



CITY COUNCIL COMMUNITY DEVELOPMENT AGENCY MINUTES

**Tuesday, August 7, 2007
7:00 p.m.**

**701 Laurel Street, Menlo Park, CA 94025
Menlo Park City Council Chambers**

7:00 p.m. REGULAR MEETING (Menlo Park City Council Chambers)

ROLL CALL - Fergusson, Cohen, Boyle, Cline, Robinson

PLEDGE OF ALLEGIANCE

The Mayor introduced new City Manager, Glen Rojas and welcomed him to Menlo Park.

Staff present – City Manager Glen Rojas, Acting City Attorney, Dan Siegel, Acting Assistant City Manager Heineck, and City Clerk Vonderlinden.

A. COMMISSION REPORTS

1. There is one vacancy on the Dumbarton Rail Citizen Advisory Panel, for one of the two seats representing Menlo Park. The deadline for submittal of applications to the City Clerk is August 21, 2007 by 5:30 p.m.

Council Member Robinson pointed out that on agenda item A1 an alternate may also be needed.

2. Commission member and Chamber of Commerce reports.

Fran Dehn, with the Chamber of Commerce, thanked Mayor Fergusson and Council Member Robinson for the idea and success of the downtown Santa Cruz Avenue Block Party. She said the inaugural event was a success. She appreciated the full Council support as well as support from City staff, Fire Protection District and Police Department. She expressed her appreciation for the members of retail service and non-profit organizations who supported this endeavor.

Mayor Fergusson thanked staff, especially Ruben Nino and Beverly Beasley, for their help. She also thanked the Chamber of Commerce for sponsoring the event. Ms. Dehn listed many of the sponsors, and the Mayor Fergusson announced the next event which will take place August 15, 2007. Council Member Boyle congratulated the residents who volunteered for the event and in particular the Mayor's role in making this a reality.

The Mayor announced the Relay for Life event which increases awareness in the fight against cancer and raises funds to advance research to cure this disease. Mayor Fergusson said she attended the event last year and she was touched by the luminaria ceremony. She invited local businesses to support these efforts.

Mayor Fergusson announced that on August 20th, 2007 the Planning Commission will hold a scoping session on the 1300 El Camino Real project. She also reported on an upcoming opportunity for the public to comment on the Bay Area Regional Plan. Mayor Fergusson announced that for further information the public can contact the office of the City Clerk. Council Member Robinson added that the Metropolitan Transportation Commission is receiving comments on its 2035 Plan.

B. PRESENTATIONS AND PROCLAMATIONS

1. Proclamation honoring Kent Steffens for serving as Interim City Manager.

Mayor Fergusson welcomed Mr. Steffens, his wife Leslie and son Colton to receive a proclamation honoring him for serving as Interim City Manager. Mayor Fergusson read the proclamation and thanked Mr. Steffens for his hard work. She announced that the Council decided to present Mr. Steffens with a one night get-a-way to the Half Moon Bay Ritz Carlton. Mayor Fergusson also recognized Linda Heineck for her work as Acting Assistant City Manager and presented her with a gift certificate to a local restaurant. Mr. Rojas thanked Mr. Steffens and Ms. Heineck for their hard work during this transition period.

C. PUBLIC COMMENT #1

Halle Hewitt spoke about second hand smoking and how San Mateo County has adopted ordinances limiting smoking in certain public areas. She asked Council to consider ordinances banning smoking in common areas such as condominium buildings.

The Mayor asked the City Manager to make a note and discuss the matter with Ms. Hewitt.

Chuck Kinney, with time donated by Fran Dehn, spoke as a committee member of the Trees for Menlo Inc., and he supported agenda item D3. He agreed with the Green Boulevard Initiative and he looks at this grant application as an opportunity to continue what has already been started. Former Mayor Kinney said that since 1999 over 250 trees have been planted by this organization.

Betty Meissner welcomed the new City Manager and announced the Music@Menlo event that took place mid-July. Ms. Meissner suggested that for 2008 there could be a coordinated effort to have the Music@Menlo, the Connoisseur's Market and the Santa Cruz Downtown block parties publicized jointly.

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Mayor Fergusson asked the City Manager to comment and he said that he would be willing to meet with Mr. Montague on the issue.

Darren Engelkemeier requested that an Environmental Impact Report be conducted due to traffic impacts. He provided details on the O'Connor School site and he hoped a long term lease with the German American School is not pursued due to enrollment levels and lack of predictability.

D. CONSENT CALENDAR

1. Adoption of Resolution No. 5760 authorizing the destruction of certain records in the Administrative Services Department. (Staff Report #07-138)
2. Authorization of the City Manager to enter into a contract with Republic Intelligent Transportation Services for traffic signal repair and maintenance for Fiscal Year 2007-08 in an amount not to exceed \$104,855, with authorization to exercise an option to renew the contract annually for an additional four years. (Staff Report # 07-139)
3. Authorize the submittal of an application for grant funding associated with the Grand Boulevard Initiative (El Camino Real) for completion of the El Camino Real Tree Project Phase III, and authorize the City Manager to execute all documents to secure the grant. (Staff Report #07-140)
4. Consideration of Resolution No. 5761 authorizing the establishment of a money purchase retirement plan with ICMA Retirement Corporation. (Staff Report #07-143)

5. Adoption of Resolution No. 5762 appropriating \$12,770 in equal amounts from the Fiscal Year 2007-08 Vehicle Replacement Fund, Water Fund, and Landscaping/Tree Assessment Fund for the purchase of a replacement diesel-engine mobile generator for the Corporation Yard; awarding a contract to Multiquip, Inc., for the purchase of the generator in the amount of \$29,136; and authorizing a total budget of \$45,770 for the purchase and installation of the generator and related equipment, contingencies, and administration. (Staff Report #07-144)

Item D6 continued

6. Approval of the fourth amendment to the agreement for services of the City Attorney. (Staff Report #07-145)

7. Approval of the minutes for the City Council meeting of June 19, 2007 (attachment); and the Special City Council meeting of June 27, 2007. (attachment)

On Agenda Item D6 Mayor Fergusson said she needed to confer with the City Attorney on the matter.

M/S Cline/Boyle to approve the Consent Calendar with the exception of item D6.

Motion carries 5-0-0. On item D6 Council consensus was to continue the item until the next meeting.

E. PUBLIC HEARING

Mayor Fergusson recused herself from the discussion because she lives within 500ft of the property. Vice Mayor Cohen chaired this portion of the meeting.

1. Consideration of an appeal of the Planning Commission's 1) review of the effectiveness of policies and programs related to traffic and parking for the German American International School of San Francisco, the German American School of Palo Alto, and the Palo Alto French Education Association, and 2) decision to approve a use permit revision to extend the use of four existing portable buildings and the addition of ballet classes for property located at 275 Elliott Drive in the P-F (Public Facilities) Zoning District. (Staff Report #07-141)

Deanna Chow, Senior Planner, presented the report elaborating on the appeal of the approval by the Planning Commission. She explained the conditions imposed by the Planning Commission. Ms. Chow added that the appeal was filed on behalf of 30 petitioners and focused on the private use of the property. Ms. Chow reiterated that staff believes that a private school use is appropriate and recommended that Council uphold the Planning Commission recommendations subject to findings on attachment A, with one modification regarding landscaping (Attachment C-5 item J). She read condition J on attachment A2 of the staff report, which read "concurrent with the submittal of the next use permit review or use permit application, the applicant shall submit a comprehensive landscape plan which would include but is not limited to addressing the interface with Oak Court". Staff said this would be inserted as condition J. Ms. Chow acknowledged correspondence that raises issues related to two heritage trees. Staff commented that Ken Ranella, the Superintendent of the Menlo Park School District, was present to answer questions.

Council Member Boyle asked about the trees and why the staff report was silent on the matter. Ms. Chow explained that staff was not aware of the problem until Monday, the day before the Council meeting. Mr. Murphy, Development Services Manager, confirmed that he too was not aware of the issue. Council Member Boyle asked who is responsible for the maintenance of the tree. Mr. Siegel, Acting City Attorney, said that the School District (the property owner) is responsible for the trees.

Vice Mayor Cohen opened the public hearing.

Mr. Ranella said that the School District is responsive to issues that come up and he just became aware of the issue and responded with a crew to fix the problem. Mr. Ranella said that he is willing to respond to the needs of the neighbors and so is the German American School. Council Member Robinson asked Mr. Ranella to discuss briefly the contract and the EIR. Mr. Ranella provided details

on the five-year agreement with the German American School which ends 2011, with an opportunity for the lease to be extended. Council Member Boyle asked about the lease and what happens after 2011. Mr. Ranella explained that the German American School has the first right of refusal but there is no guarantee. He commented that the School District has the freedom to review the request at that time and grant it or not. Demographic changes in school population were discussed and Mr. Ranella said that kindergarten enrollment exceeded projections by 8%. He elaborated on possible reasons for these statistics and he said that it is not clear if this is a trend or an anomaly. Council Member Robinson believes that the community, schools and the City need to work together to promote school trip reduction. Mr. Ranella said that for the Hillview School the School District will conduct a full EIR.

Mr. David Montague, as the appellant, addressed Council and explained the reasons for his appeal. He said he understood staff's position based on the fact that this is an administrative process. He does not have a problem with what the Planning Commission said but with what that body did not say. He explained why he disagrees with school improvements and mostly he has concerns with the near and long term impacts to residents. Mr. Montague objects to subsidizing a public school when it is being used for a private school. He spoke about case law related to CEQA (California Environmental Quality Act) and the City's responsibility on the issue of impacts. He spoke about a study he performed and how in his opinion his proposal is overall more advantageous. Mr. Montague provided details on each school, including number of students and traffic implications. He explained that the continuation of the lease of the O'Connor site to the German American School is what he objects to.

Mr. Ed Medlin, representing the German American School, addressed some of the issues that came up recently with the trees and then the appeal itself. He commented that the lease ends in 2011 and he is aware that the School District has no obligation to extend the lease. Mr. Medlin said the decision to renew or not renew the lease will be a unilateral decision by the School District but the German American School has the right of first refusal. Regarding subleases he said that the tenant is the German American School and when there is an opportunity to sublease it is with the agreement of the School District. He spoke about the tree issue and how quickly the two parties responded to neighbors' concerns. Mr. Medlin added that in the past the care of trees was the responsibility of the School District but with this new lease the school has new rights and responsibilities. He added that the school is using trip reduction measures by trying to get people to bicycle and carpool. He spoke specifically about the termination of the use permit and how this would create expenditures for the German American School and in his opinion the protection that is being sought is already in existence. Mr. Medlin said that the school is a not for profit organization and many parents donate their time.

Public Comment

Charlie Bourne, spoke as a resident and not as a commissioner, and he found that the issues affect neighbors of all schools and so he supports the appeal.

Marian Joseph spoke in favor of the appellant and how she believes that the O'Connor area is a concern. She supported the appellants' claims and she does not find that the traffic can be mitigated.

Darren Engelkemeier said that this will add congestion, emissions and trips to the area. He wants the Council to consider the long term commitments this will bring to the area.

Sandy Lee presented photographs to Council of the heritage trees and the ivy. Ms. Lee explained that a large tree limb fell on her home and she was without power for 24 hours. She asked that the ivy be kept off the trees. She said that the weight of the ivy can take out high voltage lines, and while the ivy was cut this afternoon it still needs to be cleared for at least six-feet around the trunk including the roots. She wants the use permit amended so there is a requirement to maintain these trees.

M/S Robinson/Boyle to close the public hearing. Motion carries 4-0-0 with Mayor Fergusson recused.

Council Member Cline shared his concerns regarding the school site and the anticipated impacts on traffic. He found that the appeal is looking at the deal with the German American School but everything is inter-related and for him all issues are important. He had concerns with the potential growth for the future. Council Member Boyle is satisfied that there are no grounds to grant the appeal but he would like to see a stipulation that the trees be maintained to a level consistent with the City arborist and that they are safe and healthy for neighbors. His preference is to have the lessee or the School District be named as the responsible party. Council Member Boyle asked the School District to consider approaches for reduction of trip generation. He believes that through the EIR process many of these concerns will be addressed. Council Member Robinson agreed with the comments made by previous Council Members and acknowledged that many of the issues being brought up are in the purview of the School District and the City has a limited role. He asked about the proposed wording and if it was for the next use permit process and staff confirmed. He also referred to condition J and Ms. Chow said that this would be for the next time the use permit would come forward. Ms. Chow explained the timeline regarding the application.

Vice Mayor Cohen did not find he had enough information to make an intelligent choice even though he can't avoid casting a vote. He acknowledged all the efforts from the School District and he also sees a private school that is doing the very best it can. He would like to understand what are going to be Menlo Park's needs in five years and he would not like the property committed beyond five years but that is a decision for the School District. Vice Mayor Cohen referred to correspondence regarding the tree and he said that while this seems to be a long term issue action was only taken yesterday. He wanted the School District to remove the invasive ivy and retain a licensed arborist to maintain health and safety of the trees. Acting City Attorney Siegel said that since there is concurrence from Council on the trees Ms. Chow had drafted a condition regarding maintenance and preservation of the trees and it would be added as condition K. Staff presented a document to Council that outlined measure K that read: "Within 30 days of 2007 use permit review and approval of the use permit revision on August 7, 2007, the applicant shall submit an arborist report for the one live oak and two heritage black walnut trees located at the southeast corner of the site. The report shall discuss the existing condition of these trees and identify measures and techniques to improve and maintain their long-term health subject to review and approval of the Planning Division and the City Arborist. Within 15 days of the staff approval of the arborist report, the applicant shall implement the recommended measures."

Council Member Boyle asked if Attorney Siegel could comment on the contract. Mr. Siegel explained details on the lease but he said the parties had made clear their position but Council could add a condition for the record with language that states that 2011 would be the end of the agreement. Mr. Siegel said this could be recorded as a covenant and such language would be another layer or protection. Mr. Siegel said that there is no confusion between the parties so it would be easy to record it and staff had also prepared a condition to that end. Such condition would be condition L and it would read: "Within 60 days of the 2007 use permit review and approval of the use permit revision on August 7, 2007, the applicant shall provide, in form satisfactory to the City Attorney, a recordable document that sets forth that the applicant and landlord understand and acknowledge that the revised use permit was issued by the City on material reliance on the statement at the public hearing that the applicant has no legal right to remain on the property after June 30, 2011 if the Menlo Park City School District, in its sole discretion, decides not to lease the property to a private school. The recordable document shall ensure that the City is an intended beneficiary."

M/S Boyle/Cline to deny the appeal and accept the staff recommendations (items one and two) subject to the inclusion of two items not on the staff report 1) the proposed tree condition J and K and that this be submitted to the City Attorney stipulating that the School District has unilateral right to terminate the lease in 2011 (condition L).

Council Member Cline said that while he understood the points made by the residents, he believed there are other vehicles to address the trip generation concerns. Vice Mayor Cohen asked Dr. Ranella when the residents will get some of the answers that were posed today.

Dr. Ranella said that the Hillview project is various years out and even though they have a CEQA consultant to address the elementary schools the timeline is hard to pinpoint. Dr. Ranella clarified that first the School District has to clearly define the project and his assumption is that the environmental review process (after the definition of the project) will begin sometime in the 2008 calendar year.

Council Member Boyle opined that transportation issues should be addressed as a collaborative effort. He further asked that the School District publicize future events such as the EIR comment period because of the impacts of those decisions. Dr. Ranella concurred with this request and provided information about the O'Connor site being used as a possible elementary campus in the case enrollment exceeds trend lines at other schools. Vice Mayor Cohen spoke about the concepts of cycling and busing versus parents driving kids to school. He asked that the School District get the names of the residents who have concerns and keep them informed about the various process phases. Council Member Robinson viewed the Council's role as limited because this falls under the School Districts' purview.

Motion carries 3-0-1 with Vice Mayor Cohen abstaining and Mayor Fergusson recused.

Mayor Fergusson returned to the Council Chambers. The Council took a two-minute break at 9:28 p.m. The Mayor resumed the meeting at 9:31 p.m.

F. REGULAR BUSINESS

1. Consideration of Resolution No. 5763 authorizing the submittal of an application to the Association of Bay Area Governments for a priority development area designation under the FOCUS Program for the downtown and El Camino Real Corridor. (Staff Report #07-142)

Megan Fisher, Assistant Planner, presented the report. She explained the goal of the program and what a defined area is. Ms. Fisher explained the criteria used by staff and the three options before Council. She added that adopting the resolution would not be equivalent to adopting new development.

Council Member Cline reiterated that this opens up options and opportunities for the future but Council can always withdraw its interest. Council Member Robinson said he had attended an ABAG meeting in June and it struck him at the time that this would be in congruence with the plan for the El Camino Real project and the need for housing. He added that the application could be amended in the future. He was pleased that the preservation area was included. Council Member Boyle wanted confirmation that this does not obligate the City to follow any position or guidelines. Staff confirmed this interpretation of the process.

Mayor Fergusson asked why the area between Garwood and San Antonio was excluded. Mr. Murphy, Development Services Manager, said that this boundary was consistent with a previous exhibit presented to Council in February and staff did not want to deviate from it. He added that there will be opportunities for Council to change or edit that boundary and amend the application. Vice Mayor Cohen wanted to know why a map of the shuttle service was included. Ms. Fisher explained that the application asked for additional maps detailing transit routes and staff thought that the Menlo Park shuttle route would be a good additional piece of information. Mayor Fergusson asked about the process and staff explained that the City has until August 17, 2007 to submit an application for the priority conservation area. Mayor Fergusson asked for public comment and there was none.

M/S Cline/Cohen to adopt the resolution.

Council Member Boyle made a friendly amendment to include all properties (for purposes of this application) between the railroad tracks and El Camino Real. Council Member Cline did not see the urgency in this addition because the application can be amended. Council Member Robinson concurred with. Council Member Cline found it arbitrary to block those properties together and Mayor Fergusson concurred. She said she would resist the friendly amendment because she is concerned

with Spruce and Buckthorn being included. Council Member Boyle said that from what he read some of things that would be included could benefit a wider area. Council Member Cline does not want to stretch out the area without a reason. Mr. Murphy said that it would be a more constructive exercise to discuss this if the City is a contender on the grant program. Vice Mayor Cohen cannot accept the friendly amendment because there will be ample opportunity to amend the application. Mr. Murphy commented that in concept the area could be expanded but the process by which this occurs needs to be discussed. He suggested the El Camino Real Visioning subcommittee address it. Council Member Boyle withdrew his friendly amendment.

Council Member Cline clarified that the motion includes the priority conservation area. Motion carries unanimously.

2. Consideration of state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item.

City Manager Rojas explained that a letter was received from the City of Burlingame regarding SCA 12 which would add storm water and flood control to current exemptions under Proposition 218. He said that ultimately the voters will speak on this, possibly via the November ballot. Council Member Boyle viewed this as a move to make it easier to get around raising fees or taxes. He opined the community should have an opportunity to endorse it or not. He added that the public should have known about this and so he would like this to come back so that the public can comment. Council Member Robinson supported the action but he also concurred with the fact that the public should be aware. He suggested bringing it back on Consent Calendar because it will also be an opportunity to educate the public. Mr. Rojas said he could find out if the deadline will allow staff to bring the matter back on the Consent Calendar. Council Member Boyle was dissatisfied because he does not find it appropriate to move forward without a public hearing. Mayor Fergusson would like to move forward and send the letter and let the ballot be the forum for debate. Council Member Cline had reservations because it seems like it is an easy path to increase user fees but due to the time restraints agreed upon actions should be taken tonight. Council Members Fergusson, Cohen, Cline, and Robinson support sending the letter.

M/S Cline/Robinson to approve submitting a letter in support of SCA 12. Motion carries 4-0-1 with Council Member Boyle abstaining.

G. WRITTEN COMMUNICATION - None

H. INFORMATION ITEMS - None

I. COUNCIL MEMBER REPORTS

1. Discussion and possible direction on Subcommittee's proposed approach to the El Camino Real/Downtown Visioning process. (Memorandum)

Vice Mayor Cohen commented that he had questions and some reservations about the approach. Council Member Cline explained that the subcommittee meets every Tuesday morning and a speaker talks on a topic. Council Member Boyle spoke about three items the Council subcommittee has been working on: 1) the kick-off meeting, 2) the outreach newsletter, and 3) an RFQ (Request for Qualifications) for the process. He said that there are many steps happening in parallel. Council Member Boyle clarified that this letter was meant to be an update so items like the speakers series will still take place as previously agreed upon. Vice Mayor Cohen thanked the subcommittee for its hard work however he had concerns about the need to expedite the process and use Peninsula Conflict Resolution Center for an initial outreach meeting. Subsequently, he expected a more formal process of community outreach. He now realizes that PCRC is just one of numerous consultants. He is also concerned that eight months have passed and he does not know how a four month delay is justifiable. Council Member Cline explained that the process has not changed and the goal is to have PCRC still run the first meeting. Council Member Boyle read from the minutes for the meeting when Council

discussed the matter. He explained that for the kick off event to be successful some other things will have to happen in anticipation of that event. He provided details on the delay related to the role of Dyett and Bhatia and how staff was unclear on Council's direction.

Council Member Robinson was appreciative of the work of the subcommittee and he liked the letter and the outline. He has full confidence in the process and the team. He asked if Dyett and Bhatia are under contract now and Ms. Heineck confirmed that this started several weeks ago. He supported the RFQ and getting the process started correctly. Mayor Fergusson asked for clarification on the RFQ and Council Member Boyle said that based on those responses an RFP (Request for Proposal) will be formulated for a consultant to lead the process. He added that the RFP will require Council approval. The subcommittee added that it was important to have the project consultant on board prior to the kick off meeting. Council Member Boyle said that the schedule that was outlined on the letter is already behind two weeks because of placing this on a Council Agenda for discussion. Ms. Heineck offered to have staff start working on the bones of the RFP while the RFQs are coming in to expedite the process. Council Member Cline said that the newsletter will go out in September.

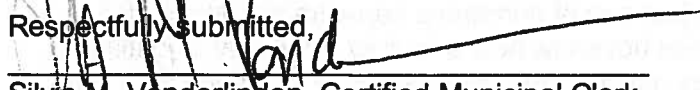
Vice Mayor Cohen said he is heartened by what he is hearing from Council Members Cline and Boyle, in particular the need for the outreach to be as full and complete as possible and the care that the subcommittee put into it. Vice Mayor Cohen said he would like to see a full timeline of the process, or if that is not doable then he wants to know why not. Council Member Boyle asked for Council input on using PCRC because it is not so obvious anymore that they be used for the kick-off meeting. Council Member Boyle said that the subcommittee met with the consultant that did the Redwood City process and he is unable to run the speakers series for Menlo Park. Council Member Robinson said that as hard as it is to say it he lost confidence in PCRC's skills after the last meeting. He believes they can play a role in certain situations but he has reservations with them leading the City through this process. Regarding the speakers series he would like to see these lined up earlier rather than later. Mayor Fergusson concurred with the comments about the speaker's series but she thinks that having PCRC as part of the kick-off was important to Vice Mayor Cohen. Council Member Cline said that he is still under the understanding that PCRC will lead the kick-off but for the rest of the process they would have to be a contender amongst others. Council Member Robinson believes the subcommittee should have flexibility to use PCRC or not. Mayor Fergusson opined that PCRC should be used to facilitate that first meeting. Council Member Boyle said that since the plan has changed, maybe the direction should change too. Council Member Robinson said that the Council always has an opportunity to revisit and clarify previous direction. **Council Member Cline said that it is clear that PCRC is in the mix but there is flexibility for the subcommittee to assess the situation. There were three Council Members that supported flexibility to use PCRC or not, they were Council Members Boyle, Cline and Robinson.**

Mayor Fergusson spoke about the possibility of an August 13, 2007 special meeting regarding the Park Theater. Mr. Rojas said that there is interest from Council to have a special meeting on Monday at 2:00 p.m. Council Member Boyle was not in support of this meeting because in his opinion people should not have to cancel vacations for a non-emergency topic. He said this is about two business parties negotiating and pulling the City into their deal and he finds it ill-advised. He shared concerns that there hasn't been enough public notice and special meetings should be reserved for emergency subjects. Council Member Robinson disagreed with calling this ill-advised because he believed there is a timing issue that pertains to an important downtown property and he supported holding this meeting.

J. PUBLIC COMMENT #2 (Limited to 30 minutes) - None

K. ADJOURNMENT - The meeting adjourned at 10:47 p.m.

Respectfully submitted,


Sylvia M. Vonderlinden, Certified Municipal Clerk

Approved at the Council Meeting of September 25, 2007.



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2. Authorization of the City Manager to enter into a contract with Republic Intelligent Transportation Services for traffic signal repair and maintenance for Fiscal Year 2007-08 in an amount not to exceed \$104,855, with authorization to exercise an option to renew the contract annually for an additional four years. (Staff Report # 07-139)
3. Authorize the submittal of an application for grant funding associated with the Grand Boulevard Initiative (El Camino Real) for completion of the El Camino Real Tree Project Phase III, and authorize the City Manager to execute all documents to secure the grant. (Staff Report #07-140)
4. Consideration of Resolution No. 5761 authorizing the establishment of a money purchase retirement plan with ICMA Retirement Corporation. (Staff Report #07-143)

5. Adoption of Resolution No. 5762 appropriating \$12,770 in equal amounts from the Fiscal Year 2007-08 Vehicle Replacement Fund, Water Fund, and Landscaping/Tree Assessment Fund for the purchase of a replacement diesel-engine mobile generator for the Corporation Yard; awarding a contract to Multiquip, Inc., for the purchase of the generator in the amount of \$29,136; and authorizing a total budget of \$45,770 for the purchase and installation of the generator and related equipment, contingencies, and administration. (Staff Report #07-144)

Item D6 continued

6. Approval of the fourth amendment to the agreement for services of the City Attorney. (Staff Report #07-145)

7. Approval of the minutes for the City Council meeting of June 19, 2007 (attachment); and the Special City Council meeting of June 27, 2007. (attachment)

On Agenda Item D6 Mayor Fergusson said she needed to confer with the City Attorney on the matter.

M/S Cline/Boyle to approve the Consent Calendar with the exception of item D6.

Motion carries 5-0-0. On item D6 Council consensus was to continue the item until the next meeting.

E. PUBLIC HEARING

Mayor Fergusson recused herself from the discussion because she lives within 500ft of the property. Vice Mayor Cohen chaired this portion of the meeting.

1. Consideration of an appeal of the Planning Commission's 1) review of the effectiveness of policies and programs related to traffic and parking for the German American International School of San Francisco, the German American School of Palo Alto, and the Palo Alto French Education Association, and 2) decision to approve a use permit revision to extend the use of four existing portable buildings and the addition of ballet classes for property located at 275 Elliott Drive in the P-F (Public Facilities) Zoning District. (Staff Report #07-141)

Deanna Chow, Senior Planner, presented the report elaborating on the appeal of the approval by the Planning Commission. She explained the conditions imposed by the Planning Commission. Ms. Chow added that the appeal was filed on behalf of 30 petitioners and focused on the private use of the property. Ms. Chow reiterated that staff believes that a private school use is appropriate and recommended that Council uphold the Planning Commission recommendations subject to findings on attachment A, with one modification regarding landscaping (Attachment C-5 item J). She read condition J on attachment A2 of the staff report, which read "concurrent with the submittal of the next use permit review or use permit application, the applicant shall submit a comprehensive landscape plan which would include but is not limited to addressing the interface with Oak Court". Staff said this would be inserted as condition J. Ms. Chow acknowledged correspondence that raises issues related to two heritage trees. Staff commented that Ken Ranella, the Superintendent of the Menlo Park School District, was present to answer questions.

Council Member Boyle asked about the trees and why the staff report was silent on the matter. Ms. Chow explained that staff was not aware of the problem until Monday, the day before the Council meeting. Mr. Murphy, Development Services Manager, confirmed that he too was not aware of the issue. Council Member Boyle asked who is responsible for the maintenance of the tree. Mr. Siegel, Acting City Attorney, said that the School District (the property owner) is responsible for the trees.

Vice Mayor Cohen opened the public hearing.

Mr. Ranella said that the School District is responsive to issues that come up and he just became aware of the issue and responded with a crew to fix the problem. Mr. Ranella said that he is willing to respond to the needs of the neighbors and so is the German American School. Council Member Robinson asked Mr. Ranella to discuss briefly the contract and the EIR. Mr. Ranella provided details

on the five-year agreement with the German American School which ends 2011, with an opportunity for the lease to be extended. Council Member Boyle asked about the lease and what happens after 2011. Mr. Ranella explained that the German American School has the first right of refusal but there is no guarantee. He commented that the School District has the freedom to review the request at that time and grant it or not. Demographic changes in school population were discussed and Mr. Ranella said that kindergarten enrollment exceeded projections by 8%. He elaborated on possible reasons for these statistics and he said that it is not clear if this is a trend or an anomaly. Council Member Robinson believes that the community, schools and the City need to work together to promote school trip reduction. Mr. Ranella said that for the Hillview School the School District will conduct a full EIR.

Mr. David Montague, as the appellant, addressed Council and explained the reasons for his appeal. He said he understood staff's position based on the fact that this is an administrative process. He does not have a problem with what the Planning Commission said but with what that body did not say. He explained why he disagrees with school improvements and mostly he has concerns with the near and long term impacts to residents. Mr. Montague objects to subsidizing a public school when it is being used for a private school. He spoke about case law related to CEQA (California Environmental Quality Act) and the City's responsibility on the issue of impacts. He spoke about a study he performed and how in his opinion his proposal is overall more advantageous. Mr. Montague provided details on each school, including number of students and traffic implications. He explained that the continuation of the lease of the O'Connor site to the German American School is what he objects to.

Mr. Ed Medlin, representing the German American School, addressed some of the issues that came up recently with the trees and then the appeal itself. He commented that the lease ends in 2011 and he is aware that the School District has no obligation to extend the lease. Mr. Medlin said the decision to renew or not renew the lease will be a unilateral decision by the School District but the German American School has the right of first refusal. Regarding subleases he said that the tenant is the German American School and when there is an opportunity to sublease it is with the agreement of the School District. He spoke about the tree issue and how quickly the two parties responded to neighbors' concerns. Mr. Medlin added that in the past the care of trees was the responsibility of the School District but with this new lease the school has new rights and responsibilities. He added that the school is using trip reduction measures by trying to get people to bicycle and carpool. He spoke specifically about the termination of the use permit and how this would create expenditures for the German American School and in his opinion the protection that is being sought is already in existence. Mr. Medlin said that the school is a not for profit organization and many parents donate their time.

Public Comment

Charlie Bourne, spoke as a resident and not as a commissioner, and he found that the issues affect neighbors of all schools and so he supports the appeal.

Marian Joseph spoke in favor of the appellant and how she believes that the O'Connor area is a concern. She supported the appellants' claims and she does not find that the traffic can be mitigated.

Darren Engelkemeier said that this will add congestion, emissions and trips to the area. He wants the Council to consider the long term commitments this will bring to the area.

Sandy Lee presented photographs to Council of the heritage trees and the ivy. Ms. Lee explained that a large tree limb fell on her home and she was without power for 24 hours. She asked that the ivy be kept off the trees. She said that the weight of the ivy can take out high voltage lines, and while the ivy was cut this afternoon it still needs to be cleared for at least six-feet around the trunk including the roots. She wants the use permit amended so there is a requirement to maintain these trees.

M/S Robinson/Boyle to close the public hearing. Motion carries 4-0-0 with Mayor Fergusson recused.

Council Member Cline shared his concerns regarding the school site and the anticipated impacts on traffic. He found that the appeal is looking at the deal with the German American School but everything is inter-related and for him all issues are important. He had concerns with the potential growth for the future. Council Member Boyle is satisfied that there are no grounds to grant the appeal but he would like to see a stipulation that the trees be maintained to a level consistent with the City arborist and that they are safe and healthy for neighbors. His preference is to have the lessee or the School District be named as the responsible party. Council Member Boyle asked the School District to consider approaches for reduction of trip generation. He believes that through the EIR process many of these concerns will be addressed. Council Member Robinson agreed with the comments made by previous Council Members and acknowledged that many of the issues being brought up are in the purview of the School District and the City has a limited role. He asked about the proposed wording and if it was for the next use permit process and staff confirmed. He also referred to condition J and Ms. Chow said that this would be for the next time the use permit would come forward. Ms. Chow explained the timeline regarding the application.

Vice Mayor Cohen did not find he had enough information to make an intelligent choice even though he can't avoid casting a vote. He acknowledged all the efforts from the School District and he also sees a private school that is doing the very best it can. He would like to understand what are going to be Menlo Park's needs in five years and he would not like the property committed beyond five years but that is a decision for the School District. Vice Mayor Cohen referred to correspondence regarding the tree and he said that while this seems to be a long term issue action was only taken yesterday. He wanted the School District to remove the invasive ivy and retain a licensed arborist to maintain health and safety of the trees. Acting City Attorney Siegel said that since there is concurrence from Council on the trees Ms. Chow had drafted a condition regarding maintenance and preservation of the trees and it would be added as condition K. Staff presented a document to Council that outlined measure K that read: "Within 30 days of 2007 use permit review and approval of the use permit revision on August 7, 2007, the applicant shall submit an arborist report for the one live oak and two heritage black walnut trees located at the southeast corner of the site. The report shall discuss the existing condition of these trees and identify measures and techniques to improve and maintain their long-term health subject to review and approval of the Planning Division and the City Arborist. Within 15 days of the staff approval of the arborist report, the applicant shall implement the recommended measures."

Council Member Boyle asked if Attorney Siegel could comment on the contract. Mr. Siegel explained details on the lease but he said the parties had made clear their position but Council could add a condition for the record with language that states that 2011 would be the end of the agreement. Mr. Siegel said this could be recorded as a covenant and such language would be another layer or protection. Mr. Siegel said that there is no confusion between the parties so it would be easy to record it and staff had also prepared a condition to that end. Such condition would be condition L and it would read: "Within 60 days of the 2007 use permit review and approval of the use permit revision on August 7, 2007, the applicant shall provide, in form satisfactory to the City Attorney, a recordable document that sets forth that the applicant and landlord understand and acknowledge that the revised use permit was issued by the City on material reliance on the statement at the public hearing that the applicant has no legal right to remain on the property after June 30, 2011 if the Menlo Park City School District, in its sole discretion, decides not to lease the property to a private school. The recordable document shall ensure that the City is an intended beneficiary."

M/S Boyle/Cline to deny the appeal and accept the staff recommendations (items one and two) subject to the inclusion of two items not on the staff report 1) the proposed tree condition J and K and that this be submitted to the City Attorney stipulating that the School District has unilateral right to terminate the lease in 2011 (condition L).

Council Member Cline said that while he understood the points made by the residents, he believed there are other vehicles to address the trip generation concerns. Vice Mayor Cohen asked Dr. Ranella when the residents will get some of the answers that were posed today.

Dr. Ranella said that the Hillview project is various years out and even though they have a CEQA consultant to address the elementary schools the timeline is hard to pinpoint. Dr. Ranella clarified that first the School District has to clearly define the project and his assumption is that the environmental review process (after the definition of the project) will begin sometime in the 2008 calendar year.

Council Member Boyle opined that transportation issues should be addressed as a collaborative effort. He further asked that the School District publicize future events such as the EIR comment period because of the impacts of those decisions. Dr. Ranella concurred with this request and provided information about the O'Connor site being used as a possible elementary campus in the case enrollment exceeds trend lines at other schools. Vice Mayor Cohen spoke about the concepts of cycling and busing versus parents driving kids to school. He asked that the School District get the names of the residents who have concerns and keep them informed about the various process phases. Council Member Robinson viewed the Council's role as limited because this falls under the School Districts' purview.

Motion carries 3-0-1 with Vice Mayor Cohen abstaining and Mayor Fergusson recused.

Mayor Fergusson returned to the Council Chambers. The Council took a two-minute break at 9:28 p.m. The Mayor resumed the meeting at 9:31 p.m.

F. REGULAR BUSINESS

1. Consideration of Resolution No. 5763 authorizing the submittal of an application to the Association of Bay Area Governments for a priority development area designation under the FOCUS Program for the downtown and El Camino Real Corridor. (Staff Report #07-142)

Megan Fisher, Assistant Planner, presented the report. She explained the goal of the program and what a defined area is. Ms. Fisher explained the criteria used by staff and the three options before Council. She added that adopting the resolution would not be equivalent to adopting new development.

Council Member Cline reiterated that this opens up options and opportunities for the future but Council can always withdraw its interest. Council Member Robinson said he had attended an ABAG meeting in June and it struck him at the time that this would be in congruence with the plan for the El Camino Real project and the need for housing. He added that the application could be amended in the future. He was pleased that the preservation area was included. Council Member Boyle wanted confirmation that this does not obligate the City to follow any position or guidelines. Staff confirmed this interpretation of the process.

Mayor Fergusson asked why the area between Garwood and San Antonio was excluded. Mr. Murphy, Development Services Manager, said that this boundary was consistent with a previous exhibit presented to Council in February and staff did not want to deviate from it. He added that there will be opportunities for Council to change or edit that boundary and amend the application. Vice Mayor Cohen wanted to know why a map of the shuttle service was included. Ms. Fisher explained that the application asked for additional maps detailing transit routes and staff thought that the Menlo Park shuttle route would be a good additional piece of information. Mayor Fergusson asked about the process and staff explained that the City has until August 17, 2007 to submit an application for the priority conservation area. Mayor Fergusson asked for public comment and there was none.

M/S Cline/Cohen to adopt the resolution.

Council Member Boyle made a friendly amendment to include all properties (for purposes of this application) between the railroad tracks and El Camino Real. Council Member Cline did not see the urgency in this addition because the application can be amended. Council Member Robinson concurred with. Council Member Cline found it arbitrary to block those properties together and Mayor Fergusson concurred. She said she would resist the friendly amendment because she is concerned

with Spruce and Buckthorn being included. Council Member Boyle said that from what he read some of things that would be included could benefit a wider area. Council Member Cline does not want to stretch out the area without a reason. Mr. Murphy said that it would be a more constructive exercise to discuss this if the City is a contender on the grant program. Vice Mayor Cohen cannot accept the friendly amendment because there will be ample opportunity to amend the application. Mr. Murphy commented that in concept the area could be expanded but the process by which this occurs needs to be discussed. He suggested the El Camino Real Visioning subcommittee address it. Council Member Boyle withdrew his friendly amendment.

**Council Member Cline clarified that the motion includes the priority conservation area.
Motion carries unanimously.**

2. Consideration of state and federal legislative items, including decisions to support or oppose any such legislation, and items listed under Written Communication or Information Item.

City Manager Rojas explained that a letter was received from the City of Burlingame regarding SCA 12 which would add storm water and flood control to current exemptions under Proposition 218. He said that ultimately the voters will speak on this, possibly via the November ballot. Council Member Boyle viewed this as a move to make it easier to get around raising fees or taxes. He opined the community should have an opportunity to endorse it or not. He added that the public should have known about this and so he would like this to come back so that the public can comment. Council Member Robinson supported the action but he also concurred with the fact that the public should be aware. He suggested bringing it back on Consent Calendar because it will also be an opportunity to educate the public. Mr. Rojas said he could find out if the deadline will allow staff to bring the matter back on the Consent Calendar. Council Member Boyle was dissatisfied because he does not find it appropriate to move forward without a public hearing. Mayor Fergusson would like to move forward and send the letter and let the ballot be the forum for debate. Council Member Cline had reservations because it seems like it is an easy path to increase user fees but due to the time restraints agreed upon actions should be taken tonight. Council Members Fergusson, Cohen, Cline, and Robinson support sending the letter.

M/S Cline/Robinson to approve submitting a letter in support of SCA 12. Motion carries 4-0-1 with Council Member Boyle abstaining.

G. WRITTEN COMMUNICATION - None

H. INFORMATION ITEMS - None

I. COUNCIL MEMBER REPORTS

1. Discussion and possible direction on Subcommittee's proposed approach to the El Camino Real/Downtown Visioning process. (Memorandum)

Vice Mayor Cohen commented that he had questions and some reservations about the approach. Council Member Cline explained that the subcommittee meets every Tuesday morning and a speaker talks on a topic. Council Member Boyle spoke about three items the Council subcommittee has been working on: 1) the kick-off meeting, 2) the outreach newsletter, and 3) an RFQ (Request for Qualifications) for the process. He said that there are many steps happening in parallel. Council Member Boyle clarified that this letter was meant to be an update so items like the speakers series will still take place as previously agreed upon. Vice Mayor Cohen thanked the subcommittee for its hard work however he had concerns about the need to expedite the process and use Peninsula Conflict Resolution Center for an initial outreach meeting. Subsequently, he expected a more formal process of community outreach. He now realizes that PCRC is just one of numerous consultants. He is also concerned that eight months have passed and he does not know how a four month delay is justifiable. Council Member Cline explained that the process has not changed and the goal is to have PCRC still run the first meeting. Council Member Boyle read from the minutes for the meeting when Council

discussed the matter. He explained that for the kick off event to be successful some other things will have to happen in anticipation of that event. He provided details on the delay related to the role of Dyett and Bhatia and how staff was unclear on Council's direction.

Council Member Robinson was appreciative of the work of the subcommittee and he liked the letter and the outline. He has full confidence in the process and the team. He asked if Dyett and Bhatia are under contract now and Ms. Heineck confirmed that this started several weeks ago. He supported the RFQ and getting the process started correctly. Mayor Fergusson asked for clarification on the RFQ and Council Member Boyle said that based on those responses an RFP (Request for Proposal) will be formulated for a consultant to lead the process. He added that the RFP will require Council approval. The subcommittee added that it was important to have the project consultant on board prior to the kick off meeting. Council Member Boyle said that the schedule that was outlined on the letter is already behind two weeks because of placing this on a Council Agenda for discussion. Ms. Heineck offered to have staff start working on the bones of the RFP while the RFQs are coming in to expedite the process. Council Member Cline said that the newsletter will go out in September.

Vice Mayor Cohen said he is heartened by what he is hearing from Council Members Cline and Boyle, in particular the need for the outreach to be as full and complete as possible and the care that the subcommittee put into it. Vice Mayor Cohen said he would like to see a full timeline of the process, or if that is not doable then he wants to know why not. Council Member Boyle asked for Council input on using PCRC because it is not so obvious anymore that they be used for the kick-off meeting. Council Member Boyle said that the subcommittee met with the consultant that did the Redwood City process and he is unable to run the speakers series for Menlo Park. Council Member Robinson said that as hard as it is to say it he lost confidence in PCRC's skills after the last meeting. He believes they can play a role in certain situations but he has reservations with them leading the City through this process. Regarding the speakers series he would like to see these lined up earlier rather than later. Mayor Fergusson concurred with the comments about the speaker's series but she thinks that having PCRC as part of the kick-off was important to Vice Mayor Cohen. Council Member Cline said that he is still under the understanding that PCRC will lead the kick-off but for the rest of the process they would have to be a contender amongst others. Council Member Robinson believes the subcommittee should have flexibility to use PCRC or not. Mayor Fergusson opined that PCRC should be used to facilitate that first meeting. Council Member Boyle said that since the plan has changed, maybe the direction should change too. Council Member Robinson said that the Council always has an opportunity to revisit and clarify previous direction. **Council Member Cline said that it is clear that PCRC is in the mix but there is flexibility for the subcommittee to assess the situation. There were three Council Members that supported flexibility to use PCRC or not, they were Council Members Boyle, Cline and Robinson.**

Mayor Fergusson spoke about the possibility of an August 13, 2007 special meeting regarding the Park Theater. Mr. Rojas said that there is interest from Council to have a special meeting on Monday at 2:00 p.m. Council Member Boyle was not in support of this meeting because in his opinion people should not have to cancel vacations for a non-emergency topic. He said this is about two business parties negotiating and pulling the City into their deal and he finds it ill-advised. He shared concerns that there hasn't been enough public notice and special meetings should be reserved for emergency subjects. Council Member Robinson disagreed with calling this ill-advised because he believed there is a timing issue that pertains to an important downtown property and he supported holding this meeting.

J. PUBLIC COMMENT #2 (Limited to 30 minutes) - None

K. ADJOURNMENT - The meeting adjourned at 10:47 p.m.

Respectfully submitted,

Silvia M. Vonderinden, Certified Municipal Clerk

Approved at the Council Meeting of September 25, 2007.