



# CITY OF PALO ALTO CITY COUNCIL TRANSCRIPT

Special Meeting  
February 6, 2017

The City Council of the City of Palo Alto met on this date in the Council Chambers at 5:05 P.M.

Present: DuBois, Filseth, Fine, Holman arrived at 5:08 P.M., Kou, Scharff, Tanaka, Wolbach arrived at 5:13 P.M.

Absent: Kniss

## Closed Session

1. CONFERENCE WITH LABOR NEGOTIATORS  
This Item will not be heard this evening and will be rescheduled.
  
- 1A. CONFERENCE WITH CITY ATTORNEY-POTENTIAL LITIGATION  
Significant Exposure to Litigation Under Govt. Code Section 54956.9(d)(2)  
(One Potential Case, as Defendant/Respondent)  
429 University Avenue; Appeal of Director of Planning and Community Environment's Architectural Review Approval of a Development Application.

Mayor Scharff: Now, we have a Closed Session, which is a conference with City Attorney regarding potential litigation, significant exposure to litigation under Government Code Section 54956.9(d)(2). One potential case is defendant/respondent, 429 University Avenue, appeal of Director of Planning and Community Environment's Architectural Review approval of the development application. Do we have any public speakers?

Beth Minor, City Clerk: Yes. You have a card there.

Mayor Scharff: Yes, I do. Herb Borock.

Herb Borock: Thank you, Mayor Scharff. First, I noticed on the Agenda that Vice Mayor Kniss might be participating.

Mayor Scharff: She won't be. I'll just ...

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Mr. Borock: She won't. Just for the future, I've noticed in the past that in this technologically advanced place that we don't have the phone connection here when attendance is taken. I think we should be able to figure out how to do that before you go into Closed Session, so the public would know who is actually here. I don't believe that you should go into Closed Session. You're scheduled for a couple of hours, and then later on in the Agenda you're actually dealing with the actual Item. It seems to me anything that you might want to consider you can consider in Open Session. A majority of the members present can decide to do that. Some people might just think that you're sitting back there deciding who's going to say what and what questions they ask and what the answers are going to be and how people are going to vote. It seems simpler just to do it all in Open Session. The administrative record already includes information from me that I submitted to the Architectural Review Board, but I'm not sure how paper manages to get its way to you from those bodies. In most cases, it doesn't even though it's part of the record below and you're expected to include that in your decision making. I've made copies of that and the letter. I'll give it to the Clerk for all the members and as well for the clerk and for the attorney. Also, on your Agenda today, I noticed that it's different from the Agenda that you had on November 30th. Was it 2015 when it was previously before you? The Agenda included the fact that you would be taking action on the Mitigated Negative Declaration. A decision-making body under the California Environmental Quality Act is supposed to do both the project and the environmental decision, and it can't delegate any of that. I'm concerned that that would be a violation of both the environmental law and the Brown Act by not stating explicitly that you'd be taking action on approving or not on the Mitigated Negative Declaration. Of course, if you deny something, you don't have to worry about all the environmental review stuff. Thank you.

Mayor Scharff: Thank you. Now, we need a Motion to go into Closed Session.

Council Member DuBois: So moved.

Mayor Scharff: Second?

Council Member Holman: Second.

**MOTION:** Council Member DuBois moved, seconded by Council Member Holman to go into Closed Session.

Mayor Scharff: If we could vote on the board. That passes unanimously with Council Member Wolbach and Vice Mayor Kniss absent.

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**MOTION PASSED:** 7-0 Kniss, Wolbach absent

Council went into Closed Session at 5:09 P.M.

Council returned from Closed Session at 6:51 P.M.

Mayor Scharff: There's no reportable Action.

## Study Session

2. THIS ITEM HAS BEEN MOVED TO THE END OF THE AGENDA.

## Agenda Changes, Additions and Deletions

Mayor Scharff: Going back to the next Item on the calendar, which is Agenda Changes, Additions and Deletions. Staff has requested that we continue Item Number 12, which is a public hearing, review and adoption of an Ordinance amending Chapter 18, Zoning, of the Municipal Code to update Code Sections regarding accessory dwelling units. Can I have a Motion to move that to a date certain, which is March 6th, 2017?

Council Member Holman: So moved.

Mayor Scharff: So moved by Council Member Holman.

Council Member Fine: Second.

**MOTION:** Council Member Holman moved, seconded by Council Member Fine, to continue Agenda Item Number 12 - PUBLIC HEARING: Review and Adoption of an Ordinance Amending Chapter 18 (Zoning) ... to March 6, 2017.

Mayor Scharff: Seconded by Council Member Fine. If we could vote on the board. That passes unanimously with Vice Mayor Kniss absent.

**MOTION PASSED:** 8-0 Kniss absent

## City Manager Comments

Mayor Scharff: The next Item up is City Manager Comments.

Ed Shikada, Assistant City Manager: Thank you, Mr. Mayor, members of the Council. I do have a few items I'd like to make note of this evening, first on the topic of water supply availability and update on the drought. Storage in our water supply, in the Hetch Hetchy regional water system, is essentially full due to the recent storms. On a related topic, hydroelectric generation

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throughout the regional water system is also high and has hit a record high for the month of January, surpassing the previous record of January 1997. At this point, the Governor, however, has not declared an end to the drought. The State Water Resources Control Board is proposing to extend the emergency water conservation regulation through the end of May of this year. A decision is expected to be made tomorrow, February 7th. The impact of extending the State's emergency water conservation regulation is negligible to Palo Alto, as the City already has 0 percent State-mandated conservation target and is on track to save more than 20 percent compared to our baseline of 2013 with our current voluntary conservation. Current water saving regulations will continue through that May timeframe. With respect to the electric generation, this precipitation in the current season has generated roughly 206 percent of the Calaveras hydro production to the State. This same central Sierra region, the snow water content is currently measured at 175 percent of average for this point in the year. Would note, however, relative to the annual milestone of April 1st, this equates to roughly 110 percent. While we remain having 2 months of potential precipitation, still early in the season. We are ahead of pace clearly. Palo Alto's share of the base resource power from the Western Area Power Administration, WAPA, is generating mainly in the north Sierra region. The combined hydro power from Calaveras and WAPA generates about 50 percent of Palo Alto's electric portfolio in an average year. As the Council knows, we purchase renewable credits, RECs, on a calendar year basis in order to ensure our carbon neutral electric supply portfolio. Given the upcoming year, however, and increased hydro production as well as our two new solar plants, Staff expects that no RECs will need to be procured in Calendar Year 2017. Next topic, County Measure A funding. Tomorrow, February 7th, the County Board of Supervisors will be discussing an initial Implementation Report for the recently approved Measure A affordable housing bond. The Council will recall that the Santa Clara County voters approved a total of \$950 million of bonds in this past November's election. The County intends to issue the first General Obligation bonds, about one-third of the total, in September of this year and will make funds available to affordable housing projects through a notice of funding availability at that time. The County's strategic goals for the Bond Funds are to increase support of housing for special needs populations, including homeless and chronically homeless persons; increasing the supply of housing that is available to extremely low-income households; and improve coordination and collaboration among agencies involved in affordable housing. In a call with the City Manager last week, County staff indicated their interest in supporting one or more projects in Palo Alto with these funds and urged the City to continue working with potential applicants to advance a proposal. Update regarding our Residential Preferential Parking. Following the Council's approval of the Evergreen Park/Mayfield program, Staff is gearing

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up on the Southgate RPP program in the hopes of getting Council's approval around the time that enforcement begins in Evergreen Park. In order to make this happen, Staff will be sending out a mailed survey to Southgate residents and property owners within the next week or so in order to enlist stakeholders in ensuring a good and positive response. As you might expect, Southgate program would be simpler than Evergreen Park without some of the issues associated with employee parking. We hope to be able to move forward quickly with providing the information from the survey for the Council's consideration. Finally, this week, it's early in the evening to note for the community that this week is the Mayor's annual State of the City address, this Wednesday, February 8th, starting at 7:00 p.m. at HanaHaus on University Avenue. We look forward to that event and reception that will follow. That concludes my report.

Mayor Scharff: Thank you.

## Oral Communications

Mayor Scharff: Now, we move to Oral Communications. The first speaker is Kimberly Wong, to be followed by Rob Levitsky.

Kimberly Wong: Dear Honorable Mayor, Vice Mayor and City Council members, my name is Kimberly Wong. My husband, Nelson Ng, and I have lived at 1260 Emerson Street for 20 years. Many of our neighbors have been living there for 30-40 years. First of all, I would like to bring up three facts. Castilleja is located in a single-family neighborhood. Castilleja is currently operating under a Conditional Use Permit granted by the City in the year 2000, limiting the maximum enrollment at 415 students. Castilleja has been violating that CUP since year 2002, for over 15 years. Currently, their enrollment is at 438 students. Despite this noncompliance, they are asking for more. What's to say that they will comply with this new CUP limit that they're asking for? For decades, the neighbors have been trying to coexist with the school. As Castilleja grew from a small boarding school to a day school, many of the neighbors endured the school's impact, including increases in traffic, safety issues and events all hours of the day. We have endured this largely in silence because we respected the merits of the school. However, the school mistook this goodwill as invitation for us to endure more impact in their relentless quest for expansion in our single-family, R-1 neighborhood. After learning of Castilleja's latest plan to increase their enrollment by 30 percent and a Master Plan to rebuild their campus, we became increasingly concerned for our quality of life. The immediate neighbors have formed a grassroots group, PNQL, Preserve Neighborhood Quality of Life, to save the neighborhood from being institutionalized by the school and to have Castilleja abide by the zoning

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Ordinance for R-1 neighborhoods in the Palo Alto Municipal Code. Over the past few months, the PNQL group collected over 400 signatures from the citizens of Palo Alto for a petition to ask the City to enforce Castilleja's existing, year 2000 Conditional Use Permit. Tonight, I am submitting this petition on behalf of PNQL and concerned citizens of Palo Alto and let the City Council know enough is enough. We are requesting the City Council to enforce the law now. In addition to submitting this petition tonight, we will also be filing a formal Code violation complaint with the City of Palo Alto citing this petition. Thank you for your time. We look forward to your speedy resolution. On behalf of PNQL, Andy Reed, Hank Souza, Jacqueline Taylor, Jim Poppy, me, Mary Sylvester, Nelson Ng, Neva Yarkin, Rob Levitsky. For all of those who have supported us and our petition, would you please stand up? Thank you very much.

Mayor Scharff: Thank you. Rob Levitsky.

Rob Levitsky: Hello members of the Council. My name is Rob Levitsky, a neighbor of Castilleja for 25 years. It hasn't been a problem, but now it is because of what they're proposing. Normally when somebody decides to do a development project on their parcel, they will go Downtown to the Development Center and check out a map like this, which shows you the zoning and the setbacks of your particular parcel. Then, you might also talk to Dave Dockter, who will advise you about the trees on your parcel. Then, you go back to your architect and try to design around the zoning requirements, setbacks, trees, etc. Castilleja has taken a different approach. The only thing I can figure out is that the model that fits them is that they don't have to follow the rules. They will take the setback on Emerson Street, which is 20 feet, and ignore it; take the setback on Bryant Street and ignore it; take the setback, which is 24 feet, on Embarcadero and ignore it; take the rules against putting lots together that's over 10,000 feet and ignore it; take a couple of R-1, beautiful old houses—there's only seven on this block—and knock them down; and then decide that it's okay to put up something like this. This is the exit to their parking garage. This isn't theirs; this is the one at Stanford. Guess what? We don't have a map yet, Mr. Mayor. We don't have a drawing. Eight months, we don't have a drawing. It might not be that; it might be more like this one, which is the one underneath this building. Not exactly something you would expect to see in an R-1 neighborhood. Not something you would expect to do to your neighbors. In terms of the trees, the arborist for them has identified 168 trees that would be impacted. This map shows each of the trees they want to kill. In particular, the blue ones are oak trees, all mature. The yellow ones are redwoods. They've already killed this one, needlessly I might add. There's another 120 right here that they want to change into a parking lot. Pave paradise, put up a parking lot. That's their attitude. They don't have

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to follow the rules for some reason. I don't know what it is. Maybe it's some secret handshake you guys have. We've been talking to the neighborhood. This is Castilleja; that's their parcel. There's two houses here that they want to knock down. My house happens to be right next to them. We have ...

Mayor Scharff: If you could just wrap it up. Thanks.

Mr. Levitsky: I will wrap it up. The green lights here indicate every single neighborhood house who has signed our petition, over 70 households so far, 400 people. This is not just a few weirdos. We're serious about this, and we want our neighborhood left alone. Thank you.

Mayor Scharff: Thank you. Carolyn Schmarzo to be followed by Neva Yarkin.

Carolyn Schmarzo: Good evening, Mayor and City Council. My name is Carolyn Schmarzo. I live at 1550 Emerson Street. Castilleja, founded in 1907, a school of traditions, blue pastel uniforms and many ceremonies, a charming and well-respected institution. However, I don't intend to discuss its merits. I do intend to discuss its proposed parking lot and increased Enrollment Plan. I vehemently oppose this project for the following reasons. Traffic. The six-year long project will bring heavy construction equipment into an area already busy. After the garage is completed, it will invite major traffic jams and gridlock not only on Embarcadero but also throughout all of Old Palo Alto, Emerson, Bryant, Waverley, Cowper, Churchill, Tennyson and California Avenue. It will result in traffic of Biblical proportions. Safety, safety, safety. I oppose this project because of safety issues. All of this frantic traffic will present a risk to the public school students of Palo Alto. Imagine the students of Walter Hays, Jordan, Addison and Paly going to school on their scooters, skateboards, rollerblades, bicycles and cars. Everyone is dodging dump trucks hauling loads of dirt, cement trucks, bulldozers, and other heavy equipment. This only prepares—if you think that's fun, just wait until the extra 500 or 600 cars are clogging our streets. Just think about it. Zoning. The area of Castilleja is zoned R-1 residential. Do zoning laws not matter anymore? Are they quaint and charming? The Castilleja Board has been sniffing the toxic fumes of entitlement. Webster defines entitlement: to give a person or thing a right or claim to something. The Castilleja project demonstrates this. They feel they are entitled to risk the safety of not only Palo Alto's public school students but also its residents. They are entitled to destroy our neighborhoods with gridlock and traffic. They are entitled to violate Zoning Codes. They are entitled to violate the CUP agreement. The property owners of Palo Alto should not be asked to sacrifice the livability of neither their neighborhood nor the City for the

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benefit of Castilleja, an exclusive private school that serves about 100 girls from Palo Alto. If this proposal is approved, it will have a negative impact on all of Palo Alto. City Council, are you listening? I look at an unusually large amount of campaign donations made to this group. I see totals of \$85,000, \$77,000, even election contributions of \$19,000 made after the election. I realize that the real question I need to ask is to whom are you listening. I stand here before you, bearing no ...

Mayor Scharff: If we could just wrap up.

Ms. Schmarzo: ... campaign contributions and ask you to please stop this proposal. I will gladly fund you with R-E-S-P-E-C-T, respect. Thank you very much for your time.

Mayor Scharff: Thank you. I was going to let it go the first time, but I have to say that we're not allowed to clap in the chambers. It's in our policies and procedures. I really would appreciate it if you'd refrain from it. The reason for that is different people have different points of view, and we value free speech. We don't want to make people feel uncomfortable. We've had a long tradition of this going back—I don't know—20, 30 years. It's nothing really about Castilleja or your view point or anything like that. I thought it was really important that we uphold the tradition. Thank you for your understanding.

Neva Yarkin: Good evening, Mayor and City Council. My name is Neva Yarkin. I live at 133 Churchill Avenue. I live within 600 feet of Castilleja. The Yarkin family has owned this property since 1963, 54 years. Building a commercial parking garage, 130 spaces, and removing one lane from Embarcadero by Bryant Street will cause more gridlock on Embarcadero. I am quite shocked that closing one lane on Embarcadero is even being considered for the parking garage. This picture here I have is Embarcadero gridlocked by Emerson at 8:00 in the morning. It was taken on Friday. All this traffic will have to go somewhere, so it will be side streets and other neighborhoods that will also be backed up with cars. I have another picture. One street people won't be able to go down is Churchill because it is already at a standstill at 8:00 in the morning. You can see it's a mess. Bike safety on the Bryant bike path will become more of an issue if this parking garage is built. Students, neighbors, bikers, cars will be faced with years of big construction equipment in the area. Another safety hazard for all concerned. Traffic is a major problem all over town. By letting Castilleja expand, it will only make the situation become unbearable for all the residents of Palo Alto. Keep the CUP at 415 so we will not add to this continuous expanding problem. Thank you very much.



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Mayor Scharff: Diane Rolfe to be followed by Sea Reddy.

Diane Rolfe: Good evening, honored members of the Palo Alto City Council. I am Diane Rolfe. I have lived at 1360 Emerson Street, across from Castilleja, for 44 years, since I was a young bride. As an educator for 34 years in Palo Alto Unified School District, I am a passionate supporter of education and have immense respect for Castilleja's contributions to the education of young women in our community. However, that is not the issue that you are faced with. In the last 15 years, Castilleja's growth has grown dramatically, accelerated with 11 years of violations of the CUP, the Conditional Use Permit, that the City of Palo Alto has installed, that was set up to protect the civil rights of all residing in an R-1 neighborhood. However, instead of accepting the rules of the CUP and their responsibilities, I regret to say Castilleja instead announced a new Master Plan in June 2016 to rebuild almost the entire campus. In the process, they would destroy two single-family homes in a community that desperately needs more housing, and one of them is an historic home. They would impact and remove many trees; 168 will be faced with either being impacted or destroyed. Build a huge underground garage while increasing their enrollment 30 percent to 540, when they're supposed to be at 415. The construction would last ongoing for a number of years. This overreaching and chaotic Business Plan undermines the Conditional Use Permit process of the City of Palo Alto. However, there is hope for the situation in that Castilleja could still honor the CUP, thereby bringing peace to the neighborhood, also lower congestion, air and noise pollution, and improve the educational outcomes of their students. As an educator on the middle school for 34 years, I know how important it is to have the middle school separated from the high school. It's very important that students in the middle school have age-appropriate education in an environment that produces and encourages that. The Palo Alto Unified School District and other private schools in this area all have chosen to do the same thing, to increase appropriate educational environments. All of us want to live in mutual respect and harmony with Castilleja.

Mayor Scharff: Thank you. If you could ...

Ms. Rolfe: This would not happen if they have the expansion policy. Thank you very much for your time.

Mayor Scharff: Thank you. Thank you all. Sea Reddy to be followed by Lewis Paris.

Sea Reddy: Good evening, City Council, the Mayor, Vice Mayor—she's not here—citizens of Palo Alto. I came to talk about three things, but I think it's more important to talk about Castilleja. My first experience is it's a traffic

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gridlock coming on Embarcadero. Castilleja right now is a high school, could think outside the box and talk to Stanford and move it to Stanford for high school. There is no room. There is no need for high school to be in a residential neighborhood. The experiences children gain are different. My children grew up in (inaudible) Unified School District. The high schools were on the main route. Middle schools were nearer thoroughfares, but the elementary schools were in the neighborhoods by the lakes. We could follow the same thing. I think Mr. Arrillaga—we could ask him to build a nice place near Escondido or right in front of the trees here and get Castilleja out of here by 2020. That's what I recommend. I have one other subject to talk about. Last week I talked about terror at home. We need to be concerned not only about the 109 (inaudible) and all that. We need to be concerned many that came here illegally and could be doing the wrong things. To give you a proof. I have a home in Hyderabad, India. This was a Sunday article. About two miles from my home, there was an ISIS terror ring that was found. They were nabbed. We need to do the same. We need to be very vigilant, very careful. We cannot not be vigilant. All the citizens, all the immigrants, all the non-immigrants, we need to make sure that the violence and any appearance of violence needs to be reported discretely. The third thing is there's a lot of discussion about charter schools. Betsy is being fought for (inaudible) Secretary. I do believe in charter schools. India is an excellent example of government-chartered schools. Millions of people are educated. There is nothing wrong with it. We do need charter schools. We need a revolution in education. It's not the lack of unions. It's anybody can educate if they have the right mind. Thank you.

Mayor Scharff: Thank you. Lewis Paris to be followed by Rita Vrhel.

Lewis Paris: Good evening, Mayor and City Council Members. Thank you for the opportunity to address this important matter. I am Lewis Paris, a City of Palo Alto employee, and I'm an SEIU steward leader. I have been authorized by our union leadership to speak tonight on behalf of the SEIU City of Palo Alto Chapter. SEIU City of Palo Alto Chapter continues to protest the contracting out of the City of Palo Alto animal shelter. We strongly believe that the animal shelter should remain the community of Palo Alto animal shelter. We know that the existing SEIU City of Palo Alto employees well perform this work now. SEIU employees are accountable and dedicated to the City and the community. It is evident some of City of Palo Alto contract work has not been going all that well for the City. Do we really want contract employees without fingerprinting and background checks? Right now there is no obligation for that accountable submittal to be performed in most contracts. Do we really want to be known for paying City Hall contract janitors \$12 an hour to support their families on in the year 2017? Wages should reflect a respect for the living condition of the workers

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and quality of life. How is contracting out of SEIU work really working for the City of Palo Alto? We would be more than willing to discuss these contracting matters with you offline. Having the City now, over the past year, cobbling together a contract for a single bidder for the animal shelter doesn't appear like a sound or safe business practice. In contrast, City of Palo Alto workers are fingerprinted and background checked. City of Palo Alto workers are reliable and are now taking back contract work because City of Palo Alto workers are more reliable. We ask you please well consider that the animal shelter and the employees of the animal shelter not be contracted out. Please retain the Palo Alto shelter as our community animal shelter. Thank you.

Mayor Scharff: Thank you. Rita Vrhel to be followed by Bill Ross.

Rita Vrhel: Good evening. I gave you a packet of information. The top part is a letter that I'm going to read. The second part is a verbatim transcription from the minutes last week of the video. During last Monday's City Council meeting when the Council continued its work on Items Number H, the Council following Mayor Scharff's specific instructions voted on whether the Items under "H," beginning with Item 2, would be discussed by the Council. Those wanting discussion were asked by the Mayor to use their yellow button. If five City Council Members pushed their yellow button, the Item would be discussed. With the first Motion as to whether to discuss Item Number 2, when the vote was taken, the Mayor declared "And that passes on an 8-1 vote with Council Member Tanaka wanting more discussion on the Item." I'm confused as to what actually just passed. This portion of the City Council meeting was confusing to me. As the meeting had been in session for more than five hours, I may not have been alone in my confusion. I went home and spent several hours reviewing this portion of the 1/30 City Council video and the Council's actions on Items Number H. After doing so, it became clear to me that votes were taken on whether to have a discussion or not on each of the Items under "H." I have provided you each with a transcript of this portion of the meeting, including times on the 1/30 videotape for your convenience. I believe my transcription is accurate as I listened to the video many times to make sure I had correctly captured what was said. The transcription details how Mayor Scharff directed the Council on how to handle "H" as well as the Motions, and the Council voted on Items 2-5 in "H." With Item 5, it became more confusing to me with the Mayor indicating that a yellow light now meant a City Council Member was abstaining. Again, it was clear votes were taken on whether to discuss each Item under "H;" however, I could find no evidence in the 1/30 video of any pass/fail or green/red light vote for Items under "H." As such, I respectfully request the City Manager or City Attorney review the 1/30 City Council video and advise me in writing if I am correct or not. This would end my and

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perhaps others' confusion as to what happened with "H" on 1/30. My question is am I correct. Were you voting for discussion? When will the City Council take a pass or fail vote on Items Number H? I respectfully request the Council schedule these Items earlier in the evening to encourage public attendance. Thank you.

Mayor Scharff: Thank you. Bill Ross to be followed by Eric Mosqueda. Sorry if I pronounced it incorrectly.

Bill Ross: Good evening, Mayor and Council. I'm speaking with respect to your action of last week with respect to the Land Use Element. I'm mystified as to what happened after reviewing the video of that action. I'm talking about the 5-4 decision concerning the Land Use Element. You are a Charter City, but like a Charter County, a Charter City, a general law City, you have to have a General Plan that complies with the statutory requirements. For the Land Use Element, that's set forth in Government Code Section 65302(a). How do you have something that sets forth land-use densities and intensities, that's correlated with the Transportation Element, when you chose to strip the housing designations and place them in an appendix? I don't think there's any authority for that. Moreover, if you look at the new General Plan guidelines, those formulated in 2015, how is that correlation to take place much less the correlation with greenhouse gases and sustainability? It's not there. It's not in the record. Many Attorney General opinions have talked about the required specificity and the relationship of the Land Use Element and its designation of uses both in text and diagrams. Those Attorney General opinions have been confirmed in many case laws dealing with this issue. No matter how novel or responsive you think your action was, I don't think it complies with State law, and I don't think I'm the only land use attorney that would come to that conclusion. When the language comes forward in case law that says the circulation element must be closely, systematically, and reciprocally related to the Land Use Element of that Plan, how is that supposed to take place when one of the critical elements of the Land Use Element, housing, is set in an appendix for you to cherry pick at a later time? I respectfully suggest you reconsider that action. I also, consistent with the Public Records Act under Government Code Section 6450, request the communications that preceded—communications defined liberally—between Council Members Wolbach, Kniss, Tanaka, and Fine. I can't believe that there wasn't some discussion between those Council Members given the type of dialog that occurred. I would also encourage you to comply with the mandatory duty of maximizing, maximizing public participation in the General Plan process, including under the economic justice concept, that with respect to the Buena Vista project. Thank you.

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Mayor Scharff: Thank you. Eric Mosqueda to be followed by Herb Borock.

Eric Mosqueda: Good evening, City Council Members and Mayor. I am Eric Mosqueda. I am a City of Palo Alto employee. I'm here as an SEIU steward representing the many employees of the City of Palo Alto. I'm here to ask you not to contract out the Palo Alto animal shelter. The employees at the animal shelter perform great work for our community. The Palo Alto animal shelter is a resource for our community, and the Palo Alto animal shelter is a benefit to our community. There is no viable reason to give away a City asset and property to a private contractor. We ask you to strongly reconsider this effort to contract out. From my own experience in observing the contracting out of City work for the contracts, there are great problems in hiring, work quality issues, and failures of vetting contract employees. City of Palo Alto SEIU employees perform quality work. City of Palo Alto SEIU employees have fingerprinting and background checks. City of Palo Alto SEIU employees are dedicated to the community of Palo Alto. City of Palo Alto SEIU employees are a part of this community. City of Palo Alto SEIU employees are quality workers. We are the soul of the community of Palo Alto. We need to honor the SEIU City of Palo Alto employees. Please say no to contracting out the animal shelter. Thank you.

Mayor Scharff: Thank you. Herb Borock to be followed by Becky Sanders.

Herb Borock: During the City Manager's Comments, Assistant City Manager Shikada mentioned the Mayor's State of the City address on the 8th. In your Packet on Agenda Item 2, which has been moved to the end of the Agenda, is the notice of preparation of the Environmental Impact Report for the Stanford University General Use Permit, which is signed on January 3rd before the Mayor was elected, in which it set a scoping meeting for the same date, February 8th. I suppose people—Stanford has a lot of money. It's a multibillion dollar corporation, and they hire government relations people who, I'm sure, will be capable of going to the Mayor's address, but citizens who are interested in the General Use Permit have a conflict now. Do they want to go hear the Mayor or do they want to go to the scoping meeting for the General Use Permit, which is being held at the exact same time? For decades, the Planning Commission meets on the second—regular meeting is on the second and last Wednesdays of the month. This Wednesday is the second Wednesday; there's a Planning and Transportation Commission meeting. I believe it's meeting on scoping ...

Mayor Scharff: Verify for you actually the Planning and Transportation Commission meeting has been postponed.

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Mr. Borock: Thank you. I was going to suggest that. I'm glad they follow my suggestion. As far as Stanford, I don't know what control we have over that. If someone told me something was at HanaHaus, I would go to the Stanford campus where there is a historic house called Hanna House. Forty-six years ago, I lived on Parkinson Avenue. From time to time, the marching band from Harker School used to march down my street. The school wanted to expand. They didn't lie to their neighbors. They didn't try to build something that didn't belong in an R-1 neighborhood. They sold the property, and they moved someplace else where they could expand. Over time, we've had at least a couple of Mayors who have had daughters who have gone to Castilleja School. The reason they were able to become Mayors of Palo Alto is, when they wanted their daughters to go to that school, they moved to Palo Alto. They didn't move to Woodside or Portola Valley to be able to come to that school. We've had a prominent attorney who is responsible for the City vacating a street—I believe that's where the playing fields are now at the school, and maybe that formally vacated street will be an excellent way to have the driveway into a garage rather than using a lane of Embarcadero. As far as applause, I'm sure the Council Members appreciate their applause and never complain when they're the ones being applauded. The only one who seems to be concerned when there is applause for somebody else are members of the Council. Thank you.

Mayor Scharff: Thank you. I misspoke. I will let Ms. Gitelman explain what's going on with the Planning and Transportation Commission.

Hillary Gitelman, Planning and Community Environment Director: Thank you, Mayor Scharff. Members of the Council, Hillary Gitelman, the Planning Director. The Planning Commission is scheduled to meet this Wednesday, on the 8th. They will convene at 6:00 as usual. At 7:00, when the Castilleja scoping meeting was scheduled, we're going to propose that for continuance to the Commission's hearing date of March 8th. It will resolve this conflict with the Mayor's State of the City. Thank you.

Mayor Scharff: Thank you. I think I left out the—it says Brock Turner, to be followed by Becky Sanders.

Brock Turner (Mark Petersen-Perez): I've been let out of prison as a result of good behavior. The Brock Turner case was horrible. It sent shockwaves around the world, didn't it? Horrible, horrible, horrible. Disgusting case. What is equally disgusting is the Palo Alto Police Department has labeled me for the past 10 years as a rapist. Pretty hard to have to deal with being locked up emotionally in prison, isn't it? But I have. It's terrible. What is even equally terrible is that we have a criminal justice system that allows us to confront our accusers. Now, for the past 10 years—Molly, listen up.

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Listen up, Molly. Look at me. Eye-to-eye here, if you can do that. I doubt, Molly, you can do that. I have asked for the criminal case file, and it has been denied time and time again. It's horrible to be locked up in a virtual, psychological prison. I want to be released. I want to go back to Nicaragua and enjoy my retirement life. I want to be able to spin the globe, put my finger on the globe, jump on a jet, and go there with a free conscience. That woman sitting right over there, that Molly Stump, she is a despicable woman, a despicable woman. Let me read this letter into the record. Let me say first, Zach, you have done one remarkable job in my case without bias. That says a lot about you as a person. It demonstrates police best practices all around. There's an incredible Supreme Court decision, Gideon versus Wainwright. This guy had an eighth grade education, and yet he went up to the United States Supreme Court. He petitioned the United States Supreme Court under a habeas corpus. Guess what? That man had an eighth grade education. Incredible court case and I would encourage everyone to read that. I'm not an attorney, but I have argued two cases before the California Supreme Court. The last one involved Molly Stump's Colleague, Gary Baum, that called my employers on three different occasions and had me terminated. Now, the thing is I didn't suffer financially, because I have a ton of cash in the bank.

Mayor Scharff: If we could wrap it up.

Mr. Petersen-Perez: No, I'm not going to wrap it up, because this is probably going to be the last time I'm coming before City Council. There is a police officer. You want to get him and jerk me off the podium? Is that what you want to do? Tell me. Tell that cop back there to pull me off. Have him tase me goddamn it. I want to be set free, sir. I don't want to be classified as a rapist and a child molester and be reported—having been reported to the Department of Justice. Later on, it was determined that that was totally unfounded. I have been released on that level. The child molestation case was found unfounded. That calls into question, Molly Stump, the other rape charge. I'm going to be coming after my criminal case file if I have to petition all the way up to the Supreme Court of the United States. I want my records. You got that? Thank you.

Mayor Scharff: Becky Sanders to be followed by Sachi Hwangbo.

Becky Sanders: Good evening. I'm Becky Sanders, moderator of the Ventura Neighborhood Association. At our monthly meeting yesterday, we were honored to have Adrian Fine come and be our special guest. It was great to have a conversation with Adrian. It was wonderful. Thank you. We're looking forward to having Council Member Tanaka come in March. We haven't got it all ironed out, but thank you, Greg. We had Lydia in

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December, and we're hoping to tap all of Council as time allows. Anyway, with Adrian though, we did touch a little bit on that article in the *Palo Alto Weekly* about the developer donations. Adrian was very reasonable and heard our concerns. After Adrian left, we did continue our discussion. We have decided that we are concerned as a neighborhood association about how developers may exercise undue influence because of their financial ties to campaign coffers. We have decided, as a neighborhood association, to ask Council to create a policy that Council Members who accept donations—we're not talking token, hello, \$50, \$100 thing but significant donations that these Council Members recuse themselves from considering and voting on any project a developer is involved with. This will allay any anxiety on the part of citizens that developers have more influence than anyone else, but particularly more influence than the voters themselves. In Ventura, traditionally the most under-served community, we are very sensitive to our voices being drowned out by big money. We do have some post-traumatic stress disorder due to 441 Page Mill, and we talked to Adrian about that. He was really nice to listen to us. I know tonight there's a big discussion coming up. Ventura is looking at that. It seems like a reasonable request, transparent, finance, donation transparency, accountability, etc., and so forth. Thank you very much for your time. Thank you all for your service. I know this is a very hard job.

Mayor Scharff: Thank you. Sachi Hwangbo to be followed by Beth Rosenthal.

Sachi Hwangbo: Good evening, Mayor Scharff and Council Members. My name is Sachi. I am a Palo Alto resident. I work for the City. For the past five and a half years, I've been an hourly, part-time admin specialist at Palo Alto Animal Services. Three years ago, when you scaled back the shelter staff, among those eliminated was our volunteer coordinator, Betty-Anne Stenmark. It fell upon me to absorb her duties and responsibilities. Now, we're just like a small boat on the ocean. I came here tonight with these volunteers on my shoulders to broadcast and acclaim the actions of my wonderful team. They work hand-in-hand with us, and they're like the big wave sending waves into the ocean into Motion. Like it was said by Martin Luther King, Jr., everybody can be great because anybody can serve. Our volunteers log over 4,000 unpaid hours each year in total serving as animal socializers and assisting potential adopters, helping the public during busy clinic days, and fostering our animals with special needs. Some volunteers have been here longer than I have, over 15, 20, 10 years. We have high schoolers, we have community contributors, the middle schoolers, girl scout, boy scout groups, service teams from various organizations. They are always eager to lend a helping hand whether it be donation drives or promoting our adoptions, helping make animals more comfortable by



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building things and making blankets. For instance, the Barron Park Kids Club collected pet food and supplies, as well did the animal welfare group of St. Francis High School. Every year, the Oshman JCC, Jordan Middle School also sponsor us for their days of service. One of my favorite examples is when an 11-year-old boy named Hunter McCann, a patient of Pediatric Therapy Clinic, held a bake sale. He made it his mission to donate the proceeds to us, even though he was sick himself. One last thing. For as long as I can remember, every Saturday a sweet gentleman named Ronald Lehman would drop off a brown bag full of veggies. He does this every Saturday. He says the vegetables are for our rabbits. Just want to thank them all, and thank you all for the opportunity to speak.

Mayor Scharff: Beth Rosenthal to be followed by David Moss.

Beth Rosenthal: Good evening, Mayor Scharff and Council Members. My name is Beth Rosenthal. I'm a 40-plus year resident of Palo Alto, and I also have a psychology practice in the City. I was appalled at the way last week's Council meeting was conducted. The Comprehensive Plan, which many people have been working on for years, was eviscerated. Council Member Wolbach's comment to use the Plan like the U.S. Constitution suggests that it would contain a set of principles. The implementation of which would be subject to interpretation with each new Council and every project subject to review. The point of developing the Plan was to have guidelines in place to address ongoing issues such as architectural design, development standards, and manageable growth to name just a few. To have this effort scrapped by what appeared to be a voting block on the Council was shocking to me. I was also puzzled that Mayor Scharff agreed with Council Member Wolbach that the aesthetic requirement, when it came to approving new construction in the Downtown area, was unnecessary but felt that housing should not be added to the Town and Country development because they had done such a good job there. Why do aesthetics apply to one project and not to another? Doesn't aesthetic quality in terms of buildings that surround us enhance our quality of life? The democratic process is ponderous, but what comes out of it is thoughtful decision-making that withstands the test of time. This is what I hoped to see reflected in the actions of the City Council. I did not see that last week, and I hope that that is an exception in the way the Council functions rather than the rule. Thank you.

Mayor Scharff: Thank you. David Moss to be followed by Cheryl Lilienstein.

David Moss: I want to piggy back on what Beth Rosenthal just said. I was dismayed to see the inner workings of the City Council splayed all over the newspaper in a polarizing "us against them" manner. The idea that we have

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a monolithic residentialist block who want zero growth and pro-development factions who want only wanton growth is ridiculous. I certainly did not vote for those kinds of people. You were chosen to see all the shades of gray, not the black and white. One of the issues, the 50-foot height limit for example, does not mean wanton growth but rather the reality that each floor of a four-story building, in order to meet current Building Code, must be a little bit more than 10 feet high due to more infrastructure required between floors, especially if you want retail on the ground floor. This does not automatically give way to a wall of high-rises down El Camino. Another item spread across the newsprint was the dropping of programs from the Comprehensive Plan. I've been a Parks and Rec Commissioner working on the Parks Master Plan and have helped to first develop goals and then policies within goals, and then programs within policies. We discovered during that process that when you get to that lowest program level, you realize that they have limited value in a 25-year plan. Each year in that 25 years, programs are going to be revised, added to, and completed. That said, they are essential. They are the first set, the fine examples, the momentum gatherers. They get the creative juices flowing and get the Commissioners and Council Members now and in the future energized and focused. They set the tone. Some are short term, and some are long term but have short-term, foundational work that must be started soon. I do hope that you will put the programs so carefully back into the Comprehensive Plan with a caveat, even though they are not the perfect list or at the very least keep them close at hand and reviewed each quarter to see what to work on next. The Comprehensive Plan does not have to be all the answers today for what we will do for 25 years, but rather set direction, energize the people, get those creative juices flowing. We need that badly to solve the very hard and very important issues that have been raised today. Thank you.

Mayor Scharff: Thank you. Cheryl Lilienstein to be followed by Vita Borgunova.

Cheryl Lilienstein: Good evening, everybody. The action taken last week by the City Council was very disturbing to me. After all the power grabs done by the Trump administration that are now causing such havoc in the public realm, it was shocking to see the Palo Alto City Council acting similarly, not having any discussion and calling for a vote that had most likely been created behind closed doors. You eliminated the hard work of the Citizens Advisory Committee (CAC), and that Committee as you know—you know it because at least one of you worked on it—worked really hard to hammer out the programs for the Comprehensive Plan. Countless hours, countless hours. Those voting for eliminating the work of the CAC have the nerve to advise the public to just calm down. It was insulting. It certainly reminded

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me of the many Trump supporters who, in the face of the Women's March, derided the concerns of millions of people worldwide and advised us all just to calm down, just calm down. The Mayor needs to immediately agendize a public discussion on this very important issue because your public futures are really at stake. Further, Council Member Tanaka should recuse himself from the discussion on 429 University. He accepted campaign donations from the applicant who directly stands to financially benefit from his vote. This is a direct violation of the rules of ethics. He has protested that he returned the money, but the appearance of a bribe is pretty straightforward and should never have been accepted if the Council Member wished to avoid the appearance of corruption. It's not really good enough to return it after you've used it to be elected. I would hope the City Council would hold its members to a higher standard than the Trump administration. Thank you.

Mayor Scharff: Vito Borgunova.

Vita Borgunova: Hello. I would like to welcome new members to the City Council. Sometimes it might look like all what you're dealing with is developers, unions, and special interests. Of course, they are here to maximize their profits, their clients' profit, and advance their agenda. It's their job. They are not your bosses. We need you to represent us, people who live, work, and raise their families in Palo Alto. We elected you to protect our interests. Even when we're not here, we do care about what's going on. It just happens that we have jobs, we have families to take care of. It's our free time when we come here to speak to you and write you letters. Please don't allow them to just write us off as a few people. It's not few people. It's just people who took time off their work, took time from their family and their kids to come here and speak. It means that something extraordinary is happening when we feel compelled to do that. I applaud Council Members who are careful about accepting donations from special interests. It allows them to influence you and (inaudible) that now more than ever citizens are paying attention to what's going on in any government level. We've already gotten an infamous developer in the White House and his advisor with a backup New Zealand citizenship. People woke up to the fact that politics do affect our lives and our work. It's starting with local politics. I don't think that we're all ready to move to New Zealand, so we are watching. We are with you when you have to fight for the good of the community. Thank you.

Mayor Scharff: Thank you. I did want to just announce that if anyone was here for the Stanford GUP, we did move that to the end of the meeting. If you wanted to speak now on the Stanford GUP, I'd actually be happy to listen to you now, so you didn't have to wait for the whole next Item, for

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three or four hours. If no one obviously wants to speak, that's fine. If so, just come up and put your card in.

## Minutes Approval

3. Approval of Action Minutes for the January 23, 2017 Council Meeting.

Mayor Scharff: In the meantime, Minutes Approval. I need a Motion to approve the Minutes.

Council Member DuBois: So moved.

Mayor Scharff: I need a second. Second.

**MOTION:** Council Member DuBois moved, seconded by Council Member Filseth to approve the Action Minutes for the January 23, 2017 Council Meeting.

Mayor Scharff: If we could vote on the Minutes. That passes unanimously with Vice Mayor Kniss absent.

**MOTION PASSED:** 8-0 Kniss absent

## Consent Calendar

Mayor Scharff: The Consent Calendar. We now have the Consent Calendar. We have a number of speakers on that. The first speaker is Josh Davis, to be followed by David Kleiman.

Josh Davis, speaking regarding Agenda Item Number 7: Good evening, Council. I'm here on behalf of the owners of 647 Emerson, FX Design Group, and the Phoenix Planning and Construction Services. They asked me to read a letter, which I believe you all have in your board Packets. FX Design Group and the Phoenix Planning and Construction Services have been retained by the same partnership LLC to provide input on the proposed project on 203 Forest Avenue. The same partnership owns 647-651 Emerson Street in Palo Alto. In my November 16, 2016 letter, I outlined some concerns about the proposed project. The usage of materials seems incompatible with context of neighborhood, and proposing a solid wall with no fenestrations or overhangs does not create a pedestrian-friendly experience. The scale and overall massing appears to be in conflict with Palo Alto's overlay zones. The City Planning Department has provided ample explanations and citations in their Staff Report regarding this project's noncompliance. It appears with each re-submittal the project has failed to compromise or even to respond to the concerns addressed. Until these Items are addressed and resolved, we cannot fully understand the project

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and, therefore, the impact at large. It is, therefore, our opinion that until the Staff comments are properly addressed, this stance of the ARB should be maintained and the project denied. Thank you.

Mayor Scharff: Thank you. Now, we have David Kleiman to be followed by Jeff Levinsky.

David Kleiman, speaking regarding Agenda Item Number 7: Good evening, Mr. Mayor, Council Members. I'm going to show you a set of slides. I'm going to move through them very quickly so that in three minutes you've seen about 45 photos. Please take a look at them. At the end, I will respond to the prior speaker from whose client, by the way, I did receive a letter of endorsement approving my project, as I did as well from the other adjoining neighbor. I have two. What you see here is the original project that I proposed a little over two years ago. Essentially, it's new construction on top of an existing building. I did receive strong input from Staff at that time to proceed not with a sympathetic renovation that was mid-century in character, which was my initial inclination, but instead to go with new construction. We did that, spent quite a bit of money on it. When we got to the ARB, I was given surprisingly just the opposite message: "It's too bad" "It's a great mid-century building," "Maybe you ought to consider taking a different approach." I was already predisposed to that, so that was fairly straightforward. Just by way of introduction, you can see this is on the corner of Emerson and Forest as outlined there in red. These are photos of the streets surrounding the property. You can see, if you see the stop sign, upper right, my building is to the right. You can see to the left there's a five-story structure across the street. This is a view looking towards the train tracks down Forest, again five-story structure. My property is out of the photo to the right. This is a view looking towards City Hall. You can see my building on the left in the foreground. This is my neighbor to the north, up Emerson. It was at one time quite an attractive building. I've seen some historical photos. It's now essentially a wood-clad remaking of a building that has no particular architectural style. Whereas, you can see mine on the right is clearly a mid-century. The building to the right, which is down Forest next door to me, has a strong mid-century identity. We've done all that we can, which you'll see in the last slide, to try to emulate that mid-century character. I'm going to skip through essentially all of these slides and get to the end. This is our proposal. It has rhythmic windows, it has a mid-century character to it. It is responsive to virtually all of the very limited number of comments that we received from Planning. Essentially what I'm asking you to do is—I'm sorry.

Mayor Scharff: Time is up. If you have one sentence.

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Mr. Kleiman: Yeah, one sentence. I'm just asking you obviously to pull this off the calendar and give me an opportunity to have an appropriate hearing. That's all I'd like. Thank you.

Mayor Scharff: Thank you. Jeff Levinsky.

Jeff Levinsky, speaking regarding Agenda Item Number 7: Good evening, Mayor Scharff and Council Members. I'm here also to talk about 203 Forest. I agree with the first speaker and with the ARB recommendation and the Staff recommendation that you not pull this Item off Consent. I'd also like to point out a problem with this project that the Staff Report doesn't discuss really. That is that this project is under-parked. It's under-parked by six spaces. The reason is that it was converted to office use. It was formerly the Cardinal Cleaners; it was converted to office use. At the time, the extra square footage upstairs was not part—it was not put into the Assessment District for that upper space. As of today, this moment, that building is a Code violation. It violates Code 18.52.070 of the Municipal Code. As a result, the City has been losing money by not charging the owner for violating that Code. In addition, the City could earn about \$370,000 by requiring the building to pay into the In-lieu Fund. Who will benefit from that? Frankly, all of us taxpayers and business owners and commuters and everybody who uses Downtown are being asked to pay for garages and such instead of having the owners of buildings that are under-parked and currently operating as under-parked fulfill that need. It is particularly disappointing on this project that Staff did not stand up for proper parking of this project. This project is in the Assessment District just like 261 Hamilton, across the street. Staff there ended up not finding any reason to exempt it from having to be fully parked. The same logic applies to 203 Forest. Why treat it with an exemption that doesn't apply to other buildings? I ask you once again to make sure that Staff enforces these laws. It will help with the parking situation. It will help with City finances. Thank you very much.

Mayor Scharff: Thank you. On the Stanford GUP, we have one speaker, Sea Reddy.

Sea Reddy, speaking on the Stanford GUP: Thank you, Mr. Mayor, for the flexibility to allow me to speak. Stanford came last week and made a presentation, or week before. Wonderful presentation, good and thorough planning. I do have a couple of things that I'd like them to consider. They're going to put about 900 more people on the east side of the campus. It directly affects me. I'm speaking on my own behalf. I live on Stanford Avenue. In front of Stanford Avenue, the campus is on the west side. There is already a lot of traffic. Children are crossing to go to Escondido school.

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Parents are riding with them, bikes, and all that. Adding 800 more people right around Escondido Village needs much more careful planning. Maybe an overpass is needed on El Camino Real or maybe an overpass on where I am, which is Williams. We need to be more creative. We can't just have 1,000 more people and expect that traffic will subside. Usually habits of graduate students are they're late sleepers, so there is a lot of traffic going in and out for groceries. We need to look at all that. I'm sure Stanford is capable of thinking all those things. Please do tell them that they need to think about that. The most important and the most concerning is the TCE effect. They thoroughly rechecked the grounds to see if the contamination that was in the industrial park spilled over to that side of the grounds. If it is, they need to let us know, and they need to take action to mitigate that process. Also, outside the box thinking, I understand that they are open to now residential building in the Stanford business park. It's a great idea. Let's look at it, and let's see how we can get creative to get more houses, more units in the business park. They can work close to the jobs they have. Thank you.

Mayor Scharff: Thank you. Back to the Action Items. No, let's vote on the Consent Calendar. Sorry. I almost forgot that. I'll move the Consent Calendar. Do I have a second?

Council Member Holman: Second.

**MOTION:** Mayor Scharff moved, seconded by Council Member Holman to approve Agenda Item Numbers 4-9 including changes to Agenda Item Number 8 - Fiscal Year 2017 Midyear Budget Review ... as outlined in the Staff Memorandum.

4. Review and Acceptance of the Annual Report on Development Impact Fees for Fiscal Year 2016.
5. Adoption of a Budget Amendment Closing the Fiscal Year 2016 Budget and Capital Projects, and Approval of the Fiscal Year 2016 Comprehensive Annual Financial Report (CAFR).
6. Resolution 9665 Entitled, "Resolution of the Council of the City of Palo Alto to Continue the Palo Alto CLEAN Program: (1) for Local Non-solar Resources, at a Price of 8.4 ¢/kWh to 8.5 ¢/kWh With no Capacity Limit; and (2) for Local Solar Resources, at a 16.5 ¢/kWh Price That Drops to Avoided Cost at 3 MW; and Approval of Associated Program Rules and Agreements."
7. 203 Forest Avenue [14PLN-00472]: Appeal of the Planning and Community Environment Director's Denial of an Architectural Review Application for a 4,996 Square Foot Residential Addition Above an

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Existing 4,626 Square Foot Commercial Building. Environmental Assessment: Not a Project. Pursuant to Section 15270, California Environmental Quality Act (CEQA) Does not Apply to Disapproved Projects. Zoning District: Downtown Commercial (CD-C (GF)(P)) District.

8. Fiscal Year 2017 Mid-year Budget Review, Approval of Budget Amendments in Various Funds and Approval of Amendments to Three Salary Schedules.
9. Approval to Issue a Contract Change Order to Contract Number C16163847 With Wadsworth Golf Construction Company in the Amount of \$198,850 for the Construction of a Prefabricated On-course Restroom at the Palo Alto Municipal Golf Course.

Mayor Scharff: Let's vote. That passes unanimously with Vice Mayor Kniss absent.

**MOTION PASSED:** 8-0 Kniss absent

## Action Items

10. PUBLIC HEARING: Resolution 9666 Entitled, "Resolution of the Council of the City of Palo Alto Ordering Weed Nuisance Abated."

Mayor Scharff: Now, we're going to move to weed abatement. Do we have any speakers on weed abatement? We do. Congratulations. I think this is the first speaker on weed abatement in a long time.

Public Hearing opened at 8:04 P.M.

Mark Lee: I'm speaking only on my behalf.

Mayor Scharff: Mark Lee, take it away.

Mr. Lee: My name's Mark. Good evening, Mayor and the Council. I live on 707 Moreno Avenue in Palo Alto, right up at the corner of Middlefield and Moreno, which cross-street is Walgreen. The reason I brought that up is that the characteristic of my location—I will talk about that more in detail. I received this notice from City and the County regarding putting me on the 3 years watching program because I had, I think, at one time in last year I had the weed. I didn't know that such thing even exist in the first place. I lived in Palo Alto over 20 some years, this particular property over 15 years, and always kept my lawn the proper maintenance and never got into this issue before. Now, I got this notice. Just because, I think, one time I had the grass that I did not take care of. The grass all died, and I had a few



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weed grow up. I here simply request that the Council to consider remove me from that 3 years watching list. By one slip of having the weed caused my being put on this watch list and paying annual fees for the next 3 years is very over the top. I want to show you that the moment we received notice in middle of last year I have kept my grass maintained like this. You see that picture? That's really the cause of the issue of why I left my grass maintained for that time period. The corner location of my property and people doing the full U-turns without turns and move back. Because of the road and curve, a lot of the cars, because of commercial location right across the street, a lot of the cars are doing their full U-turns and damage my sprinklers. I have replaced them so many times, and I can't keep up with it. I finally give up. I don't know where to voice my concerns, my problem with this. That's the reason I don't think I should be penalized for that one slip of this. I sincerely request to be removed from that 3 years watch list with heavy penalty besides on my annual property tax.

Public Hearing closed at 8:07 P.M.

Mayor Scharff: Thank you very much. By having the speaker speak, we actually opened the public hearing. I forgot to mention that. If there are any other speakers who wanted to speak, obviously the public hearing's open. Seeing none, I'm going to actually close the public hearing. Seeing no objections. At that point, does Council have any discussion or motions? Council Member Wolbach.

Council Member Wolbach: I just wanted to ask Assistant City Manager Shikada if there's any avenue open to the speaker we just heard from.

Ed Shikada, Assistant City Manager: Thank you, Council Member Wolbach. Members of the Council, I had a chance to consult briefly with the Fire Chief. He indicated he'd be happy to follow up with this gentleman. Consistent with our process, I believe he'd be able to address the issue directly. The Fire Chief's right there. Go ahead. Just for everyone's information, the Fire Department has the lead on this issue for the City. As a result, will be able to follow up.

Council Member Wolbach: Is there anything more you can provide as far as clarity for anyone else listening about what the process is if they want to be removed from that watch list?

Mr. Shikada: I ask Fire Chief Eric Nickel to respond for Staff.

Eric Nickel, Fire Chief: Good evening. Eric Nickel, Fire Chief. I also have Moe Kumre, who the City contracts with at Santa Clara County as our weed abatement coordinator. We have a very simple process. I'll be happy to

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meet with this gentleman at the end. I do believe he said he was on the watch list. I'll let Moe explain that a little bit further in terms of the process.

Moe Kumre, Santa Clara County Weed Abatement Manager: Hello. My name is Moe Kumre. I am the Weed Abatement Manager for Santa Clara County, including Palo Alto. As we are doing our inspections throughout any jurisdiction, we do note properties that are noncompliant. I may be going to look at one property; I see another. We send them a notice informing them that they're being added to the weed abatement program and that we'll be monitoring them for three years to ensure compliance. It's been our experience—this program has been in effect since the early '70s. It's been our experience that if we only put them on for one year, then after the first year, the next year, they're bad, and we have to go through the process all over again. We have to go through these hearings to be able to take any corrective actions. However, we do occasionally make mistakes or misjudgments, so we'll be happy to work with the property owner to ensure that that didn't occur. If it did, we'll take corrective actions with the Chief's approval.

Council Member Wolbach: Thank you very much for that. Unless the Mayor wants to have any more comments on this, I'd be happy ...

Mayor Scharff: Council Member Kou. You can make comments. Now, you can make ...

Council Member Wolbach: I'll just say that I appreciate that. I appreciate that the Staff has said they'll follow up with this gentleman directly and try to resolve his issue. Based on what we've seen tonight, it looks like there's some room to work with that gentleman. Also, I think it's important that we want to abate weeds and that we be reasonable about enforcements.

Mayor Scharff: Council Member Kou.

Council Member Kou: What kind of fines are involved?

Mr. Kumre: Technically, there are no fines. There are fees associated because this is a cost recovery program. The City doesn't currently pay anything for the service. It's entirely funded by those people who are found to be noncompliant. Last year, as I understood what he said, being added to the program, he's not been assessed any fees as of yet. Should he remain on the program, there's an inspection fee of every parcel that we have to inspect because of the noncompliance issue of \$60. If the properties are compliant, that's all they would pay. That would be it; we'd leave them alone. If it's noncompliant, then they would have a failed inspection fee. That's \$485, and it now results in us having to process a work order and

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schedule a contractor to perform the abatement. If we then still have to actually perform the abatement, it's the cost of the abatement plus \$434 to cover our costs because I'm here tonight as I am in several other jurisdictions. There is a lot of work involved in what we have to do to ensure that we're, one, dealing with the correct property owner, which is part of what I said we would take care of, making sure we weren't in the wrong spot, and to run through the process of being able to help people in case, like I said, there could be a misunderstanding or any of those things that we would like to address and make sure that we're accurate.

Council Member Kou: Thank you.

Mayor Scharff: With that, seeing no further lights, I will move the Staff recommendation which is to adopt the attached Resolution, Attachment A, ordering the abatement of weed nuisances in the City of Palo Alto.

Council Member Holman: Second.

**MOTION:** Mayor Scharff moved, seconded by Council Member Holman to adopt a Resolution ordering the abatement of weed nuisances in the City of Palo Alto.

Mayor Scharff: Second by Council Member Holman. If we could vote on the board. That passes unanimously with Vice Mayor Kniss absent.

**MOTION PASSED:** 8-0 Kniss absent

Mayor Scharff: I forgot to mention that Vice Mayor Kniss wanted me to say that the reason she is absent is she has a family emergency that she needed to take care of. That's why she's not here tonight.

11. PUBLIC HEARING: 429 University Avenue [14PLN-00222]: To Consider a Continued 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. Environmental Assessment: the Mitigated Negative Declaration was Circulated November 17, 2014 to December 12, 2014. Zoning District: CD-C (GF)(P). The Council Previously Considered This Appeal on November 30, 2015 and Remanded it to the Architectural Review Board for Redesign and Further Review Based on Council's Direction.

Mayor Scharff: Now, we're moving onto Item Number 11. We are approximately 30 minutes behind schedule already. Does Staff have—let me go through a couple of things first. I knew we had something. A couple of

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things. This is a public hearing on 429 University Avenue, to consider a continued appeal of the Director's Architectural Review approval of a four-story mixed-use building. The Council previously considered this appeal on November 30th, 2015, and remanded it to the Architectural Review Board for redesign and further review based on the Council's direction. I wanted to review a little bit the procedure so everyone understands what we're doing tonight and everyone has a clear concept. The first thing is we'll do Council disclosures. Then, we're going to have a Staff presentation. Then, the appellant will have 10 minutes to present, and then the applicant will have 10 minutes to present. Then, we'll take public comment. It's going to be three minutes per speaker. Don't feel you have to use all three minutes. After public comments, the appellant and the applicant will each have three minutes for rebuttal. After we close the public comments, we'll do a round of Council questions and comments before we move onto general Council motions. First, we'll start with the Council disclosures of any ex parte communications. I, first of all, see Council Member Tanaka's light on.

Council Member Tanaka: The first question is actually for the City Attorney. As the City Attorney knows, I have received a donation from the applicant. Is there any legal reason that I need to recuse myself from this meeting?

Molly Stump, City Attorney: Based on that fact, there's not a legal requirement for recusal in this matter.

Council Member Tanaka: I do have some disclosures. Even though I'm not legally required to recuse myself, I decided because of the proximity of time of when I received the donation that I would return it. I did contact the applicant to return the donation. I talked to also the appellant, Michael Harbour. I spoke to him for about maybe 40 minutes, maybe almost an hour. What I learned in the meeting was that he opposed the project because he said it has too much square footage. The project was too large. That was his primary reason for opposing this project. I subsequently had an email exchange with Molly Stump copied on it where he was asking to meet with me in person. I told him that I would follow the policy I did on the PTC, which was that I would only meet with him if he would also meet with the applicant at the same time. He basically declined to do that and basically said that—he basically compared it to having a rape victim meet their rapist, which I didn't quite understand, but that was his comment. Those are the only disclosures I have. Thank you.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: I had a short, probably about 10-minute, phone call with the appellant over a week ago. He notified me that Option 3 in the

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Packet was submitted after the last ARB meeting. He asked about recusals, and I pointed him to the public internet where there are descriptions of conflict of interest. Other than that, I did not learn anything that's not in the public record.

Mayor Scharff: Council Member Fine.

Council Member Fine: Thank you. I have met the applicant at social gatherings, I believe, at the Rotary Club, where she indicated she wanted a fair hearing. I responded to the appellant, and we did set up a meeting. After seeing where this was going, I canceled that meeting. I didn't learn anything from either of them outside of the record, just that both of them want a fair hearing. I appreciate them reaching out.

Mayor Scharff: Council Member Holman.

Council Member Holman: I had a couple of brief exchanges with the appellant. There was a message left for me, looking for contact information for, as I recall it, a couple of Council Members for whom contact information he was not able to find. By the time I could get back to him, he found them in other ways. The other communication I had from him, when I did speak with him, was that he contacted me regarding meeting procedures for appellants, was it required that the appellant, the applicant and the City Attorney all be present for a meeting with a Council Member regarding a project as had been requested of him. I indicated I was not aware of any such requirements. That would be something new to me.

Mayor Scharff: Council Member Wolbach.

Council Member Wolbach: I'm not sure if it's required at this point, but I may as well just mention that prior to, I think, our last discussion about this project back in 2015, I spoke with the applicant and also met with the appellant and did a site tour with the appellant. Nothing new since that time.

Mayor Scharff: Council Member Kou.

Council Member Kou: I had a phone call with the appellant. He just wanted to catch me up and find out if I was up-to-date on this project. I told him I was.

Mayor Scharff: Seeing no other lights except my own, I also had a short phone call with the appellant, Michael Harbour. Mr. Harbour informed me—we spoke about 10 minutes—about his opposition to the project. He thought it was incompatible with the Victorians on Kipling Street. That was basically

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the substance of the call. I did receive a voice mail from the applicant, talking about procedural issues regarding whether or not—why she did not want to put this matter off to a later date. With that, I think I'll now open the public hearing and first invite the Staff presentation.

Public Hearing opened at 8:20 P.M.

Jonathan Lait, Planning and Community Environment Assistant Director: Thank you, Mayor, and good evening, City Council. My name is Jonathan Lait. I'm the Assistant Director to the Planning and Community Environment Department. I'm joined by Director Hillary Gitelman and Mr. Petersen from M Group. He's our consulting planner, who has assisted us with this project. The Item that is before you this evening is an appeal of an Architectural Review Board approval for a proposed four-story, mixed-use project located at 429 University. The project includes two levels of subterranean parking, ground-floor retail and office and residential above that. The project was filed about—it was filed in June 2014 formally. The project received three formal hearings before the Architectural Review Board before the Director's decision was rendered in February 2015. An appeal was filed. City Council had pulled the Item off of Consent and scheduled it for a hearing. It had a hearing in May. At the hearing in May, the City Council had a number of questions that were asked, and the Council had remanded the matter to the Historic Resources Board and to the Architectural Review Board. At that meeting, the Council had discussed a number of issues related to the project, project findings, parking, loading zone requirements, the transfer of development rights, historic resources, and some other issues. The next couple of meetings before the HRB and the Architectural Review Board vetted out some of those issues. It returned to the City Council on November 30, 2015. Eleven months since that time, the applicant proceeded with modifying the project in an effort to respond to those comments and direction. In September last year, the applicant submitted a schematic drawing of a design scheme that Staff believed was heading in the right direction in terms of being responsive to the Council Members' comments. The Architectural Review Board also was supportive of the project; although, they did have some critical comments that they had asked the applicant to follow up on. At the subsequent meeting in October, the applicant had chosen to go a different path according to comments from individual Board Members, who felt that the project was actually now taking a step backwards. It was on this October 20th meeting that the Architectural Review Board recommended that the City Council uphold the appeal and deny the project. Following that action, the applicant submitted a refined version of that September 1 plan, which Staff is calling Option 1. Staff believes that that is the option that is most responsive to Council Member comments. In December, two months later, the applicant had

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submitted a third version, the third being an iteration of Option 1 that added another approximately 2,600 square feet of additional floor area at the fourth floor. Option 2 in our discussion is going to be the plan that the Architectural Review Board recommended denial on. That takes us to the meeting that we're having here this evening. Just to reorient or familiarize those unfamiliar with the project site, it is located at the corner of Kipling Street and University Avenue at 429 University. This is a photograph, the first one, looking southwest down University. The project site is toward the right, in the center-right of that photograph. The bottom photograph is taken from Kipling Street and down Lane 30. This is the area behind the subject project site. It's looking at the subject property; it's the rear property line. On November 30th, the City Council gave Staff clear direction—we should say that the comments that the City Council had offered at that point were focused on the context and design compatibility. The City Council gave specific comments with respect to four Context Based Design Criteria, which are set forth in the Municipal Code that the Council felt the project needed to respond to and additional Architectural Review Board findings. With respect to the Context Based Design Criteria, the Council was concerned that the proposed project—the contextual and compatible criteria set forth in the Code regarding the siting, scale, and mass of the project still needed some work; that the compatibility goal in relation to the pattern of rooflines and projections still needed to be evaluated; and that the proposed design, the street building facades needed some additional work to address the human scale and help break up the building mass. With respect to direction from the Council regarding Architectural Review Board findings, the Council expressed concern about the compatibility and appropriateness of the materials and textures; felt that the design's compatibility with the area as having a unified design character had not been achieved; that the design's compatibility with the immediate environment still needed to be addressed. With respect to that last point, this is a line diagram. The top part of the slide is showing the proposed project in relationship to the adjacent one and two-story buildings along University Avenue. The below photograph is a street view of those properties to the southwest or left of that project site. As viewed from Kipling, the proposed project separated by an alley from the one-story building on Kipling. As you continue down Kipling, there is the Victorian architecture that exists on both sides of the street. The photograph below is the street view of that one-story building looking toward the subject project site. Here's a summary of the three options that are presented to the City Council. Again, Option 1 is the one that Staff believes is most responsive to prior comments and direction. It has three residential dwelling units. Option 2 is the one that was rejected by the Architectural Review Board. That had five residential units. Option 3 is the plan that was submitted in December by the applicant. This is their plan that they are putting forth as

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their project. That's the one that they would like to have an action on. Some renderings of the different options. This is Option 1 as viewed from University Avenue. We don't have a rendering from Kipling Street as the applicant chose not to further develop that rendering for Kipling on this design. However, there is—the rendering for Option 3 is very similar to Option 1. You'll see that in just a moment. This is the Option 2 plan that was reviewed by the Board on October 20th and recommended for denial. Again, just to go back on Option 1 for a moment. The Architectural Review Board did review a schematic drawing of Option 1 on September 1. That plan was refined a little bit after the Architectural Review Board made its decision on this project. This is Option 2 from Kipling. Option 3, the design that was submitted in December, from University Avenue you can see there's additional building mass on the roof toward the left of the project. It also extends further toward the rear property line toward the alley. This is the view of Option 3 from Kipling Street. This same perspective is very similar to what we believe to be the Option 1 rendering as viewed from this perspective. As you shift further down Kipling, you would get a different perspective of the proposed Option 3 versus Option 1, but that's revealed in the line drawings. We can walk the Council through that if you're interested. Here's a collection of the three different options as viewed from University and viewed from Kipling. Again, we're suggesting that Option 1 and 3 from this perspective look similar. As I stated previously, Staff believes that Option 1 is the one that is most responsive to comments from the Council regarding building mass and transitions. If the Council is interested in pursuing this option or, frankly, any of the options—actually I would say Option 1 or Option 3—there are some conditions that Staff has considered. We've included those in the Staff Report; we can address these specifically if there's any interest in that. Again, the Architectural Review Board's recommending rejection of Option 2. The applicant's proposed alternative, Option 3, is included with this Packet for the Council's consideration. With that, Staff recommends that the Council direct the Staff to prepare a Record of Land Use Action to deny the appeal, approve the Mitigated Negative Declaration and Mitigation Monitoring and Reporting program, and approve either Options 1, 2 or 3 with or without conditions. Alternatively, the Council could choose to uphold the appeal and deny a modified project, Options 1, 2 and 3, based on the ARB's October 20th recommendation and a finding that the design modifications have not addressed the Council's previous concerns. Staff would return at a future date with that Record of Land Use Action to memorialize the Council's action. With that, I will turn it back to the Mayor. Thank you.

Mayor Scharff: Thank you. With that, we now go to the appellant. Dr. Harbour, are you here? You'll have 10 minutes.



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Michael Harbour, Appellant: Thank you, City Council Members and Mr. Mayor. Congratulations on your new appointments here, to be sure. These five buildings are the buildings that are slated to be torn down and the new development put there. Listed here are all the appellants; I'm representing the appellants here this evening. I want to remind people why we are here. On May 4, 2015, the Council spent a great deal of time making a Motion to the applicant about what the new plans should entail going forward. I've summarized these five points. Specifically, the project, number one, should have design linkages with the overall pattern of buildings so that the visual unity of both University and—this is important—Kipling Street are maintained. The plans were to be resubmitted to the ARB, and the ARB was specifically to look at the compatibility of the immediate environment; ensure design articulation and setbacks that minimize massing; to look at the roof, entries, setbacks, mass, and scale; and that they must conform to the Context Based Design Criteria. The building's façade shall have greater reinforcement of the relationship of the street. The upper floors shall have setbacks. Specifically I've highlighted there was an option of either third or fourth floors approved if they are visually compatible from the streets and had articulation and setback both from University and Kipling. The HRB had weighed in on this previously and unanimously, 5-0, rejected this plan. Most recently, the ARB 3-0 unanimously rejected the plans as well. Shadow studies and traffic studies were also indicated. What I want to let you know is that this appeal is rooted in violation of the Municipal Palo Alto Codes. The Palo Alto Municipal Code requires harmonious transition in scale and character and that are considerate of each other, in the Codes listed there. The design should follow the Context Based Design Criteria. In addition, the building should be responsive to the context and compatible with adjacent buildings, should have appropriate transitions, and have visible unity on the street. My argument has never been on size or square footage alone, as Council Member Tanaka incorrectly said. The appeal is also rooted in violation of the Comprehensive Plan and Downtown Development Guidelines. This massive building discourages the use of Downtown alleyways for pedestrian and bicycle only use and prevents shops from opening onto the alleyway. That's listed in the Comprehensive Plan and the Downtown Development Guidelines very specifically. Just as Centennial Alleyway has been developed to open up businesses there, this alleyway has been requested to do the same thing. Finally, Kipling Street is designated a secondary business district. There should be recognition and consideration for this as well, which has been ignored. Again, that's part of the Downtown Design Guidelines. We've seen many, many renditions. The applicant is on the fourth or fifth architect. The first design was deemed not compatible. It showed no shared characteristics or design linkages with the neighboring buildings. You can see the big white structure there. It was large and massive and detracted

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from pedestrian-oriented design. The next design was not compatible as well. The architect just moved the third and fourth floors back to the rear of the building, just stacking up all the massing at the rear of the building. It worsened the mass effect from Kipling Street and the alleyway. Today, you are miraculously being given three different designs with which to choose from. None of these—I want to point out this. This is so important. None of these in their exact form have been vetted or approved or even viewed by the ARB. Option 1, the original was rejected, and this is a modification of that. The ARB has not seen this or discussed this at all. Option 2 was seen and rejected. Option 3 has never been seen. If you view and approve Option 3, this has not even been seen by the ARB. I think it's inappropriate for you to be acting as architects here and approving a building that's never been seen by them. This is the scale of mass of this building. The size and mass is not compatible with the neighboring buildings. This is the view from Kipling Street. It's a four-plus-story structure. You need to know it's four stories plus an additional 15 feet for HVAC and elevator shafts. Parts of the building are 55—excuse me, 65 feet tall. This is the one-story building next door to it. It just hovers over it. There's no transition. The four-plus-story building overwhelms its one-story neighbors. Inappropriate size and massing, it's a massive building that will shadow Kipling Street and the alleyway. Then, unfortunately it turns the alleyway into a busy one-way street to service the in-and-out garage. This is the secondary business district that's listed in the Downtown Design Guidelines. Whether they are going to be adhered to or even recognized or given a nod, this is what it states there, that the Varsity Theatre, which is a mission revival designed building, is worthy of being consulted and looked at as part of whatever's across the street. Peet's Coffee is a Spanish mission-style building. It states right in the Guidelines that the new buildings should have tie-ins to the Varsity Theatre, which this building does not. I want to show you just how purposely—I'm saying purposely—misleading the view from the alleyway is to—the view of this building is from the alleyway. The architect has designed this brick-layered street, looking like it's a wide promenade with trees in the alleyway and flowers. The alleyway has no trees, no flowers at all. It's making this look like this is something that's being viewed from the front side. It's hard to see, but this corner is directly across the street from one of the residences on Kipling Street. It's a stairwell. It's a stairwell and elevator shaft. It's not a pedestrian or business-friendly corner, and it's not visibly appealing from those across at the residences. How would you like to look out your front door and see a stairwell or an elevator shaft? The other thing is this big alcove right here. An alleyway that has a big alcove (inaudible) people to hide in there. People will be scared walking down the street. It's just not appropriate, has not been well thought out. Here's the traffic on Kipling Street as it currently is. These are recent photos. This photo on the right was given to me by the owners just

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this week of Vino Locale, who are also one of the appellants here. This is standing on the front steps of Vino Locale, showing that cars can barely get by one another. The owner of Vino Locale, JC Andrade, told me that if he just stands out there long enough these cars keep hitting their side mirrors against each other. It's just a demolition derby all day long. Putting a big building with in-and-out traffic on the corner will just make this worse. Michaela Dieffenbach who has also appeared here before you is against this building. She says that it's going to—the traffic will destroy her business here as well as the construction. She owns Stapleton Flowers or Michaela's Flowers. Then, we have the big, massive wall that will be right across the street from Yoga Works. The peaceful entrance of Yoga Works destroyed by the 4 1/2-story, massed building along the alleyway and the in-and-out traffic. I will save the rest of my short presentation for the summary. What I'd like to do is have you ask me questions. I've been dealing with this for 2 1/2 years. I know it backwards and forwards. I've become an expert in Municipal Code, Downtown Development Guidelines, things that I never thought that I would have to learn before. Again, what we'll talk about in the summary is some of the ways forward hopefully. I don't think this is the appropriate way with which to deal with this. Unfortunately the applicants have stonewalled every attempt of working together. I have attended every ARB meeting for the past 2 1/2 years. I've attended every meeting with the architect, and I've met with the applicant multiple times. It is true I asked not to meet with the applicant again because I've been so harassed and harangued, been called names, that I did not want to go through that again. That was my reason that I told Council Member Tanaka that I did not want to go through that again. Thank you very much for your time.

Mayor Scharff: Thank you. Now, we'll go to the applicant. Applicant's team will have 10 minutes.

Timothy Kassouni, Attorney for the Applicant: Good evening, Honorable Mayor Scharff and fellow City Council Members. My name is Timothy Kassouni of the firm Kassouni Law. I represent the project applicant, Kipling Post LP. My full comments are contained in my two letters from January 30th and my most recent letter of February 2nd. As will be explained, the appeal should be denied and Option 3 of the project approved. My comments will be followed by those of the project architect wherein the specific details of the design will be explained. As you can see here, there's four primary legal aspects to be considered by the City Council. The first is a taking, which I'll get into a moment. Second is the City has illegally granted the appellant de facto veto power over the project's design. What you'll see here on the bottom is the original, approved design by the ARB. On the top is the Option 3 before the City Council right now. The question that anybody of a reasonable mind might ask is why is the top project being

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denied and the bottom one was approved by the ARB. Frankly, there is no reason other than pure politics. This project has a long history. To me in reviewing the record, it became very apparent that every step of the way the appellant simply liked the Victorian design and has used every conceivable, purely subjective excuse to impede approval. While it is appropriate for this City Council to consider the input of the appellant, that consideration has transmogrified into flat-out veto power in contravention of State law and the due process rights of Kipling Post. I have a few examples in my prior correspondence. Here's a few that bear repeating. In email dated August 31, 2016 between the City's Manager of Current Planning, Jodie Gerhardt, and the appellant, Ms. Gerhardt seeks the guidance and approval of the appellant regarding design changes. "If you can also describe what a compatible building would look like, that would be helpful. Should it only be two stories next to a one-story, existing building and step-up from there? Is three stories okay if the roofline is minimized?" In a November 22, 2016 email to me personally, Planning Director Hillary Gitelman wrote, "I hope that your client will preview her new plans with appellant to see if she can resolve his ongoing concerns." Not the concerns of the ARB, the appellant's concerns. At the March 17, 2016 ARB hearing regarding one of the numerous design revisions, Chair Gooyer stated, "I think we're in a situation. We've heard from the person who appealed it to the City Council. If we recommend a building like this, he'll just appeal it again." That the City's Architectural Review Board perceives itself as being held hostage to the whims of the appellant is an abrogation of its role as a neutral body, and that abrogation and undue deference has unfortunately permeated the Planning Department. As the Court of Appeal held in *Ross versus City of Yorba Linda* in 1991, "In restricting individual rights by exercise of the police power, neither a municipal corporation nor the State Legislature itself can deprive an individual of property rights by a plebiscite of neighbors. Such action is arbitrary and unlawful. In short, an exercise of approval power cannot be made to depend upon a count of noses." I want to reserve five minutes for the architectural team. If I could get maybe—where am I now, four minutes?

Mayor Scharff: Five minutes and (inaudible) seconds.

Mr. Kassouni: I'll just wrap up. This segues into a related constitutional defect in the City's Code, which imposes so many vague, ambiguous, and entirely subjective design criteria as to render them unworkable and meaningless on their face and as applied to Kipling Post. The project conforms to every objective design criteria. In this case, the vague Codes have been latched onto by the appellant as the only means by which to criticize the project. There is no explicit, textual limitations on the City's discretion. Unbridled discretionary grounds are inherent in phrases such as

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harmonious transitions, rhythmic patterns, design linkages. In its August 4th ARB hearing, one ARB Board Member felt that the project feels mysterious. These kinds of vague and unworkable standards should be rejected. There are also equal protection concerns and taking concerns under the Fifth Amendment, particularly with respect to the Kipling Post transferrable development rights. I encourage the City Council to review those letters. Thank you.

Mayor Scharff: Thank you.

Joseph Bellomo, Project Architect: Good evening. My name's Joseph Bellomo. I'm the architect for the project. I apologize; I'm not feeling well. I came down with the flu, but it's important that I'm here. I've lived and worked on Kipling and University Avenue for 35 years, so I'm familiar with the fabric of the Downtown. I designed the parking structure for the City of Palo Alto, the buildings on the circle, 116 and 102 University Avenue, served on the ARB, served on the Planning Commission here, worked on Johnson Park design. I love Palo Alto. I'm definitely here to stay. The project that you're seeing today is eclectic in nature. It's expresses the structural systems much like the project at 102 University Avenue. It's a sustainable concrete we've developed. It's a proprietary mix. The building here at 429 has a combination of steel, glass, honest materials expressing the structure and minimal layering. We'll approach LEED with a platinum here, for sure. A scale model would be helpful, to bring it up there. You guys want to see it? You guys okay? There's a (inaudible) in here. It's a 55-foot building here. Again, I apologize. I'll introduce Pratima Shah, and she'll take it from here. Thank you.

Pratima Shah, Bellomo Architects: I guess I have only two or three minutes left. I will quickly ...

Mayor Scharff: Two.

Ms. Shah: Two. I will quickly summarize. We have two levels of basement parking for 17 cars each, first floor retail, second floor commercial, third floor residential, three residences, and fourth floor one commercial and one residential unit. This is the program we are proposing for Council's review. This is the first-floor plan with retail space. We have kept the 20-foot storefront rhythm that we tried to maintain here. Second floor has 10-foot setback from the alley side, which can be used as a breakout space for offices. Third floor has seven-foot eight-inches setback from both Kipling Street and University Street and 10-foot setback from the alley. Fourth floor has a maximum setback of 37-foot from the Kipling Street, approximately 20-foot from University Avenue and 10-foot from the alley. This is the

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elevation from the Kipling side. As you see, the fourth floor is minimally visible. This is a sustainability slide which explains what we tried to achieve, basically honest building materials with exposed structure. This is a pedestrian-oriented design. What we tried to achieve is zero front and side line setbacks, building of varied architectural styles which is the eclectic style of Palo Alto Downtown, attractive street-facing window displays, and porticoes which demarcate the building entries. As per Municipal Code, we tried to use the overhangs which protect the openings of the buildings. This is a view of the alley and Kipling. As you see, we tried to minimize the massing on the corner of the Kipling and the alley. We have totally eliminated the mass which was earlier approved and proposed by earlier revisions. Done?

Mayor Scharff: Thank you.

Ms. Shah: Thank you.

Mayor Scharff: Now we'll return to the public. Our first speaker is Beth Bunnenberg, to be followed by Ray Hing.

Beth Bunnenberg: Hello, members of the City Council. I'm Beth Bunnenberg, 2351 Ramona Street in Palo Alto. I'm speaking tonight as an individual to review with you a little bit of the history of 429 University. News reports from September of 2015, in those I was quoted as saying that the new plans for this building changed the whole landscape of that section of University Avenue. It went on to say that there were several nearby buildings designed by Birge Clark, who really has been the, in some ways, architect of Palo Alto. They all have decorative fronts, often tile. Now, right across Kipling from this proposed building was the Swain Music Company building, but it probably is better known as the first Apple store. Who can forget the Apple store with Post-Its? When Steve Jobs died, all those windows were filled with comments. This is an important building in town. Across University Avenue, there's several small Birge Clark buildings that are fairly close to the Varsity Theatre. They also have some tile front. Some of them might be one building, but it appears to have two fronts. The HRB comments included the fact that the mass and scale of the building would be a very negative impact. The HRB voted in early September that the building plans were not compatible. I ask you to look at these new plans and keep in mind the concepts that the HRB was working for. Thank you very much.

Mayor Scharff: Thank you. Ray Hing to be followed by Amy Sung.

Yungluy (Ray) Hing: The Honorable Mayor, Council Members, this is my first time to participate in the City of Palo Alto Council meeting. Officially, my name is Ray Hing. My official name is Yungluy Hing. Officially I become a

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resident in February 2016. When I came over here, I met with a group of Chinese community, group of Chinese living in Palo Alto. They told me two things. I need to get involved and involved quickly. One is the election in 2016. One is 429 University Avenue. I did study; I did read this thick of the email. I find out the majority of people that against the building is because it's massive. It was a different architectural design. If Palo Alto's going to be the international favorite city for innovation and for going forward in the future, it's going to have change whatever the environment, the architect. After looking into it, after talking to (inaudible) Chinese New Year, last Saturday I believe—I attended so many Chinese New Year party I don't remember what it is. I come to the conclusion that after two—somebody said two, somebody said three, somebody four—four years of reviewing all this, after the changing from Option 1, Option 2, Option 3, one starts wondering why this is continuing to be delay on deny. Our community recommend that we go ahead and approve the building and move forward, looking for the better Palo Alto so all the public including the City can benefit from this development. Thank you.

Mayor Scharff: Thank you. Amy Sung to be followed by Cheryl Lilienstein.

Amy Sung: Good evening, Mayor, Council Members, Staff. My name is Amy Sung, and I live in Palo Alto. I'm a realtor, but tonight I'm here standing before you as somebody who's really interested in the future of Palo Alto. I'm here to seek and urge you to—I'm here to support the 429 University project. I urge you to grant it the permit that it seeks. Let me start by saying that this project really is good for Palo Alto's bottom line while it helps Palo Alto to achieve the goals that it wishes to achieve. First and foremost is that it will help with our goal of S/CAP and that is Sustainability and the Climate Action Plan. A new building is going to reduce the energy requirement and energy use. In addition to that, it will have to meet all the Green Building Codes. That will substantially reduce the energy use. That really fulfills the goal that Palo Alto is seeking. Number Two, this is a mixed-use building that encompasses retail spaces, offices and some housing units. If for nothing else, this could serve as a model to make a Downtown hub of living, working, and entertainment. This is the model, the lifestyle change that we're seeing everywhere. If for nothing else, for this four residential units that it proposes, we hope to remove four cars that occupies our busy streets and parking lot. Number three, it will help with Affordable Housing Fund. Because it is a new building, I don't know how much it will cost. I (inaudible) it cost a lot. The impact fees that it will contribute to the Affordable Housing Fund which, I think, is a good thing. That also will help us to achieve our goal for affordable housing. Finally, when the building is finally completed, it will really, really help our County for this tax reassessment. It will really help our bottom line to collect more property

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tax. That will in turn help our City coffer, our schools, and our park. Thank you.

Mayor Scharff: Thank you. Cheryl Lilienstein to be followed by Vita Borgunova.

Cheryl Lilienstein: In looking through the Staff Report, there is direction that says where new projects are built abutting existing, lower-scale residential development, care shall be taken to respect the scale and privacy of neighboring properties through transitions of development intensity from higher density development building types to building types that are compatible with lower-intensity, surrounding uses. Massing and orientation of buildings that respect and mirror the massing of neighboring structures by stepping back upper stories to transition to smaller-scale buildings including setbacks and daylight planes, etc. Respecting privacy of neighboring structures with windows and upper-floor balconies positioned so they minimize views into neighboring properties. Minimizing sightlines into and from neighboring properties. Limit sun and shade impacts on abutting properties. In looking at the Shadow Study that was produced by—who was that? Something ending with E-K. I forget. You can see that on the left here that's what it looks like today. That's the shadow. With the building proposed going in, that shadow is certainly going to be a lot different. Michael, can you get me to the shadow slides? The proposal shows the upper part. The upper schematic is what the situation would be at the winter solstice at 3:00 p.m., given the present condition. That's where the shadow is. The lower slide shows where the shadow will be if this building is allowed to be built as is. It certainly intrudes all the way over the yoga studio and also into the front yards and the front faces and the roofs, although it doesn't show it, of the buildings across Kipling. This is at 9:00 a.m. What does it do at 9:00 a.m.? Again, the upper slide shows where the building casts a shadow today and where that shadow would be cast if the building is allowed to be built. This is obviously not taking into consideration the quality of life for the people, the alleyway, the pedestrians, and the residents who are living alongside. It's really not compatible. I would like this to be sent back to the ARB. I wish that the requirements that the City Council established in 2016 were something that the applicant had responded to instead of just giving you another version of the same thing. Thank you.

Council Member Filseth: Thank you very much. The next speaker will be Vita Borgunova, to be followed by Mark Mollineaux.

Vita Borgunova: Hello again. I'm resident of Everett Avenue, about three blocks from the proposed project. I'm here to support an appeal of



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Mr. Harbour and urge you to deny proposed development plans. To my surprise, this project made it back to the Council. No changes were made, and concerns the Council had a year ago are not addressed. The building is still a huge brick taking over half the block and replacing three distinctly separate buildings. It's still utterly incompatible with the scale and character of the neighborhood. Airbnb actually says so. Developer just haphazardly slopped some architectural elements taken from already-approved buildings in Palo Alto and just played for time, waiting for the new Council to take over and hoping to influence you with donations. Now, they present it to us with a set of alternative facts. Honestly speaking, there is no alternative facts. There is facts of life. I see (inaudible) interest in it. They're getting five times square footage they have now and more than six times actually, if you count underground. I don't see what's in it for Palo Alto. It will worsen our parking problem Downtown. It will worsen our office/housing imbalance. It will definitely not going to be an architectural gem. Nothing to be proud of. All of that on top of not following City's rules and guidelines. Honestly speaking, this project reminds me of the Cinderella inside out. It's like the stepmother is forcing ugly daughter's shoe on Cinderella. It's still size 13, like nothing what you do. It doesn't (inaudible). Developer wasted already Staff time, resources, now wasting my taxes, my time and your time too. Please deny the project. Developer apparently has no intention to work with the City on making this project and have no regard for City's resources and for good of the community. It's not true there is no other way to build it here. Walk along University Avenue and you will see plenty of modern architecture buildings which are working with the old neighbors. Somehow the owners, I guess, were not that greedy. All the reason you need to deny is imagining the University Avenue full of those projects of the same buildings. Here I am. Thank you.

Mayor Scharff: Thank you. Mark Mollineaux to be followed by Rita Vrhel.

Mark Mollineaux: Hi there. My name is Mark Mollineaux. I graduated from Stanford, and I currently live in Redwood City. I live in a warehouse in Redwood City. Just this week, I learned that my landlord has sold the warehouse, so I am not going to be living there very soon. All us equal, I would like to live in Palo Alto. It's very close to Stanford University, and I do work at Stanford University. However, rents all through the Peninsula, especially in Palo Alto, are really not very affordable. Buying a place around here is just impossible. Let's be frank about it. The question is why is this the case. It's a matter of supply; there's just not enough supply for all the renters and all the homeowners to be able to live on this limited amount of land. One small part of this is the approval process. Here in the Palo Alto City Council, it has arbitrary standards. It can find any reason to deny something, inconsistent massing, design linkages, unharmonious transitions.

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You can make anything up to say why something shouldn't be approved. It's clear how this reflects a broken system. Homeowners, landowners in the area shielded from the effects of the limited supply through Prop 13 have every incentive to deny every single project. Why would they? Why would you allow a project? You don't really have any effect to you. You might make up any perceived slight to just shoot it down because there's really no balance to counteract it. In a more perfect world, residents who want to have a lower density living, they would pay for it with higher taxes. Prop 13 made this not the case. In any case, my tax dollars go to Palo Alto for its infrastructure, so I feel like I'm not getting my money's worth (inaudible) finding a place where I might be able to live. Anyway, the failure of Palo Alto to make an approval system that will actually supply this housing is catching the attention of Sacramento more and more every day. It's really up to Palo Alto to either solve its housing problem or have Sacramento try to solve it for them. I think Palo Alto has the potential to make it happen. Downtown Palo Alto, this is supposed to be the low-hanging fruit. You need to add housing. Three to five units in this place has become this massive train wreck of this approval process. How are you going to get any housing built if this blows up this way? You need to figure out big picture—what's your plan here? The problem's not going away. This is just one more example of how this is just kind of a wreck. Thanks very much for your time.

Mayor Scharff: Rita Vrhel to be followed by Neilson Buchanan.

Rita Vrhel: I have so much to say. I feel like we've seen this pig before. It keeps coming back, and it's got a little new dress on, but it's still the same fat pig that doesn't fit Downtown. I remember last year, Mayor Scharff, when you said when the applicant came back, "Why are you here?" The answer was that she couldn't get her way at the ARB. You said to her, "You need to follow the Codes." You actually shook your finger at her and said—do you remember this? I do. It was wonderful. You said, "We can take a very long, long time to approve your project." Why is this project back here again? You have the ARB, which apparently hasn't even seen some of these designs, and you're going to approve something. I think the attorney was a little disingenuous. I can see why Dr. Harbour feels like he has been slammed. I heard some very veiled threats on if you don't approve this project. To the young man who would like to live in Palo Alto, who spoke before me, these are luxury apartments. These are large, luxury apartments. All that the Planning and Transportation Commission and the ARB did was ask the applicant to reduce the size. I feel like this applicant is wasting your time, our time. Obviously it doesn't have the approval from most of the community. This is not a Chinese community versus the rest of us situation. This is an ugly building which is going to be replacing a very

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charming building next to a charming street. I really hope that you will send all of this back to the ARB with clear directions to follow the rules, the Codes and what you had previously said. Thank you very much.

Mayor Scharff: Thank you. Neilson Buchanan to be followed by Sam Arsan.

Neilson Buchanan: Good evening, Council. I would like to put a little bit different twist on the comments that have been made. A couple of voices have been echoing in my head for the last couple of weeks, thinking about this evening. One of those voices is Roxy Rapp. Several years ago when I first started hanging out in City Hall, Roxy made several presentations about the maximum use of the side streets that are perpendicular to University Avenue. I can't go through what he said, but basically he was saying those are treasures, and we should be developing those to draw people down the small streets for special places. I got confirmation of that in a course I'm taking at Stanford about Paris. Believe me, I'm not standing in front of you saying I've gone to four lectures, and I have the foggiest grasp of Paris. I do know, having learned a little about 300 or 400 years of Paris, that it's constantly changing, and that they really have paid great attention to special places. They recommended that you walk around town in daylight, prime hours, and evening hours at head level and take a look at the streets. I did that on the streets that radiate from Downtown North to University Avenue. I walked both ways and all the streets. I could rate the streets, but it really doesn't matter. Kipling is a very special opportunity. Anything that's built on Kipling should be special because it radiates from University Avenue like in Paris all the way to the park in Downtown North. That should be a very special pedestrian walkway. I don't think this building enhances it. Thank you.

Mayor Scharff: Thank you. Sam Arsan to be followed by Jared Bernstein.

Sam Arsan: Good evening. My name is Sam Arsan. I represent several landlords and tenants in Downtown Palo Alto. I also manage and lease several buildings in the Downtown area. I've been working in Downtown Palo Alto for over 20 years now. I think this building is very well designed, and it's very attractive. It's a welcome addition to this part of University Avenue. I have several tenants and landlords that are concerned about the delays that we've been having with this. The building is unfortunately in need of a lot of repairs, and it needs to be redeveloped and replaced. I'm hoping that you will approve this project. Thank you.

Mayor Scharff: Thank you. Jared Bernstein to be followed by Karin Alana.

Jared Bernstein: Hello. I'm Jared Bernstein, 1330 Tasso Street. I'm coming out of the blue because I wanted to talk to you guys for the last six months

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on this topic, but I didn't know it was so fraught. It's really amazing. I didn't expect this level of emotion on the topic. Maybe eight, nine years ago, I was planning to build a house. I went through the Building Code at the same time Elizabeth Wong was. I was reading about it in the newspaper. The neighbors didn't want Elizabeth Wong to build this building. I wondered why. If she's got the approval and she meets all the requirements, why can't she just build her house? It's a house on Webster somewhere. Never met Elizabeth Wong. Then, I saw this thing. It's like there's all of a sudden a building that's completely okay and conforms with all the rules. For some reason, it got stopped. This was maybe two years ago because I read the newspaper every week cover to cover. Recently, I figured out it's Elizabeth Wong again. Just recently, I met Elizabeth Wong somewhere. She had a nametag. I said, "You're Elizabeth Wong." I'm like, "Why is it that people are stopping you from building a building which apparently was originally perfectly approved?" The first time it was okay, and then somebody opposed it. For some reason, the tail is wagging the dog. If I own a property and I want to build a building and I follow all the rules, it ought to be okay. I think the same thing for every other person. We're trying to be a City of laws and not a City of people, if you know what I mean. All I'm saying is I think it should be approved somehow. I don't know which one, and I don't know all the details. The building is not too ugly; it's not too pretty; it's okay. Just a newspaper reader following it, I was puzzled. I said somebody is stopping this for who knows what reason. At any rate, thank you. You guys really put up with a lot of stuff. It's tough. You have my sympathy.

Mayor Scharff: Karin Alana to be followed by Jake Lowenheim.

Karim Allana: Good evening, Honorable Mayor and Council Members. Thank you for giving me the opportunity to speak. I live on 611 Webster, which is also in the Downtown area and own a business here as well. I own an architectural engineering company, Allana Buick and Bers in Palo Alto. We employ about 120 employees. I'm very happy to see this building go up. I think that it's a very sustainable building, which is my specialty. It's built out of concrete. It has very efficient daylighting and light and glass that is necessary today in energy efficiency. I'm also pleased to see that a building within the FAR allowable ratio and the zoning is what is allowed here. It's a mixed-use project, which is great, accommodates both people living and working, which is exactly what we need to cut down traffic and people. I also think the building is energy efficient and elegant in construction and architecture. What I am puzzled by is the opposition, especially Mr. Harbour's view. Why would a project that meets all of the City's zoning requirements, all of the FAR requirements face this type of scrutiny from a person that doesn't want it in his neighborhood? This is a NIMBY(Not in my

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back yard) issue. As much as I love Downtown Palo Alto, there are parts of it that I don't like. I don't want to be surrounded by tall buildings. I don't want to have a commercial building across my street either, but I take the good with the bad. This is where we live. This is Downtown Palo Alto. We've got to accept what the City allows us to build here. If we just arbitrarily allow people, individuals to put up a fight and listen to them and not allow construction to happen, it's going to be a bad thing. It's going to be bad for businesses like mine. I'm an architectural engineering firm. I depend on construction; I depend on development. I want to see sustainable things built. I want to see laws being followed. If people are following the rules and they're following the laws and they're building within the City guidelines, I just don't get it. I don't see why the City would allow an individual who disagrees with the development, for them to put up such a fight that the developer has to go through this many submissions and this many Architectural Review Board hearings. I thank you for your time.

Mayor Scharff: Thank you. Karim Allana to be followed by Jake Lowenheim.

Jake Lowenheim: You're off by one. I'm Jake.

Mayor Scharff: Yeah, I am. They haven't changed it there. They're supposed to have.

Mr. Lowenheim: I'm here, and I want to echo the words we just heard. I'm a little bit new to this. I realize there is a lot of you that have quite a lot of passionate feelings about this. For me—many of you may not know this. I was involved in some of the civic projects down here, especially the one that is always everyone's favorite, which is parking. From both sides, I was involved in it because a I'm resident of the neighborhood, but also there's parking and monitoring and other things that I initially got started here in the City. It made me very conscious of what goes on here in terms of pain points that the City has. I want to speak in favor of this project just very quickly because I like the idea that a building that's there at the moment, that is used for office space and other purposes, which does not have its own parking, now has built-in parking if this building goes there. I also like the idea that it's a green and sustainable building that's proposed to be built here. I'm not sure if everyone's aware, but the other pieces of property that are in that block, in between Waverley and Kipling, there's a lot of it that's at the moment under construction because there's earthquake-proof things being done. Actually, it's quite a painful process, so I like the idea of something new coming in. To echo also whatever one else says, I think it's fair as long as you are putting something in the footprint of what exists, and you're actually upgrading to what's going on and not expanding past it, and

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following the rules. It should be something that should be allowed. That's pretty much all I have to say about it. Thanks for your time.

Mayor Scharff: Thank you. Meredith Slaughter to be followed by Nikoo Namazian.

Meredith Slaughter: Good evening. My name is Meredith Slaughter, and I'm a resident of Downtown Palo Alto. I want to make three points tonight. The first has to do with the project site's close proximity to public transit, both the Caltrain station and the Lytton Avenue bus route. These close proximities make the project and other sites along University as well ideal for mixed-use design and to high-density uses. By building up and varying the land uses within a single project site, we are going to decrease the reliance on the automobile. The second thing I want to talk about tonight or to suggest to the Council is that, when you're considering the compatibility and context-based criteria under the Plan or the Code, the most appropriate application considers not only the existing uses of the immediate environment or the adjacent properties or the abutting properties, depending on the provision that applies, but also the potential uses under the Code. The project site is in the Downtown commercial district. Under the General Plan, it is in the regional center. It is considered a prime area for this type of development. Moreover, Kipling Street, as the appellant has made clear many times, is apparently the narrowest street in Downtown Palo Alto. That makes it even more compatible with a mixed-use, high-density design because narrower streets are inevitably more pedestrian-friendly because they encourage fewer automobiles to come down their travel way. The last thing I want to say tonight is that I hope the Council will consider the implications for future projects, not just this one but future projects that are proposed in the area if you deny this one and the limitations it will place on the City's development. Thank you.

Mayor Scharff: Thank you. Nikoo Namazian to be followed by Simone Sadri.

Nikoo Namazian: Hi. My name Nikoo Namazian. I've been resident of Palo Alto for last 30 years. I live on East Crescent Drive. I like to make it a little personal here. When we, my husband and I, graduated from college, we lived in Cambridge, Massachusetts, around Harvard and MIT and so on. We thought that we live in Cambridge, Massachusetts, forever. When the opportunity to came up and we moved to Silicon Valley and then we chose Palo Alto as our residence, we thought we would miss Cambridge, but we didn't. We never missed that place. This City has a unique and beautiful character. It has been great community to raise my daughter, my only child. This new wave of generation is trying to get to Palo Alto, rent

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somewhere, buy something and start up their company and then take it to public and bring a lot of money as taxpayers. When I heard about the proposal, building on 429 University, I was curious. I looked at the plan, and I looked at the architectural drawings. I truly believe that the proposed building is designed tastefully and complements its surroundings. I was very careful when I look at the detail of this project, and I didn't see anything wrong with it. I also believe that, knowing this great City, it keeps Palo Alto's character as diverse as possible. You see modern and traditional, and it's been in-between all over. I'm sure this plan is in benefit of our City too. It's going to bring a lot of tax money after it's built. Why are we waiting? What's the reason behind all these delays? I'd like the City Council approve this. Thank you for your time.

Mayor Scharff: Thank you. Simone Sadri to be followed by Henie Faghani.

Simone Sadri: Good evening. My name is Simone Sadri. I live on 1416 Hamilton Avenue. I'm in favor of this project, and I'm here to urge you to approve the project as it meets the building and Code requirements. It also provides a mix of retail, office and much needed residential units that would contribute to the vitality and vibrancy of a beautiful Palo Alto. Thank you.

Mayor Scharff: Thank you. Henie Faghani to be followed by Herb Borock.

Henie Faghani: Hi. My name is Henie Faghani. I work in Palo Alto; also I do live in Old Palo Alto. I am pro this project. I do think it's time for us to approve it, since it has met all the Building Code and requirements. The mass and scale has been addressed. It will improve retail, office, residential shortage plus this building has addressed the parking. Thank you for your time.

Mayor Scharff: Thank you. Herb Borock to be followed by Richard Brand.

Herb Borock: Mayor Scharff and Council Members, I urge you to uphold the appeal and to deny the project. The Council over a year ago on November 30, 2015, instead of denying the project sent it back to the Architectural Review Board and directed the applicant to make changes so that the project could be in a form that could be approved by the Council. However, I attended those ARB meetings and, from one meeting to the next, the ARB was prepared to say that the applicant hasn't responded appropriately to the Council's direction. They were ready to send it back to the Council and say they haven't done what you requested. The applicant repeatedly kept asking for more time to change it and sometimes made it worse compared to what the Council was asking the applicant to do. The only thing they've accomplished is to get a different City Council to review the project this evening than the one they had before. I've presented

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information based on substantial evidence that the project is larger than it is entitled to be because it is claiming to use bonus square footage from a demolished building and calling it seismic upgrade square footage. When you're presented a fair argument based on substantial evidence, as defined in the environmental law in this case, and it's not mitigated, you have to have an Environmental Impact Report if you want to proceed with the project. Perhaps you might think, "What we should do is direct the applicant to redesign the project after subtracting that amount of square footage." If you did that, you already know what the applicant's going to do. The applicant is not going to do that and will keep asking for more time, while you keep getting more revisions over and over again. Maybe after two years, there will be another Council that the applicant can try to convince what to do. I believe this has been going on too long. The only one who has kept it going this long is the applicant. Rather than following the direction that the Council had previously given the applicant and continuing to ask for more time and hoping that somehow she'll get approval for something that is worse than you saw before.

Mayor Scharff: Thank you. I'm just going to interrupt for a second. It's now 9:35. In five minutes, we're supposed to be starting the Stanford GUP. We're clearly behind. We've talked to Stanford, and they're willing to move their presentation to the next Council meeting on February 27th, I think it is. I think we're just going to go with that and do this tonight and not get to the Stanford Item. If you're here for the Stanford Item, we're going to do it on February 27th. Thank you. Richard, go ahead.

Richard Brand: Good evening, Council Members. Good to see everybody tonight. Mayor Scharff, it's interesting you're bringing this up because my issue here is policy and procedures. I'm really concerned about you taking your very precious time to deal with a project that should be at the ARB and being adjudicated and redone and looked at all the rules and regulation issue it brings up in the ARB. That said, I'm very concerned about this project. According to the Comp Plan, it's under-parked. You know my sensitivity about parking. One of the things that really concerns me about this is it's a very aggressive proposal. You've seen my note. My brother-in-law's picture is up there, Kirke Comstock. He died last year. He was a Mayor, worked a lot of time. Ethics was a big issue for him. He really felt that this Council was the epitome of how government should be run on a local basis. I'm concerned with the money being spent to push and influence potentially a project of this level on one of our most lovely streets in the City. I will say one thing about this. The appellant had mentioned about the shadow effect. We all love, at least I do, the Palo Alto Celebrates the Arts. In the afternoon in the summertime, if you walk along University Avenue for Palo Alto Celebrates the Arts, big buildings shadow that part of the celebration that



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goes on, on a weekend in August. If you have been to the area down east where we call the Bank of America building, the tall building there, that's a shadow area, and it's very cold in the summertime at Palo Alto Celebrates the Arts. This big building is oversized in massing in terms of what it does with the adjacent buildings. While it may meet the rules and regulations, what it doesn't do is meet the look and feel of what our City should be. It has some housing. I know the fellow was talking about housing in Palo Alto. Yes, we need that, but these are luxury apartments. I encourage you to turn this back to the ARB and reject it tonight. Thank you.

Mayor Scharff: Thank you. Bill Lou to be followed by Rene Wood.

Bill Lou: Good evening. Many words have been said before, so I found out the best way is talk about yourself and personal experience. I've been living here with my family for 18 years, worked at CalTech for a few years. I also lived in Europe for eight years, mainly in Zurich. In Palo Alto, I thought it was good thing to be a builder with watching my kids here. A few years ago, I decided to better use my intelligence, going back to renewable energy. Today's meeting made me feel like I did the right thing. I've been here a few times. ARB processes have not changed. I think today three things. Take away number one, it's still about people not about a Code, which is sad. Second thing, change is inevitable. It's very hard to do it here. Third thing is no brainer to me. The design came from the same architect group who has built here. The initial denial two years ago was clearly a mistake. I've been through that process a few years ago. I'm in support of both Elizabeth and Jaime. The architecture is a natural—it's good stuff. Thank you.

Mayor Scharff: Thank you. Rene Wood to be followed by Andrew Gottlieb.

Rene Wood: Good evening, Mayor and Council Members. My name is Rene Wood, and I'm not a resident of Palo Alto, but I visit here frequently and follow your politics intensely. The thing that I'm hearing tonight was an excellent presentation by City Staff, whereby they went through point-by-point the history on this project and pointed out very clearly to those who were listening what the ARB has asked for this design, Option Number 1. They were also very clear in pointing out that Option Number 2 and Option Number 3 have not been reviewed by the ARB, which is your process. The attorney and the architect for Ms. Wong came up, and there was a lot of hocus pocus in my view. There's a lot of shell-shifting going on. They did not address the points that were made by the City Staff. In fact, they basically insulted the City Staff by saying that selected emails which sought to bring together various people on this project, which every City

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department should try to do. Should I stop until the matter is cleared up back there?

Mayor Scharff: We can hear you just fine.

Ms. Wood: Thank you. I really take offense at the attorney and the architect and their comments. There's nothing wrong with a neighbor and a group of people who become very involved in City politics. This is their home. As we've heard multiple times, homes here are very, very expensive. They're just looking out for what they feel is their investment in Palo Alto as well as conforming to what the Planning Department said. I would urge you to not be taken in by this appeal and to realize that what it is, is an attempt to go around your clearly defined process, which is for your ARB to review these matters. I am struck, as someone who has been over 15 years in my hometown politics, at the patience with which this Council has given this matter and the basic disrespect that has been given to your process, in particular your ARB. For what it is worth, I would go with those people who have recommended that you deny this and send it back to the ARB. If it cannot be worked out, kill this matter because you have an applicant who is not respecting you, this town, its residents, or your process. Thank you.

Mayor Scharff: Thank you. Andrew Gottlieb to be followed by David Lieberman.

Andrew Gottlieb: Good evening. My name is Andrew Gottlieb. I'm a longtime resident of Downtown Palo Alto. Mr. Buchanan's comments struck me earlier as being very applicable. Kipling Street is a special street. In looking at and approving a building to go up on that street, the special nature of it should be taken into consideration. I think the Architectural Review Board was doing that. I think they were doing their job. I believe at this point they should continue to be able to do their job to either accept or reject this project and not circumvent the Council. I'd encourage the Council to allow them to do their job and not be influenced by other types of discussions going on tonight. Specifically the attorney for the applicant, I think they are denigrating the process in suggesting that a resident is taking over the process and not allowing a project to go forward. I think what's simply happening is a resident is exercising his right to object to a project and express the concerns of himself and apparently other members of the community. I'd encourage you to listen to that, listen to the appellant and the objections before the Council, and not be discouraged by the side conversation about an appellant taking over the process. It's simply not happening; he's encouraging it. He's just making sure the rules are being followed. Just following on that, there are reasons why the project has been delayed for several years based on objections because the applicant has not

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followed the suggestions of the ARB, has not followed the rules, and has not taken into consideration the concerns of the community. Finally, I'd like to say in this day and age, respect for the process and the public's confidence in the process is critical in local government and Federal government. Listening to Council Member Tanaka's expression of explaining why he's not recusing himself is a concern. I think even the appearance of impropriety is discouraging. I would encourage you to recuse yourself from this process based on the campaign contribution. Even though you refunded it, I think it creates a cloud and appearance of impropriety, which would undermine the public's confidence in the process if you didn't recuse yourself. Thank you.

Mayor Scharff: Thank you. David Lieberman.

David Lieberman: Hi. This project was first presented to the City in 2013. It was approved by the Planning Staff in 2015. It meets all building and Code requirements and requires no variances or exceptions. Yet, four years later here we are. Is Palo Alto governed by law or by ad hoc decisions based on individual whims? As a resident of Palo Alto, I am required to obey all municipal laws and regulations whether I like them or not, and frequently I don't. There is no exception to that requirement for Council Members. You members of the City Council have the ability to change the law, but you don't have the right to ignore it. Do the right thing. Obey the law. Approve this project. I'd just like to add one thing. If the nine of you went into a room and designed the site, designed a building, you would come out and you would vote it down.

Mayor Scharff: Now, we return to the appellant, who will have three minutes in rebuttal.

Mr. Harbour: I thought you said the applicant was first.

Mayor Scharff: Let me look at my thing here. I get that confused. Does the applicant object to going first? Nope, then the applicant can go first.

Jaime Wong, Applicant: Good evening. My name's Jaime Wong. I want to start by saying an earlier speaker talked about Birge Clark, and we're trying to honor Birge Clark. In fact, the American Institute of Architects elected to give the Birge Clark award for sustained architectural excellence to Joe Bellomo, my architect. People have tried to brand me as a developer. I don't object to that, but it's not a bad thing. I'm also your neighbor; I live here. I've raised my family here. I vote here. I shop here. Yes, I invest here. Everything for me is Palo Alto. I care about this town. I'd better because my whole future and the future of my family depends on it. We have seen the tactic of fearmongering here. People talk about ignoring the professionals who have said shadow studies, no impact. No, no, no,

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shadows are—nuclear winter is coming. Traffic and parking, no impact. Yet, we're supposed to stand there and watch cars ram into each other on Kipling Street. I don't believe that. Pictures opposing my project show flat elevations because we're required by City Code to present flat elevations. That puts the building in its worst light because nobody looks at a building that way. You look at it in 3-D. The Comprehensive Plan, you can find quotes in the Comprehensive Plan that oppose it, and the appellant has found many. I have found many that support it, and I've enclosed those in a letter to Council including quotes from the Comprehensive Plan and the Urban Design Guide. This project is good for Palo Alto; it's good for me. The Architectural Review Board has seen every page on that project except for the one with the sizes because the numbers changed a little bit, so I had to redo a new page. If you liked Option 1, you will love Option 3. All the pages are the same, and the ARB has seen all those drawings. The ARB went on record to say, "We need approval of the appellant or else the appellant will appeal again." I don't think that's right. To continue on with the presentation from earlier, here is a view of what it looks like from the alley right now. It's a service alley. It has dumpsters, and the garbage trucks come every day and pickup garbage from there, and cars park there. That's it. It's hardly used by pedestrians as the Traffic Study that we presented to the City shows. We have some slides about compatibility to show that Palo Alto is really a diverse collection of tall buildings, small buildings, modern buildings, older buildings. They take design cues from each other, but it's all diverse. This building does the same. Thank you.

Mayor Scharff: Thank you. Now, Michael Harbour.

Mr. Harbour: I wanted to summarize here and thank you again. This is a colossal building on the narrowest street in Downtown Palo Alto. I want to point out in terms of some metrics Bryant Street is 49 feet wide versus Kipling at 29. It's about 70 percent larger. That same four-story building, which would be allowed on Bryant, is going to appear much larger and have much greater impact on that narrow Kipling Street. We've heard many people come up and tell you emphatically that this building meets all the Code requirements, the FAR, the square footage. Code requirements do include FAR and square footage, but they also include the Municipal Codes about context and compatibility. Those are just as important, the Codes, as just the square footage alone. The only reason why we are at almost a 3.0 FAR is because of a transfer of development right, which the City has admitted probably would not be granted in this day and age. It doesn't mean that the applicant gets to use all of it. You have to look at the receptor site for this area. Don't feel sorry for the applicants here. The applicant went to the media. The front page of the newspaper in August, the applicant has agreed to reduce the size of the Downtown project. It was

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a bait and switch. She actually made the building smaller before she made it bigger and changed everything around and has gotten everybody confused. The options that you've seen here before are not her little, small project or smaller project. Please don't feel sorry for them. The applicant willfully did not address the issues outlined by the May 4th City Council Motion. There have been multiple violations that still exist with regard to size and massing. The Staff Report states the applicant has only partially been responsive and ignored other repeated requests. The total size and mass of the building is as large as it was when we filed our original appeal. The applicant and the architect have ignored repeated suggestions by the ARB to bring this project into compliance. Board Member Lew, who's here tonight, actually gave two separate slide presentations with photos—something I've never seen—demonstrating what success would be like. He brought these photos and showed how other applicants have done this. Again, deaf ears. I personally have met with every architect, applicant, attended every ARB meeting. The applicant has made the massing worse by enlarging the top floors. I want to make this very clear. This appeal is not meant to prevent the applicant from developing this piece of property. I am not against that. I actually come from a family of developers. One of the things that we do is actually work with the community to make sure that the needs are being met. This has not happened at all. Again, I've mentioned these here before. The only decision now is to reject the current plan. It's the only decision. The ARB hasn't even seen the existing plans of all three options and weighed in on them. Thank you very much.

Public Hearing closed at 9:53 P.M.

Mayor Scharff: Thank you. Now, we return to Council for questions and comments. I'm going to close the public hearing at this point as well. I just want to reiterate that for Council to take any action, it's going to take five votes. Council Member Wolbach.

Council Member Wolbach: I actually just want to make a couple of comments about the process and the kinds of things that we focus on tonight in response to some of the things we've heard from members of the public. First, on the question of who should be participating in this, we've heard a lot of discussion about this around other issues as well. There's no obligation for anybody to recuse themselves from this decision. There's no legal obligation. There was not even a legal obligation for anybody on Council to return any checks. The one person who saw that that might create the appearance of impropriety returned the check to remove that appearance of impropriety. Personally, I never took any money from developers when I was running for office, but everybody's able to make their own choices. When issues of Castilleja come back, I'm not going to

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encourage anybody to recuse themselves, because I think the accusations are ridiculous. I think the same thing applies here. I think the people can make informed, reasonable decisions regardless of what kinds of donations they took. This is, again, coming from somebody who decided not to take those donations myself. I just think that we should be fair to the process, and we should be honest, and we should be consistent. There's been a lot of accusations thrown around over the last year regarding the idea that just because somebody took a donation from somebody that influences their decision-making. Again, in this case it's not relevant. We've heard, frankly, from both sides of this discussion a lot of ad hominem attacks. I find that dismaying as well. This isn't a question of whether we feel some personal affinity for either the applicant or the appellant or we find their attitude to be in any manner offensive to our personal sensibilities. That's not the question in front of us. It's unfortunate that the acrimony is quite severe around this project. It would have been great if everybody had a kumbaya moment, but we're going to have disagreements. That's okay. I'm actually going to reserve—I'm actually not going to make a Motion. I want to listen to my Colleagues ...

Mayor Scharff: You can't make the Motion. So we're clear, it's supposed to be comments and questions.

Council Member Wolbach: Excellent. I'm not planning on making one. Whatever decision we make tonight, it should be very, very clear. We should focus on those issues that have not been resolved. Obviously, one of my biggest concerns previously was around the historic impact on neighboring buildings. HRB looked at it, said they were unable to come to a finding. We talked about this the last time it came before us. That issue wasn't a primary issue. The major questions here are around mass and scale and things like that and whether this project sufficiently meets the findings necessarily. I'm going to leave it to my Colleagues to weigh in on those. I'll be listening attentively.

Mayor Scharff: Council Member Filseth.

Council Member Filseth: A quick question to Staff. I know we talked about this in the last meeting. A couple of people brought up the issue of the applicability of TDRs. Can Staff comment briefly on that?

Mr. Lait: The Municipal Code sets forth the requirements and standards for having potential floor area transferred from one development site to another. There's a variety of requirements for that. Applicant has initiated that effort, has secured the Transfer Development Rights (TDRs) for the 429 University site. The area of conflict or concern that the community member

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was speaking to was that the new Apple store was one of the sites for which TDRs were granted. The Code's interest is to remove seismically vulnerable buildings and shore them up and replace them with buildings that meet the current standards. In the process of the building permit construction, it turned out that the existing walls that were to be retained couldn't be retained, and they were removed. The site was essentially demolished and built anew. That's not inconsistent with how some other projects in the City have been previously reviewed with respect to TDRs, but it did raise the conversation that the Council did talk about and directed Staff with respect to seismic upgrades of buildings where the Council had expressed an interest that Staff no longer allow complete demolition to be a means for meeting that standard. Now, you do have to retain and actually rehabilitate the existing structure. That was a conversation that happened subsequent to the City granting the TDRs for that site.

Council Member Filseth: Where does that leave this project? You're saying it was okay under the old rules but not the new rules. Did I understand that right?

Mr. Lait: We're saying that this project was evaluated consistent with City practice, and we believe that the TDRs are valid for this development site.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: If it's all right with the Mayor, I see a member of the ARB. I wanted to ask a couple of questions.

Mayor Scharff: Sure, go right ahead. That's what you get for coming.

Council Member DuBois: I have two questions for you. The first one was—Option 3 has been described as highly similar to designs that you guys looked at. Do you agree with that?

Alexander Lew, Architectural Review Board Chair: I do want to be clear that normally when a representative for the Board comes here, we represent the whole Board's opinion. The Board has not seen Option 3, so I can't tell you what the Board thinks about Option 3. You're actually asking is Option 3 similar to Option 1. The Board only saw a preliminary drawing set of Option 1. It was like a pencil drawing set. Not all the drawings were included. We didn't have perspective renderings from different sides or whatnot. Option 1 really has not been thoroughly reviewed by the ARB.

Council Member DuBois: The second question is—in November of 2015 Council made a specific Motion to ask the ARB to evaluate the project on six specific findings. What was the result of that review?

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Mr. Lew: We did review those particular findings on one of the earlier schemes. I think that was in the second architect on the project. We're on the fourth architect now. I personally did go through all the context based findings in my last review of the project. The two other Board Members who reviewed the project said they may or may not agree with what I had said, but they didn't specifically cite where they would have a differing opinion. I couldn't give you something specific. If you looked at this last Staff Report, I did highlight areas where the Staff did not think that the context based criteria were met.

Council Member DuBois: Thank you.

Mr. Lait: Excuse me, Mayor. If I may supplement that. I concur with Chair Lew's response to that. I would note that the Motion that was made on October 20th was a reference to draft findings that were included in the Staff Report. The Motion stated to accept the draft findings that were included in the Report. That speaks to the findings that were made. I can quickly just summarize a few of those if that would be helpful for the ...

Council Member DuBois: This is against which option?

Mr. Lait: This would have been against Option 2. The findings that the ARB adopted, one had to do with the—we had a conversation of the old ARB findings. Finding 1, that the design was not consistent or compatible with the applicable elements of the Comprehensive Plan. Finding 16, that the design is not consistent with the purpose of architectural review, which has to promote orderly and harmonious development in the City, enhance the desirability of residential or investment in the City. It goes on to cite a couple of different components. Specifically with respect to those findings, the Board found that the building's size, scale, and mass would not enhance the pedestrian environment, that it would conflict with the following goals, and it listed, in policies of the Comprehensive Plan: Goal L-1, Policy L-5, to avoid land uses that are overwhelming and unacceptable due to their size and scale; Goal L-4 speaks to pedestrian scale; Policy L-20 speaks to reinforcing street corners or that form corner plazas; Policy L-23, promote the quality of design that recognizes the regional and historic importance of the area and reinforces the pedestrian character; Policy L-24, Goal L-6, creating well-designed buildings that create a coherent development pattern, enhance City streets and public spaces. It goes on. Finding 2, Finding 4, Finding 5 and 6 of the old findings were not supported with explanations as to why. Then, it went on to the design compatibility standards, which I can elaborate on further, but there's a whole set of findings that the Board found for Option 2 was not supportable.



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Council Member DuBois: Just a couple of quick comments. This project has been to Council twice. My impression is the applicant really hasn't been responsive to Council direction. I did ask the City Clerk—I think she did it—to provide the verbatims from our previous meetings. I hope my Colleagues got a chance to look through those or at least watch the videos. We've had very extensive discussion. I don't think we need to repeat that discussion tonight. Just quickly, I do think the issue with the loading dock remains. I think that's going to be addressed. The scale on the first floor and the eaves and the entryways, I think, does make the building appear to tower over its neighbors. The visual mass and scale along Kipling remains an issue. Just to clarify for some of the speakers that came—I think somebody else already said this earlier—the quantitative zoning is not a right to the maximum amount. It's up to that amount. It's not the starting point, and it's not the minimum. We did have extensive experience about Ordinance 18.18.110, which is our Compatibility Ordinance. Again, when I look at those conditions, it still appears that they have not been met. Thank you.

Mayor Scharff: Council Member Holman.

Council Member Holman: Thank you. It's always dangerous when you make a comment in the presence of somebody who's been around for a long time. Just to clarify the record, not that it's something that we're considering tonight but just to clarify the record because I think it's important to do so. TDRs for seismic improvement many years ago were allowed for demolition, but also a good number of years ago, probably—this I would have to guesstimate—a good 12 years ago, 10, 12 years ago, that practice was assured to the Planning Commission and the public that that practice would no longer continue because it seemed to be contradictory to the purpose of the seismic TDR Ordinance. To my knowledge, this is the only project in the recent past that has gotten seismic TDRs for a demolition. That said and understanding that's not in front of us, I just wanted to try to correct the record. As Council Member DuBois said, there are a couple of members of the ARB here. I know Board Member Lew has had a lot of experience with this. I'd like to ask you a question, if I could please.

Mayor Scharff: You may.

Council Member Holman: Thank you. Other cities—I know you do work in a lot of other cities—have more than just the numerical standards for project review and approval. Not to put you on the spot here, but I know San Francisco being one that you work in a fair amount. Can you describe what criteria they have that are not numerical or how they might relate to our findings that are required in our Context Based Design Criteria? We're not unusual in this, correct?

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Mr. Lew: No. I think I mentioned this in one of the ARB meetings about this project. Just as an example, in San Francisco for what they call their pedestrian areas, which are their neighborhood shopping areas, just for example, they would restrict lot mergers to a prescribed size. That's actually a numerical issue. The intent is to keep the pedestrian street attractive and variable. They actually discourage putting fake fronts, multiple storefronts on one big building in an attempt to mask it to make it look smaller. That's why they restrict the lot size, lot mergers. Also, they would require driveway curb cuts or garage entrances to be on an alley side and not facing any pedestrian street. They have requirements for clear glazing along pedestrian frontages. Is there something in particular that you're looking for?

Council Member Holman: I'm not familiar with San Francisco's Code, but I just use them because I know you are familiar with them. Is there any just quick thing that you want to describe about how they might deal with street rhythm?

Mr. Lew: That's one I was getting at ...

Council Member Holman: I know about the lot mergers, but ...

Mr. Lew: ... the first thing with the lot size. They prescribe a dimension for each street, each pedestrian street. Market Street, which is a big commercial street, has a larger dimension. Some of the more neighborhood-oriented streets would have a smaller dimension, say 50 or 60 feet; whereas, Market Street might have a maximum building frontage of 125 feet or 150 feet wide. That's to make the buildings scaled to the neighborhood to ensure new buildings are scaled to the neighborhood. They also have restrictions against chain stores. We've talked about this a little bit with the (inaudible) of California Avenue to try to keep the character of an established street.

Council Member Holman: Thank you very much. Just a couple of comments. I and, I would imagine, at least the Colleagues who have been here for a while and seen this project before think it unfortunate that this project is still coming before us and not having a particularly successful or popular response. You can pick any one of these sets of plans. I'll look at Option 3, for instance. Our Context Based Design Criteria and various other aspects of the non-numerical findings that have to be made talk about the rhythm of the street. The rhythm of the street is described as 25-foot storefronts and the differentiation. If you look at—it's in the Staff presentation. Slide 10 is actually not a bad representation of that. If you look at the other storefronts, they are differentiated by either different

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window treatments, different street-level window heights or a little bit of entry heights. On the second level, the same thing. They're all finer grained. If you look then at what is being proposed in either Option 1, 2 or 3, you have very dominant and prominent concrete features that step forward, that are as single units larger than the whole of an articulated building front adjacent to or down that block. If you look on the Kipling side, that's true not for the storefronts particularly, but that kind of larger-scale rhythm is very inconsistent with the rhythm of the houses on the street. That's of great concern. These proposals for the most part—depending on which one you look at, it's either more or less the case. This building has very strong horizontal elements that run the length of the project. There's not an attempt to break up the mass and scale of this building. There have been a lot of comments made about the size of the building. As I've said recently, it's not the square footage; it's how the square footage is expressed. If you look at a building that often gets referenced because it's so successful, if you look at what used to be the University Art Building, how a lot of people still think of it, where Shinola is now. That building is a very large building and adjacent to someone and two-story buildings. What it does to make itself presented to the public as a pedestrian-scale building is it has very much differentiated storefronts. The elements of the building—it's all one building. People don't even realize that sometimes when looking at it. The elements of the building have differentiated roof angles, roof shapes, roof heights, different window treatments. Those make for a very much more smaller-grained, fine-grained, more compatible building that is much more likely to be compatible with the surroundings. It's not about style. It's not at all about style. I want to be clear about that. It's about the design, which is not the same as style. This building, I think, does not respond to those transitions, does not respond to the rhythm of the street. The height of the first floor, I would have to say, also—again, these are very dominant, concrete, forward-setting elements. Those projections are about a story and a half tall. How I look at this. I think of it as, if you go through a neighborhood that's in a floodplain—if there's a replacement building and the replacement house has to be raised the three feet or sometimes three-feet-plus, it's how that house has a very negative impact on the other houses on that block or in that neighborhood. It stands out considerably. This building does that same thing. I'll stop there. Those are some of my comments.

Mayor Scharff: I have a couple of comments on this. First of all, I'd say that for me the issue is Kipling Street. University Avenue has no unified architectural feel to it. There's a 50-foot building virtually across the street from this building. It really comes down to how this interacts with Kipling Street for me. The Staff Report does a really good job really starting on Packet Page 526 when it talks about Option 1 being the most responsive to

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concerns about the overall building mass and provides better transitions to neighboring properties. As the Staff Report points out, most of the commercial buildings have two-story volumes, are greater in height on University, and the buildings across the alley are the ones in the exception. That's Kipling Street. The character of the buildings on North Kipling Street are Victorian homes. That's really the compatibility issue I think the community is struggling with. There's a stark transition between this building and Kipling Street. Whereas, on University Avenue, I don't think there's that issue at all, frankly. University Avenue is eclectic with many different styles of architecture, some 50-foot buildings, some 80-foot buildings, some much taller buildings, 525 University down the street. When we look at University Avenue, I don't think that's the issue in any way. I actually think that Option 1 works well as a three-story building. One of the frustrations for me in this is what seems to be important is the Kipling-facing rendering and what it looks like from Kipling Street. The applicant, frankly, hasn't provided that. The fact that the stairway and elevator goes up to 56 feet—I think the Staff Report is correct that that would need to be brought down. If we move forward on something similar to Option 1, we would need to bring it down. The problem I have with Option 1 is that I can't really tell on the pop-up residential there what the effect of the massing is and what that looks like from Kipling Street. For me, this should be a three-story building. That takes away the transition issues on Kipling Street, and that feels comfortable and, I think, meets the Architectural Review findings, which we have frankly in Attachment A. It's really Packet Page 533 and 532. As a three-story building, I think it meets the Architectural Review findings. As a four-story building, I don't think the design is compatible with the immediate environment of the site. I don't think it's compatible with the character of Kipling Street, which would really be Number 4. There's no harmonious transition in scale and character as a four-story building. As a three-story building, I think there is. I'm a little bit stuck on the issue that I can't see how this looks with the pop-up residential. That tends to make me feel that we should approve this, frankly, simply as a three-story building and bring the elevator height down as well to be in that same range as the three-story height. It could pop up a little bit over that three-story like we do normally in our Code on the three-story height, but not on the four-story height. That becomes a real problem. Option 1 has a lot of really good features in terms of moving us forward in that direction. I'm just primarily concerned about that transition to Kipling Street and how we make that transition work. I think as a three-story building it works. Thanks. Now, I see no further lights. Does anyone want to speak further or should we just move to Council Member motions and further comments and questions? Council Member Fine.

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Council Member Fine: This is actually following up on your question about the eclectic nature of Downtown. Given we have two members of the ARB here, I was wondering if you have any advice on whether the Downtown area does have a unified design character. If so or if not, how does that relate to the Downtown North neighborhood and how does that transition out along Kipling? If you could just give us some thoughts on that, if the Mayor will allow it.

Mayor Scharff: Yeah, I'll allow it. Mr. Lew.

Council Member Fine: I know it's an open, wide question.

Mr. Lew: You're going to put me on the spot, and I'm not speaking—I'm speaking off the cuff and not on behalf of the rest of the Board. I would just say that because of this project, I've started working on a Downtown map of all buildings. I'm actually going back in history too, back to like 1925. I think we just have to acknowledge a couple of things, because we have—this whole area, like Kipling Street and Lytton and Hamilton, was originally all Victorian houses. The zoning was changed, and they are intended to be—they're all in the commercial district. The City was doubling in size, and the City was trying to make room for growth Downtown. The original pattern of Downtown was based on the 25-foot module, which Karen and the Staff Report have mentioned. What is not quite correct, though, is that a lot of the storefronts, like around the Varsity Theatre, are actually only 15 feet wide. They're really narrow. They're actually narrower than any commercial developer would put in a new development. Typically a chain store would want something at least 20-feet or really in a shopping mall it would be at least 25-feet wide. It is diverse. Things have changed over time, but there is in that block, I believe, a unified pattern of narrow storefronts, low storefronts with balconies on the second floor. It's stronger, I would argue, than any of the other blocks Downtown. I could make an argument that—I think people are trying to make the argument that there are other big buildings Downtown, and there are. They're at 3.0 floor area Downtown. We don't get complaints about them. They're very attractive. It's entirely conceivable to me that a 3.0 floor area building could work on this site if it were designed to meet our Codes. My personal take is this one does not.

Council Member Fine: That's actually very helpful, especially the history there. Thank you.

Mr. Lew: We have another Board Member too. He's here if he wants to weigh in.

Mr. Lait: Council, just to advise you. The other Board Member who is here was actually conflicted on the hearing of the Item. I don't know if there's a

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perspective from a resident, but speaking for the Board I would discourage that engagement at this point.

Mayor Scharff: Council Member Kou.

Council Member Kou: I'm looking over here at the Packet that the applicant had submitted in terms of some of the other buildings that are here in Downtown. I'm looking at this, and I think one of the best examples is 626 Waverley Street, with its massive, tall building. The thing is Waverley is actually a wider street. You're putting a building of that mass and that size on a much smaller street. While it fronts University, which is also wider, there is also Kipling that is much more narrow. I think the diagrams that we've received show the lanes to be wider, so it takes it off—even these diagrams up here, you can see that the streets appear to be much wider, and there's a lot more room. When I drove down Kipling, I agree with JC Andrade. There were cars coming at me, and I thought I was going to lose my mirror also. It is not as wide as it looks over here. I do have a great concern in terms of the mass of this building and how it transitions to the rest of the street over there. I was actually looking at it from Lytton, looking down towards University. If this building goes up, it's just this big wall when you're looking down the street. I really can't see this as a good transition or harmonious to the neighborhood or even fitting with the Victorian homes that are on that street. It is a narrow street, and it is a very pretty street. I love walking down it and looking at the homes. It's a very different building.

Mayor Scharff: Council Member Filseth.

Council Member Filseth: Just really briefly, I think there's been some discussion gravitating toward Option 1 being in the direction that we had discussed some months ago. I just want to comment briefly on Options 2 and 3. Most of the discussion that we're really having, in fact that we had in the last meeting, was about harmonious transition, scale, and massing, and context. To me, again these things, as has been pointed out, have an element of subjectiveness to them. To me, Options 3 and 2, which are basically four-story buildings, the transitions are obviously pretty sharp. To me, that one obviously fails. Option 2 fails on Kipling, and Option 3 fails on University. I'll stop there.

Mayor Scharff: Council Member Holman.

Council Member Holman: Just a couple of things I hope we'll keep in mind here. Our alleyways are important connectors in our Downtown area. The City's actually looking to activate a number of alleyways in the very near future and recognize the importance of our alleyways. Again, if we're going to make a good environment and a pedestrian-friendly environment, we

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shouldn't overlook the alleyway either. Kipling especially at night is a street of very strong character, and it's very obvious. During the daytime, it is. At night time, it especially is. When looking at compatibility, rhythm, transition, and scale, we're not looking at 429 University Avenue in comparison to 525 University Avenue. We're looking at the building in its context of the more immediate vicinity, the more immediate environment. I would point to the recent Citizens Survey. What it seems to me is that when we have projects that don't comply with, aren't consistent with our Downtown Urban Design Guidelines and our Context Based Design Criteria and our ARB findings, projects are either appealed or they're very unpopular as we see and hear comments. The Citizens Survey has given us a declining score on development the last several years. I think it's really important that we pay attention to these matters. While they're not numerical, they are just as important. Board Member Lew has brought forward and I've mentioned too there are ways that buildings—not to repeat what I said earlier—there are ways that even this building could make itself more compatible and more transitional. I don't know why the applicant has been resistant to making those changes. To this point, they seem to have done that in ways that I've described previously and other Council Members have spoken to and members of the public.

Mayor Scharff: Council Member Tanaka.

Council Member Tanaka: I have a few questions for Staff. A lot of the public speakers and a lot of the emails that we got had concern around three topics. One was traffic; another was parking, and then the third was the idea of mass or square footage or FAR. I want to take each of these Items one-by-one. For traffic, with the studies that Staff has done, is there an issue with traffic here at this project?

Mr. Lait: Thank you, Council Member. We did do a Traffic Study. In fact, we also did a—what did we call it? We did a TIA, but then we also did the residential one, the traffic index—some other study that we don't typically require because of the concerns that we heard expressed about this issue. This was in support and concurrence with the applicant. The results of that showed that this did not trigger any threshold for significance in terms of traffic impacts related to this project.

Council Member Tanaka: What about parking?

Mr. Lait: Parking is a function of meeting Code. The project meets the development standards with respect to the parking. It is located within the Parking Assessment District. The property owner has been assessed parking spaces for contribution to the parking lot. There's a, I'll say, credit for those

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spaces not having to be provided on site. Some of the TDRs that we've talked about this evening were parking exempt TDRs, which is not a current standard that we allow in Code, but the applicant did have an opportunity to use that. The parking that is provided onsite assumes the Parking Assessment, the parking-exempt TDRs, and the balance is provided onsite in the two subterranean structures.

Council Member Tanaka: Is the accusation that the project is under-parked true or not according to your findings?

Mr. Lait: I guess what I can tell you is that the parking as required by the Municipal Code is met with the designs.

Council Member Tanaka: What about square footage and FAR? Is it within the limits of that? I've heard from some of the members of the public in letters that say it's way too much and it's not compliant. What is the truth there?

Mr. Lait: A mixed-use project is allowed to have up to a 1.0 FAR for commercial development and up to 1.0 for the residential development. With the transfer of development rights, the applicant is available to take up to another 1.0 FAR. In no instance shall the site exceed a 3.0 FAR. That would take it to—I think the collective parcels are 11,000 square feet. A 3.0 FAR would take it to 33,000 square feet, which they are compliant with.

Council Member Tanaka: Really we're left with the architectural aspects in terms of the compatibility.

Mr. Lait: I would refer the Council to the findings, the Architectural Review Board findings and the context compatibility findings.

Council Member Tanaka: When I looked at it, the rules did look very arbitrary, so it's kind of hard to know what the—exactly how do you compare. Let me give you an example. Let's say, for instance, adjacent to the building was a vacant lot. There's nothing; it was just vacant land. Is that (inaudible) compare against, a vacant lot, or would you compare it against other nearby buildings? I guess I'm trying to understand how close to the—what is the basis of comparison? A lot of the buildings next to it, I assume, could be built taller. Is that right or not?

Mr. Lait: What I would do is refer the Council to the different findings that are made and are required pursuant to the Code. One of the findings that the project is subject to is that it is compatible with the immediate environment of the site, that it is compatible with the adjacent and neighboring structures. That's the guidance that's provided in the Code.



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Council Member Tanaka: What I'm wondering about is two things. Is it what's there right now or what could be there? What I'm wondering is—let's say, for instance, it was a vacant lot. That means it has to be compared to a vacant lot or you compare it against a one-story building, which could actually be two stories? I'm just trying to understand how does this work.

Mr. Lait: Again, I would refer you to the finding language itself. It doesn't put forth that scenario. It just refers you to the neighborhood character and the context of the neighborhood setting.

Council Member Tanaka: How immediate is immediate? Does that mean next door or does it mean one block down? What does immediate mean?

Mr. Lait: I think that's a discussion that the Council has been having over the course of this project. There's certainly examples that the Council and the community members have drawn from, that are immediate to the subject site and then also drawn from other properties that are nearby.

Council Member Tanaka: This is kind of a technical question. Kipling is a very narrow street. I can't quite tell by looking at the picture on plan A.82. From Kipling, if I stood on Kipling, on the sidewalk across the street from the project, and looked up, could I see the fourth floor?

Mr. Lait: On Option 1 or ...

Council Member Tanaka: Three.

Mr. Lait: Three.

Council Member Tanaka: It's such a narrow street you can't—the picture in this plan looks like you're like—I don't know—pretty far from the project. I'm not even sure if I could see—how much I could see given such a narrow street?

Mr. Lait: I don't have the exact information about the perspective angle that this is taken from. Typically, it's taken from about a six-foot elevation. Kipling is narrow at 29 feet, I believe is the right-of-way. I think this is representative of what one might see out there, but I couldn't tell you for certain what the specific dimension of that would be.

Council Member Tanaka: Does maybe the applicant know or does anyone know can we see the fourth floor from the other side of Kipling if this was built?

Mr. Lait: I would direct that through the Mayor to see if that's something that you wanted to open up.

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Mayor Scharff: The question is you want to ask the applicant on Option 3 ...

Council Member Tanaka: Yeah. If we stood on Kipling, on the other side of the street from this project, on the sidewalk at ground level, could we see the fourth floor?

Mayor Scharff: I will allow the applicant to answer the question.

Elizabeth Wong, Applicant: That answer can be—we can estimate by looking at the real model. I also want to tell you on Options 1 and 3 the building is three stories high. There's no way to see the fourth story, because the fourth story is 39 feet from the property line on Kipling Street. The only thing that you see from Kipling Street is the elevator, and the glass structure next to the elevator is the landing from the third floor to the fourth floor, which we moved from the corner back 11 feet so that it would be less visible to the passerby. Basically, the Options 1 and 3 are identical on Kipling Street. The difference, if I could say only difference maybe with a little range of error, is that the difference from Option 1 and Option 3 is that we added the residential square footage on the fourth floor on the west side of the building. We cannot make that building any shorter. It is three stories on Kipling. This was done in deference to the appellant. We also made the structure for the elevator glass because the approved version was concrete, and he complained that the concrete was too much in his face. We moved the building on the alley side 10 feet away from the alley at that corner, again, to give him relief as he walked south on Kipling Street. Basically, the only way to get rid of the elevator to make it truly three-stories high is to get rid of the elevator. I'm not really sure that by Code you're allowed to have a floor where you cannot access by handicap rules. I'm pretty sure that you cannot eliminate the elevator to that floor, because then there would be—handicapped people cannot get to that floor. If you're going to have a fourth floor, then you're going to need the elevator. We did not pursue Option 1 because, after giving up 3,000 square feet of residential/office space, the appellant wrote to Jodie Gerhardt that is that all she's doing. If that's all she's doing, then let's put the square footage back, and let's put it away from Kipling so that he would not be able to see it.

Mayor Scharff: Thank you.

Council Member Tanaka: I just wanted to ask Staff. I'm not an architect ...

Male: Could I be recognized just one moment? I was a resident on Kipling ...

Mayor Scharff: Nope, nope, nope.

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Council Member Tanaka: I just wanted to ask Staff. This is the applicant's point of view. Is this true that you could only really probably see the elevator from the sidewalk on the other side or is ...

Hillary Gitelman, Planning and Community Environment Director: Thank you, Council Member Tanaka. Hillary Gitelman, the Planning Director. In our view, Option 1 and Option 3 are very similar from Kipling. From right across the street, we don't think very much would be visible at all. We would further enhance Option 1 with the condition we've suggested to bring the height of the elevator down, so it doesn't exceed 50 feet. You are going to be able to see the elevator and that other piece behind it, depending on where you are on Kipling, because you'll see it at an angle. It has to a large extent addressed what some of the other schemes had as a much more prominent fourth-floor mass on Kipling. The elevator and the stair tower were much more prominent. We do think that Option 1 and Option 3 are going in the right direction on the Kipling side.

Mayor Scharff: Are you done? One more. Go ahead.

Council Member Tanaka: Can you go back to the Code which says immediate. What I'm interested in knowing from Staff's experience is when we say immediate environment, for previous projects that's come before Staff, what did immediate environment mean?

Ms. Gitelman: Thank you, Council Member Tanaka. I think we shouldn't take one of these findings out of the context of all the other findings about context. It really takes some interpretation and thought when looking at these Architectural Review findings and the Context Based Design Criteria. While you could probably parse them and find some of them that are applicable to just the building right next door, I think as a whole they allow you to read projects and the site in a larger setting, both the immediately adjacent buildings and then the general vicinity, how these buildings are experienced on the street.

Council Member Tanaka: I see. You're saying that we should look at the larger picture, and there's actually a little bit of leeway. It's not just immediate, adjacent building.

Ms. Gitelman: Yes.

Council Member Tanaka: Thank you.

Mayor Scharff: I think Option 1 meets what we're looking for, for the most part, with what Staff has put forward on Packet Page 527 under recommended Conditions of Approval. I think it brings down the elevator

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adjacent to Kipling Street inclusive of any associated mechanical equipment shall not exceed the 50-foot height limit. With all of that, I think we would be good on Kipling Street. With that, I wanted to say that Staff has done a really good job on this project in terms of outlining Option 1 and how it moves us forward to be responsive to what Council suggested. I actually appreciate the applicant putting forth Option 1 on this process as we go through it. With that, I'll move that we do Option 1 with all of the recommended Conditions of Approval, which are on Packet Page 527 and Packet Page 528 and partly on Packet Page 529.

Council Member Filseth: I'll second.

**MOTION:** Mayor Scharff moved, seconded by Council Member Filseth to:

- A. Deny the Appeal; and
- B. Approve the Mitigated Negative Declaration and Mitigation and Monitoring Plan; and
- C. Approve a modified project (Option 1) with conditions included in the Staff Report, Pages 6-8; and
- D. Direct Staff to return with written findings for adoption.

Mayor Scharff: Let's first get the Motion up there. While we're doing that, I'll speak to my Motion. This has been a long road in the community. It's been a long road for the appellant and everyone. It's time to basically put this issue behind us. I think by going with Option 1, we're being responsive to the concerns on Kipling Street. We're being responsive to the concerns of the community, and we are putting this process forward for Mrs. Wong, who actually ends up with a project. She is entitled to have a project. By going through it in this way, I think Staff did a really good job on the Conditions of Approval. I hope you'll support it. Council Member Filseth.

Council Member Filseth: Thanks very much. I think there's been a lot of discussion about the pros and cons of this building with respect to the community. All of that stuff kind of isn't relevant for what we're talking about here. Just on that subject, because the public's talked about it, not because it's covered in the appeal, this makes our housing crunch worse, not better. It's bad for sustainability, not good for sustainability. It gets rid of 1,500 square feet of retail and so forth. That's not really what we're here to discuss. We're really here to discuss the applicant's property rights in the context of our Codes. The Codes include the compatibility and Context Based Design Criteria, and that's what we're looking at here. It's pretty obvious to me that Options 2 and 3 don't meet the compatibility criteria. It's

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not completely obvious to me that a three-story building does, but I can't be certain it doesn't, so I think we should support going forward. I think I concur with the Mayor that Staff's done a very good job on this. We've worked through our process, and I think it's going to produce an outcome which is consistent with our Codes. That's what's important here. Thanks.

Mayor Scharff: Council Member Kou.

Mayor Scharff: You want to pass. Council Member Holman.

Council Member Holman: I'm going to offer a Substitute Motion. My Motion is to deny the project due to inability to make the findings recorded as part of the Council's prior review of this project, found on Pages 4 and 5 of the Staff Report, and consistent with the ARB denial. I'll speak to the Motion after hopefully getting a second.

Council Member Kou: I'll second it.

**SUBSTITUTE MOTION:** Council Member Holman moved, seconded by Council Member Kou to deny the Project due to the inability to make Architectural Review Findings as part of the Council's prior review from Staff Report Pages 4-5 and the Architectural Review Board recommendation to deny the Project.

Mayor Scharff: Speak to your Motion.

Council Member Holman: Several things. Some of this is a repeat of some of the things I've said earlier, and some of it is not. This building continues to be prominently one design for the length of the University Avenue frontage. It's not broken down into matching the rhythm that's on the street. The same design elements that are larger in scale than other buildings in the vicinity continue to be prominent and dominant. The most forward of the concrete, large box design are not consistent with the pattern of the street, and they are the dominant elements. That's true whether it is the former Apple store across the street, across the corner, or whether it is the buildings on the same block on University Avenue. It's also true when looking at the Varsity Theatre. There aren't shared—I'm not talking about style here. Again, I'm talking about design. There aren't any shared criteria, no rhythm on the street, no pedestrian-scale elements that you find in the Varsity Theatre, which is the terminus of Kipling Street. On the Kipling side, it's very hard to see what we're going to get because that rendering was not provided along with the plans for Option 1. I'm not sure how clear it is what we would be adjusting or how it is or isn't compatible. Just looking at the line drawings, it looks like it suffers the same failings that it does on University Avenue. That's what it seems to be. Just as a

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comment, I actually don't find that Options 3, 2 and 1 are that similar. I think there are pretty significant differences among them. For instance, Option 3 differs in mass, scale, FAR, setback, design features including on the University Avenue side of the project nearest Kipling, and the number of parking places. That's a lot of differences if we're saying that they're similar. I don't see how we could actually say that. I will stop there. Again, focusing on the Council's prior review of this project and those findings that we could not make then on Pages 4 and 5 of the Staff Report and also on the ARB findings that they could not make as well in making the denial recommendation for the project.

Mayor Scharff: Council Member Kou.

Council Member Kou: I'll go back to my earlier comments. This is a massive building. The mass and the scale of it is very large. I brought up the 636 Waverley property. That's what I fear will be on that corner of Kipling and University. With Kipling being a narrow street, I just don't see a three-story with that kind of mass and scale as something that would be considered as compatible. Council Member Holman has mentioned the other parts of it. I still think that it is not compatible. Just going back for modified projects, it's looking at a building that's going to be there for 50-plus years, that is going to be an impact on the other houses on Kipling Street.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: I've been listening to my Colleagues and looking at these various options. I've heard Option 1 referred to as a three-story building. Just to clarify, it is a four-story building. Correct? I still cannot make the findings that are consistent with our earlier meetings on Pages 4 and 5, particularly 18.18.110. I keep looking at these findings. I find that I will support the Substitute Motion because I don't believe I can make these findings.

Mayor Scharff: Seeing no further lights, let's vote on the Substitute Motion. The Substitute Motion fails on a 5-3 vote with Council Members DuBois, Kou, and Holman voting yes.

**SUBSTITUTE MOTION FAILED:** 3-5 DuBois, Holman, Kou yes, Kniss absent

Mayor Scharff: Now, let's vote on the—I see no lights, so now let's vote on the—you want to put your light on?

Council Member Holman: I don't think anybody's spoken to the main Motion except for the maker and seconder, I think.

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Mayor Scharff: Feel free to speak; I just saw no lights. I'm not ...

Council Member Holman: I think there are some basic design changes that we could recommend for this. It's not like you really want to design from the dais. That's not what's particularly a good thing to do. I strongly suggest that we incorporate into the Motion that the height of the, as I've referred to them, dominant and prominent first-floor concrete elements be lowered to be more consistent with what the first-floor pattern is on the street. That doesn't change the interior ceiling heights. It brings the exterior visual effect down to be more consistent with the street pattern.

Mayor Scharff: That's your (inaudible). I'd have to ask Staff. I noticed that the Staff Report talks about that the Option 1 plans reflect the pattern of development of doorway and glazing space, roughly 25 feet in width. I just ask Staff about that, about the ...

Council Member Holman: Can I comment first? If I could.

Mayor Scharff: Sure.

Council Member Holman: The reason that the 25-foot—it's hard to tell because dimensions weren't really well provided for this. I appreciate that the entrances are, in theory at least, at 25-foot intervals, but that's not the experience that one is going to have on the street. The experience one is going to have of this building is again these prominent and dominant concrete elements that are forward of the entrances, especially because they're lighter in color. The light's going to hit them. The doorways are recessed, which isn't necessarily a bad thing. The way that they're recessed here behind these sections, it's not the experience that you're going to have on the street.

Mayor Scharff: I'm waiting for Staff to respond.

Ms. Gitelman: Thank you. Through the Mayor, just quickly I'm not sure that I completely understand what the Council Member is suggesting in terms of design changes. We do have a condition that we're suggesting, that's been incorporated into the Motion, that the applicant would return to the Architectural Review Board for review and recommendations of exterior building materials, colors, and craftsmanship. While that wouldn't create room for a total redesign, some of these finish and design choices on the exterior could be addressed in that context.

Council Member Holman: This isn't materials or finishes. This is literally the design. It's literally design.

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Ms. Gitelman: I guess I'm having trouble understanding exactly what kind of changes you would be requesting.

Mayor Scharff: Council Member Holman. Council Member Holman, I'm not going to accept it. I think it's a little scary to be designing it from the dais, especially when Staff seems unclear on it. If there's a clearer sense—I guess I'm just not going to accept it. If you get a second.

Council Member Holman: Is there a laser I can point on the screen to what I'm talking about?

Mayor Scharff: I will allow, if there is such a thing, for you to explain if you want to.

Council Member Holman: Is there a laser anywhere? Can anybody see that? I'm talking about that element right there, that runs the—except for the one interruption in the sort of middle. That element, if it were lowered to be—if I can do this—if that element were lowered—I can't even find it now. Here we go. If this element, this design feature here—how do I get rid of that—was lowered down to about here so that it provides more of a cover and a pedestrian-scale cover over the entrances and is more consistent with what you see in the other buildings on the block like here—right now this is about at a story and a half when compared to the buildings next door. This goes half way up the parapet of the building next door.

Mayor Scharff: Would it satisfy you if we made that up to the discretion of the ARB?

Council Member Holman: Except that it's not in the Motion because the discretion of the ARB does not include design.

Ms. Gitelman: I'm afraid that that sounds like really a structural change to the building that would take—I don't think it's something we can do right here. I think it would require consultation with the architectural design team to determine whether that request could be accommodated.

Mayor Scharff: No, I can't accept that then.

Council Member Holman: How could we give some kind of guidance to the ARB? Again, I agree. It's not good to be sitting here and trying to design a project. I'm trying to point out things that are reasons that I can't make findings and trying to get the project closer to being able to make the findings, which is difficult given where we're starting here. Staff is being mum on how we can go about doing that.



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Mayor Scharff: Council Member Holman, I think we need to move on, unless you can get a second. Council Member Holman, are you done?

Council Member Holman: Yeah. I'm not hearing a second.

**AMENDMENT:** Council Member Holman moved, seconded by Council Member XX to add to the Motion, "that the height of the prominent First Floor concrete elements be lowered to be consistent with the prevailing street pattern."

## **AMENDMENT FAILED DUE TO THE LACK OF A SECOND**

Mayor Scharff: Council Member Fine.

Council Member Fine: Just very quickly. Being a newbie here on the Council, I'm still learning. It's very clear that this process did not work well on this project, whether we talk about Council, ARB, the applicant. In fact, I would commend you, Mr. Harbour. In many ways you've provided a very professional interaction here, presented good evidence around this issue and helped shape this project. Everything else, I think, has not been that professional. That said, I am going to support the Motion. I do believe Option 1 is compatible with our Downtown, which is a mixed area. As some others have mentioned here, property owners do have rights, which our City has a responsibility to uphold. While this isn't perfect, it is what it is. I will be supporting the original Motion.

Mayor Scharff: Council Member Wolbach.

Council Member Wolbach: I think I'm going to support the Motion, especially because it has the additional conditions that Staff took the time to stipulate. Those kind of seal the deal for me. Do I love the building? No, but that's not the question. The law is the law. The law doesn't say everybody must love the building. I certainly don't; it's not my favorite style. There's a limit to what we've allowed ourselves to do through the law. I do feel that it does meet the conditions barely, but I think it does. The impact on Kipling, there will be some. I'm not going to say that there's not going to be an impact. The question is whether it's compatible enough that we can allow the applicant to move forward. I just, again, want to commend Staff and the ARB and the applicant and the appellant for a tremendous amount of patience through a very long process. I'm just going to throw out a couple of things to think about. I don't want to get too deep into them because they're not exactly what's on our Agenda right now. A couple of things to think about as far as improving our process. We're talking about this gray area and this question and uncertainty about how many stories can you have next to X number of stories that are present. Our neighboring city

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of Mountain View, I know, has some step-down requirements. I don't know the details of how that works in Mountain View. I'd heard it works well to have—they have some clear rules maybe that we might want to look at about based on the surrounding buildings how high can you build next to that or across from that. Something to think about. It's also another example of why we should look at having mixed-use zoning that is more housing, more homes, and smaller unit homes over retail. As Council Member Filseth pointed out, this makes the jobs/housing imbalance worse, not better. That's what our zoning is. When this project started, the calls for more housing in the community weren't as strong as they are now. It just kind of reinforces the discussions that have been happening around the need to change the zoning priorities to be housing over retail. It's also a good example of where we might want to think about a future of having coordinated area plans as a more regular zoning tool. This kind of complex intersection of styles, not just streets, and the complexity of this area, I wish we'd had a better process, but it's the process that we have. I wish we had better zoning and better Codes, but they're the zoning and the Codes that we have. I'm not super thrilled with this, but I am going to support it reluctantly.

Mayor Scharff: Council Member DuBois.

Council Member DuBois: Staff talks about this would be subject to more detailed Code review when it comes to a building stage. If we're approving Option 1 here, do we have sufficient detail to know that Option 1 is what gets submitted?

Ms. Gitelman: I think we're going to have to make sure that what we get matches the Council's Motion here. We're committing to do that.

Council Member DuBois: I'd offer a friendly Amendment, "E," that this approval is subject to the actual project matching Option 1. Just because we've had so many variations, I think we need to be very clear that's what we're approving.

Mayor Scharff: That's fine. From what I understand, Council Member DuBois' Motion is that the approval is subject to the project actually matching Option 1 as described by Staff. Is that—I see no downside to that.

Council Member DuBois: Is that accepted then?

Mayor Scharff: Unless Staff has some objection, forever hold your peace.

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Ms. Gitelman: That would be how we would implement this Motion. I guess with the reiteration we would come back to you if we felt like the plan set we got was trending off in another direction.

Mayor Scharff: That's fine.

Council Member DuBois: That's what I'm asking for.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to add to the Motion, "this approval is subject to the actual Project matching Option 1 as described by Staff." (New Part E)

**MOTION AS AMENDED RESTATED:** Mayor Scharff moved, seconded by Council Member Filseth to:

- A. Deny the Appeal; and
- B. Approve the Mitigated Negative Declaration and Mitigation and Monitoring Plan; and
- C. Approve a modified project (Option 1) with conditions included in the Staff Report, Packet Pages 527-528; and
- D. Direct Staff to return with written findings for adoption; and
- E. This approval is subject to the actual Project matching Option 1 as described by Staff.

Mayor Scharff: I see no further lights. If we could vote on the board. That passes on a 5-3 vote with Council Members DuBois, Kou, and Holman voting no.

**MOTION AS AMENDED PASSED:** 5-3 DuBois, Holman, Kou no, Kniss absent

Mayor Scharff: Thank you all for coming tonight. Congratulations on your approval.

- 12. ~~PUBLIC HEARING: Review and Adoption of an Ordinance Amending Chapter 18 (Zoning) of the Palo Alto Municipal Code to Update Code Sections Regarding Accessory Dwelling Units.~~

STAFF REQUESTS THIS ITEM BE CONTINUED TO MARCH 6, 2017.

# TRANSCRIPT

## Study Session

2. ~~Update on Stanford University's General Use Plan (GUP) Application to Santa Clara County.~~

This Agenda Item continued to February 27, 2017.

## Inter-Governmental Legislative Affairs

None.

## Council Member Questions, Comments and Announcements

Mayor Scharff: Now, we go to Council Member Questions, Comments and Announcements. Tom, did you put on your light or did I just not turn yours off?

Ms. Gitelman: I'm sorry.

Mayor Scharff: Council Member Holman.

Council Member Holman: It's going to be a little bit noisy I think. Can we ask the public to move to the lobby? I've actually provided to David Carnahan something I'm going to be reading. My comments are these. The Staff bring back to the Council at the earliest opportunity the consideration of taking the programs out of the body of the Comprehensive Plan. While I acknowledge that reconsideration of an action is typically made by a member of the prevailing side, this referenced action had a number of unusual and far-reaching implications including—these are in no particular order—(a) no discussion by Council or presentation by Staff as an option; (b) a radical departure from the Comp Plan work that has been ongoing since 2008 and most intensively the last 18-24 months; (c) lack of clarity among at least some Council Members, Staff, and public what happens to the programs and their influence if other than in the body of the Comprehensive Plan. Could we ask the public to move to the lobby please? Could we ask the public to move to the lobby please or lower the tone? (d) Concern about a show of disrespect for the intensive efforts of members of the CAC; (e) the manner of voting was not one that supports transparency or discussion of issues and, while the Chair has discretion on running meetings, the Comp Plan deserves a consensus discussion around process given the radical departure from typical procedures. Making policy is not a lightning-round event. (f) It is further procedurally not clear if we were actually voting on whether to discuss the various matters or voting on a Motion to approve the matter. While not part of what I ask here, I am also greatly concerned about other far-reaching, impactful decisions brought up

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last week in such rapid-fire manner, without consensus of the body to proceed thusly, and about things not previously vetted by Staff, CAC, public or Council such as 3.0 FAR for hotels.

Mayor Scharff: Seeing no further lights, we're adjourned.

Council Member Holman: Wait, wait, wait. Is no one going to comment on that? I thought ...

Mayor Scharff: This is not a discussion (inaudible).

Council Member Holman: No, but this acts as a Colleagues' Memo if someone else wants to comment.

Council Member DuBois: I would second that. Were you making a Motion?

Council Member Holman: I'm sorry?

Council Member DuBois: Were you making a Motion?

Council Member Holman: Yes. I'm putting this forward as a Colleagues' Memo. It's how we do it. It's what our procedures are. If someone puts something forward at the end of a meeting and somebody else supports it, it acts as a Colleagues' Memo.

Molly Stump, City Attorney: Council Members, there have been very few number of cases in the past number of years where Colleagues' Memos have been made orally. As you know, in your procedures, they do call for a written Colleagues' Memo process that gets distributed to Staff and has Staff input, and then is placed on the Council's Agenda. I would maybe just note also that perhaps this is really a timing question because the Staff was intending to bring back this item anyway based on the preliminary direction that Staff received from Council on Monday. I don't know that it's clear to us ...

Council Member Holman: This goes a little bit—not to interrupt you. I'm sorry. This goes a little further than that. What I understand Staff's going to bring back to Council is talking about what the action that was taken means. What I'm asking for here is that the Staff bring back to the Council at the earliest opportunity the consideration of taking the programs out of the body of the Comprehensive Plan ...

Mayor Scharff: Council Member Holman ...

Council Member Holman: ... because we don't know what that means.

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Mayor Scharff: ... what you're asking for is a Motion for reconsideration. Under our procedures, a Motion for reconsideration would not be appropriate at this time. The answer is no, and I'm adjourning the meeting. Meeting adjourned.

Adjournment: The meeting was adjourned at 11:11 P.M.