



# MEMORANDUM

**DATE:** November 13, 2006

**TO:** Planning Commission

**FROM:** Deanna Chow, Senior Planner  
Community Development Department

**RE:** **Agenda Item C1: Possible Reconsideration of the Planning Commission's Action on October 23, 2006 to Approve a Use Permit, Architectural Control and an Environmental Impact Report at 321 Middlefield Road**

## BACKGROUND

### Planning Commission Meeting – October 23, 2006

On October 23, 2006, the Planning Commission conducted a public hearing on a proposed project at 321 Middlefield Road for exterior modifications of an existing building and its conversion from a general office to medical office use. The proposed project requires a use permit to allow medical office and related uses in the C-1 zoning district, architectural control for exterior changes to the building, a heritage tree permit for removal of eight heritage trees and the relocation of three heritage trees, and an Environmental Impact Report.

At the meeting, the Planning Commission considered various items, including the staff report and related documents, presentations by the applicants, and verbal and written communication from the public prior to making a motion on the proposed project. A copy of the October 23, 2006 staff report and related documents are available for review at the Planning Division office. At the meeting, several members of the public raised concerns about the increase in traffic associated with a medical office building while several others stated that the area is in need of medical office buildings and the proposed site is a good location. The Commission supported the reuse of the existing building and the incorporation of "green building" elements, and indicated that medical offices could provide a service to the community. The Planning Commission also recognized the potential for an increase in traffic and discussed possible ways to monitor traffic or reduce the amount of peak hour traffic by limiting the hours of

operation. The majority of the Commission believed that imposing time restrictions could be a hindrance to the business and the community and that the benefits of the project outweigh potential traffic impacts. The Planning Commission approved the proposed project subject to the findings and conditions in the staff report and those added at the meeting to clarify mitigation measures in the EIR (4-2, Commissioners Keith and Pagee opposed and Commissioner Deziel recused). Revised conditions of approval including the changes are shown in underline and strikeout format in Attachment A.

The Planning Commission could be the final decision-making body on the proposed project. The proposed project, however, was appealed, and the City Council will become the final decision-making body. The appeal hearing date has been set for the City Council meeting of November 28, 2006.

#### Additional Letter on the Final EIR Submitted Prior to the End of the Review Period

On October 24, 2006, the day following the Planning Commission meeting, staff became aware of a letter concerning the Final Environmental Impact Report (EIR) for the proposed project. The letter for the proposed project at 321 Middlefield Road is included as Attachment B. (A letter was also received for the proposed project at 75 Willow Road, which was also heard by the Planning Commission on October 23, 2006.) Although the correspondence was submitted by fax the afternoon of October 23, 2006, staff was unaware of the submittal and thus the letter was not provided at the Planning Commission meeting that evening. Because the letter was submitted during the public review period for the Final EIR, but was not made available to the Planning Commission during its review of the project, staff believes it essential to provide the Commission an opportunity to review the letter and determine whether to reconsider its action on the project based on the information contained in the letter. The consideration of the certification of the Final EIR was part of the Commission's action on October 23, 2006.

While staff believes the comment letter on the Final EIR does not provide new substantive material, staff has placed the item on the November 13, 2006 agenda to allow the Planning Commission the opportunity to reconsider its action. The letter claims that that Final EIR is inadequate in its response to concerns raised in the Draft EIR, and continues to state that the Draft EIR is inadequate and should be recirculated. Staff believes the information contained in the letter on the Final EIR does not provide new information that was not previously stated or addressed through previous documents, which were considered at the Planning Commission meeting on October 23, 2006. The environmental consultant has prepared a letter, included as Attachment C, to address issues raised in the October 23, 2006 letter submitted by the Law Offices of Brian Gaffney on behalf of the Linfield Oaks Neighborhood Association (Attachment B). The consultant's letter reiterates how the environmental documents prepared for the project address issues that were previously raised. The applicant has also submitted a letter addressing the concerns raised in the additional letter. The applicant's letter is included as Attachment D.

## **PLANNING COMMISSION OPTIONS**

The following section outlines the Planning Commission's options for discussion at its meeting on November 13, 2006. In both scenarios, the Planning Commission should first consider the merits of the additional letter. As part of its consideration, the Planning Commission should accept public comments. The Commission should discuss whether the additional letter impacts its previous decision. The Commission could then proceed to either 1) reaffirm its October 23, 2006 action to approve the proposed project or 2) vote to reconsider the item. Both options are further discussed below in the respective sections.

### Option 1: Motion to Reaffirm the Planning Commission's October 23, 2006 Action

If the Planning Commission believes the additional letter does not provide new substantial information that would change its previous decision, the Planning Commission should make a motion to that affect, thereby reaffirming its previous action of October 23, 2006 to approve the proposed project, including the Draft and Final EIRs. Since the Planning Commission would not be reconsidering the proposed item, the previous action would stand. The existing appeal on the proposed project would remain valid, and the City Council would then conduct a public hearing on the proposed project at its November 28, 2006 meeting. The City Council would be the final decision-making body on the proposed project.

### Option 2: Motion to Reconsider the Planning Commission's October 23, 2006 Action

If the Planning Commission believes the additional letter provides substantial new information that would result in a change to the Commission's previous action, the Commission should reconsider the item. In order for the Planning Commission to reconsider the item, a motion would need to be made by a Commissioner who voted in the affirmative on October 23, 2006 to approve the proposed project. A majority of the Planning Commission would need to support the motion in order for the item to be reconsidered. If the motion is supported, the previous action would become void and the Planning Commission would then reconsider the item and take a new action. The Planning Commission could approve, modify or deny the proposed application. A new 15-day appeal period would begin, and the matter would be removed from the November 28, 2006 City Council meeting. If an appeal were filed, the matter would be re-noticed to a date uncertain at this time.

## **CORRESPONDENCE**

At the time of printing of the memorandum, staff had not received additional correspondence from the public on the potential reconsideration of the item. If comments are received, staff will provide them to the Planning Commission at the meeting of November 13, 2006.

## **RECOMMENDATION**

Staff believes that the Planning Commission findings and conditions of approval as stated in the October 23, 2006 staff report and those identified at the October 23, 2006 meeting are appropriate and take into consideration concerns raised throughout the process on the proposed project. The additional letter does not identify new issues or impacts and staff believes the Final EIR adequately addresses similar comments that were previously raised. The Planning Commission's action considered these comments and therefore, staff recommends that the Planning Commission reaffirm its decision from the October 23, 2006 meeting to approve the proposed project at 321 Middlefield Road.

## **ATTACHMENTS**

- A. Findings and Conditions of Approval, dated October 23, 2006
- B. Correspondence from Law Offices of Brian Gaffney, dated October 23, 2006
- C. Correspondence from Impact Sciences, dated November 9, 2006
- D. Correspondence from DLA Piper, dated November 9, 2006

## **Previous Documents Available for Review During Business Hours at the Planning Division**

- City Council Study Meeting on Linfield/Middlefield/Willow Study Area Staff Report, June 22, 2004
- City Council Study Meeting on Linfield/Middlefield/Willow Study Area Staff Report, October 19, 2004
- Neighborhood meeting to receive input on the Linfield/Middlefield/Willow Study Area presentation, April 28, 2005
- City Council Meeting to Review Neighborhood Input and Direction on Future Land Uses and Review Process for Development Proposals in the Linfield/Middlefield/Willow Area, June 14, 2005
- City Council Staff Report to Review the Scope of Work for a Comprehensive Traffic Study for Development Proposals in the Linfield/Middlefield/Willow Area, August 23, 2005
- Planning Commission Study Session Staff Report, December 5, 2005
- City Council Staff Report on LMW Area-Wide Transportation Impact Analysis, March 14, 2006
- Draft Environmental Impact Report, dated July 2006
- Planning Commission Staff Report, July 31, 2006
- Final Environmental Impact Report, dated October 2006
- Planning Commission Staff Report, dated October 23, 2006

## **FINDINGS AND CONDITIONS OF APPROVAL**

**321 Middlefield Road**

**October 23, 3006, 2006**

*Redlined Conditions of Approval*

*Showing Changes Incorporated at the October 23, 2006 Meeting in  
Underline and ~~Strikeout~~ Format*

1. Adopt the Findings for Certification of the Environmental Impact Report, including the Statement of Overriding Considerations and Statement of Certification.
2. Adopt the Mitigation Monitoring and Reporting Program prepared for the project.
3. Adopt the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:
  - a. The general appearance of the structure is in keeping with the character of the neighborhood.
  - b. The development will not be detrimental to the harmonious and orderly growth of the City.
  - c. The development will not impair the desirability of investment or occupation in the neighborhood.
  - d. The development provides adequate parking as required in all applicable City Ordinances and has made adequate provisions for access to such parking.
4. 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.
5. Approve the use permit and architectural control request subject to the following conditions:
  - a. Development of the project shall be substantially in conformance with the plans prepared by DES Architects, dated received October 18, 2006, consisting of 26 plan sheets and approved by the Planning Commission on October 23, 2006 except as modified by the conditions contained herein.
  - b. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility company's regulations that are directly applicable to the project.

- c. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval of the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- e. Prior to building permit issuance, the applicant shall submit a detailed landscape and irrigation plan prepared by a licensed landscape architect subject to review and approval of the City Arborist and the Planning Division. The landscaping plan shall comply with the Water Efficient Landscape Ordinance (Chapter 12.44). Landscaping within the City right-of-way shall include City approved street plant materials. The landscaping shall be installed prior to final building inspection.
- f. Prior to grading permit issuance, the applicant shall submit a plan for construction safety fences around the periphery of the construction area for review and approval of the Building Division. The fences shall be installed according to the plan prior to commencing construction.
- g. Prior to grading permit issuance, the applicant shall pay the applicable Building Construction Street Impact Fee.
- h. Prior to building permit issuance, the project shall contribute shuttle fees in accordance with the proposed Transportation Demand Management Plan and the City's requirements. The shuttle fee is \$0.105 per square foot of commercial use paid on an annual basis.
- h.i. Concurrent with the building permit submittal for site improvements, the applicant shall submit a parking lot stripe plan indicating one-way access from Middlefield Road and two-way access from Linfield Drive subject to review and approval of the Transportation Division.
- h.j. Prior to building permit issuance, the applicant shall use reasonable, best efforts, as determined by the Community Development Director, to negotiate an overflow parking agreement to allow residents of the 110 and 175 Linfield Drive project sites to use the parking facilities at 321 Middlefield Road before and after business hours (generally 7 a.m. to 6 p.m., Monday through Friday). If the applicant is unsuccessful in negotiating an agreement prior to building permit issuance, the applicant shall continue to use reasonable, best efforts to negotiate an agreement up to the time of final building inspection.

i-k. If an overflow parking agreement is agreed upon between 321 Middlefield and 110 Linfield Drive and 175 Linfield Drive, the agreement shall be provided to the City and reviewed and approved by the Planning and Transportation Divisions prior to any parking being used by residents.

k-l. Prior to building permit issuance, the applicant shall submit improvement plans for the right-of-way fronting the property. The plans shall include details for curbs, gutters, sidewalks, landscaping irrigation, lighting, etc. The plans shall be subject to review and approval of the Public Works Department.

l-m. Prior to building permit issuance, the applicant shall submit revised plans demonstrating that the proposed peak flow rate for a 10-year storm is equal to or less than the existing peak flow rate. If necessary to meet this condition, the project plans shall be revised to integrate additional measures such as pervious pavers in the parking lot or other measures. If the Public Works Director determines that no other feasible options exist to reduce the peak flow rate, the applicant may propose a system that utilizes detention based on a dynamic hydrology analysis. The analysis must show that no adverse impact to the existing system or adjacent property occurs and that detention capacity is sufficient to reduce peak flows to pre-development levels. Any improvements to reduce storm flows that are deemed necessary by the Public Works Director shall be required as part of the conditions of approval. (MM Hydrology-1)

m-n. Prior to grading or building permit issuance, the applicant shall submit detailed plans for the construction of a new 36 inch storm drain line in Linfield Drive from the proposed entrance to the 175 Linfield Drive site to a new connection point with the Middlefield Road storm drain system according to the study performed by BKF Engineers, dated March 1, 2006 as part of the 110 and 175 Linfield Drive projects. The storm drain shall be designed to City standards, and shall be subject to review and approval by the Engineering Division. The storm drain shall be constructed in conjunction with the on-site project improvements and completed prior to occupancy. The City shall enter into a non-recourse reimbursement agreement with the applicant, whereby the City shall agree to levy and use its best efforts to collect a storm drainage fee from all future development within the Linfield Drive drainage basin. The total amount of fees reimbursed to the applicant shall not exceed the total cost to design and install the improvements less the amount the applicant is required to contribute to the storm drain system based on their proportionate size of the project. The agreement shall be entered into prior to grading or building permit issuance. (MM Hydrology-2)

n-o. Prior to grading permit issuance, the project applicant shall implement Best Management Practices for water quality treatment on the project site, per the City of Menlo Park Grading and Drainage Plan Guidelines and checklist, subject to review and approval by the Engineering Division. Specific guidelines that would apply to the project site include (but would not be limited to) #1 (use of on-site infiltration as much as possible as a means of handling

roof and site drainage); #4 (Design of the site drainage so the storm water will flow to on-site lawn or pervious landscaped areas, or detention/retention and filtration systems through vegetated/grassed swales or underground pipes), #5 (drainage from roof downspouts to on-site lawn or pervious landscaped areas, or detention/retention and filtration systems through vegetated/grassed swales), and #11 (use of on-site infiltration, vegetated swales or other comparable BMPs prior to discharge). The BMPs shall be shown on the drainage plan and reviewed by the City prior to approval of the Tentative Map. (This mitigation measure is identified as Mitigation Measure 4.2 in the Initial Study.) (MM Hydrology-3)

- ~~o. Prior to occupancy, the City shall prohibit left and through movements from Alma Street during the AM peak period (similar to current operations during the PM peak period). The prohibition shall become effective prior to the occupancy of the first project completed in the Linfield/Middlefield/Willow (LMW) area, subject to approval by the Transportation Division. (MM Traffic 1-a)~~
- ~~p. Prior to building permit issuance, the applicant shall pay \$4,000 to the City to install signage to prohibit left turns and through movements from Alma Street during the AM peak period (similar to current operations during the PM peak period). The signage shall be installed prior to occupancy. The condition is only applicable if the improvement has yet been funded by another project. (MM Traffic 1-a)~~
- q. Prior to building permit issuance, the applicant shall pay fees as contributions to the following mitigations and/or improvements identified in the Linfield Middlefield Willow Area-wide Transportation Impact Analysis, performed by DKS Associates, dated March 2, 2006, or as subsequently directed by the City Council:
  - Linfield Drive/Middlefield Road pedestrian improvements/traffic signal: \$62,000 with first priority for the use of the funds identified as pedestrian improvements at the Linfield Drive and Middlefield Road intersection. To the extent that funds are not used for that purpose, the City may use such funds for other transportation improvements in the Linfield Drive, Middlefield Road, Willow Road area or elsewhere in the City.
  - Adaptive signal timing improvements at the intersections of Middlefield Road and Willow Road, Middlefield Road and Ringwood Avenue, and Middlefield Road and Ravenswood Avenue: \$57,500. (MM Traffic-1c)
- ~~p-r.~~ Prior to building permit issuance, the applicant shall submit detailed plans for the construction of streetscape improvements along Linfield Drive from Waverley Street to Middlefield Road according to the Linfield Middlefield Willow Area-wide Transportation Impact Analysis, performed by DKS Associates, dated March 2, 2006 (if the improvement has not yet been initiated by another project). The streetscape shall include, but not be limited to, the following components: installation of new sidewalks where sidewalks currently do not exist; removal and replacement of existing curb, gutters and

sidewalks that are currently cracked or damaged; and the installation of crosswalks, striping, signage, medians, and landscaping in the medians and parkways/planter strips. The streetscape shall be designed to City standards subject to review and approval by the Engineering Division. The streetscape shall be constructed in conjunction with the on-site project improvements and completed prior to occupancy. The City shall enter into a non-recourse reimbursement agreement with the applicant, whereby the City shall agree to levy and use its best efforts to collect a streetscape fee from all future development along Linfield Drive. The total amount of fees reimbursed to the applicant shall not exceed the total cost to design and install the improvements less the amount the applicant is required to contribute to the streetscape system based on their proportionate size of the project. The agreement shall be entered into prior to issuance of a grading or building permit. To the extent that the actual cost of the streetscape improvements is less than \$400,000, the applicant shall contribute the difference to the City for additional traffic mitigation at the time of final acceptance of the streetscape improvements. (MM Traffic-2)

g.s. Prior to building permit issuance, the applicant/project sponsor shall implement the following air quality control measures, subject to review and approval by the Building Division:

- Water all active construction areas at least twice daily.
- 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 (non-toxic) 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.
- Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.

In addition, the applicant/project sponsor shall encourage the implementation of the following optional measures:

- Install wheel washers for all existing, or wash off the tires or tracks of all trucks and equipment leaving the site.

- Install windbreaks, or plant trees/vegetative windbreaks at the windward side(s) of construction areas.
- Suspend excavation and grading activity when sustained winds exceed 25 mph.
- Limit the area subject to excavation, grading, and other construction activity at any one time. (MM-5.1)

f.t. Prior to the commencement of grading, the applicant shall retain a qualified biologist (with selection to be approved by the City) to conduct nest surveys on the site prior to construction or site preparation activities occurring during the nesting/breeding season of native bird species (typically February through August). The survey area shall include all potential nesting habitat on the project site within 200 feet of the grading boundaries. If the 200-foot distance encompasses trees on adjacent properties, the biologist shall survey the trees using binoculars. The survey shall be conducted no more than 14 days prior to commencement of construction activities. The survey shall be conducted no more than 14 days prior to commencement of construction activities, and shall be subject to review and approval by the Planning Division. (MM-7.1) If active nests of bird species protected by the Migratory Bird Treaty Act and/or the California Fish and Game Code (which, together, apply to all native nesting birds) are present in the construction zone or within 200 feet of this area, temporary construction fencing shall be erected within the project site at a minimum of 100 feet around the nest site. This temporary buffer may be greater depending on the bird species and construction activity, as determined by the biologist. (MM-7.2) At the discretion of the biologist, clearing and construction within the fenced area shall be postponed or halted until juveniles have fledged and there is no evidence of a second nesting attempt. The biologist shall serve as a construction monitor during those periods when construction activities will occur near active nest areas to ensure that no inadvertent impacts on these nests will occur. (MM-7.3)

s.u. Prior to building permit issuance, the project applicant shall comply with the Menlo Park Heritage Tree Ordinance and the City's Heritage Tree Replacement procedures, and with the tree replacement ratios recommended by City staff. The final landscaping plans for the project shall reflect compliance with the ordinance and procedures, and the applicant shall demonstrate that the required number of trees have been planted prior to project occupancy. The final landscaping plans shall be subject to review and approval by the Planning Division. (MM-7.4) The project applicant shall adhere to the tree protection and preservation plan included in the Tree Survey Report prepared by Barrie D. Coate and Associates. The plan includes measures related to the tree protection zone (TPZ), pruning and brush clearance, fencing and signage, fertilization, pest and disease control, and tree health and maintenance (including root cutting). (MM-7.5)

t.v. Prior to demolition permit issuance, the applicant shall survey the building for the presence of asbestos and lead-based paint. The survey shall be subject to review and approval by the Building Division. If asbestos is found, the applicant shall comply with Bay Area Air Quality Management District Regulation 11, Rule 2 (Hazardous Materials, Asbestos Demolition, Renovation, and Manufacturing) when renovating the building. If lead-based paint is present, the applicant shall determine whether paint must be separated from the building materials (e.g., chemically or physically). The paint waste shall be evaluated independently from the building material to determine its proper management. According to the California Department of Toxic Substances Control, if paint is not removed from the building material during demolition (and is not chipping or peeling), the material could be disposed of as construction debris (a non-hazardous waste). The appropriate landfill operator shall be contacted in advance or determine any specific requirement they may have regarding the disposal of lead-based paint materials. (MM-9.1)

u.w. Prior to demolition permit issuance, the project applicant shall incorporate noise reduction measures into project construction activities, subject to review and approval by the Planning and Building Divisions. These measures may include, but shall not be limited to, the use of mufflers and other devices on equipment, locating stationary construction equipment away from sensitive receptors, shutting off idling equipment, notifying adjacent residences and businesses in advance of construction work, and installing temporary barriers around construction noise sources. (MM-10.1)

v.x. If archeological resources such as chipped stone or groundstone, historic debris, building foundations, or human bone or any other indicators of cultural resources are discovered during ground-disturbing activities, construction activities will halt and a qualified archeologist shall be consulted to assess the significance of the find. If any find is determined to be significant, representatives of the City, construction contractor, and the archaeologist shall meet to determine the appropriate course of action. In the event that human remains are discovered, an appropriate representative of the Native American groups and the County Coroner shall be notified and consulted, as required by state law. All cultural materials recovered as part of the monitoring program would be subject to scientific analysis, professional museum curation, and report prepared according to current professional standards. (MM-14.1)