locate on the ground floor of a building located in the C-3 (Central Commercial) zoning district. The proposed extension would be permanent and would continue to include payment of a yearly sales tax in-lieu contribution for the ground-floor square footage.

Staff Comment: Planner Rogers said correspondence supporting the use permit extension request from the Menlo Park Chamber of Commerce had been received since the publication of the staff report.

Questions of Staff: Commissioner Keith asked how the figure of \$1.62 was determined for the in-lieu fee. Planner Rogers said the original in-lieu fee set in 1989 was \$1.00 per square foot and that was tied to a consumer price index for annual adjustment.

Commissioner Keith asked about a different in-lieu fee per square foot for a nearby bank. Planner Rogers said the interest was in charging higher values for Santa Cruz Avenue properties and less for properties off Santa Cruz Avenue with the higher charge for non-retail businesses within the most successful retail corridor in the City.

Commissioner Keith asked about condition 4.b regarding a fee to be paid for a parking structure. Planner Rogers said it was a statement of principle that was part of the original approval. He said in the future should a parking structure be built that the property owners would buy into it.

Commissioner Riggs said in one place in the text it stated that any existing permitted medical offices would be allowed to remain and in another place it stated that there were psychologists, therapists, and others on the first floor, none of which were

considered medical. He asked if there were any medical uses in the building. Planner Rogers said staff had not yet confirmed that although the property owner had indicated there were not medical uses. He said it was known that the vast majority of the office was not medical. Commissioner Riggs asked about the 1987 permit and if that had been for retail use, noting that the building seemed ill-suited to retail. Planner Rogers said the building had originally been intended for retail and approved as such which led to the subsequent request to modify the use permit. Chair O'Malley asked what the cost was to renew a use permit. Planner Rogers said that a \$1,500 deposit was made, against which staff time was charged. He said often the cost was \$2,000 to \$8,000.

Public Comment: Mr. Sam Wright, Menlo Park, said he was representing his family. He said there were no clinical offices in the building; he said the MD's in the offices were psychiatrists and psychoanalysts. He said the original design of the building had not changed since 1987 and the first floor had not really been well-suited to retail. He said they had listed the first floor for months and had not received any retail inquiries.

Chair O'Malley closed the public hearing.

Commission Comment: Commissioner Keith said she would move to approve as recommended in the staff report. Commissioner Bressler seconded the motion.

1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit extension subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans submitted by the applicant, consisting of three plan sheets, dated received September 23, 2010, and approved by the Planning Commission on October 4, 2010, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
4. Approve the use permit extension subject to the following **ongoing, project-specific** conditions:
 - a. The total number of full-time equivalent employees permitted to work in the building shall be limited to 22; provided however that said limitation will be without prejudice to the applicant's ability to apply in the future to increase the total number of employees in this building in the event a parking structure is constructed in the adjacent parking plaza or other parking is provided.

- b. The applicant will agree to support the Parking Assessment District to the purpose of constructing parking structures in the Central Business District and to participate in the payment of parking assessments that may be levied in the District to similar properties fronting on Oak Grove Avenue.
- c. The property owner shall pay a fee (in addition to applicable yearly Business License fees paid by each individual business) to the City in lieu of sales tax for the 3,030 square feet of ground-floor area. The fee for the current year (ended May 7, 2010) is set at \$1.622 per square foot. The fee for each year thereafter shall be adjusted annually, effective May 8th, according to the percentage change for the year ended each December in the All Urban Consumer Price Index (CPI) for the San Francisco-Oakland-San Jose area, with the fee paid in arrears. The procedure for collecting the in-lieu fee shall be established by the Finance Division.
- d. Non-medical office is the only permitted type of office use within the building, and, as such, excludes facilities for physicians, dentists, and chiropractors where the primary purpose of the space is to provide diagnoses and outpatient care on a daily basis. The permitted uses within the overall building are as follows:
 - i. First Floor: Retail, non-medical office, personal services
 - ii. Second and Third Floors: Non-medical office

Motion carried 6-0 with Commissioner Eiref absent.

- 3. **Use Permit/Menlo Park Fire Protection District/444 El Camino Real:** Request for a use permit to use the subject site (former car dealership) as a training facility, mainly for a driving course and low impact team search drills. The existing buildings would also be used for temporary storage of a few vehicles. No outside storage is proposed except during training sessions. The proposal is for a limited two-year term.

Staff Comment: Planner Chow said that staff had no additional comments.

Questions of Staff: Commissioner Kadvany asked if the property at the t-intersection at Middle Avenue was also owned by Stanford. Planner Chow said the properties from 300 to 550 El Camino Real were Stanford properties. Commissioner Kadvany said that the antique fire engine in the empty car showroom at 444 El Camino Real was attractive. He asked if Stanford would possibly consider some type of staging for the empty car show room at the other property on El Camino Real. Planner Chow said that property was under lease until 2012. Responding to Commissioner Keith, Planner Chow said there was no lease currently for 444 El Camino Real.

Public Comment: Mr. Seth Johnson, Fire Captain, Fire Station No. 6, said that they had asked Stanford to allow their use of this vacant land for training. He said they presently conduct much of their training at 300 Middlefield Road but it was helpful to do training at

different sites. He said annually they hold a Drivers Rodeo for driver safety training, which they have done in prior years at the Dumbarton Bridge. He said the space was not quite wide enough for the maneuvers and also it was a distance from Station No. 4. He said they would like to do the Driver Rodeo at the El Camino Real site which was a central location. He said they had tested the noise levels and found there was no impact at Alma Street. He said for team search drills that they would put some low impact search props inside the building. He said it was important to have varied rescue exercises. He said they had cleaned up the site and removed graffiti and kept the landscape maintained. He said having the site to use for training was a big asset.

Chair O'Malley asked for public comments. There were none.

Commissioner Keith asked if there was exchange of training with other cities. Captain Johnson said there was. Commissioner Riggs asked what vehicles would be stored at the site. Captain Johnson said that they would store a truck with cones for the rodeo. He said it was good to have a site where they might temporarily store vehicles and referenced the mechanic bay for that purpose.

Chair O'Malley closed the public hearing.

Commission Comment: Commissioner Ferrick moved to approve as recommended in the staff report. Commissioner Keith seconded the motion.

Commissioner Riggs noted in condition 4.a there was no indication that the training would be once a year only that it would occur Monday through Friday. Planner Chow said the staff report indicated the annual Driver Rodeo. She said the Commission could add more information to condition 4.a. Commissioner Riggs suggested that they might add training events up to three times a year. Captain Johnson said they would appreciate the flexibility. Commissioner Riggs said the backup alarms were measured at 96 decibels, which was very loud. Captain Johnson said that was the noise measurement directly behind the bumper. He said they could not hear the backup alarms from Alma Street.

Commissioners Ferrick and Keith as the makers of the motion accepted the modification to 4.a to allow for three week-long events annually. Commissioner Bressler said that this seemed to create restriction under condition 4.a. Commissioner Riggs said that the text of the staff report indicated one event per year and this would allow for more flexibility to have week-long events up to three events per year.

Commission Action: M/S Ferrick/Keith to approve the use permit with the following modification.

1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, "Existing Facilities") of the current CEQA Guidelines.

2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans provided by Menlo Park Fire Protection District, consisting of two plan sheets, dated received September 29, 2010, and approved by the Planning Commission on October 4, 2010 except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - b. Prior to building permit issuance, the applicant shall comply with all sanitary district, Menlo Park Fire Protection District, and utility companies regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
4. Approve the use permit subject to the following **project-specific** conditions:
 - a. Hours and days of operation shall be limited to two sessions per day, generally in two-hour increments between 9:00 a.m. and 4:00 p.m., Monday through Saturday, **up to three events per year**. Sunday training sessions are prohibited.
 - b. The permit shall expire on October 4, 2012. All training activities shall stop and storage of equipment shall be removed.

Motion carried 6-0 with Commissioner Eiref absent.

4. **Planned Development Permit Amendment, Below Market Rate Housing Agreement Amendment and Vesting Tentative Map Revision/Beltramo's Investment Co. Inc./1452 &1460 El Camino Real and 1457 & 1473 San Antonio Street:** Request for the following: 1) a two-year extension (until August 1, 2012) of a Planned Development (PD) Permit for the construction of a new 26,800-square-foot, two-story commercial building with at-grade and subterranean parking and 16 two-story townhomes with partially submerged parking and 2) an amendment to the approved Below Market Rate (BMR) Housing Agreement to allow for a combination of one on-site BMR unit, payment of in-lieu fees, and profit sharing of revenues above a projected sales price instead of the provision to provide three on-site BMR units, 3) modifications to

the vesting tentative map for consistency with the proposed BMR Agreement, and 4) an amendment to the approved PD Permit to allow for the provision of a bond in lieu of demolishing structures prior to recordation of the final map. The rezoning from C-4 (General Commercial, Applicable to El Camino Real) to P-D (Planned Development), the PD Permit, Vesting Tentative Map, and BMR Housing Agreement were previously approved by the City Council in August 2006 and subsequently extended until August 1, 2010.

Staff Comments: Planner Chow referred to page 11, condition item 8, related to the Below Market Rate Housing Agreement. She said it should be expanded to add profit sharing of revenue above a project sales price instead of the provision to provide three on-site BMR units.

Questions of Staff: Commissioner Keith asked if the in-lieu fee of \$127,500 was for one unit or five units. Planner Chow said that would be for five units. She said this was calculated based on three percent of the market rate price and this assumed the market rate price at \$850,000. Commissioner Keith asked what the selling price of an actual BMR unit would be. Planner Chow said that was determined when it was constructed. Commissioner Keith said the City has a shortage of BMR units and wondered at the thought process for this proposed Agreement. Planner Chow said in the negotiation between the applicant and the City that the applicant had originally proposed all in-lieu fee payment which was not acceptable. She said the compromise was one BMR unit and in-lieu fees; she said the bonus was the revenue sharing proposal.

Commissioner Kadvany asked if there were other situations in which there had been a change to the BMR agreement after the proposed design was submitted. Planner Chow said there was not. Commissioner Bressler said that the project at 75 Willow Road had three BMR units on site originally and then there was an in-lieu fee paid to build something in west Menlo which building had never occurred. Planner Chow said the project changed because of a legal stipulation and as part of that the developer was to pay in-lieu fees for a project rather than onsite units.

Chair O'Malley said the expiration of the use permit was August 1, 2010 and asked about the rationale and legality for considering the permit still valid. Planner Chow said the applicant had submitted an application for renewal of the use permit in the spring and subsequent discussion and negotiation was extensive. She said that the validity of the use permit was legally sound. Chair O'Malley said there was some issue related to potential toxic materials and impact to the water. Planner Chow said that the applicant was working with the State Department of Toxic and Substance Control (DTSC) to devise a vapor system to release, manage and mitigate toxins when the project was developed. Chair O'Malley said the oil issue and water impact issue would have to be resolved before the applicant could obtain a building permit. Planner Chow said the applicant would not have the construction details until their work was completed with DTSC.

Commissioner Kadvany said the design and approval for this project was several years old. He asked if there was a relationship between the number of proposed units and required BMR units. Planner Chow said that the applicant had proposed 16 units for which they needed to provide three BMR units related to 1.6 units for the residential portion of the project and 1.4 units for the commercial development.

Public Comment: Mr. John Beltramo said in December 2, 1996 a study session was held with the Planning Commission at which they had presented six schematic designs for commercial use and ground parking for consideration. He said they were directed to resubmit a design to include a residential component. He said in August 1999 they submitted an application for a PD permit and in September 1999 the application was considered complete. He said at that time however there had been a great deal of opposition to development by the City Council. He said there was difficulty with the DEIR process because of issues raised by the City Council and it had to be amended a number of times. He said they came up with a project that felt good to them and to the City. He said the project was initially approved in August 2006. He said they found out from the Housing Department that BMR units sold for about \$250,000. He said they had placed the project on hold and asked for a second extension primarily because of the tough economic times, but then additionally there were unexpected hazmat problems, which had been discovered during the decommissioning of wells. He said it was determined that the hazmat contamination had not been caused by them. He said they agreed however to enter into a voluntary cleanup agreement. He said there were numerous delays trying to get the cleanup signed off on. He said the County was slow in responding so they then worked with DTSC. He said that there were delays with DTSC too. He said it appeared they would need to place an expensive liquid boot under both the residential and commercial projects. He noted that they had spent four years and \$360,000 on the hazmat issues alone.

Mr. Beltramo said the BMR sales price was established without considering the size of the units other than the numbers of bedrooms, whether the project had high or low end exterior finishes or interior amenities, off street parking or whether it was a condo, town home or freestanding residence, how much land was attributable to the unit and the value of the land attributable, specials costs such as hazmat, and the presence or absence of recreational/fitness facilities. He said they looked at the BMR ordinance carefully and found a provision that stated that when it was not possible to construct BMR units on the site that an in-lieu fee might be paid. He said however the City's stance was that if residential units were being built then BMR units had to be constructed onsite. He said they had gotten costs from four different contractors and it was determined that the project might not be viable, which meant funding would be an issue. He said in requesting this amended permit that they were requesting an in-lieu fee. He said they requested that the Commission approve the conditions of approval on pages 10 and 11 including the clarification to number 8 by Planner Chow. He said that instead of condition 9 to use 5.1 from the staff report to indicate that if none of the existing structures crossed the new boundary lines that the Engineering Department would have the ability and discretion to approve the project.

Ms. Amy Nefouse said she was a land use attorney retained by the Beltramo's. She said that the delays because of the hazmat issues and the economic downturn were outside the control of the applicants. She said the State had allowed a two-year extension on the vesting tentative map. She said that the three BMR units were just not feasible for the project to have a positive return. She said with average construction costs and building three BMR units that there would be no profit. She said the applicant was trying to balance the ability to show financial viability to the market place and comply with the BMR Ordinance. She said they asked the City to allow them to do the project with no units. The City said some units were needed. She said they then offered one onsite unit, to pay an in-lieu fee, and share revenue with the City should the market turn around and the units sell for a higher sales price than what was presently anticipated.

Ms. Anne Moser, Menlo Park, said she wanted to speak as an individual rather than as a Housing Commissioner. She said she had voted for this proposal but wanted to state that she had made an error. She said BMRs were needed and there was a waiting list of 200 families already. She said there was a need for people of moderate means to be able to buy in the community. She said the in-lieu fees were not enough to buy a house to take the place of the BMR unit was lost in projects such as this. She said the Housing Commission worked hard to develop this proposal but in retrospect she regretted her vote of approval. Chair O'Malley asked if the Housing Commission's vote was unanimous. Ms. Moser said it was.

Commissioner Riggs asked if the BMRs had to be sold at \$250,000. Ms. Nefouse said that it had to be somewhere between \$200,000 to \$270,000. Commissioner Riggs confirmed that the BMR units had to be the built the same as the market rate units. Commissioner Riggs said under the Visioning Plan done for the Specific Plan that three-to-four stories would not be out of the question along El Camino Real. He asked if the project would be more viable if the project had more density. Ms. Nefouse said that they were not looking to redesign the project rather they were looking at the permit expiration and an extension for the filing of the vesting tentative map.

Commissioner Ferrick asked how they arrived at the total number of 15 units. Ms. Nefouse said it was to maximize the Floor Area Ratio between the residential and commercial units. Commissioner Ferrick asked if the City had talked about a tradeoff to make BMR units more viable such as increased density. Ms. Nefouse said that had not occurred.

Commissioner Keith asked about the ratio for the units, commercial and residential, for the BMR units. Ms. Nefouse said it was one unit per every 10 units. She said there would be one BMR unit on site and that allowed for a bonus unit. She said the three units were technically more than what was required and that 1.6 units were for the residential part of the project and 1.4 units were for the commercial part of the project. Commissioner Keith said that Mr. Howard Crittendon had sent an email that the City should just buy a residence as a BMR unit but the cost was prohibitive. She said that the in-lieu fee on five units was \$127,000. Ms. Nefouse said the fee was three percent

of the sales price of five market rate units, plus a linkage fee based on the square footage of the commercial part of the project as well as a revenue sharing plan. Commissioner Keith said that the expected \$417,000 in lieu fee was not enough for the City to buy one of the units expected to sell for \$850,000. Ms. Nefouse said that the City did not have to buy a unit from this project, but could purchase a residence elsewhere.

Planner Chow confirmed for the record that the determination of the BMR units had been exactly three units and there had been no rounding up.

Chair O'Malley closed the public hearing.

Commission Comments: Chair O'Malley noted that there was no number six on the list of recommendations. Planner Chow said that was a typographical error and the list should just be renumbered to correct that as written.

Commissioner Kadvany said it was hard for him to understand what the planning dimension was and if it was a complex fiscal tradeoff. He said he did not know if he was looking for a fairness judgment for this development project, whether he should ignore the unfortunate contamination issue, and if this proposal was precedent setting. He said he was obviously sympathetic to the applicant because of the economy and the history of the project, and what they have tried to do and the conditions of the law. He asked if they were making policy or looking at an exceptional case and using individual judgment.

Commissioner Bressler said there was some precedent setting which he thought was Ms. Moser's concern. He said there was lower density than what would come out of the Specific Plan. He said he was not confident the project would get built within two years. He said however that he was not a proponent of high density housing along El Camino Real and he would prefer this project over something more dense. He said he thought the BMR Ordinance was somewhat misguided. He said the market had to sort out housing issues, allow foreclosures to happen and allow people to buy those at a lower price. He said there was a lot of housing available in the nation.

Commissioner Keith said she would love to see three BMR units built but she understood the applicant's plight. She said she appreciated how much time, effort, years and money the applicant had invested. She said the proposal was not necessarily a precedent as there was the option of an in-lieu fee in the BMR Ordinance. She said with the proposal they would get one BMR, low density and \$417,000 for in-lieu fees.

Commissioner Keith moved to approve as recommended in the staff report with the renumbering of items 7, 8, and 9. Commissioner Riggs said he would second the motion with the modification to accommodate the request of the applicant to move forward without demolition of the existing buildings if they did not cross boundary lines. Commissioner Keith agreed with the modification.

Commissioner Riggs said he had issues with the BMR Ordinance but he thought it should be applied consistently. He said in this instance he wanted to honor the work of the Housing Commission and staff in developing this BMR Agreement.

Commissioner Ferrick said she would prefer to see BMRs. She said that BMRs should not count against FAR and that there should be an allowance for 18 units on the site and that three BMR units should be allowed and not count towards FAR. She said she did not know that the City should be in the real estate business related to in-lieu fees and purchase of housing. She said she supported most of the recommendations except for the BMR.

Commissioner Kadvany said that it might be possible under the future Specific Plan to have increased density by trading off for fewer parking spaces. He said they might do some three story combinations. He said he wanted to keep the project moving forward. Commissioner Keith asked if he was talking about three levels with parking underneath. Commissioner Kadvany said he thought it was interpretable to him that the BMR units might have one less parking space than the others. Commissioner Keith said on Willow Road near Highway 101 that those buildings have two levels with parking underneath. Planner Chow said the project was proposing a split level garage with two stories of living space. She asked if Commissioner Kadvany was thinking of below parking and three stories. Commissioner Kadvany said he was.

Commissioner Ferrick asked if they supported the motion as it was stated but the project was not built right away, and then the Specific Plan went into effect, whether the applicant would be able to take advantage of the greater density. Planner Chow said when the Specific Plan was adopted the properties would be rezoned. She said the project could be built as approved or the applicant could apply for a revised use permit under the new zoning. She said that most likely that application would be a full packet. Ms. Nefouse, recognized by the Chair, said under CEQA if a project was modified there would be a need to review the existing EIR for impacts and levels of significance. She said in terms of density there could be traffic and visual impacts and that would require a supplement or amendment to the EIR. Chair O'Malley asked if the EIR done for the Specific Plan would cover that. Ms. Nefouse said that was possible. Commissioner Bressler said that was the intent of the Specific Plan.

Chair O'Malley said that the amount of in-lieu fees were never sufficient to buy a BMR unit elsewhere. He said if the City continued to reduce the level of BMR units required for development they would become nonexistent but the applicant might not build if they were required to build BMR units. He said the applicant had offered revenue sharing. He said the Housing Commission had reviewed the proposal and unanimously approved it. He said it made sense to allow the applicant to destroy the buildings after they applied for a building permit as those were revenue producing and did not straddle property lines. He said the applicant had been trying earnestly for years to get the project moving and they had previously approved it but now they would like to eliminate the number of BMR units required.

Planner Chow said under the building code that if there were property lines close to the buildings that they might trigger upgrades. She said the applicant they could have longevity for the building revenue to wait to record the map until they were ready to get their building permit. She said the applicant did not have to record the map right away and it could be timed to prevent a situation where there would be existing nonconforming buildings. Commissioner Riggs asked if there was a downside to hold off on recording the map. Ms. Nefouse said there could be if the Beltramos wanted to sell a lot that needed to be created by the map. She said the use of a bond was a possibility and not a right. Commissioner Riggs asked if staff were comfortable with that language. Planner Chow said there were standard conditions for demolition but there were alternatives to the recordation of the map.

Mr. Beltramo said they would waive their objection to condition 8.

Commissioner Riggs said as the maker of the amendment to the motion that he would withdraw that modification. Commissioner Keith said that was agreeable to her.

Planner Chow confirmed that the motion was to recommend approval to the City Council as recommended in the staff report for items 1 through 8.

Commission Action: M/S Keith/Riggs to approve as recommended in the staff report.

Recommend to the City Council:

1. Make a finding that the project is consistent with the *Environmental Impact Report for 1460 El Camino Real* and the Response to Comments certified by the City Council on August 1, 2006.
2. Make a finding that the proposed Planned Development Permit will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed planned development, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Make a finding that the Planned Development Permit allows for development that supports a mix of commercial and residential uses in close proximity to each other, involves combining smaller parcels for the purpose of creating a more innovative development proposal than would have been possible if the parcels were developed separately, improves an underdeveloped site along El Camino Real, and contributes one below market rate unit in combination with a payment of fees to the City's Below Market Housing Program for property with the primary addresses of 1452 and 1460 El Camino Real and 1457 and 1473 San Antonio Street, collectively known as 1460 El Camino Real, subject to the terms and conditions of the Planned Development Permit.

4. Approve the planned development permit extension for a period of two years (August 1, 2012).
5. Make a finding that the vesting tentative subdivision map has been updated for consistency with the Below Market Rate Housing Agreement, but all other aspects of the approved map remains unchanged.
6. Approve the revised vesting tentative subdivision map for a period of two years (August 1, 2012).
7. Approve the Below Market Rate Housing Agreement for one on-site BMR residential units, payment of in-lieu fees for five residential units, and payment of the commercial linkage fee to comply with both the residential and commercial requirements of the BMR Program.
8. Deny the proposed modification to condition 6.7 of the planned development permit.

The motion carried 5-0-1 with Commissioner Ferrick abstaining and Commissioner Eiref absent.

E. COMMISSION BUSINESS

There was none.

ADJOURNMENT

The meeting adjourned at 9:37 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Recording Secretary: Brenda Bennett

Approved by Planning Commission on November 1, 2010