



# CITY OF PALO ALTO CITY COUNCIL TRANSCRIPT

Special Meeting  
May 4, 2015

The City Council of the City of Palo Alto met on this date in the Community Meeting Room at 5:39 P.M.

Present: Berman arrived at 6:11 P.M., Burt, DuBois, Filseth, Holman, Kniss, Scharff arrived at 6:11 P.M., Schmid, Wolbach

Absent:

## Special Orders of the Day

1. Interview of Two Candidates for the Human Relations Commission.

Mayor Holman: Our first candidate is Alice Smith. You've probably seen this enough that you know the routine. You'll have a minute or so to make any opening comments if you want to. We'll have the rest of the time for Council Member questions. Thank you.

Alice Smith: Thank you very much for interviewing me. I'm sorry I couldn't see you before, but I was at a wedding in England which was extremely nice. I'm interested in being on the Human Relations Commission (HRC), because I loved being on the Library Bond Oversight Commission. I think I contributed with my skills and knowledge. I learned a lot. I've never wanted to run for City Council or for any of the specific offices. I really do believe that you should participate in your local government to the extent that you have something to contribute. I think I might. I'd be happy to answer any questions you have.

Council Member Kniss: Full disclosure, I've known Alice a really long time. Alice, I think it would be great if you gave us some more background on your involvement with local government and how you've been involved and what your passions are.

Ms. Smith: When you say local government ...

Council Member Kniss: That's us.

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Ms. Smith: I've helped many candidates to run for election. I've been a fundraiser or an organizer or done precinct work for many of you in this room. I've worked on issues at the City level which include, with the great assistance of Karen, asking the City Council to take a position on the death penalty, for example. I was very active in that coalition. At that time, I was the co-chair of the American Civil Liberties Union (ACLU) Mid-Peninsula which I've just moved off that position and have been on the ACLU Northern California Board as the person who is the representative to the Board for four years, which is a good turn. In that respect I've looked at the issues of children in school and punishment. I'm very interested in having justice which denies punishment and looks for solutions. I don't feel, for example, that a child should be excluded from school or put in juvenile hall when there might be an alternative which would be for the schools to educate and find a way to meet up with this child and get them restored, if you will, in a more just society. I certainly have worked hard on restorative justice. Your Police Chief, I've talked with him and met with him and talked about restorative justice, which I think should be the goal of the City. I know that your Police Department does have that role. I think they've been sensitive to the needs of children when they're acting out. My fingers are in many pies. Those are just some examples, if you would like. I should say I have been the President of the Fair Housing Council and was one of the first people to work in Midpeninsula Citizens for Fair Housing. When I was first an attorney, I had cases which we won or settled immediately when the law was explained and people who were discriminating against someone on the basis of race back in the late 1970s and have been working on housing equality, housing access, this, that and the other.

Council Member Burt: Hi, Alice.

Ms. Smith: Hi, Pat.

Council Member Burt: Can you share how familiar you are with the role of the HRC and any different directions or emphasis that you would want to see the HRC pursue if you were on the Board?

Ms. Smith: That's a tough question for me, because I have been watching the City Council meetings on television, but I have not watched the HRC. I have looked through some of the back tapes, but I think I'm concerned that sometimes issues don't come from the HRC to the City Council when they become issues already at the City Council. In other words, it's unclear to me that they've taken a strong position. They may well have, and I could be ignorant on this fact. I'm not aware of their taking a leadership position on the problems of low-income people in the town who have not had an opportunity to have housing and take steps to go forward on various

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solutions. I know the HRC has done some great things with the problems of homeless. I know that they've been involved in that.

Council Member Burt: As a comment, unlike most of our other Boards and Commissions, the HRC actually has some broad latitude to take their own initiatives. Just for reference.

Council Member DuBois: There was a question on the application that said if you're appointed, what specific goals would you have. You asked a bunch of questions back. You didn't state any goals. Do you have some goals you'd like to...

Ms. Smith: I don't have a preexisting agenda, to be frank.

Council Member DuBois: You asked the question should we advocate for Buena Vista residents. Do you have an answer?

Ms. Smith: Yes. I think definitely. I was late to the Policy and Services Committee where unanimously you all agreed to go for \$10 an hour for an increase in the minimum wage. I'm not sure that that came out of the Human Relations Commission. In fact, I'm pretty sure it didn't. A living wage in the City of Palo Alto is something which I would have been advocating for. It seems to me it's very difficult to live in Palo Alto or to work in Palo Alto if you have to commute out of Palo Alto. If you're a low income person who happens to have a job, you're going to spend all your money on car fare or bus fare to get home. There's not enough money at \$10, and there's not enough money at \$15. I would like to have heard a discussion of the living wage. I think you guys have done a great step one, but I would be a pressure point because I think we have to look carefully at who lives in Palo Alto and who has an opportunity to perhaps help others who contribute to Palo Alto but not necessarily live in Palo Alto.

Mayor Holman: I have one question. Thank you for applying. I have one question which is around our social service organizations. We have a broad spectrum of those organizations, and I don't know if you've watched the Budget process and how the HRC goes through that budgeting process and Budget allocations for those organizations. Is there any that you think, for instance, that the HRC is not recommending over another or should be?

Ms. Smith: I can't answer that question, because I don't know. I know that in some instances I have been asked by members of the Human Relations Commission in the past, can you give to Catholic Social Services, for example, when certain values might not be equally shared. I happen to think that Catholic Social Services is one of the most amazing organizations in the county. I'm deeply involved in Assembly Bill AB 109 and the prison

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program in Santa Clara County. The opportunities for the people in Santa Clara County that have been aided by many of the social services agencies who you have been funding may have a religious side to it, but they have not crossed over any line that I've ever seen. I think they've done some wonderful things. I'm sure that Liz knows perhaps more about this. When you look at what they did for housing, for education, for family services, those organizations are critical. I don't see the City of Palo Alto not working in conjunction with many groups. I've been on the Board of the Red Cross, I guess you know that, for about six years; I'm not there now. When we were on the Board of the Red Cross, we had many agencies who came and provided food, for example, if there was a disaster. They helped us with it when we set up fire shelters. Those things are very, very important.

Mayor Holman: Sorry to cut you off. You have about 20 seconds left to make any kind of closing remarks that you want, to be fair to the other candidate.

Ms. Smith: Valerie's a friend. I don't know where you are in your continuum. It's not the most important thing that could ever happen to me, but it's something which I think I could contribute to. I leave it to your good judgment. I'm sure that you can decide who you want and what you want and what values you have. What you see is what you get with me.

Mayor Holman: Thank you for that. I should disclose too I've known you also for a good number of years just as Liz has. Thank you for your application.

Ms. Smith: Thank you. Thank you for what you guys do. I admire your work.

Mayor Holman: Thank you, Valerie, for applying and for joining us this evening. We have ten minutes for interviews. If you'd care to take a few moments or a minute to make some introductory comments, we'd be happy to hear those.

Valerie Stinger: Thank you. Thank you for allowing me to interview. I'll be really brief. I'll introduce myself as a resident, a professional and a volunteer. Resident, I've lived in Palo Alto since 1974, lived in the same house since 1974. We have two daughters who have gone through the Palo Alto school system. As a professional, I began my career at the Federal Reserve Bank; worked for the Center for Continuing Study of the California Economy; spent the bulk of my career in new product planning in pharmaceuticals and biotech, went into Peace Corps in 1999. I've done a lot of work in Africa and the former Soviet Union since then. Volunteer, I've been on the daycare board, school site councils, theatre boosters, and most

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recently the Library Advisory Commission when we went through the [Library Service Model Analysis and Recommendations Report] (LSMAR) process and the funding process. I tried to strip adjectives to stay in my 30 seconds. I hope that you'll ask questions, and I'll answer appropriately to your needs.

Vice Mayor Schmid: Thanks for applying. The Human Relations Commission is an important one. They deal with a wide range of issues. What priorities would you have going in there to be our key issues?

Ms. Stinger: I don't have an agenda, but my priority is diversity in our community. That would be age, gender, and particularly economic diversity. I've always felt that that's really important in a community. I think that was reinforced today in *The New York Times* by a study, it was probably on National Public Radio (NPR) also, about how much a child is advantaged by having exposure to a better school system and a better community. I think the part that that article omitted—I don't want to say that, because maybe it wasn't part of the study. I think the other part of that is how much advantaged children benefit from exposure to disadvantaged children or how much a community thrives by diversity. I'd like to be part of ensuring that we remain a diverse, heterogeneous community.

Council Member Kniss: That's intriguing. I'm thinking how to word this. Maybe in the second part of your life you decided to go into the Peace Corps. Tell us what motivated that and where did you end up and was it something you really enjoyed.

Ms. Stinger: It was life changing. I enjoyed it tremendously. I guess one day I was driving up Highway 101 to Genentech, caught in traffic which I thought was terrible. I had no idea what traffic would be like today, but at the time it seemed horrendous. I said, "You're either doing this because you need to," at that point we had an education fund, a pension fund and a house to manage. I thought, "Either you're doing this because you need to or you want to or you can do something you've always wanted to do." I wanted to explore lifelong learning and wanted to give something back. I wanted to see if I could learn a modern language. I had the experience of living in another country. I had the experience of giving something back, but older years just aren't good for learning Arabic. I wasn't so successful in that regard. I had a fascinating experience. It changed what I was able to do in the next decade. It opened up doors to me; it gave me new exposure, new appreciation for different lifestyles.

Council Member Burt: Hi, Valerie.

Ms. Stinger: Hi, good to see you.

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Council Member Burt: You too. Are there certain directions that you would like to see the HRC take that are different from what they have taken in the past that are emphasis?

Ms. Stinger: What I've read from the Agenda Packets and from the Minutes, I see nothing different. I might have missed something, but what I've read is that they seem to be on target for addressing immediate needs, but also being able to develop an agenda for the future, like taking a longer term view. They certainly run a tight meeting. I was extremely impressed by some of the minutes that were so in-depth, and then they ended by 8:40. I thought, "This is one hell of a Chairwoman."

Mayor Holman: She is.

Ms. Stinger: I don't; I want to just continue.

Council Member Burt: I saw that you spoke about senior issues. Is that an area that you think we should have greater emphasis in? If so, how?

Ms. Stinger: At the time when I did my application, I was going through a horrific experience with my mother. That certainly colored my experience. I was intrigued that that was the outcome of one of their Study Sessions. Yes, I do think that's an area where we could continue to focus. Was it five years ago we had a study in the City that said, now I'm going to get the numbers wrong, 30 percent of our population would be over 55 in 2030. Please forgive me if I have these numbers wrong, because I haven't used them in a while. That's a population that needs some attention. It might be transportation. It might be an expansion of Avenidas' services, more library programs, certainly low-income rental. I found a lot of board and care facilities where my mother could live in Redwood City. Not so much in Palo Alto. I'm going to change gears for a second. I remember doing a dinner for homeless. We prepared the dinner; we bought the food; we prepared the dinner; we all sat down to dinner together. The man across from me looked me and said, "Hi." He was a man I had worked with and there by the grace of God. He was on the other side of the table. I think we need to remember that we're a very wealthy community, but we need to be able to care for a lot of different people in housing. Transportation for elderly citizens is important even though we think that we are well taken care of and we're secure.

Council Member Filseth: You talked before about the importance of diversity, especially economic diversity in town. How can the HRC make a bigger difference than they do now?

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Ms. Stinger: When I was role playing, I thought, "I wonder what they'll ask about this?" That was the question that I knew would come, and I knew I wouldn't have a good answer for. I guess my indirect answer is the way I would approach a problem in industry or in a third-world country is to do the situation analysis, walk the walk, and start to identify areas that are well served, areas where there are high needs, and start to prioritize, bring together groups in the community as they've done with the senior issue, and then bring some recommendations to Staff and to Council, and hope that we can move forward either with a coalition of nonprofits. That is the way we started daycare in Palo Alto; addressing a need, putting together a nonprofit. The City helped get it started, kick started it, and now it's independent. We're not City funded as much.

Council Member DuBois: I saw your comment about your mother, and so, yes, the one question I was going to ask about senior services. Two quick ones. When you say childcare, is that the Palo Alto Child Care?

Ms. Stinger: Palo Alto Child Care Community.

Council Member DuBois: You were involved in that at the beginning?

Ms. Stinger: I was, yeah.

Council Member DuBois: Do you have ideas on programs for, say, teens or youth that the HRC should be involved in?

Ms. Stinger: I guess I would have to research that more, because my bias is theatre and poetry. I just don't think there's enough outlets for literary arts in Palo Alto. I mean there is the Children's Theatre. Both of my girls were involved in that for a long time. They do a great job. Beyond that, there's a need for some more avant garde or abstract theater. I would love to see Mitchell Park Community Center be a place where teens could try some different sorts of less mainstream activities.

Mayor Holman: We're out of time, but if you'd care to make a couple of closing statements, please feel free.

Ms. Stinger: The question I was hoping you would ask was why I wanted to be at the HRC. I will answer that as quickly as I can. I certainly want to give something back. My experience on the Library Advisory Commission was that I got more out of it than I put into it. Drilling down on a particular issue, the experience of drilling down, the learning that went with that, the involvement in City affairs, the satisfaction of taking my mother to College Terrace, of walking by Mitchell Park now and seeing something that I was involved in was immensely gratifying. Process wise, that's really important

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to me. Working on a Commission that would in some way be involved with maintaining diversity in our community would be very satisfying. That was my application.

Mayor Holman: Thank you. You may be the first candidate we've ever had to interview, to my knowledge any way, that asked and answered their own question. Thank you and thank you for the application. We look forward to seeing you.

The City Council reconvened in the Council Chambers at 6:11 P.M.

2. Resolution 9506 and Resolution 9507 entitled "Resolution of the Council of the City of Palo Alto Expressing Appreciation to John Melton and Asher Waldfogel Upon Completion of Their Terms as Utilities Advisory Commissioners."

Council Member Scharff read the Resolution for John Melton into the record. Is John here? Where's John?

Mayor Holman: I don't believe he's here.

Council Member Scharff: I don't see John. In that case, I'm not going to go on and on about how wonderful a Commissioner John was. I will tell you that John was an outstanding Commissioner. I really did enjoy serving as the Utilities Advisory Commission (UAC) rep from the City Council with John. On the meetings, his points were always insightful. He was a very thoughtful Commissioner. He will truly be missed.

Valerie Fong, Utilities Director: Utilities Director Valerie Fong. John Melton is not able to be here; however, Commissioner Asher Waldfogel, he was actually the Vice Chair, has agreed to accept on his behalf.

Council Member Burt read the Resolution for Asher Waldfogel into the record.

Vice Mayor Schmid: I'd just like to thank Asher very much for his work on technology and utilities, two areas that are of critical importance to Palo Alto and that need a deep and thoughtful look at. Thanks for what you've done over the last decade.

Council Member Scharff: I also would like to say a few words about Asher. I'm also going to really miss you on the Utilities Advisory Commission. You had a unique ability to ask probing questions that were outside the box. I thought that was really helpful and often sparked conversation at the UAC



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that otherwise people wouldn't have had in delving much deeper. I thought you brought a lot to the Commission. I'm sorry that you'll be leaving.

Mayor Holman: I'd like to add my voice of appreciation for your commitment. Seven years is a long time to serve on any Board or Commission. Your public services has been stellar. Really appreciate your dedication. It's heavy lifting that UAC does, and it takes a lot of intellect and a lot of energy to participate for such a long period of time. Really appreciate your effort in that regard.

**MOTION:** Council Member Burt moved, seconded by Council Member Kniss to adopt the Resolutions of Appreciation for John Melton and Asher Waldfogel.

**MOTION PASSED:** 9-0

### 3. Community Partnership Presentation - Palo Alto Mediation Program.

Minka van der Zwaag, Manager Human Services: Good evening, Council Members. My name is Minka van der Zwaag with the Office of Human Services. It's my pleasure to introduce the volunteers and staff for the Palo Alto Mediation Program (PAMP). This is a group that I work with a lot in Human Services, as does the Human Relations Commission who hears quarterly reports on the services that they provide. They're going to give a little introduction to what they do. I invite Diane Maddis, their co-chair for this year, to come up, and she'll invite the others of the group up as those times come in the presentation. Diane, welcome.

Diane Maddis, Palo Alto Mediation Program Co-Chair: Thank you, Minka. Good evening. As Minka said, I'm Diane Maddis. I'm the Co-Chair of the Palo Alto Mediation Group. I'm here with some of my Co-Mediators as well as Paul Hebert from Project Sentinel, our administrative arm. We usually work with the Human Relations Commission, but our HRC Liaison Mehdi Alhassani encouraged us to come to Council as there's a number of new members on Council this year. He thought it would be a good opportunity to introduce ourselves or reintroduce ourselves and to tell you about the services we provide in the community. Currently PAMP has 22 volunteer Mediators who all live or work in Palo Alto. We've been in existence since 1971 in different forms. While most of us were not there at the beginning, many of the mediators have been with the organization for over ten years. One of our mediators just this week, Karen Michael, was recognized by the National Association for Community Mediation and was selected as the 2015 Fourth Quarter Outstanding Volunteer. We're really excited about that. Mediation services are offered to people who live or work or own property in Palo Alto. Many of our Mediators volunteer as facilitators in community

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meetings. We do outreach through our website and the neighborhood networks as well as working with many City departments such as police, code enforcement and animal control. They have a place to refer people when there's an issue that they can't resolve themselves. We hope to be doing some outreach at the libraries. In the last couple of months, we've been enjoying using the new library rooms for mediation. It's a great change from Cubberley [Community Center], so we're thrilled with that. As Mediators, we try to help people in the community resolve conflicts, some of which may be going back as many as 20 years. These can range from landlord/tenant issues such as security deposits, rent increases; neighbor to neighbor issues such as noise, fences, trees; disagreements about housemates or disagreements with homeowners associations. Each year we handle about 140 cases, of which about half result in mediation. Of those, approximately 90 percent have a positive outcome. PAMP also works with the Palo Alto Mandatory Response Program (MRP) which is a process established by City Ordinance. This program provides conciliation and mediation services for tenants and landlords. It applies to rental properties where the landlord owns or operates two or more rental units in the City and covers disputes ranging from rental increases to deposits to privacy and quiet enjoyment. This year we've had 14 potential MRP cases. Of these, eight voluntarily agreed to mediate and seven reached an agreement. Three were conciliated by phone, and two were resolved through counseling. We have one still pending. We're getting very good outcomes from the Ordinance, and it's a wonderful tool to have. As Palo Alto has become more culturally diverse, we believe the Mediation Program provides a bridge for helping people with misunderstandings and miscommunication that they face in the community. We hope that by having a mediation program available as a free service to Palo Alto we are contributing by making it a stronger community and a great place to live. We want to thank you for your continuing support. We want to talk about a new program, which Paul Hebert is going to talk about, from Project Sentinel.

Paul Hebert, Project Sentinel: Thank you, Diane. Just wanted to add a piece of the outreach that's a little bit new this year is a result of an uptick in the number of landlords calling for help. A lion's share of the calls we take are from tenant/landlord issues, but mostly it's the tenants calling for help. The fact that a lot of landlords are facing difficult situations with their tenants had us decide to offer a training specifically targeting the smaller or new landlords, people who are just renting out a room in their home or who have inherited a home or are living in half of a duplex, things like that. These people tend to step into it with good intentions about ownership or investment and not much preparation for the role of landlord. We will be doing outreaches to the community specifically targeting those folks to help them learn how to deal proactively with the things that they're facing.

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That's something new. At this point, if you have any questions of us, we're happy to answer them.

Mayor Holman: The big comment that we would make really isn't a question. It's a thank you. It's more of a comment in appreciation and expression of our gratitude. Thank you so very much for the long years of service that many of you put into this organization and for your assistance with community members. Much appreciated. Thank you for taking the time out to come this evening.

4. Appointment of Candidates to the Public Art Commission and Utilities Advisory Commission.

Council Member Scharff: In the packet with the resignation, are we going to vote for three or two? The ballot says two. I'd like to see us vote for three...

Council Member Berman: I thought we were doing three.

Council Member Scharff: ...but the ballot actually said two, I think. Vote for two, at least the ballot I got. I'd like to...

Mayor Holman: Three on which...

Council Member Scharff: On Utilities Advisory Commission (UAC).

Council Member Berman: UAC.

Council Member Scharff: On UAC. I'd like to vote for three.

Mayor Holman: It says vote for three.

Council Member Scharff: Really? On the one I got, it says vote for two.

Mayor Holman: I'm sorry. Three-year terms, yes. Vote for two. Can Clerk...

Beth Minor, City Clerk: Mayor Holman?

Mayor Holman: Let's hear from the Clerk.

Ms. Minor: Mayor Holman and Council Members, Beth Minor, City Clerk. We are going to vote first for the two full terms and then after that was completed, we were going to have you vote for the one unexpired term.

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Council Member Berman: Just for information sake, can you remind us when that unexpired term expires?

Ms. Minor: The one unexpired term expires on April 30, 2016.

Mayor Holman: Have Council Members filled out their ballots? Since the Clerks are just now collecting our ballots, we can go on and come back to the tally of our votes.

First Round of voting for three positions on the Public Art Commission with terms ending April 30, 2018:

Council Member Filseth abstained from voting.

Voting For Eric Beckstrom:

Voting For Loren Gordon: Berman, Burt, DuBois, Holman, Scharff, Schmid, Wolbach

Voting For Ben Miyaji: Berman, Burt, DuBois, Holman, Kniss, Scharff, Schmid, Wolbach

Voting For Caroline Mustard: Kniss

Voting For Mila Zelkha: Berman, Burt, DuBois, Holman, Kniss, Scharff, Schmid, Wolbach

Beth Minor, City Clerk announced that Loren Gordon with 7 votes, Ben Miyaji with 8 votes and Mila Zelkha with 8 votes were each appointed to the Public Art Commission for three years, with terms ending April 30, 2018.

First Round of voting for two positions on the Utilities Advisory Commission with terms ending April 30, 2018:

Council Member Filseth abstained from voting.

Voting For Michael Danaher: Berman, Burt, DuBois, Holman, Kniss, Scharff, Schmid, Wolbach

Voting For Timothy Gray:

Voting For Natalia Kachenko:

Voting For Judith Schwartz: DuBois, Schmid

Voting For Lisa Van Dusen: Berman, Burt, Holman, Kniss, Scharff, Wolbach

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Ms. Minor announced that Michael Danaher with 8 votes and Lisa Van Dusen with 6 votes were each appointed to the Utilities Advisory Commission for three years, with terms ending April 30, 2018.

First Round of voting for one position on the Utilities Advisory Commission for one unexpired term ending April 30, 2016:

Council Member Filseth abstained from voting.

Voting For Timothy Gray:

Voting For Natalia Kachenko:

Voting For Judith Schwartz:                   Berman, Burt, DuBois, Holman, Kniss,  
Scharff, Schmid, Wolbach

Ms. Minor announced that Judith Schwartz with 8 votes was appointed to the Utilities Advisory Commission for one unexpired term ending April 30, 2016.

Agenda Changes, Additions and Deletions

None.

City Manager Comments

James Keene, City Manager: Thank you, Madam Mayor, Council Members. A number of items to report. All good news. I did want to share that once again this year Lalo Perez, our Chief Financial Officer, and David Ramberg, Assistant Director in Administrative Services Department, received on behalf of the City the Government Finance Officers Award for Achievement of Excellence in Financial Reporting for the 2014 Comprehensive Annual Financial Report. ASD, the Administrative Services Department, and our City have received this award going back 18 years, which represents a long-term, consistent record of exemplary financial management. It is the highest form of recognition in governmental accounting and financial reporting. It's attainment represents a significant accomplishment by government and its financial management. Along those lines I did want to share in response to a comment and also a question that the Mayor asked last week that the Fiscal Year 2016 Proposed Budget has been released on the OpenGov data website. As you know, in 2012 our City was the first in the nation in presenting its Adopted Budget in detail in the OpenGov online platform. With that platform, visitors to the site can analyze changes and costs, revenues, etc., at a more detailed level than is shown in the Budget document that we present to the Council and in many ways simpler for the

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layperson to read and take a look at. I know you had interest in that. It is out there in advance of the start of the Finance Committee's Budget Hearings tomorrow night. An eventful weekend this weekend, of course. Reporting on the May Fete Parade and Fair, which many of the Council Members and obviously our citizens were there at the 93rd Annual May Fete Children's Parade and Fair. It was a resounding success. Special thanks to Mayor Holman for her special support. A few highlights for this year's Parade include that there were 87 total entries this year versus 62 last year in 2014. The extended parade route, which went down University Avenue all the way to Webster Street, across to Homer Avenue, and ended at Heritage Park supported the addition of block parties for senior residents at Channing Housing Lytton Gardens. Staff and volunteers had tables and chairs set up along the parade route with light refreshments donated by Whole Foods for our senior residents. I certainly can tell you that walking along in them they were cheered by all of that youthful energy and attention. As many of you, Council Members and Mayor driving in some amazing cars, very historic cars. Remember cars; there won't be very many around in the future. Maybe the hit of the whole event of course was the Project Palo Alto Perry, our avatar donkey, who was present at the Parade. You will recall that this project won the competition at the "For the Love of Palo Alto" community event earlier this year. My understanding is we did try to have Perry available for my comments tonight, but he's got a full dance card for the weeks ahead. The folks who had reserved him for the evening were not going to give him up, even for us at the Council Meeting. I was hoping to have a few pictures to show you. If you're not on Twitter, jump on Twitter and follow the City's Twitter page. You'll see people all over the community enjoying Perry. We had more middle and high school youth participation than in previous years, including robotics teams, drama clubs and an anti-bullying student club. East Side Prep and East Palo Alto joined the parade this year. We had new sponsors. We had almost twice as many floats as last year. Again, the fair at Heritage Park is organized by the Palo Alto Recreation Foundation and the Kiwanis Club of Palo Alto. Thank you for all of their good works. Lots of activities and fun. Again, a resounding success. Later Saturday evening, several of us were at the Adolescent Counseling Services' fundraising and awards dinner at the Jewish Community Center. The Mayor was there, Council Member Kniss, myself. The event was (MC'd) by Assembly Member Rich Gordon. More than \$150,000 for ACS was raised at the meeting. The Mayor received an award from Adolescent Counseling Services recognizing the City's support for ACS and youth wellbeing over the many years. We heard some compelling, poignant stories from individual young people, now in early adulthood, whose lives were saved or enriched by the kinds of services provided by Adolescent Counseling Services. A great evening there. Speaking about the changing world of cars again, give bike commuting a try. Next Thursday, May 14th again is Bike to Work Day,

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May 14, 2015, from 6:30 A.M. to 9:00 A.M. As we do every year, celebrate cycling, get rewarded at energizing stations along popular bike routes in bike-friendly Palo Alto. Again, starting early in the morning, the Alma Bike Bridge near Alma Street and Palo Alto Avenue. Cyclists traveling through there can stop and get their bikes tuned up and with other riders enjoy some fresh fruit. City Hall on the Ellen Fletcher Bike Boulevard, which is actually right there at Bryant Street and Hamilton Street. At the California Avenue Caltrain Station, this will be a special location this year, because the week before we will have been celebrating the reopening of the California Avenue Project and new plaza and everything there at that location. It's going to be a really big hit. As always the Wilkie Way Bike Bridge, between Wilkie Way and Miller Avenue, is a special place. If you haven't been down there, that's a nice and easy ride. More good news about Mitchell Park. We have received our official LEED certification, receiving Platinum LEED certification, the highest possible. In fact, the project earned 92 points out of 100. A project only needs 80 points in order to reach the platinum level. This is no small accomplishment by everybody who's been involved in this project. Many thanks, of course, to our Council for your leadership on pushing that design for the building and to our Public Works Staff team for their hard work in supporting the designation. I'm almost done, Madam Mayor. Our City will be partnering with the Palo Alto Medical Foundation on the linkAges TimeBank Program. This is a neighborhood service exchange network in which residents can help each other with various tasks and bank their time to take advantage of services by others. The City will use the TimeBank to recruit ambassadors to perform in-home surveys, help educate neighbors about energy and water efficiency and Zero Waste. The goal is to help green Palo Alto and build a strong social support network in our community among seniors. Interested residents can visit [TimeBank.linkAges.org](http://TimeBank.linkAges.org) to attend an orientation. I think we have something on the Council Agenda in the next few weeks. This month is Building Safety Month. Our Development Services Department is pushing a safety awareness program to help individuals, families and businesses understand what it takes to create safe, reliant and affordable energy-efficient homes and buildings. That's all I have to report. Thank you.

Mayor Holman: Just a couple of quick follow-ups here. Congratulations to Lalo. He's not here, but he will certainly hear about that. Adolescent Counseling Services, not only have they been serving the community for 40 years, but it's important to note, especially since we just did [Human Relations Commission] (HRC) interviews a little bit earlier this evening, that it was the City in combination and concern with the Human Relations Commission that launched Adolescent Counseling Services. This was a number that came out at the event that really surprised me. They have touched 62,000 lives over the period of their existence. Thank you also City

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Manager Keene and Staff for getting the open data up. You're exactly right; I much appreciate that. Also appreciation to Community Services Director Rob de Geus, Ali Williams and the team for doing a stupendous job having to do with the Parade. Thank you to all of those. City Clerk, do you have tallies from the votes?

Beth Minor, City Clerk: Yes, we do.

Mayor Holman: Congratulations to all the Applicants who have been selected. Thank you in advance for your service.

## Oral Communications

Winter Dellenbach: I want to offer you reasons why I think you should change your mind on how you're going about determining rent subsidies for some families at Buena Vista Mobilehome Park as part of the relocation package. This is why. Rental owners can't limit occupancy to fewer people than, there are two common standards. I know this. For ten years I practiced a form of housing law, mostly discrimination. This is how families with children get discriminated against, by imposing unreasonable, illegal occupancy standards. The Jissers' attorney, during the Appeal Hearing, referred to the housing standard as the County Housing Authority standard which, as you're about to see, allows a few more people than the City of Palo Alto's own Ordinance. In fact, the occupancy standard that's more widely used in my experience, ten years of dealing with this issue in the Bay area. For the Housing Authority, it'd be three people in a one-bedroom. You couldn't require fewer than that. Seven people in a three-bedroom. Whereas, in Palo Alto, and really the majority use this standard, two people in a one-bedroom, six people in a three-bedroom. The above is meant as a minimum, but it's used as a maximum very widely. It's both minimum and maximum. The consequence of this for Buena Vista families according to the 2013 study that came from two Stanford professors, 100 percent participation, 67 families, 129 children, nearly all families have two parents living in the household or one parent and one grandparent. Your formulation is based on one or two bedrooms, looking at the comparison between surrounding rents on one and two bedrooms. However, 22 percent of the households at Buena Vista won't benefit as much from that sort of formulation, because they're going to need three bedrooms or even four bedrooms. There are 15 households that either have three children, four children or five children in them. That's a total of 55 children. That 22 percent of households, unfortunately, are going to have a hard time finding a place. The rent subsidy isn't going to be adequate. It's not going to be equitable. It's not going to be fair. Some people at Buena Vista are going to be treated more equal than other people at Buena Vista. I strongly



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suggest that you include the rent subsidy comparables for three and four-bedroom units and not hold it to one and two-bedroom units. Thank you. I'll leave copies of those two slides with the Clerk.

Linda Dominguez: Good evening, Mayor Karen Holman and Council Members. I would like to thank you for this opportunity to tell you about the long-term care program at Catholic Charities of Santa Clara County. Also to thank the City of Palo Alto for the past continuous support of the Ombudsman Program. The Ombudsman is an advocate for the most vulnerable citizens of your City, those who live in nursing homes and assisted living facilities. We advocate for the dignity and the rights and needs of seniors and the disabled in those facilities. This is an unduplicated service of Santa Clara County. No other program has 24/7 access to residents and facilities. The Long-Term Care Ombudsman Program (LTCOP) is authorized by the Federal Older Americans Act as well as the California Older Americans Act to advocate for the rights of seniors and disabled residents in a long-term care facility. The main function of the Ombudsman Program is to investigate and to resolve complaints made on behalf of the residents related to issues of quality of care and abuse. The Long-Term Care Ombudsman Program promotes the interest, well-being and rights of the long-term care facility residents. A Long-Term Care, LTC, Ombudsman protects and helps improve the quality of care and life for the frailest of our senior and disabled population. Living in a long-term care facility is often not the first choice for anyone. Many seniors and disabled adults have no option but to live in a facility. For this reason, it's very important that their rights are protected. Often a long-term care resident lacks the ability to exercise their rights or voice complaints about their circumstances. The presences of a Long-Term Care Ombudsman in itself provides quality of care and life of all residents by giving a voice to those seniors and providing an advocate for their needs and concerns. We investigate complaints, solve problems, give referrals and witness advanced healthcare directives. All of our services are free to residents, families and friends. We partner with agencies such as Senior Adult Legal Assistance Service (SALAS), Next Door Solution, the Police and Sheriff's Departments and Adult Protective Services. For the City of Palo Alto, our contract visits 260 residents in three facilities, and we resolved 26 complaints. Although the City only funds the Long-Term Ombudsman Program for the visits made in Lytton Gardens Nursing and Assisted Living and Palo Alto Nursing, which are three facilities, the program visits all long-term care facilities in Palo Alto and responds to all calls and complaints. The Palo Alto City facilities and residents, we have four nursing homes, nine Residential Care Facilities for Elderly (RCFE), six bed-and-board cares, a total of Santa Clara 51 nursing homes, 360 assisted living facilities. We have 1,030 residents in Palo Alto facilities. The City of Palo Alto has one Staff, three volunteers. Last year, our volunteers contributed 5,445 hours to

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Santa Clara County. On behalf of Wanda Hale, our Program Manager, we would like to thank you for your time.

## Minutes Approval

5. March 16, 2015

**MOTION:** Council Member Kniss moved, seconded by Vice Mayor Schmid to approve the minutes of March 16, 2015.

**MOTION PASSED:** 9-0

## Consent Calendar

**MOTION:** Council Member Wolbach moved, seconded by Council Member Kniss to approve Agenda Item Numbers 6-9.

6. Approval of the Award of Contract Number C15157200 for \$191,760 to Walker Parking for Design of Parking Access and Revenue Controls (PARCs) and Parking Guidance Systems (PGS), and Approval of a Budget Amendment Ordinance to Transfer \$171,760 From the University Avenue Parking Permit Fund to Capital Improvement Project (CIP) PL-15002, Garage Technologies Project.
7. Approval of Purchase Order with Golden Gate Systems, LLC for FY15 City-Wide Computer Refresh in the Amount of \$622,837.
8. Approval of a One-year Contract with Bovo-Tighe LLC for Organization and Performance Management Consulting at a Cost Not to Exceed Amount of \$125,000.
9. Confirmation of Appointment of Beth Minor as City Clerk and Approval of Employment Agreement.

**MOTION PASSED:** 9-0

Beth Minor, City Clerk: Thank you, Mayor Holman and Honorable Council Members. I'm excited to be appointed to the City Clerk position and moving onto this next stage in my career. During this past six-month process, I have told many people that I am having fun doing this. I truly mean it; I am. This has been my goal since I started with the City almost eight years ago. I have learned a lot working as the Assistant City Clerk, and I really look forward to my new role leading the Department and having the ability to work closer with Council, the Executive Leadership Team, City Staff and the public. Some of the things we are already working on include launching the online public records request portal, going digital with as many of our

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historical records as we can, making it easier for Council and the public to view these records. We're changing the way the Standing Committees and the Council and public can view the agendas, minutes and videos online. I will be starting the recruitment for the Assistant City Clerk position. It is my honor to serve you, the City Council, and the City of Palo Alto in my new role. I truly look forward to it and the challenges. Thank you for the confidence that you have placed in me and my ability to move this Department forward. I want to say a special thank you to Jim, Molly and Harriet, the Executive Leadership Team, City Staff and my family for their support and confidence. It's an honor and thank you.

Mayor Holman: I think the Council's confidence is well placed in you, Beth. It's always a pleasure to be able to promote someone that's homegrown, so to speak. It was a good candidate pool, and you were the top choice even from a good candidate pool. Congratulations, and we look forward to your next adventure. Thank you very much.

## Action Items

10. Finance Committee Recommends Adoption of the 2015-2020 Consolidated Plan, 2015/2016 Action Plan and Associated 2015/2016 Funding Allocations and Adoption of a Resolution 9508 entitled "Resolution of the Council of the City of Palo Alto Approving the Use of Community Development Block Grant Funds for Fiscal Year 2015/2016.

Hillary Gitelman, Planning and Community Environment Director: Thank you, Mayor Holman and Council Members. I'm Hillary Gitelman, the Planning Director. I'm joined by Consuelo Hernandez, our Staff on this Item. We have a super-fast presentation for you. This Item comes to you with a unanimous recommendation from Finance Committee, but our Public Participation Plan calls for a hearing at City Council. We will keep the introduction very brief.

Consuelo Hernandez, Senior Planner: Thank you, Hillary. Thank you, Mayor Holman, Members of the City Council. As Hillary mentioned, tonight we have a very quick presentation for you on the Community Development Block Grant (CDBG) allocations. As you are aware, the City receives funding annually from the U.S. Department of Housing and Urban Development (HUD). One of the requirements under our Citizen Participation Plan is that the City Council hold the last Public Hearing for these allocations. Tonight what you have before you is the allocations for Fiscal Year 2016 as well as the 2015-2020 Consolidated Plan, and the goals that we're proposing over the next five years. The table up here just shows you where our funding is

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over the last eight years. As you can see, our allocation is leveling out around the \$400,000 annual basis. We also receive funding through program income and resources from prior years that are not used. We have five different categories in which to allocate funds. I'll just run them by you really quickly. The first is Public Services. These are similar to those of Human Services Resources Allocation Program (HSRAP). We have a statutory cap of 20 percent of our budget; that is \$82,910 for this year. The second cap is placed on Administration and Planning. Under that we're proposing the personnel cost associated with administering the program and also funding Project Sentinel with a budget of \$115,702. The last two funding categories don't have a cap. The first is Economic Development. Again, we're proposing to fund Downtown Streets Team for their workforce development program. A new project before you is Mid-Pen Housing. They're proposing a rehab project for their Palo Alto Gardens. Unfortunately, we weren't able to fund them at the full amount, but they believe they can still accomplish what they set out with the \$392,000 allocation. Again as Hillary mentioned, the Finance Committee reviewed these recommendations and unanimously voted that the City Council make the final funding recommendations. With that, the Finance Committee recommends that the City Council take the following action: adopt the attached funding Resolution allocating CDBG funding as recommended in the 2016 Action Plan; authorize the City Manager on behalf of the City to execute the 2016 application and Action Plan for CDBG funds; authorize Staff to submit the 2016 Action Plan to HUD by the May 15th deadline and the 2015/2020 Consolidated Plan. Staff is here to answer any questions. That concludes our presentation. Thank you.

Vice Mayor Schmid: Thanks very much for the short and succinct presentation. This is important. The money is limited, I know, and it comes from the Federal Government through HUD, so it's focused only on housing and services to support people in affordable housing. I'd like to acknowledge that the [Human Relations Commission] (HRC) gave a careful look to that and gave some details of their review at the Finance Committee. Three important points. There's not a lot of money in it to solve the magnitude of the problems we have. What's important, I think, for each of the beneficiaries is the funds are and can be leveraged and they continue over time, so it's a commitment over a period of time. Two, the report that HUD requires contained a lot of very good, wonderful data about our City. I'd refer to packet pages 260 to 290, where things like residents, housing, homeless and needs in our City. Third, we are approving not just the funding for this year but an outlook for the next five, so each of the organizations has presented material about what they would be doing over an extended period. The Finance Committee voted unanimously to support this and encourages a positive vote.

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**MOTION:** Council Member Scharff moved, seconded by Council Member Kniss to:

- A. Adopt the funding Resolution allocating CDBG funding as recommended in the draft 2016 Action Plan; and
- B. Authorize the City Manager to execute the 2016 CDBG application and 2016 Action Plan for CDBG funds, any other necessary documents concerning the application, and to otherwise bind the City with respect to the applications and commitment of funds; and
- C. Authorize Staff to submit the 2016 Action Plan to HUD by the May 15, 2015 deadline; and
- D. Authorize Staff to submit the 2015-2020 Consolidated Plan to HUD by the May 15, 2015 deadline.

**MOTION PASSED:** 9-0

- 11. PUBLIC HEARING: To Consider an Appeal of the Director of Planning and Community Environment's Architectural Review Approval of a 31,407 Square-Foot, Four Story, Mixed Use Building with Parking Facilities on Two Subterranean Levels on an 11,000 Square-Foot Site in the Downtown Commercial (CD-C (GF)(P)) Zone District located at 429 University Avenue; and Approval of a Mitigated Negative Declaration. Environmental Assessment: A Mitigated Negative Declaration has been Prepared.

Hillary Gitelman, Planning and Community Environment Director: Thank you, Mayor Holman, Council Members. I'm Hillary Gitelman, the Planning Director. I'm joined here at the table by Jonathan Lait, our Assistant Director, and Katherine Waugh, our California Environmental Quality Act (CEQA) consultant on this project. I'd also like to acknowledge the assistance of other Staff in the room. Christy Fong, the Project Planner, is with us in the front row as is Amy French and Matthew Weintraub, our historic preservation expert on Staff. We're going to try and be brief in our presentation. I know that there's a lot of interest in this project. We will give a short introduction and then be available for questions after we hear from the appellant, the Applicant and the public. Thank you. Jonathan.

Jonathan Lait, Planning and Community Environment Assistant Director: Thank you, Hillary. Good evening, Mayor and Members of the City Council. I'll give you a brief overview of the project before you today. The project is located at the intersection of Kipling Street and University Avenue, 429 University Avenue. It's a mixed-use project that's four stories, 50 feet in

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height. There's approximately 31,500 square feet, roughly, with a net gain of approximately 20,000 square feet of net floor area. This is a project that required architectural review. As a part of that review, we prepared a Negative Declaration and Mitigation Monitoring Program. The timeline is before you. The project was formally submitted in June 2014. There were three Architectural Review Board hearings. The Director rendered a decision in late February 2015. The project was appealed a few days later. The next few slides I'll show you are going to be pictures of the subject site as viewed from University with a progression of the project as it went from the preliminary review through the final approval. This is University Avenue as viewed today. This was the first submission that was submitted to the Architectural Review Board for preliminary review. This was the application as it was submitted for formal application in November 2014. The second architectural formal review application came in January. It looked like this and was approved in February with some details from that previous drawing. Now viewed from Kipling Street, this is the current condition today. Again, the preliminary review submission in 2013. The first formal review in November 2014. The second formal submission in January 2015. That project was refined to reflect this illustration in February 2015. There are a number of Architectural Review Board Findings that need to be made in addition to Context-Based Design Criteria. Those can be found in your Packet starting on page 612. The Director made a decision on the project on February 25, 2015. As I mentioned earlier, as part of that review process, the Mitigated Negative Declaration was prepared and the Mitigation Monitoring Program. We can speak to that if you have any questions regarding that issue. The Appellant had a number of concerns with the project related to the size and style, massing of the proposed project as it relates to existing structures on University Avenue and Kipling Street, safety, traffic and parking concerns and loss of retail. Tonight what we're asking the City Council for is direction to Staff to prepare a Record of Land Use Action that reflects your decision. That concludes the Staff presentation.

Mayor Holman: I'm sorry, we're doing two things up here at once. The Applicant presentation, I'm sorry. We're doing two things up here at once, so I apologize.

Mr. Lait: I believe it's the Appellant that you would hear from first, followed by the Applicant.

Mayor Holman: Council Members, while we're waiting for the presentation to come online, this is a quasi-judicial matter so we do have disclosures that are required. Are there any Council Members who have any disclosures to make?

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Council Member Berman: Out of an abundance of caution, I traded either emails or phone calls with the Applicant and the Appellant at the stage when I wasn't sure if I'd be able to participate. I let them know I wasn't sure if I'd be able to participate. I found out that I would be able to participate on Friday, and I haven't had a chance to connect with either of them. I haven't had any substantive conversations with either the Appellant or the Applicant. I haven't learned anything new that's not available to the public.

Council Member Scharff: I had lots of conversations with the Appellant, the Applicant, the architect, the florist next door, the person across the street who owns the house, random citizens walking by in that area when I spent time on the site. I had lots of conversations with everybody. I learned a couple of things that have influenced my thinking which I will disclose a little bit. First of all, I gained an appreciation and a concern for the circulation, which is not addressed in the Staff Report, at least I didn't feel it was. When I talked to the florist, for instance, there was a concern about deliveries and her trucks and people blocking the alleyway and lots of cars going down the alley and how that would affect them. When I talked to the homeowner across the street, there was a concern about the cars coming out and what the traffic would be like there. That's really a circulation issue, not a traffic issue. There were lots of those questions that I didn't necessarily have answered in my mind. The Applicant also mentioned that the two trees, right there on Kipling Street, were going to go away. I checked into that a little bit, and my understanding is that the City wants to replace those trees. That's not required by the Applicant for the building. It was the Appellant who made the point to me. I want some explanation at some point about the trees. There were several people, I think it was the homeowner and the yoga studio people next door, that had concerns about the shadows of the building. There's a little park-like setting on the alleyway. How that would affect the sun and all of that. I didn't see a sun study. I don't know if we have one, but I didn't see one. That became a concern for me. I also found out and understood that we're going to have some retail on Kipling Street, which I didn't realize that there was going to be an opening on Kipling Street which would bring people down Kipling Street and make Kipling Street more vibrant. That was something I hadn't realized when I was doing that. In fact, when I spoke to the appellant, the appellant didn't understand that. At least that was the discussion I thought we had. I thought that was interesting. It was going to be a huge increase in the amount of store frontage which I didn't realize at the time. I thought that was an interesting thing. There should be more retail in terms of store frontage, but less in terms of actual. The other thing that someone told me I thought was interesting was that originally the Applicant wanted to do a bistro on the fourth floor section instead of the office. On that fourth floor, they wanted to do a bistro up there, which would have been more retail and would have

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been counted towards the retail, but Staff strongly discouraged them from doing so. I was quite shocked that Staff would strongly discourage them from doing so. Let's see, was there anything else that I had major discussions about? No, I think that was it.

Council Member Wolbach: I met with the Appellant, and I did not learn anything in that meeting which was not already in the record. No substantial changes in my thinking or understandings based on that meeting. We did visit the project site during that meeting.

Council Member Kniss: I won't go into quite the detail that Council Member Scharff has gone into. I met with both the Appellant and with the Applicant. I know the Appellant; I know the Applicant. I also did extensive touring. I talked with Michaela at the flower shop, and I talked with several other people who are involved along Kipling StreetStreet. I have also spent a good deal of time touring in that area and looking at this site from many different angles.

Council Member Burt: I had a phone conversation with the Applicant and met onsite with the appellant and did not receive any materials that are not otherwise in the record.

Council Member DuBois: I walked around the site. I met the appellant. I didn't learn anything that's not in the record.

Mayor Holman: I met with the appellant onsite. I have toured the site several times before and since. Quite by happenstance, I also had a conversation with the florist from Stapleton's who talked about challenges that they are concerned about, having to do with deliveries. That seems to conclude our disclosures.

Ms. Gitelman: Mayor Holman, if I can just clarify the conduct of the hearing. It's customary to hear ten minutes from the Appellant, ten minutes from the Applicant, both will also have a three minute rebuttal after the public testimony a representative from the [Architectural Review Board] ARB is in the room, so perhaps after the first two speakers we could hear from the ARB's representative.

Public Hearing opened at 7:12 P.M.

Michael Harbour, Appellant: Dear members of the City Council, on behalf of my fellow co-appellants and countless Palo Altans, I'm here tonight to present the facts that support the appeal of the proposed building at 429 University Avenue at Kipling Street. Shown in the photo are the five storefronts that are slated for demolition with this project. We believe



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multiple violations in Municipal Code, Comprehensive Plan regulations and Downtown Design Guidelines have occurred. In new buildings that are built here in Palo Alto, the Palo Alto Municipal Code requires the harmonious transition in scale and character, and that they be considerate of each other, and the design should follow Context-Based Design Criteria as stated in Code 18.18.110(a). The buildings need to be responsive to context and compatible with adjacent development including street types. They need to provide appropriate transition to surroundings and, in some cases, reinforce existing architecture. New construction shares general characteristics and design linkages to maintain the visual unity of the street. Despite these Municipal Codes, to the contrary this building discourages the use of Downtown alleyways for pedestrian and bicycle-only use and prevents shops from opening onto the alleyway. The Kipling Street secondary business district considerations are ignored. Precious ground-floor retail space is lost. Insufficient parking adversely affects traffic, safety and the neighboring residential areas. This design is simply not compatible. There are no shared characteristics or design linkages with the neighboring buildings. Visual unity of the street is not maintained. This large scale and mass detracts from the pedestrian-oriented design. You can see the building on the right and the 1 1/2 to 2-story buildings on the left; these are just incompatible. You don't need a degree in architecture to see that. This is a colossal building being proposed on the narrowest street in Downtown Palo Alto. In the aerial photo to the left, outlined in red shows where this proposed building is to be built on narrow Kipling Street. It takes up approximately one-half of the block. On the right here, you see this colossal building looming over narrow Kipling Street. This is a very deceptive rendering showing this building from the perspective of University Avenue. It appears there is a large plaza across the street from this building, which there is none. It minimizes the actual building size and mass effect. The upper floors should be set back according to Code, but they have only done so here in the left-hand upper portion of the building. All exposed sides should be treated equally according to Code. This ugly, solid wall, two stories high, faces University Avenue. This flat wall does not provide harmonious transition and violates the roofline transition. Another very deceptive rendering makes Kipling Street look like a spacious plaza. You can see from behind the old Apple building what appears to be this large plaza with people walking by. No such plaza exists at all. The false setback appears to minimize the building size and height. In actuality, to view this building from this vantage point, you have to be standing across at the residence at 443 Kipling Street, which was conveniently erased to make the building look smaller. The only thing that's accurate about this photo is the large shadowing that's occurring across Kipling Street from this massive building. This building violates numerous Ordinances, inappropriate size and massing on narrow Kipling Street. The upper floors require setbacks as transition to

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the neighboring one-story buildings on Kipling Street just as much as it does on University Avenue. It turns this alleyway into a busy one-way street to service the in-and-out garage which is located at the rear of this building. There's insufficient use of landscaping to buffer the parking entrance from adjacent buildings as required by Code. This massive building again shadows Kipling Street and the alleyway and blocks the skyline. This size is not compatible with neighboring buildings. On the right-hand side you see the one-story, red-tiled roof, existing beauty salon and directly across the narrow alleyway is this four-story, flat, huge monolith right there. There is no harmonious transition between these buildings at all. None. This building towers over the alleyway and obscures daylight into the garden entrance for YogaWorks. On the left-hand side is the existing structure with this parking overhang. The YogaWorks entrance is right there; it's a Zen garden. This is to scale of what this building will look like, four stories tall, overpowering the garden. The peaceful entrance to YogaWorks is obscured by this massive wall and garage traffic. Here's a photo of this little Zen entranceway into the yoga studio. The increased traffic poses a safety threat to the yoga students going to class. It discourages the use of the alleyway as a pedestrian pathway as designated in our Comp Plan Policy T-21. It prevents shops from opening onto the alleyway as designated in our Downtown Design Guidelines, page 16. The increased alleyway traffic discourages pedestrians and interferes with existing businesses. Here's one of Palo Alto's most favorite businesses, Stapleton Florist, been there for decades. They receive and sell flowers on this alleyway, especially at holiday times. They make deliveries from here. The increased traffic zipping down this narrow alleyway while there's also being deliveries will interrupt this business tremendously. It violates the Comprehensive Plan Policy T-21, B1 and B4. Code requires a landscape buffer. This photo comes directly from the Code book. For properties with parking access from the rear of the site such as the rear alley or driveway, landscaping shall provide a visual buffer between vehicle circulation areas and abutting properties. This does not occur at all. We need to avoid the Florence Street problem. Here we had a large four-story, massive, flat, block building built adjacent to this Victorian home which happens to be almost three stories with the little tower here. There is no harmonious transition between these two. It is ugly. It is actually disgusting. What happened here on Florence Street is the back side of the Waverley Street garage, it has permanently shaded this Florence Street. If you walk down it, there's no sun there. Kipling Street is designated as a secondary business district right in the Downtown Design Guidelines. It's specified. I've written down verbatim everything with regard to Kipling Street. To summarize the most important points, the Guidelines say that the district contains significant historic architecture and development patterns. The Palo Alto Historic Resources Board should be consulted when doing further development. This distinct

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characteristic makes it worthy of special note. Verbatim, right here, we should promote the development of Kipling Street between Lytton Avenue and University Avenue as a secondary district. Here's the zinger. The terminus at University Avenue should be enhanced through the tie-ins to the Varsity Theater. The Varsity Theater is one of Palo Alto's most cherished buildings. There is not a single tie-in between this monolith and Varsity Theater. None, zero. Traffic and parking are already at maximum capacity. Cars have to navigate beyond one another along Kipling Street. There are a number of small accidents that occur all the time with people's side mirrors being cut off. All you have to do is stand, have wine at Vino Locale and you will see this. Increased traffic going to this building and coming from this building will cause safety, traffic and a parking overflow. They warrant further study. Approximately 20 percent loss of retail is equivalent to one entire storefront.

Mayor Holman: I look to Staff to confirm, my prior experience has been that the Applicant or the Appellant team, either one, speak as a unit within the ten minutes. I have cards from both the Applicant and the Applicant's attorney. Should they speak within the ten minutes? That's been my experience.

Cara Silver, Senior Assistant City Attorney: It is customary for anyone on the Applicant or Appellant's team to speak within the ten minutes.

Mayor Holman: I had said that before the Appellant spoke. I have Elizabeth Wong, and I have Dori Yob, I believe it is, as the Applicant's attorney. You will have ten minutes. Or I have Ken Hayes.

Ken Hayes, Hayes Group Architects: Yes, you have Ken Hayes. Good evening, Mayor Holman. Dori, the attorney, and Elizabeth Wong, my client, will wait for the rebuttal. I'm sorry, I may have misspoke. Mayor Holman, I have a question.

Dori Yob, Applicant Attorney: Hi, Dori Yob, counsel for the Applicant here. I understand ...

Mayor Holman: Do you have a question or are you starting the ten minutes?

Ms. Yob: No, I have a question, just a point of order so we understand. It was our understanding that members of the team could speak as members of the public. I understand it's customary. We'd request that I get an opportunity to use three minutes as a member of the public, and also that Ms. Wong be allowed to do that.

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Mayor Holman: That is not what we've done traditionally. It's been ten minutes for the team. That's what I said to begin with and what the Staff has just confirmed as what our process is.

Ms. Yob: I'm reaching out to ask for an accommodation. I did contact the City Attorney's Office today and requested that I speak as a member of the public for three minutes. It was my understanding that would be permitted. If you're ...

Mayor Holman: I think our process is our process. Did you get a response from the City Attorney's Office?

Molly Stump, City Attorney: I did have that communication with Ms. Yob, not really understanding that aspect of the issue. If we could allow an additional three minutes for that and then also perhaps you could add three minutes to the Appellant's rebuttal time so that both sides get an additional time.

Mayor Holman: That seems to be a reasonable accommodation.

Mr. Hayes: Thank you for accommodating. My name's Ken Hayes. Mayor Holman, good evening, members of the Council. Ken Hayes with Hayes Group Architects. I'll be responding to the appeal this evening. The architectural goals for the project were to create a building that is placed in our time, respects the past; increases the height at the corners to support Downtown goals of accentuating and defining corners; design for architectural compatibility through contextual building relationships; create a vibrant commercial frontage that encourages shopping and creates linkages to the Kipling and Lytton commercial areas. The ARB unanimously approved this project at the third hearing. The project they approved is a high quality, modern design that responds to the needs of our time, yet is differentiated by style but is no less compatible in our Downtown than other neighboring buildings. The Downtown Urban Design Guide says that architects should not mimic prevalent architectural styles found in the community. Compatibility is the standard for evaluation. Compatibility can be evaluated or thought of at an architectural level, at a historic level and at an urban level. Architectural compatibility, in my opinion, is measured by considering contextual building relationships. This is a block that we've designed in Downtown Palo Alto. What I mean by contextual building relationships, it talks about the alignment of building forms, entries, canopies, soffits, window lines. The roof forms that are prevalent and transitions of roof forms to other buildings. You can see here how buildings transition from the one story to the two story to the four story. What is really important is the syncopation or the rhythm or the texture of the buildings defined by the

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building structure, the columns, the pilasters, the openings, obviously openings that face the street. Recesses are all encouraged in the Downtown, and you can find that walking up and down the street. Closer up. The building on the left, a Category 2 historic structure by Birge Clark that we recently restored. The addition to it to the left, you can see how we've aligned building window lines with the fascia of our building next door. The canopy lines pull across the big opening of Birge's building, the big opening of our building. Window proportions. In this particular case, they're vertically proportioned on Birge Clark's building. Our building, we've taken that same proportion and turned it to try to create a similar kind of texture on the building. Historic compatibility. The Secretary of the Interior's Guidelines state, "New work shall be differentiated from the old and shall be compatible with the mass and scale and architectural features." Here it's a clear definition. They really encourage clear definition between the old and the new. There's no mistaking it. Again here, the definition of the building that we did of the old and the new. The old obviously solid, and the new transparent. The old horizontal bricks, and the new horizontal window relationships. Urban compatibility is measured by fulfilling design goals of the community. For instance, creating mixed-use buildings in our Downtown. We're doing that; there's four apartments in this building along with the commercial space. Reinforcing the block face. It's very important that University Avenue have a defined corridor. Up to our third floor we're reinforcing the block face similar to other buildings along the street. The buildings that are in dark red are 50 feet or taller. Our building is about 40 feet except the part that says 429 in red. That's the 50-foot portion of the building. Major setbacks on all sides nearly for our building. The Downtown goal of invigorating the sidewalk, creating great pedestrian shopping experiences through the use of recesses and canopies and large store fronts, enhanced sidewalk patterns. In my mind, the ribbon of trees does more for the linkages, the urban linkages, of University Avenue than the buildings do. In fact, the height of buildings almost disappears when you see it in this kind of context. What becomes very important is that first 15 feet as you're walking along the sidewalk. That's what you experience. This is a view of University Avenue. The top view is the south view across the street. The bottom view is the north view. Kipling is right in the center. The purpose of this is to show the texture of that streetscape, defined through windows, pilasters, recesses, etc. It's about a 25 to 30-foot rhythm. Sometimes there's accents, like in the Lululemon building there, a vertical accent at an entry. On the slide below, you can see a similar pattern. The next slide puts our building in the photograph, superimposes it there, where we have continued that 25 to 30-foot rhythm. This was something that the ARB and we worked very closely trying to create that. It extends up and through the building. In terms of roof transitions, it goes from the six story across the street, six story President Hotel down to a 1 1/2-story building up to the

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marquee for the Varsity Theater back to a one story to a two story to a four story and back to a one story. There's a very varied roofline on University Avenue if you just look and pay attention. On our side of the street it starts off as a one story but then it turns into 1 1/2 stories. Our building, the face on the street is two stories next to the building next door, then it steps up to three stories. You're not even going to be aware of the fourth floor when you're walking on University Avenue. At Kipling Street it steps back down to the Apple building, and then terminates at the AT&T building which is a three-story, 50-foot building on the corner. On Kipling Street, a similar kind of thing. Above, you have the Apple store on the corner, the former Apple store that is, with its pilaster rhythm. Then it breaks away to the homes that are on the rest of the street with gaps between the homes. There's vertical accents on those homes, and there's a little bit different texture that we've picked up in our building, but we're not being literal. We're not trying to imitate; we're trying to take cues. It's a different grain of architecture here on Kipling Street than it is on University Avenue. The view below shows our building and then the rhythm is increased. We actually have a stair tower element that is a vertical accent. It's going to have the public art on it that in the Dudek report said that it actually picks up on some of the vertical elements of what you might find across the street of the Victorian and Queen Anne buildings. Again, it's not literal. It's about rhythm and mass. This shows the transition. Our building starts at the corner at three stories. It drops down to two stories, drops down to the alley and then back up to a one-story building and then a two-story building at Zibibbo's. Very common throughout the Downtown. There's nothing unusual about that kind of transition. To activate sidewalks, we're obviously replacing the entire frontage all the way around. We're creating recessed entries. We're providing canopies. We're doing new trees along Kipling Street. We're going to have 75 percent more retail frontage. On the far upper left-hand corner of the slide, that's the office/residential entry which is all glass. We've set back from the alley 4 feet for safety reasons, also to pull away a little bit from the rest of Kipling Street. We created a planter there at that level. That would be a nice transition to the alley. All of our bikes are parked in that recess off the alley, so it is an activated space. On the third floor, we have three apartments. They have generous terraces that are set back 18 feet on University Avenue, 18 feet on Kipling Street, 12 feet when you get to where our elevator is located. We're set back 11 feet from the property line on the alley to the third floor of the building. That's going to be eyes on the street. Those are inhabited terraces off of the living space. These units all live to Kipling Street and University Avenue. On the fourth floor, some more of the same. There's one unit up there and then this lunchroom area where we have a 41-foot recess back from University Avenue to the apartment. Then we have 28 feet recessed back at the office area above. Then we're at 12 feet off of Kipling Street, and again 11

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feet off of the alley. That's all rooftop terrace. That'll be planted. There'll be people up there. This is the building on the corner, Apple. It's dead as it extends down Kipling Street. This is the existing building above. Again dead in the way it addresses Kipling StreetStreet. The slide below is a blow-up. We're going to have display windows, retail entries. The office entry is not shown in this diagram here. Canopies of beautiful materials. Same thing on University Avenue. The slide above is what's there today. The slide below, much more transparent, much more open, much more compelling for retailers of today. This is the evolution. Jonathan Lait did a good job. How we progress. This is what we ended up with, the massing on the Kipling Street side, what I was talking about. The building actually becomes much more detailed and fine as it extends towards Kipling Street. The block face along University Avenue at the corner degrades to this more detail. I am done. Thank you very much.

Mayor Holman: We have several members of the public who'd care to speak to this.

Janice Sedriks: Good evening. My name is Janice Sedriks. I live at 325 Waverley Street, which is just a couple of blocks away. I am surprised the Architectural Review Board approved the design and height of the new construction on University Avenue. Both the design and height is out of keeping with the rest of that block. It's interesting the architect shows the 300 block, but we're dealing with the 400 block here. The old Apple store on the corner next to it that was converted maintaining the original building. Even Apple didn't make it into a glass box; they kept the same building. In my view, any new construction should not be any higher than the Apple building. I would prefer it keep more in character with the existing style of Palo Alto. I like modern things, but in this case it's not applicable. If the height of the building is reduced, the second level underground made parking may not be required. This is going to greatly impact the businesses in the area due to construction. I actually belong to YogaWorks; it's directly behind. I'm sure the noise in itself is going to be a problem. I would also like to request the City Arborist check again. I understand the Mediterranean Carob trees, the real big, old ones, the City has approved removal of them. They need to look at that again. They're amazing. All this landscaping that's going to be done by the new company is going to be piddly little trees that will take decades to reach the majestic trees that you're going to be removing. That's it for me. Thank you very much.

Sam Arsan: Good evening. My name is Sam Arsan. I'm with Arsan Realty. I've been doing business in Palo Alto for over 20 years. I concentrate on retail leasing in the Downtown area. Many of the current tenants in Downtown are clients of mine. I have several prospects looking in the area.

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This is a very attractive, well designed building that replaces an outdated building that has inefficient and failing systems. This building is exactly what the tenants that I'm working with are looking for. It provides them with the flexibility to build and design their own stores. They need effective and efficient space that complements their business and the product they are offering. I just wanted to make sure that I let you know that I do support this project. I respectfully ask that you approve the project. Thank you.

Stephen Levy: Judy Kleinberg emailed Council Member Kniss asking to cede her time.

Mayor Holman: We don't do that. We don't have one speaker cede their time to another speaker to give them more time. It's just not something we do.

Mr. Levy: I've heard people talk for ten people here.

Mayor Holman: Yes, but that's determined ahead of time. Stephen, you have three minutes.

Mr. Levy: There is a time for everything, and a season for every activity under the heavens, begins the beautiful passage from Ecclesiastes that we all know. 2015 is the season for the Council to look at development and parking and transportation and maybe make some modifications to the existing practice. Tonight I hope is the time to honor the existing rules under which this and other applications have come forward. More importantly, the existing precedents around this difficult issue of compatibility. The Staff has told you that the building complies. The Staff gave you no illegal actions in this building. It complies as to height and as to retail and as to parking Transferable Development Rights (TDRs) and in-lieu payments. It provides things that are in the Comprehensive Plan that are good. A mixed-use building Downtown, bicycle access increased, and a green building which you can only have with a new building. You come to this compatibility issue. I'm not a lawyer; I'm not an architect. As some of you know, I don't see too well, so I can't get into the intricate design issues. I can walk a neighborhood, and I have a pretty good sense of precedent. I can tell that there's a similar height building across the street. I know that you have approved a much larger building for 500 University Avenue and 611 Cowper Avenue and 600 block of Waverley Street, all of which are far less similar to their surroundings than this building. Tonight is a night to honor those precedents. All we have now is a new Council and an angry audience. We don't have anything that distinguishes this issue of compatibility from the others that you have heard appeals on and have



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approved in the context that this Applicant came forward. Let us end this tonight. Deny the appeal. Have this not linger over the important decisions facing the Council. A season for change; a night for denial and moving forward. Thank you.

Norman Beamer: Good evening. I'm here to speak on behalf of the organization called Palo Alto Neighborhoods or PAN. PAN supports the appeal of 429 University Avenue and opposes this project on multiple grounds. First, the project is egregiously underparked. We're mindful that the owner is trying to take advantage of several outmoded exceptions to the parking space requirements. Unlike the previous speaker, we should not be bound by those outmoded exceptions. These exceptions make no sense given the crisis of inadequate parking in the Downtown area. The adverse environmental impact of allowing this underparked project overrides these exceptions. It's high time to eliminate the exceptions. Even under the best case scenario, the Residential [Preferential] Parking Program (RPP) that the City is now attempting to implement will be overwhelmed by the dozens of underparked development projects now in the pipeline, some of which were just mentioned. This project being one more example. The appeal should also be granted, because this project would result in significant decrease in the retail space on University Avenue. The owner attempts to justify this by citing various Building Code requirements such as the need for an elevator lobby. Those requirements are only there because the owners want to replace the present building with a new, larger building. At the very least, the loss of retail on the first floor should be made up by adding retail to the second story. Better yet, keep the current building. We also support the Appellant's complaint that the size and massing of the building is out of proportion to the surroundings. Also, the project will exacerbate traffic problems on the narrow side street. I'm referring to Kipling Street, I believe named after Rudyard who once said, "Borrow trouble for yourself if that's your nature, but don't lend it to your neighbors."

Katherine Clark: Good evening. I am here to support the appeal. I oppose this project. I moved here with my husband in 1984. I'm a resident of Crescent Park, and I have seen this Council and the Historical Review Board systematically destroying the charm of our City. We had mom and pop stores here occupying all the spots along University in the 1980s. Slowly but surely these buildings that look like the new Walgreens are going in and replacing the charm of the past. We're never going to get that back. These five buildings that are going to be replaced by this monstrosity will never come back. I would just ask yourselves to take a moment and say, "Would the Town of Carmel or would the City Council of Santa Barbara or the Town of Los Gatos approve a monstrosity like this, that changes the entire character of that area?" The architect mentioned this respects the past. It

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doesn't respect the past in any way, shape or form. He talked about architectural compatibility. There's no compatibility. Look across the street. You have Pete's Coffee, the Cream, the old Varsity Theater, even the President Hotel Apartment building. Even though that's large, it's still Spanish Colonial Revival heritage architecture, and the same with these buildings. The old Apple building is Art Deco. The ones that you're looking at destroying are Art Deco. They were probably built, in my estimate, in the 1930s. I'm just saying that slowly but surely the architects that are getting approval for these new commercial buildings are destroying the charm of this City. Thank you.

Cheryl Lillienstein: Good evening. My name is Cheryl Lillienstein and I hope that this PowerPoint thing that I have will get set up so that I can show you the photos that I have. Tonight I'm speaking as the President of Palo Altans for Sensible Zoning, and I'm using the appeal before you tonight to ask for more integrity and compliance by architects, City Staff, the ARB and the Planning and Transportation Commission (PTC), who unfortunately have biases that show up in approvals of buildings that are out of compliance with the parts of the Comprehensive Plan they prefer to ignore or they make stuff up. For instance, Mr. Hayes asserts in his letter to the Council that his designs enhance the eclectic nature of Palo Alto and meet the compatibility design goal which he says includes buildings that are taller. I challenge anyone in the community to tell me where in the Palo Alto Municipal Code or the Comprehensive Plan we find this taller building goal stated. Nowhere in it does it state that taller buildings are a design goal, and yet the meetings I've attended, members of the ARB and PTC act as if it's their prerogative to promote larger buildings, even though their job is to ensure compatibility with the Comprehensive Plan. I'd like the Council to insist that the members of the Boards and Commissions set aside their personal preferences and act in accordance with Palo Alto's Codes. Let's consider the word eclectic, since it's been used by various members of Council and architects. Frankly I'd like more eclectic. I appreciate imagination and would really like more of it expressed in our streetscape. This buzzword eclectic is being used as a substitute for imagination, taste, harmony and true pedestrian-oriented design which is something our City really wants. What I see here is not eclectic; it's generic. It could easily be anywhere in the world. Here are some examples: Berlin, Frankfurt and Phoenix all have parking garages that look similar to this type of architecture. Can you tell the difference between these parking garage buildings and the one proposed? Is there any specificity to the style or would you say any of these buildings relates in any way to University Avenue, Kipling Street or Palo Alto? No. Nonetheless, in their report to the Council, the ARB unanimously claims that this project is in compliance. In addition, the ARB has taken it as their professional prerogative to override the guiding documents of the City. Here's a list that

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this project violates: L-5, L-3, L-6. You can just keep going through them. Program L-4, L-5, land use definitions, etc. I urge you to send this back for rework and urge the PTC and the ARB to dispense with their personal preferences. The project is overbearing, looms over all adjacent buildings and, thus, is out of scale, incompatible with surroundings and, as you are aware, further exacerbates parking issues. Thank you very much.

John Hanna: Good evening, Madam Mayor, members of the Council. My name is John Hanna. In 1887, 300 of the leading architects, artists and sculptors signed a petition to the Paris Exposition committee saying, "Whatever you do, don't let them build that ridiculous giant, black smokestack." Some of you may remember, I know I do because I was here, the Transamerica building proposed in San Francisco about 40 years ago. The Planning Director at the time in disapproving the project said that it was not complementary to the buildings next to it. A leading architectural critic at the time said the building was insensitive and inappropriate. After the Eiffel Tower was finished, it's been hailed as an engineering marvel. Indeed, it has become the iconic symbol of the City of Light. The Transamerica building after it was completed has been referred to as an architectural masterpiece. Today, one could argue that it's as much an icon of the City of San Francisco as cable cars and the Golden Gate Bridge. It's funny, isn't it, how things change. Tonight is not about compliance with Ordinances or with CEQA or with rules. This project complies with all of those. Some people don't like the rules. If you don't like the rules, you change the rules, but you don't change them in the middle of the game. What we're really dealing with here tonight is progress versus stagnation, innovation versus conformity. I remember what the architect said about the Transamerica Pyramid in defense of his creation. He said that if all buildings were required to conform to their neighbors in style and in scale, all of our cities today would be an aggregation of mud huts. Let me leave you with two thoughts. One, something you are all familiar with. A camel is a horse designed by a committee. Secondly, in my view at least, every effective elected public official has to resist the temptation occasionally to pander to the agenda of the current popular movement. Thank you.

Dan Garber: In 1931 Birge Clark submitted his design for the Palo Alto Post Office, and it was rejected because it was in the wrong style. It took Mrs. Hoover's influence to eventually result in Palo Alto getting the nation's first post office in the Early California style. Mr. Clark's take on the Spanish Revival Style projected a romantic vision of an idealized past. Prior to him and several other architects, commercial buildings here hadn't often been designed to look that way before. As evidenced by the Federal Government, the style had its detractors and it took a while for some people and even more institutions to accept it in the way that we do today. In the 1950s, the

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developer Joseph Eichler decided to gamble in Palo Alto. A keen eye for the marketplace, he deftly connected a younger generation recently unburdened by war with the economical construction of his homes. As successful as he was, the modern style he had his architects produce had its detractors. His houses were only a small minority of the homes buyers were purchasing at the time. If you think that tonight's submittal rises to the level of these examples and their impacts on the City, I argue that it does not. As out of sync as the Bank of America building was at its time, the power and diversity of University Avenue appears to nearly have absorbed it today. I recently led an architectural tour down University Avenue and was personally surprised to find some Palo Altans in my group find reasons to praise it. Certainly, this submittal being discussed this evening has none of the handicaps of that building. Does this submittal raise the issue of how we should deal with parking and traffic or how the City should manage the conflicts between the neighborhood and commercial use? You bet it does. Should this submittal take the fall and criticism for those issues? It should not. Do not judge the submittal on its style. The only style consistency in this part of town is its diversity which is what should be celebrated. Style cannot be measured, and its impact can only be evaluated over time. Only the property owner has true fiat over the project style by either picking the architect of their choice or demanding their architect perform as they like, as Leland Stanford did in 1888 when he hired the eminent Frederick Law Olmsted to design his campus but, upon seeing Olmsted's modern solution that spread the campus out across the Foothills, he threw it out and demanded it be redesigned. The Architectural Review Board is to be commended for supporting this submittal. It duly evaluated the submittal against the legal requirements and the compatibility criteria of its own and, more importantly, provided the forum for the City to hear the higher level issues it needs to grapple with. With the exception of very specific historic or other unique circumstances, style is not legislated in this country nor should it be.

Douglas Smith: Mayor Holman, Council Members, good evening. The compatibility violations of this design I believe to be the same as in the appeals that I filed in 2013. I'd refer here to the Municipal Code Section on how to achieve compatibility goals, which incidentally are independent of architectural style. There are eight, and I will refer to the first six. Siting, scale, massing and materials. The siting and massing of this building are about 50 percent larger than the other six buildings on University Avenue combined. The design is 100 feet wide. The others average 20 and are about half its height. Second, the rhythmic pattern of the street established by the general width of the buildings and the space between them. The proposed design totally dominates both the University Avenue and Kipling Street block with its width and bulk. Third, the pattern of rooflines and

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projections. The roofline won't even be seen by nearby pedestrians because it's high enough. Horizontal glass projections on the design contrast to appealing colored canvas awnings on neighboring buildings, some of which you can see in the picture. Fourth, the size, proportion and orientation of windows, bays and doorways. The design's windows have no particular aesthetic interest. They're simply rectangular in contrast to many punched art windows on upper floors on both sides of University Avenue. Fifth, the location and treatment of entryways. All other entryways on the University Avenue block are deeply recessed, hence pedestrian-friendly. The design's entryways appear to be nearly flush with the façade and not very inviting to pedestrians. Lastly, the shadow patterns from massing and decorative features, another compatibility element. The design's shadow is going to be massive because of its bulk. It has no decorative features. The design appears to me to be most compatible with the parking garage on Bryant Street at the upper left. The Palo Alto Comprehensive Plan, cited briefly by another speaker, maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due to their size and scale. I urge the City Council to uphold this appeal. Thank you.

Jon Goldman: Thank you. I've had the distinct pleasure of working in Downtown Palo Alto continuously since 1997, since 2011 as the owner of a business with 15 employees. We're at 539 Alma Street, which is a wonderful 1921 Birge Clark building which we participated in restoring when we moved in. I walk around Downtown every day. I ride my bike to work a lot. I've certainly seen a lot of changes. Dare I say, I think Downtown has improved and has become quite a spectacular place. I've been a fan of Ken Hayes over the years, enjoyed seeing attractive modern buildings mixed with the traditional buildings. I'm really a fan of this building, this proposed project, because I like the idea of a mixed-use building. It's elegant. It's well designed, has the residences onsite. Who wouldn't want to live there right in the middle of Downtown? I'm a little surprised that the height has become such an issue. There are many iconic tall buildings in Downtown that I love, like the President Hotel, the University Art, 250 University which many think is an older building with the bell tower which is actually a modern building. I didn't entirely grasp the amount of retail contribution of this building on Kipling Street. To have the storefronts contributing to the sustainability and activity and vibrancy of Kipling Street is quite exciting. I am amazed at how all these projects get appealed. I've been doing business in this City for a long time. People say to me, "What about that famous Palo Alto process I heard about?" I always say, "If you follow the rules, you won't have a problem, so read them, understand them and follow them." My understanding is this project does meet the legal requirements; therefore, it should be allowed to move forward. Thank you.

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Brad Ehikian: Thank you. My name is Brad Ehikian. I'm with Premier Properties. I'm here today to ask the Council to deny the appeal that is before us today. Personally I view architecture as like art. It's really in the eyes of the beholder. I realize some people may not like modern design, but again it's an opinion of personalized style. One of the most incredible things about living here in Palo Alto is our level of diversity in our community. We have diversity in our businesses, in our cultures, religions, races and ideas. For some reason we don't want to celebrate the diversity of our architecture. Why are we trying to recreate styles of the past? Why don't we celebrate styles of the future or designs that challenge the status quo? While you may not like Ken's style, what people need to realize is that he's designed over 30 buildings in our Downtown. How can he not be compatible with his own designs? That's the piece I don't understand. Furthermore, I find myself continually asking the question, in 30, 40, 50 years from now, are we going to be speaking about Ken Hayes' designs as we speak about Birge Clark. I know it's hard to think about today, but time will tell. Finally, the City has a real opportunity. You have an opportunity to send a message to the world that our community welcomes and encourages diversity, and that diversity doesn't stop at our businesses and ideas, that it also extends to our architecture. Thank you.

Bev Fields: My name is Bev Fields. I've been working in Downtown Palo Alto since 1984 as a commercial property manager. I personally witnessed the transformation of Downtown from an unattractive corridor with old, badly maintained buildings. I remember vividly the early '90s when the City began approving projects that were other than Spanish-style buildings to mimic downtown Santa Barbara. At that time, some young architects from Palo Alto started designing modern style buildings in the Downtown corridor. One of those architects was Ken Hayes. His buildings were modern, sleek and simple, which brought diversity to the Downtown corridor. I feel that due to this architectural diversity, Palo Alto began to attract unique restaurants, retailers and office users. It is my belief that Palo Alto would not have the economic stability it has today without the diversity that the Downtown offers to its users, which has made Palo Alto a destination for the entire Bay area. I believe that the Applicant's proposed building is unique and will contribute to the uniqueness of this important corridor. The Applicant has met all the requirements for redevelopment of this project. Do the right thing and approve this project.

Andrew Wong: Honorable Mayor, City Council, my name is Andrew Wong. I've been a resident of Palo Alto for almost 20 years, and I'm here to voice my support for this building. I believe this building is good for Palo Alto. I'm going to echo the message that I iterated the last time I was here, which is that the City Council should balance the needs of business and residents.

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I believe this building does that. I think the building is properly located in the Downtown. It improves the quality of retail space as we've discussed. It addresses Palo Alto's need for housing. It is fully parked. It offers more spaces than is required under the law. There is no loss of retail. Retail is simply being transformed for other uses as required by Code as was discussed by Applicant. The retail space is being improved. Zoning balances the needs of businesses and residents. The proposed building is not in an historic or residential district. It is in the commercial Downtown. The Appellant's building is in the Downtown and is being rented to office tenants and not residents or retailers. The Appellant claims that this building is out of proportion, but the City encourages mixed-use projects of this type. The Staff and ARB found that the proposed building is appropriately designed for mixed-use projects encouraged in the City plan. Finally Staff and the ARB found appropriate mitigating measures that have been implemented in this design. The proposed building is also consistent with the architecture of the surrounding buildings which include several modern buildings, large offices and parking lots. The Appellant claims that the building impacts allegedly historic buildings. Rather the architectural report says that the building is not in an historic area nor could the area be considered historic, because of the mix of building styles and development history. Furthermore, the City found that the building would have no impact on any nearby historic structures. The building is consistent with the mix of buildings in the area and other existing commercial buildings. The building is also fully parked, does not negatively impact traffic. The Appellant claims that the narrowness of Kipling Street would result in accidents. Police data does not support this claim. In fact, a 100-plus page traffic report showed no significant impact would result due to construction of the proposed building. On the contrary, the report notes that pedestrian and bike activity would increase due to the new building. Even in conservative estimates in the City study, the traffic impact would be negligible. In addition, the proposed building has five more parking spots than is required under the Code, alleviating the City's parking problem. The building improves retail, adds four more units of residential space to the City's limited residential area and is properly sized for incorporating residential areas and commercial in one building. Thank you very much.

Doria Summa: Good evening, Mayor Holman and City Council Members. Thank you for hearing this appeal. I agree with the Appellant that the building does not meet the size and massing requirements of the Municipal Code and further ideas expressed in the Downtown Design Guidelines. This project will exacerbate the existing parking deficit and traffic congestion. It has circulation issues with the alley and the narrow street of Kipling. I don't think that the project has adequately mitigated those concerns. I have nothing against contemporary architectural styles. I like all styles of

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architecture as long as they are executed well. I don't have any problem with the style of this building. It is more that it is too big for the context. It can't even be appreciated, this building, because you can't get far enough away from it to see it at its size. I also would like to note that the Comp Plan calls for adaptive reuse of old buildings especially Downtown, because it is such a mix. To take all the old buildings out would reduce the variety. There also seems to be a question about the sender site of one of the [Transferable Development Rights] (TDRs) that this building is using, that it was a historic building that was demolished. It's unclear whether a demolished building can receive a seismic TDR. I think that that issue should be resolved before going any further with an approval of this building. I want to add something about the process. I do agree that this process of appealing at the end of a project after an appellant and Staff and residents have worked so long and hard on something is very difficult. I was recently involved in an appeal of 261 Hamilton Avenue. I really learned that it would be better if we had in the review process some way to get this out earlier in the process. It would benefit everybody, the Applicant, the Appellant, Staff and residents if we had some different review processes. In summary, I encourage you to support the Appellant and reject the project in front of you today in favor of a project that will better meet the municipal plan, the goals of the Downtown Design Guidelines and our Comprehensive Plan. Thank you.

Jeff Levinsky: Good evening, Mayor Holman and City Council Members. I agree with the many excellent reasons you've already heard why this project does not conform to City Code. I want to talk about the TDR issue. The project is using three TDRs to increase its size and provide less parking. One of those TDRs was generated by the property at 340 University Avenue. That's the site of the new Apple store, and before that Liddicoats and Z Gallerie. The City issued that property a TDR two years ago for seismic rehabilitation; yet, no seismic rehabilitation occurred. Instead the old building was torn down and the Apple store went up. The Municipal Code is extremely clear. Section 18.18.070(a)(2) says you can get a TDR if you're "in Seismic Category 1, 2 or 3 and undergoing seismic rehabilitation." Rehabilitation of a building isn't the same as tearing it down. Just as rehabilitating criminals doesn't mean executing them. Here's a helpful quote from City Minutes in 1995 when the TDR Ordinance was updated. "The entire keynote of the TDR Program was whether funds could be generated for buildings that had extraordinary costs for seismic and historic retrofit." That's retrofit, not replacement. The person quoted, by the way, Chop Keenan. City Staff say they've granted three other seismic rehabilitation TDRs when buildings were instead torn down. That's unfortunate, but it doesn't change the law. Those cases weren't legal either. There's another problem with the TDR from 340 University Avenue. It was issued for more



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square footage than City records show the old building could have generated. Over and over again, we've found that the City has ignored the plain and simple language of the law to let buildings expand. Staff ignored the definition of building envelope for 261 Hamilton Avenue and then went on to allow it to have less parking than legal. They have exempted vastly more space than needed to accommodate those with disabilities for 240 Hamilton Avenue and 451 University Avenue. They issued TDRs for rehabilitation never done to several buildings including 340 University Avenue. While the law is the law, and you must still uphold it even if the Staff doesn't. Until 429 University Avenue, the project before you, obtains a legal TDR with the right square footage, it cannot legitimately proceed. Thank you.

Michaela Dieffenbach: Hi, my name is Michaela Dieffenbach. I am part owner of Michaela's Flower Shop. You guys may know it as Stapleton's. We're not the biggest building; we're the skinniest little thing in Palo Alto, but we do a lot of business. One of my major concerns about this is the alleyway. We use every inch of our property. I use the alleyway to put out my deliveries, to get my deliveries. My husband, who's also my driver, has to load up. This is an alleyway that I share with all my neighbors. We love each other. The trucks come in for the coffee shop, the new tea place. They just moved in; they use the alley. We all share it. My biggest concern about this is that once this building is completed, the traffic. There's kids that come in; there's customers that go in and out of our store, every store. The traffic, Kipling Street is so skinny, you can't get two cars, so they're going to come down Waverley Avenue and they're going to zoom down our alley to try to find parking at this place. Some people even go down the wrong way. I don't know how many times I've come out that door and almost been hit because someone's going the wrong way. I know that it's going to happen. You can only go one way down that alley. It's a really big concern, because that's the artery to my shop and a lot of other shops and business owners down here. It just really worries me that traffic, the congestion is just going to stop my process. I'm just a business owner that wants to keep going. I'm very, very concerned. I don't see how it's not going to be a big problem. That's really all I have to say. Thank you.

Alexis Andrew: Thank you. I'm a resident of Palo Alto and live a couple of blocks from the construction project. I have nothing against this particular style of architecture and modern building. What I have against is the sizing issues. I believe the building is way too big. The reason for me, at least the way I see it, is as residents of Palo Alto we have shared resources. Those resources are the quality of roads, and we have quality of traffic, and we have ability to park or not park our cars. We have bicycle congestion or bicycle routes or lack of bicycle routes. We have sewage pipes we have to

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replace. We have water pipes we have to upgrade all the time. By allowing such a massive increase in building on University Avenue, I essentially have to subsidize those guys, because right now they consume a certain throughput of water. They consume a certain amount of electricity. They produce a certain amount of noise and traffic congestion. If you triple or quadruple the size, we're talking about overtaxing. I don't think it's the right way for me to subsidize. I'm a venture capitalist; I don't want to subsidize those guys on University Avenue frankly. To respond to the Eiffel Tower, love this building, but if you look at the history of Palo Alto, PayPal, Facebook, Google, Palantir Technologies, they all got started in Palo Alto, and it happened before the initiative to expand and create a lot of office buildings. They were sitting on the small houses along University Avenue and they were doing extremely well. Frankly, since the office buildings started popping up, I don't see any building or companies increasing in Palo Alto. They're all old companies started ten years ago. I don't know why. I'm not saying there is a causality, but there is a clear correlation. Since the expansion of traffic, since expansion of those buildings, I don't see any new multibillion dollar startups getting started and sitting and being residents of Downtown Palo Alto.

Vita Gorbunoca: Good evening. I'm also Downtown resident for 15 years. I live three blocks from this project. Honestly speaking, I'm pretty impressed with this architectural firm. If I ever decide to move out of state, grow cold heart to Palo Alto, sever all my ties with my neighbors, I will definitely turn to them to get the best bang for the buck for my money. Until then, I still love Palo Alto, so I have to speak against this project. I walk by this site every day. I'm very much concerned about the impact this project is getting on this Downtown area. We all know it is an office boom in Palo Alto and every dog kennel is converted to office buildings. Fortunately dog kennel could be converted back to the dog kennel after the boom is done. Whatever is built right now with stock who is building for the next decades, several decades, probably century. They build them good. Let's get the design question out of the way. Let's stop pretending and calling it a breakthrough marvel of engineering or modern design. It looks like my father's factory which I saw 40 years ago back in Soviet Union. Let's stop calling it modern. It's outdated. When we get that out of the way, let's focus on the context-based design criteria. They say beauty is in the eyes of the beholder, but I notice I'm consciously every time I have to go to this area on University Avenue, I take Kipling Street. I don't take Cowper Street. I prefer not to take Waverley Avenue. I will take Kipling Street. No, actually not just something which I can't quantify, and I can't point it out. This new building claims to be pedestrian and bicycle friendly. I think not. It's one of the most unfriendly buildings in existence. Instead of widening sidewalks, the sidewalks will actually be narrower. All the indentation with all the

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buildings on this block, on the 400 block, 500 block, every building has this indentation which widens the sidewalk. This has the least indentation possible just so open doors don't hit people walking on the street. Let's not call it recessed. There is no pedestrian friendly on this. By the way, two bigger bike parking racks which would take our right of walk on the sidewalk will be bigger than two existing bike racks. The sidewalks would be more congested. In regard to style compatibility, all I can say is it's compatible to the other buildings only because it has doors and windows. I totally agree with the other speakers about size and style compatibility to the surroundings. Thank you.

Stephanie Munoz: Good evening, City Council Members. All that's been said in disapproval of the building and in approval of the appeal, pretty much I could echo all of it. I guess Jeff Levinsky is probably the one that I would most follow. I'd like to address the address by the people who are in favor of the building. It seems to me that that is what we all haven't been listening to very much. The man in the blue shirt who spoke about the buildings, well there's this building and that building and the other building and the other building, and that sets a precedent, and therefore you have to accept this building also. That's what people are complaining about. They've been saying, "These buildings are getting bigger and bigger and bigger." Every time you approve a big building, the next one to apply is going to be 6 inches taller. Pretty soon you're going to have a different town which we don't want. Back in, say, 1898, 1911, people were eager for more, more commerce, better selection, more money, more taxes. They approve differences. Finally the town gets filled up. The town is then big enough. It has all that a resident could want and a little bit more. I had to laugh about the Eiffel Tower. I've been in the Eiffel Tower, and I bet you all you have too. It is inappropriate for Paris, but the Parisians love it and everybody loves it because it's familiar. Possibly these other buildings 50 years from now will be beloved, because they're familiar. They were peculiar in their day. I'm not implying that this building is peculiar at all. It's an okay building. It would look great in Los Angeles. It would improve Los Angeles. I like the fact that their height is in residences, in housing. I think that's something that the Council could really look at very seriously that no height ever be exceeded if it's not in affordable housing. That's a good part. Folks, it's just too big. Thank you.

William Ross: Good evening. I'm a taxpayer and a resident of the City. Before you make your decision tonight, I would respectfully suggest that under the authority of *Vedanta Society v. California Quartet*, 84 Cal. App. 4th, 517, a 2000 year case meaning from 2000, you're required to make a finding concerning the environmental analysis of this project, a Mitigated Negative Declaration (MND) based on an initial study from November 2014

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to the effect that it's supported by substantial evidence. I'm going to respectfully suggest it's not supported by substantial evidence. One of the bases that an initial study does is it employs what's known as Appendix G of the CEQA Guideline Checklist. Here that's based on the Planner's knowledge that accomplished it in the project plans. I suggest it's not supported by substantial evidence in the area of utilities, specifically with respect to water supply and wastewater treatment. Regardless of whether you treat the MND as being approved or being subject to approval tonight, you have to make this finding about substantial evidence. It's to be based on what exists in the current environment. Staff will argue that the current environment is defined by the date that the Notice of Preparation was accomplished, sometime in November 2014. I respectfully disagree. There are changed circumstances under which this project is being carried out. On April 1st the Governor issued his Order B29-15 enforcing urgency regulations to be formulated by the State Water Control Board which are actually going to be heard tomorrow and the next day, which would mandate a 25 percent reduction in potable water. None of that's mentioned in the discussion in the initial study or the MND. Likewise, there's a claim in the MND that this will comply with all wastewater requirements of the City. In the last week of April, you issued a Draft Environmental Impact Report (DEIR) on the completion of your recycled water plan, which if implemented would reduce potable water. You're seriously asking us to reduce our consumption of water when you aren't even correctly or completely analyzing that critical issue on this project which should be done on a cumulative basis as well as with respect to traffic as has been argued by others. You need to remand this to have a complete environmental analysis of the project that complies with applicable law before the decision can be made. Please ensure that these written remarks are included in the record on this matter. Thank you for your consideration.

Nielson Buchanan: Good evening. I'm going to try to squeeze in three quick comments. First of all, the big issue here is that the City does not have adequate policies for housing, traffic, parking, retail, safety. The problem is that the economy has been booming for so long that things are just not in harmony. They're in an imbalance. There's only about three ways I can think of that's going to resolve it. One is the Council has to seize control of this. The expeditious way to do that is to put on a really first-class moratorium, force all the power to the table and work out the differences in a timely manner. We can dawdle along with more and more appeals and eventually the recession's going to catch us. I had an interesting conversation with one of the venture capitalists, who pretty much felt there's no more than three years left in this boom, which is still a long boom. That's going to be your choice. This is not the place to settle all that. My second comment is to remind you about the inadequacy of the Parking Assessment

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District. Let me quickly give you a summary. The two property owners in 2001, the Christianson family and the Wong family, paid about \$180,000 to be entitled for these 37 parking places, \$5,013 per parking space. At the same time, the Parking Assessment District created about 700 parking places at the cost of \$64,000 a parking place. When you take a look at the differential of what that is, it's in the document that I sent you today, the Parking Assessment District basically didn't just create 37 parking places for these property owners, it created 9,146 parking spaces, entitlements that no one can explain to me, but it comes up every time. Here it is, 37 more parking places. I think you need to ask Hillary, with all due respect, where are those 37 people going to park. We know that there's going to be so little parking available in Downtown two years from now. Then last but not least, and I won't dwell on it, there's provisions for a Transportation Demand Management (TDM) requirement on the property owners here. I won't have time to explain why they're not adequate. I urge you not to approve the TDM measures as recommended by the Planning Director until the public can properly comment on them. I commented to you in writing, but I will not have time to enumerate them tonight. Thank you for working this issue so hard and for the hours yet to come.

Mr. Harbour: We've heard a lot about style and diversity this evening and people's interpretation of that. I want to let you know that nowhere have I talked about or criticized architecture or style or diversity here. The main issues here are written in the Code, which is context and compatibility. Compatibility has a lot to do with sizing and mass and how a building that's built is in relationship to the buildings around it, and the harmonious transition between one building and another. Because this building does not have harmonious transitions between the buildings around it, it does not meet Code. The building needs to be looked at not in a vacuum by what it looks like by itself in a picture. What's really said is that those pictures are so deceitful. Why would the architect submit pictures that are so deceitful with regard to its size? The only thing that I can come up with is because he's tried to hide the true impact of this building. We can still have mixed-use buildings here. This is not an argument against mixed-use buildings, but it needs to be smaller. The fact that the Applicant has purchased property along Kipling Street which happens to be the most narrow street in Palo Alto does not give her the right to build a 50-foot building that is not in harmony with the buildings around it. The Design Guidelines specifically talk about how we are to treat this building from the vantage point of Kipling Street and how that terminus happens right at University Avenue. Nowhere has this been discussed at all. The architect showed you many, many buildings in Palo Alto in lead up to his last two pictures of his building which showed very little other than this massive building with the disrespectful vantage points. I urge you to look at all of this Code. Specifically the

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Municipal Code clearly states that no proposal can be approved without it being consistent and compatible with applicable elements of the Palo Alto Comprehensive Plan. I've shown you here tonight where this building violates the Comprehensive Plan, Municipal Code. It is not consistent with our Downtown Design Guidelines. You've heard from a business owner whose business will be impacted by this one-way traffic going down the street as well as YogaWorks, that little Zen garden. People will be potentially hit. The traffic is not something that you can just brush under the table with that Hexagon report, which was so inadequate. We need a Full Environmental Impact Report, including a full traffic analysis to fully know what's going on here. The appellants and I urge you to deny this building's approval. We ask the developer to reevaluate these plans in relationship to the criteria which we have put forward. Thank you very much.

Ms. Yob: Good evening, Honorable Mayor and Council Members. My name is Dori Yob. I'm with the law firm of Hopkins and Carley which represents the project Applicant. First, I want to thank you very much for the opportunity to be heard this evening. I also want to acknowledge and thank Staff for their time, attention, detailed review and consideration of this project. I also want to take a moment to identify the other members of the Applicant's team who are here in case you have questions of them. We have Mark Hulbert, the Historic Resources Consultant, Gary Black, the Hexagon Transportation Consultant, and Elizabeth and Jaime Wong of Kipling Post LP, the Applicant. This high quality project was carefully designed with a sensitivity to the requirements of this City. This project is compliant with all applicable municipal regulations, the City's Comprehensive Plan, and the Downtown Design Guidelines. There are no exceptions or variances being requested. As you heard, this project has been fully and carefully vetted by the ARB in a preliminary review of the concept plans in 2013 and in three separate and fully public hearings since that time. The project was recommended for approval by the ARB following revisions made during that public review process, was recommended by the Planning Director, and is recommended for approval by the City Planning Staff here tonight. We are here before you tonight because of the appeal presented by one single Appellant. It should be noted the Appellant's concerns have been fully vetted as part of the lengthy review process. The Appellant presented verbally at all three ARB Public Hearings and submitted various written letters during that process, raising objections similar to those that you're hearing here tonight. Significant changes were made to the project as you have seen as part of the review process, including changes responding to the concerns raised by the appellant. Despite having been heard at all those hearings, the Appellant continues to raise arguments that are unsupported by evidence and entirely at odds and inconsistent with the express findings

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of the ARB, the Planning Director and the law. I submitted a letter on Friday, May 1st that walked through each of Appellant's arguments which were also exhaustively addressed in the Staff Report and in the architect's presentation. As you now, this is a quasi-judicial matter. In a sense, you serve as judges here today, determining whether Applicant's project complies with the law and whether there's any basis to overturn the ARB's unanimous findings. It is without dispute that this project is compliant and conforms with all existing laws, regulations and design guidelines. Staff points out that the project and appeal touch on "several current policy considerations the Council and community are having related to Downtown development, housing and parking." Again, while Council can and should engage in policy discussions to guide its future decision making, it can't change the rules in the midst of a project. We urge you to deny the appeal and affirm the Director's findings.

Ken Hayes: Hi, Ken Hayes. Thank you. Mission Revival, modern, Spanish Colonial, Victorian, Queen Anne, utilitarian are all surrounding architectural styles referenced by Mr. Harbour. I would like to add a few more like Art Deco, bungalow, mercantile, neoclassic. It is this eclecticism that defines a community as accepting, innovative, progressive. A community that is Palo Alto. We are not Carmel; we're not Santa Barbara; we're not Los Angeles (LA). Palo Alto is recognized worldwide for its entrepreneurial environment, for its innovation, for its technology, for its position on environmental concerns and sustainability. This is a brand new building. Certainly we're addressing sustainable issues. Our architecture should be part of this forward thinking, not stuck in the past. Let's write the book and lead the way. Let's innovate and inspire new ideas without forgetting the past but with our sights on the future. As I've demonstrated tonight and as everyone has talked, the standard is compatibility. The transitions that I showed you tonight of rooflines, of upper story setbacks and so on are found throughout the Downtown. They're all over. The alignment issue of trying to establish compatibility with relating to existing building architecture, contextual relationships is found in this building. We've aligned recesses. There's a predominant 10-foot window that surrounds the ground floor that is the same scale as those of the adjacent buildings unlike the parking garage in LA which must be 20 feet tall. The Kipling retail is not ignored. We have deliberately wrapped the ground floor glass, we've increased the glazing by 75 percent on that ground floor to invigorate the Kipling side street and the linkages that we talk about that we want from district to district. Having the retail frontage provide that linkage is important. We're doing that for that enhanced pedestrian experience. Mixed-use opportunities. We want to encourage those in the Downtown. We have four apartments; these aren't condominiums. In terms of size, this building is 8,700 square feet more commercial area than is there today. That's hardly a massive building or

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that much more massive than what's there. The rest of it is residential floor area on the third floor and the fourth floor. There was no intent by my firm to deceive anyone with our renderings. The idea there is to get back far enough to show the context. It does no good to show a building up close without showing the context if our whole discussion is going to be about compatibility and context. To answer Council Member Scharff's questions about the alley and circulation, we're actually increasing the alley four feet along our building where our garage entrance is and where the bike parking is. That four feet will allow additional space there, but we have found that with 20-foot alleys, which is what we have, there's typically plenty of room for a truck to pull over and for vehicles to get by especially in a one-way situation. I urge you to support the ARB and your Staff and deny this appeal. Thank you.

Randy Popp, Architectural Review Board Chair: Good evening, Mayor Holman and Council Members. My name is Randy Popp, and I am here in my capacity as Chair of the Architectural Review Board to provide some perspective on the support the Board offered for this project. While the Staff Report is correct in noting this project was reviewed by the Board three times, you have heard prior to this submittal the Applicant proposed a similar project which incorporated one less parcel, which was reviewed earlier. The Board spent numerous hours in discussion which cannot all be summarized, but I will seek to highlight some of that. There are really just two topics that I'd like to focus on. The first is building scale as it relates to style and massing. The second is context and in particular how that relates to pedestrian-oriented design. To the points of style and massing, overall the Board felt this Applicant has successfully integrated the proposed floor area into a structure which creates transitions from adjacent properties and respects the policies and goals outlined in the Comprehensive Plan. Breaking down the overall mass of the building into multiple forms, stepping back elements of the building design and relating elements of the building with those existing at adjacent properties was both a focus of the Board's discussion and ultimately a successful response as proposed by the Applicant. The Board did make mention of the structures on Kipling Street. Related to those structures and their current use, particular attention was paid to addressing concerns raised for the rear corner of the property at the alley. Again, the Board felt the Applicant has successfully mitigated concerns related to mass and has organized the building so that its uses are thoughtfully controlled at this location with terraces and the major elements well integrated into the building form. There is a rhythm along University Avenue. Our pedestrian-oriented guidelines seek to preserve and enhance this. The project design as approved has successfully incorporated a spacing of narrow, solid elements and allowed for a regular pattern of open storefront glass consistent with nearby structures. The building across the



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street at 428 University approaches this in a much different way. Heavy columns and deeply recessed storefront glass make the visibility into the retail space much more difficult to achieve. The Board was quite positive about the approach this Applicant has taken in regard to retail visibility and the pedestrian experience of it. In closing, I'd like to reiterate how important it is to understand context does not mean replicating style of adjacent structures. You need to look deeper, deeper into design and understand the diagrammatic massing and overall order of the building's organization and the environment within which it exists. This is what our guidelines encourage, and this is what the building has achieved. Thank you.

Public Hearing closed at 8:50 P.M.

Ms. Gitelman: Thank you, Mayor Holman. We don't have anything to add at this point, but we'd be happy to answer any questions that the Council has.

Council Member Kniss: Probably the issue that has generated the most questions and certainly some that you sent over the weekend deals with the TDR. It's come up any number of times tonight. We have as a Council not this year dealt with TDRs yet, but we did in December of last year when we dealt with the TDRs on the historical museum. Could you give us, at least, your feedback, your read on this? That seems to be a consistent theme, that there's something amiss with the TDRS.

Ms. Gitelman: Thank you, Council Member Kniss. I'd be happy to reiterate some of the material we provided in response to Council questions. That material should have gotten to you all in writing today and to the public via email. The question was raised about the seismic bonus that was granted at the property at 340 University, and subsequently transferred for use at this site. It's been pointed out that the building was demolished, and that's how the seismic hazard was abated. The Code does provide for a bonus for seismic rehabilitation, is the wording in the Code. Historically, the Staff and the City has provided that bonus when the seismic hazard is addressed through demolition. We found a handful of examples where this has been the case. This was the case for 340 University Avenue. The bonus was granted. The TDRs were certified and recorded in accordance with the City's procedures. At this point, we don't think there's a way to take back what was given in compliance with a precedent that was set by multiple other examples in the City. We are certainly open to the Council's direction on a go forward basis, if you'd like to clarify that section of the Ordinance or have us interpret it differently. As I said, we don't feel there's an ability to go backwards at this point and change what has been granted.

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Council Member Kniss: Pursuing that a little further, my research seems to show these TDRs go back 15 years or more. I don't know how many times they've been used. It would be pretty difficult to find out

Ms. Gitelman: The seismic bonus program, I think, dates from the 19 ...

Council Member Kniss: No, the TDRs. Either seismic or historic.

Ms. Gitelman: I think it goes back to the '80s, 1980s.

Council Member Kniss: It may. I don't know. You think it's been in place for 20 years, 25 years?

Ms. Gitelman: Quite some time, yes.

Council Member Kniss: Has there been any other question that has come up around the use of the TDRs? I realize, Hillary, you're coming up on two years, so I don't mean to put you on the spot. If someone has the answer to that, that would be helpful.

Ms. Gitelman: Thank you, Council Member Kniss. You've pointed out that's one of the challenges that Jonathan and myself and some of the Staff have. We're relatively new here. We're piecing together the history of the TDR Program, finding the precedence in what has transpired before our arrival at the City. The program as a whole has been quite successful. There's been bonuses granted for historic rehabilitation and for addressing seismic hazards, bonuses that have been used on the sites where the activity is taking place, but also bonuses that have been transferred using TDRs. A more complete summary or synopsis of the program would take probably more time than we have and more research than we've been able to do in advance of the meeting.

Council Member DuBois: I just wanted to follow up on that TDR question. There was also a comment made that the amount of TDRs didn't square with the amount of square footage at 340 University Avenue.

Ms. Gitelman: Thank you, Council Member DuBois. We did get a question about a matter of a discrepancy of something like 60-something square feet. We did not have an opportunity to research going back four years what was the cause of that discrepancy. Again, if the Council would like us to pursue that further, you could certainly ask us to do that, and we would do our best to dig into the records.

Council Member DuBois: The numbers I saw were more like 200 square feet which could be significant. I guess that's something we could potentially

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address. The other question I had, Council Member Scharff mentioned earlier. When is a shadow analysis required for a project like this?

Ms. Gitelman: Thank you, Council Member DuBois. We did address that topic in the initial study. Typically we look under CEQA at whether there's significant shading on public parks and open spaces and the like. We covered that in brief in the initial study, noting that the only public areas that would be shaded would be the streets and sidewalks. I don't know whether, Katherine, you have anything to add?

Council Member DuBois: It does not include the residence across the street on Kipling Street?

Ms. Gitelman: No. We typically don't look at impacts on private properties from a CEQA perspective. That is something that could be considered by the ARB or the Council as a design issue.

Council Member Filseth: I have a question for Board Member Popp from the Architectural Review Board. I'm looking at the Minutes of February 19, 2015, the third and final review. In here, there's a comment from Board Member Lew which says, this is about Floor Area Ratio (FAR) by the way and scale since we're talking about scale and sizing, "In an ideal world, I really support more of our 2.0 Floor Area Ratio. The 2.86 seems big to me particularly at the back." The project was given 2.86 FAR. 2.0 would be 40 percent smaller. You comment, "I agree with Alex's comments about the 2.86. I mean that's a lot for this site. It's a lot. On top of the 2.86, there's a 200-square-foot bonus that was taken. All these things in aggregate have created what is a significant building." It sounds like you folks had at least some serious thinking about the scale. Did you guys ultimately decide that it was acceptable?

Mr. Popp: I'll tell you we had some serious thinking about the scale. We spent three solid hearings talking about how this building is fashioned, how it's sculpted, what the right approach should be to managing the FAR that the Applicant was proposing. Ultimately we got to a point where we were comfortable with it. We approved the project on that level of analysis and understanding that the top floor is pulled back, that the building has a lot of recesses. They really have tried to, in what we thought was a very successful way, mask this significant square footage.

Council Member Filseth: You felt that they made a significant effort to ameliorate the scale?

Mr. Popp: Definitely. If you take a look at the rendering of the first version of the building that we saw and compare that to the approved version of the

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building, you'll see the progress that was made and the really significant efforts this Applicant made. This is a good example of the Architectural Review Board process assisting an Applicant toward a better solution.

Council Member Filseth: I would agree with that. The final one looks significantly different. You guys must have been impressed by that.

Mr. Popp: We were. Many projects that we see are not much of a dialog. We are struggling with Applicants. We are working hard to get an Applicant to understand what needs to be changed. This is a capable Applicant who has experience and understands the process in Palo Alto and listened carefully to our concerns, met with us and worked hard to address the concerns the Board brought forward, and ultimately was successful.

Council Member Scharff: Thank you. The first thing is on the TDM Program. Can you actually walk me through? I couldn't find it; I guess I just can't read this properly. It says Attachment D page 12 of 41, Condition Number 8. What packet page is that? I simply couldn't find it. I wanted you to walk me through what the TDM requirements are on this project.

Mr. Lait: Jonathan Lait, Assistant Director. I believe you're referring to the condition that was imposed with respect to the TDM.

Council Member Scharff: Yes, I am.

Mr. Lait: You can find that on packet page 632, Condition Number 8. The program, as you're getting to that, lays out a requirement. This was not included in the ARB reports, but it was one that came in with the Director's approval, that the plan be approved by the Director and that it include proposed performance targets for parking and/or trip production and indicate the basis for such estimates and shall designate a single entity to implement the proposed measures during the building occupancy. It's relatively a standard condition, but the important part about that is that it's subject to the Director's review. We're looking at our TDM Programs, and it has to go through that discretionary review of getting that approval from the Director.

Council Member Scharff: The reason I ask is we've obviously heard a lot from the audience about parking and whether or not the building is going to be under-parked. One of the things I did notice was that they didn't take advantage of the 20 percent for a mixed-use project, if I recall. I'm glad they didn't, but there is that. Yes, the building is under-parked. I don't think there's a question on that. The question is what kind of reduction do you expect to achieve in terms of parking, in terms of single-occupancy vehicles through the TDM imposition and how are you thinking about this.

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This is an interesting question since you have the condition on here. What are you thinking?

Mr. Lait: I'll take an initial cut at the question. In terms of any specific targets, I don't know that we have a percentage in mind. We do recognize that the building is located in a very pedestrian-oriented area. There is some bicycle lockers that are required, and input would be put on the site and the proximity to the Caltrain Rail Station. We saw this as an opportunity to incorporate some TDM Program.

Council Member Scharff: What would those be? We've obviously been talking a lot about TDM. I'm expecting a little more than what you're saying.

Ms. Gitelman: Thank you, Council Member Scharff. The most common element of an effective TDM Program that we see is transit passes, like the GoPass or the EcoPass, that can encourage employees and residents to take advantage of the transit that's already available in the vicinity. I did want to also add I know it's been said several times, at least several times this evening, that the project is under-parked. The project actually complies with our Code. I don't think we could impose additional parking requirements on it. It meets every standard that we have in terms of its parking compliance. We saw the imposition of a TDM as an added requirement in the hopes that any way we could encourage people to rely on transit, pedestrian, bicycling and walking, we'd like to do that.

Council Member Scharff: Not to belabor the point a little bit. Yes, I agree the project has completely complied with all the parking requirements under our Code. I don't disagree with that. In fact, it was pretty clear to me that if we told the Applicant they could only build the existing square footage plus 5,000 square feet, they could build a building with no parking whatsoever, because they have 5,000 of TDRs which they're absolutely entitled to under all circumstances. I can tell it. The question becomes how are we going to ensure that there is no spillover parking. What I wanted to hear was there's no parking in the neighborhoods, there's no spillover parking, that this doesn't make the parking situation in Downtown worse. I'm trying to get a sense of what kind of teeth you can put in this. Can you say, for instance, that you will have a 25 percent reduction or a 30 percent reduction? Clearly when SurveyMonkey did their survey and it was Palantir and I forget the third company in the SurveyMonkey building, I think it was 67 percent utilized the garage. I'm just trying to get a sense from you if I should have some comfort level that no, there's not going to be a stream of cars parking in the neighborhoods and this building will in fact be fully parked or the fact that you think the TDM Program won't achieve it. Can you say there will be fines, for instance, if you don't meet certain targets? Are we going to have a

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robust TDM Program that goes in that direction? Do you feel you have the authority to do that?

Ms. Gitelman: Thank you again, Council Member Scharff. By imposing this condition, we do think we have the authority to have a substantive conversation with the Applicant about a quantitative standard that they think they could meet. I'm not prepared to say right now what I think that would be. Based on the tenants that occupy the building, we would look at them to establish a standard that is robust and can be monitored and tracked.

Council Member Scharff: I wanted to ask the City Attorney if we can retain jurisdiction to approve the TDM Program that the Director comes up with, if we approve this project.

Ms. Silver: Cara Silver, Senior Assistant City Attorney. You could do that through a Condition of Approval, that the TDM Program would have to come back to the Council for approval.

Council Member Scharff: As the Director, you approved this project as being compatible, which is one of the big issues that we're discussing tonight. Could you walk me through your thinking of why this building is compatible and why you have made that decision to approve it?

Ms. Gitelman: Thank you, Council Member Scharff. It's always a challenge. We knew this project was going to have a lot of interest at the Council and in the community. When we're faced with a situation like this, we give great weight to what the City's volunteer experts on the ARB recommend. There was a long record here. We also give great weight to whether the project has evolved over the course of the process to respond to the concerns that have been raised both by the ARB and by members of the public who attend the ARB meetings. In this case, we had a unanimous ARB recommendation, and we had in evidence that the project had evolved over the course of the review. Again, it's always a difficult decision. I recognize that compatibility is in the eye of the beholder. We're here tonight because members of the community don't agree with our decision. Ultimately it's up to the Council to decide whether you agree with our decision and with the ARB or whether you'd like to take a different direction.

Council Member Scharff: I have one final question for the Applicant themselves, either Ken Hayes or Ms. Wong or whoever. I heard from Michaela and her flower shop. There is a community on the alley there. What have you done or what are you prepared to do to protect those businesses and to make sure that that ecosystem works and that they're not negatively impacted by your building?

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Elizabeth Wong, Applicant: Basically we are not the expert in traffic. The City has a transportation department. I was asking Rafael what are some possibilities of handling the alley. We will work and cooperate very closely with him to mitigate any problems that we may cause. I believe the alley right now is basically no parking and a one-way street. I also believe that the Zen garden created by one of the neighbors is a two-space parking that they closed and made it into a garden. I'm not really sure if that garden, how they can take two parking spaces and make it into a garden. I'm not the expert in this and I will work with the City's traffic department and Rafael, what is it that I need to do in order to mitigate any problems that we may cause.

Council Member Burt: I first want to start with a couple of questions for Board Member Popp, if I could. Randy, the first one is a follow-up to Council Member Filseth's question about this exchange that is in the record from the ARB about apprehensions on the impact of the size on the mass and scale. You had said, if I understood you right, in your exchange with Council Member Filseth that you subsequently worked through those issues. If I read this correctly, this was stated toward the end of your final hearing. What changed in the project after you made those comments?

Mr. Popp: I'm sorry. Perhaps I wasn't clear earlier. What I meant to say was that we had worked through all these issues of massing and scale. If you look at the record, very early on in the process I started talking about the extraordinary FAR on this project. In addition to standard FAR...

Council Member Burt: I'm just going by the record.

Mr. Popp: No, it's fine. I don't have complete recollection of everything that was said. What I was getting at, at the very end of this process, saying, "Listen, we struggled with this. This has been tough." Part of what we talk about is when other Applicants come forward, how do we want them to handle it. I don't have complete recollection of everything that we said at this meeting. My recollection of the intent was to say it's a lot, but we've gotten where we need to get and we're going to vote yes.

Council Member Burt: Here's the other contextual part of that discussion as the records shows. A couple of you, after the project had been finished in its design, expressed concerns over that mass and scale. Then there was a discussion with Board Member Lew saying that it wasn't his understanding that compatibility concerns would allow the ARB to reject a project which used TDRs to meet the numerical criteria. The implication there is that the ARB was under an understanding that their purview and the existing Code would not have allowed them to say, "No, you can't use that much in TDRs."

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Mr. Popp: That's not my read of the regulations. I have had discussions about that recently. The way I understand the regulation, and we can certainly ask the City Attorney to give us some definition about this, is that the Architectural Review Board is discouraged from encouraging an Applicant to reduce their area that they have achieved through TDRs unless it's absolutely necessary to manage the bulk or the scale of the building. In this particular case, we were able to get to a point where we felt the building was compatible, where we could make the findings and we were able to approve the project. Be happy to have further discussion about that and to better understand that if that's appropriate.

Council Member Burt: The other thing that I couldn't find in the record, maybe it's there, was ARB discussion around some specific parts of the Downtown Urban Design Guidelines. In particular there's a section about secondary districts that speaks to Kipling Street itself. Was that something that you guys specifically addressed or was it addressed more generally?

Mr. Popp: I'm certainly aware of that statement in the Downtown Guidelines. Maybe you've read the Minutes more carefully than I have. I don't recall us having a specific discussion about that. It's certainly something that I evaluated as I was understanding the project.

Council Member Burt: The Guidelines, I reread them and I hadn't read them in a long time so it's not like it's been at the back of my head. It does say that the areas including the Kipling District have their own distinct characteristics and efforts should be made to unify and complement each of the secondary districts through use of appropriate design, landscaping and amenities. Both districts, including Kipling, contain significant historic architecture and development patterns. It goes on to say the HRB is an important resource for consulting. I'll ask Staff about that. It also goes into talking about Kipling Street itself and giving a lot of context. These guidelines are much of what the Comp Plan speaks to in this area and the findings that the ARB has to make. It drives down to this set of Urban Design Guidelines. I was troubled that I didn't see these addressed, even talked about by the ARB. I think they're pretty important. If you or anybody, maybe Staff, can point out that there was that discourse, I'd be happy to be corrected on that.

Mr. Lait: Thank you, Council Member Burt. I don't recall a specific conversation about looking at the context-based criteria. It was included in the Staff Reports that went to the ARB. It was included in the administrative record, and it was a part of those reports. The findings were there with some explanation as to how those were addressed. You can also find those in your current packet, starting on packet page 626.



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Council Member Burt: I'm at 626. Can you walk me through where those guidelines are specifically referenced?

Mr. Lait: These context-based criteria are set forth in the Municipal Code specifically. As far as the Downtown Urban Design Guide, which is not a document that contains findings. Staff will correct me if I'm wrong about this. This is a guide as opposed to findings that are set forth in the Municipal Code. We use this as a policy guidance, so I don't believe there's any. It's Policy L-23. Let me bring your attention to packet page 629 which is Attachment E to the Director's determination. Attachment E is the Comprehensive Plan table. Policy L-23 talks about maintain and enhance the University, Downtown area with a central business district. It goes on. The response to the right of that is reference to the Downtown Urban Design Guide. It notes compliance with pedestrian-friendly amenities such as recessed entries, canopies and new street trees. Two, includes attractive display windows at frequent intervals. So on and so forth.

Council Member Burt: Let's dive a little deeper into that. The Comp Plan in L-23, I don't know if it's L-23. The Comp Plan references specifically the Downtown Urban Design Guidelines. Correct? We have a requirement in our Findings for consistency with the Comp Plan. The Staff reference on packet page 629 refers to some elements of the general Downtown Urban Design Guidelines. However, I can't find a reference to the guidelines specific to Kipling Street which are on page 28, I think, of the Downtown Urban Design Guidelines. The specific guidelines are much more relevant than the general.

Mr. Lait: Again I'll start at that. The policy in the Comprehensive Plan that references the Downtown Guidelines is actually not a policy at all. It's actually Program L-19. It reads, "The Downtown Urban Design Guide is not mandatory, but provides useful ideas and direction for private development and public improvement in the Downtown area." That's the framework we have in which to evaluate the projects. I hear your question about the specific response of the guidelines to Kipling Street. Other than the general conversations of compatibility and a conversation about the other structures on Kipling Street, I don't know that there was a specific discussion about those guidelines relative to the project.

Council Member Burt: Let me switch over to the City Attorney, and then I'd like to return to that in a moment. I want to make sure I understand our obligations in the Findings to find consistency with the Comp Plan. If the Comp Plan refers to the Downtown Urban Design Guidelines as not mandatory but guidelines, does that mean that we should exclude that from consideration of consistency with the Comp Plan because it's not mandatory?

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Or is its reference, whether it's a mandatory compliance or not, still constituting consistency with the Comp Plan?

Ms. Silver: Thank you, Council Member Burt. Typically what we would like to see with these types of policies, and the Comp Plan has several different policies similar to this that reference other guidance documents, is the decision is informed by those guidance documents. The guidance documents tend to be more policy-oriented. They perhaps contain more subjective, interpretative-type of language, so we would expect the decision makers to consult with those policy documents and have those policy documents inform their decisions.

Council Member Burt: If I, as a policymaker, am going to look at consistency in the Comp Plan, is it fair and appropriate for me to include the document that the Comp Plan references, the Downtown Urban Design Guidelines, as part of my determination of consistency?

Ms. Silver: Yes, to the extent that those Urban Design Guidelines would help you make the decision on consistency.

Council Member Burt: Good. This project didn't have Historic Resources Board (HRB) review. Yet, the Applicant had reports from an historic expert. Was that expert selected by our Staff or the Applicant or who determines who that expert is?

Mr. Lait: For the historic analysis, that was prepared by the Applicant. We had that peer reviewed as part of our environmental analysis.

Council Member Burt: It hit the threshold of having this historic analysis. I'll say also that in these Urban Design Guidelines, it says, referring to the Kipling district, "Both districts contain significant historic architecture and development patterns. The Palo Alto Historic Resources Board is an important resource in consulting for future development of these areas." It doesn't state explicitly that any project here must go before the HRB. Here we have this guidance, and we have a trigger of a historic compatibility report, but it never went to the HRB. Why is that?

Ms. Gitelman: Thank you, Council Member Burt. I should mention that we did find reference to the Kipling sub-district in our Staff Report that went to the ARB. The page I have right here is a different packet reference. There was a paragraph presented to the ARB talking about this specific issue of the Kipling district. With regard to the historic resources report, the primary issue evaluated was the significance of the buildings on the site itself. To the extent it talked about compatibility, it talked about whether there was a district or a potential historic district in the area. If this is an area where the

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City Council would like some additional input from the HRB, you could certainly ask for that. At the time, we did not feel that it was warranted, based on the scope of the project and what we understood the questions to be about it.

Council Member Burt: The Downtown Urban Design Guidelines didn't say it's an historic district. It said it has significant historic architecture and development patterns. That context alone caused it to reference that the Historic Resources Board is an important resource in consulting for future development. The implication clearly being, to me, that they would be consulted on a project falling within that district. That seems to be the intent of that paragraph. Can you explain what, in Staff's current thinking and practice, triggers when a project goes to the HRB? Is it just if that project, the building itself has historic merit or potential historic merit?

Ms. Gitelman: Thank you, Council Member Burt. If the building itself or another building that is recognized as a historic resource would have a potential impact, we would have referred this to the HRB. In this case, we didn't see that as a possibility, and we didn't think the referral was necessary. Again, this is an area where, if the Council would like to refer to the HRB, we could certainly backtrack and do that. At the time, we didn't feel that it was merited.

Council Member Burt: I read earlier, in trying to keep everything in my head I've lost sight of it. I believe there is a reference, I think it was in the Findings. I went back and tried to find it and couldn't. The walls that are affected are not merely the street-facing walls. Do you know where that reference lies? That the alley wall and the other, I'll call it west, it's the southwest-facing wall toward the train station, that those are also walls that matter, maybe not in the same way that a street-facing wall does. I'll let you work on that. If it comes to somebody's mind or if I can go back and find it a third time, I'll let you know. I don't think I imagined reading it. I think it's in there. There was a statement by Board Member Popp that the ARB is discouraged, this is a question I guess for legal counsel, by legal counsel from them having an Applicant reduce their use of TDRs to meet mass and scale criteria, if I understood that right. Can you tell me what is the position of our legal department on the discretion that the ARB and the other review parties should have around these TDRs? It goes to the crux of this question. Downtown, we have a 1.0 FAR. I think in the Comp Plan there's a reference that commercial buildings should be 0.35 to 2.0 FAR. Here we have a project at 2.86 FAR. The question is if somebody legally purchases TDRs, do they then have an implicit right to develop a building that large as long as it stays within the height and other envelope factors, that they can build a building that utilizes those TDRs.

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Ms. Silver: Thank you, Council Member Burt. There are two relevant sections in the TDR Ordinance that apply here. There is a section in the TDR Ordinance that says that while an Applicant can certainly purchase TDRs, the City does not guarantee that there are adequate receiver sites in which to transfer those TDRs. The TDR Program was built on the assumption that there's not going to be an absolute guaranty that these TDRs can be used. Also there is a section in the Ordinance that states that TDRs should be allowed to be transferred to a receiver site and, when the ARB or other decision maker is reviewing the discretionary findings, that the size of the building and the FAR should not be reduced when TDRs are being used except in the condition where the FAR needs to be adjusted in order to make findings. Your TDR Ordinance does allow you to reduce FAR in order to make particular consistency findings.

Council Member Burt: You've just clarified that we definitely are allowed to reduce the use of TDRs in order to come up with consistency findings. Is the ARB discouraged from doing what you just described? Has the legal Staff discouraged them from doing what you just described we're allowed to do as a Council?

Ms. Silver: I didn't hear Mr. Popp say that the legal Staff had discouraged that.

Council Member Burt: Was it Planning Staff then?

Ms. Silver: I don't know. I can't speak to that. They're probably implementing policy. Of course, TDR policy here is that there's been a long established policy that you want to preserve historic buildings, and this TDR Program has served very well for doing that. There's a desire to keep the TDR Program intact. That's probably what the ARB was doing with that.

Council Member Burt: Keeping the program intact and having not limits on that use are not one and the same in my mind. Can I ask Board Member Popp to clarify what he had said and where this guidance came from and what the guidance was?

Mr. Popp: First, let me be clear in saying that the evaluation of this was my own. I did not get guidance from Planning Staff or from the City Attorney's Office. I read what I thought was the relevant section which was Municipal Code Section 18.18.080, Transfer of Development Rights, and found this language relevant to the discussion: in reviewing a project proposed for a receiver site pursuant to this section, the Architectural Review Board shall review the project in accordance with Section 16.48.120 of this Code; however, the project may not be required to be modified for the sole purpose of reducing square footage unless necessary in order to satisfy the

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criteria for approval under Chapter 16.48 or any specific requirement of the Municipal Code.

Council Member Burt: That's the same Code that the City Attorney just read from. The crux is interpretation of what it means that unless it's necessary in order to meet the findings.

Mr. Popp: If I may?

Council Member Burt: Yeah.

Mr. Popp: My interpretation was that if we couldn't meet the findings, we could ask the Applicant to go back and reduce the amount of square footage that they were proposing. We got to a point where we were able to make the findings, so we did not go there.

Council Member Burt: Thanks. Final questions, I believe they're my final questions are for Mr. Hayes. You made a point of emphasizing that this project is not required to mimic architectural designs surrounding it. I agree fully with that, but I wasn't sure. You sounded like you were responding to claims that it was required to mimic it.

Mr. Hayes: No, no, no. It was really coming from some of the discussions during the ARB process from the appellant, indicating that we have a Victorian and a Queen Anne neighborhood of Category 3 and 4 historic buildings. I see no reflection of that in this building. I just was responding that that was not a requirement.

Council Member Burt: I couldn't find in the Appellant's language anything about mimicking. It comes down to what we mean by respecting those and what compatibility is. It's a misrepresentation to say anybody was claiming it should be a mimicking. I couldn't find anything in the record.

Mr. Hayes: In the ARB notes.

Council Member Burt: In the Appellant's appeal...

Mr. Hayes: It's probably not in the Appellant's...

Council Member Burt:... or the ARB notes. I couldn't find it anywhere about saying it ought to mimic. You also said that the President Hotel is across the street.

Mr. Hayes: It's in the block across the street.

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Council Member Burt: That's different from across the street. It's a block down.

Mr. Hayes: I was very rushed tonight as you could see. I meant to say across the street.

Council Member Burt: It's an important distinction. When we look at compatibility of surrounding buildings, we are going to have a question of is that compatibility about a broader street area of one or two blocks and the opposite of the street as much as ...

Mr. Hayes: I think it is.

Council Member Burt: Yeah. Adjacent buildings or is it trying to emphasize more of a tighter-knit area where we're talking about compatibility? That's an important question. We could make arguments that it's not too far away from 525 University Avenue, and I don't think anybody's going to argue that that's relevant to compatibility. I just wanted to clarify that. Thanks.

Mr. Hayes: Can I clarify one thing, sir ...

Council Member Burt: Sure.

Mr. Hayes: ... Council Member Burt, on the FAR? The FAR on the commercial side is 1.85 or 1.86 depending on how you round. To get to the 2.86, it's the 1:1 FAR for the residential that is putting us there.

Vice Mayor Schmid: I'd like to step back for a moment and ask a general question on the parking issue. I have found as a Council Member I have a hard time getting past the parking issue to look at other questions. Let me put this in terms of a question, not to the Applicant but to Staff. The project is planned for 57 parking places offsite. It seems to me that there's a conflict in Code here. The Code says that you can use in-lieu fees and exemptions for TDRs for offsite parking. On the other hand, the Code that defines the in-lieu fee, the Downtown Parking District says explicitly that payment of in-lieu fees ensures that new development in the Downtown area does not exacerbate the existing parking deficit. They define that as 1,490 cars. You have these two elements of the Code. One that says it's okay to park offsite, but the other base Code says yes, as long as it doesn't exceed that number of 1,490. That number becomes very important. How many cars of workers are there parked somewhere in the Downtown area? Four years ago, the Council asked for an update of the Development Cap. In May 2014 we got the first volume of that, and it looked at parking. It summed up by saying the implication of the Downtown square footage implies there's 8,000 cars that would be in the area. They make some assumptions about

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surveys and said there's probably only 4,900 cars of workers in the Downtown. They also say that the number of off-street sites in the Downtown area comes to less than 1,900, and that all the street parking in the Downtown is restricted two-hour parking. That implies that there's 3,000 or more cars in the neighborhoods every day. The latest surveys of counting cars in the neighborhood says there seems to be some substantial increase in parking between 2013, the date that the data in the Development Cap Study was taken, and the last month in the Downtown area. It was probably substantially over that. One of the people tonight said there's some 9,000 entitlements granted through various programs of in-lieu fees and elsewhere. Somehow there is a number between 3,000 and 9,000 of worker cars that are out there. If our basic in-lieu, Downtown Development Parking District Code says you shall not exceed 1,490, that's the goal of the program. We are exceeding that. A number of questions flow from that. It's important to answer these base questions. What are the numbers and how should we deal with the Development Cap Study? Are those the numbers that the City is standing behind? That report came out a year and a half ago, and we have never had a Council meeting to discuss those numbers and what they mean. Are they compatible with our Code setting up the Parking District? Number two, who keeps count of entitlements and who has those entitlements and where do they go? Number three, what happens when we're talking about not just resolving the issue of the entitlements, but adding more to it? This 57 cars offsite are somehow subsumed into not the existing deficit, but an increase in the deficit. Another question, does the Parking District have some financial responsibility for placing those cars or paying the cost of placing them elsewhere, since they are set up on the base? A question came up tonight about TDRs. Are they only for retrofit or not? Maybe there's some base questions out there on TDRs. Another question came up on TDMs, might be a solution. I do note that the Citywide transportation study in 1988 said the key policy we will have to keep the number of commuter cars down is a dynamic TDM Program. That was 25 years ago we had that. A series of questions, and I find myself unable to make a decision on this compatible or not issue until I can get some base information on the parking issue, not only the existing parking issue but adding to the parking issue.

Ms. Stump: Vice Mayor Schmid, City Attorney Molly Stump. Before the Planning Director weighs in with some comments on the various issues that you raised. Some very important and deep questions on parking and the way that the Assessment District was set up. Those items are appropriate tonight to the extent that they bear on the application that's before the Council tonight. Because of the way the item was agendized, we do need to be focusing on that issue this evening. Other, broader questions about parking and the history of the parking and the Cap Study, etc., the Planning

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Director is going to need to wait. Perhaps it's time for some other item to be agendaized specifically on those. I will leave that to the Mayor and the City Manager to contemplate. Tonight we have to focus on this particular project that is noticed.

Vice Mayor Schmid: The generation of the question comes from the fact that there are 57 parking places not onsite.

Ms. Gitelman: Thank you, Vice Mayor Schmid. I have a couple of things to add. It's important to step back and think about Downtown Palo Alto. It's a special place, and people who have planned and thought about Downtown for generations have had this great idea, which is we're not going to require every little building and every site to have its own parking supply. We're going to be collective about this. We're going to fund and construct parking garages and parking lots that serve the communal good. We're going to finance those and allow those to serve the individual buildings. One of the reasons that that's such a great idea in dense environments like Downtown Palo Alto is it minimizes pedestrian impacts. Every time you have a driveway that crosses a sidewalk, you have a potential for pedestrian and auto conflicts. It just wouldn't be feasible to have every site in Downtown Palo Alto park itself to the maximum that's required by parking demand or by Code. Those who have come before us established the Parking Assessment District. This project benefits from that Assessment District. Whether that's a good thing or not, I happen to think it is. As I mentioned, that's a wise strategy in a dense environment like Palo Alto's Downtown, but it is what it is. In terms of recognizing potential offsite impacts that might exist if there was overflow parking from this site. We on Staff are comforted by the Council's actions to establish a Residential Permit Parking Program. That program is reasonably foreseeable at this point. You have taken a formal action. You have directed us to proceed. We will be taking steps to limit overflow impacts in the neighborhood. Unless you were very pessimistic and think that's going to be completely ineffective, the Council can also take some comfort in that. There's no reason to expect that a project of this scale, that meets all of the requirements of the City Code and has contributed to the Assessment District over time, would have any impacts on the neighborhood that are outsized or that could not be somehow controlled or mitigated by the program that the Council has already set in motion.

Vice Mayor Schmid: Thank you. One of the implications of what you say, though, is the Parking Assessment District was set up to make a collective decision about parking. The financial responsibility for parking might rest with them. Is that an implication?



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Ms. Gitelman: I'm afraid I don't follow you. There are 37 spaces here that are not required because the site is in the Assessment District and has paid assessments. There has been a financial commitment over time from this site. I don't follow you any further than that.

Vice Mayor Schmid: If the district has underfunded its sites, who bears the responsibility of saying, "We have created a base problem of not filling the needs for the permits we gave out"?

Ms. Gitelman: Again, Vice Mayor Schmid, we're straying far from the agenda here. We have collected in-lieu fees over time and we have parking garage construction in the Council's Infrastructure Plan. We have this RPP Program in place with a number of other supply enhancements and operational changes that we intend to make in Downtown Palo Alto. These issues have been considered at length in other contexts, and it's probably safe to leave it at that.

Mayor Holman: I have just a couple or three questions. One of them has to do with retail and the rhythm of University Avenue especially in retail. As I look at the plans on Plan Sheet A0.4, I'm doing this not with the scale I did it earlier by counting the number of sidewalk squares, I guess you could call it, which seems to be a reasonable way to do that. They seem to be consistent. It seems to me that there's about 30 feet from the last retail entry to the corner of Kipling Street. While there is an entry that looks like it opens onto the retail on the Kipling Street side, as it measures out, again using the sidewalk square as a calculator, that's 70 feet from the corner. These are approximates; I would hope that they're pretty clear. I didn't round any number up when I did the math. The rhythm on University Avenue is 25-foot wide storefronts for the most part. Each one of those buildings having an entry. I look on this 100-foot span. There are three entryways and then there's another 100 feet that wraps the corner before there's another entry. Also we have some principles in the Downtown Design Guidelines, I think, that talk about reinforcing corners, and yet we've got, like I say, 30 feet from the corner. I think on this project or another project, the ARB has tried to introduce corner entries and that sort of thing to strengthen the corners. This seems to be defying that. Help me understand that.

Mr. Lait: Thank you, Mayor Holman. I actually happen to have that page open from the Downtown Design Guidelines with the corners. I'll show it here; I don't necessarily expect you to see it. There are four options. Three of those options include entrances pretty much at the corner. There's a fourth option shown here on the far left. It comes to a corner almost as illustrated here on the drawings as a successful implementation of

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reinforcing the street frontage at a corner on University Avenue and, in this case, the side street Kipling. With respect to the Downtown Guide, at least in part that seems to be a design solution that is identified in that document. With regard to ...

Mayor Holman: Can you state that again please? Something about that I didn't quite follow.

Mr. Lait: As I understand the Downtown Design Guidelines, there are options for how to address corners on the ground floor of buildings. One of the options is a design that's illustrated in the document. This is on page 28 of the plan, if you have a copy of that with you. It shows the façade coming to a point without an entry at that corner. That said, there are three other design options that show an entry at the corner. It's not a prescription for how to design it, but there's guidance on four options presented in the document. With respect to Kipling Street and entrances, I would ask that we bring the Applicant up to speak to their program needs or why they designed it this way with respect to Kipling Street and the entrances, if that's appropriate.

Mr. Hayes: Mayor Holman, hello. Ken Hayes. Actually A2.3 has a better drawing to look at. That actually has the dimensions. It's not unlike the former Apple store on the corner; I think that's actually a 50-foot site. You have about 25 feet to the center of the doors at the former Apple store to the corner. This is about 29 feet to the center of the doors from the corner. It's not unlike what's happening across Kipling Street. What I really want to draw your attention to is that, yes, it's important that we have recessed entries and that they face the street. We're certainly doing that. The rhythm that I was speaking to tonight was not only that part of it, but the fact that the actual structure of the buildings themselves and the spacing of the windows creates that texture or rhythm that is University Avenue. If you look at A2.3, you can see the structure does reflect that. The first piece is 29 feet, and then 25, 25 and 17 1/2. It does reflect the pattern of development that you find as you walk. There's not an entrance at every 25-foot section, just like there's not one at the building across the street. When it turns and runs down Kipling Street, we've maintained that rhythm and felt like if there was going to be a viable retailer on Kipling, we wanted to make sure that it had a space that fronted Kipling Street and the corner of the property did not have conflicting doors. It's always a balance between the community's needs, the City's requirements and my client's requirements. From the very beginning of this project, I told the ARB this as well, the client has dreamed of a corner window. I'm not saying the whole project was driven from that, but that was a requirement. It is after all the client's building, so that was a strong requirement from them. If you look

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across the street at the former Apple building, it's exactly the same thing. It's a corner window.

Mayor Holman: Another question having to do with this is that same rhythm question. As I look at the buildings along University Avenue, it seems like the buildings have a variety of recesses. Some storefronts are recessed; some aren't, but they differentiate. It seems like they pop in and out. These are all the same recess and the same door pattern. Was there any consideration of, the ARB may have addressed this, why this is such a repeat pattern as opposed to differentiated? I would do two questions at once. The entryways and also the roofline. If you look at the pattern along University Avenue, especially on this block, the rooflines deviate quite some.

Mr. Hayes: To your first question, this was something that was discussed at the ARB. You can see it in the progression of iterations with the project. Initially it was very similar, not only in plan but also in elevation where we had a very broad building. The ARB's comments, and I agree, was that we really needed to break this up more and provide transitions and accentuate that rhythm that we're defining as Palo Alto. That's where we made the significant change to University Avenue frontage, where we took the first 30 feet. I wish I had my slides up. As you're looking at the building from University on the left-hand side, where it transitions from the one-story building to the two-story building, we completely dropped that. It's going to read like a separate building on the left-hand side. That's about 30 feet. That's going to create and start to set up the rhythm that you then see in the remaining 75 feet of the frontage. I feel it's important for the building to be seen as one as well. It can have these constituent parts, but I want it to read like one composition. We've taken the height of that second story of that first piece, the first 30 feet, and established that as a datum line that runs through the elevation and defines the height of the balconies for the third-floor apartments. That provides that continuity, but then superimposed on that is the block face that continues the 25-foot rhythm that you see on the ground floor in the area that's above. That's what I was trying to display tonight. When you step back, you do see those transitions all over the Downtown in every block that has any buildings that are taller than two stories. There is that transition in the block where I showed La Strada and Joya and the Birge Clarke building as it transitions to the Wells Fargo building. It's a beautiful transition from the four-story Wells Fargo building that we didn't do to the three stories down to the two stories and so forth. That is a pattern that I've seen in the Downtown, and that's what we're repeating here.

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Mayor Holman: Because there has been a fair amount of reference to Kipling Street, Staff prepared a slide that showed the historic resources that are on Kipling Street. It might be informative to put that up.

Ms. Gitelman: We do have a slide that shows the context down Kipling Street. We'll try and get that on the screen.

Mayor Holman: The other questions, let me do a quick search here. I think my other questions have been asked already. If Staff can put that slide up, that would be helpful. I guess it does beg the question that in the, Preservation Architecture I think was the firm. I don't think Staff answered the question who selected the firm. The Applicant did the analysis and paid for it. Who selected the firm?

Mr. Lait: That was the Applicant's consultant.

Mayor Holman: The report that was done looked to me to focus on, it says, "Additionally, the property and the structure are not located in or near an identified historic district, and the making of any such district does not appear to have even distant potential." Was there analysis of these historic structures that are prolific on Kipling? Was there analysis of that actually being a district? I couldn't tell that there was.

Mr. Lait: Thank you, Mayor. I'm going to ask the City's environmental consultant to respond to that question.

Katherine Waugh, Dudek: Hi, I'm Katherine Waugh, Senior Project Manager with Dudek. As you said the historic architectural report was prepared by another consultant, but peer reviewed by Dudek's architectural historian as well. In terms of evaluating those specific homes or buildings on Kipling Street, that was not specifically done as part of this study, and it's also not required. What was evaluated was the general characteristics of the area, particularly focusing on the subject buildings. There was a general finding that there was a lack of integrity to comprise a historic district.

Mayor Holman: By the subject properties, not the adjacent property. What I'm getting at, does this project have potentially an impact on the historic properties that are near adjacent? Is that a district that also this project could have an impact on? That was my question. Some of my wonderings were about the analysis.

Council Member Wolbach: I apologize if it's been discussed and I wasn't aware of it. This is a question both for Staff and also for colleagues. Has there been in the past a discussion about changing Kipling to be a one-way street? I ask this because of the context of the question about traffic and

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circulation, especially coming out of that alleyway behind. I'm not suggesting that we do that; I'm just asking if there has been a discussion about that in the past or if that's something we might consider. If it's beyond the purview of asking the question just to provide background and context for the environment of where this project is proposed, then we can defer that conversation. I wanted to be aware if that had been discussed.

Mr. Lait: We're not aware of that conversation having taken place.

Mayor Holman: Council Members, comments, potential Motions or do you feel like you need a five minute break? It is 10:00 P.M. which also we should look at Item Number 12. Given it is 10:00 P.M., do we want to take up that item? Now is the time that we would decide if we were or were not going to take up Item 12 which is Policy and Services Committee recommendation regarding changes to City Council and Standing Committee Minutes. We've allotted 30 minutes for that, thinking it won't take very much time. I'll look for Council Members' thoughts.

Council Member Burt: The Policy and Services Committee didn't see any sense of urgency to that item.

James Keene, City Manager: Looks like you're going to go for a while. I would just add there are four meetings of the Council this week, every night. The lack of urgency and not taking it up tonight ...

Mayor Holman: You're saying the lack of urgency will get us out of here earlier.

**MOTION:** Council Member Scharff moved, seconded by Council Member Berman to continue Agenda Item 12- Policy and Services Committee Recommendation Regarding Changes to City Council and Standing Committee Minutes to Wednesday, May 6, 2015.

Council Member Scharff: Would it be possible to move it to Wednesday?

Mr. Keene: This is a continuation to the Special Meeting you have on Wednesday.

Mayor Holman: I don't have that agenda with me, but it's scheduled to go to what time, City Clerk?

Beth Minor, City Clerk: I believe about 9:00 P.M.

Mayor Holman: That seems reasonable.

**MOTION PASSED:** 8-0 Kniss not participating

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Council Member Burt: I'm only volunteering because no one else was. The Staff gave us several alternatives on how we could proceed tonight. I'll just review them for us. They're on page 610 of the packet. First, deny the appeal and approve the project. Uphold the appeal and approve the project with modifications. Continue the appeal and request additional studies and/or redesign. Finally, uphold the appeal and deny the project based on its failure to meet required Findings. I'll start by saying there are some Findings. We have to be able to make all of the Findings, not half of them, not most of them, not all but one. We're legally required to make all Findings. There are a number of Findings that I have real difficulty with, principally around compatibility and mass and setbacks and in part around other context-related issues. The question for me is whether to deny the project outright or send it back to the appropriate bodies. In this case, also I have a concern over the HRB not having been asked to advise on the historic context. My reading of the Downtown Guidelines and other historic documents is that it should not be limited to the building itself, but to the surrounding buildings and the impact on surrounding buildings, a group of buildings, whether it's a formally recognized district or not. Our Downtown Urban Design Guidelines recognize this as an informal group of historic buildings on Kipling. We have those two choices before us. I could either make a Motion or we could have a brief discussion on what colleagues think about the correct course of action. I don't want to get into putting a Motion out there without having some sense of where my colleagues are headed. Mayor, would it be appropriate to get a sense of direction amongst colleagues before trying to do it through a Motion or would you prefer me to put a Motion out there?

Mayor Holman: My concern is trying to get a sense of where Council Members are, we could spend a lot of time trying to do that. That's my concern with that.

Council Member Burt: How about a lightning round that asks out of the four options, what direction their headed? There's no problem legally on that, right? What if we just have a lightning round that we don't comment, we just say, "We've got four different options. Where are you headed?"

Mayor Holman: What is your thinking about the rationale for a Motion to do any one of those? It might influence somebody's comments.

Council Member Burt: I think that three and four are both based upon determining that we cannot make the findings. Then it's just a question of the redress. Do we send it back to Boards and Commissions to fix it according to direction that we have around what we're seeing as being inadequate in the project's ability to meet the findings? Do we reject it

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outright and then they can't come forward within a year with a similar project? For me, it's three or four. I could live with either one of them.

Mayor Holman: I do still think it could be influenced by what the rationale is, the meat you might put on the bone for either three or four. We can do a lightning round.

Council Member Kniss: Let me ask questions of Council Member Burt. It is tempting to, for lack of a better word, fiddle with it. The question would be, if we send it back either regarding historical or regarding planning, what would we anticipate would come from that? Do we anticipate it would be a redesign? After having gone to ...

Council Member Burt: I would anticipate a significantly modified project roughly aligned with our current incompatibility with findings and what it would take to become compatible. As far as on the historic side, I don't know because it hasn't gone to HRB.

Council Member Kniss: What you're suggesting is a different building or a different design. Am I correct?

Council Member Burt: This is not looking like a lightning round.

Council Member Kniss: In order for us to get anywhere though, we've got to have some substantial indication of where we're heading.

Council Member Burt: I don't know whether I'd call it a different building. I would say that it would have to be redesigned to become compliant with the findings. I've certainly raised a number of my findings concerns. Some others have as well. That gives you the best sense I can give you right now as to what would be the outcome.

Council Member Filseth: Can I take a shot at this? Is the difference between three and four really the timeframe that they can come back with different ideas? Is that the only real difference?

Mayor Holman: I think it's a question for the City Attorney.

Ms. Silver: Your Code specifies that if the project is denied, the Council has the ability to prevent a re-filing within a 12-month period. It's not automatically barred, but you can also state that you don't want the Applicant to refile within 12 months.

Council Member Burt: That's consistent with my understanding. It's largely a difference in timing and to some degree a difference in process. If they're starting with a brand new project, per se, then they'd start at ground zero.

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This would be looping back to ARB to address this and presumably HRB. I wouldn't say the outcome for the Applicant is going to be radically different other than the amount of time.

Council Member Filseth: Lightning round. I'm not terribly persnickety about the amount of time. These folks have put a lot of time and effort into it. It's not important to me to say you can't come back for exe many months. The magnitude of what needs to be done is significant enough that it shouldn't come straight back to council. It needs to go back to the ARB.

Council member Burt: I'm sorry. Could you repeat that last part?

Council Member Filseth: I said the magnitude of what needs to be done here is big enough that it probably needs to go to the ARB and the Historic Resources Board, not come straight back to Council.

Council Member Scharff: There's a couple of things for me I think are important. First of all, this is a great green building. That's really important to me. The retail is significantly better than what it otherwise would be. I like the fact that it activates Kipling and has an opening on Kipling Street. Those two things are really good. It's also a mixed-use project. We as a Council have a policy that we want to support mixed use but, whenever it come before us, we vote it down in the Downtown area. This isn't two stories of office. This is one story of office, one story of retail and one story of housing. I don't have a problem with the compatibility. I think it's impossible to make the compatibility argument with the Lululemon building which is 50 feet tall right across the street. How could it not be compatible? It's right there. I think that's a weak argument; I don't see it.

Council Member Burt: Are you arguing on a Motion that doesn't exist or a lightning round as to what we ..

Council Member Scharff: No, no. I'm giving my lightning round reasons of where I am on this which is what you asked for, Pat.

Council Member Burt: That's not what I'm getting.

Council Member Scharff: It's not what you want, but it's what you're asking for. I do have some concerns. I have concerns with the circulation; there's a problem there. I have some concerns with the shadowing. I would like to see maybe a circulation study and maybe a shadowing study. Maybe, but those are where I'm mostly concerned with this in terms of a project.

Council Member DuBois: Last time when it was here we heard that this project follows the rules. After listening to all the speakers and hearing the



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questions and answers, my conclusion is the project appears to comply with the quantitative parts of our zoning. But, in my opinion, it doesn't comply with the compatibility and context part of the Ordinance in terms of mass and scale. I'm also concerned about safety, neighborhood impacts, reduction of the retail, accounting of the TDRs. I'd like to see perhaps a focused EIR that evaluates the real density and the real parking impacts as well as the issue about the circulation and use of the alley. Based on what I've heard, I don't think I can make the findings.

Vice Mayor Schmid: I would be in favor of Number three, continue the item with some additional information. The big issue of compatibility has come up. The parking issue needs information for Council Members at least to make decisions. I would be in favor of Number three.

Council Member Berman: I was tempted not to say anything at all. I'm concerned with where this conversation is going and how we're going to give no feedback to the Applicant that's actionable. I agree a lot with what Council Member Scharff said. There are some concerns with circulation. I don't know so much about the shadow issue. I was curious about Council Member Wolbach's question on different unique possibilities with Kipling Street. A conversation about that should be had with this project. That's a huge concern for the folks on Kipling Street. I am concerned that at the end of the night we're going to send this back with no clear direction, because all nine of us on Council disagree about and have different problems with the project. I'm very curious to see how this is going to end up. I'm going to withhold most of my comments until that happens. Yeah, I'll wait until then.

Council Member Kniss: I thought I'd had my turn, but I'll jump right back in. Council Member Scharff's comments are very compelling. This is green; we are pushing green. It is adding additional living spaces. They might not be just what we would do. We might make eight instead of four. Adding that additional living space is important. We keep talking about we need more Downtown apartments. These are apartments, not condos. I too am troubled by size, but Ken Hayes said it clearly. This has one FAR for the business aspect of this, and another a FAR for the living aspect of it. We have talked about trying to be creative in the Downtown. If we were to send it back, are we going to say redesign the building? Circulation is a good idea. I would buy into that one, but a complete building redesign at this point means that we basically have turned down the project.

Council Member Wolbach: I don't have a problem with the size of the building. I've walked that neighborhood; I've walked up and down University I don't know how many times, like probably everybody here. My take is that there is a variety of heights. There's a variety of sizes of

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buildings there. The design of the building is largely compatible with the design of architecture in the neighborhood. I do have questions that are as of yet unanswered about how it fits with the historical context. I'm not an expert on historic resources. If there is a way that we can have input from the Historic Resources Board without unduly delaying or harming the Applicant, I would like to have that opportunity and hear from them in addition to what we've already seen in the record. As has been discussed, I do have some concerns about traffic circulation, particularly going through the alley, was it Lane 30, the alley 67 I'm concerned about circulation on Lane 30, particularly coming from Lane 30 into Kipling Street. If there's a way that we can get more information about that and how that would work and how we can work together to make that work, again in a way that's fair to the Applicant who's already put a lot of work in, I would like to see an opportunity to do that. I don't think at this point I have seen anything that would convince me that we need to send it back for redesign. I haven't seen that. Others obviously have different views. Where I'm at, I'm comfortable with the design. I'm concerned about those impacts, the daylight plane issue. The circulation and historical context are the ones where I would like additional input, again if there's a way that we can do that in a Motion that's fair to all parties involved. That's where I'm at.

Mayor Holman: Where I am on this is three or four. My concern about doing three is, I've made this comment about ARB is a hardworking body, but we do sometimes, my perspective is anyway, we do sometimes get projects that are better than they were at the beginning, but they're still not great projects. My concern about sending it back is we're going to get a modified what we've got as opposed to getting a really good project, which I think this corner deserves. I have issues with compatibility, the Findings, the shadows that other people have mentioned, HRB wasn't included, and historic context and impacts. I have concerns about all of those. I've also numerous times made comments about findings and how I don't think that oftentimes the findings are actually stated as findings. If I can quickly, I'll give you one example. I'll try to do this really quickly. For instance, Number 6 on Page 624, "the design is compatible with approved improvements both on and off the site." This finding can be made in the affirmative in that the project design is compatible with the surrounding commercial, office, mixed-use and residential buildings in the Downtown commercial area. It's a circuitous statement. It's not a finding. Unless we can really make Findings, how can we approve the project? Those are my thoughts. I don't want to have this project massaged and come back without the issues that have been expressed tonight being addressed.

Ms. Gitelman: I just wanted to clarify that no matter what course of action the Council chooses this evening, what we're asking for is direction to Staff

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to prepare written Findings that would come back to you. We do need some specificity. I've heard specificity when it comes to studying circulation patterns and how that affects traffic in the alley. I've heard specificity about referring to the HRB and looking at this analysis of historical context, and then the shadow analysis. In terms of those of you who are concerned about compatibility, if we could get to the specific issues you'd like us to capture in written Findings, that will be important.

Mayor Holman: I think we have some meat to add to that.

Council Member Burt: First, I have a process question, then I think I'm ready to propose a Motion. If we do Option Number three, which is continue the appeal and request additional studies, we need to give guidance to ARB and Staff to go to HRB, but we don't have to do the same record of findings as we would with a project denial. Correct?

Ms. Silver: Yes, that's correct. Of course, when you're giving direction to HRB and ARB, the more information you can provide to them would be very helpful.

Council Member Burt: Absolutely.

**MOTION:** Council Member Burt moved, seconded by Council Member DuBois to continue the appeal and request additional studies and redesign that would address the following:

- A. Greater respect for the context-based design criteria, Municipal Code Section 18.18.110, contextual and compatibility criteria. Have the project have a great context, meaning relationships between the site's development to adjacent street types; and
- B. Under (a)(2), compatibility. The project return in a way that the construction shares general characteristics and establishes design linkages with the overall pattern of buildings, so that the visual unity of the streets is maintained; and
- C. Compatibility: specifically readdressing the siting, scale and massing and to study shadow patterns; and
- D. Under (b)(2), street building façades. The building to return with greater reinforcement of the relationship of the street with the building mass. The upper floors need to have setback to fit in with the context of the neighborhood. Specifically, the look and feel from the street should not be of building with more than one floor greater than

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adjacent buildings with an additional floor requiring articulation or setbacks; and

- E. Massing and setbacks. The design shall have articulation and setbacks that minimize massing; and
- F. Project shall be reviewed by the Historic Resources Board including as it relates to buildings along Kipling Street.

Council Member Burt: I'll just clarify B2. I'm meaning that if it was two floors directly at the street face and a third floor that would be articulated above so that the look and feel is generally of a two-story building. That's my best cut at it. I'm sure others will have some different thoughts.

Council Member DuBois: There's been a little bit of disagreement even among us about context and compatibility. I look at the drawings on A02. To me it's completely striking how massive and out of scale this building is. If you look at the relationship on Kipling Street, it's a one-story building to a four-story building, extremely abrupt. Even along University Avenue, it's 1 1/2-story buildings to a four-story building. The context and the compatibility is the number one issue. Like I said, I'm concerned about the circulation and some of the other issues. For me this is the most striking one. It talks about patterns of rooflines, projections, shadow patterns for massing. Compatibility is achieved when apparent scale and mass is consistent. I don't feel it's consistent in this case. In terms of providing specific feedback, Council Member Berman's comment was well made. This Motion tries to get to that by pulling from the Ordinance and citing the specific elements that need to be addressed.

Council Member Filseth: My instinct is almost identical to Council Member DuBois'. The issue on my mind is compatibility. If you look at the picture, it just sticks out. That's what needs to be addressed. The Motion on the table attempts to address that. What I hope is that when this comes back, you won't have the reaction that you do when you see this one next to all the other ones. That's the issue of siting and scale. This is A02, is the drawing, right? I think we're trying to strike a balance between being over-prescriptive here as opposed to what the criteria we want to look at is. I don't think that tweaking the setbacks on the terrace on the top, for example, is going to do what needs to be done. I hope that the Motion is clear on this stuff. There was a lot of discussion about great weight being given to how much the project evolved over time. We all appreciate the Applicant working to incorporate feedback from the ARB, but that's the wrong criteria. What it used to look like is irrelevant. The question that really matters is, is it compatible. I'm sure if you look at it enough times,

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your eyes start to glaze over, but it seems pretty clear. It's too bad in a way, because I agree with Council Member Scharff there is some cool stuff in this building. I like the retail down Kipling Avenue; some of that stuff is good. I hope we don't lose that. For me, the issue is compatibility.

Council Member Kniss: I'm not going to speak to this right now. I need some clarification from the maker of the Motion or the seconder. Essentially, unless I'm misreading this, we are turning down this design. We are saying redesign the building. Am I mistaken?

Council Member Burt: You keep wanting me to say things different from what I'm saying. It says what it says. You can interpret it as you.

Council Member Kniss: Then it says redesign. Essentially we would be redesigning a building with the criteria that is built into this Motion as it currently exists. What we're doing, if we vote for this, is we're essentially turning down what's before us tonight.

Council Member Burt: I will bite.

Council Member Kniss: I just restated what I think you have said.

Council Member Burt: Yep, and it's not what I said. That's why I'm going to bite. This Motion would intend to have a building that would have less mass and scale, by implication a smaller building. It would have certain design changes that would make it more compatible. I could see that it would still be a building with much of the same style and basic design to it, but with significant changes to that. Whether you want to describe that as redesign the whole building, I wouldn't but you're free to do so.

Council Member Kniss: Since I have the floor for a moment. Do you see it as smaller, since you've spoken about massing and scale?

Council Member Burt: I already said that.

Council Member Kniss: You see it as smaller?

Council Member Burt: Okay, three times. I said it.

Council Member Scharff: I also am struggling with this Motion. I'm thinking to myself that the Applicant has followed all the rules, done everything they're supposed to do. They've gotten the ARB approval. They bought the TDRs or had the TDRs. We, at least some people on Council, think the building is just too big, which is one thing to say. We're not saying how big it is. We're saying, "Come back to us with something different. Come back with a smaller building, smaller mass." What does that mean if you're the

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Applicant? Can I ask the Applicant if they have a sense of where they should go with this? Mayor Holman?

Council Member Berman: That's important.

Mayor Holman: All right. You can ask them. For me, I'm not sure that there's not enough information in the Motion yet to give them direction on what they could do either.

Council Member Scharff: That's my point. I'm happy to ask them, because I don't think there's enough information in the Motion to tell them what to do. I don't know how much they've spent already with Ken Hayes, but I'm assuming they're going to go back and redesign something. They'll come back, and we'll say, "No. It's still too big. Come back again." Without clear direction as to what's acceptable to the Council, I think it's a completely unfair process.

**SUBSTITUTE MOTION:** Council Member Scharff moved, seconded by Council Member Kniss to direct Staff to return to the Council with a circulation analysis and to the Historic Resources Board with the direction that the Historic Resources Board is to look at historical issues.

Council Member Scharff: When I put these two things in, they were the two things that were important to me. I know there were things that were important to Council Member Schmid, for instance, that he might want to get more information on. I'd be happy to add those in this discussion. If there are other Council Members that want to get information back, I'm happy to get information back. I, for instance, was interested in a shadow study, but I only heard Council Member DuBois being interested in that. I didn't hear anyone else interested, so I didn't include it. I'm open to including that. What I'm not interested in doing is going back to the Applicant and saying, "Redesign your building, and we'll see if we like it. If we don't like it a second time, come back to us a third time." Or maybe then we'll deny the project. I don't think that's a fair process. If Council Members have an alternative suggestion and say, "We want nothing more than a two-story building here," then you should say so. Then we can decide if they want them to go away in terms of the residential component of it. I can't get over it. There's the Lululemon project right across the street. It's 50 feet high. It is as big as this project. I just don't get how I can take what was in that Motion and say to myself, "Where would I go with this?" This is a much better approach. If we have particular concerns, we should clearly state them and clearly say what we want.

Council Member Kniss: I'm going to go back to something that we discussed, I think, in February. We discussed Carina Way. I was very

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impressed because Council Member Filseth said we have rules. While we don't want to follow the rules all the time, whether we call them rules or policies or whatever it may be, we have been looking at this building now for, Randy am I correct, three years?

Mr. Popp: Close to it.

Council Member Kniss: In three years, there has been a determination of how to use the TDRs. There's been another determination of where the movement could take place within the building. Unless I'm mistaken here, it looks like it was revamped at least three to four to five times before it was finally accepted. Once again, I would emphasize that we have been really looking at green buildings. We also have been looking at trying to add Downtown living quarters. This does both. The part that really bothers me the most is that this very much went by a number of the policies that we have in place. We've talked about changing those policies in a whole variety of ways. This is the fairest, and fair is really hard to define in politics. This is the fairest way to address the issue with the Applicant, both the circulation analysis which is really important as well as going to the HRB for another look at, as you called, them, the historical issues is going to cover it. As far as I'm concerned, that's a good outcome for this building. It's difficult. We're struggling with it. It is big, and it does have an unusual FAR, but it does two things that we've talked about wanting to do, over and over. I'm with my second.

Council Member Berman: I'm going to support the Motion for a couple of reasons. This is a big project; it's a big building. The Applicant acquired the rights to build a big building by following policies that have existed in Palo Alto for over three decades in terms of the TDR process. The majority of this Council six months ago approved the City being a sender site knowing full well that the receiver site for TDRs has to be Downtown and that a receiver site can build above what the existing FAR is. It would be incredibly hypocritical for this Council now to turn around to somebody else, now that the City has benefited from that, and say, "Sorry you've paid for that, but now you can't have it." It just strikes me as a fundamentally unfair move for the Council to make. In terms of mixed-use projects, it's a good mixed-use project. It's got a good ratio of retail to commercial to residential. It's Downtown; it's on University Avenue. If Middlefield Road and Alma Street were end zones, this project's at the 40-yard line of Downtown. Kipling Street is an anomaly Downtown, and there are smaller buildings on Kipling Street. It's important for the project to receive some additional analysis as suggested in the Motion. That's a responsible thing to do. I'm not comfortable with giving, while it might look descriptive, so remarkably vague directions to the Applicant and expecting them to come back with a project

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that we'd then approve. That's a recipe for us spending another eight hours over the next year and a half discussing this project in Council meetings. There are improvements that can be made. The guidance that's given here is accurate. For University Avenue in the middle of Downtown, this is a good mixed-use project.

Council Member DuBois: I agree we need to honor existing rules. For too long this body has not done that. People keep saying this is following all the rules, but we have City Code 18.18.110 which is our context space design criteria. It's time we start to enforce that. One other 50-foot building doesn't set context. You also have the President Hotel which was pre-50-foot height limit. I feel that we're ignoring Kipling Street. This project's going to have a huge impact on that street, and it's completely out of context. I will not be supporting the Substitute Motion.

Vice Mayor Schmid: The current Motion on the floor states to go to the Historical Resources Board. It is hard to think of them being asked to look at compatibility with Kipling Street without addressing mass in some way. Is this current Motion dealing with the issue of mass?

Council Member Scharff: It gave the HRB direction to say whatever they think is necessary. No, it does not specifically deal with mass. If the HRB said that the mass should be different, but I don't think that's what they do at HRB. ARB does, but I don't think HRB does that. I think HRB purely deals with historical context. Maybe someone else can help me out here. I assume what HRB could say is, "This project denigrates the historical context of Kipling Street, and therefore, you shouldn't do it because it's too big." That would give us a report that said that; at which point, we would look at mass. They would say how it's too big, how big it should be, I assume, that kind of stuff. That's the only way I see it dealing with mass.

Vice Mayor Schmid: I like the project, because it is mixed-use, one of the first on University Avenue to deal with mixed-use where you have retail, office and residential. On the other hand, if you deal with the compatibility in the Kipling district, the mass issue is a big one. There should be some recognition of that in the Motion.

Council Member Scharff: What would you suggest?

Vice Mayor Schmid: I'd include the sentence about readdressing siting, scale and massing.

Council Member Scharff: At the Historical Resource Board?



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Vice Mayor Schmid: That would be a review, meaning that it would be compatible with the Kipling district.

**INCORPORATED INTO THE SUBSTITUTE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to direct the Historic Resources Board to readdress siting, scale and massing within the Kipling District.

Council Member Wolbach: The Substitute Motion addresses the two key concerns that I had. It also now incorporates having another body look at the question of size, scale and mass. As I explained before, I'm not particularly concerned with that, but I think it's appropriate to ask the question about what that means in the context of the historical buildings around it. Council Member DuBois, though we disagree about which of these Motions we like better, I agree that the context is very important. We have differences of opinion about whether this project to our own judgment is appropriate for the neighborhood, for the context for that corner. I definitely agree that the context is important. I appreciate Vice Mayor Schmid's Amendment to have that studied by the HRB, assuming that that's not too far outside the purview of the HRB. The way that we can justify this is that it's just providing a little bit more guidance to the HRB about why we're sending it to them.

Council Member Burt: First let me speak to this last Amendment. Council Member Scharff had said that the main Motion was too ambiguous. Now the sentence has been added that is exceedingly ambiguous as to the authority of the HRB. They can't review and determine or make a determination that a project must be adjusted in its scale and mass and siting. That's not their purview. It's also much more vague than the main Motion. It's really designed to get the five votes and convincing colleagues that somehow their issues will be addressed. The other thing is what process would occur. Council Member Scharff had said he was worried about this thing coming back to Council. This is set up for something that some vague direction to HRB that they don't have purview over, that if they did say they didn't like the project, it would somehow muddle its way back to the Council in some undefined way. For all those reasons, that last Amendment is misguided as far as trying to address the very things that several of us were talking about. Second, I just want to say that there's been talk about following the rules. This hearing is part of our rule process. I agree with Council Member DuBois that we've had inadequate adherence to our site and design and context-based rules. As far as Council Member Berman's statement about the TDRs, we've asked Staff and it's been clear that having a TDR Program and continuing to have a TDR Program doesn't mean that anybody can buy whatever amount of TDRs they want and they have an automatic right to

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build that. Framing it as if saying that someone who uses TDRs must comply with our other requirements is somehow abandoning the TDR Program is a misrepresentation. This building before us is significantly out of scale with its surroundings. That's the intent of the primary Motion which is to get that corrected.

Council Member Filseth: I want to make sure that I understand the process here. Given that the HRB doesn't do anything about compatibility from a siting and scale and transitions perspective, what happens if the HRB makes a ruling of some kind? Does it come back here, does it go back to the ARB, do we issue a building permit? What happens?

Council Member Scharff: I believe it would come back here.

Mayor Holman: We can direct it any way we want to, I suppose. I look to the City Attorney for that. The HRB recommends to the ARB. That's one of the challenges of historic analysis without some specific meat on the bone, which this does not have.

Ms. Gitelman: Just to interject. My understanding is the HRB can make a recommendation to the ARB or directly to the Council.

Mayor Holman: If we direct it.

Council Member Filseth: Is it really better for the Applicant that it goes to the HRB? The HRB does something with it, we don't know what, and then it comes back here again?

Council Member Scharff: I believe it is. I'm happy to address that point too, if you'd like me to.

Council Member Filseth: This seems to me like a whole bunch of rigmarole and runaround without a clear vision of where we're going. The other thing I wanted to comment on is the issue of the four apartment units. It's four apartment units. In the office space, there's going to be 80, 100, 120 jobs. The four apartment units doesn't help the housing problem. The building actually makes it worse. That's a little bit of a bogey. Thanks.

Mayor Holman: I haven't gotten to speak to either Motion yet really. I'm going to speak to the Substitute Motion obviously first, because that's what's before us. I appreciate that the circulation analysis and, we didn't have the shadow study in here but I wish it did. That still doesn't get me there in terms of being able to support the Motion. The problem with both Motions at this point in time is that neither one of them have enough direction to the Applicant, to the HRB and in the first Motion to the ARB to not get back just

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a mush over of what we've got now. Council Member Scharff, you're rightly concerned that are we giving good direction to the Applicant. I would say also are we giving good direction to our Boards if we want to have them review the project. I'm going to be voting against the Substitute Motion. Looking to return to the main Motion, I will have some Amendments to make to that to provide better clarity and put some meat on the bone that will hopefully give direction for where we would get a better project that could be compatible and address some of the issues that have been stated tonight by Council Members and by members of the public as well as the Appellant. I'm going to be voting against the Substitute Motion and urge colleagues to do the same.

Council Member Filseth: I'm going to vote against the Substitute Motion as well. I concur with the Mayor's suggestion that some of the Historic Resources Board thinking find its way into the original Motion.

Vice Mayor Schmid: I will vote against the Substitute Motion as well, because it does not address the compatibility on University Avenue where the main impact will be on people. It is still necessary to be more specific in the main Motion. The Substitute Motion is still further up in the air.

Council Member Wolbach: It does sound like the Substitute Motion will not have the votes to pass. I do want to ask a couple of questions and make a couple of statements. It sounded like the mover and, I think, the seconder were open to further Amendments and recommendations if there was a request for more information or a study about daylight plane impacts and things of that nature. If there are other Amendments that colleagues would like to make, I'd encourage them to make them whether it's in this Motion or the other one. This one is shorter, simpler and cleaner. As I've said, I don't think we're in a position where we should be redesigning from the dais. We're in the position where we should be asking for more information. If you look at the options before us on page 610 of the packet, we were trying to figure out earlier which one of these we're at. The current Motion before us, the Substitute Motion, is somewhere between two and three; I'm not really sure. I'm looking to Staff for clarity about this, this question of what happens next. Council Members Burt and Filseth were right to say we should have greater clarity. Would we want to change this Motion to say something like Council moves to uphold ...

Mayor Holman: Are you offering an Amendment?

Council Member Wolbach: It's a question about whether this kind of Amendment would be appropriate, if it would provide greater clarity to say that we would continue the appeal and request the additional study of HRB

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in the context of the neighborhood and also circulation and also potentially daylight plane. Would that be a Motion that would provide appropriate clarity to the parties, particularly to the Applicant? I'm just trying to get a better sense of the process and make sure that whatever we end up with, whatever Motion we end up with, has enough clarity that we've put ourselves and everybody in a good position to move forward.

Mayor Holman: One comment on that. The HRB doesn't address circulation. That's what I heard you saying.

Council Member Wolbach: Those would be separate things. I believe the Motion was intending that one piece of additional information we would be expecting would be a study about circulation, particularly as it relates to Lane 30 onto Kipling Street. The other part was to look at the historical context including how the design of this building relates to the context of the neighborhood.

Council Member Scharff: I wanted to ask Council Member Schmid. When you said it doesn't address compatibility on University Avenue, how would you address that? Are you looking for them to make a smaller building? What's your concern?

Vice Mayor Schmid: The base issue virtually everyone has brought up is massing, the size and scale of the building.

Council Member Scharff: Not just in a historical context for you?

Vice Mayor Schmid: That's right. Although, the sharpest discrepancy is on the Kipling Street side. There still is the University Avenue set of buildings. It does...

Council Member Scharff: How would you address that issue in an Amendment? I may not accept it, but how would you?

Mayor Holman: Council Members, we need to vote on the Motion that's before us. We're fishing, and I don't think that's a good way to proceed. If there is an Amendment to be offered, it can be offered. We're fishing. I would suggest that we vote on the Motion.

Council Member Scharff: Unless you want to make an Amendment, Greg.

Mayor Holman: I didn't hear him being forthcoming with an Amendment.

**SUBSTITUTE MOTION AS AMENDED FAILED:** 4-5 Berman, Kniss, Scharff, Wolbach yes

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Mayor Holman: I will make some Amendments that I hope will provide some clear direction. City Clerk has an email that has some specific criteria. Under the portion of the email that you have, you have a version of it. We've had email issues tonight, to be sure. Under historic review, there's a list of five questions that the HRB should address. I would like those added under the last sentence here, if you can plug in those five bullets.

## **INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER:**

1. To direct the Applicant to bring the project back to the Historic Resources Board to analyze the following issues:
  - A. The Preservation Architecture report focuses on whether there are criteria for a historic district. There is no need for existence of a district for there to be historic considerations. The HRB should determine whether there are other factors that should be considered; and
  - B. What is the applicable "area of potential effect" under (California Environmental Quality Act) CEQA analysis?; and
  - C. There are a number of historic structures near (e.g. on Kipling Street), one next to the proposed project and several across the street. How will the project impact these structures?; and
  - D. Whether the mass, scale, and compatibility of the proposed project has an impact on the existing historic properties should be analyzed; and
  - E. Whether the changed setting (CEQA) has an impact on the historic properties should be addressed.

Mayor Holman: I ask the maker of the Motion if those are acceptable.

Council Member Burt: They are, because they do not appear to be trying to design the project.

Mayor Holman: That's exactly the intention. They are supposed to be reviewing with this guidance. Does your Motion send this back to the ARB? I can't see enough of it to ...

Council Member Burt: It does.

Mayor Holman: It does, okay. The ARB ...

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Council Member Burt: Let me make sure that's clear in the Motion. That was certainly the intent. That was by implication, but it should be more clear.

Council Member DuBois: Just at the very beginning.

Mayor Holman: I think what Council Member DuBois is saying is ...

Council Member Burt: Yes. After the words "the following redesign that would address and return to ARB." We'll see if that wording needs changing.

Mayor Holman: I think it's a little bit backwards.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to replace in the Motion, "and request additional studies and redesign that would address the following" with "to the Architectural Review Board and the Historic Resources Board to address the following issues:"

Mayor Holman: What's happened here? Something's changed.

Council Member Burt: We lost the reference to the studies.

Mayor Holman: No, I wanted to pick it up later. Just address the ARB and HRB first. Something happened. You have to put Historic Resources Board above that, so you know who's reviewing what. Next, you'd go down to Architectural Review Board.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** that the Applicant redesign the project and that the project be re-submitted to the Architectural Review Board to address the following Council concerns regarding the required findings, the project does not satisfy the following Findings:

- A. The design is not compatible with the immediate environment of the site; and
- B. In areas considered by the Board as having a unified design character or historical character, the design is compatible with such character; and
- C. The design is compatible with approved improvements both on and off the site.

Mayor Holman: Council Member Burt, while I'm trying to decipher this, do you want to go to the end of the Motion or later down in the Motion and add

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back in the studies that you had? I think you had the circulation, shadow, what did you have? You had shadow. What else did you have?

Council Member Burt: I did not have circulation; although, I'd be willing to accept that as an Amendment.

Mayor Holman: Okay. And then shadow.

Council Member Burt: The last sentence can now be deleted, because it's been substituted by the HRB. If you wanted to include the circulation, then we can simply bring back the shadow and add your Amendment.

Mayor Holman: I think we can eliminate "readdressing siting, scale and massing," because we're going to pick that up otherwise in the ARB issues. If you want to add circulation, do you want to address that specifically on the alleyway or the lane?

Council Member Burt: Is that the focus and limitation of the circulation issue?

Mayor Holman: No, but it ought to be called out. Is it Lane 8; what is it called?

Council Member Burt: Then we should say "including in the alley."

Mayor Holman: Okay. Lane 30, I'm hearing. We ought to delete readdressing the siting and scale and massing, because that's going to go someplace else.

Council Member Burt: Okay.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add Part D to the Motion, under Architectural Review Board, after Part C, "rooflines along University Avenue and on Kipling Street."

Mayor Holman: I'm trying to satisfy Council Member Scharff's concerns about not giving clear direction. The next is "additionally as to doorways and entries." If you're looking at the email, it starts "see 1" and then move over to the middle of the line that says "additionally ..."

Council Member Burt: I am starting to be concerned that this is drifting into redesigning.

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Mayor Holman: It is addressing the issues that are stipulated in our criteria and findings and the Downtown Urban Design Guidelines. I didn't make these up.

Council Member Burt: I'd feel more ...

Mayor Holman: Council Member Wolbach has suggested we reference the guidelines, that's how we got here tonight. Just referencing the guidelines and not being specific about what's lacking is how we got here tonight.

Council Member Burt: For instance, "D" gives not just a direction to look at rooflines to assure that they meet the criteria, it starts explaining more about why they don't and what you want. I don't think that's where we ought to go. On this rooflines on "D," I would not accept it as written. I would accept "the ARB to review rooflines as they relate to the guidelines." At a certain point in time, even though we may feel that we want a certain direction to be addressed more by the ARB, we still have to respect the process.

Mayor Holman: What language are you suggesting then?

Council Member Burt: I would say "the consistency of rooflines with the Downtown Urban Design Guidelines."

Mayor Holman: They're also in the Context-Based Design Criteria. It's a different code.

Council Member Burt: That's fine if you want to reference it there. That "D" replaces "E." Any other changes need to be not so prescriptive.

Mayor Holman: Let me just add "the consistency of rooflines, entries, setbacks, mass and scale."

Council Member Burt: It's all those things consistent with the context-based design criteria, correct?

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to replace in the Motion, under Architectural Review Board, Part D, "rooflines along University Avenue and on Kipling Street" with "the consistency of roof lines, entries, setbacks, mass, and scale with context based design criteria."

Mayor Holman: I believe all of that is, yes.

Council Member Berman: I'd like to have it printed out. I'm not comfortable voting on this, and I wouldn't be comfortable with us scrolling down it. I



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have no idea what just happened for the past 15 minutes while you guys were doing this.

Mayor Holman: David, can you put it on two screens? Would that satisfy people, so we're not scrolling? We've done that before; we've put it on two screens.

Council Member Berman: How difficult is it to send it to a printer and print it out? I'm probably going to have a lot of questions about it. It would be a lot easier if I'm not looking up at two screens behind me.

Council Member DuBois: I think we want to delete Number 1. It's leftover text.

Mayor Holman: It seems to me that we would want to keep that except delete what's after the comma, "the project does not satisfy the following findings."

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to remove from the Motion, "the project does not satisfy the following findings."

Council Member Burt: Let's do that at a minimum right now. On Number 1, delete the final phrase, "the project does not satisfy the following findings." We have to have consistent language. They weren't worded in the same way. "That the Applicant redesign the project and the project be submitted to the ARB," I don't think we need to say that.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to remove from the Motion, "that the Applicant redesign the project and the project be submitted to the Architectural Review Board."

Council Member DuBois: I think it's covered.

Council Member Burt: It's going to go back to the ARB and the HRB. To meet that, they have to make whatever changes are necessary to comply with these other guidelines. We don't have to say, "You have to redesign it."

Mayor Holman: That's true, so we could eliminate that.

Council Member Burt: Let's delete "1" under ARB.

Mayor Holman: Not the whole thing, just that the Applicant redesign the project.

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Council Member DuBois: The whole thing.

Council Member Burt: The rest is already covered. It's going to go back to the ARB based on the above. Our preamble above said it's going to go to HRB and ARB.

Mayor Holman: Right. What we need to be clear on is what the ARB is going to be doing. My concern is they have bases on which they're supposed to review projects. Like I say, that's what got us here tonight.

Council Member Burt: I don't understand what this adds. The title says what's going to the ARB.

Mr. Keene: Might I make a logistical request? Do you think I could dismiss the Staff? It's looking like this is an internal Council thing. The City Attorneys will still be here, and I'll be here. It just sounds like a technical thing. Thank you.

Council Member Burt: I don't see what that "1" is adding that's not addressed elsewhere.

Mayor Holman: We have to have the part that says that the ARB needs to address the following Council concerns.

Council Member Burt: We have a title that that's ARB, and then we talk about what they're going to do.

Mayor Holman: Okay. Then "to address the following Council concerns regarding required findings." Then we list those concerns.

Council Member Burt: Up above we said it's going to the ARB and the HRB. Under we're just listing what the ARB is going to do.

Mayor Holman: Exactly. That's right. That gives guidance.

Council Member DuBois: Karen, do you want the phrase "to address the following Council concerns" in the first section?

Mayor Holman: I'm sorry.

Council Member DuBois: Is it the phrase "addressing the following Council concerns" that you want to make sure is present?

Mayor Holman: Yes. Hold on just a second. Yes. What I'm trying to eliminate here is not send it back to ARB and what are they supposed to do,

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what do we want them to do. What do we want them to do differently than what they did before.

Council Member Burt: But "1" doesn't tell them anything that they do differently. It's not substantive. It's just saying that it's going to go to the ARB.

Mayor Holman: It points to the findings that are below, the "A" and "B" and whatever is under that. That's what it's pointing to. Randy, did you have something to say?

Mr. Popp: Thank you for indulging me. I'm looking for direction. I'm looking for direction for my Board. When I read "1A" that says the design is not compatible with the immediate environment of the site, I need to know why not. I need to understand what is not compatible. What is it that you're all seeing that makes this building not compatible? Without that information, we can't work for you as your Board.

Mayor Holman: Council Member Burt, what was eliminated earlier was the roof forms criteria, for instance. It sounds like that's what Chair Popp is looking for. I agree, Council Member Burt, we still need to clean up that first sentence.

Council Member Burt: The rooflines are already covered down on "D," "consistency of rooflines, entries, setbacks, mass and scale with a context-based solution."

Mayor Holman: "D" is a pickup literally from the compatibility. "2" fleshes that out more. One or the other needs to be there in terms of what we don't think currently is satisfying the design criteria. I'm hoping we can find some way to get through this faster.

Council Member Burt: I would drop "2" and leave "D."

Mayor Holman: Chair Popp, does that give you any better direction than you currently have based on, that's what you have in the context-based design criteria right now. Is it focusing you on those issues?

Mr. Popp: I'm not sure I understand what you're asking for in "D" could you illuminate that a little more?

Mayor Holman: Look at "2" and see if "2" does that for you.

Mr. Popp: What I read "2" to be saying is that context means variation. That context means differentiation between different building elements. Is that what you're intending? I believe that's what it says.

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Mayor Holman: Yes, and I think that's what the context-based design criteria is after, because it talks about the rhythm on the street. This is not an easy process.

Mr. Popp: No, it's not. There's a lot of discussion to be had about rhythm on the street versus rhythm up at the roofline and the pedestrian experience versus the overall mass of the building, what you can really witness as a pedestrian versus what you might witness as a bird flying in the air.

Council Member Burt: Randy, we have two choices before us that affect you and your Board. Essentially we can take what's in "2" and be more prescriptive and you'd have an answer to the question of exactly what we want. Or we can give you something like in "D" to say we want greater respect for these guidelines and return it to you for the discretion on how to achieve that. You can't have it both ways.

Mayor Holman: While you're thinking about that, Council Member Berman, you were wanting to see a printout. Are other Council Members wanting to see a printout? We aren't complete with this, but it sounds like from Council majority that it would be helpful.

Mr. Popp: Would you mind if I offered a suggestion for "D?"

Mayor Holman: Absolutely.

Mr. Popp: I might alter that to be "the design of rooflines, entries, setbacks, mass and scale with context-based criteria." Just move the word "design" to replace the word "consistency."

Council Member Burt: I'm okay with that. Under "D," replace the word "consistency" with "design," and then we would eliminate Number 2 under ARB.

Mr. Popp: Remove the word "design" at the end of "D." That's helpful. Thank you.

Mayor Holman: Apologies to everybody here, but It sounds like we need to take a couple minute break here while we get some printouts for people to look at.

Council Member Kniss: Mayor Holman, just a comment on Agenda Item Number 12. I presume we're not going to take that up.

Mayor Holman: We continued it to Wednesday night.

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Mr. Popp: If you don't mind, one more quick question. Maybe I missed it in not being able to see the whole thing. I want to understand the process that you're sending this back for. This will go back to some discussion at HRB. That will inform the discussion at the Architectural Review Board. Then it will go back to the Director. At that point, could it potentially be done or does it necessarily come back to Council?

Mayor Holman: Depends on if it's appealed again or not.

Council Member Burt: The way we had the Motion is that we were continuing the appeal.

Mayor Holman: True, thank you.

Council Member Kniss: It is what it is.

Council Member Burt: In that sense, it would return to Council.

Mr. Popp: It would return back to Council with the information coming from HRB and ARB.

Council Member Burt: The hope would be that the changes would allow us to deny the appeal.

Mr. Popp : I'm just being asked would it come on Consent or would it come back for discussion? That would be up to you?

Council Member Burt: Yeah.

Mayor Holman: Council Members, while we're waiting for printouts, do you want to take a five-minute break?

Council took a break from 11:09 P.M. to 11:13 P.M.

Mayor Holman: We've been at this a long time. Council Members, I suggest that we take just a minute and read through the Motion, so we're all clear on what's before us. Chair Popp has a comment.

Council Member Kniss: Mayor Holman, is there any timeline in this? Is this open-ended?

Mayor Holman: It does not currently have a timeline in it. Give us just a moment so we can read through this first. Chair Popp, did you have some comments you wanted to make?

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Mr. Popp: Yes. Not for my Board, but I'm having trouble understanding what "E" says.

Mayor Holman: Which "E" are you looking at?

Mr. Popp: The one that's on the page there.

Mayor Holman: That's HRB.

Mr. Popp: HRB "E," correct.

Mayor Holman: Because the setting has an impact on a building's historic context.

Council Member Burt: What changes in the setting? I'm not following that either.

Mayor Holman: If a setting changes for an historic resource, that's an impact on its historic integrity.

Mr. Popp: I understand what you're getting at.

Council Member Burt: I now understand what you mean. Would it be more clear under that HRB to say "whether the proposed building would change the setting under CEQA in relation to the historic properties on Kipling?" Is that what we're meaning here?

Mayor Holman: Basically, yes. Kipling Street or University Avenue.

Council Member Burt: In relation to historic properties on Kipling Street or University.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to replace in the Motion under Historic Resources Board, Part E, "whether the changed setting (CEQA) has an impact on the historic properties should be addressed" with "that the proposed building would change the setting under CEQA in relation to the historic properties on Kipling Street or University Avenue."

Mayor Holman: Yes. Did you have anything else?

Mr. Popp: I do, if you don't mind. Second from the last paragraph, "B2" where you're talking about street building facades, the last sentence in that says "specifically the look and feel from a street should be the look and feel compatible with adjacent buildings," those are two-story buildings, "with an additional floor requiring articulation or setbacks." "With an additional floor"

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means you are limiting this building to a three-story building. No option for a fourth floor. I want to make sure that's your intent.

Mayor Holman: Council Member Burt, that's your language.

Council Member Burt: Yes, that's correct.

Mayor Holman: I look to City Attorney. I don't know if we can ...

Council Member Filseth: Are we legally allowed to ...

Mayor Holman: Without knowing findings or being able to make findings, can we actually direct this?

Ms. Silver: It's certainly helpful in terms of guidance to tell the ARB what type of reduced scale you're looking for. Maybe you can say "focus on the impacts of a three-story building as opposed to the proposed four-story building," something like that.

Mayor Holman: That makes sense, yes. Council Member Burt, are you okay with that?

Council Member Burt: It's the same intent. I don't know what that alternative wording would be.

Mayor Holman: She just provided it. Could you repeat that, please, for David to pick up? At the very end, "with the option of a three-story building as compared to a four-story building." Does that satisfy you, Cara?

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, under Architectural Review Board, Part E, "with the option of three story building as compared to a four-story building."

Mr. Popp: Just another wordsmithing clarification.

Mayor Holman: Let us finish this one first, if you could.

Mr. Popp: It says specifically "if the look and feel from the street is of a two-story building with a third-story set back" and from the street a fourth floor was not visible, would you allow a fourth floor? Again, you're talking about the visible context.

Council Member Burt: I understand. I think my answer would be yes. Is that agreeable to the seconder?

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Council Member DuBois: Again, we're getting very prescriptive here. I'm concerned about the impact on Kipling Street.

Council Member Burt: The look and feel from the streets would have to be both streets, Kipling Street and University Avenue.

Council Member DuBois: On Kipling, it's mostly a one-story ...

Council Member Burt: I'm not sure it's achievable. I'm just ...

Council Member Filseth: How far down University Avenue too.

Mayor Holman: Council Member DuBois, I think we have to give the guidance and look for them to solve it. We're talking about both streets, Kipling Street and University Avenue.

Council Member DuBois: "B2" needs to be moved and become a subsection.

Mr. Popp: You can determine what visually compatible means. It might mean that you don't see it at all.

Mayor Holman: It has to be "with an option of three or four stories," because "with the option of one or more" doesn't say anything.

Ms. Silver: May I suggest "with an option of one or more additional floors provided they are compatible"?

Council Member Burt: I like having "visually compatible from the street."

Mayor Holman: With the option of a third or fourth floor ...

Council Member Burt: Yeah, let's put it that way.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to replace in the Motion, under Architectural Review Board, Part E, "with the option of a three-story building as compared to a four-story building with an additional floor" with "with the option of a third or fourth floor provided they are visually compatible from the street level."

Mayor Holman: With the option of a third or fourth floor, provided they are visually compatible. Is that good, maker and seconder?

Council Member Burt: Yeah. Tom's asking whether we should retain language about referring to the articulation or setbacks to achieve it. It



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could be comma after streets "requiring articulation or setbacks." That gives more clarity as to the intent.

Mayor Holman: Chair Popp, are you good with that? Okay. That next sentence about massing and setbacks, we can eliminate that, right?

Council Member Burt: Let's go ahead and move this "B2" up as a ...

Mayor Holman: I'm talking about that last sentence right below that. "Massing and setbacks design shall have articulation," we've already addressed that right above. Correct?

Council Member Burt: Yeah, I would say we achieved that.

Council Member DuBois: Could I propose a series of cleanup edits? This last sentence should be attached to "1a."

Council Member Burt: Attached to it, yeah.

Council Member DuBois: Delete "massing and setbacks." Let's just say, "buildings shall be designed with articulation and setbacks that minimize massing." "B2" becomes "E." Under the study, you should say, "study shadow patterns." Then make a new line.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to remove in the Motion, under Architectural Review Board, Part A, "massing and setbacks" and restate in the Motion under Architectural Review Board, Part A, "the design shall be compatible with the immediate environment of the site– the building will be designed with articulation and set backs that minimize massing."

Council Member Burt: Should we have the additional studies be in "F"? Study shadow patterns and circulation analysis.

Council Member DuBois: We have these four items after the last colon.

Council Member Burt: Those aren't studies, are they? I'm just saying group the two studies as one section.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion under Architectural Review Board, "to study shadow patterns."

Council Member DuBois: Shadow patterns aren't only in respect to Lane 30, that's why I spoke.

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Council Member Burt: It would be two things. A new "f" would be "study shadow patterns and circulation analysis including in Lane 30." I think it's clear that Lane 30 isn't talking to shadow patterns.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion under Architectural Review Board, "study circulation analysis including on Lane 30."

Council Member DuBois: I thought it was clearer to separate those. It looks like Lane 30 applies to both.

Council Member Burt: Then just make the circulation "G."

Mayor Holman: You're both good with that. Are we there?

Council Member Burt: "Additional studies," that next line we can delete, I think. "Greater respect for the context between the site's development and adjacent street types," have we covered that adequately elsewhere? You can delete that part. We just have these two things to go. What's your recommendation, Tom?

Council Member DuBois: Just make them "H" and "I."

Mayor Holman: City Attorney Silver, you had some language that I have lost. In the first part of the Motion "to continue the appeal," you had language about the Applicant returning to the ARB and HRB with a redesigned project.

Ms. Silver: Yes. I would suggest that after that first sentence that reads, "continue the appeal," add language of "and request the Applicant to redesign the project and return to the ARB and HRB." Both the HRB and the ARB are reviewing the updated plans.

Mayor Holman: The direction that we're giving the HRB and the ARB, that's going to give the Applicant guidance on redesigning the project. Correct?

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to replace in the Motion, "and to the Architectural Review Board to address the following issues" with "and request the Applicant design the project and return to the Architectural Review Board and the Historic Resources Board to address the following issues."

Mr. Hayes: (inaudible)

Mayor Holman: Under Architectural Review Board, we need to delete the words "that the Applicant redesign the project," because we carried that

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earlier. "The project be resubmitted to the Architectural Review Board" is where it starts. Is it clean? Are the maker and seconder both happy with the Motion? Can everybody else follow the new Motion?

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to remove from the Motion under Architectural Review Board, "that the Applicant redesign the project."

Council Member Berman: I thought about the new printout, but I'm good. I do have a question, if I may?

Council Member Kniss: Again, there's no timeline, right?

Council Member Burt: The Applicant will (inaudible).

Council Member Berman: Under ARB "C," "1C," "the design is compatible with improvements both on and off the site," I don't know what that means.

Mayor Holman: That's a good point. These were pickups from the Context-Based Design Criteria. We did during the break talk about adding language here. Council Member Burt, as maker of the Motion, it says, "the project be resubmitted to the Architectural Review Board to address the following Council concerns regarding the required Findings." We're focusing the Applicant and the ARB on these findings. That is a finding, the design is compatible with improvements both on and off the site. That's a finding.

Council Member Berman: Assuming a majority approves this, then the Council will have felt like that Finding wasn't met, but I don't know that we're giving any guidance as to why that wasn't met.

Mayor Holman: You are correct.

Council Member Berman: We need to make sure that we do that, or else we're going to be back here nine months from now.

Council Member Burt: The original way that the Motion was worded was all around the Findings. We've morphed it into directions to ARB to give greater clarity. All of these directions are based upon concerns over ability to meet Findings. We now have extensive description on what's problematic in meeting findings. All the other stuff does that.

Council Member Berman: You're saying that all the other stuff gives direction as to why we don't feel like the design is compatible with approved improvements both on and off the site.

Council Member Burt: Yeah.

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Council Member Berman: If you think it does, then you're the maker.

Mayor Holman: I did provide language that is more specific. I don't know if Council wants to ...

Council Member Burt: We're good.

Council Member Berman: You are.

Mayor Holman: We may be good because it's late, but when we get this back again ...

Council Member Scharff: What was your language, Karen?

Mayor Holman: I had "the elements of the proposed project are not responsive to the more fine-grained elements of the adjacent and nearby buildings since University Avenue is predominantly comprised of buildings with 25-foot wide facades with appropriately scaled openings, entries and narrow vertical upper windows where they exist, and they are differentiated from building to building. Whereas, the proposed building has large spans of street-level windows and a repeat pattern over approximately 75 feet of the project." In my opinion, that identifies, from my perspective again, why the building isn't responsive to the rhythm on the street. I don't know if the maker and seconder want to put anything like that ...

Council Member Burt: I don't.

Mayor Holman: Secunder? Neither one of them do.

Council Member Wolbach: First, I'll just put out there I'm not going to be supporting the Motion, because it calls for redesign when I think it's premature for us to be doing that. We need more information before we can make that demand of the Applicant. I will just point out to the Maker and the Secunder something that Council Member Berman picked up on. If you compare the phrasing under the ARB section of "a" to the phrasing of "c," it's extremely confusing and inconsistent. If you are going to proceed with this Motion, I would recommend finding a way to clean those up so that they're consistent.

Council Member Burt: I see what's meant there. One is phrased in terms of what is not compatible. The other assumes that there's an overview statement saying it's not compatible. These are all about what we want them to do. I'd change "a," isn't it? I would say, "the design shall be compatible" instead of "is not." I think the rest are consistent, worded correctly.

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**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** replace in the Motion under Architectural Review Board, Part A, "is not" with "the design shall be compatible."

Mayor Holman: I have one small Amendment. Under Architectural Review Board, that first sentence regarding the required findings include "including," because there may be others that play into this.

Council Member Burt: If we didn't state them, aren't we saying that there are some others that we didn't state and that we want them to consider? I don't think so.

Mayor Holman: They need to be able to make all the findings. We need to be able to make all the findings. We're not precluding anything if we put in the word "include."

Council Member Burt: Okay. "The project is to be resubmitted to the ARB to address the following Council concerns." I don't think it's stating here that outside of these explicit ones, they get a free pass on the other findings. We're just saying that these are the ones that we have issues with under the existing proposal. That's the things we're asking for redesign on.

Mayor Holman: If we didn't at this hour capture everything, I don't want it to be only addressing these, should we have overlooked something.

Council Member Burt: It's up to us to state the things that we think are problematic and not have it open-ended. No, I would not include the word "including."

Mr. Popp: It seems to me that there is a redundancy between the language contained in "E" which is talking about the street building facades and "H" which is talking about the relationship between the site's development to adjacent streets.

Council Member Burt: That's correct. Tom, you agree?

Mr. Popp: And "i" which is talking about linkages with the visual unity of the streets. Somewhere between those three, there's probably one.

Council Member Burt: It looks pretty simple that "H," does that appear to be a repeat?

Council Member DuBois: I was following along through the Ordinance when you originally did these and you were calling out several items.

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Council Member Burt: It's no longer framed point-by-point through the Ordinance. It's just the guidance. The Ordinance in itself has some repetition, and I laid out each one. We can delete "H."

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to remove Section H from the Motion.

Council Member DuBois: Okay, yeah.

Council Member Burt: Let's leave the new "H" in there and be done with it. A little redundancy is not going to kill us.

Mayor Holman: On "G" what do you want them to do regarding the circulation analysis including Lane 30? There's no verb.

Council Member DuBois: Study.

Council Member Burt: Perform or study. Are we good?

Mayor Holman: I hope we are. This is not the way to do it. Applicant has a question.

Ms. Wong: What is the sense of going to the ARB and what is the sense of working with Planning and the City if ultimately this is not what you want? If in the beginning you had said, "We're not going to approve this. You need to do a two-story building," whatever. In fact, one of the things that I offered was let's get rid of the residential, because the appellant wanted it small. I said, "I can get rid of the residences." He wanted me to get rid of the parking, so there's no congestion. I said, "That's fine. Let's get rid of the parking. Let's get rid of the residential. We'll have retail, office. Voila." I went to the City with that; I went to the ARB with that. They said, "No. We like mixed use. You have residences. We need residences. We want you to park underground." I said, "Whatever you want, let me do it." Now we're going back two years prior when I said to them, "I'm willing to take out the residences. I'm willing to take out the parking." It was a waste of time. Your ARB did not fulfill their obligations. Your City did not fulfill their obligations. There's no guidance for a person who wants to do a building in this City on how to proceed. They're afraid that when they come back here they're going to be faced with this. Am I better off spending more money or am I better off waiting for two years until we have another election and maybe we have a different set of people? It's very frustrating. You cannot redesign the building. You don't like a modern building, tell me so. Tell all of us so. There are a lot of us.

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Mayor Holman: I appreciate your comments. From my perspective, whether it's a mixed-use building or not a mixed-use building, it's how it can be designed to, it's not about style, include the mixed-use components, the three components that you have, retail, commercial and housing, how it can be designed to fit on the site or not. We're about ready to vote on the Motion.

Ms. Wong: The other thing is that there are certain constraints. There are structural constraints. It's not a use to make just one little (crosstalk) up there. It doesn't work that way.

Mayor Holman: Yes, ma'am. Understood. Thank you.

**MOTION RESTATED FOR THE PURPOSE OF VOTING:** Council Member Burt moved, seconded by Council Member DuBois to continue the appeal and request the Applicant redesign the project and return to the Architectural Review Board and the Historic Resources Board to address the following issues:

## **Historic Resources Board**

- A. The Preservation Architecture report focuses on whether there are criteria for a historic district. There is no need for existence of a district for there to be historic considerations. The HRB should determine whether there are other factors that should be considered.
- B. What is the applicable "area of potential effect" under CEQA analysis?
- C. There are a number of historic structures near (e.g. on Kipling), one next to the proposed project and several across the street. How will the project impact these structures?
- D. Whether the mass, scale, and compatibility of the proposed project has an impact on the existing historic properties should be analyzed.
- E. Whether the proposed building would change the setting of the historic properties on Kipling Street or University Avenue and have an impact under CEQA.

## **Architectural Review Board**

- A. The design shall be compatible with the immediate environment of the site– the building will be designed with articulation and set backs that minimize massing.
- B. In areas considered by the board as having a unified design character or historical character, the design is compatible with such character

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- C. The design is compatible with approved improvements both on and off the site
- D. The consistency of roof lines, entries, setbacks, mass and scale with context based criteria.
- E. Street building facades – building to return with greater reinforcement of the relationship of the street with building mass. The upper floors need to have set backs to fit in with the context of the neighborhood. Specifically, the look and feel from the street should be of a look and feel compatible with adjacent buildings, with the option of a third or fourth floor provided they are visually compatible from the streets, requiring articulation or set-backs
- F. To study shadow patterns
- G. Study circulation analysis including on Lane 30.
- H. Direction that the project shall share design linkages with the overall pattern of buildings so that the visual unity of the streets are maintained.

**MOTION AS AMENDED PASSED:** 5-4 Berman, Kniss, Scharff, Wolbach no

- 12. ~~Policy and Services Committee Recommendation Regarding Changes to City Council and Standing Committee Minutes.~~

## Inter-Governmental Legislative Affairs

None.

## Council Member Questions, Comments and Announcements

Council Member Filseth: Just very briefly. I attended the Downtown Business Improvement District Board meeting this week. They sent a letter to Council last month discussing recent growth of panhandling and people living in public spaces such as parking garages. They have asked when they may expect a response to their letter.

Council Member Burt: I want to report from the San Francisquito Creek Joint Power Authority (JPA). Approximately a month ago, we received our permit from the Regional Water Quality Control Board, but it had added significant measures to it that had never been brought forward to the agency in the two years leading up to that. In particular, it's about removal of two different gas lines; one that will be coming offline as a result of this project and one that has been buried in the ground for 50 years or so. The Regional Water Quality Control Board wants the JPA to have those removed



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at significant expense. The JPA had a closed session a week ago and is attempting to determine the outcome. This item we had requested would be on the agenda of the Regional Water Quality Control Board meeting coming up in ...

James Keene, City Manager: May 17th I think.

Council Member Burt: 13th. It is not going to be on the agenda, but the Director of the Water Board had stated that it could be discussed in their open comments. That's where we stand. This thing's never over until it's over.

Adjournment: The meeting was adjourned at 12:19 A.M.