



CITY OF PALO ALTO CITY COUNCIL MINUTES

Special Meeting
January 26, 2015

The City Council of the City of Palo Alto met on this date in the Council Chambers at 6:07 P.M.

Present: Berman, Burt, DuBois, Filseth, Holman, Kniss, Scharff, Schmid, Wolbach

Absent:

Study Session

1. Information Technology Three-Year Strategy Update Study Session.

Jonathan Reichental, Chief Information Officer, provided an update of the City's Three-Year Information Technology (IT) Strategy launched in July 2012. Technology was making people more social, connecting machines, producing data, and making the world smarter.

Lisa Bolger, Information Technology Chief of Staff, advised that Staff identified four key motivations for their strategy: insufficient use of innovative technologies; lack of a framework for prioritizing work; inconsistent delivery and quality of services; and aging infrastructure.

Mr. Reichental reported the first strategy area included deploying digital city capabilities in order to provide services to the community. The second strategy was IT governance. Third, Staff wanted to provide standardized, consistent services to Staff and the community. Fourth, upgrading older infrastructure was necessary. IT Staff added a focus on cyber security to handle budgeting, data analysis, technology changes, and high performance.

Ms. Bolger noted the IT Department's budget included approximately \$11.7 million in expenses and 32 IT Staff members. IT Staff deployed over 300 technology solutions comprised of applications and online services or systems, and utilized over 400 pieces of technology equipment supporting networks and servers and 1,200 computers. In Fiscal Year 2014, 9,326 service desk tickets were closed. Over 2 1/2 years, IT Staff completed 77 projects. Currently, 41 projects were in progress and 27 projects were planned.

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Mr. Reichental wanted to build something bold in creating IT's vision. IT Staff were driven to provide innovative solutions to support City departments in delivering quality services to the community. In implementing digital city capabilities, IT Staff launched Palo Alto 311 which resolved over 2,000 service requests and would go live across all departments in July 2015; launched the PulsePoint application; and created more than 50 online services. The Open Data Portal hosted over 100 data sets.

Ms. Bolger advised that implementation of IT governance created a formalized and documented process for following any incoming technology initiative. With the Three-Year IT Strategy, IT Staff could predict initiatives for the next three years. The City realized \$800,000 in cost avoidance as a direct result of IT governance. In order to standardize and enhance service delivery, IT Staff established a framework and adopted the Information Technology Infrastructure Library (ITIL), a common industry-used framework for delivering IT services. IT Staff became customer-centric in order to provide high quality customer service to Staff and constituents. Also, career paths were established for the IT team. Ninety-four percent of survey respondents rated IT services and support as excellent. The time to resolve issues decreased by 55 percent. In order to upgrade infrastructure and formalize information security, a cloud-first strategy had to be established. A cloud-first strategy allowed Staff to more quickly deploy services across the City and to have better resiliency, redundancy, and disaster recovery for services. Under the Three-Year Strategy, IT Staff replaced the City's telephone system and network cabling; deployed a number of security enhancements which resulted in 99.98 percent network availability and metrics for security incidents; and deployed Wi-Fi to a number of City facilities.

Mr. Reichental noted the City had been recognized by peers and organizations for its digital capabilities. For the second consecutive year, the City was named as one of the leading digital cities in America. The City had received a number of other awards. The City had to move beyond existing legacy technology, because it was costing money. Training was needed for all Staff to better use technology systems. The City experienced difficulties in hiring IT staff as the market was very competitive. City Staff needed real time data to make better decisions. Making data available to the community provided more transparency. In the next few weeks, IT Staff would present a new vision for core systems. GIS systems needed considerable work. IT Staff was co-managing quite a few items for Fiber to the Premises and wireless and Wi-Fi capabilities. He anticipated more mobile applications and attendant automation. The data center was now smaller, which provided a reduced impact to the environment.

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More than 66 percent of desktop computers had been replaced with mobile devices. In the next few months, almost 100 percent of Staff would have mobile devices. IT Staff was facing enormous work to support transportation and sustainability initiatives.

Council Member Kniss attended a conference in Austin, Texas, where a presentation reviewed the applications the City had developed and employed. She requested a copy of that information so that everyone could understand what the IT Department had accomplished.

Council Member DuBois asked if IT Staff worked across every department in the City or if IT groups existed in some or all departments.

Mr. Reichental advised that IT Staff worked across all departments. Smart people in each department had different roles relative to technology. Each department had an IT liaison. Because the Utilities Department was a high user of technology, many Utilities Staff specialized in systems. The Library Department had a few people who were experts in their systems. The Public Safety Department was using technology in smart ways and leading innovation.

Council Member DuBois inquired whether Staff had discussed creating a data analytics center of excellence across departments for business analysis and surveying technology.

James Keene, City Manager, reported Staff was in the planning phase related to integration of performance/management efforts. In addition, Staff had contacted the Office of New Urban Mechanics in Boston regarding analysis of services.

Council Member DuBois wanted to know what City data was at the greatest risk of being comprised by a security threat.

Mr. Reichental expressed concern about protecting the confidentiality, integrity, and availability of data. A perpetrator might not be seeking data, but to interrupt service. Online receipts were handled by vendors. Protecting the integrity of data meant preventing a perpetrator from changing data.

Council Member Burt asked if the \$800,000 in cost avoidance included efficiencies gained through increased digital interaction.

Ms. Bolger indicated that amount was solely cost avoidance for solutions being deployed. It did not necessarily take into account any productivity changes.

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Council Member Burt inquired whether automated services was included in that number.

Ms. Bolger replied no.

Council Member Burt felt it would be good to track the economic benefit to both the City and the consumer as well as trend elements. He inquired whether the environmental benefits of shrinking data centers referred to both the transition to cloud use and more efficient centers.

Mr. Reichental answered yes.

Council Member Burt was pleased to see an organization take a new direction and move with it.

Vice Mayor Schmid noticed that the Council received substantial input from a greater variety of people on every issue. Interactions between the public and the Council were increasingly detailed and thoughtful.

Council Member Wolbach noted the current Three-Year IT Strategy would expire in June 2015, and inquired about the process to ensure the next strategy was in place before then.

Mr. Keene expressed no concern with respect to IT Staff completing the next three-year strategy.

Mr. Reichental explained that future goals were not determined at the current time; however, IT Staff would continue some initiatives because they were not finished. Other areas discovered in the past 2 1/2 years would be slated for work.

Council Member Wolbach encouraged Staff to consider whether it was best to have many applications or to unify applications. He had received comments and requests for a one-stop shop for information. He hoped City management Staff would consider making relevant documents and presentations for public meetings available for the public.

Mr. Keene recalled the City's dismal situation when he joined the City in 2008. The Development Services Center's vendor for applications stated the City was far above its other clients in receptivity to innovation. The City had received two other recognitions in the past month.

Council Member Berman believed IT improvements allowed Staff to provide higher quality service to residents more efficiently and quickly.

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Council Member Scharff stated Mr. Reichental had outlined a cogent vision for IT when he was hired and accomplished that vision. He liked the Hack-a-Thon and requested another be held.

Mayor Holman requested a demonstration of the capabilities of open government, particularly regarding the Budget cycle.

Mr. Keene noted the City was the first to institute an open government platform.

Mayor Holman felt IT Staff was accomplishing the demand for more, faster, and better.

Agenda Changes, Additions and Deletions

Mayor Holman reported Council Member Questions, Comments and Announcements would be heard immediately after Agenda Item Number 7, and Agenda Item Number 4 would be continued to a date uncertain.

City Manager Comments

James Keene, City Manager, announced the Local Agency Formation Commission (LAFCO) would conduct a service review of the 15 incorporated cities and some unincorporated areas in Santa Clara County in 2015. Mitchell Park Library had issued almost 2,600 new library cards since its opening. The Palo Alto Art Center was awarded a California State Superintendent's Award for Excellence for the Cultural Kaleidoscope Program. The Human Relations Commission sponsored a Senior Summit on January 15, 2015 to discuss leading chronic and urgent needs facing seniors. The California Park and Recreation Society selected the City of Palo Alto and Group 4 Architecture as a recipient of the 2014 Award for Excellence in Facility Design for the Mitchell Park Library and Community Center. The creation phase of the online registration tool for the Business Registry was almost complete.

Oral Communications

Mark Weiss' thoughts were in the context of Matt Liddicoat, Keith Lockhart, and Sister Maria Immaculada of Holy Trinity OCD also known as Gloria Acebo.

Omar Chatty reported the death count on Caltrain tracks since 1995 was 214. Ten people had died in 2014, and two so far in 2015. He recommended Bay Area Rapid Transit (BART) as an alternative to rail.

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Closing the 30-mile gap around the Bay would double BART capacity and save lives.

Wynn Grcich advised that Sonoma County residents voted not to fluoridate their water. Fluoridation caused bone cancer.

Bill Rosenberg stated that densification of bulk Styrofoam was a problem in that it could not be recycled or placed in landfills. He suggested the City implement a fee to disincentivize manufacturers from using Styrofoam as packing material.

Nancy Krup, PTA Council, indicated Supervisor Joe Simitian would propose devoting \$8 million of County of Santa Clara affordable housing funds towards the purchase of Buena Vista Mobile Home Park. Additional funds were needed. The PTA supported Supervisor Simitian's proposal and called on the City Council to propose funds as well.

Kip Husty recalled police handling of riots in the East Bay in December 2014. Palo Alto should not send police officers to support such police efforts.

Winter Dellenbach reviewed newspaper editorials and letters regarding Buena Vista Mobile Home Park.

Ronna DeVinchenzi thanked Staff for investigating the glass utilized in sidewalks along California Avenue. An additional problem was glare off the glass. Perhaps glass could be used as a trim along sidewalks.

Aram James remarked that four of the California Supreme Court Justices were women, but none of the Justices were white males. Council Members could speak on the compensation package and \$8 million for purchase of Buena Vista Mobile Home Park. He disagreed with the City Attorney's citation to a case regarding whether the Public Records Acts extended to Council Members' personal digital devices.

Joe Hirsch, Cardiac Therapy Foundation, reported the five-year services agreement had been executed and delivered. He thanked the Council and Staff for their support of the organization. He inquired about the role of the guards at Caltrain crossings.

Stephanie Munoz commented that Council Members were part owners of every single property in Palo Alto, because they dictated the value of property through zoning. The land on which Buena Vista Mobile Home Park was located should have been zoned trailer park.

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James Keene, City Manager, reported no members of the Palo Alto Police Department were deployed to any locations in the East Bay.

Consent Calendar

Aram James spoke regarding Agenda Item Number 3. The Public Records Act contained an exception for ongoing investigations. If a person was not arrested, copies of video from body-worn cameras could be released only with Police Department consent. The Council should be made aware of the City's policy regarding cameras on police personnel and in police vehicles.

Council Member Wolbach encouraged the City Manager to inform the Council of plans to utilize surveillance technology by the Police Department.

MOTION: Council Member Scharff moved, seconded by Council Member Burt to approve Agenda Item Numbers 2-3 and 5.

2. Policy and Services Committee Recommendation to Accept the Triennial External Quality Control Review of the Office of the City Auditor.
3. Approval of the Acceptance and Expenditure of Citizens Options for Public Safety (COPS) Funds on Various Law Enforcement Equipment and Approval of a Budget Amendment Ordinance 5299 entitled "Budget Amendment Ordinance of the Council of the City of Palo Alto in the Amount of \$105,587 for the Supplemental Law Enforcement Services Fund."
- ~~4. Approval of a Construction Grant Agreement with The Association of Bay Area Governments and the San Francisco Bay Area Water Trail in the Amount of \$40,000 for Palo Alto Baylands Sailing Station Accessibility Improvements and Adoption of a Related Budget Amendment Ordinance in the Capital Project Fund.~~
5. Finance Committee Recommendation that City Council Adopt a Resolution 9487 entitled "Resolution of the Council of the City of Palo Alto Amending the City's Cap-and-Trade Revenue Utilization Policy to Cover the Use of Freely Allocated Allowances for the Gas and Electric Utilities, and Adopt a Resolution 9488 entitled "Resolution of the Council of the City of Palo Alto Amending Rate Schedules G 1, G-1-G, G 2, G-2-G, G 3, and G-3-G to Add a Rate Component for Cap-and-Trade Regulatory Compliance Costs and Combine the Administrative and Transportation Charges with the Distribution Charges."

MOTION PASSED FOR AGENDA ITEM NUMBERS 2-3, 5: 9-0

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Action Items

6. PUBLIC HEARING: Approval of a Mitigated Negative Declaration and a Site & Design Review and Design Enhancement Exception Application for a Three Story Mixed-Use Building on a 27,000 Square Foot Site Zoned Service Commercial (CS) at 441 Page Mill Road. The Project Would Contain 21,540 Square Feet of Commercial Space, 91 Off-Street Parking Spaces, and Ten Apartment Units, Including Three Below Market Rate Units, and Includes a Request for Three "Off Menu" Concessions Under Palo Alto Municipal Code Section 18.15 and the State Density Bonus Law.

Mayor Holman requested Council Member disclosures.

Council Member Berman met with the Applicant, but did not learn any information not contained within the public record.

Council Member Burt had a brief phone conversation with the Applicant's architect, but did not receive any information not contained within the public record.

Council Member Kniss met with the Applicant, but did not learn any new information.

Hillary Gitelman, Planning and Community Environment Director, noted that the State Density Bonus Law contained disadvantages for local agencies. Staff had to support significant concessions based on the fact that the project included three units of Below Market Rate (BMR) housing. A written public comment suggested the Municipal Code did not require concessions and Density Bonus Law concessions were optional. That was not the case.

Russ Reich, Senior Planner, reported the site had been rezoned from single-family residential to Service Commercial (CS) with a Site and Design Overlay. The site was bounded by the Kelly-Moore Paint Store, a veterinary hospital, multifamily buildings, and single-family residences. In June 2014, the Planning and Transportation Commission (PTC) recommended Council approval of the project. PTC discussion focused on density bonus concessions. The PTC requested a value at completion analysis, which was done. The Architectural Review Board (ARB) held three hearings. The ARB maintained the zoning approval for height, but changed the front elevation. The building was moved three feet back from the build-to line in order to incorporate street trees. The Staff Arborist reported space was sufficient for the trees to achieve the desired privacy screening across the rear.

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Reed Kawahara, Kaiser Marston Associates, performed the economic analysis of the proposed project. Under the State Density Bonus Law, a density bonus was to be granted "by right" to developers who built a certain percentage of residential units in a project as affordable housing. In addition, the developer could request up to three incentives or concessions if additional affordable units were provided. The State Density Bonus Law stated that requested incentives or concessions shall be granted unless a finding in writing could be made based upon substantial evidence that the concession was not required in order to provide the affordable housing cost. The State Density Bonus Law was not precise in defining substantial evidence of affordable housing cost or requirements to demonstrate those concessions were not required. Nonetheless, Kaiser Marston's analysis was consistent with many other development review applications submitted throughout the state. The site was approximately 27,000 square feet or 0.6 acres in size. Under CS Zoning, up to 50 percent lot coverage and 0.6 Floor Area Ratio (FAR) for residential and 0.4 FAR for office/retail was allowed. The proposed project requested lot coverage of 68.8 percent, residential FAR of 0.53, and office and retail FAR of 0.8. The analysis defined two different project alternatives. The first project alternative was the proposed project. The second alternative was an alternative that could be built under CS Zoning but which would maximize the financial return of the project. Kaiser Marston first tested to determine whether the maximum building envelope permitted under CS Zoning would generate the maximum return. Kaiser Marston determined that a project slightly less than the maximum permitted FAR would be an economic improvement. A total FAR of 1.0 triggered a requirement for an underground parking garage, which was a very expensive element of the project, and triggered a requirement for soil remediation. Kaiser Marston concluded that the second alternative that maximized return to the project would be a total FAR of 0.78, 0.4 FAR for office/retail and 0.38 FAR for residential. Next, Kaiser Marston quantified the affordable housing cost. The proposed project contained ten residential units, three of which would be low-income. To estimate the cost of affordable housing, Kaiser Marston allocated to the affordable housing units the total cost of the project on a pro rata basis based on square footage of the project. Recognizing that the three affordable units would generate income, Kaiser Marston calculated a \$380,000 value to those units as an offset to total cost. Deducting that value from the cost yielded a net affordable housing cost of \$1.85 million. In order to estimate the incremental value of requested concessions, Kaiser Marston analyzed the development economics of the CS Zoning alternative compared with the proposed project. Income and development costs from the project were estimated, and the relationship between the two generated a return. Kaiser Marston compared the returns for the two projects to estimate the incremental value.

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The base case project offered a net operating income (NOI) of approximately \$950,000 compared with the proposed project of about \$1.5 million. That generated an increase in annual NOI of about \$600,000. Development costs had increased from \$15 million to approximately \$24 million for an increased cost of approximately \$8 million. When the net operating income was capitalized to realize a total project value, Kaiser Marston calculated an incremental value of approximately \$9.5 million as compared to the incremental development cost of approximately \$8 million. Kaiser Marston estimated the net project value was about \$1.28 million. The affordable housing cost, according to the State Density Bonus Law, was \$1.85 million. The incremental value from the three requested concessions was \$1.28 million. Because the affordable housing cost exceeded the incremental value, Kaiser Marston concluded that the three requested off-menu concessions were required to offset the cost of affordable housing. If the affordable housing cost had been less than the incremental value, then Kaiser Marston would have concluded that one or more of the requested concessions might not be needed.

Cara Silver, Senior Assistant City Attorney, advised that the City was restricted in certain aspects of the project. It was unusual for the State to impose restrictions in the land-use arena as Palo Alto was a Charter City; however, the State Density Bonus Law specifically applied to Charter Cities. Assuming findings could be made and the Applicant fell within its right to claim concessions, the State Density Law allowed projects that were inconsistent with local zoning and Comprehensive Plans. The Council could approve the project with the off-menu concessions as requested. If the Council wanted additional information or analysis, Staff requested the Council focus its requests on pro forma data supporting the off-menu concessions, Design Enhancement Exception (DEE) and parking reduction exception, and the series of findings contained in the Record of Land Use Action.

Public Hearing opened at 8:09 P.M.

Norman Schwab, Applicant, reported existing houses on the project site were in disrepair. He proposed a three-story, mixed-use building. Retail would be located on the first floor, office on the second floor, and ten residential units on the third floor. Parking would be contained onsite at-grade and below-grade and would be consistent with the current Zoning Code. Proposed residences had a common area as well as private, outdoor areas.

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John Northway, Applicant, remarked that the project suffered from many complexities in both jurisdictional rules and site constraints. Rules of three jurisdictions often conflicted. The site was constrained by a 30-foot height limit, rear setback lines, daylight plane, and polluted groundwater. The building was pushed forward on the site to keep it away from neighbors. The rear of the building was 27 feet from the back property line, with houses 42-77 feet from the rear property line. The building was set back 17 feet from the curb to provide room for trees and pedestrians. Because the County of Santa Clara (County) controlled Page Mill Road and did not allow street trees, the Applicant requested a DEE to set the building back from the curb 17 feet. The site was close to bus stops and the train station. Parking at the site conformed to regulations for mixed-use buildings. A parking demand management study showed that between 10:00 A.M. and 2:00 P.M., peak hours, demand was 79 cars. The City required a 10 percent safety factor, resulting in a demand of 87 cars. The project would provide space for 91 cars. Bike racks and lockers were provided to encourage alternative transportation. A Transportation Demand Management (TDM) Program would include transit passes and would be reviewed yearly. The Applicant attempted to address neighbors' concerns regarding parking and traffic by implementing a TDM Program and supporting the County's desire to eliminate street parking on Page Mill Road. Noise and light pollution were addressed through placing lighting on the roof or inside the building. Light from offices was addressed through the use of automatic shades that closed at night. Neighbors selected the trees for the planting screen. The Applicant believed the project conformed to Policy H-2 of the Housing Element.

Leigh Prince, attorney for Applicant, advised that the State Density Bonus Law was implemented by the Palo Alto Municipal Code, which meant the Density Bonus Law controlled but the City set forth application procedures to request off-menu incentives. The three requested incentives contributed significantly to the economic feasibility of the low-income units, which was the stated intent of the State Density Bonus Law. Kaiser Marston Associates (KMA) concluded that requested incentives were required to make the affordable housing possible. A Mitigated Negative Declaration (MND), which the PTC recommended for adoption, concluded impacts were less than significant. The requested incentives were legal. Substantial evidence included facts, reasonable assumptions predicated on facts, and expert opinion supported by facts. KMA was an expert and tested all the data and assumptions in the pro forma. KMA concluded that incentives were needed to offset the cost of affordable housing. With the development return approach, KMA concluded that concessions were needed because returns were less. KMA completed a value at completion analysis and concluded that no adjustments to the original analysis were necessary.

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KMA and Staff agreed that the incentives were needed and the required findings for denial could not be made. The proposed project passed the stringent review process, and State law required the City to grant the requested incentives.

Frank Ingle remarked that the proposed project was in a difficult location. He hoped the Council could find a way to deny the application. The Council should consider the effects of this project along with the effects of projects in the pipeline.

Louis Luh commented that the trees in the rear screening were reported to grow only 30 feet tall, which would not be high enough to block the view from the second-floor of his home. A smoking area was located at the rear of the site close to his backyard where his children played.

Judith Wasserman believed this project was the kind of project the City wanted. The project offered mixed use, did not exceed the height limit, and was close to services and transportation. She encouraged the Council to continue to obey the law.

David Kleiman supported recommendations to approve the project. The design of the project was pleasing to the eye and compatible with the location.

Daniel Garber supported PTC, ARB, and Staff recommendations to approve the project. The project provided ten residential units which were most welcome. The requested concessions were allowed "by right." He supported the Director's finding regarding 91 off-street parking spaces.

Stephanie Munoz stated that the Council could not allow more buildings to be under-parked. Projects should provide parking rather than paying in-lieu fees.

Bob Moss indicated the City had required BMR units in every development and did not offer incentives. The Council did not have to provide 100 percent of requested concessions. The project was under-parked and would create further traffic congestion. He suggested the Council reduce office space by at least 2,000 square feet and require 2,000 square feet of onsite parking.

David Keller remarked that the property in its current state was an eyesore, and the project would be an improvement for the community. The project's location was ideal to attract rail and bike commuters. He fully supported the project and hoped the Council would as well.

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Ian Carroll supported the project. The City needed more affordable housing as well as BMR housing. The project location was not appropriate for single-family homes.

Edie Keating supported the project and was happy the Density Bonus Law was being used. She did not support adding office space and was not inclined to argue against proposals that were within zoning. The transition from two-story to three-story buildings was acceptable.

Martin Bernstein, speaking as an individual, indicated the project complied with local and state law. He supported approval of the project.

Herb Borock recommended the Council reject the project or request additional environmental and economic review. There was no adequate cumulative analysis of traffic. There was no reason to reduce the amount of parking. The analysis was not a true pro forma statement.

Lydia Kou provided a list of developments under construction or review. The total square footage of those projects exceeded 400,000 square feet. The Fry's site was slated for additional mixed use. Streets and neighborhoods could not handle this much growth. The Council had to consider the impacts of all development projects in the area.

Joe Hirsch stated residents did not want projects similar to the proposed project. He had difficulty understanding that the incremental value of the three concessions was merely \$1.28 million. According to his calculations, the affordable housing cost would be paid in three or four years.

Ruth Lowy believed the increase in office space would result in more people and cars. A barrier was needed to prevent pedestrians from walking into the street.

Rita Vrhel felt the project would create more problems than it would solve. She wanted to know the percentage of total residential space that would be allocated to BMR units. The State Density Bonus Law would be detrimental to the cities' interests.

Neilson Buchanan suggested the Council create a Conditional Use Permit requiring all occupants to park in the building, implement permit parking, and consider the cumulative impact of parking and traffic.

Vujay Varma was skeptical of any business plan that showed costs greater than revenue. That was a disingenuous analysis.

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Ranier Pitham indicated dynamic scoring was missing from the pro forma information. Pro forma information should be reviewed by a building superintendant of a large construction company.

Matthew Harris advised that the project met all planning guidelines and was of high quality. If a project met all existing guidelines but was not approved, then that was irrational.

David Schrom commented that predictions made in environmental impact statements, traffic projections, and parking need requirements were proved to be inaccurate time and again. He questioned whether Staff reviewed the reliability of consultants prior to hiring consultants to perform analyses. The Council should ensure data was more reliable for this and future projects than it had been in the past.

Ms. Prince advised that inclusionary housing did not apply to rental housing, which these units were. BMR units were restricted for 55 years. A court case did not support the Council being able to reduce concessions. A cumulative traffic analysis was included in the MND. While the City hired consultants, the Applicant paid their fees. KMA was a respected firm who performed careful and thoughtful analyses. A one-bedroom, two-bedroom, and three bedroom unit would be BMR units. The building's setback and trees in the streetscape should address safety concerns.

Mr. Northway would work with Mr. Luh to address his concerns.

Public Hearing closed at 9:02 P.M.

Ms. Gitelman reported that the California Environmental Quality Act (CEQA) explicitly provided for either a projections-based approach or a list of recent projects approach in the analysis of cumulative traffic. The analysis included a growth rate ample enough for all known projects, including the Jay Paul Project which had been withdrawn. Staff discharged their obligation to review the project's increment contribution to the cumulative picture. The project made use of a Code provision that allowed for a parking reduction of up to 20 percent for a mixed-use project. The Applicant did not receive a full 20 percent reduction. The Council had previously indicated its desire to rescind some parking exemptions; however, that had not been done. Mr. Buchanan's point that the benefits of the few dwelling units were far offset by job creation was valid.

Mr. Kawahara clarified that the \$1.284 million incremental value was the net incremental value after considering development costs. The estimate of the incremental gross value prior to considering development costs was about \$9.6 million between the two alternatives.

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Consideration of costs for underground parking and environmental remediation resulted in a net value of \$1.28 million.

Mayor Holman asked how the Council could review the project with respect to the Density Bonus Law and the project as a whole.

Ms. Gitelman noted the Council was constrained by the Density Bonus Law with regard to the project's request for concessions. The Council could differ with the Applicant's request for DEEs and parking exception. It would be difficult to separate the site and design of the project from the requested concessions.

Mayor Holman noted the time of 9:07 P.M. and the fact that Agenda Item Number 7 was scheduled for 9:00 P.M. If the Council discussed Agenda Item Numbers 6 and 7 for an hour each, then the Closed Session could begin at 11:00 P.M. Because Agenda Item Number 7 was noticed for 9:00-10:30, public comment would be taken in that time period. Agenda Item Number 7 would likely be considered over two separate meetings; therefore, the public would have another opportunity to speak to it.

Council Member Kniss inquired about the potential outcome of the Council denying the project.

Mayor Holman requested one round of Council Member questions prior to Council Member comments and Motions.

Ms. Silver reported potential outcomes depended on the grounds used to deny the project. If the Council based its denial on the Density Bonus Law, then it would have to make certain findings. A court would review the findings and determine whether they could be made. Specific findings were required to deny a concession.

Council Member Kniss would offer a Motion in order to begin the discussion, unless the Mayor preferred a round of Council Member questions.

Mayor Holman preferred to allow Council Member questions and comments prior to a motion being made.

Council Member Berman asked if the law alluded to any maximum or minimum allowable increase in project net value and to what extent the Council could lower the square footage of the project to reach a net project increase of \$0.

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Ms. Gitelman explained that the Council was hampered by the lack of a definition of affordable housing cost. Staff only analyzed the two project alternatives, but it would be possible to analyze other hypothetical projects.

Council Member Berman inquired whether an analysis that demonstrated a 1,000 square foot decrease in office space compensated the developer for the cost of affordable housing would be defensible or allowed.

Ms. Silver indicated the Council would need substantial evidence in the record to support that. At this point, substantial evidence was not available. If the Council wished to have that analysis, it should request the consultant provide that analysis.

Council Member DuBois asked if the analysis considered the on-menu concession option.

Mr. Kawahara answered yes, he did analyze a scenario with the on-menu concessions only. The conclusion from that analysis was that the three incentives were needed.

Council Member DuBois inquired whether the analysis included parking allowances.

Mr. Kawahara believed it did, but could not recall exactly.

Council Member DuBois inquired about the traffic report prepared by RKH and whether Park Boulevard was excluded from the traffic study.

Ms. Gitelman could provide a copy of the traffic study if Council Members wished to have a copy.

Council Member DuBois reiterated his query about the exclusion or inclusion of Park Boulevard.

Ms. Gitelman explained that the traffic study reviewed the closest intersections to the site. The intersections in the study were the ones likely to be impacted by the project. The study was also available on the City's website.

Council Member DuBois requested examples of projects where the Council approved the mixed-use parking exception and asked if predictions in those projects were accurate.

Ms. Gitelman would research such development projects and provide examples. Parking exceptions were a common request and a common practice in traffic and parking analyses generally.

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Most jurisdictions provided some reduced parking requirements in a mix of uses that peaked at different times of day.

Council Member DuBois was asking in reference to public comment regarding inaccurate predictions for the amount of sharing.

Ms. Gitelman would provide information as time and resources permitted.

Vice Mayor Schmid stated that the Santa Clara Valley Transportation Authority (VTA) and Palo Alto model for traffic analysis projected over 20 years a 1 percent growth per year in traffic at that intersection. The Existing Conditions Report clearly stated that the actual traffic increase between 1998 and 2014 averaged 3 percent growth per year at that intersection. He inquired whether the model should use the numbers from the Existing Conditions Report.

Ms. Gitelman would reply once she had reviewed the Existing Conditions Report. Staff projected significant increases in traffic volume from the date of the analysis to 2035.

Vice Mayor Schmid reiterated that the model had utilized 1 percent per year for ten years, while the ten-year actual data was closer to 3 percent.

Ms. Gitelman explained that Staff did not use a straight 1 percent per year. Rather, Staff used volumes taken from the traffic model, which varied in different locations. In the two intersections analyzed, there were different percentage increases that were a direct result of consulting the regional model.

Vice Mayor Schmid commented that the table in the one-page summary of parking analysis looked reasonable. At the top under commercial, the table indicated a peak rate of 3.03 for retail. The City Code indicated 4.0 should be used. He asked why Staff assumed they should be using a third less than the Code required.

Ms. Gitelman clarified that those were demand figures taken from data sources that aligned with the Code section that provided the exception. The section of the Zoning Ordinance that provided the mixed-use exception outlined the methodology and the type of data sources that should be used to justify the exception. The analysis was directly in keeping with that section of the Zoning Ordinance. Parking demand was not only a factor of total trips generated, but also a percentage of trips that would not be made by automobile. There could be some adjustment there. She would need to review this more deeply and provide a more complete answer. The analysis was entirely in keeping with the City Code.

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Vice Mayor Schmid asked Ms. Gitelman if she meant there were two sections of the Code: the mandate for parking of 4 and an exception that allowed use of 3.03.

Ms. Gitelman indicated that the section did not provide a ratio. It suggested a methodology for justifying the exception. Staff considered the methodology and felt it was warranted.

Council Member Burt inquired whether Council Members could pose questions to the Applicant.

Mayor Holman indicated that Council Member questions could be directed to Staff, the Applicant, or the public.

Council Member Burt recalled the Applicant attorney mentioned case law stating that cities could not reduce proposed concessions. He inquired whether the City could reduce concessions if they were twice the amount the Applicant proposed.

Ms. Prince clarified that the court had not determined specific details for reducing concessions. Generally, if incentives were necessary, State law required approval of those incentives unless findings based on substantial evidence could be made.

Council Member Burt stated Ms. Prince asserted that the Council could not adjust concessions based on case law. He asked if she would make the same argument if the Applicant had requested concessions twice the proposed amount.

Ms. Prince answered yes.

Council Member Burt did not believe Staff would be able to answer Vice Mayor Schmid's question regarding growth of 3 percent per year versus 1 percent per year within the current discussion. That would be a substantial issue and would raise his concerns about whether the impact analysis was adequate. He inquired whether Staff would be able to provide an answer within the current meeting.

Ms. Gitelman could not comment prior to referring to the Existing Conditions Report and other data about traffic volumes at that intersection over time. She would also need to confer with traffic experts.

Council Member Burt wanted to know if Council Members could have a response in the current meeting. It sounded as though the answer was no.

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Ms. Gitelman reiterated that she would have to provide a response at a later time.

Council Member Wolbach inquired whether the Council could add a Conditional Use Permit to require occupants park onsite as suggested in public comment.

Ms. Gitelman advised that the Council could adjust or add to the Conditions of Approval within reason. She cautioned the Council about adding a Condition of Approval that would be difficult to monitor or enforce.

Council Member Scharff requested Ms. Gitelman relate her experience of whether sharing of parking was feasible.

Ms. Gitelman reported that was a typical provision to reduce parking requirements in a mix of uses. In her experience, it was warranted and it did work. Those types of uses peaked at different times; therefore, she did not anticipate all parking spaces would be filled for both uses at the same time. Some modification or adjustment was typical and warranted.

Council Member Scharff seemed to recall that use of parking exemptions began in the 1990s. He asked about the length of time that had been tested and tried.

Ms. Gitelman did not recall.

Mayor Holman inquired whether the proposed parking included spaces at the curb that were slated for removal.

Ms. Gitelman did not believe so, but could not recall the number of spaces being removed.

Mayor Holman noted the street trees were located by the building, rather than on the street side of the sidewalk. Placing the trees next to the building seemed to be unsafe and unappealing for pedestrians. She requested a rationale for placing the trees against the building.

Mr. Reich reported Staff spent a great deal of time working with the Applicant to locate trees between the street and sidewalk. The location of existing utilities prevented that from occurring.

Mr. Northway believed the number of parking spaces being removed was five and some driveways would be closed. He had assumed the existing trees would remain; however, the County would not allow trees in its easement.

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MOTION: Council Member Kniss moved, seconded by Council Member XX to approve the Mitigated Negative Declaration (MND), the Site and Design Review application, the two Design Enhancement Exceptions (DEEs) and the three density bonus concessions for the project at 441 Page Mill Road, based on Architectural Review (AR), Design Enhancement Exception (DEE), Context Based Design Criteria and Density Bonus Findings, and subject to the conditions in the draft Record of Land Use Action (RLUA, Attachment A).

MOTION FAILED DUE TO THE LACK OF A SECOND

Council Member Kniss felt this was a test case for the Density Bonus Law. There was a great deal of concern throughout the state regarding affordable housing. She inquired whether any cities other than Berkeley had experienced the same issues.

Ms. Prince indicated communities across the state were struggling with the issues. There were a couple of other cases about different aspects of the Density Bonus Law.

Council Member Kniss hoped the City was not headed to a lawsuit with this project, but would not be surprised if State law trumped local law.

Vice Mayor Schmid noted this project was the first off-menu project the Council had reviewed under the State Density Bonus Law. A concession of 10,000 square feet of office space above zoning, at a value of \$600,000-\$700,000, for three BMR units, at a value of \$400,000-\$500,000, was astounding. The model used to justify it was mystifying. The original zoning had residential space for 13 units and office space. Economic assumptions should be logical. In order to provide three additional units which accounted for less than 10 percent of the total square footage in the building, the Applicant could impose over 30 percent of the cost of the garage. It baffled him how the Council could accept that pro forma.

Council Member Filseth wished to understand the model. He asked if the income stream, total NOI, was the total annual rent from the project.

Mr. Kawahara replied yes.

Council Member Filseth stated that dividing that in the first alternative by 5.59 percent provided the gross value of the project. He inquired whether subtracting from that the upfront cost would provide the total net project value.

Mr. Kawahara answered yes. He clarified that the 5.59 percent was a blended rate. It assumed a separate percentage for each land use.

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Council Member Filseth understood the percentage was weighted by the land use. That provided a net present value of the off-menu project of \$2.8 million or the value of the project.

Mr. Kawahara concurred it was the net value.

Council Member Filseth asked if the 5.59 percent was the capitalization rate.

Mr. Kawahara responded correct.

Council Member Filseth reported that was the formula for the net present value of a fixed annuity. The model used current rental rates. He inquired about Kaiser Marston's assumptions as to how those would change in the future and where that was in the model.

Mr. Kawahara explained that the model did not make projections for future rents.

Council Member Filseth asked if he assumed the income stream was fixed for the future.

Mr. Kawahara responded no. The model did not make any assumptions with regard to the direction of rents in the future.

Council Member Filseth disagreed. Depending on what was in the cap rate, the model generated the net present value of a fixed annuity, which meant it was \$953,944 every year.

Mr. Kawahara clarified that in real estate estimating an income stream allowed the application of a cap rate, which is what Kaiser Marston did. The cap rates were determined by the market, based on the price properties were bought and sold for. Cap rates changed over time. The cap rates Kaiser Marston assumed and resulted in the blended rate were intended to reflect the current market for those uses. Purchases of other properties reflected the amount other investors would project in terms of future growth of rents.

Council Member Filseth asked if Kaiser Marston utilized comparables from the industry to obtain those.

Mr. Kawahara replied correct.

Council Member Filseth requested Mr. Kawahara explain what exactly went into the cap rate. The whole model was very sensitive to that number. A sizeable body of literature stated the cap rate was equal to the risk adjusted cost of capital minus the growth rate.

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That was where the growth and income projection was, inside the cap rate. That meant the cap rate was given by three components, because the risk adjusted rate of capital was calculated by taking the risk free rate of capital, adding a risk premium, and then subtracting the rate of growth of the rental income. An industry standard measure of the risk free rate was the ten-year Treasury Bill, which was currently just under 2 percent. The typical estimate of a risk premium for commercial real estate was a few percent. A report stated 3.5 percent for apartment properties in the third quarter of 2014. He inquired whether that was approximately correct.

Mr. Kawahara indicated that varied by land use and location. It was difficult to answer that question with precision.

Council Member Filseth explained that adding the 2 percent to the 3.5 percent resulted in a risk adjusted cost of capital between 5 and 6 percent. A current study for the Downtown Cap reported the average rental growth in office space was about 11 percent. In terms of the cap rate, there was no way to subtract 11 percent from 5.5 percent to obtain 5.59 percent. Assuming a 5 percent growth rate in rental income, there was no way to subtract 5 percent from 5.5 percent and obtain 5.59 percent. These models were shortcuts for a real discounted cash flow analysis. The simplified model did not work for this project. Industry comparables did not work in a high-growth, moderate-risk situation such as that in Palo Alto. He was curious about the result of a full analysis; therefore, he attempted one. He backed out a growth rate from the cap rate, so it became a true discount rate, a risk adjusted cost of capital. For the first pass he left it at 5.59 percent and 5.82 percent. Instead of using \$953,944 as a fixed income stream, he used a formula for a net present value of an increasing annuity and assumed in the first case that rental rates would grow 5 percent per year. The value of the project, assuming 5 percent growth and mid-5 percent risk adjusted cost of capital, was not \$2.8 million but \$15.59 million. The value increment was not \$1.284 million, but \$6 million. He tried it with 7 percent instead of 5 percent. In that case, the valuation of the project changed from \$2.18 million to \$28.1 million. The value increment changed to \$10.6 million. He attempted other discount rates. With the PPP corporate bond rate of 3.6 percent currently, the value of the project went from \$15 and \$28 million to \$29 and \$47 million. The value increment, depending on whether the growth rate of rental income was 5 or 7 percent, changed to \$11 and \$17 million. The model was not appropriate for the circumstances in Palo Alto. This was important, because those numbers were the basis for deciding whether the City was legally required to grant the off-menu concessions. The current model calculated the wrong answer, so the Council could not use it to make that judgment. The Council needed a discounted cash flow analysis that correctly accounted for rental growth.

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The analysis should split out the growth and use a local growth rate and discount it by a pure risk adjusted cost of capital. Staff's suggestion for the Council to request a pro forma that would support the off-menu concessions was a good idea. Such an analysis would find substantial evidence that the magnitude of area expansion, the off-menu concessions, would not be required in order to provide for the cost of the BMR units.

Ms. Gitelman wanted to see the calculations and sources referenced by Council Member Filseth in the interest of transparency. She could review the information and provide a supplemental analysis. The Applicant paid the cost of Kaiser Marston's analysis. In this case it would be incumbent upon the City to pay the costs of a supplemental analysis. Staff could request a supplemental analysis and provide the results at a later date.

MOTION: Council Member Filseth moved, seconded by Vice Mayor Schmid to request additional Pro Forma off-menu concession analysis and use a discounted cash flow approach applying local rental rate growth and reasonable risk adjusted cost of capital figures.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct Staff to review the rate of traffic growth assumed at the intersection of Page Mill Road and El Camino Real using the historic growth rate.

Council Member Scharff requested a timeframe for the item to return to the Council and asked how many times the Council could request information.

Ms. Silver reported the time to act upon an application began to run upon the approval of the environmental document. Apparently, the Council was not prepared to certify the environmental document; therefore, the Permit Streamlining Act had not been triggered. Generally, cities could take up to a year to prepare the environmental documentation. However, changes in circumstances could delay the timeframe.

Council Member Scharff noted the Council had not discussed why it was not ready to approve the MND. He inquired whether the concessions implicated the MND.

Ms. Silver replied no.

Council Member Scharff inquired whether the further analysis of traffic would implicate approval of the MND.

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Ms. Gitelman would compare the data Vice Mayor Schmid suggested to the assumptions in the existing analysis and comment on the variance between assumptions.

Council Member Scharff asked if the comparison could change Staff's recommendation of the MND.

Ms. Gitelman indicated if Staff identified a basis to question the assumptions in the study, it could affect Staff's recommendation for the MND.

Council Member Scharff stated the Council was waiting to approve the MND in order to receive the further traffic analysis. The City hired an expert who performed three analyses. The Council was now requesting a fourth analysis. To request a fifth analysis would be inappropriate; therefore, he encouraged Council Members to request all information in the current meeting. He asked if it was fair to say the market determined cap rates.

Mr. Kawahara answered yes.

Council Member Scharff advised that cap rates were not determined in the manner Council Member Filseth utilized. Palo Alto had particular cap rates. He encouraged Kaiser Marston to review Palo Alto cap rates in the model. Council Members should raise parking issues in the current discussion. He was pleased the building was moved back from the sidewalk. He reviewed Palantir's parking analysis. Contrary to public comment, data indicated a ratio of 4:1,000 was correct for Palo Alto's credit tenants. He agreed with Ms. Gitelman regarding the effectiveness of mixed use parking. The building was not under-parked.

Mayor Holman clarified that if the Motion passed, the project would be continued.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct Staff in regards to cost, to use a model that does not assign the pro-rata cost of the entire building to the Below Market Rate (BMR) units, but instead looks at the incremental market rate and BMR revenue, and offsets that with a density bonus;

- a. Direct Staff to provide more detail on travel impact that takes into account actual traffic growth on nearby intersections, including the impacts of recent Stanford projects and Park Boulevard impacts; and

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- b. Include a conditional use permit requiring occupants and users of the building to park in the garage. If occupants and users do not comply with the conditional use permit, the City will initiate a Residential Parking Permit program for the neighborhood.

Council Member Filseth advised that the size of the building resulted in a very small incremental cost of the three units. He inquired whether the Council should review the incremental cost of the three units over the existing building as opposed to evenly allocating the costs of the whole building.

Council Member DuBois replied yes.

Council Member Filseth asked if State law contained any requirements for the method of calculation.

Ms. Silver reported State law provided little guidance regarding methodology. She suggested Mr. Kawahara indicate whether he understood the request and whether it was possible.

Molly Stump, City Attorney, advised that a court would consider the reasonableness of any methodology used. Consultants should have an opportunity to explore and comment on reasonableness.

Council Member DuBois appreciated the Applicant's project and outreach to neighbors. The Council was being asked to review the MND, Site and Design Review, two Design Exceptions, and the request for off-menu concessions. He found issues in traffic, parking, and the economic model. The traffic report was three years old and did not consider multiple projects on Park Boulevard. With respect to parking, the City was using old numbers; therefore, more people than projected could use the building. He could not accept that the three concessions would not cover the cost of the BMR units. If the Council accepted the methodology, then zoning would have no meaning. The analysis utilized a pro rata approach for building cost and allocated the entire cost of the underground garage to the BMR units. The resulting construction cost was \$630 per square foot which was utilized for the affordable housing. A local realty company suggested that cost was high. A five-story building in San Francisco with underground parking had a cost of \$338 per square foot. A fine-grained approach was needed. He wanted a method that shielded the City from individual construction costs and the potential for loading the cost of luxury items onto BMR units. He believed the requested incentives exceeded requirements based on written and financial evidence. The Council should commission a model that did not assign the pro rata cost of the entire building to the BMR units.

MINUTES

Ms. Gitelman asked if Council Member DuBois was requesting Staff change the methodology to use a list-based approach even if growth rates aligned with historical figures, or requesting Staff review the methodology to ensure it adequately accounted for developments cited.

Council Member DuBois responded the latter. He was specifically asking about Park Boulevard, where there were several developments.

Ms. Gitelman inquired whether he was requesting an analysis of traffic conditions on Park Boulevard or whether the projects had been adequately included in the analysis.

Council Member DuBois answered that he wished for the projects to be adequately included.

Ms. Gitelman explained that the Council had adopted an Ordinance that set forth procedures for implementing a Residential Parking Permit (RPP) Program. She questioned whether the Council could require that as a Condition of Approval. She inquired whether Mr. Kawahara understood the request for a modified approach to the economic analysis.

Mr. Kawahara understood a portion of the request, but needed time to think through the request and perhaps ask clarifying questions.

Council Member DuBois requested Mr. Kawahara ask for clarification.

Mr. Kawahara indicated the request had potential ramifications for other aspects of the analysis. He needed time to consider those ramifications before asking questions.

Mayor Holman noted the time as 10:23 P.M., 1 1/2 hours past the time to begin Agenda Item Number 7. In addition, discussion of a Closed Session was on the Agenda. She recalled her previous statement that she would allow public comment regarding Agenda Item Number 7 between 9:00 and 10:30. She did not believe the Council could conclude Agenda Item Number 6 in 10 minutes. She asked the City Attorney if she could table Agenda Item Number 6 and allow public comment on Agenda Item Number 7.

Ms. Stump reported the Brown Act did not prevent the Mayor from holding the item, moving to Agenda Item Number 7, and then returning to Agenda Item Number 6. If colleagues disagreed with that procedure, they could overrule the Mayor.

Mayor Holman estimated discussion of Agenda Item Number 6 would continue to 11:00 P.M.

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Council Member Kniss inquired whether Agenda Item Number 7 was scheduled for a second meeting.

Mayor Holman indicated a continuation night was scheduled for Agenda Item Number 7; however, the public had remained at the meeting in order to speak. She requested Council Members proceed with Agenda Item Number 6 quickly and efficiently.

MOTION: Council Member Burt moved, seconded by Council Member Scharff to continue Agenda Item Number 7 - Discussion and Direction to Staff Regarding Establishment of an Office/R&D Annual Growth Limit to February 9, 2015.

Mayor Holman noted several members of the public had remained in order to speak to Agenda Item Number 7. She asked if the Motion included allowing public comment in the current meeting.

Council Member Burt did not believe there would be sufficient time for public comment.

James Keene, City Manager, advised Agenda Item Number 7 was scheduled for February 9, 2015.

MOTION PASSED: 7-2 Filseth, Wolbach no

Council Member Burt expressed concern that Staff would not be able to proceed as directed if the consultant had questions regarding the Motion; therefore, the consultant should ask his questions at the current time.

Mr. Kawahara advised that Council Member DuBois requested a change to the methodology for estimating the affordable housing cost from a pro rata share of the total cost of the project to assessing that cost on the basis of the difference between a market rate apartment rent versus the BMR rent. That was an annual difference. He inquired whether Council Member DuBois would capitalize that annualized difference in order to recognize the affordable housing cost.

Council Member DuBois responded yes. The difference was \$10 per net square foot. Applying the market rate for the office space would result in an additional amount of office space that would cover that difference.

Council Member Burt inquired whether the consultant had to understand the Council's request and concur that it was a reasonable approach.

Ms. Stump remarked that that could require some analysis and thought from the consultant.

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Council Member Burt asked if the City Attorney meant that the request in the proposed Motion was reasonable under the State Density Bonus Law requirements and the City Ordinance.

Ms. Stump did not understand the question. She urged the Council not to constrain the consultant's response and analysis. As the experts considered the topics in which the Council was interested, they could see aspects that were not specifically articulated but appeared to answer the intent of the question such that the experts could wish to bring those forward. The Council should allow that.

Council Member Burt inquired whether the Motion needed to provide more latitude.

Ms. Gitelman reported Staff would follow the Council's direction to the best of their ability. If the inquiry led in a slightly different direction, Staff would pursue those additional questions.

Council Member Burt asked if Staff needed additional clarity.

Ms. Gitelman replied no. In the course of the analysis, Staff would consider whether additional methodologies were reasonable and defensible and attempt to advise the Council.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct Staff to ensure that the parking analysis captures the effect of the loss of parking on Page Mill Road.

Council Member Burt believed the requirement to initiate an RPP Program had some problems. He was unsure whether there was a method of enforcement to require occupants to use the parking garage.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to restate paragraph 5 as "Staff will explore a Conditional Use Permit that requires the occupants and users of the building to park in the garage. If occupants and users do not comply with the conditional use permit, the City may initiate a Residential Parking Permit program for the neighborhood."

Council Member Burt noted RPP Programs were initiated by neighborhoods rather than the City.

Council Member DuBois understood the Ordinance allowed the City to implement an RPP Program as well as neighborhoods.

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Council Member Burt did not want to establish an RPP Program if neighbors did not want it.

Ms. Stump advised that the Council went through a thoughtful process to set up a procedure that allowed neighborhoods to come forward when there was a problem and standards to measure and assess that. That could speak to the Council's interest in a process for neighborhood parking intrusion that the City could readily and promptly address.

Council Member DuBois' intent was to avoid the year-long process to implement an RPP Program.

Council Member Burt felt "may" did not prescribe an exact sequence of events. When the item returned, he could probably be persuaded that the parking could be adequately addressed onsite if it were not for the huge office bonus. The Council would have some discretionary judgment regarding what was permissible for parking below the standard. He did not understand the Applicant's statement that they were looking for as much residential as possible. There was a huge difference between the permitted number of residential units and the proposed number. He did not view it as approaching a net benefit. Depending on how it was calculated, the proposed project in comparison to one under existing CS Zoning was a huge imbalance between jobs created and housing units created. The project provided a net gain of six residential units to offset the creation of 86 jobs. Depending on the size of the units, a project built to existing CS Zoning would be closer to a balance between jobs created and residential units created.

Mr. Schwab explained that the Applicant did not utilize the maximum for residential units. The busy street did not lend itself to a high residential density. Housing on the first or second floor would be too close to traffic and, therefore, it was more logical to use the lower levels for commercial space. The Applicant could have planned smaller units, but there was a need for family housing. The mix of units provided for different size families as well as individuals.

Council Member Burt remarked that the design elements of the project were exceptional for the size of the project.

Council Member Kniss indicated the Council was requesting a great deal of information. The Council simply was putting the request for approval of the MND on hold until it had additional information. She was willing to support the Motion.

MINUTES

Council Member Berman expressed concern that the Council was setting a precedent. When setting a precedent, the Council needed to be sure it had the appropriate analysis. When talking about parking, speakers were confusing employees per square foot with parking space per square foot. The Code stated 250 square feet of office space per parking space. Data indicated 100 percent of employees did not drive single-occupant vehicles. There was a lack of clarity as to whether the analysis proposed in the Motion would be reasonable and defensible. He wanted to ensure Staff and the consultant understood that if they were concerned that an analysis was not reasonable and defensible, then they were to present that analysis along with a reasonable and defensible analysis so the Council would have options. The City had lost control based on the State Density Bonus Law and had no clarity as to what it could control. He questioned the Council's ability to question the amount of the benefit for the developer from the concessions.

AMENDMENT: Council Member Berman moved, seconded by Council Member XX to direct Staff to return with additional analysis and information detailing varying levels of benefits including at 100 percent of the concession economic benefit, 50 percent of the concession economic benefit and 25 percent of the concession economic benefit.

Ms. Gitelman understood Council Member Berman was requesting a legal analysis of whether the City could limit the value of the concessions so they were more comparable.

Council Member Berman indicated that was one element. If Staff's analysis determined the benefit was \$10 million, the Council would want to know the size of the project that would generate a \$2.5 million benefit or a \$5 million benefit. He was concerned about the office space rather than the housing.

Ms. Gitelman was unsure whether Staff could analyze an unlimited number of scenarios. Perhaps Council Member Berman had one hypothetical scenario he would like Staff to analyze.

Council Member Berman requested analyses of 25 percent and 50 percent of the determined benefit.

Council Member DuBois clarified that Council Member Berman wanted to know the amount of concession necessary rather than the amount of concession sufficient to fulfill the State Density Bonus Law. It would be an equation that stated this much of the concession provided this much benefit.

Mr. Kawahara understood the analysis would be separated into two parts. The first part was merely an economic exercise, the financial analysis as modified. The second part was more complicated. If the concessions were

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more than needed, then the Council wanted to know how much could be removed from the project and what the project would look like.

Council Member Berman concurred.

Mr. Kawahara advised that as an economist he could not answer that question. The Council would need an architect to design the building. That became a more complicated question.

Mr. Schwab commented that if the Council wanted a way to make it equal, then it should understand that the State wanted to incentivize BMR housing.

Council Member Berman wanted to see an analysis of varying degrees of benefit.

Mr. Schwab explained that the Applicant considered how to efficiently use the building envelope for commercial and residential use. Because the residential portion sat atop the office portion, reducing the commercial space would reduce the residential space. Residential units reduced the value of an office building when it stood alone. He would not choose to put BMR units in there because it affected market rates and rental rates. This was meant to be an incentive. The Applicant attempted to use the space in a way that would not negatively affect anybody. Cap rate calculated the increases for future years. If the increases were expected to be higher, then cap rates could be lower. The Applicant attempted to approach the project in the way the State wanted in order to provide BMR units.

Council Member Berman noted the project provided three BMR units in exchange for doubling the office space. That set a precedent for the rest of Palo Alto. The Council had to analyze that precedent carefully before it voted.

Council Member Filseth did not believe the language needed to be part of the Motion.

Council Member Berman was concerned that when the item returned, the Council would want to discuss those issues and possibly delay the project further.

AMENDMENT FAILED DUE TO THE LACK OF A SECOND

Mr. Northway requested Council Members include a date certain in the Motion.

Council Member Wolbach requested an estimate of the cost for the consultant's analysis as the City would be paying for it.

MINUTES

Ms. Gitelman would need time to consult with partners.

Council Member Wolbach requested a range for the cost.

Ms. Gitelman could not provide one. Mr. Kawahara estimated his current scope of work at \$12,000; therefore, the analysis cost could be in that range.

Council Member Wolbach indicated the City could institute a RPP Program in any neighborhood.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to eliminate paragraph 5, sentence 2 "If occupants and users do not comply with the conditional use permit, the City may initiate a Residential Parking Permit program for the neighborhood." from the Motion.

Council Member DuBois wanted to know how the City would enforce the Conditional Use Permit without that language.

Ms. Gitelman requested clarification of the remaining sentence in that paragraph. It did not reflect Council Member Burt's request for Staff to explore a Condition of Approval for occupants to park in the garage.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to restate paragraph 5 as "Staff will explore a condition of approval that requires the occupants and users of the building to park in the garage."

Council Member Wolbach felt the major concern was the negative impact of the project on the jobs/housing imbalance.

Mayor Holman stated that CS Zoning allowed a 1:1 FAR. The Staff Report indicated the commercial FAR was 10,770 feet, the total FAR was 26,926. CS Zoning required the housing component be 16,156 square feet. The project provided 13,979 square feet. The project lacked approximately 2,200 square feet of housing as required by the Code. That was important because the pro forma could be based on something that was not the base. The Applicant was not building three additional BMR units; it was converting existing residential units to affordable units. She inquired whether the pro forma utilized the correct basis.

MINUTES

Ms. Gitelman clarified that CS Zoning allowed a certain FAR of residential space but did not require a specific FAR. The proposed amount was less than the allowable residential FAR. The total cost of site development was built into the analysis.

Mayor Holman believed the Council should require the total square footage of housing allowed under CS Zoning before allowing concessions for additional BMR units that converted the amount allowed under the Code.

Mr. Kawahara reiterated that in the straight CS Zoning alternative, Kaiser Marston determined that the project that would yield the highest return for the Applicant, *i.e.*, the project the Applicant would most likely build without concessions, would be something less than the maximum permitted under CS Zoning. In the analysis, Kaiser Marston concluded that the developer would build the most amount of office permitted, the 0.4 FAR, and would reduce the amount of residential to the point that it would not trigger underground parking. Kaiser Marston concluded that the base case project was the one the Applicant would most likely build.

Mayor Holman wished to define the TDM Program as an enforceable program.

Ms. Gitelman reported the TDM Program was presently included as a Condition of Approval, so it would be enforced through regular Code enforcement procedures. If it was not implemented, Staff would use Code enforcement Staff to encourage voluntary compliance and take steps if that was not successful. If the Council wanted to recast that Condition of Approval as an agreement between the parties, Staff could investigate that with the Applicant.

Mayor Holman wanted something that indicated an enforcement mechanism. The City had several projects with TDM agreements that were not enforceable.

Ms. Gitelman stated all programs were enforceable through the Code enforcement mechanism, which included the potential to levy fines if Conditions of Approval were not complied with. If the Council wanted something more, then she needed clarification.

Mayor Holman expressed concern about the trees being on the inside of the sidewalk and asked if the Applicant could incorporate some type of design component to create a canopy or barrier between the street and the sidewalk.

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Mr. Northway felt something could be done, but he was not sure exactly what off the top of his head. The landscaping plan contained a planting strip alongside the curb.

Mayor Holman indicated that was not a barrier.

Mr. Northway would check with the County regarding a barrier in its right-of-way.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to ask the applicant to explore a barrier between Page Mill Road and the sidewalk.

Ms. Gitelman was not aware of any area in Palo Alto where something like that existed.

Mayor Holman could not think of an area where no trees were located on the outside of the sidewalk.

Ms. Gitelman explained that Staff attempted to make a really busy intersection more hospitable from an urban design perspective.

Mayor Holman suggested leaving the design of the barrier to the Applicant. The barrier should be transparent rather than opaque.

Vice Mayor Schmid inquired whether that would involve the County and its requirements.

Mayor Holman clarified that the Applicant would ask that question.

Vice Mayor Schmid asked if a barrier would impose a substantial cost.

Mayor Holman had no idea. She was simply asking the Applicant to explore it. She would not offer enforcement of the TDM Program as an Amendment, but would request Staff provide clarity for an enforcement mechanism and penalties.

Council Member Scharff believed it was inappropriate for the Council to tell its consultant which methodology to use if that methodology was not reasonable and defensible. That should be part of the Motion because the Council was creating a record. He questioned whether the Council wanted the consultant to perform an analysis that he determined was unreasonable and indefensible.

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INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to direct the consultant that if the methodology suggested in the Motion is determined to not be reasonable and defensible and the Director of Planning and Community Environment concurs with this determination, the consultant will not perform the analysis but instead will report back to City Council on why the methodology is not reasonable and defensible.

Council Member Filseth asked if the State mandate stated that in order to contest the requirement to implement off-menu concessions, the Council had to provide a written and justifiable argument of why the extra value of the concessions exceeded the cost of the BMR units.

Ms. Silver added that in order to deny the concessions, the Council needed to provide a written document which would be the Record of Land Use supported by substantial evidence which would essentially be the consultant's report. The Council needed to make a finding that the incentive was not required to provide for affordable rents or affordable sales price.

Council Member Filseth would not want to put the City in a position where a disagreement between the City and the consultant would prevent the City from pursuing a justification.

Council Member Scharff clarified that if the methodology suggested in the Motion was determined to be not reasonable and defensible and the Planning Director concurred, then the consultant would not perform the analysis.

Ms. Gitelman would be happy to consult with colleagues.

Ms. Silver advised that Staff had run through various scenarios with KMA, and did not believe the expense would be considerable. If Staff did not believe the methodology was defensible, then they would provide the Council with a confidential memorandum.

Ms. Stump understood the Council's intent was to be fiscally responsible. To the extent that issues were sometimes matters of judgment and relative risk, Staff would provide the Council with confidential advice for its judgment.

Vice Mayor Schmid inquired whether the consultant was comfortable with the Motion. If the consultant did not wish to perform the work, then Staff had permission to perform the work themselves or find another consultant. The consultant did not need an agreement from the Planning Director not to go ahead.

MINUTES

Ms. Gitelman understood the discussion would be a dialog. More likely the consultant would indicate the methodology suggested by the Council Member was not reasonable and would suggest a reasonable method. Staff could agree to pursue the alternative.

Vice Mayor Schmid concurred.

Mr. Kawahara reported that the various methodologies used for the project were consistent with all the other ones he had seen. The Council's proposed methodology veered off the course of typical and went beyond what everyone else did. There was some discomfort that came with that.

Ms. Prince requested the Applicant have the benefit of the consultant's analysis. If the consultant determined the proposed methodology was unreasonable and Staff chose another consultant, then it would be unfair for the Applicant not to receive a copy of the consultant's analysis.

Council Member Scharff did not understand the direction for the parking analysis to capture the effect of the loss of parking on Page Mill Road. Caltrans required elimination of the parking. The Municipal Code stated the amount of required parking.

Council Member Burt explained that calculating the amount of the parking exemption for a mixed-use project should include the impacts of the project on parking demand. Part of that consideration should be a loss in on-street parking, not just solely in isolation the onsite parking. The impact of the project would go into the evaluation of the amount of parking the Applicant needed to provide.

Council Member Scharff inquired about the work Staff would have to perform for that analysis.

Ms. Gitelman would disclose the loss of on-street parking and compare that to the calculated parking demand and notify the Council if they anticipated a spillover impact.

Mayor Holman asked if the County required removal of those parking spaces.

Mr. Reich explained that the County intended to eliminate those parking spaces in order to extend the left-hand turn lane westbound from Page Mill Road to southbound El Camino Real.

MINUTES

Council Member Scharff was confused by the need for a barrier. The Comprehensive Plan provided the notion of pedestrian-friendly, walkable neighborhoods. A barrier was not friendly or walkable. Perhaps Mayor Holman meant something other than a barrier.

Mayor Holman suggested a safety measure, attractive bollards, or something that provided safety.

INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER to change "barrier" to "safety measure" in paragraph 7 of the Motion.

Council Member Berman did not understand the purpose of a barrier or safety measure given the distance between trees whether on the inside or outside of the sidewalk.

AMENDMENT: Council Member Berman moved, seconded by Council Member Scharff to remove "To ask applicant to explore a safety measure between Page Mill Road and the sidewalk." from the Motion.

Council Member Berman was worried that this would be required for other projects when it did not set the appropriate aesthetic value. It would be a waste of Applicant's time.

Council Member Scharff agreed that the barrier or safety measure was unnecessary.

AMENDMENT FAILED: 3-6 Berman, Scharff, Wolbach yes

AMENDMENT: Council Member Wolbach moved, seconded by Council Member Scharff to remove "to direct Staff to ensure that the parking analysis captures the effect of the loss of parking on Page Mill Road."

Council Member Wolbach felt it was unnecessary and unfair to analyze an impact over which the Applicant had no control.

Council Member Scharff believed analyzing an impact that was not part of the project was a bad approach.

Council Member Burt reiterated that a variety of factors on the site and in the surroundings were considered in calculating the reduction in the parking requirement. Staff would consider in their best professional judgment the amount of parking that would be needed for a mixed-use project. If there was quite a bit of parking on the street, then Staff would probably require less onsite parking. It was a valid consideration for Staff to include in their appraisal of the amount of parking needed for a mixed-use project.

MINUTES

Staff was allowed to waive up to 20 percent based on a variety of factors. He assumed this would be a factor.

AMENDMENT FAILED: 4-5 Berman, Kniss, Scharff, Wolbach yes

Council Member Kniss requested Staff provide an estimate of a date for return of the item.

Mr. Keene would provide the Council and the Applicant with a date as soon as possible after discussing a timeline with Staff.

Mr. Northway wanted to know a date certain and requested Staff provide one in the next few days.

MOTION AS AMENDED PASSED: 9-0

~~7. Discussion and Direction to Staff Regarding Establishment of an Office/R&D Annual Growth Limit.~~

Council Member Questions, Comments and Announcements

Mayor Holman expressed the Council's condolences for the loss of the Gunn High School student. A second suicide occurred the following day on Caltrain tracks.

Closed Session

Herb Borock recommended the Council move into Closed Session to discuss the City's options. The correspondence regarding Paralleling Station Number 5 gave the impression that a decision had been made without the Council having made a collective decision as to other issues. This was the Council's first opportunity to discuss all issues regarding potential litigation.

Adina Levin, Friends of Caltrain, was pleased the City indicated it would work cooperatively with Caltrain. Litigating grade separations would not result in the funds needed for grade separations. Partnering to raise those funds would be more helpful. She urged the Council to work collaboratively to raise funds for grade separations.

MOTION: Council Member Wolbach moved, seconded by Vice Mayor Schmid to go into Closed Session.

Council Member Wolbach believed it was important to discuss litigation matters in Closed Session.

MOTION PASSED: 8-1 Kniss no

MINUTES

The Council went into the closed session at 11:40 P.M.

8. CONFERENCE WITH CITY ATTORNEY/LEGAL COUNSEL
Potential Litigation (as petitioner): One matter
Subject: Caltrain Joint Powers Board –
Peninsula Corridor Electrification
Project: California Environmental Quality Act
Authority: Government Code Section 54956.9(d)(4)

The Council reconvened from the Closed Session at 12:15 A.M.

Mayor Holman reported that the City Council (PASSED: 9-0) decided not to initiate a lawsuit based on Caltrain's stated commitment to work on resolving areas of concern identified by the City of Palo Alto.

Adjournment: The meeting was adjourned at 12:16 A.M.