



PLANNING COMMISSION STAFF REPORT

FOR THE PLANNING COMMISSION
MEETING OF MARCH 31, 2008
AGENDA ITEM C1

LOCATION:	550-580 Oak Grove 540-570 Derry Lane	APPLICANT:	O'Brien at Derry Lane, LLC
EXISTING USE:	Car wash Retail Fast food Dry cleaner Automobile storage	PROPERTY OWNER:	Derry Family
PROPOSED USE:	Residential/ Commercial	APPLICATIONS:	Recission of Previous Approvals for the Derry Project and General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Planned Development Permit, Major Subdivision, Development Agreement, and Environmental Review
EXISTING ZONING:	C-4 General Commercial Applicable to EI Camino Real	PROPOSED ZONING:	P-D Planned Development

PROPOSAL

The applicant is proposing to demolish all existing structures on the project site, including several single-story commercial buildings along Oak Grove Avenue and Derry Lane, merge the lots and the Derry Lane right-of-way, and construct 108 residential condominium units, 24,925 square feet of commercial condominium space, and 301 parking spaces in a partially and fully submerged parking garage. The proposed project site consists of eight existing parcels at 540-570 Oak Grove Avenue and 550-580 Derry Lane and the Derry Lane right-of-way, totaling 3.45 acres. Following dedication of the proposed Derry Lane/Garwood Way right-of-way and Oak Grove Avenue plan line, the site area would be 2.72 acres. The proposal requires the approval of the following requests:

1. **General Plan Amendment** to modify the El Camino Real land use designation and the associated land use intensity tables to allow the density for residential uses to exceed the base density of 18.5 dwelling units per acre (du/ac) and to allow the intensity to exceed the base floor area ratio (FAR) of 75 percent on this property;
2. **Zoning Ordinance Amendment** to modify Chapter 16.57 P-D District to allow the density for residential uses to exceed the base density of 18.5 du/ac and to allow intensity to exceed the overall floor area ratio (FAR) requirements of the existing C-4 General Commercial District (Applicable to El Camino Real) zoning designation on this property;
3. **Rezoning** the property from C-4 (ECR) District to PD #8 (Planned Development) District;
4. **Planned Development (PD) Permit** for the demolition of existing commercial structures and to establish specific development regulations and architectural designs for the construction of:
 - 108 residential units at a density of 40 du/net acre where 18.5 du/ac is the maximum density permitted by the pre-existing zoning designation;
 - Approximately 146,075 square feet of residential gross floor area;
 - Approximately 12,650 square feet of retail/restaurant (with permitted restaurant alcohol sales and outdoor seating) space and 12,275 square feet of non-medical office space for a total commercial gross floor area of 24,925 square feet;
 - An approximate residential FAR of 124 percent and commercial FAR of 21 percent for a total FAR of 145 percent where 75 percent is the maximum FAR permitted by the pre-existing zoning designation;
 - Three-story building elements with a maximum building height of 40 feet where 30 feet is the maximum building height permitted by the pre-existing zoning designation; and
 - 301 on-site parking spaces in a partially submerged and below-grade parking structure where 366 parking spaces would be required by the pre-existing zoning designation.

5. **Major Subdivision** to merge eight existing lots, to abandon right-of-way, plan lines, and easements, to dedicate right-of-way and easements, and to create 108 residential and a maximum of eight commercial condominium units;
6. **Development Agreement** to allow the project sponsor to secure vested rights and the City to secure certain benefits;
7. **Below Market Rate (BMR) Agreement** to provide 16 BMR units and in-lieu fees in accordance with the City's BMR Housing Program;
8. **Heritage Tree Removal Permit** to remove five on-site heritage trees, and to remove three off-site heritage trees associated with the proposed Derry Lane/Garwood Way right-of-way improvements and extension; and
9. **Environmental Impact Report (EIR) Addendum** to compare the potential environmental impacts of the proposal with the certified EIR.

The above acts include rescinding the August 29, 2006 and September 12, 2006 approvals for a General Plan Amendment, Zoning Ordinance Amendment, Rezoning, PD Permit, Major Subdivision, BMR Agreement, and Heritage Tree Removal Permit. Due to the suspended nature of the previous project approvals and the proposed rescissions, this staff report considers the conditions that existed prior to the August 29, 2006 and September 12, 2006 approvals that were subjected to the referendum to be the existing conditions.

The proposal requires review and recommendations by the Planning Commission on the General Plan Amendment, Zoning Ordinance Amendment, Rezoning, PD Permit, Major Subdivision, and Development Agreement, and consideration of the EIR Addendum. The City Council is the final decision-making body on these applications, as well as the BMR Housing Agreement and the Heritage Tree Permit.

BACKGROUND

On August 29, 2006, the Derry Lane Mixed-Use Development, which included 135 residential units and 22,525 square feet of commercial space, was approved by the City Council, and on September 12, 2006, the City Council adopted the related ordinances amending the Zoning Ordinance and rezoning the property to Planned Development (P-D). The Final EIR was also certified at the August 29, 2006 City Council meeting. In October 2006, a referendum petition was submitted to the City. To provide the applicant and referendum group with the opportunity to reach a settlement, the City Council did not take action regarding the referendum. In May 2007, the applicant for the Derry Mixed-Use Project and the referendum group announced a settlement, and in September 2007 staff received plans for a revised project based on the Settlement Agreement (Attachment M) that were subsequently revised in February and March 2008 (Attachment B). A Frequently Asked Questions document on the Settlement Agreement and Referendum prepared by the City Attorney's office (Attachment N) is included as part of this report.

After hearing from members of the public at its meeting of October 22, 2007, the Planning Commission discussed the revised project. The excerpt minutes from this

meeting are included as Attachment O. The Planning Commission had the following comments on the revised proposal:

- More information is needed regarding the permitted commercial uses and types of commercial establishments, including a market assessment plan.
- The project should provide as many below-market rate (BMR) units as possible.
- The applicant should provide renderings with perspectives from El Camino Real, the 7-11 store, and the train tracks.
- More information is needed regarding the height of and roofing for the stair and elevator towers.
- The applicant should investigate using green building techniques and working with Build It Green.
- The proposed residential unit mix should be revisited to add one- and two-bedroom units and reduce the number of three-bedroom units.
- Public noticing should be expanded to Marcussen Drive and on-site noticing should be explored.

On November 27, 2007, the Council considered an information item on the revised Derry project, including aspects such as changes to the project, the Settlement Agreement, the Development Agreement, and the project review process. During this meeting, Council members commented on a potential desire to see the Development Agreement prior to consideration of approval of the project, and mentioned forming a subcommittee to participate in the drafting of the Development Agreement. However, on March 4, 2008, the Council effectively authorized staff to proceed with preparation of the Development Agreement without a Council sub-committee.

As part of its review of the revised project, staff reviewed the previously approved PD Permit #7 with the intention of resolving open-ended items that were previously addressed with conditions of approval, but could possibly affect the design of the project. Staff worked with the applicant to address items such as the third party review of the hydrology report, the queuing analysis to evaluate the length and duration of queues on Derry Lane/Garwood Way, the on-street parking analysis to determine time restrictions for the new on-street parking spaces along Derry Lane/Garwood Way, etc. As a result, these and other conditions that were no longer applicable have been removed from the recommended PD Permit #8 that is discussed in more detail later in the report.

ANALYSIS

The purpose of the March 31, 2008 public hearing is to give the public and the Planning Commission an opportunity to review the project and the Addendum to the Final EIR that has been prepared for the project. Subsequent to receiving public comments, the Commission should formulate and forward to the City Council its final recommendation on the proposed project and Addendum to the Final EIR.

Site and Surrounding Context

The proposed project site consists of eight existing parcels and the Derry Lane right-of-way, totaling 3.45 acres. Existing uses include several single-story commercial buildings along Oak Grove Avenue, a dry cleaning business and a vacant structure fronting Derry Lane, and a surface parking lot formerly used for car storage.

The site extends along Oak Grove Avenue from the Caltrain tracks to the commercial uses that front on El Camino Real (see Attachment A). The rear portion of the site is adjacent to the 1300 El Camino Real site (the location of a proposed commercial development on the former site of the “Cadillac, Buick, Pontiac, GMC of Menlo Park” car dealership). Menlo Square, a mixed use residential/commercial development, is located across Oak Grove Avenue, and the Menlo Park Caltrain station is located southeast of the project site. The site is separated from single- and multiple-family residential uses to the east by the Caltrain tracks.

Project Description

The applicant is proposing to demolish all existing structures on the project site, merge the lots and the Derry Lane right-of-way, and construct 108 residential condominium units, 24,925 square feet of commercial condominium space, and partially and fully submerged parking levels and parallel on-street spaces to serve the new uses.

The proposed project consists of 10 buildings (see sheet A1.2, Attachment B6). Buildings 1-7 and 9 would be located on top of a parking podium (accessed by a half-flight of stairs or elevator) that would cover most of the project site, and Buildings 8 and 10 would have at-grade access from Oak Grove Avenue. The buildings are proposed to be three stories and the maximum building height would be 40 feet when measured from average natural grade to the top of the roof plate. Planting areas and plazas on the podium level would be interspersed among the structures, with the main plaza area, located at grade on Oak Grove Avenue, extending north into the project.

The applicant is proposing to extend Garwood Way from its current terminus at the edge of the property to form an intersection at Oak Grove Avenue. The intersection would be offset from Merrill Street across Oak Grove Avenue, similar to the existing Derry Lane intersection. Garwood Way from Glenwood Avenue to Oak Grove Avenue is proposed to be renamed Derry Lane.

While the overall layout and architecture of the revised project is similar to the previously approved project, the project has been revised in several ways. A comparison chart is below.

Remainder of page intentionally left blank

	Approved Project	Revised Project
Residential		
No. of Residential Units	135	108
No. of BMR units	21	16
Residential Square Footage	171,334 square feet	146,055 square feet
Unit Mix	53 one-bedroom units 82 two-bedroom units	29 one-bedroom units 58 two-bedroom units 21 three-bedroom units
No. of Bedrooms	217	208
Commercial		
Office Square Footage	12,274 square feet	12,275 square feet
Retail Square Footage	10,251 square feet	12,650 square feet
Commercial Square Footage	22,525 square feet	24,925 square feet
Total Square Footage	193,859 square feet	171,000 square feet
Parking		
No. of on-site spaces	307 spaces	301 spaces
No. of off-site spaces on Derry Lane/Garwood Way	29 spaces	26 spaces
No. of off-site spaces on Oak Grove Avenue	5 spaces	5 spaces
Building Height		
No. of stories	4 stories	3 stories
Fees		
El Camino Real Study Contribution	\$100,000	N/A
Public Benefit Contribution	N/A	\$2,000,000
Recreation in Lieu Fee*	\$4.3 million	\$3.5 million
Traffic Impact Fee	\$97,556	\$82,280
Estimated Cost of Construction	\$37,000,000	\$34,000,000
Building Permit Fees	\$269,482	\$248,190
Construction Street Impact Fee	\$214,600	\$197,200
BMR Proposal	21 units on-site 10 one-bedrooms 11 two-bedrooms	16 units on-site 8 one-bedrooms 8 two-bedrooms \$159,060 in BMR fees

* based on \$4 million per acre land value

Residential Units

The applicant is proposing to build 108 residential condominium units, consisting of 29 one-bedroom units, 58 two-bedroom units, and 21 three-bedroom units. Eight of the ten buildings would contain residential units. The proposed residential condominiums range in size from 920 square feet for the one-bedroom units, 1,255 square feet for the interior two-bedroom units, 1,330 square feet for corner two-bedroom units, and to 1,568 square feet for three-bedroom units. All units would have balconies and storage space in the parking garage. A business/fitness/social center for residents is proposed on the podium level in Building 7.

In accordance with the residential Below Market Rate (BMR) housing requirements, fifteen percent of the units would be designated as BMR units, and in-lieu fees would be paid for the fraction of a unit required for the residential component and for the commercial component of the project. The applicant is proposing to provide eight one-bedroom units and eight two-bedroom units located throughout the first, second, and third levels of the residential buildings; none of the three-bedroom units would be below market rate. The Draft BMR Agreement is included as Attachment J and shows the proposed location of the BMR units. The BMR proposal received a recommendation of approval by the Housing Commission on March 5, 2008. The Housing Commission staff report and minutes are included as Attachment K and Attachment L, respectively.

Commercial Space

The project plans currently include 24,890 square feet of commercial space with 12,278 square feet on the ground level, 7,580 square feet on the second level, and the 5,032 square feet on the third level. The ground floor area would be retail, of which up to 7,800 square feet could be restaurant, and the second and third levels would be office uses. The types of restaurant uses permitted are described in further detail in the Environmental Review section below. Additionally, the allowable square footages for each use are part of the PD Permit. Staff would note that the sale of alcohol and outdoor seating associated with restaurant uses would be permitted uses as part of this proposal. Staff would also note that the allowed uses as outlined in the recommended PD Permit are not consistent with the applicant's proposal. This is discussed in more detail in the Environmental Review section below.

Previously, the Planning Commission requested more information regarding the permitted commercial uses and types of commercial establishments, including a market assessment plan. The applicant has also provided potential commercial leasing schemes (Attachment P) and letters from commercial brokers who have analyzed the retail commercial space (see the Correspondence section below) and have deemed it well designed.

Architecture and Materials

The traditional Mission and Spanish Colonial architectural styles are the principal design themes of the project. While these architectural styles are different from the nearby buildings along El Camino Real and Oak Grove Avenue, the architecture for this project would be similar to and compatible with the architectural style of the office building at 1600 El Camino Real, the new Safeway, and the proposed development at 1300 El Camino Real. Reflective of traditional Mission and Spanish Colonial styles, the buildings would be characterized by stucco siding, red tile roofs with low-pitched gables, recessed windows, arched overpasses, open patios, heavy timber trellis and wrought iron detailing, and the bell tower element. Variations in massing and elevation along Oak Grove Avenue, created by the setback of the second and third levels from the ground level façade, aim to reduce the scale of the building and create a pedestrian environment along the street frontage. A project materials and finishes sheet has been included as Attachment Q, and staff has been informed that a color and materials board and samples will be provided at the Planning Commission meeting on March 31, 2008.

In response to the earlier comments made by the Planning Commission, the applicant has provided perspectives from El Camino Real and the 7-11 store/train tracks area. Additionally, the applicant changed the stair and elevator tower roofs to a hipped tile roof. Information on the finishes for the stairwells has also been provided. The interior stairs (R-1 through R-7 and C-1, as shown on Attachment B12, sheet A2.1) that extend from the garage level, street level and/or the podium level to the upper levels of the residential buildings would have textured and painted sheetrock walls, carpeted or tile floors, decorative interior lighting fixtures, and high quality handrails and baseboards. The exterior stairs (R-7 and R-8, as shown on Attachment B12, sheet A2.1) leading from street level to the podium level would be finished with decorative pavers with inset tile details. Lighting and railing details would match the exterior lighting and railings elsewhere in the community, as described in the Project Materials and Finishes sheet (Attachment Q).

Access and Parking

As proposed, vehicular access for the site would be from Oak Grove Avenue and Derry Lane/Garwood Way. Oak Grove Avenue access would be fairly limited, as no left turns would be permitted to either enter or exit the Oak Grove parking entrance. Pedestrians would access the site from Oak Grove Avenue. The applicant has indicated their willingness to improve the existing crosswalk on Oak Grove Avenue at Merrill Street by constructing a lighted crosswalk. This improvement would enhance the safety of pedestrians going to and from the train station and the site.

The applicant is proposing to dedicate right-of-way and construct the Garwood Way plan line that runs along the project frontage, creating a continuous street from Glenwood Avenue to Oak Grove Avenue. The applicant is proposing to rename the proposed street to Derry Lane. To ensure a uniform streetscape and coordinated improvement of Derry Lane/Garwood Way, the applicant, in cooperation with the

applicant for the 1300 El Camino Real proposal, has developed a right-of-way improvement plan for Derry Lane/Garwood Way from Glenwood Avenue to Oak Grove Avenue. Both applicants have agreed to pay for the right-of-way improvements through a private cost sharing agreement.

The P-D zoning district allows flexibility from the parking requirements of the pre-existing zoning district. The applicant is proposing to provide one parking space for each one-bedroom unit, two parking spaces for two- and three-bedroom units, and to comply with the adopted use-based commercial parking standards for the commercial portion of the project. The following two tables compare the proposed parking standards to the pre-existing zoning parking standards, and the resulting required number of parking spaces by each method.

	<u>Proposed Parking Standards</u>	<u>C-4 (ECR) Parking Standards</u>
Residential One-Bedroom Units	one space per unit	two spaces per unit
Residential Two- and Three-Bedroom Units	two spaces per unit	two spaces per unit
Non-Medical Office	3.3 spaces per 1,000 sq. ft.*	6 spaces per 1,000 sq. ft.
Retail	5 spaces per 1,000 sq. ft.*	6 spaces per 1,000 sq. ft.
Restaurant	6 spaces per 1,000 sq. ft.*	6 spaces per 1,000 sq. ft.

*Parking standards per the Policy for Administrative Review of Parking Reduction Requests (Use-Based Guidelines)

	<u>Proposed Parking Calculations</u>	<u>C-4 (ECR) Parking Calculations</u>
Residential One-Bedroom Units	$29 * 1 = 29$	$29 * 2 = 58$
Residential Two- and Three-Bedroom Units	$58 * 2 = 116$	$58 * 2 = 116$
Non-Medical Office	$12,275 / 1,000 * 3.3 = 41$	$12,255 / 1,000 * 6 = 74$
Retail	$4,850 / 1,000 * 5 = 24$	$4,835 / 1,000 * 6 = 29$
Restaurant	$7,800 / 1,000 * 6 = 47$	$7,800 / 1,000 * 6 = 47$
Total Parking Required	299 spaces	366 spaces

The proposed parking garage layout includes 301 parking spaces, provided in partially and fully submerged parking levels onsite, which would exceed the number required by the use-based parking calculations by two spaces.

Heritage Trees and Landscaping

The project site contains six heritage trees and six non-heritage trees on the site, mostly located on the perimeter of the site and along Derry Lane and Oak Grove Avenue. Eleven heritage trees are located along the proposed right-of-way for Derry Lane/Garwood Way. The arborist reports, dated March 2008, include an assessment of all of the heritage size trees in addition to the other trees onsite and along the proposed right-of-way (Attachment R). The applicant is proposing to remove five of the six heritage trees onsite: two trees of heaven in poor condition, one palm in fair condition, and two coast redwoods in fair/good condition to accommodate the development. Additionally, one heritage-size palm tree would be relocated to an off-site location, and the six non-heritage trees would be removed. The removal of the heritage trees requires a Heritage Tree Permit and a two to one replacement ratio with trees that could grow to heritage size.

The applicant is proposing to preserve six of the eleven heritage trees located along the proposed Derry Lane/Garwood Way right-of-way, relocate two heritage-size palm trees, and remove three heritage-size oak trees. One of the oak trees to be removed is in fair condition, one is potentially hazardous, and one is dead. The removal of the heritage trees in the future right-of-way would also require a Heritage Tree Permit and a two-to-one replacement ratio with trees that could grow to heritage size.

The applicant has prepared a landscaping plan utilizing a mix of trees, shrubs, perennials, and lawn on the podium portion of the project. Street trees are proposed along Derry Lane/Garwood Way and the project's street frontage on Oak Grove Avenue. As the project applicant has not provided information on heritage replacement trees or the types and quantities of proposed trees, staff has added a condition of approval for a heritage tree replacement plan as part of a detailed landscape and irrigation plan.

A vegetated swale for stormwater treatment is proposed between the Derry Lane/Garwood Way right-of-way and the train tracks. During the previous approval of this project, the City Council added a requirement for a walkable path in the vegetated swale. As part of the revised project, the applicant is requesting that the condition for the walkable path in the vegetated swale be eliminated. The applicant has provided a letter (Attachment S) describing why they believe that the walkable path in the vegetated swale will be difficult, if not impossible, to construct properly. Therefore, they believe that they should be relieved of this obligation. The Planning Commission may wish to consider whether they would like to make this part of their recommendation to the City Council.

Sound Wall

The applicant is proposing to build an eight-foot tall sound wall adjacent to the railroad in the public right-of-way. A condition of approval for a maintenance agreement establishing the project owner's responsibility for maintenance of the wall is part of the

PD Permit. The new sound wall would be compatible with the existing sound wall along the railroad near the Glenwood Inn. The applicant has revised the proposed sound wall, so it extends from the current northwest property line to meet the existing Glenwood Inn sound wall. A portion of the wall steps down from eight to five feet for 15 linear feet, and then to three feet for 25 linear feet as it approaches Oak Grove Avenue. The sound wall would be built with breaks around the remaining heritage trees.

Trash and Recycling Facilities

Proposed trash and recycling facilities are included as part of the revised plan submittal. The plans show one commercial trash/recycling collection area and four residential collection areas. Both the residential and commercial trash/recycling collection areas are proposed to be located on the first level of the parking garage. The residential portion of the project would include a chute system. Each level of the residential buildings would have four trash and recycling areas. Allied Waste has reviewed the project and stated that the trash/recycling collection areas with chute systems are adequate to serve the project's needs.

Master Sign Program

The applicant has not yet provided staff with a master sign program proposal for the revised project. Staff has included 250 square feet of allowed signage as part of the PD Permit, and included a condition of approval that the applicant submit for review and implement a master sign program that individual sign requests would be reviewed against.

Project Land Use Entitlements

General Plan Amendment

Based on the proposed rescission of Resolution 5701, the site has a General Plan land use designation of El Camino Real –Professional/Retail Commercial. The existing land use designation allows for retail services, personal services, professional offices, banks, savings and loans, restaurants, cafes, theaters, social and fraternal clubs, residential uses, public and quasi public uses, and similar and compatible uses. Residential density in the El Camino Real –Professional/Retail Commercial designation is limited to 18.5 dwelling units per acre (du/ac). While the proposed mix of uses is consistent with the General Plan land use designation, the residential densities proposed are higher than the allowable density identified in the General Plan. Therefore, the applicant is requesting to amend the El Camino Real –Professional/Retail Commercial land use designation to permit this project area to exceed the maximum density and intensity of the base zoning district, as specified in a PD Permit and subject to obtaining a Development Agreement. The proposed General Plan Amendment is included as Attachment E. While the previously adopted General Plan Amendment allowed residential density to be calculated using gross project acreage, the density of the revised Derry project is calculated using net project acreage.

The Planning Commission may wish to consider the goals and policies contained in the General Plan that are related to the General Plan Amendment. Some of the goals that are most applicable to the proposal are listed below.

- *Housing Element Policies:*

- *III.A.10 The City will increase the supply of land available for residential development by redesignating and rezoning targeted residential and non-residential parcels for multi-family residential use, particularly near public transit and major transportation corridors in the city.*
- *III.A.11 The City will promote the distribution of new, higher-density residential developments throughout the city, taking into consideration compatibility with surrounding existing residential uses, particularly near public transit and major transportation corridors in the city.*

Other land use goals and policies that the Planning Commission may wish to consider relate to encouraging the development of housing for smaller households in commercially zoned areas in and near Downtown, uses and activities that will strengthen and complement the relationship between the Transportation Center and the Downtown area and nearby El Camino Real corridor, creative development in the El Camino Real corridor, and the location of activities within easy walking distance of transit stops.

Zoning Ordinance Amendment

The P-D zoning district does not currently allow for a property to be developed at a residential density higher than that allowed in the base-zoning district. This application includes a proposal to rescind Ordinance 953 that previously amended Chapter 16.57 of the Zoning Ordinance, and amend the Zoning Ordinance to permit this project area to exceed the maximum density and intensity of the base zoning district, as specified in a PD Permit and subject to obtaining a Development Agreement. The proposed Zoning Ordinance Amendment is included as Attachment F. While the previously approved Zoning Ordinance Amendment allowed the revised P-D development regulations potentially to be applied to the area bounded by El Camino Real, Glenwood Avenue, the Caltrain tracks, and Oak Grove Avenue, the revised Zoning Ordinance Amendment would only apply to the Derry project area.

The applicant proposes an infill development that would assemble eight parcels and Derry Lane right-of-way and revitalize an underdeveloped site along the El Camino Real Corridor, providing additional space for providers of goods and services to locate in the center of the city. By providing a mix of commercial and residential uses, including 16 Below Market Rate housing units, the development would provide complimentary uses in close proximity to one another and to the downtown core and transportation center. Based on the general location of the site in relationship to a highly used mass transportation center, staff believes that a higher density residential use is appropriate

at the project site. Staff believes the proposal is consistent with the goals and policies of the General Plan.

Rezoning and Planned Development Permit

The Planned Development (P-D) zoning designation and PD Permit were created to encourage the merging of parcels in order to foster more innovative design alternatives than could be accomplished with existing, smaller parcels. Assuming a rescission of Ordinance 954 that rezoned this property to PD #7, the project site has a pre-existing zoning of C-4 (ECR). While the proposal is consistent with the established uses in the C-4 (ECR) zoning district, the applicant is pursuing a rezoning from C-4 (ECR) to P-D, and approval of a PD Permit, to gain the higher density and intensity that would be permitted by the General Plan and Zoning Ordinance Amendments, and flexibility in the application of the development standards, specifically the standards related to parking and height of buildings. The proposed rezoning is included as Attachment G and PD Permit #8 is included as Attachment H.

As noted above, the PD Permit would include uses for the project site that are consistent with the pre-existing C-4 zoning, including general, non-medical office, retail, and restaurants in the commercial portion of the project, and residential uses. The PD Permit includes the specific development standards and conditions of approval for the proposal as well as provisions for minor changes in the project over time. Minor changes that are generally consistent with the PD Permit would be allowed through an administrative review process. Major modifications involving additional square footage or a change in the land uses or development standards would require an amendment to the PD Permit and approval by the City Council.

Tentative Subdivision Map

The applicant is proposing to merge the existing eight parcels and Derry Lane right-of-way and then subdivide the parcel for condominiums, including 108 residential condominiums and up to eight commercial condominiums. The applicant is proposing the condominium subdivision through the Tentative Subdivision Map process. The Engineering Division and affected agencies and utilities have reviewed the map and have determined that it is technically correct and in compliance with the State Subdivision Map Act and the City's Subdivision Ordinance subject to conditions of approval.

Development Agreement

In order to arrange payment of a two million dollar public benefit contribution and establish any other terms to be negotiated, the applicant is pursuing a legally binding Development Agreement. A Development Agreement is a contract between the City of Menlo Park and a project sponsor that delineates the terms and conditions of a proposed development project. A Development Agreement allows a project sponsor to secure vested rights and it allows the City to secure certain benefits. Development

Agreements are enabled by California Government Code Sections 6584-65869.5. The City Council adopted Resolution No. 4159 in January 1990, establishing the procedures and requirements for the consideration of Development Agreements (available upon request at the Planning Division). The resolution contains specific provisions regarding the form of applications for development agreements, minimum requirements for public notification and review, standards for review, findings and decisions, amendments and cancellation of agreements by mutual consent, recordation of the agreements, periodic review, and modification or termination of an agreement.

Staff believes that the draft Development Agreement (Attachment I) provides an overall benefit to the City for the following reasons:

- The two million dollars can be used for any purpose as deemed appropriate by the City Council unlike impact fees which are meant to address a specific impact and are restricted in their use.
- The Development Agreement is consistent with the terms of the Settlement Agreement, and as such provides a greater likelihood that the referendum issues can be resolved and a project can move forward to the construction stage.
- The Development Agreement provides for adequate controls on the development including such items as phasing, conditions, and fees.

ENVIRONMENTAL REVIEW

An addendum to the EIR was prepared for the revised project, and is included as Attachment D. The purpose of the Addendum is to compare the environmental effects of the revised project to the environmental effects of the previously approved project that were analyzed and addressed in the certified Final EIR. The Addendum concludes that the revised project would not result in new or more significant impacts (or require new or significantly altered mitigation measures) beyond those already identified in the Final EIR. The Planning Commission should consider the Addendum to the EIR while making its recommendation on the project. One aspect of the Addendum that is worth further discussion is the area restrictions on different types of restaurants. Because the proposed restaurant square footage increased as part of the revised project, restrictions on the square footage of certain types of restaurants were needed to ensure that the daily, AM peak hour, and/or PM peak hour trips that were analyzed as part of the certified Final EIR were not exceeded.

Different types of restaurants generate different numbers of AM peak hour, PM peak hour, and daily trips. Four restaurant combination options (variants) for three different restaurant types (based on Institute of Transportation Engineers (ITE) definitions) were evaluated for the revised project. They are reflected in the table below.

Restaurant Uses	Option 1	Option 2	Option 3	Option 4
<i>Quality Restaurant</i>	900 sq. ft.	5,400 sq. ft.	7,150 sq. ft.	6,600 sq. ft.
<i>High-Turnover Restaurant</i>	6,900 sq. ft.	2,400 sq. ft.	--	--
<i>Fast Food (Without Drive- Through)</i>	--	--	650 sq. ft.	1,200 sq. ft.
Total Restaurant Uses	7,800 sq. ft.	7,800 sq. ft.	7,800 sq. ft.	7,800 sq. ft.
<i>Open During AM Peak Hour?</i>	No	Yes	Yes	Yes
<i>Transit-Oriented Trip Reduction?</i>	No	Yes; 10% for "high turnover" trips	Yes; 10% for "fast food" trips	Yes; 15% for "fast food" and residential trips

Two of the options include a mix of "quality" restaurant uses and "high-turnover" restaurant uses. "Quality" restaurant uses are defined by ITE as restaurants that are "high quality, full-service eating establishments with turnover rates usually of at least one hour or longer." "Quality" restaurants do not serve breakfast (but sometimes serve lunch and always dinner), usually require reservations, and are generally not part of a chain. "High-turnover" restaurants are defined by ITE as "sit-down, full-service eating establishments with turnover rates of approximately one hour or less." These restaurants typically serve lunch and dinner, and may also be open for breakfast. They typically do not take reservations, frequently belong to a restaurant chain, and are usually moderately priced. The other two variants include a mixture of "quality" restaurant uses and "fast-food" uses. "Fast-food" restaurants are defined by ITE as being "characterized by a large carryout clientele; long hours of service...and high turnover rates for eat-in customers. These limited-service eating establishments do not provide table service. Patrons generally order at a cash register and pay before they eat."

The table above shows the permitted square footage for each type of restaurant for the four different options. It should be noted that while "quality" type restaurants could occupy the entire 7,800 square feet of restaurant area, "high-turnover" and "fast food" type restaurants would exceed the daily, AM peak hour, and/or PM peak hour trips that were analyzed as part of the certified Final EIR, and therefore, could not occupy the entire space. It should also be noted that options 2 and 3 assume a 10 percent reduction in the "high-turnover" or "fast food" restaurant trips based on the mix of proposed land uses and the site's proximity to transit services and the downtown area. These trip reductions were not used in the certified Final EIR. Studies have shown that the percentage of transit trips can be highly variable, even in a downtown area with good transit service. Nevertheless, staff believes that a 10 percent reduction due to the mixed use project and nearby transit is a reasonably modest decrease. Therefore, options 1, 2, and 3 are all incorporated into the staff recommended PD Permit (Attachment H).

The final option, however, includes a trip reduction of 15 percent for both "fast food" and residential trips. Because trip reductions due to transit-oriented design are difficult to predict, staff believes that more studies are needed to establish definitive reduction percentages. However, it should be noted that recent studies of numerous transit-oriented design projects in California found that the average transit commute share for

residential transit-oriented projects may be 20 percentage points greater than that of residents living in the surrounding area. The applicant has provided a letter regarding his request to have the ability to implement option 4 (Attachment T). As part of its recommendation to the City Council, the Planning Commission may wish to consider whether or not a transit trip reduction of 15 percent for the “fast food” and residential uses would be appropriate for this specific project.

CORRESPONDENCE

Since the Planning Commission information item on this item on October 22, 2007, staff has received several pieces of correspondence (Attachment U). Three letters are from commercial brokers, and state that the retail space has been well-designed and will be attractive to prospective retailers and restaurants. Three letters, from the Santa Clara County Housing Action Coalition, the Silicon Valley Leadership Group, and the Bay Area Council, support the project and the additional housing that it will provide. Finally, two members of the public commented on the project. One letter questioned how the project would work with the potential Caltrain grade separation, and the other letter requested that this project be required to meet renewable energy requirements and provide solar panels. All previous correspondence is on file and available at the Planning Division.

RECOMMENDATION

The proposed mixed-use development project is well designed, compatible with the surrounding land uses, and appropriate in scale and use for the site. The proposed General Plan Amendment, Zoning Ordinance Amendment, Rezoning, PD Permit, Tentative Subdivision Map, Development Agreement, BMR Agreement, and Heritage Tree Removal Permit are necessary for the development of the proposed project, which is consistent with several goals and policies of the City’s General Plan. As indicated in the Addendum to the certified EIR, the revised project would continue to have a less than significant impact in all environmental impact areas except for traffic and air quality. Staff recommends that the Planning Commission recommend approval of the General Plan Amendment, Zoning Ordinance Amendment, Rezoning, PD Permit, Tentative Subdivision Map, and Development Agreement.

Megan Fisher
Associate Planner
Report Author

Justin Murphy
Development Services Manager

PUBLIC NOTIFICATION

Public notification consisted of publishing a notice in the local newspaper and notification by mail of owners and occupants within the area bounded by the City’s

northerly boundary along El Camino Real between Valparaiso Avenue and Watkins Avenue, Felton Gables, Laurel Street, Oak Grove Avenue, Middlefield Road, Ravenswood Avenue, the Caltrain right-of-way, Middle Avenue, and University Drive. Planning Commission action will be in the form of a recommendation to the City Council. In addition, the public hearing notice and this staff report were posted on the Derry Mixed-Use Project webpage on the City's website, and an email bulletin was sent to all subscribers to the page.

ATTACHMENTS

- A. Location Map
- B. Project Plans
- C. Draft Findings and Actions for Approval, March 31, 2008
- D. EIR Addendum
- E. Draft General Plan Amendment
- F. Draft Zoning Ordinance Amendment
- G. Draft Rezoning
- H. Draft Planned Development Permit, dated March 31, 2008
- I. Draft Development Agreement
- J. Draft Below Market Rate Housing Agreement
- K. Housing Commission staff report for the meeting of March 5, 2008 (without attachments)
- L. Draft Excerpts from the Minutes from the March 5, 2008 Housing Commission Meeting
- M. Settlement Agreement between Menlo Park Tomorrow and O'Brien at Derry Lane, LLC, dated May 31, 2007
- N. Frequently Asked Questions on the Derry Project Settlement Agreement and Referendum
- O. Minutes from the October 22, 2007 Planning Commission Meeting
- P. Potential Ground Level Commercial Leasing Schemes
- Q. Project Materials and Finishes Sheet
- R. Arborist Reports by McClenahan Consulting, LLC, dated March 18, 2008
- S. Pedestrian Path in Vegetated Swale Objection Letter, prepared by the applicant, dated March 24, 2008
- T. TOD Trip Credit Request Letter, prepared by the applicant, dated March 24, 2008
- U. Correspondence received since October 22, 2007
 - Todd Oliver, Terranomics Retail Services, dated March 24, 2008
 - Brian Hunter, BDH Associates, Inc., dated March 21, 2008
 - Michael Berube, The Berube Company, dated March 24, 2008
 - Margaret Bard and Chris Block, Santa Clara County Housing Action Coalition, dated November 20, 2007
 - Carl Guardiano, Silicon Valley Leadership Group, dated November 20, 2007
 - Matt Regan, Bay Area Council, dated January 3, 2008
 - Peter Bradshaw, dated March 18, 2008
 - Douglas G. Danforth, Ph.D., 1325 Mills Street, dated March 18, 2008

The Following Documents with all of the Attachments were Distributed Previously and are Available for Review During Business Hours at the Planning Division:

1. City Council Study Session Staff Report, dated January 13, 2004
2. Planning Commission Study Session Staff Report, dated September 13, 2004
3. Draft Environmental Impact Report, dated March 2006
4. Planning Commission DEIR and Study Session Staff Report, dated March 27, 2006
5. Planning Commission Study Session Staff Report, dated May 15, 2006
6. Final Environmental Impact Report, dated July 2006
7. Planning Commission Staff Report, dated July 24, 2006
8. City Council Staff Report, dated August 29, 2006
9. Planning Commission Revised Project Information Item Staff Report, dated October 22, 2007
10. City Council Revised Project Information Item Staff Report, dated November 27, 2007
11. City Council C/CAG TOD Grant Application Consent Item Staff Report, dated February 26, 2008
12. City Council Development Agreement Information Item Staff Report, dated March 4, 2008
13. City Council State TOD Grant Funding Information Item Staff Report, dated March 4, 2008

Documents and information on the project are also available on the project webpage:
http://www.menlopark.org/projects/comdev_dmu.htm

EXHIBITS TO BE PROVIDED AT MEETING

- Color and Materials Board

Note: Attached are reduced versions of maps and diagrams submitted by the applicant. The accuracy of the information in these drawings is the responsibility of the applicant, and verification of the accuracy by City Staff is not always possible. The original full-scale maps and drawings are available for public viewing at the Community Development Department.

V:\STAFFRPT\PC\2008\Derry\033108_Derry_ PC staff report.doc

ATTACHMENT C

DRAFT
March 31, 2008

FINDINGS AND ACTIONS FOR APPROVAL

**550-580 Oak Grove Avenue and 540-570 Derry Lane
Collectively Known as the Derry Mixed-Use Project**

The Planning Commission recommends that the City Council take the following actions.

Environmental Review

1. Make a finding that the Addendum to the Certified Environmental Impact Report provides adequate environmental documentation of the changes to the project. (Attachment D).

General Plan Amendment

2. Make a finding that the proposed General Plan amendment to modify the land use designation of El Camino Real Professional/Retail Commercial to allow the Derry project, assessor parcel numbers 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, and 061-430-460, to exceed the maximum permitted density as specified in a PD Permit and subject to obtaining a Development Agreement would be consistent with the goals and policies of the adopted General Plan.
3. Approve a resolution rescinding Resolution No. 5701 and amending the General Plan to modify the land use designation of El Camino Real Professional/Retail Commercial to allow the Derry project, assessor parcel numbers 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, and 061-430-460, to exceed the maximum permitted density as specified in a PD Permit and subject to obtaining a Development Agreement (Attachment E).

Zoning Ordinance Amendment

4. Make a finding that the proposed Zoning Ordinance amendment to allow the Derry project, assessor parcel numbers 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, and 061-430-460, to exceed the maximum density (i.e., dwelling units per acre) and intensity (i.e., floor area ratio) requirements of the pre-existing

- zoning designation as specified in a PD Permit and subject to obtaining a Development Agreement would be consistent with the General Plan as amended as a part of the proposal.
5. Approve an ordinance rescinding Ordinance No. 953 and amending Section 16.57.050 of the Zoning Ordinance to allow the Derry project, assessor parcel numbers 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, and 061-430-460, to exceed the maximum density (i.e., dwelling units per acre) and intensity (i.e., floor area ratio) requirements of the pre-existing zoning designation as specified in a PD Permit and subject to obtaining a Development Agreement (Attachment F).

Rezoning

6. Make a finding that the proposed rezoning of property with the primary addresses of 550-580 Oak Grove Avenue and 540-570 Derry Lane, collectively known as the Derry Mixed-Use Project, from C-4 (General Commercial – Applicable to El Camino Real) to P-D (Planned Development District) is consistent with the General Plan land use designation of El Camino Real Professional/Retail Commercial.
7. Introduce an ordinance rescinding Ordinance No. 954 and the associated PD Permit, and rezoning property with the primary addresses of 550-580 Oak Grove Avenue and 540-570 Derry Lane, collectively known as the Derry Mixed-Use Project, from C-4 (General Commercial – Applicable to El Camino Real) to P-D (Planned Development District) (Attachment G).

Planned Development Permit

8. Make a finding that the proposed PD Permit #8 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.
9. Make a finding that the PD Permit #8 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 near the downtown, and contributes 16 below market rate condominium units to the City's Below Market Housing Program for property with the primary addresses of 550-580 Oak Grove Avenue and 540-570 Derry

Lane, collectively known as the Derry Mixed-Use Project, subject to the terms and conditions included within.

10. Approve the PD Permit #8 (Attachment H).

Tentative Map

11. Rescind the August 29, 2006 approval for the Tentative Subdivision Map.
12. Make a finding that the Tentative Subdivision Map has been reviewed by the Engineering Division and has been found to be technically correct and in compliance with the State Subdivision Map Act and the City's Subdivision Ordinance.
13. Approve the Tentative Subdivision Map (Attachment B).

Development Agreement

14. Make a finding that the Development Agreement, which is enabled through California Government Code Sections 6584-65869.5 and City Council Resolution No. 4159, provides overall benefits to the City and adequate controls on the development.
15. Approve the Development Agreement (Attachment I).

ATTACHMENT E

DRAFT
March 31, 2008

RESOLUTION NO. ____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MENLO PARK RESCINDING RESOLUTION NO. 5701 AND AMENDING THE GENERAL PLAN TO MODIFY THE EL CAMINO REAL PROFESSIONAL/RETAIL COMMERCIAL LAND USE DESIGNATION

WHEREAS, the City of Menlo Park adopted Resolution No. 5701 already on August 29, 2006; and

WHEREAS, Menlo Park Tomorrow, a citizens' group, submitted a referendum petition for the Zoning Ordinance Amendment and Rezoning for the subject parcels, but reached a settlement agreement with the applicant, whereby the applicant agreed to seek rescission of Resolution No. 5701 and apply for an amendment to the General Plan as set forth in Exhibit A; and

WHEREAS, the Planning Commission of the City of Menlo Park has considered the adoption of an amendment to the General Plan to modify the El Camino Real Professional/Retail Commercial land use designation to allow for a mixed use development near a transit center at 550-580 Oak Grove Avenue and 540-570 Derry Lane; and

WHEREAS, the provisions of the Government Code, 65350, et. seq. have been complied with; and

WHEREAS, the City Council of the City of Menlo Park has considered the comments and recommendations of the Planning Commission in regard to amending the General Plan;

NOW THEREFORE, BE IT AND IT IS HEREBY RESOLVED by the City Council of the City Menlo Park that Resolution No. 5701 is hereby rescinded and that the General Plan Amendment to modify the El Camino Real Professional/Retail Commercial land use designation, particularly described in Exhibit "A", be adopted.

This resolution shall take effect upon the effective date of Ordinance No. _ amending Chapter 16.57, *P-D District* of the Zoning Ordinance, and Ordinance No. _ rezoning the property at 550-580 Oak Grove Avenue and 540-570 Derry Lane to Planned Development District. In the event such ordinances do not become effective within ninety (90) days of the adoption of this resolution, this resolution shall be void and of no legal effect.

I, Sherry M. Kelly, City Clerk of the City of Menlo Park, do hereby certify that the above and foregoing Resolution was duly and regularly passed and adopted at a meeting by said Council on the ___th day of _____, 2008 by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

I further certify that the foregoing copy of said Resolution is a true and correct copy of the original on file in the office of the City Clerk, Civic Center, Menlo Park, California.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Official Seal of said City, this _____ day of _____, 2008.

City Clerk

Exhibit A

Part II – Land Use/Circulation Diagrams and Standards

El Camino Real Professional/Retail Commercial land use designation is amended to modify the maximum density and FAR range as follows:

COMMERCIAL DESIGNATIONS

El Camino Real Professional/Retail Commercial

This designation provides for retail services, personal services, professional offices, executive, general and administrative offices, research and development facilities, banks, savings and loans, convalescent homes, restaurants, cafes, theaters, residential uses, public and quasi-public uses, and similar and compatible uses. The maximum FAR for non-residential uses shall be in the range of 40 percent to 75 percent. Residential intensity shall not exceed 18.5 units per net acre **except for the Derry project, assessor parcel numbers 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, and 061-430-460, which may exceed the maximum** as specified in a PD Permit and subject to obtaining a Development Agreement.

Table II-1 is amended to add use intensities for the P-D zoning district as follows:

TABLE II-1 RESIDENTIAL USE INTENSITY ¹			
Land Use Designation	Use Intensity (units per net acre)	Floor Area Limit/Ratio ²	Applicable Zoning Districts ³
Very Low Density	0-3.5	2,800 sq. ft. +25% of lot area over 7,000 sq. ft.	R-E, R-E-S, R-1-S
Low Density	3.6-5.0	2,800 sq. ft. +25% of lot area over 7,000 sq. ft.	R-1-U, R-1-S
Medium Density	5.1-18.5	40-45%	R-2, R-3, R-3-A, R-3-C, R-C
High Density	18.6-40.0 ⁴	100% ⁴	R-4, R-L-U ⁴

¹Residential uses are also allowed in the Professional and Administrative Offices, the Retail/Commercial, and the El Camino Real Professional/Retail Commercial designations, subject to a maximum intensity limit of 18.5 units per net acre.

Mixed-use (residential and commercial) is subject to the following zoning ordinance limitations:

R-C zoning district: residential intensity up to 18.5 DU/net acre and FAR of up to 45%. In a mixed use project, the maximum total FAR is 45% for residential plus 40% for commercial for a total maximum 85% FAR.

C-3 zoning district: residential intensity up to 18.5 DU/net acre and FAR of up to 100%. Any FAR used for residential use would be subtracted from that otherwise allowed for commercial use.

C-4 El Camino Real zoning district: residential intensity up to 18.5 DU/net acre and FAR of up to 75%. Any FAR used for residential use would be subtracted from that otherwise allowed for commercial use.

²The BMR density bonus can result in the density, number of units, and floor area being increased up to a maximum of 15%. The floor area limit for lots under 5,000 square feet shall be determined by use permit.

³Residential uses are also allowed in the P-D zoning district. This district allows residential and other uses at a density or intensity that does not exceed the density or intensity allowed by the pre-existing zoning for the P-D-zoned property **except for the Derry project, assessor parcel numbers 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, and 061-430-460, which may exceed the maximum as specified in a PD Permit and subject to obtaining a Development Agreement.**

⁴The R-L-U zoning district allows senior rental housing with residential intensity of 54-97 DU/net acre and FAR of up to 150%. Any new R-L-U project will require a general plan amendment and rezoning.

Please Note: This draft ordinance amendment uses ~~strikeout~~ and underline formatting to show the reader the extent of changes to existing Zoning Ordinance provisions in order to provide context.

ATTACHMENT F

DRAFT

ORDINANCE NO. ____

An Ordinance of the City of Menlo Park, Rescinding Ordinance No. 953 and Amending Title 16 of the Menlo Park Municipal Code, Amending Chapter 16.57 P-D District

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1. Ordinance No. 953, An Ordinance of the City of Menlo Park, Amending Title 16 of the Menlo Park Municipal Code, Amending Chapter 16.57 *P-D District*, is hereby rescinded.

SECTION 2. The following section of Title 16, *Zoning*, Chapter 16.57.005, *P-D District*, of the Menlo Park Municipal Code is hereby amended to read as follows:

16.57.005 Purpose of the P-D Zone. The purpose of the P-D Zone is to encourage the consolidation of smaller parcels into larger parcels to provide benefits to the City which could not otherwise be obtained. In order to obtain these benefits, the project plans should consider the inclusion of specific development controls to develop more usable open space, to provide efficient use of land, utilities, and circulation systems, to develop creative and integrated design and to allow for innovative and desirable mixed use developments that are consistent with the density (i.e., **dwelling units per acre**) and intensity (i.e., **floor area ratio**) requirements of the pre-existing zoning designation, **except as provided in subsection 16.57.050**, and with the aesthetic and environmental qualities of the community.

SECTION 3. The following section of Title 16, *Zoning*, Chapter 16.57.050, *P-D District*, of the Menlo Park Municipal Code is hereby amended to read as follows:

16.57.050 Area limitation. Property within the area bounded by El Camino Real, Watkins Avenue, **Southern Pacific Railwaythe Caltrain railroad** tracks, and San Francisquito Creek may be placed in a P-D zone in accordance with the provisions of this chapter. No other property may be placed in a P-D zone. **Furthermore, development of the Derry project, assessor parcel numbers 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, and 061-430-460, may exceed the density (i.e., dwelling units per acre) and intensity (i.e., floor area ratio) requirements of the pre-existing zoning designation as specified in a PD Permit and subject to obtaining a Development Agreement.**

SECTION 4. If any part of this Ordinance is held to be invalid or inapplicable to any situation by a court of competent jurisdiction, such decision shall not affect the

validity of the remaining portions of this Ordinance or the applicability of this Ordinance to other situations.

SECTION 5. This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the ____ day of _____, 2008.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ____ day of _____, 2008, by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

APPROVED:

Andy Cohen
Mayor, City of Menlo Park

ATTEST:

Sherry M. Kelly
City Clerk

ATTACHMENT G

DRAFT
March 31, 2008

ORDINANCE NO. ____

An Ordinance of the City of Menlo Park, Rescinding Ordinance No. 954 and Rezoning Property with the Primary Addresses of 550-580 Oak Grove Avenue and 540-570 Derry Lane, Collectively Known as the Derry Mixed-Use Project

The City Council of the City of Menlo Park does ordain as follows:

SECTION 1. Ordinance No. 954, An Ordinance of the City of Menlo Park, rezoning property with the primary addresses of 550-580 Oak Grove Avenue and 540-570 Derry Lane, collectively known as the Derry Mixed-Use Project or PD #7, the PD Permit for the said project, is hereby rescinded.

SECTION 2. The zoning map of the City of Menlo Park is hereby amended such that certain real property with the primary addresses of 550-580 Oak Grove Avenue and 540-570 Garwood Way (061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, 061-430-460) and more particularly described in Exhibit "A" and Exhibit "B" is rezoned from C-4 (General Commercial – Applicable to El Camino Real) to PD (Planned Development) District, subject to the terms and provisions of the PD Permit #8, approved here within.

SECTION 3. This ordinance shall become effective thirty (30) days after the date of its adoption. Within fifteen (15) days of its adoption, the ordinance shall be posted in three (3) public places within the City of Menlo Park, and the ordinance, or a summary of the ordinance prepared by the City Attorney, shall be published in a local newspaper used to publish official notices for the City of Menlo Park prior to the effective date.

INTRODUCED on the ____ day of _____, 2008.

PASSED AND ADOPTED as an ordinance of the City of Menlo Park at a regular meeting of said Council on the ____ day of _____, 2008, by the following vote:

AYES: Council Members:
NOES: Council Members:
ABSENT: Council Members:
ABSTAIN: Council Members:

APPROVED:

Andy Cohen
Mayor, City of Menlo Park

ATTEST:

Sherry Kelly, City Clerk

DRAFT PLANNED DEVELOPMENT PERMIT #8

550-580 Oak Grove Avenue and 540-570 Derry Lane Collectively Known as the Derry Mixed-Use Project

1. GENERAL INFORMATION:

- 1.1 Applicant: O'Brien at Derry Lane, LLC
- 1.2 Nature of Project: General Plan and Zoning Ordinance Amendments, Rezoning, Planned Development Permit for the construction of 24,925 square feet of commercial space in two separate buildings and 108 residential units configured in eight separate buildings, with related site improvements including partially and fully submerged parking, landscaping, and right-of-way dedication and improvements, and Tentative Subdivision Map to abandon Derry Lane public right-of-way and existing 20-foot wide storm sewer easement along the eastern boundary of the project site, merge eight parcels and the Derry Lane right-of-way, relocate the public utility easement adjacent to the southwest portion of the project site, and create 108 residential condominium units with associated common areas and a maximum of eight commercial condominium units.
- 1.3 Property Location: 550-580 Oak Grove Avenue and 540-570 Derry Lane, collectively known as the Derry Mixed-Use Project
- 1.4 Assessor's Parcel Numbers: 061-430-200, 061-430-210, 061-430-220, 061-430-230, 061-430-310, 061-430-320, 061-430-380, 061-430-460
- 1.5 Area of Property: 150,209 square feet (3.45 acres) pre-dedication, 118,293 square feet (2.72 acres) post-dedication
- 1.6 Existing Zoning: C-4 (General Commercial, Applicable to El Camino Real District)
- 1.7 Proposed Zoning: P-D (Planned Development District)

2. DEVELOPMENT STANDARDS:

- 2.1 Floor Area Ratio (FAR) shall not exceed **144.6 percent** of the project site based on land area post-dedication of the public right-of-way. Residential FAR shall not exceed **123.5 percent** of the project site area. Commercial FAR shall not exceed **21.1 percent** of the project site area, except for office uses that shall be limited to a FAR of **10.4 percent**. Below grade residential storage shall be limited to **6 percent** of the project site area, which shall be excluded from the total FAR for the site.

- 2.2 Dwelling units per acre shall not exceed **40 dwelling units per net acre**.
- 2.3 Lot coverage shall be in accordance with the approved plans
- 2.4 Minimum landscaping shall be **21 percent** of the on-site project site area.
- 2.5 The maximum amount of pavement shall be in accordance with the approved plans.
- 2.6 Building height shall not exceed **40 feet** from the average level of the highest and lowest points of the natural grade of the portion of the lot covered by the structure to the topmost point of the structure, excluding elevator and stair towers, ventilating and air conditioning equipment, and screening of the roof-mounted equipment.
- 2.7 Building setbacks shall be in accordance with the approved plans.
- 2.8 Parking shall be provided in accordance with the project plans that show a total of **301 parking spaces** on the project site. A commercial loading zone measuring nine feet wide by 66 feet long shall be provided along Derry Lane/Garwood Way.
- 2.9 The on-site circulation shall be installed according to the approved plans and maintained through the creation of a maintenance association as specified in the covenants, conditions and restrictions (CC & R's) for the project.
- 2.10 All rooftop equipment shall be fully integrated into the design of the building or fully screened. Landscaping shall screen all utility equipment that is installed outside of a building that cannot be placed underground.

3. USES

- 3.1 The project site includes a maximum of 24,925 square feet of commercial space in two commercial buildings that may be subdivided into a maximum of eight commercial condominium units. The table on the following page describes the various uses and the locations and the maximum square footage allowed for each of the uses.

Use	Ground Level	Second Level	Third Level	Maximum Floor Area (square feet)
General Offices (excluding medical/dental)	-	P	P	12,275
Retail Stores	P	-	-	12,650
Restaurants*	P	-	-	7,800
Sale of Alcohol	P	-	-	
Outdoor Seating	P	-	-	
Live Entertainment	C	-	-	

*Only High Quality Restaurant (Restaurants that are high quality, full-service eating establishments with turnover rates usually of at least one hour or longer. They do not serve breakfast (but sometimes serve lunch and always dinner), usually require reservations, and are generally not part of a chain) is permitted to occupy the entire maximum floor area for restaurants. While High Turnover (Restaurants that are sit-down, full-service eating establishments with turnover rates of approximately one hour or less. These restaurants typically serve lunch and dinner, and may also be open for breakfast. They typically do not take reservations, frequently belong to a restaurant chain, and are usually moderately priced) and Fast Food (Restaurants that are characterized by a large carryout clientele; long hours of service and high turnover rates for eat-in customers. These limited-service eating establishments do not provide table service. Patrons generally order at a cash register and pay before they eat) may occupy some of the restaurant space, they are restricted to 2,400 square feet for High Turnover (with breakfast service), 6,900 square feet for High Turnover (no breakfast service), and 650 square feet for Fast Food. Additionally, only High Turnover (with breakfast service) OR High Turnover (no breakfast service) OR Fast Food may be permitted in conjunction with High Quality for a total restaurant area of 7,800 square feet.

P = Permitted Use, C = Conditionally Permitted Use (would require a revision to the PD Permit)

3.2 The project site includes the development of 108 residential units. Permitted uses include the following for the residential component of the project:

3.2.1 Residential units (a maximum of 108); and

3.2.2 Business/Fitness/Social center to serve the residents of the residential component.

4. SIGNS

4.1 The Planned Development Permit establishes a maximum allowed sign area of 250 square feet for the entire development. All signage must be located entirely within the project site.

4.2 A Master Sign Program shall be developed by the project sponsor, subject to review and approval by the Planning Division. All signs must be reviewed and approved through the Sign Permit process with an application and applicable filing fees.

5. TERMS OF THE PERMIT

- 5.1. The Planned Development Permit shall expire **five years** from the date of approval if the project sponsor does not submit a complete building permit application within that time.
- 5.2. Minor modifications to building exteriors and locations, fence styles and locations, signage, and significant landscape features may be approved by the Community Development Director or designee, based on the determination that the proposed modification is consistent with other building and design elements, including the quality of finish materials and details, of the approved Planned Development Permit and will not have an adverse impact on the character and aesthetics of the project. The Director may refer any request for revisions to the plans to the Planning Commission for architectural control approval. A public hearing could be called regarding such changes if deemed necessary by the Planning Commission.
- 5.3. Major modifications to building exteriors and locations, fence styles and locations, signage, and significant landscape features may be allowed subject to obtaining an architectural control permit from the Planning Commission, based on the determination that the proposed modification is compatible with the other building and design elements of the approved Planned Development Permit and will not have an adverse impact on the character and aesthetics of the project. A public hearing could be called regarding such changes if deemed necessary by the Planning Commission.
- 5.4. Major revisions to the development plan which involve material changes in land use, expansion or intensification of development or a material relaxation in the standards of development set forth in Section 2 above constitute permit amendments that require public hearings by the Planning Commission and City Council.
- 5.5. Any application for a modification or amendment pursuant to 5.2, 5.3, or 5.4 shall be made by in writing by the project sponsor or condominium association to the Planning Division.

6. PROJECT CONDITIONS:

- 6.1. Development of the project shall be substantially in conformance with the following plans approved by the City Council on _____, 2008 except as modified by the conditions contained herein:
 - The Steinberg Group, dated received March 24, 2008, consisting of 31 plan sheets; and
 - BKF, dated received March 24, 2008, consisting of 14 plan sheets.

- 6.2. Within two years from the date of approval of the tentative subdivision map, the project sponsor shall submit a Final Map for review and approval of the City Council, subject to any extensions as may be granted by the Community Development Director. The Final Map shall use a benchmark selected from the City of Menlo Park benchmark list as the project benchmark and the site benchmark. All right of way dedication, public street and easement abandonments, lot mergers, and new easement dedications must take place on the final map. Phasing of these items will not be allowed. The improvement plans, described in condition 6.4, shall be approved by the Public Works Department prior to approval of the Final Map.
- 6.3. Concurrent with submittal of the Final Map, the project sponsor shall submit Covenants, Conditions and Restrictions (CC & R's) for the approval of the City Engineer and the City Attorney. .Prior to Final Map approval, the CC&R's must be reviewed and approved by the Engineering Division and City Attorney. The approved CC & R's shall be recorded with the Final Map. The CC&R's shall incorporate of the off-site maintenance agreements with the City (identified in condition 6.10), commercial condominium use restrictions related to the type, size, and location of the units, and administration of the Transportation Demand Management (TDM) plan as identified in Condition 6.41.
- 6.4. Concurrent with submittal of the Final Map, the project sponsor shall submit a complete public right-of-way Improvement Plan package, which shall include, but is not limited to, the items listed below. Fees in the amount of 50% of the engineering fees based upon preliminary engineer's estimate will be collected at the first improvement plan submittal. The Improvement Plan package shall consist of construction plans for improvements in the public right-of-way and is subject to review and approval by the Engineering, Transportation, Building, and Planning Divisions.
 - a. Signage and striping plan, including, parking signs, types of striping, red curb painting areas, etc;
 - b. Grading and drainage plan, including erosion and sediment control;
 - c. Stormwater pump design and calculations;
 - d. Lighting plan with a photometric and load capacity analysis supporting proposed public streetlight design;
 - e. Structural calculations for the soundwall;
 - f. Lighted crosswalk details;

- g. Landscaping and irrigation plan, including landscaping details for the Public Access Easement connecting Derry Lane/Garwood Way to the proposed 1300 El Camino Real project. Additionally, a heritage tree replacement plan shall be submitted for review and approval by the City Arborist;
- h. Utility plan showing all new or upgraded utilities and profiles for all proposed utilities in the public right-of-way. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes. The project sponsor shall work with West Bay Sanitary District to determine if the existing infrastructure cannot accommodate increased flow, and replacement of the main is required. If required, this shall be included on the utility plan. Landscaping shall properly screen all utility equipment that is installed outside of a building and cannot be placed underground;
- i. Street trench restoration details that conform to City standard details;
- j. Approval letters from CalWater and West Bay Sanitary District for public utility improvements;
- k. Best Management Practices plan incorporating as many concepts as practicable from *Start at the Source, Design Guidance Manual for Stormwater Quality Protection*, including consideration of installing “end-of-pipe” treatment systems (MM HYD-1);
- l. Department of Toxic Substances Control groundwater protection certification and a Risk Management Plan (RMP) establishing soil mitigation and control specifications for grading and construction activities at the site. To be consistent with the approved Final EIR, the RMP shall include the elements listed in the Mitigation and Monitoring Report for this project (MM HAZ-1 and HAZ-2);
- m. Letter from San Francisco Public Utilities Commission acknowledging the construction activity over their water pipeline;
- n. Letter from the project arborist indicating his/her approval for the locations of all proposed trenches near trees; and
- o. Project engineer’s preliminary estimate of construction costs.

6.5. Concurrent with the improvement plan submittal, the project sponsor shall file a Notice of Intent (NOI) with the State Water Resources Control Board and prepare a Stormwater Pollution Prevention Plan (SWPPP) per Section

III of the "Project Applicant Checklist for NPDES Permit Requirements". It is not required that the SWPPP be submitted to the Regional Water Quality Control Board (RWQCB), but must be maintained onsite and made available to RWQCB staff upon request. To be consistent with the approved Final EIR, the SWPPP shall include the elements listed in the Mitigation and Monitoring Report for this project. A copy of the NOI and SWPPP shall be provided to the Engineering Division.(MM HYD-1)

- 6.6. Prior to approval of the Final Map, the project sponsor shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.
- 6.7. Prior to approval of the Final Map, the project sponsor shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- 6.8. Prior to Final Map approval, the project sponsor shall obtain a demolition permit for each of the buildings and demolish the existing structures. Separate demolition permit applications shall be made for each parcel.
- 6.9. Prior to Final Map approval, the project sponsor shall pay applicable recreation fees (in lieu of dedication) per Section 15.16.020 of the Subdivision Ordinance. Recreation in lieu fees shall be based upon a valuation of \$4 million per acre. In addition to the recreation fee, the project sponsor shall pay fees for the final subdivision map, improvement plan check, construction inspection, storm drainage fees, and encroachment permit.
- 6.10. Prior to Final Map approval, the project sponsor shall enter into a maintenance agreement with the City of Menlo Park designating that the property owner or association(s) shall have responsibility for all aspects of maintenance of the following features in the public right-of-way, subject to review and approval by the Public Works Department and the City Attorney's office. Maintenance responsibilities shall also be incorporated in the CC&R's.
 - a. Vegetated swale and trees (with non-standard spacing) on the northeast side of Derry Lane/Garwood Way;
 - b. Pedestrian paving, accent concrete, and the pedestrian seatwall along Oak Grove Avenue;
 - c. Storm drain dewatering sump pump at Glenwood Avenue and Derry Lane/Garwood Way;
 - d. Pedestrian pathway along the vegetated swale;

- e. Soundwall along the railroad right-of-way;
 - f. Trees located along the Oak Grove Avenue and Derry Lane/Garwood Way project frontages; and
 - g. Lighted crosswalk at Oak Grove Avenue and Merrill Street.
- 6.11. Prior to Final Map approval, the project sponsor shall enter into a subdivision agreement with the City of Menlo Park. The project sponsor shall construct or bond for all off-site improvements per City standards, subject to the review and approval of the Engineering Division. Any cost sharing with other property owners for the off-site improvements shall be via private agreement between the two parties.
- 6.12. Prior to Final Map approval, the project sponsor shall provide the Engineering Division with a copy of the schematic/conceptual joint trench plans. All electric and communication lines servicing the project shall be placed underground. Each unit shall have separate utility service connections.
- 6.13. Concurrent with Final Map recordation, the project sponsor shall submit proof of recordation of the Below Market Rate (BMR) Housing Agreement.
- 6.14. The project sponsor shall obtain an encroachment permit prior to commencing any work within the right-of-way or public easements. A traffic control plan is required at encroachment permit submittal, and the encroachment permit issuance is subject to the review and approval of the traffic control plan by the Transportation Manager.
- 6.15. Concurrent with demolition permit submittal, the project sponsor shall also submit a heritage tree preservation plan, detailing the location of and methods for all tree protection measures, as described in the arborist report. The project arborist shall submit a letter confirming adequate installation of the tree protection measures. The project sponsor shall retain an arborist throughout the term of the project, and the project arborist shall submit periodic inspection reports to the City.
- 6.16. Concurrent with demolition permit submittal, the project sponsor shall submit a phased plan for construction safety fences around the periphery of the construction area and a demolition Erosion and Sedimentation Control Plan. The fences and erosion and sedimentation control measures shall be installed according to the phased plan prior to commencing each construction phase. The plans shall be reviewed and approved by the Building and Planning Divisions prior to issuance of a demolition permit.

- 6.17. Concurrent with demolition permit submittal, the project sponsor shall submit a truck route plan and permit to be reviewed and approved by the Transportation Manager.
- 6.18. Concurrent with demolition permit submittal, the project sponsor shall prepare a dust control plan. The plan shall be reviewed and approved by the Building Division prior to demolition permit issuance. Consistent with guidance from the Bay Area Air Quality Management District (BAAQMD), the following measures shall be required of construction contracts and specifications for the project as part of the dust control plan.
- a. Contact information for an on-site complaint and enforcement manager shall be posted on the job trailer and at the project site entrance to allow for responses to and tracking of complaints.
 - b. The following controls shall be implemented during demolition:
 - Watering shall be used to control dust generation during demolition of structures and break-up of pavement;
 - Cover all trucks hauling demolition debris from the site; and
 - Use dust-proof chutes to load debris into trucks whenever feasible.
 - c. The following controls shall be shown on the building permit plans and implemented during construction:
 - Water all active construction areas at least twice daily and more often during windy periods; active areas adjacent to existing land uses shall be kept damp at all times, or shall be treated with non-toxic stabilizers or dust palliatives;
 - Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard;
 - Pave, apply water three times daily, or apply (nontoxic) soil stabilizers on all unpaved access roads, parking areas, and staging areas at construction sites;
 - Sweep daily (with water sweepers) all paved access roads, parking areas, and staging areas at construction sites; water sweepers shall vacuum up excess water to avoid runoff-related impacts to water quality;
 - Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets;
 - Apply nontoxic soil stabilizers to inactive construction areas;
 - Enclose, cover, water twice daily, or apply non-toxic soil binders to exposed stockpiles (dirt, sand, etc.);
 - Limit traffic speeds on unpaved roads to 15 mph;
 - Install sandbags or other erosion control measures to prevent silt runoff to public roadways; and

- Suspend excavation and grading activity when winds (instantaneous gusts) exceed 25 mph (MM AIR-1 and AIR-3).
- 6.19. Concurrent with demolition permit submittal, an asbestos and lead-based paint survey shall be performed and submitted to the Building Division for review and approval prior to the issuance of a demolition permit. If asbestos-containing materials are determined to be present, a certified asbestos abatement contractor in accordance with the regulations and notification requirements of the BAAQMD shall abate the materials. If lead-based paint is identified, then Federal and State construction worker health and safety regulations shall be required during demolition activities, and any required worker health and safety procedures shall be incorporated into the Risk Management Plan (RMP) for the project. If loose or peeling lead-based paint is identified, the paint shall be removed by a qualified lead abatement contractor and disposed of in accordance with existing hazardous waste regulations. (MM HAZ-3)
- 6.20. Concurrent with demolition permit submittal, a Construction Noise and Vibration Control Plan shall be submitted for review and approval by the Planning and Building Divisions prior to demolition permit issuance. The following measures shall be included in the Plan and implemented during demolition and construction.
- a. A pre-construction meeting shall be held with Code Enforcement and the general contractor/on-site project manager to confirm that noise mitigation and practices are completed prior to issuance of a building permit.
 - b. Five days prior to soil compaction for the right-of-way improvements, the project sponsor shall notice property owners and occupants within a 500-foot radius of the proposed construction area regarding the upcoming construction and expected noise and vibration levels.
 - c. Site-specific noise and vibration reduction measures to reduce daytime noise and vibration impacts due to construction to the maximum extent feasible, subject to Building and Planning Division review and approval. The program shall include the following measures and be shown on the building permit plans:
 - Signs posted at the construction site that include permitted construction days and hours, a day and evening contact number for the job site, and a day and evening contact number for the City in the event of problems;
 - Contact information for an on-site complaint and enforcement manager posted on-site to allow for responses to and tracking of complaints.

- Equipment and trucks used for project construction shall utilize the best available noise and vibration control techniques (e.g., improved mufflers, equipment redesign, use of intake silencers, ducts, engine enclosures, and acoustically attenuating shields or shrouds, wherever feasible);
- Impact tools (e.g., jack hammers, pavement breakers, and rock drills) shall be hydraulically or electrically powered wherever possible to avoid noise associated with compressed-air exhaust from pneumatically powered tools; where use of pneumatic tools is unavoidable, an exhaust muffler on the compressed-air exhaust shall be used; quieter procedures shall be used, such as drills rather than impact equipment, whenever feasible; and
- Stationary noise sources shall be located as far from sensitive receptors as possible and shall be muffled and enclosed within temporary sheds or insulation barriers or other measures shall be incorporated to the extent feasible. (MM NOISE-1)

6.21. Prior to demolition permit issuance, the project sponsor shall relocate all trees that are scheduled to be relocated and provide a letter confirming the replanting location(s) to the Planning Division.

6.22. Prior to demolition permit issuance, the project sponsor shall submit an Archeological Monitoring and Data Recovery Plan (AMDRP) prepared by a qualified professional archaeologist. The AMDRP shall detail protocol for subsurface examination to determine the presence, nature, extent, and potential significance of archaeological deposits that may be encountered by project activities. This plan shall be submitted to the Planning Division for review and approval. Prior demolition, excavation, grading, or other construction-related activities on the site, the qualified professional archaeologist shall conduct a subsurface examination. If such deposits exist, and cannot be avoided by project activities, they shall undergo a California Register eligibility assessment. If such deposits are California Register eligible, project impacts to these deposits shall be mitigated through archaeological data recovery, in accordance with *CEQA Guidelines* Section 15126.4(b)(3)(C). If such deposits are not California Register eligible, no further study, report, or protection is warranted. If archaeological data recovery is conducted, feasible efforts shall be made to publicly display the interpretive findings of the investigation. The Menlo Park Historical Society shall be consulted regarding the potential use of the archaeological findings for interpretive opportunities. Such opportunities may include, but are not limited to, museum, library, or Menlo Park Historical Society interpretive displays. A report shall be prepared to document the methods, findings, and recommendations of the archaeologist conducting the work. The report shall be submitted to the Planning Division, the project sponsor, and the Northwest Information Center at Sonoma State University (NWIC). (MM CULT-1)

- 6.23. Prior to issuance of the demolition permit and the foundation/podium permit, the project sponsor shall pay the demolition and construction recycling deposits (Chapter 12.48 of the City of Menlo Park Municipal Code).
- 6.24. Prior to the issuance of the demolition, grading and excavation, foundation/podium, and other building permits, the project sponsor shall pay the applicable Building Construction Street Impact Fee
- 6.25. Prior to any building permit issuance, except for demolition permit, the approved Final Map shall be recorded at the County Recorder's Office. The project sponsor shall provide documentation of the recordation of the Final Map at the County Recorder's Office to the Engineering and Planning Divisions.
- 6.26. Concurrent with the grading and excavation permit submittal, the project sponsor shall submit a qualified paleontologist's paleontological assessment that determines if monitoring during construction activities for paleontological resources is necessary. The assessment shall include: (1) the results of any geotechnical investigation conducted for the project area; (2) specific details of the construction plans for the project area; (3) background research; and (4) limited subsurface investigation within the project area. If the possibility of paleontological resources is confirmed, a paleontological monitoring plan shall be prepared in conjunction with this evaluation. Upon completion of the paleontological assessment, a report documenting methods, findings, and recommendations shall be prepared and submitted to the Planning Division, the project sponsor, and the Northwest Information Center. The Planning Division shall review and approve the assessment. (MM CULT-2)
- 6.27. Concurrent with the grading and excavation permit submittal, the project sponsor shall submit a shoring plan for review and approval by the Building Division. Grading and excavation permit issuance is subject to the Building Official's discretion.
- 6.28. Should human remains be encountered during project construction activities, construction activities shall be halted and the project sponsor shall notify the Building Division and County Coroner, immediately. If the human remains are of Native American origin, the Coroner shall notify the Native American Heritage Commission (NAHC) within 24 hours of this identification, and a qualified archaeologist shall be contacted to evaluate the situation. The NAHC will identify a Native American Most Likely Descendent (MLD) to inspect the site and provide recommendations for the proper treatment of the remains and associated grave goods. The archaeologist shall recover scientifically valuable information, as appropriate and in accordance with the recommendations of the MLD. Upon completion

of such analysis and/or recovery, the archaeologist shall prepare a report documenting the methods and results of the investigation. This report shall be submitted to the Building Division and Planning Division, the project sponsor and the Northwest Information Center at Sonoma State University (NWIC). (MM CULT-3)

- 6.29 Concurrent with foundation/podium permit submittal, a design-level geotechnical investigation report shall be submitted to the City of Menlo Park Building Division for review and confirmation that the proposed development fully complies with the California Building Code. The report shall be approved prior to foundation/podium permit issuance. The report shall determine the project site's surface geotechnical conditions and address potential seismic hazards such as liquefaction and subsidence. The report shall identify building techniques appropriate to minimize seismic damage. In addition, the analysis presented in the geotechnical report shall conform to the California Division of Mines and Geology recommendations presented in the *Guidelines for Evaluating Seismic Hazards in California*. The design-level geotechnical investigation report shall also include measures to ensure potential damage related to expansive soils and non-uniformly compacted fill are minimized. Mitigation options may range from removal of the problematic soils, and replacement, as needed, with properly conditioned and compacted fill to design and construction of improvements to withstand the forces exerted during the expected shrink-swell cycles and settlements. (MM GEO-1 and GEO-2)
- 6.30 Concurrent with foundation/podium permit submittal, a detailed vibration analysis shall be conducted by a qualified Acoustical Specialist, in accordance with FTA standards, and submitted for review and approval by the Building and Planning Divisions prior to foundation/podium permit issuance. This analysis shall include modifications to the project that would reduce vibration levels to under 72 VdB, possibly including the use of extensive shear wall implementation and/or deeper floor joists. The project sponsor shall incorporate vibration reduction measures recommended in the analysis such that vibration levels within the project site are reduced to less than 72 VdB. (MM NOISE-4)
- 6.31 Prior to the foundation/podium permit issuance, the project sponsor shall pay the School Impact Fee.
- 6.32 Prior to foundation/podium permit issuance, the project sponsor shall contribute traffic impact mitigation fees of \$1.60 per square foot of net new commercial square footage and \$708 per new residential unit. (MM TRANS-FEE)
- 6.33 Prior to issuance of a building permit beyond foundation/podium, in consultation with the Engineering Division and West Bay Sanitary District,

- the project sponsor shall be responsible for replacing the existing sanitary sewer main in the Oak Grove Avenue right-of-way if it is determined that the existing infrastructure cannot accommodate increased flow. The replacement of this main would require a bore and jack operation under the existing railroad tracks, necessitating the coordination with the appropriate agencies related to Caltrain. (ULT-1)
- 6.34 Prior to issuance of a building permit beyond foundation/podium, the project sponsor shall submit a Condominium Plan for review and approval by the Engineering Division and City Attorney's office. The approved Condominium Plan shall be recorded as an amendment to the approved CC&R's prior to release of occupancy for the first unit in the project.
- 6.35 Prior to issuance of a building permit beyond foundation/podium, street improvements for Derry Lane/Garwood Way between Glenwood Avenue and Oak Grove Avenue shall be constructed per the approved plans and in place. This shall include operable fire hydrants, all street improvements from curb to curb (inclusive of curb), underground utilities in and crossing Derry Lane/Garwood Way and street construction up through the final two-inch lift of asphalt. The improvements shall be subject to review and approval by the Public Works Department.
- 6.36 Concurrent with building permit submittal, a detailed acoustical analysis by a qualified Acoustical Specialist, in accordance with State and City standards, shall be submitted to the Building and Planning Divisions for review and approval prior to building permit issuance. This analysis shall include modifications to the project that would reduce traffic- and train-related exterior and interior noise levels (including single event noises such as train whistles) to Conditionally Acceptable levels (at a minimum), as stated in the Noise Element of the General Plan. These modifications could include the features listed in the Mitigations Monitoring and Reporting Plan (MMRP), however, more suitable options may be recommended at the time the acoustical analysis is prepared. The project sponsor shall incorporate noise reduction measures recommended in the acoustical study in the revised plans. (MM NOISE-2 and NOISE-3)
- 6.37 Concurrent with building permit submittal, a plan shall be provided that details that all on-site stationary noise sources shall comply with the standards listed in Section 08.06.030 of the City's Noise Ordinance. This plan shall be subject to review and approval by the Building Division prior to each building permit issuance. (MM NOISE-5)
- 6.38 Concurrent with building permit submittal, a detailed on-site landscape plan, including the size, species, and location, and an irrigation plan shall be submitted for review and approval by the Planning Division. The plan shall

include a statement of compliance with the Water Efficient Landscaping Ordinance (Municipal Code Chapter 12.44).

- 6.39 Concurrent with building permit submittal, an on-site lighting proposal with a photometric study shall be reviewed and approved by the Planning Division prior to building permit issuance. This review shall ensure that any outdoor lighting for the project is oriented downwards and is designed to minimize lighting or glare off-site. (MM AES-1)
- 6.40 Prior to release of occupancy for the first unit in the project, the project sponsor shall submit a Transportation Demand Management (TDM) Program, including provisions for payment of the annual Shuttle Fee of 10.5 cents per square foot of commercial space, for review and approval by the Planning and Transportation Divisions and the City Attorney's office. Payment of this annual fee by the owner of the commercial space or the association shall be included as part the project CC&R's. Concurrent with the start of occupancy of the first unit, the project sponsor shall implement the approved TDM measures. These programs shall be ongoing for the occupied life of the development. (MM TRANS-TDM)
- 6.41 Prior to release of occupancy for the first unit in the project, all public improvements for Derry Lane/Garwood Way between Glenwood Avenue and Oak Grove Avenue located outside of the curbs and travel way, (including but not limited to landscaping, vegetated swale and walkable path, soundwall, sidewalks, and streetlights) shall be fully constructed and accepted. Additionally, the lighted crosswalk at Derry Lane/Garwood Way and Merrill Street shall also be constructed. The improvements shall be subject to review and approval by the Public Works Department.
- 6.42 Prior to release of occupancy for the first unit, the project sponsor shall install signage restricting parking to two hours from 7 AM to 6 PM on Monday through Saturday for the new on-street parking spaces on Derry Lane/Garwood Way and the existing spaces on the north side of Oak Grove Avenue, subject to approval by the Transportation Manager.
- 6.43 Prior to final building inspection of each phase of the project, on-site landscape shall be installed per the approved landscape plan, subject to review and approval by the Planning Division.
- 6.44 This Planned Development Permit is subject to the terms and provisions of the Development Agreement approved by the City Council concurrently with the approval of this permit.

Considered by the Menlo Park
Planning Commission on
March 31, 2008

Approved by the
Menlo Park City Council on
_____ 2008

Arlinda Heineck, Community
Development Director

Sherry Kelly, City Clerk

v:\staffrpt\pc\2008\derry\revised pd permit 2.doc



HOUSING COMMISSION DRAFT MINUTES
EXCERPTS
Regular Meeting
March 5, 2008
5:30 p.m.
Administrative Building Conference Room, First Floor
701 Laurel Street, Menlo Park, CA 94025-3483

CALL TO ORDER

Chairperson Lasensky called the meeting to order at 5:30 p.m. in the Administrative Building Conference Room.

ROLL CALL

Housing Commission Members Present: Patricia Boyle, Don Brawner, Elizabeth Lasensky (Chair), Carol Louchheim, Clarice O'Neal (Vice-Chair).

Housing Commission Members Absent: Elza Keet, Anne Moser.

Staff Present: Douglas Frederick, Housing Manager; Megan Fisher, Associate Planner; Megan Nee, Management Analyst.

2. Proposed Below Market Rate (BMR) Agreement for Project Located at 550-580 Oak Grove Avenue and 540-570 Derry Lane

Chair Lasensky announced that she is recusing herself from the discussion of the proposed BMR Agreement for this project because she is on the BMR Waiting List for one-bedroom units. She said that Commissioner Boyle had requested to serve as acting Chair in her absence and that Vice-Chair O'Neal had agreed to the request. Vice-Chair O'Neal then stated that she approves the request.

Housing Manager Frederick began the discussion by providing a summary of the proposed project and BMR Agreement. He explained that the applicant, O'Brien at Derry Lane, LLC, is proposing to demolish existing commercial uses and construct 108 new residential units and 24,925 square feet of commercial space on 3.45 acres located at Oak Grove Avenue and Derry Lane. When the residential and commercial portions of the proposed project are considered together, he said, the BMR requirement is for 16.57 BMR units. The applicant proposes to meet the requirement by providing 16 BMR units and paying in lieu fees of \$103,250 for the fractional unit.

Housing Manager Frederick said that staff is recommending that the Commission recommend approval of the BMR Agreement, subject to some revision. One change that staff recommends is that the BMR units not be "stacked" or similarly located on each floor. He said there is a need for one and two-bedroom BMR units and staff also recommends that the applicant provide 17 BMR units rather than 16 plus payment of the in lieu fee. He also explained that a grant application to cover infrastructure costs is being submitted to the State. If the grant is approved, he

said, the applicant has said that they will reduce the income level of BMR units from moderate to low-income.

Jim Pollart, representing O'Brien at Derry Lane, LLC, provided a brief history of the project. He began by saying that an earlier version of the proposed project was approved by the City Council in August 2006. In October 2006, a referendum petition was submitted to the City. Then, in May 2007, the project applicant and the referendum group announced a settlement. In September 2007, the applicant submitted plans to the City for a revised project based on the settlement. The revised project plans are currently undergoing review by City staff.

Mr. Pollart described the new, revised project and how it has changed from the original proposed project. He said that the revised project is smaller but is the same project with some specific changes. He said that the layout and configuration are the same and there are the same number of buildings. He identified the changes to the project proposal, as follows:

- a). The fourth floor of the building, consisting of ten residential condominium units, was eliminated.
- b). The overall residential density was reduced by 20%, or 27 units.
- c). The public courtyard located off of Oak Grove Avenue was expanded.
- d). An additional 2,400 square feet of commercial space was added.
- e). Residential space on the third floor was converted to office space.

Acting Chair Boyle asked about parking access and Vice-Chair O'Neal asked where the building's residents will park. Mr. Pollart responded that there is resident-only parking at the back of the garage and residents may also park anywhere on the second level of the garage. He said that all of the project's required parking is located in the garage and extra parking is being provided by 26 on-street spaces. There will be two levels of parking in the one garage, he said. He added that most of the garage parking will be below-grade. The first level of parking will have some access to daylight and ventilation because it is not entirely below-grade, he said. He concluded that the applicant will be providing a new public street parallel to the railroad track.

Commissioner Louchheim asked about soundproofing for residential units located nearest the railroad track. Mr. Pollart replied that there will be soundproofing as needed and that residential units located along the new public street near the railroad track will have internal orientations and the walls nearest the railroad track will be pretty solid without windows.

Mr. Pollart said that he would like to address the concerns raised in Housing Manager Frederick's staff report. He said that, regarding staff's preference for 17 BMR units rather than 16, the Settlement Agreement states that they will provide 16 BMR units. He said that they will also be providing two million dollars of public

benefit and it is not economically viable to round up to 17 units. He referenced the email (attached to the staff report) that he sent to Housing Manager Frederick, which details these concerns. He added that, related to the current mortgage crisis, the economy is not good right now and construction costs are not going down.

Mr. Pollart explained that O'Brien at Derry Lane, LLC has responded to staff's concern regarding the "stacking" of BMR units. He said that they are now proposing to "stack" 80 percent of the units, with the remaining 20 percent distributed elsewhere within the project. He added that another change is to have a two-bedroom corner BMR unit on the first floor, as in the old, original BMR proposal. He said that the BMR units are evenly distributed between floors and between the front of the community and the back. He concluded by saying that the BMR units are exactly the same as the market rate units and have the same finishes.

Commissioner Louchheim said she takes issue with rounding down from 16.2 required BMR units (for the residential portion of the development) to 16. She said that usually developers round up and that the Settlement Agreement was not with the City. She would like to see the applicant round up to 17 BMR units, she said. She added, however, that she is very pleased that they are one and two-bedroom units because they are very much needed. She inquired about the overall mix of units and what the applicant thinks the market will be, given the project's location. Mr. Pollart responded that 80 percent of the proposed homes will be one and two-bedroom units. He said he anticipates that there will be several different kinds of buyers but would not be comfortable with a higher proportion of three-bedroom units. In response to an inquiry from the Commission, Mr. Pollart said he anticipates that the market rate three-bedroom homes will be priced in the \$900,000 dollar range.

Acting Chair Boyle asked Mr. Pollart if the applicant reduced the number of three-bedroom residential units and replaced them with an additional number of smaller units, would they earn more or less. Mr. Pollart replied that he cannot discuss this. Acting Chair Boyle said that she is trying to understand how it would affect their profit margin and, therefore, the feasibility of providing an additional BMR unit. Mr. Pollart said it probably wouldn't be of economic benefit to reduce the number of three-bedroom units and replace them with additional smaller units. He said that what is relevant is the economic cost of providing a BMR unit, which is \$600,000-\$650,000 dollars.

Maurice Brown, Menlo Park resident, commented that the condominium association fees at a nearby residential development on Merrill Street (Menlo Square development) are too high for BMR buyers. Housing Manager Frederick responded that association fees are factored into the calculation of BMR sales prices, which lowers the cost of the BMR units. Menlo Park resident David Speer spoke in favor of the applicant and their generous \$2 million dollar contribution to the city. He said that the \$2 million is discretionary revenue, which is hard to come by. He concluded that it is only fair that they should be allowed to pay the in lieu fee like other commercial projects.

Commissioner Louchheim made a motion to recommend that the applicant provide 17 BMR units rather than 16 units plus in lieu fees. There was no second and the motion was dropped.

M/S O'Neal/Brawner to recommend approval of the applicant's proposal to provide 16 BMR units plus in lieu fees to be paid on two market rate units, per the Draft BMR Agreement for 550-580 Oak Grove Avenue and 540-570 Derry Lane; 4-0-0. M/S Boyle/Louchheim to recommend approval of the applicant's proposed amended placement of BMR units within the development, in which 80 percent of BMR units are stacked and 20 percent are not, and in which a two-bedroom corner unit on the first floor is designated a BMR unit; 3-0-1 with Commissioner Brawner abstaining.

3. Below Market Rate (BMR) Proposal for 1300 El Camino Real

Chair Lasensky returned to the Commission and resumed her role as Chair.

Housing Manager Frederick began the discussion by providing a summary of the proposed project and BMR Agreement. He explained that the applicant, Sand Hill Property Company, is proposing to develop a commercial project on property located at 1300 El Camino Real, in the block between Oak Grove Avenue and Glenwood Avenue. The applicant is proposing to demolish buildings associated with an existing vacant auto dealership and construct two commercial buildings for a total of 110,066 square feet and approximately 420 parking spaces located at grade and in an underground parking structure. Housing Manager Frederick said that the applicant's proposal includes a primary project and two variations, in which the proposed mix of uses varies. The primary project description and a project variation include commercial uses only. Additionally, an alternative is being studied as part of the Environmental Impact Report (EIR) that would include an 84,881 square foot commercial building and a 41,694 square foot residential building with 36 two-bedroom units.

Housing Manager Frederick explained that, because it is through the review process that the final project will be determined, the applicant has submitted three distinct Draft BMR Agreements. The first agreement is for the commercial project, which includes payment of an in-lieu fee in the amount of \$966,122 and no actual BMR units. He said that staff believes this is an appropriate approach to meeting the BMR requirement for this project proposal. The second and third agreements are for mixed use commercial and residential projects. The second agreement specifies rental units and the third ownership units. When the residential and commercial portions of the project are considered together, the requirement is for 7.63 BMR units, and the applicant is proposing to meet the requirement by rounding up to 8 BMR units. He concluded that staff believes this is an appropriate approach to meeting the BMR requirement for this proposal.

Jeff Warmouth, representing the applicant, provided some background on the alternative project proposals. He said that initially the City Council said it wanted a project that conforms with the existing zoning for the site. Therefore the applicant studied this. Then, at a City Council study session, the question of housing was brought up. He said that the proposed project is commercial but the residential

alternative is there as well. It will depend what the City wants to be built, he said. He said that, if the project is commercial in nature, the applicant is proposing to pay an in lieu fee. He said the proposal that includes a residential component is a separate proposal and that no portion of the project is taller than 40 feet. He explained that most of the parking is underground except for some "teaser parking" along El Camino Real. All 36 proposed residential units are identical, he said. He concluded that they are proposing to provide 8 BMR units, rather than 7 plus the fee, because it is part of the company's mission and a personal preference of the firm.

Commissioner Brawner said that he sees all of these projects as being a parking problem. In response to a question by the Commission, Mr. Warmouth said that the applicant normally builds rental housing and would probably prefer to do so here. Commissioner Louchheim asked if it had been a long time since there was the possibility of a new rental development and Associate Planner Fisher responded yes, it has been a while. Commissioner Louchheim said she just hopes the project includes housing and thanked the developer for rounding up the number of BMR units. Commissioner Brawner commented that he is amazed that anyone would want more housing and that there should only be retail uses there. Commissioner Louchheim asked if the project contains housing, could it mitigate the traffic demand. Housing Manager Frederick responded that we can't really answer this question because we don't have a transportation planner present.

Commissioner Boyle asked Mr. Warmouth about the timeframe for the proposed development and he responded that it should take 18 months to complete. He added that if everything goes as planned, the applicant could break ground by the end of the year. Chair Lasensky said she had some questions on behalf of Commissioner Moser, who was unable to attend the present meeting. She said that in reference to the proposed, mixed commercial and residential site plan, it appears that there are no windows in the second bedroom of the sample floor plan. Mr. Warmouth examined the sample floor plan and replied that it appears to be drawn without windows but it should have them. Chair Lasensky also asked on behalf of Commissioner Moser if the units will have balconies. Mr. Warmouth responded yes, each unit would have something. He noted, however, that the proposed units are quite small. He said they are apartment size, not condominium size. Chair Lasensky asked Mr. Warmouth how much the proposed units would rent and sell for, at market rates. He responded that he estimates each market rate unit will rent for under \$2,000 per month or sell for approximately \$450,000. Chair Lasensky inquired as to whether or not the project would be LEED certified and Mr. Warmouth replied yes, it will likely be LEED accredited but it's too early to tell what level of accreditation it will receive.

Morris Brown, Menlo Park resident, commented that the underlying zoning on El Camino Real calls for six parking spots per thousand and, since the proposed project allows for five spots per thousand, he worries about parking. He added that housing costs the City money by requiring added services. He concluded by saying he acknowledges that housing is a need and that retail benefits the City.

Commissioner Louchheim asked who would spend more at Menlo Park businesses, people who live in the city or people who work in the city. Mr. Warmouth responded that he has no real data on this but probably citizens. He added, however, that 80 percent of lunch traffic is from employees of city businesses.

Menlo Park resident David Speer asked if the proposed projects would require rezoning and Associate Planner Fisher responded yes, rezoning would be required for both commercial and mixed commercial/residential proposals. She also clarified that the zone-based parking requirement for the proposed project site is six parking spots per thousand. In conclusion, Mr. Speer said he supports a commercial development proposal for the site. Allen Gustaffson, member of the public, said the demand for rental apartments would be good. He also said that five parking spaces per thousand would not be considered low. Mr. Warmouth said he is confident his potential commercial tenants, all very high quality, will be very pleased with five parking spaces per thousand.

M/S Louchheim/Boyle to recommend approval of the three Draft BMR Agreements for 1300 El Camino Real, including the two possible housing options in addition to the commercial only options, with preference for a mixed commercial and residential project; 4-0-0. Commissioner Brawner left the meeting prior to the motion.

E. ADJOURNMENT: The meeting was adjourned at 7:30 PM.

Respectfully submitted,

Megan Nee
Management Analyst

Frequently Asked Questions on the Derry Project Settlement Agreement and Referendum

1. Why can the Planning Commission and City Council not see the full Settlement Agreement between Menlo Park Tomorrow and the O'Brien Group?

The City is not a party to the Settlement Agreement and only a portion of the confidential Settlement Agreement, Section 2, has been made public. Pursuant to the terms of the Settlement Agreement, all but Section 2 are confidential and relate to the rights, duties and obligations of the parties.

2. To what extent is the City bound or limited by the Settlement Agreement?

The City is not a party to the Settlement Agreement and is not bound by it. The Settlement Agreement establishes parameters for a revised project to which both Menlo Park Tomorrow and the O'Brien Group are agreeable. Similar to other lawsuits over land use that reach a negotiated settlement, this settlement has resulted in a scaling back of the size of the project.

The applicant has presented the revised project, as scaled back by the Settlement Agreement, to the City for approval. The City will review the revised project and has the discretion to approve, deny or impose additional restrictions or conditions on the project or to approve a project that is larger than the project contemplated in the Settlement Agreement.

3. What happens if the City Council approves a project that differs from the Settlement Agreement?

If the City Council approves a project that does not fit within the parameters defined in the Settlement Agreement, the Settlement Agreement becomes null and void. It is as if there was no settlement and the City will need to either rescind the approvals or put the matter before the voters (unless the Council determines the form of petition is not valid).

If, however, both parties to the Settlement Agreement agree to the project changes proposed by the City, so long as the project with the proposed changes falls within what was considered by the EIR, then the changes could be implemented without upsetting the settlement.

In addition, the Settlement Agreement contemplates that there could be non-material changes to the project that would not upset the settlement. The terms of the Settlement Agreement limit the intensity of development (i.e. number of units, total FAR for the project, maximum FAR for the commercial, maximum FAR for offices, minimum number of parking spaces on site, and maximum height) and require comparable quality of design and finishes, but allow some flexibility in terms of design and layout.

4. What if the City is interested in accepting the project in its original form?

The City has to respond to the referendum petitions, either rescind the previous ordinances that were the subject of the referendum or put the matter to a vote (unless the Council determines the form of petition is defective and therefore invalid). The City cannot simply accept the project in its original form without taking some action to the referendum petitions.

If the City Council rescinds the previous approvals, the same or substantially the same project cannot be considered for approval within one (1) year of the date the zoning ordinances are repealed, unless the project is approved by the voters.

If the applicant resubmits the original project (after one year) or a modified version of the project as a new project, it would have to go through the entire application process again, including California Environmental Quality Act review. The applicant could use some of the existing environmental information from the original EIR, but to the extent there are new traffic counts, or newly approved projects, that have occurred prior to the receipt of a new application, all that new data would have to go into the analysis. The applicant does not get the benefit of looking back to the conditions in effect at the time their original application was submitted as is the case for the modified project.

5. Is the State law regarding referendum satisfied through the Settlement Agreement?

Unless the City Council declares the referendum petitions to be invalid as to form, the existing ordinances which were suspended when the petitions were filed will either have to be rescinded or placed on the ballot. The Settlement Agreement contemplates that if the City Council approves the revised project, it will rescind the approvals for the previous project at the same time it is approving the revised project and thereby comply with State law. If the council takes the position that the referendum petitions are invalid and therefore the original project approvals stand, then there will likely be litigation prior to going through the referendum process.



PLANNING COMMISSION MINUTES

October 22, 2007

7:00 p.m.

City Council Chambers

701 Laurel Street, Menlo Park, CA 94025

CALL TO ORDER – 7:00 p.m.

ROLL CALL – Bims (Absent), Bressler, Deziel (Vice chair), Keith (Chair), O'Malley, Pagee, Riggs

INTRODUCTION OF STAFF – Deanna Chow, Senior Planner; Megan Fisher, Associate Planner; Justin Murphy, Development Services Manager; Thomas Rogers, Associate Planner

A. PUBLIC COMMENTS

There were none.

B. CONSENT

There were no consent items on the agenda.

C. PUBLIC HEARING

1. **Use Permit/Richard S. Onorato/859 Oak Grove Avenue**: Request for a use permit to allow a beauty salon (personal services) to expand into vacant space on the ground floor of an existing commercial building in the C-3 (Central Commercial) zoning district.

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

Questions of Staff: Commissioner Deziel confirmed with Planner Rogers that the use permit was only for a beauty salon and not for a blanket use permit.

Commissioner Pagee said that the plot line on the site/area map as shown on A-O.1 was 113.5 feet and the project scope indicated the length of the building was 113-foot 4-inches. Planner Rogers confirmed that was consistent with the plans. Commissioner Pagee said the staff report indicated there would be no changes to electrical lighting, mechanical equipment or plumbing. She said that there might need to be a new source of water as this use was being changed from office to beauty salon; she asked whether that would occur with the building permit application. Planner Rogers said only to the

extent that any changes needed a building permit. He said staff depended upon the intent stated in the applicant's letter for the scope of work.

Public Comment: Mr. Richard S. Onorato, applicant, said he was applying for a use permit to allow his tenant to use the front office space left vacant by a financial services tenant. He said he had put the space for rent in the newspaper and had received a few calls, most of which were for office uses but one which was for retail. He said however that person never called back. He said that his existing tenant then approached him to use the space. He said that the changes to the site would be mainly cosmetic.

Commissioner Pagee asked about the water source. Mr. Onorato said that this was in the existing hair salon. Commissioner Pagee asked about a connecting door. Mr. Onorato said there was a doorway from both rooms that opened onto a common hallway. Commissioner Pagee said that the electrical needs would change. Mr. Onorato said that his tenant was working with a contractor and he did not know what changes were needed.

Commissioner Deziel confirmed with Mr. Onorato that the right door would be functional and the left door would remain nonfunctional.

Chair Keith closed the public hearing.

Commission Comment: Commissioner O'Malley moved to approve as recommended in the staff report; Commissioner Riggs seconded the motion.

Commissioner Pagee said she hoped that the project would have greater review as she saw potential ingress/egress and plumbing issues. Planner Rogers said if anything was needed that would require a building permit then there would be review, but at this point it did not seem that there was anything intended that would require a building permit. He said that staff would check back with the applicant on the status of the project and any permits possibly needed.

Commission Action: M/S O'Malley/Riggs to approve the item as recommended in the staff report.

1. Make a finding that the project is categorically exempt under Class 1 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 revision subject to the following **standard** conditions:

- a. Development of the project shall be substantially in conformance with the plans prepared by Studio 61, consisting of two plan sheets, dated received October 4, 2007, and approved by the Planning Commission on October 22, 2007, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.

Motion carried 6-0 with Commissioner Bims not in attendance.

D. REGULAR BUSINESS

1. **Information Update on a Proposal to Rescind Previous Approvals and Pursue New Approvals for General Plan Amendment, Zoning Ordinance Amendment, Rezoning, Planned Development Permit, Major Subdivision, Development Agreement, and Environmental Review to Construct a Mixed-Use Development including 108 Residential Units and 24,925 Square Feet of Commercial Space on a 3.45-Acre (gross acreage) Site Located at 550-580 Oak Grove Avenue and 540-570 Derry Lane.**

Staff Comment: Development Services Manager Murphy said this item was being presented as a purely informational item to allow comparison between the site project approved formerly and this revised proposal. He said the City had received three pieces of correspondence; one that was directly in regard to this item and the other two which seemed to relate to this item. He said one was from Mr. Tony Coon, who asked about noticing for the meeting. He said staff had replied to Mr. Coon as his residence was located more than 700 feet from this project and was not within the notification area, but staff was looking to expand the notification area. He said another was from Ms. Margaret Pettijean and related to noise pollution with development near the train tracks. The third letter was from Mr. Winn Smith and was about quiet zones related to the railroad.

Questions of Staff: Chair Keith asked staff to explain the expanded notification area. Development Services Manager Murphy said page 7 of the staff report indicated the already expanded notification area for the project which currently ranged from Valparaiso Avenue to Middle Avenue to University Avenue to the northern boundary of Laurel Street. He said staff would further expand the notification area east from the northern boundary of Laurel Street to include Pine Street in the future.

Commissioner Deziel asked if the preparation of the EIR Addendum had already begun. Development Services Manager Murphy said that it had. Commissioner Deziel said that the project description for that Addendum was only now being considered for public comment. He asked if the Commission had received the full Derry Project Settlement Agreement. Development Services Manager Murphy said that the Commission had received Section 2, which was the public portion of the Settlement Agreement. Commissioner Deziel asked about the Commission's role this evening as he had the sense this was a pre-negotiated land use, which seemed to curtail his normal examination of a project proposal as a Commissioner. He asked if the City Council approved land use conditions that differed from those stipulated in the Settlement

Agreement, what would that mean to the City and the Applicant? Development Services Manager Murphy said the Agreement was between the Applicant and the leaders of the Referendum to a revised project with certain parameters. He said if the City ultimately approved a project consistent with those parameters then the previous project would have been rescinded, the Referendum effort would be removed, and there would be a project that the City could, and the Applicant could move forward with development. Commissioner Deziel asked if the City approved a project that was different from the settlement parameters what that would mean to the City.

Development Services Manager Murphy said if the project that was approved by the City was substantially different from the project proposed in this Agreement that the City would be in the same position it was when the referendum was first made, which would be the decision whether to rescind the project or put it to a vote, and deal with legal ramifications related to the validity of the Referendum material. He said he did not think the City would want to be in that position. Commissioner Deziel said that there was no ability for any public member to be considered who had objections to this project. He said that the Settlement Agreement stipulated key land use parameters and that all other aspects would be the same as the original proposal, so there was no room for customary Commissioner discretion. Development Services Manager Murphy said the Settlement Agreement identified certain things agreed upon but there were details that needed to be specified and so there was a spectrum of discretion. He said there was no flexibility for any of the key components. Commissioner Deziel asked about the strength of the Settlement Agreement as the people who promoted the petition asked for signatures to put the project on the ballot, but now, rather than placing the projection the ballot, the sponsors were negotiating for interests of what might be only a very small number of people. He asked if staff was asking the Commission to take this project proposal as a given. Development Services Manager Murphy said that the proposal was not a given but there was a framework established by the Settlement Agreement. He said page 3 of Section 2 indicated where there were possibilities for changes.

Commissioner Deziel asked if staff was operating on the Settlement Agreement. Development Services Manager Murphy said staff had received an application submittal for a revised project, which staff was processing and part of that included Section 2 of the Settlement Agreement with public consideration. Commissioner Deziel said he felt that that the Commission could assume that the Applicant had revised their project and scope and the Commission was then reviewing this as a normal project revision.

Commissioner O'Malley said the Commission was not privy to the entire Settlement Agreement, and asked why not. Development Services Manager Murphy said that question might be better directed to the Applicant. Commissioner O'Malley said he had similar feelings to Commissioner Deziel's in that while he respected the Menlo Park Tomorrow group, he questioned whether that entity represented the combined will of the majority of residents in Menlo Park. He said he had voted for the previous project which he thought was beneficial to the City. He said that he wanted to look at the project as a new project and not as a project predetermined. Development Services Manager Murphy said the Planning Commission needed to review and make recommendations about the project, but he could not dictate individual views. He said there were aspects

of the Agreement that if they were not part of the approval would have implications for the project.

Public Comment: Mr. Jim Pollard, O'Brien Group, said they were submitting a project application and the Commission had the discretion to recommend approval, conditional approval, or denial. He said a project at the site had been approved the past year, which had then been referended. He said the Referendum sponsors, the applicant, and he and his company asked the Council to delay action on the Referendum while those same parties attempted to work out a negotiated settlement. He said they did that and subsequently his group agreed to postpone filing a lawsuit contesting the validity of the ballot petition and Menlo Park Tomorrow agreed to postpone approaching the Council to either rescind the previous project approval or hold a ballot election on it. He said if the current application was approved then the old project proposal would evaporate and this project would proceed. He said if that did not occur then the proposal was null and void and the Agreement participants would return to their previous stances.

Mr. Morris Brown, Menlo Park, the contact person for Menlo Park Tomorrow, said the Commission approved the project last year 7-0 and then the City Council approved it 4-1. He said Menlo Park Tomorrow obtained over 2,500 certified signatures for a petition for a Referendum. He said the main issue was that the proposed General Plan Amendment of that project had been too broad as it would have covered the whole block from Oak Grove Avenue to Glenwood Avenue, and that anything within that zone might be zoned to a much higher density. He said because of that approval a proposed 1300 El Camino Real project at the former Cadillac dealership site was originally designed at a higher density, but with this Agreement that developer has since reduced the project density, which seemed to comply with the existing General Plan, and would not require a General Plan Amendment. He said the main objection to the Derry Project was the size and density as it would have 50-foot high structures and 50-units per acre for which there was little public benefit. He said there were normally two options for a Council after a successful referendum and that was to rescind approval of the project or put it on the ballot for an election. He said a third option developed to see if a compromise could be negotiated and this was found to be a legal option. He said they conducted negotiations to reach a compromise with the developer that would satisfy the referendum objectives and leave the developer with a viable project. He said on April 6, 2007 they reached a legal settlement agreement. He said the changes related to height and density in that the buildings would be three-, not four-stories, and maximum 40-foot high rather than 50-foot high, and the public benefit was \$2,000,000 for the City, which use they had not attempted to legislate. He said other changes included more commercial space, an expanded and desirable public plaza, improved parking, and a reduction of the overall density reduced to meet the upper levels of the City's zoning for this area. He said the Referendum group fully supported the proposed project presented to the Commission. He emphasized that the project would have to proceed through a development agreement. He stated that no compensation or money had been paid to Menlo Park Tomorrow or any party of the group, nor would that occur at anytime in the future.

Mr. Pollard restated that the Settlement Agreement had no provisions for compensation or reimbursement to Menlo Park Tomorrow or any individual associated with that group.

Commissioner Bressler asked if the City got a better deal because citizens were involved in the negotiation. Mr. Pollard said the previous project had a number of benefits for the City and this one did as well.

Commissioner O'Malley asked why the Commissioners could not see the entire Settlement Agreement. Mr. Pollard said that he understood in all types of negotiations it was common that the parties agreed to keep negotiations confidential at the outset and at the end decide which portion of the agreement would be made public. He said City Attorney McClure had been instrumental in facilitating the negotiations and was entirely familiar with the document. He said O'Brien Homes would have no problem with the City Attorney reconfirming that there was not compensation or reimbursement of any kind in the Settlement Agreement.

Mr. Jim Pollard reviewed the major changes between the previously approved project and the revised proposal. He said the residential density was reduced 20 percent from 135 condominiums to 108 with a corresponding reduction in Below Market Rate (BMR) units from 21 to 16. He said all of the four-story elements had been reduced to three-stories and the maximum height reduced from 50 to 40 feet max. He said this eliminated four condominiums on the third floor on the main commercial building. He said that the elimination of condominiums from the central portion of the residential area increased courtyard area. He said the commercial public plaza had been increased to 100 feet into the community and added 2,400 square foot ground floor retail with the intent of restaurant uses. He said they eliminated architectural details of bridges between the commercial and residential areas as the expanded public plaza made those details unnecessary. He said the main commercial building would have setbacks on the second and third stories. He said O'Brien Homes voluntarily proposed a \$2,000,000 supplemental public benefit contribution to the City and restructured the rezoning and general plan amendment so these would not affect the 1300 ECR property development. He said they also propose adding a 10-foot pedestrian easement in the rear portion of the property. He said they also agreed to entitle this project through a development agreement.

Mr. Rob Steinberg, project architect, Steinberg Architects, said their goals were to create a site that was welcoming, authentic and compatible with the urban setting. He said the proposed plan was very similar to the previous iteration with an open village layout and courtyards to allow light and views. He said the single-loaded buildings in the rear were oriented to look away from the railroad tracks. He said the four significant changes included the public plaza, which would increase in length about 50 feet; the residential courtyards would now open into the community and were increased from 24 feet to 40 feet, and increased setbacks along Oak Grove Avenue for the commercial building, and the decrease in density and height. He said that the level of quality of materials would remain as previously proposed. He said they would use the highest quality of materials and were following the best principles of smart growth.

Commissioner O'Malley said the condominiums seemed to have kitchen entrances and asked if that was commonly done in more modern condominiums. Mr. Steinberg said with double-loaded corridor buildings the intent was to have the entrance into a space with an open large feeling that would lead the eye to the view outside and the natural light. He said this type of layout design was commonly done and expected in the marketplace.

Commissioner Pagee asked about ingress/egress from Oak Grove Avenue onto Derry Lane noting that it currently was a traffic bottleneck. She asked if that had been reviewed by the Transportation Department. Mr. Pollard said the entry off Oak Grove is right in and right out only. He said the left turn movements eastbound onto Derry Lane have been reviewed by the City, which ultimately approved the traffic circulation plan.

Commissioner Pagee said she liked the layouts of the units and that there would be storage areas below for the residential occupants. She asked how the development was impacted by the railroad studies, in particular the entrance and exit from the site, if the railroad was elevated. Mr. Pollard said there were areas around the parking garage that were marked storage and storage facilities along the perimeter of the parking garage. These would be floor to ceiling height, 5-foot by 8-foot in size, and secure. He said if the railroad tracks were elevated 10-feet and Oak Grove Avenue lowered 10-feet that Garwood Way and Merrill would remain connected to Oak Grove and would be similarly depressed. He said retaining walls would be developed around the frontage; they would lose the pedestrian connection across Oak Grove but would maintain vehicular connection. He said if Oak Grove went down 20-feet and the railroad bed stayed at grade that Garwood Way and Merrill would disconnect from Oak Grove, rather there would be a bridge over Oak Grove for both vehicular and pedestrian traffic. Commissioner Pagee asked how raising the tracks would impact the project. Mr. Pollard said they have reserved a 15-foot landscape reserve around the east boundary of the property. He said the railroad would build a retaining wall between the railroad and the units. He said there were six alternatives but they evaluated the two preferred alternatives. Commissioner Pagee asked about bringing LEED qualities into the project and adding to a green environment through materials, access to light, and possibly solar panels. Mr. Pollard said they believed the design was very green and they were proposing split system heat pumps with individual A/C conditioners on the roof. He said some other developments they were building used elements from the California Build It Green Program. He said they had not reached a conclusion as to whether they would take similar steps with this project.

Chair Keith asked about the tile work on the left tower as she thought it looked strange. Mr. Pollard said they would take that under consideration. Chair Keith asked if the same type of windows would be used as previously proposed. Mr. Pollard said they were planning to use the same windows. He said the colors/materials board was the same as previously submitted and would use the exact same materials and finishes as previously submitted. Chair Keith said she was glad that the stucco would be applied with a hand trowel. She requested that they consider at least doing the same amount of

green building they were doing in their other developments. She asked about the retaining wall to be built by the railroad noting that the Commission in its previous consideration of the project had wanted the wall stepped down as it approached Oak Grove Avenue. Mr. Pollard said the wall was about eight feet high in the main central area and would be stepped down incrementally to reach a step of five to three feet at about 80-feet from Oak Grove Avenue. Development Services Manager Murphy said that the project included revisions to the retaining wall as conditioned previously by the Planning Commission in its recommendation for the project's approval.

Mr. Pollard said this new application had all the same quality and programmatic elements included in the previous community; there were the same material selections and finishes, amenities including five fountains located throughout the courtyard, health and fitness center, business center, same number of stair towers and one additional elevator. He said this proposal had slightly better parking ratios and more diversity in floor plan selections with all units having a built-in work alcove. He said this project was equal if not superior in design to the previously approved project. He said they had consulted with retail specialist Ms. Amanda Tevis originally as to the right footprint and shape of the retail space. As she relocated to France, for this iteration they had met with three other local retail boutique leasing specialists from whom they had letters related to the elements of those consultations.

Chair Keith said that the Settlement Agreement on page 2, Section 2.4 stated that there would be no greater school and traffic impacts, and asked how the student generation was determined if this project was now including three-bedroom units. Mr. Pollard said the school district determined student generation rates not on a bedroom count but on unit count and so the revised project would generate 20 percent fewer students.

Ms. Anne Moser, Menlo Park, said she was extremely uncomfortable with the discussion at the beginning of the meeting. She noted that the Council was elected, Commissioners were appointed and both of their processes were open for public input and vote. She said Menlo Park Tomorrow was a non-elected, self-appointed group who were dictating what could be done within the City. She said they did not speak for her, but she had no vote to influence that action. She said she was particularly concerned about the loss of BMR units and the delay in project completion because of the Referendum as this would drive the price of the units up and make even BMR units beyond the capacity of many to purchase. She said the Central Tower had curves and a decorative balcony. She said it looked like a mission church and was too busy. She said she would prefer something simpler.

Ms. Elizabeth Lasensky, Menlo Park, said she was distressed at losing five BMR units in the one and two-bedrooms units as these were not replaceable anywhere in the current housing stock in Menlo Park. She said the delay to this project resulted in delays for people who needed housing. She said limiting the units per acre and the delay to the project would drive up the price. She said she would like the revised project to go forward.

Chair Keith confirmed Ms. Lasensky was on the Housing Commission, and asked her about potential housing not yet in the pipeline; for instance, whether Habitat for Humanity had brought a proposal forward to the Commission. Ms. Lasensky said they had not yet received a final proposal from Habitat for Humanity, but her understanding was there would not be one- to two-2 bedroom units but larger units for families. She said the only housing in the pipeline were three- to four-bedroom homes. Chair Keith asked if anyone had presented future projects to them. Ms. L said they were currently doing a senior housing needs assessment, but there were no other project proposals for BMR units at this time other than mentioned. .

Ms. Patti Fry, Menlo Park, said she was a former Commissioner, and she had been very uncomfortable with the previously approved project in that it allowed multiple times the limits specified in the General Plan and zoning regulations. She said she joined the negotiating team with Menlo Park Tomorrow as she felt this was the least divisive way to proceed and it would bring a project forward sooner. She said the elements of the Settlement Agreement were all negotiated and they tried to express their understanding of the principles that drove people to referendum. She said she saw the revised project on the prior Friday. She urged the Commission's support of the revised project.

Mr. Irvin Dawid, Palo Alto, former Chair of the Sustainable Land Use Committee of the Loma Prieta Chapter of the Sierra Club, said he was speaking on behalf of the Sierra Club. He said the Sierra Club had begun evaluating the previously approved project according to their process and had invited the developer, Mr. Brown and Council Member Cohen to speak before them. He said only Mr. Pollard showed interest in presenting to them, which he had done as well as a follow up presentation. He said that they were waiting only for the evaluation from the Build It Green process to finalize the previous project for Sierra Club endorsement. He thanked Commissioner Deziel for his probing questions related to the Commission's role in reviewing the Settlement Agreement and the proposed project. He said the real lesson he thought was to the public that signing a petition meant they were opposed to a project as approved by the Planning Commission and City Council as opposed to just letting the public vote. He thought the project should move forward and noted that referendums were almost always divisive and expensive. He said in response to Commissioner Bressler's somewhat rhetorical question as to which project proposal was superior that, from an environmental assessment, the reduction of units and BMR units by 20 percent at the only Caltrans train station site in Menlo Park was a disappointment. He said the prior project was greener and more socially equitable. He said that going forward with the Settlement Agreement was preferable to starting over.

Mr. Robin Leblan, Menlo Park, said he was representing just a few neighbors on Pine Street. He said he and his neighbors enter Menlo Park via Oak Grove Avenue. He said the first time he heard about this hearing was two days ago. He asked that the Planning Commission hold another meeting so that others in his area would be able to attend and provide input.

Chair Keith asked Development Services Manager Murphy if the expanded notification area would include Pine Street. Development Services Manager Murphy said that it would. Commissioner Pagee suggested moving the notification area to include Marcussen as well. Development Services Manager Murphy said the area could be extended to the City's boundary and that would catch Marcussen as well.

Commissioner Deziel noted for the record that there would be another informational meeting on this revised project at the City Council, a subsequent public hearing at both the Housing and Planning Commissions and then to the City Council for final consideration. He said notices of meetings should be placed on a board on the property.

Mr. Kevin Townsend, Palo Alto, said he was representing Greenbelt Alliance and that organization wanted to encourage approval of the project as it located compact homes in the downtown center with a diversity of transportation options, and would provide a high level of affordable homes in an area in which housing was needed. He said this site had crucial access to transit alternatives, was close to Menlo Park's downtown center and would encourage more pedestrian transit. He said secure bike parking and shared parking strengthened future residents' alternatives to driving. He said Greenbelt Alliance believed that diverse communities made vibrant communities.

Commissioner Riggs asked if Greenbelt Alliance would support this project if the units were to be sold at \$1.4 million. Mr. Townsend asked what the current rate for the units was. Commissioner Riggs said that 1,300 and 1,400 square foot condominiums on the other side of Oak Grove were marketed at \$1.3 million and their amenities were not quite as nice as those proposed by this project. He said that previously the units had been one- and two-bedroom, but now were predominately 1,600 square feet and if sold at the \$1.3 million level whether Greenbelt Alliance still supported the project. Mr. Townsend said that generally income was higher in Menlo Park. Commissioner Riggs asked if he thought this would address the lower income market. Mr. Townsend said he had not been involved in the review of this project.

Chair Keith noted that Mr. Paul Collacchi had time donated by Mr. Morris Brown.

Mr. Paul Collacchi, Menlo Park, said he reviewed the project for the first time on Friday and he believed that it met the terms of the Settlement Agreement. He said he supported the project submittal and encouraged the Commission to support as well. He said under the Referendum the choices for the City of Menlo Park were to place the approved project on the ballot or to rescind it. He said the Settlement Agreement assumed the rescind path and protected the developer with assurances that he had a supportable project. He said regarding the desire for more BMRs and housing that the previously approved project would have to be approved by ballot, and it would have to have an 80 percent likelihood of success for the developer or the city to consider the ballot a better option. He said the Settlement Agreement provided for a high density housing project with certainty. He said the Housing Element got stalled in 2003 and that if Menlo Park wanted more housing then the City should complete the Housing Element.

He said developing more housing ad hoc ran the risk of future referendum action. He said through his participation in the negotiation for the Settlement Agreement he tried to stay true to the R-4 zoning code. He said that Menlo Park has only one parcel zoned R-4 and that was a complex in Sharon Heights. He said introducing R-4 zoning into downtown Menlo Park was zoning-up and innovative. He said the negotiated intensity was higher even than that allowed in the R-4 zoning district. He said if the City tried to do too much in the wrong area it ran the risk of delay. He said that 1300 El Camino was never intended for R-4 density but the Derry property had long been considered for R-4 zoning. He said the O'Brien Group and the architect had done an outstanding project within the constraints of the Settlement Agreement. He said those constraints softened the project and improved it. He said he signed on as a member of the Settlement Agreement not because he was representing the City or people who signed the petition rather as representing himself. He said the choice before the Commission was full discretion on this project and the Council's choice was either to rescind or to bring the approved project to the ballot. He said the consequence of straying too much from the Settlement Agreement was that it would release both the developer and the Menlo Park Tomorrow group from the Settlement agreement. He said this was an opportunity to move forward with this negotiated project. He said it was a higher density project than had ever been approved in Menlo Park downtown or any residential area. He urged the Commission to support the proposed project. Mr. Collacchi said he had made a mistake voting for Santa Cruz (street improvements) and therefore the Planning Commission could make a mistake too, therefore the Commission should not over think this and support the project proposed now.

Commissioner Riggs asked Mr. Collacchi if he personally saw a value in providing housing that was more affordable. Mr. Collacchi said providing housing at \$800,000 and \$1.2 million was not affordable for the working class. He said there was world demand to live in Menlo Park and he did not think enough units would ever be built to create housing that was actually affordable. He said the BMRs would stay the most attainable. Commissioner Riggs said in order to have BMRs that the cost difference of those had to be spread over the other units. Mr. Collacchi said that he did not think it was about recovering cost rather the profit margin of these projects.

Mr. Elias Blawie, Menlo Park, said he was speaking as a member of the negotiating team, a resident of Menlo Park, and a person who circulated the petition for the referendum through which he had had multiple extended discussions with those signatories. He said the project submittal was presented as a solution to the complicated Referendum effort. He said he supported the revised project as presented. He said if the Planning Commission did not think the project as submitted had merit or that the Menlo Park Tomorrow's efforts were not representative of the City's citizens that the project might be voted down. He said that most of the architectural elements and details of the project were not reflected in the Settlement Agreement; thus the Commission has a fair amount of discretion. He said the Agreement did not dictate the mix of number of bedroom units or the materials and window placements. He said he supported the revised project in that if high density was to be done, this was the area in which to do it. He said that three-story homes at a maximum 40-foot height and the

openness of the design was desirable to the community. He said that BMRs were a function of density and 40 units per acre pushed the upper limits of whatever residential density that the City had looked at. He said this was an opportunity to move the project on without tying it up in Referendum action or litigation.

Mr. David Speer, Menlo Park, said he supported the comments of Mr. Collacchi and Mr. Blawie. He said he had run for City Council in 2002 and although not elected, he remained very interested in what occurred in Menlo Park. He said he fully supported the revised project. He advocated that the Commission support the project so that it was not delayed further. He said there was a process to plan the El Camino corridor and he encouraged more public input at the beginning of projects. He said rather than spot zoning the City should consider changes that would only apply throughout the City.

Mr. Jack Morris, Menlo Park, said he was a member of the negotiating team, and wanted to speak to them as a 40-year resident of Menlo Park, former Planning Commissioner for eight years, and former Council member for 12 years. He said he wanted to endorse the comments of Ms. Fry, Mr. Collacchi, Mr. Blawie, and Mr. Speer. He said this was a good project and if he was on the Planning Commission and Council, he would support it. He encouraged the Commission to look at it as a new project.

Chair Keith closed the public hearing.

Commission Comments: Commissioner Bressler said he was involved in the Referendum and he was delighted with the ultimate outcome of the project being presented. He said the Referendum was a very divisive effort. He said he was very impressed with the process that had been played out and the solution.

Commissioner Pagee said that she was not part of the Referendum movement and there had not been a lot of public participation as the original project was developed. She said she did not know how to get more public participation in the beginning of such large projects, but at the least the notification area had to be greatly increased. She said she liked the project as presented and she was pleased that two opposing sides had reached a mutual agreement.

Commissioner Bressler said one of the objections he has had with spot zoning is that there was not a strong negotiating process to maximize benefit to the City. He said it would behoove the City to have groups of citizens who represented the community to do such negotiation.

Commissioner Deziel said in looking just at the project that he had two issues related to the commercial portion of the project, which were the same ones he stated at all hearings related to the previously approved project. He said the changes he wanted for that project had been undone by the City Council in the previous project's approval. He said this project site was one of the last developable commercial lands with which to strengthen the vitality of downtown. He said the project did not contribute as much to the commercial intensity as a commercial development with surface parking. He said

even if the rear portion of the project was removed from consideration that the project should provide commercial square footage equivalent to the frontage of 270 feet times a depth of 100 feet, or 27,000 square feet. He said the square footage on the second floor of the commercial structure was completely devoid of customer drawing capability. He said that the City was short about 15,000 square feet of customer drawing commercial use with this project. He said he could accept the lower square footage on the first floor if the second floor had the capability of drawing in people with such uses as medical and personal services. He said the last paragraph on page D.10 and continuing on page D.11 was language which had been diluted by the City Council so that only the attached letter from Terranomics would be needed to meet the condition, i.e., to say that the commercial project was well developed. He said previous condition recommended by the Planning Commission would have required the applicant to perform a market assessment of what the area could do to develop synergy downtown and would have required the applicant to use a commercial consultant to develop a plan for the 25,000 square feet that would create a vital commercial center. He said he would like the quality of use to be conditioned and that the proposed use mix was not acceptable because medical and dental uses were excluded. He said personal services needed to be allowed as well on the upper area of the commercial center.

Chair Keith said she was not sure personal services were being excluded.

Commissioner Deziel said that the Settlement Agreement did not extract an additional \$2 million from the developer, but that the developer was merely paying \$2 million instead of costs avoided by reducing the density, such as reduced parking structure costs and reduced in-lieu fees. He said that three-quarters of that money was coming directly from lost community benefit as there would be skewed housing mix as opposed to a mix with smaller housing.

Commissioner Bressler asked whether what Commissioner Deziel wanted would void the Settlement Agreement. Commissioner Deziel said that was what he could not understand; that a citizen group could negotiate zoning ordinance amendments for the City. Commissioner Bressler asked whether Commissioner Deziel had supported the project previously. Commissioner Deziel said he had with conditions related to the issues he had raised. Commissioner Bressler said he was greatly confident that the negotiated terms of the Settlement Agreement were much better than the original project.

Commissioner O'Malley said he had a problem that an independent group had done this negotiation and not the City Council or Commission. He said that this should not be the modus operandi for the City. He said he had a problem with the housing situation as many of the City employees were not able to live within the City because of the cost of housing. He said having more people housed in the project would mean greater success for the commercial services that would be provided. He said he was a strong advocate of having places for employees of the City to live in the City. He said he thought housing should be maximized and he was not sure this project did that. He said if the Commission had not seen the previous project that this would most likely have

been an acceptable project. He said he would not take a stand on the revised project at this time.

Commissioner Riggs said when the petition was made that there was only a certain amount of time in which the City could rescind the approved project or put it on the ballot. He asked whether that deadline had expired. Development Services Manager Murphy said the two groups involved in the negotiation had not taken action and there was no expiration, but at some point the issue of the Referendum needed to be resolved, and if the former project approval was rescinded that would resolve the Referendum.

Mr. Pollard said that if the Referendum sponsor specifically asked the City to respond within a time frame the City would have had to, but that had not occurred. He said however eventually the whole matter would need to be resolved.

Commissioner Riggs said the renderings for the proposed project were done with a view from the train station; he said a number of people live, work or shop on the other side of El Camino and he would like to see a rendering from the angle of Oak Grove. He said that the front of the project from Oak Grove needed more attention. He said the elevator and stair towers appeared to be chopped off at the top. He asked if the developer knew whether they would not need additional space on the top of the towers for five-stop elevators. Mr. Pollard noted the architect had left the meeting, and he would need to consult with him.

Commissioner Riggs said two residents, obviously active and interested in the housing of Menlo Park had spoken about the need for housing, and the Sierra Club and Greenbelt Alliance had addressed maximizing affordable housing. He said the City needed housing that was more affordable. He said the police force in Menlo Park was understaffed by 20 percent. He said the Commission had supported through a series of meetings that the commercial portion of this project was to be the best it could be. He said he wanted to reinforce Commissioner Deziel's comments related to the commercial part of the project.

Chair Keith said the City needed more housing and she hoped there was some way for the developer when they met with the Housing Commission to somehow support BMR housing perhaps at other locations. She noted there was a dearth of one- and two-bedroom units. She asked how many of the BMRs in the project would be one- or two-bedrooms or three bedrooms, and where those would be located. Mr. Pollard said they have not decided the mix or location of the BMRs yet. Chair Keith suggested that the BMRs be scattered throughout the project. She said the architecture was beautiful and had quality details. She said she thought it was impressive that a Settlement Agreement had been reached considering that historically that had never occurred for the attorney when he had tried that solution. She said she thought it was the least divisive way to proceed. She asked about the wording in the Settlement Agreement excluding medical/dental use on the second story and whether that included personal services. She asked if the two parties could revisit that area. Mr. Pollard said staff

would be preparing an updated Planned Development Permit that would outline such things as permitted uses, conditionally permitted uses, and administratively permitted usage. He said the Settlement Agreement however did not allow personal services on the second story, but it was possible from his side to revisit the issue. Mr. Brown said that he recalled the exclusion of medical/dental was the key issue they were interested in preventing, but that he could not speak for the negotiating team.

Chair Keith said she would like both parties to get together to discuss allowing personal services for the second story as the process continued moving forward. She said she supported increased project notification and she thought an information board was important for this project and future large projects. She said she would like to see a rendering from the view of the 7-11 store. She said the elevator and stair towers look unfinished with one being tiled and the other not tiled. She said she would like both towers finished with tiles and embellishment. She said she was glad to hear that the same color and type of windows would be used as previously designed. She said that the developer did not want to seek LEED certification but she encouraged that at the least they work with the Build It Green program. She said despite the school district's determination as to student generation from the project she thought with three-bedroom units that the student generation would be higher. She said if she had not seen the previous project or known about the number of BMRs it would have had that she would have found this project attractive, but she would like the commercial use addressed.

Commissioner Deziel said the Sierra Club representative had indicated that there had never been a successful settlement agreement from a referendum action; he said he had no problem proceeding with the referendum action to put the project on the ballot.

2. **Consideration of minutes from the August 20, 2007, Planning Commission meeting.**

Commission Action: M/S Unanimous consent to approve the minutes as modified.

- Page 5, 5th paragraph, 1st line, Replace the word "it" with the word "if."
- Page 12, 2nd paragraph, 5th line, Replace the words "there be a variety of uses reviewed" with the words "staff should identify a new variant."

Motion carried 6-0 with Commissioner Bims not in attendance.

3. **Consideration of minutes from the August 27, 2007, Planning Commission meeting.**

Commission Action: M/S Unanimous consent to approve the minutes as modified.

- Page 4, 9th paragraph, 4th line, Replace the word "the" with the words "if he."
- Page 16, 5th paragraph, last line, Replace the words "relationship to the airport and businesses on the peninsula" with the words "proximity to Redwood City, the airport, and south to Santa Clara."

- Page 19, 1st paragraph, 18th line, Replace the word “would” with the word “should.”
- Page 19, 1st paragraph, 23rd line, Replace the word “M-3” with the word “M-2.”
- Page 19, 1st paragraph, 24th line, Insert the word “it” after the word “that.”
- Page 20, 1st paragraph, 6th line, Replace the word “created” with “create.”
- Page 20, 2nd paragraph, 18th line, Replace the word “vibration” with the words “reverberation it would cause” add the words “of the freeway” at the end of the same sentence.
- Page 20, 2nd paragraph, 19th line, replace “was” with “are.”
- Page 20, 2nd paragraph, 25th line, Add the words “but needed” after the word “homes.”

Motion carried 6-0 with Commissioner Bims not in attendance.

E. COMMISSION BUSINESS, REPORTS, AND ANNOUNCEMENT

1. Review of upcoming planning items on the City Council agenda.

Planner Chow presented a review of upcoming planning items on the City Council agenda.

ADJOURNMENT

The meeting adjourned at 10:28 p.m.

Staff Liaison: Deanna Chow, Senior Planner

Prepared by: Brenda Bennett, Recording Secretary

Approved by Planning Commission on December 3, 2007.