CITY OF BELMONT
MEMORANDUM

TO: Planning Commission

FROM: Dia Swan, Associate Planner/ Housing Specialist

VIA: Craig Ewing, Community Development Director

SUBJECT: January 18, 2005 Planning Commission Meeting – Agenda Item 5A
Application No. PA2003-0099 - 1405 Solana Drive
Mitigated Negative Declaration and Conceptual Development Plan to construct an activity center building and an addition to an existing multipurpose building

---

PROJECT DESCRIPTION

The applicant requests approval of an amendment to the Conceptual Development Plan for the Charles Armstrong School at 1405 Solana Drive. The proposed Conceptual Development Plan would allow new school activities and construction of approximately 15,600 square feet of additional gross enclosed floor area to the existing 29,540 square foot private school campus. The proposed additions would include the construction of a new 14,700 square foot Activity Center with a 900 square foot addition to the existing multi-purpose building. The maximum height of the proposed building would be 34 feet (current building heights range up to 27 feet).

Vehicular access for the site would continue from the existing Solana Drive driveways. The number and configuration of the existing on-site parking areas would not be changed with this project. A more complete project description was provided in the staff report of November 16, 2004. This memorandum supplements that report.

RECOMMENDATION

Staff recommends the Planning Commission open hearing, take testimony and continue item for any additional research the Commission may deem necessary.

BACKGROUND

The Commission previously reviewed the proposal on November 16, 2004 (see Attachment 1 for staff report), continuing the item and requesting responses to the following questions (See Attachment 2 for questions); the responses follow below.

COMMISSION QUESTIONS

A. Does CAS pay property or other taxes?

Response prepared by the **Applicant**:

As you know, like any other non-profit school in Belmont, the School does not pay property or corporate income taxes, but the school does incur the following costs:

- *San Mateo County Mosquito Abatement District*
- *Belmont NPDDES Storm Water Fee*
- *Federal, CA, and NPDES Storm Fee*
- *Belmont Sewer Fee*

The School is subject to state and local sales taxes. The School is subject to all payroll taxes. The School is not subject to federal and state corporate income tax.

Parents and staff are taxpayers just like neighbors, commissioners and others. In California property taxes are paid to the County; sales, use and income taxes are paid to the State. The flow of these revenues back to Cities (like Belmont) is a formula set by the legislature. School Districts (which are not geographically consistent with City boundaries) receive funds on a per pupil basis from the State. It is not meaningful to speak of local residents as "taxpayers and parents and staff as not "Belmont taxpayers". This is not a land issue or a CEQA impact.

B. How many of CAS employees are Belmont residents?

Applicant:

City of Belmont = 3
San Mateo County = 45
San Francisco County = 12
Santa Clara County = 2
Other Counties = 1

An unscientific survey of teachers in local private schools show the same ratios; the local public schools would not give out any information on this topic.

Staff:

There are a total of 63 employees at the school. The janitorial and gardening duties are done by outside contractors.

C. What supplies and services does CAS purchase from Belmont businesses?

Applicant:

See attachment 3 for a table response, page 2.

D. How much is tuition for students?

Applicant:

$21,000.

E. What number/ percentage of students live in Belmont?

Applicant:

Grade	***Belmont Residents***	***Other***	***Total***
First	*2*	*10*	*12*
Second	*1*	*29*	*30*
Third	*2*	*32*	*34*
Fourth	*5*	*29*	*34*
Fifth	*2*	*32*	*34*
Sixth	*2*	*32*	*34*
Seventh	*3*	*34*	*37*
Eighth	*0*	*32*	*32*
Total	*17*	*231*	*247*
Percentage	*7%*	*93%*	*100%*

F. Is there any special financial aid available for students who are Belmont residents?

Applicant:

The School does not have a special financial aid program available for students who are Belmont residents. However, the School extends 12% to 13% of its annual gross tuition in financial assistance to any family who demonstrates a financial need. The School treats all applicants equally and does not discriminate in any way.

Approximately 50% of the school's students come from and return to public schools. Since the State is required to educate all children, the School by offering an education to children with learning differences, takes the financial burden away from public funds.

G. Which set of drawings – especially the site plan – is most current?

Staff:

See attachment 7.

H. What are the other proposed facilities/classrooms to be used for?

Applicant:

The two classrooms will be used as science and technology labs. The science classroom lab will accommodate the science program for grades 1 through 8. The technology lab will be used for CAS students to do multimedia and advanced technology application (robotics, 3d imaging, animation, etc.); it would be a 'class' taught by a teacher.

I. What are the planned hours of operation?

Applicant:

The planned hours of operation for the gym are 8:30 a.m. to 4 p.m. with the exception of special events where the time might be extended until 9 p.m. Occasional sports events may go up to 6:30 p.m.

J. What sports activities are now offered and when are they held?

Applicant:

See attachment 3 for table on page 5.

K. What sports activities will be offered in the new facilities that are now conducted off-site?

Applicant:

There will be no sports activities offered in the new facilities that are now conducted off-site.

L. What is the seating capacity of the proposed gym and existing multi-purpose building?

Applicant:

Proposed gym seating capacity (6,080 square feet)	*405 Individuals*
Existing multi-purpose room (2,768 square feet)	*250 Individuals*

M. How will parking be provided for the seating capacities of these two buildings?

Applicant:

The School does not anticipate that any events would run concurrently in both buildings. Since most of the school's seating during an event will be occupied by students who do not drive to school, adequate parking is available on campus. At the few events where a larger crowd is anticipated, the school has made arrangements with the neighboring Terra Linda School for additional parking space.

N. What are the existing and proposed dates for summer school?

Applicant:

	2004 - 2005	*2005 - 2006*
Session 1	*June 21 – July 9*	*June 20 – July 8*
Session 2	*July 19 – August 6*	*July 18 – August 5*

O. What happens if CAS sports activities continue at the park after 4:00 p.m. and citizens want to use the park?

Applicant:

Twice a year the School meets with Belmont Park & Recreation Department along with all other organized sports managers to discuss and arrange McDougal ball field use. All organizations present their needs for game and practice use and a schedule is made and agreed upon.

Belmont citizens have access to the park.

Staff:
After 4 p.m. scheduled sports groups, like CAS, share park facilities with citizens. The park is open to the public after 4:00 p.m. as illustrated in the following chart (provides a summary of the time limits for McDougal Park, including the Municipal Code time limits for all City parks)[1]:

<table>
<tr><th>Daily Time Intervals</th><th>M–F Regular Session</th><th>M–F Summer Session</th><th>Weekends</th></tr>
<tr><td>Midnight to sunrise</td><td>Closed</td><td>Closed</td><td>Closed</td></tr>
<tr><td>Sunrise to 8 a.m.</td><td>Public Use</td><td>Public Use</td><td rowspan="4">Public Use</td></tr>
<tr><td>8 a.m. to 12:30 p.m.</td><td rowspan="2">School Use Only</td><td>School Use Only</td></tr>
<tr><td>12:30 p.m. to 4 p.m.</td><td rowspan="2">Public Use</td></tr>
<tr><td>4 p.m. to sunset</td><td>Public Use</td></tr>
<tr><td>Sunset to midnight</td><td>Closed</td><td>Closed</td><td>Closed</td></tr>
</table>

1 Section 16-33 of the Belmont Municipal code states that all public parks are, "…closed to the public between one-half hour after sunset and one-half hour before sunrise…"

P. Why didn't they address the Planning Commission's request to re-site the building?

Applicant:

Not true. As explained in the presentation to the Planning Commission on November 16, 2004, the School had changed architects and redesigned the project, reduced its scope based on an initial design reviewed by neighbors. Much time, thought and money was expended on the redesign and the School feels the building is well located to minimize its impact. The current building placement was in fact moved to add a buffer between the building and the park. Alternative locations have been studied but rejected as less appropriate. Other alternatives would involve excavating into the hillside, which may result in the destabilization of the hillside, landslides and/or soil erosion.

The location of the building on the lot is designed to minimize CEQA impacts. CEQA environmental impacts (sight/view, sound, traffic, circulation, etc.) are minimized by this site selection.

The School has spent approximately $600,000 to date to mitigate the issues that have been raised to the amount possible.

Q. Is the School currently in compliance with terms and conditions of existing approvals?
1. Hours of operation
2. Adults driving cars to classes
3. Parking requirements

Staff:

The conditioned hours of operation for school uses/activities are set by Reso No. 1988-10, which states, "*Use of the school shall be permitted strictly for school activities between 7 a.m. and 9 p.m. Monday through Friday….*" The current schedule of use (attachment 3, page 17) shows the school's activities begin at 7:30 a.m. and end at 9:00 p.m. Monday through Friday. A senior square dancing group, that operates until 9:30 Wednesday nights, appears to be a use that is not in compliance with past approvals.[2]

Regarding the question about adult drivers, a condition of Reso No. 2002-39 states, "*No Charles Armstrong School students shall drive to school; during school operating hours; the 70 required parking spaces are intended for school employees and school visitors.*" The current Charles Armstrong School curriculum includes no adult classes; staff believes that the participants in the Parent Education Meetings are correctly described as "school visitors".

The parking requirements for the school are set by the following:

2 The Commission may allow the square dancing group as a condition of this Conceptual Development Plan.

Ordinance No. 783 – "*Development standards for building size and location and the general location of parking, site circulation, access, and landscape improvements shall be as established on the approved Conceptual Development Plan.*" The January 12, 1988 plan included the upper and lower parking lot areas. The current school has its parking in these locations.

Reso No. 1988-10 – "*The applicant shall instruct employees to park on-site. Quiet zone signs shall be installed at appropriate locations within the school parking lot, the wording and location of the signs shall be subject to the review of the Planning director. Said signs shall be installed within 60 days.*" The school currently instructs school employees and visitors to park onsite; four quiet zone signs are installed within the school's parking lot. Staff cannot determine if the signs were installed within 60 days.

Reso No. 1988-10 – "*During the month of February 1989, the applicant shall submit a statement listing the number of employees and students enrolled at the school. A Planning Commission review of parking availability and on-site parking needs shall be conducted. The applicant shall install any additional parking spaces necessary to accommodate the parking demand.*" Staff found a 1/27/89 statement in the project file listing the number of employees and students enrolled at the school (see attachment 6).

Reso No. 1988-10 – "*Within 60 days, the applicant shall submit a statement to the Planning Department indicating a) how the school operations have been made compatible with the neighborhood in the following areas: noise from garbage pick up, noise from gardeners, traffic noise and parking impacts from parent drop off and pick up of children (and how drop off and pick up of students has been accomplished entirely on site, and b) steps the applicant has taken to:*

- *advise parents of the need to not use the public street for the pick up and drop off of students,*
- *implement the carpool assistance program, and provide instructions to employees to park on-site.*"

The Commission adopted Resolution No. 1988-10 on 2/2/88. The applicant submitted statements regarding school operations and neighborhood compatibility on 2/11/88 and 4/21/88 (see attachments 7 and 8).

Reso No. 2002-39 – "*Parking shall be reconfigured to conform to the plans on file in the Planning Division for Appl. No. 2001-0106 and date-stamped March 28, 2002. The parking plan includes 70 parking spaces and the Director of Community Development may approve minor modifications to the plan.*" The school currently has seventy (70) parking spaces, in compliance with the recommendations of the traffic study prepared by Fehr & Peers Transportation Consultants, 2001.

Reso No. 2002-39 – "*The applicant shall continue to advise parents and employees to park on-site.*" See responses above.

Reso No. 2002-39 – "*The applicant shall install quiet zone signs at appropriate places within the school parking lot; the wording and location of quiet zone signs shall be subject to review and approval by the Director of Community Development.*" The school is currently in compliance with this condition; the campus includes four installed quiet zone signs.

Reso No. 2002-39 – "*No Charles Armstrong School students shall drive to school; during school operating hours; the 70 required parking spaces are intended for school employees and school visitors*". See responses above.

R. Provide a revised site plan showing required mitigations.

Applicant:

See attachment 9 for project plan.

S. Provide an analysis of elementary schools in Belmont and San Carlos and whether they have gymnasium facilities and the size of those facilities.

Staff:

See attachment 10 for gymnasium comparison table.

Applicant:

The Gymnasium and Classroom functions of the proposed CAS Activity Center have been designed to satisfy the minimum requirements of the State of California, Department of Education, Title Five requirements for these kinds of uses. Specifically, Title Five general outlines the statewide issue of common gymnasium type facilities.

Additionally, the gymnasium component is consistent with the State of California, Office of Public School Construction requirement identifying a minimum size gymnasium facility for the 6 to 8 grade level at 6,828 square feet.

T. Is CAS restricting park access during their time of use even if it is beyond their hours of exclusive use?

Applicant:

The School does not restrict park access beyond their hours of exclusive use. A School representative meets with the Belmont Park & Recreation and representatives from other organized sports users twice a year to schedule game use.

U. What is the cost per year for the City to maintain the park?

Staff:

According to the Parks and Recreation Department, the cost per acre for maintaining an athletic field is approximately $8,000/year. McDougal Park is a 1.5-acre site and the City's cost to maintain McDougal Park is approximately $12,000 annually.

Applicant:

CAS pays all costs of maintenance of the parking, roads and restrooms used by the public in use of the Park.

V. What legal rights does CAS have to build on their property?

City Attorney:

For many years, there has been controversy regarding whether development is a right or privilege. In California, the courts have repeatedly held that there is no right to develop and that development is instead a privilege. See Trent Meredith, Inc. v. City of Oxnard (1981) 144 Cal.App.3d 317. As examples, the courts have held that there is no right to subdivide, Associated Homebuilders, Inc. v. City of Walnut Creek (1971) 4 Cal.3d 633l; no right to convert an apartment to a condominium, Griffin Development Company v. City of Oxnard (1985) 39 Cal.3d 256; no right to convert residential hotel units to other uses, Terminal Plaza Corporation v. City and County of San Francisco (1986) 177 Cal.App.3d 892; transit fees exacted when a developer creates new open office space are viewed as "the privilege of developing a particular parcel", Russ Building Partnership v. City and County of San Francisco (1987) 199 Cal.App.3d 1496, 1506.

In 1987, the United States Supreme Court sought to clarify this issue with its holding in Nolan v. California Coastal Commission (1987) 483 U.S. 825, "but the right to build on one's own property – even though its exercise can be subjected to legitimate permitting requirements – cannot remotely be described as a governmental benefit." While some legal scholars have argued that the Supreme Court's decision in Nolan can be interpreted as stating a right to build something on one's property, it cannot be read as recognizing the right to build a particular project. To date, notwithstanding the above holding in Nolan, California courts still hold to their position that development is a privilege. As an example, in Saad v. City of Berkeley (1994) 24 Cal.App.4th 1206, the court rejected a property owner's "right to build" argument citing to Nolan when the city denied a use permit for a home, holding that it would impair views and have a towering affect on a neighborhood. In another decision, also rendered after Nolan, the court struck down a school district fee as being an invalid special tax. In so doing, the court stated "typically a development fee is an exaction imposed as a precondition for the privilege of developing the land." California Building Industries Association v. Governing Board of the Newhall School District (1988) 206 Cal.App.3d 212, 235. (Emphasis added.)

W. Have any activities listed in Attachment 13 anticipated the increase in enrollment from 220 to 260? Convert Attachment 13 (Campus Activity) to an Excel spreadsheet.

Staff:

See attachment 3 page 16 for a spreadsheet that includes student enrollment.

X. What activities are happening on each evening of the week?

Applicant:

No regular activities happen on certain days of the week other than the Wednesday evening Senior Citizen Square Dancing. Events and meeting times vary. (See attachment 3 page 16 for an Excel spreadsheet).

Y. What is the traffic impact from the evening activities, including adult classes?

Staff:

The project materials indicate that the school's evening activities include occasional student sports games (in attachment 3 page 5: basketball intramural game times 4-6:30 p.m.), special events (in attachment 3 page 16: festivals, school dances, and banquets), and year round activities (in attachment 3 page 16: parent meetings, senior square dancing, and the teaching institute). No specific analysis was performed relating to the evening activities of the school.

The project plan includes 70 striped parking spaces, a 14,400 square foot portion of the existing black-top play court to be used as over-flow parking, and the event parking arrangement with Terra Linda School (as stated in attachment 3 page 19 of the "CAS Parking & Traffic Plan").

Applicant:

CAS has not seen any evening activities for which parking is not able to be contained on site with the existing parking capacity.

Z. What is the parking management plan required of CAS and how is it used?

Applicant:

The School's parking management plan is used to minimize the amount of parking on City Streets, improve traffic flow, encourage carpooling and improve neighborhood communications.

Staff:

See attachment 3 page 17 for a copy of the "Charles Armstrong School Parking & Traffic Plan.

AA. Can a traffic counter be placed near the school to measure traffic levels?

Staff:

Two sets of traffic counters were placed near the inlet of Solana Drive from Chula Vista Drive, and farther up Solana Drive past the school. The counters were in place for five days between 12/10/04 and 12/17/04 (includes weekdays and weekend days), and resulted in the counts indicated on attachment 6.

BB. What does it take to get neighborhood agreement for the project?

Applicant:

Charles Armstrong School has worked with the Belmont Community and through the planning Commission process in hopes to reach consensus on the approval of the project. CAS has had public meetings and made modifications to minimize to acceptable levels per CEQA. Community outreach has been documented in the staff reports. From comments at the November Commission hearing there are many people who are focused not on the application but on "past issues". For whatever reasons some would like to see CAS simply go away. Unanimous "neighborhood agreement" (as with any application) is not to be expected.

CC. Why are so many close neighbors opposed?

Applicant:

Some of the closest neighbors to the school living on Solana Drive have come forward to the community in favor of the project.

The School understands that the San Carlos neighbors whose backyard borders the school on the south side are opposed to having the school build the Activity Center on the school's existing ball court. However, there are no other open spaces for the school to construct the needed facilities to support the school's program. The School empathizes with these neighbors and therefore, has designed the building to have the lowest point nearest to these neighbors; increased the setback beyond required limits; landscaped to buffer the sight for the building, and moved mechanical equipment on the other side of the building as well as eliminated operable windows on the south side.

A WORD ON VIEWS: City policy discusses "views". However, the question is "View of What". Interference with "view" does not equate to "Visibility". The homes surrounding

CAS (both in Belmont and San Carlos) are on subdivision lots of 5,000 square feet (most 50x100). Any structure built on surrounding property (R1; R2 PD zoning or other) will be visible from any neighboring property. The PC sees this with every 2nd story addition application. With 2 story homes and a 6-7" fence ordinance what gets built on any neighbor's lot will be visible and vice versa. The neighbors "view" which will be impacted is of current black top playground, school classroom buildings and trees. The view after construction will be of play ground, gym building and trees. There is no (negligible at best) loss of a "significant view" of mountains, bay or open green space.

DD. How to get the neighborhood to buy in if project approved?

Applicant:

Please see response to question BB. We don't know what "buy in" means or how it is measured. There are people opposed to any project, people opposed to the school in general and many in favor of the school and the project. CAS seeks to provide a project that simply fulfill the needs of the school and imposes little or no additional impacts on the City of the neighborhood.

EE. Can a one-way circulation plan be developed on the site?

Applicant:

The School had considered a one-way circulation plan, however, the plan would involve a steep grade at the east side of the school and would disrupt existing play area and eliminate parking space at the north parking lot.

FF. What are the options for reducing the bulk of the proposed gymnasium?

Applicant:

We have made an attempt to reduce the bulk of the gym by locating it at the lowest possible elevation at the site. The roof slopes gently away from the San Carlos neighbors who are further buffered by the bulk of the gym and by the further attached storage area.

Bulk is determined by minimum required heights. See further explanation at TT.

GG. What is Charles Armstrong Teaching Institute?
1. Its purpose
2. The type, size and time of classes it offers

Applicant:

The mission of CATI is to provide inspiring professional development tools and services to classroom teachers and parents of learning disabled students in the public and private school throughout the San Francisco Bay Area.

CATI offers professional development workshops offsite at individual school sites, conferences at local conference centers, print and video materials, and web-based services all of which to achieve its mission of providing professional redevelopment.

The goal is to make institutional changes in public and private schools by sharing the techniques we have developed over the years with teachers and administrators. This is accomplished by offering conferences for administrators and meeting school teams at their own school to develop site based leadership teams.

Last year we offered CATI workshops throughout the academic year at approximately 30 schools, Additionally, CATI did week-long summer training at Hamlin School in San Francisco.

This year our goal is to train in 50 schools throughout the Bay Area and to hold two four-day courses at school sites in San Francisco and the South Bay.

HH. How will the multipurpose room be used once the gym is built?

Applicant:

The multipurpose room will be used to support the drama and music programs at the school and continue to be an assembly room for non-all-school assemblies and a meeting room for parents' information nights.

II. How will parking be provided for the nine events per year that will draw 275 – 400 people?

Applicant:

Breakdown of attendance

Students	*Staff*	*Visitors*	*Total*
247	*60*	*93*	*400*

The School has 70 official parking spaces and will be able to accommodate sufficient overflow parking between the upper parking lot and the ball court nearest the new Activity Center. During special events staff is required to park in the Terra Linda parking lot freeing up parking spaces for visitors.

JJ. Where will drama programs be conducted?

Applicant:

The School's original plan included a gym/theater that could accommodate a large audience. In consideration of the neighbors the School revised the building to house the gym. The School will continue to perform one major drama production per year at an off site community theater that can accommodate an audience of 400 plus. There are no plans to change the program or venue.

KK. How do the opposing teams get to the 53 home games at 4:00 p.m.? If need to use field for football, how is it handled?

Applicant:

The opposing teams generally come in carpools driven by coaches and parents. Because the games begin at 4:00 p.m. most working parents are unable to attend. CAS representatives meets with the Belmont Park & Recreation and representatives from other organized sports users twice a year to schedule game use.

LL. Why was the site discontinued as a polling place after 1984?

Applicant:

The School is unable to determine why the site was discontinued as a polling place after 1984; the school did not request it. The School is more than willing to participate in community events and make facilities available. If requested the school would be happy to accommodate the County Recorders use as a polling place. The ability of the school to offer facilities to community groups for meetings and other activities is limited by the restrictions of the current use permit. Modification on the use permit to accommodate more community functions is agreeable to CAS but is beyond the scope of this application.

MM. As a transitional school, what is the average length of time a student spends at CAS?

Applicant:

The average length of time that a student is enrolled at the School is three years.

NN. Why did the school not accept mitigation measure #18 and relocate the gym?

Applicant:

The School undertook an arduous look at the placement of the Activity Center. After careful consideration of the building program and campus design, the School determined

that the current placement would work best for the campus and the program. The proposed configuration focuses the outdoor activity towards the center of the campus and away from its closest neighbors.

OO. Revise the gym comparison matrix to include:
1. The grade levels of each school.
2. Total number of students in grade 6,7, & 8.
3. Whether or not there is a multipurpose room.
4. The amount of associated parking.
5. The Immaculate Heart of Mary facility.

Staff:

See attachment 5 for the gymnasium comparison.

PP. Can the city limit the use of added classroom to the overall maximum student enrollment?

City Attorney:

Consideration of and action on a request for additional classroom space does not commit the City to any particular position regarding the maximum number of students authorized to enroll at Charles Armstrong School. The maximum enrollment number is set currently at 260 pursuant to the Conditional Use Permit approved by the City in 2002, Resolution No. 2002-39. Unless and until the City approves some different number, that is the maximum number of students which are allowed regardless of the classroom space existing at the school.

Applicant:

There is nothing in the application that permits increase in enrollment and the school does not anticipate a request to increase enrollment.

QQ. Does the school pay parcel tax or generate any sales tax revenue?

Applicant:

The School does not pay parcel tax or generate any sales tax revenue of its own, however, the school does pay sales tax on goods and services it purchases.

RR. What are the legal requirements/Belmont's practice for a public school to do a similar project?

City Attorney:

Prior to 1959, the California Supreme Court held that public school activities were a matter of statewide concern and that school districts, being local agencies of the state, were not subject to municipal construction regulations when engaged in such sovereign activities as the construction of school buildings. Hall v. City of Taft (1956) 47 Cal.2d 177. It was subsequently held that school districts were likewise exempt from municipal zoning ordinances and that the state had occupied the field of school site selection by general laws contained in the Education and Government Codes. Town of Atherton v. Superior Court (1958) 159 Cal.App.2d 417. Because of the broad implications of the Taft and Atherton decisions, the legislature responded in 1959 by enacting Government Code Sections 53090-530955.

Section 53091 provides in part that "each local agency shall comply with all applicable building ordinances and zoning ordinances of the county or city in which the territory of the local agency is situated…Notwithstanding the preceding provisions of this section, this section does not require a school district to comply with the zoning ordinances of a county or city unless such zoning ordinance makes provision for the location of public schools and unless the city or county planning commission has adopted a master plan."

Section 53094 provides in part that "notwithstanding any other provision of this article…, the governing board of a school district, by vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed used of property by such school district except when the proposed use of the property…is for non-classroom facilities…If such governing board has taken such action, the city or county may commence an action in the superior court…seeking a review of such action of the governing board of the school district to determine whether it was arbitrary and capricious…If the court determines that such action was arbitrary and capricious, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by such school district." If the property in question is used, or jointly used by a private person, it is subject to local zoning regulations and Government Code Section 53094 is inapplicable, except in the case of property used solely for educational purposes. Education Code Section 81390.

The above sections, read as a whole, require all local agencies to comply with city or county zoning ordinances (Government Code Section 53091) but school districts are specifically authorized, under the circumstances enumerated above, to exempt themselves from the purview of such ordinances by a two-thirds vote of their governing board. Government Code Section 53094. Therefore, a school district must abide by local zoning ordinances unless it chooses to exercise its right of exemption. Further, Section 53094 does not limit a school district's discretion in any way except to provide that if the district's determination to exempt itself is arbitrary and capricious, it is subject to attack in the superior court. City of Santa Clara v. Santa Clara Unified School District (1971) 22 Cal.App.3d 152, 158.

Except in unusual circumstances, there should be no conflict between local zoning and site selection for new schools, inasmuch as the Education Code itself requires consideration of non-conformity to regional and local master plans. Education Code Section 39101(a). Other code sections help to ensure conformity between local zoning regulations and school district site locations and treatment of grounds and buildings. Government Code Section 65402(c) provides that a local agency (including a school district) shall not acquire or dispose of real property, nor construct or authorize a public building or structure, if the city has adopted a general plan and such general plan is applicable thereto, unless the location, purpose and extent of such acquisition, disposition, or such public building or structure have been submitted to and reported upon by the planning agency having jurisdiction, as to conformity with the adopted general plan. However, if the planning agency disapproves the location, purpose or extent of such acquisition, disposition, or the public building or structure, the disapproval may be overruled by the local agency (school district). Local school districts and community college districts are required to seek planning commission review of proposed acquisitions of school sites and may not act until after the planning commission completes its review. But, if the commission opposes the acquisition, the district may proceed with the site acquisition following a 30-day waiting period. Education Code Section 39004 and 81035.

School districts are authorized to adopt five-year capital improvement programs containing specified information concerning proposed and existing capital improvements. Such a program, and revisions thereof, must be submitted to the planning agency of each affected city and county for review as to consistency with applicable general and specific plans. If the planning agency determines that the capital improvement program is inconsistent, the district must not carry out the program unless it overrules such finding. Government Code Section 65403.

School districts are required to comply with local government ordinances and conditions regulating drainage and road improvements and must give consideration to requirements and conditions of local agency ordinances relating to the design and construction of off-site improvements. If a school district elects not to comply with the requirements relating to off-site improvements, the local agency shall not be liable for any injuries or for any damage to property caused by the failure of the district to so comply. Government Code Section 53097.

Government Code Section 6103 provides that public entities, including school districts, are exempt from the payment of fees for services rendered by other public entities. The California Supreme Court has also held that where the purpose of a sewer capacity fee is to defray costs of capital improvements, the fee is a special assessment and may not be imposed on a public entity because of their exemption from property tax liability. San Marcos Water District v. San Marcos Unified School District (1986) 42 Cal.3d 154. However, one court has held that a school district was obligated to pay a city user fee for solid waste disposal, holding that the exemption of Government Code Section 6103 does

not apply to user fees. Anaheim City School District V. County of Orange (1985) 164 Cal.App.3d 697.

Staff:

Staff has no record of the Belmont-Redwood Shores School District or the Sequoia High School District exempting themselves from Belmont's zoning ordinances.

Applicant:

Public Schools are exempt from local land use regulation. If CAS was a public school or even a Charter School, no application to Belmont and no neighbor comment would be needed for this project.

SS. Can the City condition this application with renegotiation of the park access agreement?

City Attorney:

Given the voluntary nature of development, courts have long held that cities may impose conditions or exactions on developments so long as the conditions/exactions are reasonable, and there exists a sufficient "nexus" between the conditions imposed and the projected burden on the proposed project. Associated Homebuilders v. City of Walnut Creek (1971) 4 Cal.3d 633.

There is no single precise rule that is applied by courts to determine whether or not an exaction/condition is reasonable and valid. Courts have instead, used an ad hoc analysis, examining the facts of each case. The determination depends on the size of the development, the demands for services, the burden that will be created by the development, and the development's overall affect on the city and the surrounding community. Courts, in examining challenges to conditions/exactions, use a balancing test to determine whether there has been a proper exercise of police power in a reasonable manner. If so, the conditions/exactions are valid and no regulatory taking of property has occurred.

As the United States Supreme Court determined when considering what constitutes the required nexus, "no precise mathematical calculation is required, but the city must make some sort of individualized determination that the required dedication is related both in nature and extent to the impact of the proposed development." Dolan v. City of Tigard (1994) 512 U.S. 374, 391.

The legal issue regarding exactions/conditions is not whether the exaction/condition imposed as a condition precedent to development may be required but instead to what extent the dedication or fee may be imposed. As a general rule, California courts required a nexus between project conditions/exactions and the impacts of the specific

development. Associated Homebuilders v. City of Walnut Creek, Supra at 4 Cal.3d at 644.

Staff:

Based on this background, the Commission would need to establish a nexus between the proposal to add the gym and classrooms and the requirement to renegotiate the park access agreement. The two principles of the law required for a nexus to be established are that the condition must be related to the project's impacts and that it be proportional to the impacts.

The project is defined as the addition of a gym and classrooms, and includes the relocation to indoors of certain outdoor activities, revised landscaping, the expansion of certain academic programs (computer technology) and other consequences. The Commission must identify the impacts of these changes on current park access and conclude that they adversely affect the current access arrangement and necessitate a re-opening of the agreement. (Implicit in this analysis is the idea that the proposal cannot be a basis for re-opening the access agreement just because the agreement doesn't work for some people now). In sum, the Commission must do two things:

a. Identify an impact from the proposed project that changes the current access in an adverse way, and
b. Determine that lesser mitigations than re-opening the agreement will not adequately address the impact.

TT. Why is the high ceiling needed for the gym?

Applicant:

Basketball and volleyball require minimum height allowances. For basketball the suggested minimum height is 26' and volleyball minimum clearance is 23'. We also have to allow for the structure of the building to span across the gym, which adds to the height of the building.

UU. What is the estimated noise level on San Carlos side of gym?

Applicant:

On the San Carlos side of the gym the School has agreed to have inoperable windows and no mechanical levers. The noise level will be lower than the existing situation with an outdoor play area. Once the gym is built, activities which are currently outside will be taking place inside a contained space.

VV. How many additional "varsity" or similar upper grade sports activities will be held?

Applicant:

The School recognizes the 8th grade players as its varsity teams, and does not foresee adding any additional teams at the varsity level.

WW. How does the phrase "right to a view", as found in the General Plan, fit in the Zoning Ordinance and with project review? (General Plan Policy 3052.13 states - *A right to plant trees on a property should be balanced with the* ***right of a view*** *from adjacent property (emphasis added).*)

Staff:

The only time private views are recognized by the Zoning Ordinance is in relation to Single Family Residential floor area exceptions[3]. No view protection is provided by any findings of the CDP/DDP or Design Review. However, tree placement and protection are found throughout the Zoning ordinance, including Principles c, d, and g of the Design Review.[4]

Based on the requirement for CDP/DDP projects, it appears that the balance between planting trees and views is entirely weighted towards trees. The Design Review Principles will be assessed for this project in the DDP stage of the review.

Applicant:

See CAS comment on views in response CC

XX. Is the on-site turnaround required by Fire Department?

Staff:

The particular location and design of the existing access roadway was not designed by the Fire Marshal; the applicant's current proposal was reviewed by the Fire Marshal and the fire department access road was determined to be compliant.

---

3 Section 4.2.10.D.2 - The addition will not adversely affect the views or privacy of adjacent property.

4 Section 13.5.3 - PRINCIPLES TO BE FOLLOWED: Areas of aesthetic and site plan consideration shall include, but not necessarily be limited to, the following:

(c) Review of proposed location, height and materials of walls, fences, hedges and screen plantings to insure harmony with adjacent development or to conceal storage areas, utility installations or other surfacing to prevent dust erosion.

(d) Review of location, size, height, lighting and landscaping of signs as specified in the Sign Ordinance, in relation to traffic hazards and the appearance and harmony with the environment. The intent with respect to review of color is to avoid the use of extreme color.

(g) Review of site landscaping including adequacy of irrigation plans, size and location of plant materials, and protection of existing plant materials.

YY. Can a Planning Commission site visit be arranged with the Criswell's on Dartmouth Avenue?

Staff:

Yes, staff emailed the Criswell's contact information to the Commissioners on 11/29/04. Three Commissioners and one Council member made arrangements to visit the Criswell's home on Dartmouth Avenue.

ZZ. What is staff's response to the questions raised about General Plan park policy No. 2062.3 ("*To preserve and enhance existing parks, recreational areas and facilities to serve neighborhood and community needs to the maximum extent possible"*)?

Staff listened to the tapes of the 11/16/04 meeting and identified the following issues/questions raised about park access:

1) Expand public access to McDougal Park from sunrise to sunset
2) Formalize existing over-flow parking on school campus for park users

The neighbor's requests are explained by the response given to question SS above; that is, the Commission would need to establish a nexus between the proposal and a renegotiation of the park access agreement. The Commission must identify the impacts of these project changes on current park access and conclude that they adversely affect the current access arrangement and necessitate a re-opening of the agreement. A renegotiation of the park access agreement is not currently a part of the project proposal.

CONCLUSION AND RECOMMENDATION

Based on the foregoing analysis, staff recommends the Planning Commission take the following actions:

1. Continue the review to a date certain in order to appropriately assess the material.

ACTION ALTERNATIVES

1. Adopt a resolution recommending City Council action regarding the Mitigated Negative Declaration.

2. Adopt a resolution with findings recommending City Council action regarding the zoning ordinance amendment for the site, and Conceptual Development Plan for the school.

ATTACHMENTS

1. Planning Commission Staff Report and meeting minutes (November 16, 2004)
2. List of Questions from Commissioners
3. Charles Armstrong School response

4. Table of controlling conditions of approval
5. Gymnasium comparison table
6. Reference document from 1/27/89 (statement in the project file listing the number of employees and students enrolled at the school)
7. Reference document from 2/11/88 (regarding school operations and neighborhood compatibility)
8. Reference document from 4/21/88 (regarding school operations and neighborhood compatibility)
9. Applicant's plans (Commission only)
10. Traffic count graphic 12/2004