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February 18, 2010

Via Certified Mail

Mayor Richard Cline and
Members of the City Council
City of Menlo Park
701 Laurel Street
Menlo Park, CA 94025

Re: Proposed Conversions of Downtown Parking Plazas

Dear Mayor Cline and Honorable Members of the City Council:

Members of the Downtown Property Owners Vision Group, a coalition of downtown business and property owners, have asked us to write you concerning recent proposals contained in the City's Emerging Plan for the El Camino Real/Downtown Specific Plan. Specifically, the Vision Group opposes the Emerging Plan's proposal to

- convert most of the downtown surface parking plazas to uses other than surface parking,
- such as mixed-use buildings, residences, a covered marketplace, a boutique hotel, and
- multi-level parking structures. Such permanent conversions would eliminate over 60% of the existing surface parking spaces, thereby removing (next to street parking) the most desired parking areas in the downtown.

Surface parking close to storefronts and small-town charm have been critical ingredients to the success of Menlo Park's downtown. In the event that the City continues to consider the Emerging Plan's proposal despite the detrimental impact it

- would have on local businesses, we would like to bring to your attention state statutory
- provisions requiring the City to obtain the approval of downtown property owners prior
- to conversion of the surface parking plazas to other uses.

Background

Between 1945 and 1965, the City of Menlo Park established several assessment districts in the Central Business District to fund the acquisition and construction of eight downtown parking plazas. (See, e.g., City Council Res. 1809-E (Feb. 11, 1964) (Attachment A) (authorizing acquisition and construction of Parking Plaza No. 4 and making the costs "chargeable upon an assessment district"); see also City Council Res. 1809-J (Feb. 11, 1964) (Attachment B) (setting assessment district boundaries and recording notice thereof).) Attachment C to this letter shows the parking plazas the City purchased by assessment district year. (*City Publishes Map of Proposed Downtown Parking District*, Menlo Park Recorder, March 14, 1963.) Downtown property owners paid into these assessment districts for many years to finance the City's acquisition of the parking plazas. (See, e.g., City Council Res. 1809-J (Feb. 11, 1964) (Attachment D) (authorizing the issuance of bonds to pay for Plaza No. 4 and establishing unpaid assessments against 121 assessor's parcels to pay for such bonds).)

State Law Limitations Pertaining to Use of Properties in Assessment Districts

Because the City acquired the downtown parking properties with assessment district funds for the express purpose of constructing surface parking plazas, Government Code sections 50490 through 50516 regulate the City's use of those properties.¹ (Gov't Code § 50490 (establishing that the statute applies to "property [that] was acquired for a particular purpose with funds derived from an assessment district").) Under this statute, the City may not "lease the property or use it *except for the purposes for which it is acquired*" unless a petition is "signed by the owners of at least 51 percent of the property lying in the assessment district." (*Id.* §§ 50491-92 (emphasis added).) Even if the City is able to obtain such a petition, the City will have no authority to proceed with the new use, if a majority of the owners of assessed property protest the proposed use prior to a public hearing on the matter. (*Id.* § 50504.) Accordingly, the City must obtain the approval of property owners representing a majority of downtown property prior to implementing any of the proposed uses for parking plaza properties contained in the Emerging Plan.

¹ Because the City of Menlo Park is a general law city, the requirements of Government Code section 50490 *et seq.* apply to its actions. (See 65 Ops. Cal. Atty. Gen. 383 (1982) (concluding a charter city is not required to comply with Government Code section 50490 *et seq.*))

Vision Group Survey Results

The Vision Group decided to conduct its own survey of assessed property owners in order to determine their stance on the Emerging Plan's proposed uses for the downtown parking plazas. (See Vision Group Survey Card (Attachment E).) To date, the Vision Group has received cards from property owners representing over 55% of downtown property square footage pledging to join a protest vote should the City of Menlo Park approve the proposal to convert downtown surface parking plazas to other uses. (See Menlo Park CBD Square Footage (Attachment F) (summarizing the square footage of assessed downtown property and totaling the square footage of property owners in opposition).) Given this response, it appears unlikely that the City will be able to obtain the petition required by Government Code sections 50491 and 50492 in order to convert the parking plazas to the uses proposed in the Emerging Plan.

The Vision Group has been encouraged by recent comments by City Council members suggesting that the City may be rethinking some of the Emerging Plan's proposals. The Vision Group is open to different proposals for the Downtown Specific Plan that would preserve most of the downtown surface parking. For instance, the Vision Group may support a proposal to construct a single parking structure on Plaza 2. Also, please be aware that the Vision Group is not objecting to temporary uses that are consistent with the surface parking plazas, such as the Menlo Park Farmer's Market. The Farmer's Market is an important amenity that contributes to the vitality of downtown Menlo Park; risk to the Market's continued viability posed by the Emerging Plan's development proposals is another reason to reconsider the Plan as currently envisioned.

Please feel free to contact us if you would like to discuss these issues.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

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cc: Bill McClure, City Attorney