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Building in East Palo Alto

Is the Building Permit Approval Process in East Palo Alto Equitable?

Issue

Determine if the proper checks and balances are in place to equitably regulate the approval of building permits in East Palo Alto.

Background

For most of its history, the area where the current City of East Palo Alto (City) is located was an unincorporated part of San Mateo County. As such, it did not have an official boundary until it incorporated in 1983. The area historically regarded as East Palo Alto was much larger than the City's current 2.5 square miles; large tracts of historic, unincorporated East Palo Alto were annexed by the Cities of Menlo Park and Palo Alto from the late 1940s to the early 1960s.

Recently, a redevelopment program has brought in an up-scale hotel and several large stores and a residential building boom has followed the commercial building activity. It appears that the boom has been accompanied by confusion and irregularities in the issuance of building permits.

Investigation

The 2006-2007 San Mateo County Civil Grand Jury (Grand Jury) received several citizen complaints concerning irregularities in building approval practices in East Palo Alto. In addition, the termination of the Planning Manager by the City Manager for refusing to sign an inspection card attracted the Grand Jury's attention. The Grand Jury interviewed officials and citizens of the City. Numerous City documents and emails were also reviewed.

Findings

Four separate categories of irregularities were found in the awarding of contracts and issuance of building permits. The details of these transactions are complicated and were carried out by an overlapping cast of characters. This section is an attempt to organize the irregularities that have arisen to make the overall situation more understandable. Each of the categories is discussed separately. More than a dozen different properties have been involved in the incidents described below. In an effort to preserve anonymity, the properties are only identified by the incident in which they were involved, and not by address.

1. Inappropriate Participation of the City Manager in the Planning Process

The current City Manager served as Planning Director for agencies in other jurisdictions for a total of about 20 years, leaving him with a strong interest in planning issues. The following examples suggest that this interest may have led to inappropriate interventions in the granting of building permits.

Before proceeding, it should be noted that the role of the City Manager in the East Palo Alto planning process was changed a few years ago. The role of the City Manager in planning process appeals is governed by a March 2004 revision of Section 6581.1 of Chapter 30 of the East Palo Alto City Code (*Appeal of Decision on Which Administrative Review and Approval is Sought*), which now removes the City Manager from planning decisions. Originally, the code stated: “In the event of dissatisfaction with the decision of the Planning Director on any entitlement for which administrative review is sought ... the proponent may appeal in writing to the City Manager. ... The City Manager shall render his or her decision within 45 days after the conclusion of said hearing of the appeal. ... In event of dissatisfaction with the decision of the City Manager, proponent may appeal in writing to the City Council.” The revised code eliminated the role of the City Manager in the planning appeal process, while leaving the City Manager with a role in the building permit approval process itself. Some of the following information suggests that the City Manager has not adjusted to the changed rules.

Incident 1 involved the City Manager’s March 13, 2007 termination of the Planning Manager for refusing to sign a Final Inspection card related to a recently completed residential structure. The terminated Planning Manager allegedly refused to sign the inspection card or direct any of the planners she supervised to do so, because none of them had inspected the project. Furthermore, she had allegedly informed the City Manager and the City Attorney that the building permits for the second phase of development were issued without planning approvals and had allegedly informed them that the permits did not comply with the Zoning Regulations. On the same day that the Planning Manager was terminated, a *Notice of Warning* was issued by the City Manager to an Associate Planner, who had also refused to sign the card.

The City Manager has authority to terminate exempt employees at any time without cause. It appears in this case that employees were disciplined because they refused to undertake an action that they felt was professionally improper. The fact that this particular incident involved *two* employees who refused to sign off on a property makes the City Manager's actions particularly questionable.

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Environmental documents with a Mitigated Negative Declaration for the property were also not forwarded for Council consideration. As a result, the Council acted to amend the General Plan, rezone the subject property, and adopt the Mitigated Negative Declaration without having received the required supporting documents. The City Manager and the City Attorney directed the Planning Manager and the Associate Planner to file the Notice of Determination. Allegedly, both refused because the Council's actions were not yet complete and therefore inconsistent with state law.

The City Manager and the Council went on to approve the Planned Unit Development project entitlements without the required Conditions of Approval and findings. Instead, the City Manager substituted the draft Conditions of Approval and findings provided by the developer. Such a procedure is inconsistent with California Land Use laws.

The grading plan for this same property was issued without planning and engineering review and approval. Allegedly, the Planning Manager recommended to the City Manager that the grading permit be revoked and that a Mitigation Monitoring/Tracking table be prepared in order to comply with the California Environmental Quality Act (CEQA), but the City Manager ignored the recommendation and allowed the grading to proceed.

At the same time that the above activities were going on, the City Manager worked directly with the same developer on the processing of building permits for another project involving certain industrial condominiums on the east side of Pulgas Avenue. Even though the Planning Manager allegedly informed both the City Manager and the developer that the Conditions of Approval required the payment of a \$10,000 fee for the services of a contract planner for the building permit application review and mitigation monitoring review, the fee was not paid to the City.

The City Manager allegedly intervened in the above matters because the Planning Manager was on leave and the planning staff was short-handed.

Incident 3 involved the City Manager's reversal of an earlier decision by the Planning Manager concerning a third property. The Planning Manager denied the permits on July 5, 2006. On August 4, 2006, the City Manager granted building permits for two

duplexes. The City Manager again allegedly acted because the Planning Manager was on leave.

2. Possible Conflict of Interest Concerning the Previous Mayor

On July 25, 2006, the previous Mayor voted (City Resolution 2619) to rezone the property discussed in Incident 2, even though that project was within 500 feet of his residence. The City staff may have failed to alert the Mayor that his residence was so close to the project in question, but it is the responsibility of elected officials to recuse themselves in these situations.

It has recently been acknowledged that the Mayor's residence is within 500 feet of the project and that the Mayor should have recused himself from any vote on the project. The grand jury was informed that the Council must now reconsider the environmental determination, the general plan and amendment and the rezoning ordinance, all of which require public hearings at additional expenses to the City.

The grand jury was further informed that the City Attorney will also recommend that the previous Mayor contact the Fair Political Practices Commission (FPPC) to report this potential violation of FPPC rules.

3. Improprieties in a Contract Award by the City Council

During November and December of 2006, the City Council sought bids and awarded a contract for planning services and the preparation of an Environmental Impact Report (EIR) for a large live/work development. The contract was awarded to a company that had not been recommended by the Planning Manager, and is alleged to have received an unfair advantage during the award process.

According to the allegations, two companies (hereafter referred to as Company A and Company B) were the finalists in a competition to provide contract planning services to the City and prepare an EIR for the above development. On November 8, 2006, the Planning Manager presented an analysis of the two Companies to the City Council and based on technical considerations recommended that Company A receive the contract. During the public forum, the developer requested that Company B be hired, in spite of the Planning Manager's recommendation. The Council later directed the Planning Manager to give Company B a copy of Company A's proposal. On November 15, Company A wrote to the City Council noting that it was "... *inappropriate and raised ethical questions ...* " for the City to give Company A's proposal to Company B, but the City did so anyway. Company B subsequently revised its proposal, but the proposal still did not include an evaluation of the impact of a hazardous waste materials facility in close proximity to the project site. Company A had included such an evaluation in their scope of work.

The City Manager allegedly changed the Planning Manager's report after Company B revised their proposal, and then recommended that the Council award the contract to Company B. The City Council chose Company B, in spite of the above mentioned

deficiency with regard to the hazardous materials study. The Grand Jury could find no documentation that justified overruling the Planning Manager's recommendation and the award to Company B.

4. Allegations of Improprieties by a Former Building Official

A former Building Official has been alleged to have engaged in dubious practices in connection with several different properties. Some of these same properties have been discussed above. The following chronological narrative is supported by various testimony and documents.

- On May 9, 2005, the Building Official issued building permits for foundations at a site in the City without planning approval and prior to the payment of park-in-lieu and below-market rate in-lieu fees.
- On June 10, 2005, the Building Official issued building permits for another property without obtaining planning, fire and engineering approval.
- On March 28, 2006, the Building Official issued building permits for the residential structure mentioned in connection with the termination of the Planning Manager without planning review and approval.
- On October 18, 2006, the Building Official issued grading permits without planning and engineering review for the planned development project that was near the former Mayor's home.
- During 2006, the Building Official issued a grading permit without planning and engineering review.

5. Other Irregularities

A Planning Commission meeting scheduled for February 28, 2005 was cancelled for lack of a quorum. The following day, the Building Official allegedly was informed that the Planning Commission had reviewed the plans for the subdivision mentioned in connection with the termination of the Planning Manager, so building permits could then be issued. In fact, the project could not have been approved by the Planning Commission because of the aforementioned lack of a quorum.

Finally, the zoning ordinance on the City website is out of date. It was last updated in October 2003. The lack of current information could be quite misleading for permit applicants, necessitating undue expense and delay.

Conclusions

In reviewing the several citizen complaints, the Grand Jury noticed the key role played by the City Manager in many of the incidents. This may reflect the considerable planning director experience (in other jurisdictions) of the current City Manager. Evidence was presented to the Grand Jury that many confrontations occurred between the recently terminated Planning Director and the City Manager over planning issues.

Prior to the revision of Section 6581.1 of the East Palo Alto City Code that was noted earlier, the City Manager played an unusually active role in the building permit approval process. As stated before, Chapter 30 was repealed and a new chapter was enacted on March 2, 2004, eliminating the role of the City Manager in the planning appeal process. The City's ordinance now sets forth a procedure common in other cities, i.e., "In the event of dissatisfaction with the decision of the Planning Director on any entitlement for which administrative review is sought ... any interested party may appeal in writing to the Planning Commission." As noted previously, the City Manager continues to oversee final inspection and certificates of occupancy. The allegations concerning the City Manager indicates that he continues to interfere with decisions made by the Planning Manager even though the 2004 revision of the zoning ordinance eliminated his involvement in the planning process.

Allegations of questionable action involving the City Manager, the now-departed Building Official, the former Mayor, the Planning Commission and the City Council have been reported above. About one dozen different properties have been involved. Throughout the course of this investigation, the Grand Jury observed that members of the Building Department, the Planning Department, and other City staff were confused about their roles and duties in the building permit approval process. The atmosphere of uncertainty and confusion suggests that current and former City officials have not consistently followed the established building permit approval policies and procedures.

Recommendations

The Grand Jury recommends that the East Palo Alto City Council:

1. Clarify the role of the City Manager, if any, in planning and zoning decisions, and direct the City Manager to avoid any unauthorized participation in such processes.
2. Clarify the roles and duties of those involved in the planning/building permit approval process in order to eliminate confusion and improve public confidence.
3. Instruct the City Manager to update the zoning ordinances on the City website by September 2007.



**CITY OF EAST PALO ALTO
OFFICE OF THE CITY MANAGER**

October 18, 2007

Hon. John L. Grandsaert
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655

Re: East Palo Alto's response to 2006-2007 Civil Grand Jury Report


Dear Judge Grandsaert:

Attached is East Palo Alto's response to the 2006-2007 Civil Grand Jury Report, in the following format:

- October 16, 2007 administrative report to the East Palo Alto City Council, containing the Grand Jury reports and the City's proposed responses to each report.

Please be advised that on October 16, 2007, the City Council reviewed and approved the responses to the reports. An electronic version of the City's responses is being sent directly to the Grand Jury at grandjury@sanmateocourt.org.

Very truly yours,


Alvin D. James, City Manager


Attachment: as indicated

cc: City Council
City Attorney



**CITY OF EAST PALO ALTO
OFFICE OF THE CITY MANAGER**

Administrative Report

Date: October 16, 2007
To: Honorable Mayor and Members of the City Council
From: Alvin D. James, City Manager 
Re: 2006-2007 Civil Grand Jury Report: Proposed Responses from East Palo Alto

Recommendation:

Review and accept the proposed responses to the 2006-2007 San Mateo County Civil Grand Jury Report

The 2006-2007 San Mateo County Civil Grand Jury issued three reports related to East Palo Alto:

1. Electronic Communication Among City Officials: A valuable Tool in Need of Careful Guidance
2. Emergency Planning for Dam or Levee Failures in San Mateo County
3. Building in East Palo Alto: Is the Building Permit Approval Process in East Palo Alto Equitable?

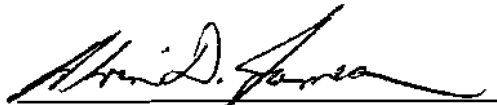
The City is required to respond to the reports. The City Council is required to review and approve the proposed responses.

Attached are the three reports (**EXHIBITS 1-3**). The proposed responses to electronic communications and dams/levees are contained in separate documents (**EXHIBITS 4 and 5**). The proposed response to building in East Palo Alto is more complicated, and the proposed response is interspersed in the report for ease of reference (**EXHIBIT 6**).

Fiscal Impact:

None.

Respectfully submitted,



Alvin D. James, City Manager

- EXHIBIT 1. Electronic Communication Among City Officials: A valuable Tool in Need of Careful Guidance
- EXHIBIT 2. Emergency Planning for Dam or Levee Failures in San Mateo County
- EXHIBIT 3. Building in East Palo Alto: Is the Building Permit Approval Process in East Palo Alto Equitable?
-
- EXHIBIT 4. Proposed response to Electronic Communication Among City Officials.
- EXHIBIT 5. Proposed response to Emergency Planning Dam or Levee Failures in San Mateo County
- EXHIBIT 6. Proposed response to Building in East Palo Alto
-

AGENDA ITEM
CITY COUNCIL/REDEVELOPMENT AGENCY
TUESDAY, OCTOBER 16, 2007 ITEM No. VIII.A. 1

POLICY AND ACTION

ITEM: VIII.A.1

**2006-2007 CIVIL GRAND JURY REPORT: PROPOSED
RESPONSES FROM EAST PALO ALTO**

EXHIBIT 3

Building in East Palo Alto: Is the Building Permit Approval Process in East Palo Alto Equitable?



Superior Court of San Mateo County

Hall of Justice and Records
400 County Center
Redwood City, CA 94063-1655

John C. Fitton
Court Executive Officer
Clerk & Jury Commissioner

(650) 599-1711
FAX (650) 363-4698

July 10, 2007

City Council
City of East Palo Alto
2415 University Avenue
East Palo Alto, CA 94303

Re: BUILDING IN EAST PALO ALTO Report

Dear Councilmembers:

The 2006-2007 Grand Jury filed a report on July 10, 2007 which contains findings and recommendations pertaining to your agency. Your agency must submit comments, within 90 days, to the Hon. John L. Grandsaert.

As you are the public agency that has been commented upon by the Grand Jury, your comments are due no later than October 9, 2007 to:

Hon. John L. Grandsaert
Judge of the Superior Court
Hall of Justice
400 County Center, 2nd Floor
Redwood City, CA 94063-1655.

For all responses, the responding person or entity shall indicate one of the following:

1. The respondent agrees with the finding.
2. The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

Additionally, as to each Grand Jury finding, the responding person or entity shall report one of the following actions:

1. The recommendation has been implemented, with a summary regarding the implemented action.
2. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

3. The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or director of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
4. The recommendation will not be implemented because it is not warranted or reasonable, with an explanation therefor.

Please submit your responses as follows:

1. Responses to be placed on file with the Clerk of the Court by the Court Executive Office.
 - Prepare original on letterhead, address and mail to Judge Grandsaert.
2. Responses to be placed at the Grand Jury website.
 - Copy response and send by e-mail to: grandjury@sanmateocourt.org. (Insert agency name if it is not indicated at the top of your response.)
3. Responses to be placed with the clerk of your agency.
 - File a copy of the response directly with the clerk of your agency. Do not send this copy to the Court.

For up to 45 days after the end of the term, the foreperson and the foreperson's designees are available to clarify the recommendations of the report. To reach the foreperson, please call the Grand Jury Clerk at (650) 599-1711.

If you have any questions regarding these procedures, please do not hesitate to contact Thomas F. Casey III, County Counsel, at (650) 363-4756.

Very truly yours,



John C. Finon
Court Executive Officer

JCF:mc
Enclosure

cc: Hon. John L. Grandsaert
Thomas F. Casey III

Information Copy: City Manager



Building in East Palo Alto

Is the Building Permit Approval Process In East Palo Alto Equitable?

Issue

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Environmental documents with a Mitigated Negative Declaration for the property were also not forwarded for Council consideration. As a result, the Council acted to amend the General Plan, rezone the subject property, and adopt the Mitigated Negative Declaration without having received the required supporting documents. The City Manager and the City Attorney directed the Planning Manager and the Associate Planner to file the Notice of Determination. Allegedly, both refused because the Council's actions were not yet complete and therefore inconsistent with state law.

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Recommendations

The Grand Jury recommends that the East Palo Alto City Council:

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3. Instruct the City Manager to update the zoning ordinances on the City website by September 2007.

EXHIBIT 6

Proposed response to Building in East Palo Alto

Building in East Palo Alto

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1. Inappropriate Participation of the City Manager in the Planning it Process

The current City Manager served as Planning Director for agencies in other jurisdictions for a total of about 20 years, leaving him with a strong interest in planning issues. The following examples suggest that this interest may have led to inappropriate interventions in the granting of building permits.

Before proceeding, it should be noted that the role of the City Manager in the East Palo Alto planning process was changed a few years ago. The role of the City Manager in planning process appeals is governed by a March 2004 revision of Section 658 1.1 of Chapter 30 of the East Palo Alto City Code (Appeal of Decision on Which Administrative Review and Approval is Sought), which now removes the City Manager from planning decisions. Originally, the code stated: "In the event of dissatisfaction with the decision of the Planning Director on any entitlement for which administrative review is sought ... the proponent may appeal in writing to the City Manager. ... The City Manager shall render his or her decision within 45 days after the conclusion of said hearing of the appeal. .. In event of dissatisfaction with the decision of the City Manager, proponent may appeal in writing to the City Council." The revised code eliminated the role of the City Manager in the planning appeal process, while leaving the City Manager with a role in the building permit approval process itself.

Respondent does **not** agree with the finding for the following reason:

*It **is accurate** that the City Manager had served as Planning Director for the cities of Oakland and Pasadena as well as the County of Santa Cruz prior to joining the City of East Palo Alto. It is also true that because of that background, he was aware of the shortcomings of the previous administrative review system relative to acceptable standards for public notice and due process under Chapter 30 as discussed in the following paragraph. Between the time of his hire in October 2003 and March 2004 when the amendment of Chapter 30 occurred, the City Manager never processed an administrative appeal nor was asked to do so by any permit applicant.*

*It **is accurate** that the City Council completed amendment of Chapter 30, Section 658I.1 in March, 2004 (Ordinance 284, March 2, 2004) removing a role for the City Manager in reviewing the administrative decisions of the City's Planning Manager. However, it was not for the reasons implied in the first paragraph of the findings or the paragraph heading. The modification was prepared and presented for Planning Commission and City Council consideration **at the request of the City Manager**. During the staff presentation to the City Council, both the Planning Manager and the City Manager pointed out that with its capacity to require public notification and conduct public hearings, the Planning Commission is logically and specifically equipped to ensure that public notice due process requirements are satisfied. Properly noticed Commission sponsored public hearings provide the necessary investigative opportunity, via written staff reports and public comment, to ensure that the concerns of interested parties are taken into account prior to a final decision being made. Under the former administrative appeal system, no public notice or public hearing was required to be conducted. It should be reiterated that the ordinance change did **not** originate with either the City Council or City Planning Commission.*

Some of the following information suggests that the City Manager has not adjusted to the changed rules.

Incident 1 involved the City Manager's March 13, 2007 termination of the Planning Manager for refusing to sign a Final Inspection card related to a recently completed residential structure. The terminated Planning Manager allegedly refused to sign the inspection card or direct any of the planners she supervised to do so, because none of them had inspected the project. Furthermore, she had allegedly informed the City Manager and the City Attorney that the building permits for the second phase of development were issued without planning approvals and had allegedly informed them that the permits did not comply with the Zoning Regulations. On the same day that the Planning Manager was terminated, a Notice of Warning was issued by the City Manager to an Associate Planner, who had also refused to sign the card.

Respondent does **not** agree with the finding for the following reason:

The incident described in the Grand Jury's finding concerns Title 15 (Building and Construction) of the City's Municipal Code, not the Zoning Regulations. Even if it did concern the Zoning Regulations, the Planning Manager had previously provided a complainant with a letter indicating that the project did comply with the City's zoning requirements. On March 9, 2005, the Planning Manager sent a letter to the complainant indicating project compliance with all aspects of the subdivision development.

Title 15.04.340 (Final Inspection and Approval) indicates that a final inspection and approval is required on all buildings when completed. Furthermore, Title 15.04.380 (Requirement of Certificate of Occupancy) indicates that: "No building or structure shall be used or occupied and no change in the existing occupancy classification of a building or structure or portion thereof shall be made until the (Building Official) has issued a certificate of occupancy." According to the Municipal Code, a final inspection is a prerequisite to issuance of the Certificate of Occupancy. The contractor had completed the subject buildings and structured and called for final inspections in a timely manner. The Planning Manager refused on several occasions, the last of which was in the presence of the City Manager and the contractor, to agree to conduct any necessary planning inspection or sign the inspection card. Virtually every review agency, with the exception of Planning, had completed their inspections and sign off on the inspection card.

The City Manager has authority to terminate exempt employees at any time without cause. It appears in this case that employees were disciplined because they refused to undertake an action that they felt was professionally improper. The fact that this particular incident involved *two* employees who refused to sip off on a property makes the City Manager's actions particularly questionable.

Respondent does **not** agree with the finding for the following reason:

*Title 2.12.070 (Powers and duties) of the City's Municipal Cod defines the responsibilities of the City Manager. Particularly relevant to this response is 2.12.070 (C) which does provide authority to remove city employees ...subject to **personnel ordinances, rules and regulations** (emphasis added). A basis, as specified in the personnel rules and regulations was identified and communicated in writing to each affected employee in connection with the referenced disciplinary action.*

*It should be noted that it was brought to the attention of the City Manager, and building inspection files independently confirm, that the Planning staff **frequently** did not signed inspection cards which are intended to evidence that final inspections have occurred with respect to completed development projects. As previously indicated Final Inspections are a requirement of the East Palo Alto Municipal Code.¹ The Final Inspection Card reserves a place for every reviewing department, including the Planning Division, to signoff. Final inspection is a prerequisite to issuance of the Final Certificate of Occupancy. Failure to provide the appropriate signoffs on the Final Inspection Card creates potential legal exposure for the city and the project sponsor related to the question of whether all required reviews and inspections have been completed*

Incident 2 involves allegations that the City Manager interceded after a planning application had been denied by the Planning Commission. With regard to the property involved, a Planned Unit Development project, the City Manager wrote the staff reports that were submitted to the City Council for its July 25 and September 5, 2006 meetings, and he failed to forward the minutes and records of the Planning Commission for consideration by the City Council before they took action.

Respondent does **not** agree with the finding for the following reason:

The City Manager wrote the staff report for consideration by City Council at its regular meeting of July 18, 2006. A Special Council meeting was scheduled and held on July 25, 2006 because the Council was unable to complete consideration of

¹ **15.04.340 Final inspection and approval. (EPA Municipal Code)**

*There **shall** be a final inspection and approval on all buildings when completed and ready for occupancy (emphasis added)....*

¹ **15.04.270 Types of inspection.**

Among the principal types of inspections required by this code and the construction codes are the following:

...
D. Final inspection. (Prior code § 9-J.502) (Emphasis added)

all items on the July 18th agenda and it was scheduled to recess for the entire month of August.

The Planning Manager had requested and received authorization to take a leave of absence for family reasons. That leave began on July 6, 2006 and was completed on August 31, 2006 when the employee returned to work. At the time of her departure, a new Senior Planner had been provisionally appointed and had been on the job less than two weeks. Neither he nor the two current Assistant Planners had been involved with the application in question. (The case had been previously handled by the Planning Manager who had prepared a staff report for consideration by the Planning Commission after taking it over from the previous Senior Planner who left his position in May 2006.

The City Manager met with the planning staff and reviewed the department's caseload at the time. It was agreed that each staff member would continue to work on previously assigned cases and tasks, and that the City Manager would take responsibility for two cases that were being handled by the Planning Manager that required attention because of appeal or permit processing deadlines. The Planning Commission had denied the application that is the subject of the Grand Jury's finding and the applicant had appealed the decision to the City Council.

It is a matter of public record that minutes, planning staff reports presented to the Planning Commission, were forwarded the City Council at the July 18, 2006 and subsequent meetings for consideration by the Council before it took action.

Environmental documents with a Mitigated Negative Declaration for the property were also not forwarded for Council consideration.

Respondent does **not** agree with the finding for the following reason:

It is a matter of public record that environmental documents provided to the Planning Commission were forwarded for City Council consideration at the July 18, 2006 and subsequent meetings before it took action.

As a result, the Council acted to amend the General Plan, rezone the subject property, and adopt the Mitigated Negative Declaration without having received the required supporting documents. The City Manager and the City Attorney directed the Planning Manager and the Associate Planner to file the Notice of Determination. Allegedly, both refused because the Council's actions were not yet complete and therefore inconsistent with state law.

Respondent does **not** agree with the finding for the following reason:

The City Council received all available information from the Planning Commission meetings related to the appeal, including environmental documentation. It properly certified the adequacy of the environmental information prior to taking action on the development application as required by the California Environmental Quality Act (CEQA). Therefore, the filing of the Notice of Determination was proper.

The City Manager and the Council went on to approve the Planned Unit Development project entitlements without the required Conditions of Approval and findings.

Respondent does **not** agree with the finding for the following reason:

The City Manager does not have authority under the Municipal Code, including the Zoning Regulations, to approve project entitlements with or without findings and conditions of approval.

Relative to the project that is the subject of the Grand Jury's findings, the City Manager did assume the role of the Planning Manager in her absence of necessity and did prepare a staff report. That report was accompanied by findings. The findings presented were within the context of a de Novo appeal hearing before the City Council. They were based upon an independent review of the case record and existing city land use policy. The presented findings and recommendations differed from those of the previous staff report.

Relative to conditions of approval, recommended conditions of approval were included in the agenda packet and presented for City Council consideration at the July 18, 2006 and subsequent meetings.

Instead, the City Manager substituted the draft Conditions of Approval and findings provided by the developer. Such a procedure is inconsistent with California Land Use laws.

Respondent does **not** agree with the finding for the following reason:

The staff report prepared for City Council consideration did not revise the staff report submitted for City Planning Commission consideration. Accordingly, no written information, including conditions of approval or findings, were substituted for anything in the latter document. The draft Conditions of Approval considered by the City Council, were the product of several meetings that involved representatives of all city review agencies and the project sponsor. The process was consistent with how conditions of approval have previously been formulated for projects within the City of East Palo Alto and many other jurisdictions. The City Manager did participate in those meetings and represented the planning perspective because the existing planning staff could not be available for the reasons previously explained. The draft conditions that were the subject of the

negotiations between city representatives and the developer were presented by staff. The origin of the draft was not discussed nor their origin or when they might have been submitted for consideration. It was clear at those meetings that the various reviewing entities were familiar with them and many were not to the liking of the project developer. Many of the draft conditions were responsive to requirements of agencies not under the control of the city such as the Menlo Park Fire Protection District and the East Palo Alto Sanitary District. Ultimately, the draft conditions of approval presented for City Council consideration were just that --- draft. They were presented in a public hearing where any interested party could comment as to their appropriateness and the City Council, as the project approving body, had the authority accept, reject, or modify them as deemed appropriate.

The grading plan for this same property was issued without planning and engineering review and approval. Allegedly, the Planning Manager recommended to the City Manager that the grading permit be revoked and that a Mitigation Monitoring/Tracking table be prepared in order to comply with the California Environmental Quality Act (CEQA), but the City Manager ignored the recommendation and allowed the grading to proceed.

Respondent does **not** agree with the finding for the following reason:

The City Manager is not involved in the review of grading plans or issuance of grading permits. In fact, the City Manager does not recall having any conversation, written or oral regarding issues related to grading permit issuance or preparation of a Mitigation Monitoring/Tracking table. As previously indicated, the City Manager did not become involved with this project until the Planning Manager had taken a leave of absence. The City Manager was not even aware of the issuance of any permits, including grading permit until the City Engineer mentioned that he had approved and issued a rough grading permit. He mentioned it in connection with an inquiry by the developer regarding schedule for completion of review of submittals of detailed site development and construction plans at a subsequent permit processing phase. When the Planning Manager returned from her leave of absence in August, the City Manager asked her to take responsibility for planning matters related to the project in question. It would have been her responsibility to prepare a Mitigation Monitoring/Tracking table for the project as planning would do for any project requiring one. Consultation and coordination regarding mitigation monitoring typically occurs between the review agencies (eg. Engineering, building, etc.); it has never required prior consultation with or approval from the City Manager.

At the same time that the above activities were going on, the City Manager worked directly with the same developer on the processing of building permits for another project involving certain industrial condominiums on the east side of Pulgas Avenue. Even though the

Planning Manager allegedly informed both the City Manager and the developer that the Conditions of Approval required the payment of a \$10,000 fee for the services of a contract planner for the building permit application review and mitigation monitoring review, the fee was not paid to the City. The City Manager allegedly intervened in the above matters because the Planning Manager was on leave and the planning staff was short-handed.

Respondent does **not** agree with the finding for the following reason:

This finding is confusing; although it indicates that the City Manager worked directly with the same developer on another project, it appears to be the same project discussed earlier (the project includes 22 industrial office condominiums on the east side of Pulgas Avenue). As noted by the Grand Jury, final approval of the project was not granted by the City Council until October, 2006. The \$10,000 fee for contract planning services was a specified condition of approval, the payment of which could not be required unless and until final City Council project approval occurred. When the project was finally approved in October 2006, the Planning Manager had returned from leave and been reassigned responsibility for planning matters related to the project. She had no reason to bring the matter to the attention of the City Manager as it was a condition of approval imposed as an ultimate result of the City Council decision to approve the project. It isn't clear why the Planning Manager did not request payment of the fee from the developer or, prepare the necessary request for City Council consideration for selection and hiring of a contract planner per previous Council authorized procedure related to the same. In any event, the City Manager did not intervene in any of the above matters described in the Grand Jury finding.

Incident 3 involved the City Manager's reversal of an earlier decision by the Planning Manager concerning a third property. The Planning Manager denied the permits on July 5, 2006. On August 4, 2006, the City Manager granted building permits for two duplexes. The City Manager again allegedly acted because the Planning Manager was on leave.

Respondent does **not** agree with the finding for the following reason:

The City Manager did not grant building permits for two duplexes; the then Building Official granted building permits. The City Manager simply concurred with the Building Officials interpretation of the City's adopted version of the Uniform Building Code that the Building Official is the responsible city official to interpret that code and, his determination that a zoning regulation-based discretion afforded the Planning Manager concerning design review does not supercede a

specified building code requirement that window openings cannot be located within 3 feet of a side property line. The Planning Manager was insistent that a Planning imposed window placement occur within 3 feet of a side property line and that the Building Official not issue a building permit for the project. The Building Official, citing the relevant section of the building code, issued the permit. The City Manager did not intervene.

2. Possible Conflict of Interest Concerning the Previous Mayor

On July 25, 2006, the previous Mayor voted (City Resolution 2619) to rezone the property discussed in Incident 2, even though that project was within 500 feet of his residence. The City staff may have failed to alert the Mayor that his residence was so close to the project in question, but it is the responsibility of elected officials to recuse themselves in these situations.

It has recently been acknowledged that the Mayor's residence is within 500 feet of the project and that the Mayor should have recused himself from any vote on the project. The grand jury was informed that the Council must now reconsider the environmental determination, the general plan and amendment and the rezoning ordinance, all of which require public hearings at additional expenses to the City.

The grand jury was further informed that the City Attorney will also recommend that the previous Mayor contact the Fair Political Practices Commission (FPPC) to report this potential violation of FPPC rules.

The respondent disagrees partially with this finding:

It is true that the previous Councilmember and now current Mayor voted as indicated on July 25, 2006. It is also true that staff failed to alert the Mayor that his residence was so close to the project in question. The current Mayor lives in a subdivision, the first phase of which had been completed not long before the project that is the subject of the Grand Jury finding was before the city for consideration of approval. The City Planning Division subscribes to a private real estate service to update its mailing list information used for public notification on an ongoing basis. That service provides updated information every three months. When the Senior Planner initially responsible for processing the project in question (who has since left city employment) utilized the real estate service, the service provided information that did not include mailing information for the development in which the Mayor resides. It appears that the service utilizes county property ownership information and that the new development had not as yet been included in records available to the real estate service.

The Planning Manager used the list for the Planning Commission hearings on the project and in fact no one in the Mayor's development received notice of the project for those hearings. After the Planning Manager departed on her leave of absence, neither the City Manager nor the staff responsible for preparing the public notice for the City Council were aware of the omission and utilized the same mailing list -- - again, no one in the Mayor's residential development received notice of the pending City Council appeal regarding the proposed development. When the matter was before the City Council on July 18, 2006 and subsequently, neither the city staff nor any member of City Council were aware of the omission in the mailing list. When the Mayor's improper vote became manifest, the City Attorney advised the Council to rescind the vote and he advised the Mayor to voluntarily report the matter to the state Fair Political Practices Commission (FPPC). The Council rescinded the vote and the Mayor took the City Attorney's advice and voluntarily reported the incident to the FPPC.

3. Improprieties in a Contract Award by the City Council

During November and December of 2006, the City Council sought bids and awarded a contract for planning services and the preparation of an Environmental Impact Report (EIR) for a large live/work development. The contract was awarded to a company that had not been recommended by the Planning Manager, and is alleged to have received an unfair advantage during the award process.

According to the allegations, two companies (hereafter referred to as Company A and Company B) were the finalists in a competition to provide contract planning services to the City and prepare an EIR for the above development. On November 8, 2006, the Planning Manager presented an analysis of the two Companies to the City Council and, based on technical considerations, recommended that Company A, receive the contract. During the public forum, the developer requested that Company B be hired, in spite of the Planning Manager's recommendation. The Council later directed the Planning Manager to give Company B a copy of Company A's proposal. On November 15, Company A wrote to the City Council noting that it was "... *inappropriate and raised ethical questions ...*" for the City to give Company A's proposal to Company B, but the City did so anyway. Company B subsequently revised its proposal, but the proposal still did not include an evaluation of the impact of a hazardous waste materials facility in close proximity to the project site. Company A had included such an evaluation in their scope of work.

The City Manager allegedly changed the Planning Manager's report after Company B revised their proposal, and then recommended that the Council award the contract to Company B. The City Council chose Company B, in spite of the above mentioned deficiency with regard to the

hazardous materials study. The Grand Jury could find no documentation that justified overruling the Planning Manager's recommendation and the award to Company B.

Respondent does **not** agree with the finding for the following reason:

It is a matter of public record that the staff report to the City Council regarding the above allegations was not modified from that which was initially presented for Council consideration. It is also a matter of public record that the City Council, following its own inquiries and deliberations, chose the company it believed to meet the requirements of the city. The City Manager did not change any staff recommendation. He did, however, in response to a question of a particular councilmember, remind the Council that during her presentation, that the Planning Manager had indicated her judgment that both firms under consideration were technically qualified and could satisfy the city's requirements on that basis. The City Manager also indicated that the Council, as always, was not bound to act in accordance with a staff recommendation but could chose whichever firm it deemed acceptable.

4. Allegations of Improprieties by a Former Building Official

A former Building Official has been alleged to have engaged in dubious practices in connection with several different properties. Some of these same properties have been discussed above. The following chronological narrative is supported, by various testimony and documents.

On May 9, 2005, the Building Official issued building permits for foundations at a site in the City without planning approval and prior to the payment of park-in-lieu and below-market rate in-lieu fees.

Respondent does **not agree or disagree** with the finding for the following reason:

Insufficient information has been provided as part of this allegation to determine if the "dubious practices" were in fact illegal. If additional information is provided, the City Manager will investigate and pursue whatever remedies are available. The Building Official in question no longer is employed by the City of East Palo Alto. The City Manager is mindful of the fact that "dubious practices" have also been evidenced by planning staff as indicated by fact that Final Inspection Cards have frequently not been signed off on by planning staff which has hampered efforts to meet the requirements of the Municipal Code.

On June 10, 2005, the Building Official issued building permits for another property without obtaining planning, fire and engineering approval.

Respondent does **not agree or disagree** with the finding for the following reason:

Insufficient information has been provided as part of this allegation to determine if the "dubious practices" were in fact illegal. If additional information is provided, the City Manager will investigate and pursue whatever remedies are available. The Building Official in question no longer is employed by the City of East Palo Alto. The City Manager is mindful of the fact that "dubious practices" have also been evidenced by planning staff as indicated by fact that Final Inspection Cards have frequently not been signed off on by planning staff which has hampered efforts to meet the requirements of the Municipal Code.

On March 28, 2006, the Building Official issued building permits for the residential structure mentioned in connection with the termination of the Planning Manager without planning review and approval.

Respondent does **not** agree with the finding for the following reason:

See response to Incident 3 above.

On October 18, 2006, the Building Official issued grading permits without planning and engineering review for the planned development project that was near the former Mayor's home.

Respondent does **not agree or disagree** with the finding for the following reason:

Insufficient information has been provided as part of this allegation to determine if the alleged action was in fact illegal. If additional information is provided, the City Manager will investigate and pursue whatever remedies are available and necessary. The Building Official in question no longer is employed by the City of East Palo Alto. As previously indicated, the City Manager became aware, some time after detailed plans had been submitted for the project in question, that the City Engineer had approved a rough grading permit for the project. The City Manager is mindful of the fact that the "dubious practices" described have also been evidenced by planning staff as indicated by fact that Final Inspection Cards have frequently not been signed off on by planning staff which has hampered efforts to meet the requirements of the Municipal Code.

During 2006, the Building Official issued a grading permit without planning and engineering review.

Respondent does **not agree or disagree** with the finding for the following reason:

Insufficient information has been provided as part of this allegation to determine if the alleged action was in fact illegal. If additional information is provided, the City Manager will investigate and pursue whatever remedies are available and necessary. The Building Official in question no longer is employed by the City of East Palo Alto.

5. Other Irregularities

A Planning Commission meeting scheduled for February 28, 2005 was cancelled for lack of a quorum. The following day, the Building Official allegedly was informed that the Planning Commission had reviewed the plans for the subdivision mentioned in connection with the termination of the Planning Manager, so building permits could then be issued. In fact, the project could not had not have been approved by the Planning Commission because of the aforementioned lack of a quorum.

Respondent does **not agree or disagree** with the finding for the following reason:

The proposed finding does not logically follow, in that the Building Official would not have had any responsibility for determining the quorum of the Planning Commission. Consequently, additional information is necessary to review the matter. In any event, the said project was fully entitled and permitted to move forward. The Planning Commission had no jurisdiction to review the matter on February 28, 2005. Consistent therewith, on March 9, 2005, the Planning Manager wrote a detailed letter to a complaining neighbor, pointing out all of the entitlements for said project and why said project was fully vested.

Finally, the zoning ordinance on the City website is out of date. It was last updated in October 2003. The lack of current information could be quite misleading for permit applicants, necessitating undue expense and delay.

Respondent **agrees** with the finding for the following reason:

The City of East Palo Alto is committed to providing the most current information available requiring zoning requirements. Please note the following information in the Preface of the online version of the Municipal Code:

The electronic version of the City of East Palo Alto Municipal Code is up to date through Ordinance 305, passed July 17, 2007. For more recent provisions, please contact the City.

The City currently maintains an arrangement with a private update service to ensure that the latest revisions are reflected in the online Municipal Code which does not cover the online version of the Zoning Regulations. The City Attorney expects to present a proposal for City Council consideration by December 31, 2007 for obtaining the same or a similar update service for the city's zoning regulations.

Conclusions

In reviewing the several citizen complaints, the Grand Jury noticed the key role played by the City Manager in many of the incidents. This may reflect the considerable planning director experience (in other jurisdictions) of the current City Manager. Evidence was presented to the Grand Jury that many confrontations occurred between, the recently terminated Planning Director and the City Manager over planning issues.

Respondent does **not** agree with the conclusion for the following reason:

There has never been a "confrontation" of any kind between the former Planning Manager and the City Manager over planning issues. The Grand Jury does not indicate: how many confrontations occurred, when they occurred, whether not a legitimate basis existed for the City Manager's position if indeed a difference of opinion existed, etc. The Grand Jury does not define "planning issues" --- in at least two of the aforementioned Grand Jury findings believed to be planning issues, the matter in fact, involved building code issues and a third involved City Council discretion in determining an appropriate contractor to provide planning services to the city. While a difference of opinion may or may not have existed between the former Planning Manager's perspective and that of the City Manager, none involved any confrontation between the parties.

Prior to the revision of Section 65 & 1.1 of the East Palo Alto City Code that was noted earlier, the City Manager played an unusually active role in the building permit approval process, As stated before, Chapter 30 was repealed and a new chapter was enacted on March 2, 2004, eliminating the role of the City Manager in the planning appeal process. The City's ordinance now sets forth a procedure common in other cities; i.e., "In the event of dissatisfaction with the decision of the Planning Director on any entitlement for which, administrative review is sought ... any interested party may appeal in writing to the Planning Commission." As noted previously, the City Manager continues to oversee final inspection and certificates of occupancy.

Respondent does **not** agree with the conclusion for the following reason:

Per Title 15 of the City's Municipal Code, the Building Official oversees final inspection and issuance of Certificates of Occupancy.

The allegations concerning the City Manager indicates that he continues to interfere with decisions made by the Planning Manager even though the 2004 revision of the zoning ordinance eliminated his involvement in the planning process.

Allegations of questionable action involving the City Manager, the now-departed Building Official, the former Mayor, the Planning Commission, and the City Council have been reported above. About one dozen different properties have been involved. Throughout the course of this investigation, the Grand Jury observed that members of the Building Department, the Planning Department, and other City staff were confused about their roles and duties in the building permit approval process. The atmosphere of uncertainty and confusion suggests that current and former City officials have not consistently followed the established building permit approval policies and procedures.

Recommendations

The Grand Jury recommends that the East Palo Alto City Council:

1. Clarify the role of the City Manager, if any, in planning and zoning decisions, and direct the City Manager to avoid any unauthorized participation in such processes.

The recommendation has been **implemented**:

With the March 2004 revision of Section 658 1.1 of Chapter 30 of the East Palo Alto City Code (Appeal of Decision on Which Administrative Review and Approval is Sought), the City Manager properly no longer participates in the processing of administrative appeals from decisions of the Planning Manager as previously indicated.

2. Clarify the roles and duties of those involved in the planning/building permit approval process in order to eliminate confusion and improve public confidence.

The recommendation has been **implemented**:

On July 3, 2007, the City Council, per recommendation of the City Manager's Office, awarded a contract to the Matrix Consulting Group to conduct an Organizational/Operational Assessment of the Community Development Department, which currently includes the Planning and Building Services Division (see attached staff report). The action followed City Council authorization on

February 6, 2007 to distribute a Request for Proposal (RFP) for consulting services to conduct an organizational/operational assessment that may result in recommendations for, among other considerations, a more effective and efficient departmental structure, best management practices, efficient permit and records management. Matrix is expected to provide its final report around the end of October 2007.

3. Instruct the City Manager to update the zoning ordinances on the City website by September 2007.

The recommendation has **not** yet been implemented, **but will be implemented in the future, with a time frame for implementation:**

The City Attorney expects to present a recommendation for City Council consideration no later than December 31, 2007 regarding how best to update the online version of the Zoning Regulations and keep them updated on an ongoing basis. The recommendation may involve the use of an outside update service, such as currently utilized for the Municipal Code or an alternative method.