On May 5, 2008, the Council approved the Conditional Use Permit to allow beer and wine service and late night business activities for a new restaurant "Ramen Club", making the following findings, determination and declarations:

SECTION 1. Background. The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A. On January 18, 2008, John Y Chen applied on behalf of 3924 El Camino Real, LLC to allow beer and wine service and late night business activities until 2:00 AM for a new restaurant "Ramen Club" ("The Project").

B. The project was deemed complete in February 12, 2008. A tentative Director’s Decision was prepared approving the conditional use permit on February 26, 2008. A hearing before the Planning & Transportation Commission ("PTC") was requested on March 5, 2008. The PTC held a public hearing on April 9, 2008 to consider the appeal. The PTC voted to recommend approval of the conditional use permit and to uphold the Director’s decision.

SECTION 2. Environmental Review. The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA).

SECTION 3. Conditional Use Permit Findings

1. The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience, in that:

The project conforms to this finding in the following manner: the proposed eating service establishment will meet all current zoning requirements. The business will be located within an existing building; and the use which includes alcoholic beverage service, will be accessory to the full service restaurant operation.

2. The proposed use will be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the
purposes of the Zoning Ordinance, in that:

The project conforms to this finding in the following manner: the subject property is located in an area designated as Neighborhood Commercial, as indicated on the Comprehensive Plan Land Use and Circulation Map. Eating and drinking services are an allowed use in the CN zoning designation and are consistent with the current land use designation and the pertinent elements of the Palo Alto Comprehensive Plan. There are no restrictions in establishing this use within the existing building.

SECTION 4. Conditional Use Permit Granted. Conditional Use Permit No. ____ is granted to allow food, beer, and wine service until 11:00 PM for a new restaurant "Ramen Club".

SECTION 5. Conditions of Approval.

Department of Planning & Community Environment

Planning Division...

1. The use shall be conducted in substantial conformance with the project description letter received on January 18, 2008 that is on file with the City of Palo Alto Planning Division.

2. The serving of alcoholic beverages shall only be allowed in conjunction with the operation of a bona-fide restaurant. A full service menu shall be available at any point that alcohol service is provided. This permit does not allow any operations associated with a nightclub-type use.

3. The operator shall keep the subject property free of litter associated with the restaurant operation.

4. Hours of operation: The permitted hours of operation shall be from 11:00am-11:00pm.

5. There shall be no live or amplified music played on site without an approved amendment to this conditional use permit or a temporary use permit.

6. Hours of beer and wine service: The permitted hours of beer and wine service shall be from 11:00am-11:00pm.

7. Hours of customer parking onsite: The permitted hours of customer parking onsite shall be from 11:00am-10:00pm. At
The business operator shall submit a plan for signage to educate patrons that the use of property is only permitted under certain conditions, particularly with respect for the surrounding business and residential neighborhood. The plan shall direct patrons to reduce noise in the parking lot and along Cypress Lane, to eliminate litter and vandalism, and to be respectful of property and residents in the adjacent residential neighborhood. The plan shall include wording for signs on the interior and exterior of the building. The plan shall be reviewed and approved by both the Police Department and the Planning Manager. The plan shall be submitted no later than 15 days after the issuance of this use permit (May 19, 2008) and implemented immediately upon approval unless otherwise specified.

9. Trash and recycling disposal and other use of the dumpster behind the business shall be limited to no later than half an hour after the end of business.

10. This use shall comply with all applicable City codes, including Titles 9 (Public Peace, Morals and Safety) and 15 (Fire Prevention/Uniform Fire Code) of the Palo Alto Municipal Code and Titles 4 (Alcoholic Beverage Business Regulations) and 19 (Public Safety) of the State of California Administrative Code.

11. The consumption of alcoholic beverage under this use permit shall be deemed an agreement on the part of the applicant, their heirs, successors, and assigns to comply with all terms and conditions of this conditional use permit.

12. Revocation or Modification of Approvals: The director may issue a notice of noncompliance for any failure to comply with any condition of this permit approval, or when a use conducted pursuant to a conditional use permit is being conducted in a manner detrimental to the public health, safety and welfare.

13. A copy of this approval letter shall be printed on the cover sheet of any plans submitted for building permit(s).

Public Works Engineering

14. STREET TREE: The applicant is required to contact Public
Works arborist at 650-496-5953 to arrange a site visit so the arborist can determine if the empty tree well in the front sidewalk should have a street tree installed. If he determines a tree should be installed, then the site plan submitted with the building permit plan set must show the street tree work that the arborist has determined, including the tree species, size, staking, grate, and irrigation requirements. The plan must note that in order to do street tree work, the applicant must first obtain a Permit for Street Tree Work in the Public Right-of-Way from Public Works arborist. If the arborist determines a tree is not required, then the sidewalk must be patched. Include a note on the building permit plan set that this work must be done per Public Works standards and the contractor performing the work must first obtain a Permit for Construction in the Public Street from Public Works at the Development Center.

Public Works Water Quality

15. PAMC 16.09.106(e) Dumpsters for New and Remodeled Facilities - New dumpster areas shall be covered. The area shall be designed to prevent water run-on to the area and run-off from the area.

16. PAMC 16.09 - Newly constructed or improved buildings with all or a portion of the space with undesignated tenants or future use will need to meet all requirements that would have been applicable during design and construction. If such undesignated retail space becomes a food service facility the following requirements must be met:

17. PAMC Section 16.09.103(a) Grease Control Devices for Food Service Facilities - A grease control device (GCD) shall be installed with a minimum capacity of 750 gallons. The GCD must be sized in accordance with the 2007 California Plumbing Code. The sizing calculation must be submitted with the plans. All grease generating drainage fixtures shall be connected to the GCD. The connection of any dishwashers to a GCD is prohibited. All large, in-ground interceptors shall have manholes to allow visibility of each inlet piping, baffle (divider) piping and outlet piping to ensure accessibility for inspection, cleaning and removal of all contents.

18. PAMC 16.09.032b(16) Covered Dumpsters for Food Service Facilities - After January 1, 1996, new buildings constructed to house food service facilities shall include a covered area for a dumpster. The area shall be designed
to prevent water run-on to the area and runoff from the area. Drains that are installed beneath dumpsters serving food service facilities, shall be connected to a grease removal device. The area shall include room for all tallow bins.

19. **PAMC 16.09.103(e) Prohibition Against Garbage Disposals** - The installation of a garbage grinder at any food service facility is prohibited after January 1, 2003. The kitchen cannot utilize a garbage grinder for food waste disposal to the sanitary sewer.

20. **PAMC 16.09.032b(16) Large Item Cleaning Sink for Food Service Facilities** - Food service facilities shall have a sink or other area for cleaning floor mats, containers, and equipment, which is connected to a grease interceptor and the sanitary sewer.

**Fire Department**

21. A separate permit is required for the Type I kitchen hood fire suppression system.

**Utilities - Electrical Engineering**

22. Applicant/Developer must notify Utilities Engineering (Electric) if the proposed renovation/change of use has any impact on the existing electrical service size, voltage, or location. If there are any changes, the Utilities will provide comments and/or conditions along with any applicable fees and cost estimate.

**Utilities - Water, Gas & Wastewater**

**PRIOR TO SUBMITTAL FOR BUILDING PERMIT**

23. The applicant shall submit a completed water-gas-wastewater service connection application - load sheet for City of Palo Alto Utilities. The applicant must provide all the information requested for utility service demands.

24. The applicant shall submit improvement plans for utility construction. The plans must show the size and location of all new and existing underground utilities within the development and the public right of way including meters, backflow preventers, fire service requirements, sewer mains, sewer cleanouts, sewer lift stations and any other required utilities.

25. Sewer drainage piping serving fixtures located below the
next upstream sewer main manhole cover shall be protected by an approved backwater valve per California Plumbing Code 710.0. The upstream sewer main manhole rim elevation shall be shown on the plans.

PRIOR TO ISSUANCE OF BUILDING PERMIT

26. For contractor installed water and wastewater mains or services, the applicant shall submit to the WGW engineering section of the Utilities Department four copies of the installation of water and wastewater utilities off-site improvement plans in accordance with the utilities department design criteria. All utility work within the public right-of-way shall be clearly shown on the plans that are prepared, signed and stamped by a registered civil engineer. The contractor shall also submit a complete schedule of work, method of construction and the manufacture's literature on the materials to be used for approval by the utilities engineering section. The applicant's contractor will not be allowed to begin work until the improvement plan and other submittals have been approved by the water, gas and wastewater engineering section.

27. Existing wastewater laterals that are not plastic (ABS, PVC, or PE) shall be replaced at the applicant's expense.

28. The applicant shall pay the capacity fees and connection fees associated with the installation of the new utility service/s to be installed by the City of Palo Alto Utilities. The approved relocation of services, meters, hydrants, or other facilities will be performed at the cost of the person/entity requesting the relocation.

29. Each unit or place of business shall have its own water and gas meter shown on the plans.

30. A separate water meter and backflow preventer shall be installed to irrigate the approved landscape plan. Show the location of the irrigation meter on the plans. This meter shall be designated as an irrigation account and no other water service will be billed on the account. The irrigation and landscape plans submitted with the application for a grading or building permit shall conform to the City of Palo Alto water efficiency standards.

31. An approved reduce pressure principle assembly (RPPA backflow preventer device) shall be installed for all existing and new water connections from Palo Alto Utilities to comply with requirements of California administrative code, title 17, sections 7583 through 7605
inclusive. The RPPA shall be installed on the owner's property and directly behind the water meter. Show the location of the RPPA on the plans. Inspection by the utilities cross connection inspector is required for the supply pipe between the meter and the assembly.

32. An approved double detector check valve shall be installed for the existing or new water connections for the fire system to comply with requirements of California administrative code, title 17, sections 7583 through 7605 inclusive. Double check detector check valves shall be installed on the owner's property adjacent to the property line. Show the location of the double detector check assembly on the plans. Inspection by the utilities cross connection inspector is required for the supply pipe between the City connection and the assembly.

33. All existing water and wastewater services that will not be reused shall be abandoned at the main per WGW Utilities procedures.

34. All utility installations shall be in accordance with the City of Palo Alto Utility standards for water, gas & wastewater.

SECTION 6. Term of Approval. If the Conditional Use Permit granted is not used within one year of the date of council approval, it shall become null and void, pursuant to by Palo Alto Municipal Code Section 18.77.090(a).

PASSED:
AYES:
NOES:
ABSENT:
ABSTENTIONS:
ATTEST:                APPROVED:

City Clerk                     Director of Planning and Community Environment

APPROVED AS TO FORM:

Senior Asst. City Attorney
PROJECT DESCRIPTION REFERENCED:

1. The project description prepared by John Y. Chen, consisting of one page, dated January 16, 2008 and received January 18, 2008.
PLANNING & TRANSPORTATION DIVISION

STAFF REPORT

TO: PLANNING & TRANSPORTATION COMMISSION

FROM: Jennifer Cutler
Associate Planner

DEPARTMENT: Planning and Community Environment

AGENDA DATE: April 9, 2008

SUBJECT: **3924 El Camino Real [08PLN-00017]:** Review of and recommendation to the City Council on a Conditional Use Permit and Record of Land Use Action to allow beer and wine service and late night business activities until 2:00 AM for a new restaurant “Ramen Club”. Environmental Assessment: Exempt from the provisions of CEQA. Zone District: CN.

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**RECOMMENDATION:**
Staff recommends that the Planning and Transportation Commission (P&TC) recommend that the City Council (Council) approve a record of Land Use Action approving the Conditional Use Permit as modified to further restrict hours of beer an wine service and onsite customer parking, to allow the establishment of a new restaurant “Ramen Club” open after 10:00 PM seven days per week, based upon the findings and conditions of approval in the Record of Land Use Action (Attachment A).

**BACKGROUND**
A conditional use permit application was received on January 18, 2008 and tentatively approved by the Planning Manager, on behalf of the Director of Planning and Community Environment, on February 26, 2008. On March 5, 2008, within the request for hearing period, a request for hearing was made.

No comments from the public were received during the 21-day comment period after the receipt of application. Concerns and a request for this hearing were received after the tentative approval was published and are summarized below and included as Attachment D. Subsequent to the hearing request the planning manager conducted a meeting on March 10, 2008, with the applicant and neighbors to better understand the issues and concerns and to try to find solutions to these various issues. It appears to staff that the issues are beyond the scope of this application.
Project Description
The conditional use permit application requests extended hours until 2:00 AM, and the ability to serve wine and beer as part of a new Japanese noodle house to be called “The Ramen Club.” The restaurant would use the existing facilities, previously occupied by Quizno’s, with no physical changes except for interior decorations and the installation of a hood in the kitchen area for cooking purposes. The applicant’s description of the business is a location where busy workers, nearby residents, and late night studying students could enjoy a warm meal. During staff’s recent meeting with neighbors the applicant noted their willingness to explore solutions including reducing hours of beer and wine service and limiting late night access through the parking lot.

SUMMARY OF LAND USE ACTION:
Background information related to the project’s details and history has been included within the Record of Land Use Action, which contains findings and conditions of approval. The action required of the Planning and Transportation Commission (Commission) is a recommendation on the Conditional Use Permit.

The Conditional Use Permit is required as follows:

The following regulations restrict businesses that operate or have associated activities at any time between the hours of 10:00 p.m. and 6:00 a.m., where such site abuts or is located within 50 feet of residentially zoned properties.

(1) Such businesses shall be operated in a manner to protect residential properties from excessive noise, odors, lighting or other nuisances from any sources during those hours.

(2) For properties located in the CN or CS zone districts, businesses that operate or have associated activities at any time between the hours of 10:00 p.m. and 6:00 a.m. shall be required to obtain a conditional use permit. The director may apply conditions of approval as are deemed necessary to assure that the operations or activities are compatible with the nearby residentially zoned property.

(Palo Alto Municipal Code (PAMC) Section 18.16.040(b))

Procedure for review by the Commission upon request for hearing is as follows:

Hearing and Recommendation (Upon Request) by the Planning and Transportation Commission
(1) Within 45 days following the filing of a timely hearing request of a proposed director’s decision or revised proposed director’s decision the planning and transportation commission shall hold a hearing on the application, unless the request is withdrawn as described above.

(2) Notice of the revised director’s decision shall be given by mail to owners and residents of property within 600 feet of the property, by publication, by e-mail, and by posting in a public place. Notice shall include the address of the property, a brief description of the proposed project, and the date, time and location of the hearing.

(3) Following the hearing, the planning and transportation commission shall make a recommendation on the application, which shall be forwarded to the city council.

(Palo Alto Municipal Code (PAMC) Section 18.77.060(e))
Procedure for review by the Council upon recommendation from the Commission is as follows:

The recommendation of the planning and transportation commission on the application shall be placed on the consent calendar of the council within 30 days. The council may:

1. Adopt the findings and recommendation of the planning and transportation commission; or

2. Remove the recommendation from the consent calendar, which shall require three votes, and:
   (A) Discuss the application and adopt findings and take action on the application based upon the evidence presented at the hearing of the planning and transportation commission; or
   (B) Direct that the application be set for a new hearing before the city council, following which the city council shall adopt findings and take action on the application.

(Palo Alto Municipal Code (PAMC) Section 18.77.060(f))

SUMMARY OF KEY ISSUES:

Standards of Review
The draft Record of Land Use Action, upholding the Director’s approval (Attachment A), includes a determination that the proposed conditional use permit meets all requirements of the City’s Municipal Code and Comprehensive Plan. The following findings must be met to grant the conditional use permit. Staff believes that both findings can be made and each is discussed below:

1. The proposed use, at the proposed location, will not be detrimental or injurious to property or improvements in the vicinity, and will not be detrimental to the public health, safety, general welfare, or convenience.

   The project, as conditioned, conforms to this finding in the following manner: the proposed eating service establishment will meet all current zoning requirements. The business will be located within an existing building, and the use which includes alcoholic beverage service, will be accessory to the full service restaurant operation. The sale of alcoholic beverages will not be conducted in a manner that will be injurious to property or improvements in the vicinity or detrimental to the public health, safety, and general welfare, or convenience. Conditions would limit late night impacts to neighbors.

2. The proposed use will be located and conducted in a manner in accord with the Palo Alto Comprehensive Plan and the purposes of the Zoning Ordinance.

   The project conforms to this finding in the following manner: the subject property is located in an area designated as Neighborhood Commercial, as indicated on the Comprehensive Plan Land Use and Circulation Map. Eating and drinking services are an allowed use in the CN zoning designation and are consistent with the current land use designation and the pertinent elements of the Palo Alto Comprehensive Plan. As conditioned, the use is restricted in the service of beer and wine and late night parking for customers.

Neighbor Concerns
The concerns expressed by the residential neighbors to this project include the impacts resulting
from the late night activity and the beer and wine service, as well as concerns about larger issues caused by the use of the alley, Cypress Lane, by customers of both the Ramen Club and the adjacent Happy Donuts, which is open 24-hours. The twelve emails received, two of which include requests for this public hearing, are included as Attachment D.

Hours of Operation and Alcohol Service
The concerns expressed by the neighbors stem from either the beer and wine service or the late night activities. Concerns stated in writing suggest that the restaurant should not be open later than 11 pm. In the March 10, 2008, meeting the discussion focused more on the limitation of the hours that beer and wine would be served and the hours of access to the alley, and particularly, existing conditions related to the alley and its use by Happy Donuts customers.

Concerns about the beer and wine service were connected with historical problems in the area with other businesses serving liquor and resulting violence, noise, and police activity, as well as the current existence of two liquor stores in the vicinity of the site.

Noise
Neighbors are concerned about loud music in connection with this late night use. Questions were expressed about whether loud music would be part of the new business, and whether the late night use would result in noise disturbance from car stereos in the parking lot, as reportedly occurs at the Happy Donuts parking lot. An additional source of noise is the loud banging that results from customers driving over a broken water meter cover in the alley behind the building at 3886-3898 El Camino Real.

Alley
Additional information about the context of this property was provided by the neighbors’ comments, including descriptions of the state of the private alley, Cypress Lane, that runs along the rear of the property and adjacent to the rear lot lines of residential properties on La Selva Drive. The state of the alley as private land partially owned by the commercial properties, and partially owned by an unknown heir to the original Barron estate, has resulted in virtually no maintenance of the alley.

Parking
Concerns were also expressed about the limited amount of parking spaces available for the use, and the potential for parking on Cypress Lane and within the neighborhood. In the March 10, 2008, meeting staff raised the possibility of designating a segment of short term, 20-minute, parking along El Camino Real directly in front of the building for take-out customers. This proposal could be implemented on a trial basis, designed to reduce the number of customers parking on-site and exiting the site via the alley. Permanent implementation of this parking solution would require approval by Caltrans and City Council.

Staff has added conditions of approval 6 and 7 to alleviate the concerns of most of the neighbors in regards to this project. The conditions would have the hours for serving beer and wine end at 9:30 PM and limit access to the parking lot and alley after 10:00 PM. The applicant expressed acceptance of such conditions at the March 10, 2008, meeting

Use of the Alley
The existing neighborhood issues center around the maintenance of the alley and the nuisances caused by late night activity. Staff met with representatives from Police, Fire, Public Works, Transportation, Code Enforcement, and the Attorney’s office to discuss the issues and potential solutions, including working with existing businesses and installation of signs limiting use of the alley after 10:00 PM.

The Happy Donuts business was permitted prior to the requirement of a conditional use permit for late night activity within 50 feet of residential property. In the year 2007 the police received 59 complaints related to the property due to excessive noise or other disturbances caused by patrons. This number of complaints and the resulting police response has a significant resource impact that should be addressed.

Staff also discussed the concern about the broken water meter over in the alley adjacent to another property. The Utilities Department has agreed to go out and look at the broken water meter cover to assess what needs to be done.

The requirement by the Fire Department for use of the alley way is very limited. Currently they can access all buildings on El Camino Real sufficiently without the use of the alley, though a short fire easement for a small section of the end of the alley would be needed if the Happy Donuts’ parking lot were to be closed off to the alley after 10:00 PM.

Additional research is needed to determine existing easements and feasibility of changes on the sites accessing the alley, and to assess the feasibility of restricting the use of the alley to maintenance, utility and emergency access. These uses, however, will not be materially affected by the applicant’s proposal.

POLICY IMPLICATIONS:
The proposed project is consistent with the Comprehensive Plan and staff believes there are no other substantive policy implications.

TIME LINE:
Application Received: Application Deemed Complete: Tentative Approval: Hearing Requested: End of Hearing Request Period: Date: January 18, 2008 February 12, 2008 February 26, 2008 March 5, 2008 March 11, 2008

ENVIRONMENTAL REVIEW:
The project is categorically exempt from the provisions of the California Environmental Quality Act (CEQA).

ATTACHMENTS:
A. Draft Record of Land Use Action
B. Location Map
C. Project Description
D. Tentative Approval Letter
E. Request for Hearing Correspondence
F. Project Plans (Commissioners' only)

COURTESY COPIES:
John Y Chen, Applicant
3924 El Camino Real, LLC, Owner
Bob Cool, Neighbor
Gloria Sikora, Neighbor

Prepared by: Jennifer Cutler, Associate Planner

Reviewed by: Amy French, Manager of Current Planning

Department/Division Head Approval: ________________________________

Curtis Williams, Assistant Director
Planning and Transportation Commission
Verbatim Minutes
April 9, 2008

DRAFT EXCERPT

3924 El Camino Real*: [08PLN-00017]: Review of and recommendation to the City Council on a Conditional Use Permit and Record of Land Use Action to allow beer and wine service and late night business activities until 2:00 AM for a new restaurant “Ramen Club”. Environmental Assessment: Exempt from the provisions of CEQA. Zone District: CN.

Ms. Jennifer Cutler, Associate Planner: Good evening Commissioners. This project involves a Conditional Use Permit for a new restaurant called The Ramen Club at 3924 El Camino Real. The restaurant will be a small noodle house as described in the project description letter and menu attached to the item’s Staff Report. The building previously used for Quizno’s requires only minor interior decorative changes and a new hood in the kitchen. No other physical changes are proposed.

The Conditional Use Permit is required for two distinct items. The first item is beer and wine service. Currently the proposed conditions limit this to end at 9:30 PM and the applicant has agreed to this condition. The second element that requires a Conditional Use Permit is the request for late night hours within 50 feet of residential properties. There is a proposed condition, which restricts the parking access to the alley behind the property that is between the property and the residential after 10:00 PM. The applicant has agreed to that as well.

The application was submitted January 18, 2008. No comments were received during the 21-day public comment period and so a tentative approval letter was mailed on February 26, 2008. Numerous comments were received between March 5 and March 11 during the 14-day request for hearing period. This included two specific requests for public hearing, which brings us here today.

Staff held a meeting with some of the interested neighbors on March 10 to better understand their issues and concerns. These focused on the noise and other nuisances in the alley at night that are currently going on and concerns that this would be increased by this use. At the end of the meeting all but one of the neighbors attending seemed willing to forego the public hearing if the approval was conditioned on the 9:30 PM end time for beer and wine, and blocking off of the parking lot to prevent traffic at the same time. Both of these conditions are currently proposed in this evening’s Staff Report. Based on this feedback Staff recommends that the Commission recommend approval with the proposed conditions.

The remaining neighbor was concerned about the larger issues and all of the neighbors were but specifically concerned that we come to this public meeting to discuss some of these larger issues. They center around the use of the private alley called Cypress Lane and the use of the Happy Donuts property which is adjacent to 3924 El Camino Real. These issues are beyond the scope of the Conditional Use Permit but Staff feels that this is a valuable opportunity to discuss them.
As a result of this neighbor meeting Staff held a meeting with representatives from Fire, Police, Transportation, Public Works, and the Attorney’s Office to discuss these larger issues. Further discussion was also held with Code Enforcement, Utilities and the Real Property Division of the Administrative Services. As a result of these discussions the Utility Department has agreed to go out and look a broken water meter to assess what must be done. This was one of the major noise issues with cars driving through the alley. Staff has also scheduled a meeting with the owner and managers of Happy Donuts. That meeting was held on April 1 with staff from Planning, Transportation, and Code Enforcement. The Happy Donuts managers’ experience is that college students who use the donut shop late at night are very quiet and want to study.

It seems that it is high school students that are noisy and hang out in the rear of the parking lot causing the problems. For this reason the manager was more than happy to try and find some solutions to these problems. The owner has agreed to install additional lighting in the rear of the property as well as signage to discourage loitering or label the area as a quiet neighborhood or something similar since this would help their business as well. Staff has also suggested that we might request an increase of police presence in the area on a few Friday or Saturday nights to try and discourage the students from congregating in the location. In addition the owner has agreed to look into installing a three or four foot wall along part of the rear property line to delineate the edge of the property though not restricting access to the alley. It is hoped that the combination of the lighting, signage, and increase in police presence as well as the wall should reduce the nuisance caused by the loud noise near to the residential neighbors.

Staff has put responses to the written questions from Commissioners at places and the applicant was here earlier to make a presentation. I believe he had to go pick up his kids but his sister is here to speak on his behalf. If you have questions I am here.

Chair Holman: Any clarifying questions for Staff?

Mr. Larkin: If I could make a real quick comment. There is a lot of information about Happy Donuts is provided by way of background. The Commission understands this Conditional Use Permit if for the noodle restaurant it is not for Happy Donuts. So it is important to know what is going on because you can consider whether or not the addition of the noodle house would exacerbate and create conditions to prevent the noodle house from exacerbating any existing condition but probably can’t work by any change to the existing condition. However, those things are going on.

Chair Holman: There are lights from Keller and Fineberg. Are these literally clarifying questions? Commissioner Keller.

Commissioner Keller: Yes, the first clarifying question is I just want to make sure that your comment about a wall at the back of the property referred to Happy Donuts and not to the subject property.

Ms. Cutler: Correct.
Commissioner Keller: The second question is in response to the questions of somebody from April 9, for 5-b it says give that Happy Donuts has angled parking do you mean Happy Donuts there or do you mean the subject property?

Ms. Cutler: I believe that both properties do have angled parking.

Commissioner Keller: So which were you referring to there?

Chair Holman: That was my question and I was referring to Happy Donuts because there was talk about limiting the use of the alleyway. I know we are not talking about Happy Donuts but there was talk in the Staff Report about limiting that use and Happy Donuts’ parking points you to go out the alleyway.

Commissioner Keller: Okay. Is there sufficient space for the subject property for turning around? I am not sure there is.

Ms. Cutler: No, there is not.

Commissioner Keller: Okay, thank you.

Chair Holman: Commissioner Fineberg and then Commissioner Lippert.

Commissioner Fineberg: I am a bit confused by your description tonight and the statement in the Staff Report that there was the installation of a new hood in the kitchen area but no physical changes except for interior decoration. I went out today to the subject property and did the best I could to peek in the windows and what I saw was a new hood with an anseel system and I saw what looked like a gas range and deep fat fryer both of which are heavy duty cooking equipment that typically require permit. Quizno’s does not use a deep fryer in their menu so unless this was the only location that they had preexisting equipment that hadn’t been pulled out and their happened to be stub-ins, did they install this and was there a permit?

Ms. Cutler: I believe that the applicant, or the applicant’s sister who is here, could answer that question.

Chair Holman: We will get to you ma’am. Commissioner Lippert you had a clarifying question?

Commissioner Lippert: Yes. Has ownership of Cypress Lane ever been determined?

Ms. Cutler: Yes, over the years there has been a lot of discussion of this issue. The understanding is that half of Cypress Lane actually belongs to the commercial properties and the other half belongs to an unknown heir of the Barron Estate.

Commissioner Lippert: Okay.

Chair Holman: City Attorney, would you care to clarify that?
Mr. Larkin: I haven’t looked at the exact map but it is a very old subdivision. Typically the way the ownership interests goes when a property is subdivided like this is that it is owned jointly by all of the members of the subdivision. So I don’t know exactly how many units are in the subdivision but each unit has one share of ownership in that alley. We would have to go back and look at the actual subdivision map to determine how that ownership was done and if there is a map.

Commissioner Lippert: Okay, but at least it has been determined that there is ownership in that. I remember reviewing this several times and nobody knew who owned what.

Ms. Cutler: A title report was performed in 2002 and it did find that it is still owned by Jones or their heirs and is what we have noted here.

Commissioner Lippert: Okay, and then with that I guess the alleyway would be restricted after certain hours. How would the parking lot be able to be used? Would cars pull in and then back out onto El Camino Real? I don’t think that is a safe condition.

Ms. Cutler: The proposed condition is actually that the parking lot be blocked off from use except by employees or the residential unit on that property so after ten o’clock any customers would use the parking along El Camino Real.

Commissioner Lippert: Thank you.

Chair Holman: Commissioner Sandas, you have a clarifying question?

Commissioner Sandas: I do. I just wanted to clarify, can you please tell me what the concessions were again that the owner had made in terms of stopping the sale of beer and wine at 9:30?

Ms. Cutler: There were two conditions that are recommended that were not part of the original tentative approval. They are that beer and wine would only be served until 9:30 PM and that a rope or similar would be placed across the parking lot to prevent entry and therefore use of the alley at ten o’clock.

Commissioner Sandas: So there was no consideration for closing the restaurant when the parking lot was closed off and the beer and wine sales were stopping?

Ms. Cutler: That is not currently recommended by Staff due to the desire of the business owner to be able to be open to Stanford students studying late at night but that is up to you for your recommendation.

Chair Holman: Okay. It doesn’t appear that I have a card from the applicant.
Mr. Larkin: A couple of reminders before you open the public hearing. I know there was one site visit. This is quasi-judicial so Commissioners should make disclosures prior to the public hearing. The second is under you process the appellant actually goes first.

Chair Holman: This was a request for a hearing it is not really an appeal, right?

Mr. Larkin: It is the same. The person requesting the hearing goes first.

Chair Holman: Just to try to speed things along here just a site visit if there is no interaction it does not need to be disclosed, correct?

Mr. Larkin: Under the rules that the Commission adopted it does.

Chair Holman: Okay, Commissioners, disclosures? We will just go down the line, Commissioner Fineberg.

Commissioner Fineberg: I visited the site. I did not speak with the applicant or anyone on the property.

Chair Holman: Commissioner Keller.

Commissioner Keller: I visited the site but did not speak with anybody.

Chair Holman: Commissioner Garber.

Vice-Chair Garber: I have not visited the site for this particular project but I am very familiar with it having gone to Happy Donuts before.

Chair Holman: Commissioner Sandas.

Commissioner Sandas: I visited the site and drove past by car. I did not stop or speak with anyone.

Chair Holman: Commissioner Lippert.

Commissioner Lippert: I didn’t visit the site but I am familiar with the site because I reviewed it when I was on the Architectural Review Board and have visited the site several times subsequently.

Chair Holman: Commissioner Tuma.

Commissioner Tuma: I live in the neighborhood, drive by the site every day, been to Happy Donuts a few hundred with my kids and visited Quizno’s, but I have not talked to the applicant in this context.
Chair Holman: I did not visit the site on this particular occasion, as I am very familiar with the site for a number of reasons. Given that now have we decided Staff if we are going to treat this as an appellant or how are we going to do this?

Mr. Larkin: Semantics aside it is an appeal. The amount of time that is given is at the discretion of the Chair, 15 is standard but it is 15 divided among all of the people appealing and that may not make sense.

Chair Holman: I only have one card that indicates Appellant and I was going to question that. As Appellant I have list Bob Sikora. So you will speak first and if you wish you can have 15 minutes and if don’t need it. So you are up first to be followed by the Applicant and I don’t seem to have….can you bring your card forward then? Thank you very much. Mr. Sikora.

Mr. Bob Sikora, Appellant: Hello. I live on the street parallel to El Camino just behind the subject property. In the spirit of green, the last agenda item, there are only four copies for you to share. I am representing a group of residents some of them who were at the previous meeting on the topic and few others who were not able to make the meeting.

I have a statement here that lists our concerns. We appreciate your consideration of our concerns and the Staff’s recommendation of restrictions to the proposed Conditional Use Permit to respond to these concerns.--We also appreciate that Mr. Chen is proposing the kind of establishment that the neighborhood will patronize and we want Mr. Chen as well as our commercial area in general to be successful.

The preliminary meeting on March 10 was our first involvement in the Conditional Use Permit process. The meeting was limited in time and not all concerns were fully presented. We realize that the terms of this permit will set precedent for future Conditional Use Permits.

Since this meeting we have met as a group to prepare our concerns as a neighborhood. This presentation will detail our common concerns and recommendations for compatible business operations in our Neighborhood Commercial zone. We have two significant concerns with the permit as recommended, hours of operation and policy on the use of Cypress Lane, which we refer to as ‘the alley.’ Number one, hours of operation, although the March 10 discussion focused mostly on the hours of beer and wine service and alley access the hours of operation are of equal concern. Primary concerns regarding hours of operation are noise and other disturbance. Limiting the hours of alcohol service does not eliminate our concern for noise to the adjacent homes. The most significant problem with noise in the neighborhood is currently generated by Happy Donuts, which does not serve alcohol. The noise from Happy Donuts results from customers smoking, socializing, and playing music from car stereos outside the building. Police received 59 complaints in 2007 due to excessive noise or disturbance caused by patrons of Happy Donuts.

The second item is compatibility with the neighborhood. The site is zoned Neighborhood Commercial, which defines it as serving the immediate neighborhood, and assuring maximum compatibility with surrounding residential area. Late night hours of operation would not serve the needs of our neighborhood. Patronage of the establishment by the immediate neighborhood
would likely cease by ten to eleven at night. The norm for all other restaurants in the area is to close at or before eleven o’clock. Happy Donuts’ hours are an exception that we do not support. These extended hours of operation were not open to public review or comment.

Number three, historical experience. Late night business in this area has proven to be a problem in the past. Armando’s Bar operated at the same address and the La Cumbre Night Club previously located across the street were both closed down due to a long history of police intervention in the early morning hours. The late hours also serve to attract regional rather than local patrons. In consideration for the adjacent homes and compatibility with the neighborhood we strongly feel that the restaurant should cease operation by eleven o’clock at night.

At the March 10 meeting closing by eleven o’clock was proposed and the applicants indicated some willingness to agree to this. The applicants were very responsive to our concerns in general and willing to work with us. We appreciate this greatly and wish to work with them as well. If the hours of operation were limited to eleven o’clock we would be willing to agree that alcohol service continue until eleven o’clock. This would allow the applicant the additional opportunity to generate revenue and would also eliminate the difficulty of having to manage the end of the alcohol service in the normal operation.

The second item of concern is the policy of use of Cypress Lane or the alley. We appreciate Staff’s response by recommending limited access to the alley after ten o’clock. However, we are concerned about the continued use of the alley at all hours not just after ten o’clock. The current use of the alley is a significant concern to the well being and safety of the neighborhood. The primary concerns with the alley affecting the neighborhood are as follows: illegal activity in the alley including dumping mattresses and other items. As of today there are four mattresses in the alley. These are fire hazards. Homeless persons and vagrants loiter and camp in the alley and leave open alcohol containers and trash. Multiple fires start in the alley from unknown sources most likely smoking. Abandoned, non-operative vehicles parked in the alley for over 72 hours. Customer traffic from Happy Donuts and the Laundromat as well as teens joyriding through the alley at all hours with loud music playing. Open dumpsters with food creating a rodent and health problems. Then proximity to homes of course, the alley runs only 20 feet from the bedrooms of some of the neighborhood residents and some are even closer. The items above expose neighbors to increased incidents of theft, property damage, noise, and health issues.

There is a continually deteriorating condition at present in the alley with an absence of accountability and responsibility for these problems. This needs to be addressed and resolved and will be exacerbated by additional use of the alley for customer traffic especially late into the evening hours. Many of us have tried to resolve problems through contacting police, Utilities, and business owners, and the City but to date these efforts have had little if any affect. We feel very strongly that this is something we cannot do alone. It must be addressed at the City policy level. We respectfully request that the City of Palo Alto develop consistent policy regarding the alley that ensures the safety, health, and welfare of the neighborhood.

At the March 10 meeting we requested a hearing to address the issues of the alley before the permit hearing. Due to the scope of the alley issue it did not seem reasonable or fair to the applicants to delay their process any further. We support the restaurant and would like to see it
be successful if this is possible without significant negative impact to the neighborhood. If the
restaurant could be successful without allowing traffic into the alley this would be the best
option. In lieu of addressing the alley through the permit application we are asking for a
commitment from Planning and Transportation or other appropriate City departments to conduct
an inquiring and hearing on the use of, and the responsibility and maintenance for the alley, and
to work with us to ensure the safety, health, and welfare of the neighborhood. Until this issue is
resolved we request the Conditional Use Permit include language that allows the terms of alley
access to be subject to change in the future.

Thank you for your consideration of our concerns. We hope that we can come to a solution that
will work for everyone, and that this business is a positive and successful addition to our
neighborhood. We look forward to working with the Planning Department to improve
conditions, safety, and quality of life in our neighborhood. Thank you.

Chair Holman: Thank you very much. We will next here from the Applicant, Julie Chen, and
you also will have 15 minutes.

Ms. Julie Chen, Palo Alto: I just want to start by saying that my brother and I thank the
neighborhood for the warm welcome and we are really looking forward to hopefully come to an
agreement and making this all possible.

What they have proposed for the eleven o’clock hours of operation as well as being able to serve
beer and wine until that time we are in agreement to that. In terms of the access and using the
alleyway we are open to having our employees park in those spots except for the handicap spot
to kind of avoid any traffic going to the back. However there is a residential unit right behind
our building so we can’t block it off completely. They need to be able to access their home, their
parking garage from our driveway.

Other than that we are our neighbors, we are going to be neighbors with these great people
behind us, and we are hoping now that being there we see that the alleyway does need some
attention. It is really needed. Now that we have invested our time and money in building this
business the last thing we want is our building to be vandalized or have people loitering in the
back. We are hoping to bring a positive and great business for the neighborhood to make it
family-friendly. So that is all we have to say.

Chair Holman: Thank you so much.

Ms. Chen: Also regarding the permits we did attain all the required permits in getting all of the
things installed. So we have everything cleared and today was the final health inspection and
everything has all been cleared through to answer that question.

Chair Holman: Thank you very much. Commissioner Keller has a question for you.

Commissioner Keller: Thank you. I am looking at this diagram, just so people know and people
have seen this. It looks to me like this property has five parking spaces. What I am wondering
and maybe I am redesigning it or whatever, but I am wondering if you put parallel parking along
the adjacent Happy Donuts and parallel parking along the 60-foot long property I could imagine
that you could probably fit six parking spaces and allow people to turn around. Would that work
or not work?

Ms. Chen: In our parking lot I don’t think it would be possible because of the residential unit
that is right behind us.

Commissioner Keller: Maybe somebody....

Chair Holman: Commissioner Keller, I think this maybe a question for later and our job isn’t
necessarily to redesign it. It is just to approve a use or not. I know we have some considerations
about the alley but hold that question if you would please and we will address that later.

Commissioner Keller: Sure, thank you.

Chair Holman: Thank you. Thank you very much, Ms. Chen. We have other members of the
public who like to speak, Bob Henshel to be followed by James Thalmann. Thank you for
bearing with us this evening.

Mr. Bob Henshel, Palo Alto: I am happy to be here and happy to hear this. I grew up on La
Selva, my mother’s house is still there. It backs up to the alley and apparently no one has
responsibility for the alley that we could find. No one will take the responsibility for it.

I own property at 513 Military and it fortunately/unfortunately the side yard of this property is at
the alley so I have a double whammy. It has always been a problem and while it is not part of
this hearing because of liquor stores it is a great problem. My wife and I certainly welcome a
noodle shop. We go up to University Avenue now so having someone in Barron Park like that is
kind of nice.

Eleven o’clock my tenants complain to me now, eleven o’clock they like to be asleep. It is pretty
late. Many restaurants historically aim to close at nine. You want something you can go to the
donuts but you want a dinner you have to get in there before nine. So I don’t know why they
have to be open until eleven. That is my only objections. I love the idea of having a noodle shop
there. So you will have my business. Thank you very much.

Chair Holman: Thank you sir. James Thalmann to be followed by John Benza.

Mr. James Thalmann, Palo Alto: Good evening. I am a 22-year resident and homeowner. I
wanted to brief you on my personal experiences with the alley of Cypress Lane so you could
make a more informed decision. The permit as it is setup for approval here requires protection
for residential properties from excessive noise. So I wanted to speak to that in terms of my
personal experiences that we have had so far. It has been my experience that these businesses
can sometimes act as a catalyst for noise. That is something that we should consider as we are
working through this. My next-door neighbor had an interesting relation to tell me the other day.
His five-year-old daughter came out of her bedroom at eight o’clock at night on a weekendnight and
she came out to say she couldn’t sleep. Why not? It was because of these booming car stereos
actually parked in the parking lot of the business. They are not driving through the alley they are just parked there. The building is so immense that the entire ground is shaking, the entire house is shaking, and it is a nightmare. If you are trying to sleep through that you are going to wake up every 45 minutes or so if you are a light sleeper or you are just not going to get a good deep nights sleep. So the booming car stereos are a big problem no matter where they are and as they go driving by they are getting within 20 feet of my bedroom making the bedroom pretty useless. As they are crossing the alley if they hit it at just the right time they hit this water cover that you were talking about. Actually what it is is a big metal grate that covers the water meter for the Laundromat and it is imbedded in the alley and the cement is cracked a little bit so it doesn’t quite lie flat. So when someone goes over it it goes ba-bum ba-bum and makes a huge noise like somebody knocking on your door. So we haven’t been able to get people to fix that. Laundromat customers go through the Happy Donuts, they could go through other businesses, and they park behind in the alley running the stereo waiting for their laundry to finish. It has been one thing after another with the alley. How much more time do I have?

Chair Holman: You have about 30 seconds.

Mr. Thalmann: I guess in the future the permit of two o’clock in the morning seems a little bit inconsistent to me with the Neighborhood Commercial zone as was pointed out earlier. It doesn’t really serve the immediate neighborhood I don’t believe in order to have something open at two o’clock. It does serve the Stanford students but we are not Stanford we are Barron Park. The Noise Ordinance is not really a priority for the Police Department. You might be able to get the unit now but it wanes off eventually. That goes for the repair of the water meter cover too. Thank you.

Chair Holman: Thank you so much and again thank you for your forbearance with us. John Benza to be followed by Bob Moss who I do not see here.

Mr. John Benza, Palo Alto: Yes, Bob left.

Chair Holman: So our final speaker will be Peter Eng.

Mr. Benza: Good evening. I am a resident of Barron Park and I have lived in my house for 14 years. I do own a copy of the map of the parcel deed that is available from the county offices. I would be willing to share it. I have probably done most if not all of the research in that area on that and I would dispute Bill Feldman’s – in fact Bill and I were in agreement in 1994 when we first raised this issue on the alley. Before I get to the alley I would like to thank the applicant. I am looking forward with my family to the eleven o’clock liquor and closure after that. It sounds like there is some semblance of agreement on that.

I brought a few photographs that I will flip through as I talk about the alley. These are the mattresses for example. They show up better with the light dim but we may not be able to do that. The biggest concern about the alley and the two properties in question the old Quizno’s facility, which used to be Armando’s Tavern, bar, whatever you call it, before that. When Armando’s closed and Quizno’s moved in there were modifications made to that property that opened the access to the alley. There is passion about the alley because never before and never
on Cypress Lane has been used for through commercial traffic. It has always been closed. You can see business. That is great, thank you. So you can see this Happy Donuts right about over here so their driveway comes out here. These things just get dumped by people who are there at late hours or whatever. As we scroll through you will see others. Neither Happy Donuts nor the Armando’s property ever had traffic passing through this alley. These are typically the business owners conserving the spaces in the strip mall. You can see there are containers here of chemicals, just stored, this is problematic to the alley. These are some of the other businesses. Often this business here, Barron Park Florist, which used to be an automotive shop that was rezoned. They will abandon vehicles in the alley quite frequently. He has recently installed this. I have to talk faster because I only have three minutes. They have recently installed this. I don’t know if that was permitted but this is the edge of the alley right here, the edge of his property and the beginning of that 20-foot lane called Woodland Avenue lane. This is the corner, Military Way right here, and this is an exposed liquor store. When A-1 was rebuilt it was not required to have an enclosed garbage container. Don’t know why. This is often left out here in the curb line. Moving down to the other side of Cypress Lane. I see my time is running if I may have a few seconds more. This is an unpaved access road. There is not one business on this alley that has open access to it. The fear of the neighborhood is that by setting precedents with Happy Donuts, if I might continue just a moment, setting a precedent with Happy Donuts and with the Quizno’s and now the noodle shop having access what is to stop Taco Bell from opening theirs, which they once tried. You can see their shopping carts. Here homeless people will sleep in these areas.

Chair Holman: I do need to ask you to wrap up, sir.

Mr. Benza: Okay, I will. The biggest problem on this portion of the road is many of these businesses can open up and you can see the road is fully deteriorated with huge potholes that result in mud on buildings. This was a recently repainted building. I am scrolling through. A car bottomed out on the road you can see the oil spill, leaking contaminates all in the area. This is the access way to the Taco Bell shop. So our concern is that Celia’s restaurant, which is also tight on parking, could theoretically open up because we now have precedent to Cypress Lane, Taco Bell could put in a drive-through, etc. It really does need some attention. I appreciate the extra time.

Chair Holman: Thank you sir. So at this time the Applicant can make closing comments. You have up to three minutes and then the Appellant will close with also three minutes. I apologize I overlooked the last speaker who is Peter Eng, and I do apologize.

Mr. Peter Eng, Palo Alto: Thank you. My family is the property owner of the property adjacent to the proposed noodle club. We have owned property for over two years. I had observed a lot of changes positive as well as negative and become familiar with the neighborhood. I am a very active owner. I go there to cleanup. I recently, last year, become a parking lot attendant because Quizno’s customers invariably drive into our parking lot and say oh, I am just going to go over there for a few minutes. I say no, this is private parking you cannot do that and they cannot understand why.
As far as parking is concerned I really don’t understand how a restaurant can be built with five parking spaces. What is the requirement for eating establishments as far as parking requirements are concerned? I think that is way under the standard. Who created this problem? I think it goes back to the Building Department. Allowing such a small number of parking spaces for an eating establishment.

Parking from my experience the Building Department can interpret whatever they want to however they want to even if it is not written in the book. They might have adjusted it so you can get by with five parking spaces. Let me give you an example. Under the ordinance we were allowed, permitted, to have a tenant on the second story operate educational offices. They will not permit us to do that. You have to have an elevator. Where is it on the zoning ordinance that we are supposed to have an elevator for this? Nowhere to be found. Fred Herman and the Staff decided this and the requirement is nowhere to be found. I suspect that the parking, the so-called substandard number of parking spaces at this location was a result of the Building Department’s oversight.

I appreciate the neighbors voicing their concerns. I concur with them. The alley has been really a nightmare. We don’t us it. Our lot has a gate to close it. We don’t want our people to access through the alley nor allow people from other establishments to come through our parking lot to get on El Camino Real. That gate is always locked and we only need to open it for our access. I try to keep the alley as clean as possible through our due diligence we keep the area clean.

Thank you very much for your time.

Chair Holman: Thank you. Sir, there is a question for you.

Commissioner Keller: Just for the record could you identify which property you said that you own?

Mr. Eng: It is 3944 El Camino Real.

Commissioner Keller: So that is the property that has a couple of buildings and the laundry, is that right or is it a different one?

Mr. Eng: No, no as you are facing the Ramen Club restaurant it is to the left side.

Commissioner Keller: Towards Los Robles?

Mr. Eng: Yes, correct, next to the driving school.

Commissioner Keller: Thank you.

Chair Holman: Thank you. So the Applicant will have three minutes, Ms. Chen and then the Appellant will have three minutes, Mr. Sikora.

Ms. Chen: I just want to end by saying that we are going to do our part in making sure that doing our due diligence and making sure the area is clean and doing our part in making sure that
the alleyway doesn’t get much traffic. We are going to try to block it off the best that we can. In
addition, again the whole beer and wine until eleven we can promise our customers that it is
purely just for the pleasure of our clients who are dining-in. We are not there to promote
drinking or parties or anything like that. It is purely just to enjoy with their meal and we can
promise that. I think that is all we have to say. We are going to do our best and hopefully we
can all come to an agreement.

Chair Holman: Ms. Chen there is a question for you. Commissioner Sandas.

Commissioner Sandas: I just wanted to clarify I think you said earlier that you will hold your
hours of operation until eleven.

Ms. Chen: Preferably, yes.

Commissioner Sandas: Okay. I had one other question. I don’t know if you know the answer to
this and maybe it is for Staff. In talking about the ownership of the alley and that each of the
commercial businesses that backup to the alley are responsible or they own a portion of the alley.
Would that include the Ramen Club because there is a house behind the Ramen Club?

Ms. Chen: That I don’t know because we just lease the building. So we don’t know how that
ownership works.

Ms. Cutler: It is one property that has the residential and the commercial on it. So I would
assume that it is attached to that property.

Chair Holman: Okay, thank you. Thank you Ms. Chen. Commissioner Fineberg, did you have
a question for the Applicant? I am so sorry Ms. Chen.

Commissioner Fineberg: Yes I do. Could you clarify for me if there is a chain hung to close
access will it be between the parking lot and the alley or from El Camino to the parking lot?

Ms. Chen: That is going to be kind of difficult for us. I can’t say just because we haven’t really
talked to the resident that is living behind. We can’t just block it off because if they want to use
it as their way out we can’t obviously restrict them from it. We will do what we can to keep our
patrons from parking in that parking lot except for the handicap so they don’t go through the
alleyway. But in terms of the resident I can’t say.

Commissioner Fineberg: Okay, so I guess at some point we are going to have to come to some
sort of closure of if your operations are until eleven at what hour would liquor stop? When
would the chain go up and then would it be front or back? How do you practically implement
that because if you are putting the chain up at El Camino so new cars can’t come in how do the
patrons who are eating their noodles leave? Do they just lower the chain and then the next car
comes in? Or do you put it on the alley in the back and then cars will continue to come in
because they don’t know they are not supposed to? I don’t know that I understand how that
would be implemented.
Ms. Chen: I think what we are going to try to do is have our employees park in these designated spots so that obviously there is not going to be any parking available for our patrons that way there won’t any traffic going through. In terms of the chain that was something that was mentioned in our first initial meeting but again I don’t think that will work unless the resident is willing to agree to it because if we close up and put a chain up and they work at six o’clock in the morning obviously it isn’t going to work.

Commissioner Fineberg: So which designated spots would your employees park in?

Ms. Chen: In the five spaces that are noted in the photo that was shown. There are five parking spaces.

Commissioner Fineberg: So there would be no onsite customer parking?

Ms. Chen: We would try to have them park along El Camino.

Chair Holman: Commissioner Keller, you had a question for the applicant and then let’s move to the Appellant.

Commissioner Keller: Yes, just be clear. I think that what you agreed to just to clarify Commissioner Sandas’ question, I think what you agreed to is the idea of closing the restaurant at eleven o’clock and not serving alcohol beyond eleven o’clock. Is that what you are suggesting?

Ms. Chen: That is correct.

Commissioner Keller: Okay. And just to be clear I am going to ask the question of the Appellant if the restaurant closes at eleven o’clock is there a need for a chain because I am not sure if that is needed or not. That is one thing that we need to do. I am wondering to the extent and probably there is not enough time to explore this but the idea of if the parking lot …..Mr. City Attorney.

Chair Holman: Commissioner Keller, we have the Applicant standing at the microphone so if you have a question for Staff.

Commissioner Keller: Well, I would like to ask the question of Staff whether we could condition this on restriping the parking lot.

Chair Holman: That is a question for Staff.

Commissioner Keller: But then I would have to ask the Applicant whether they would be agreeable to that if it is feasible.

Chair Holman: I don’t think that would necessary. I think that is a question for Staff.

Commissioner Keller: Okay, thank you.
Chair Holman: Commissioner Lippert, you have a question for Staff later. So Ms. Chen I think that is the last question for you. The Appellant, Bob Sikora, you will have three minutes.

Mr. Sikora: Thank you very much. I want to thank you for the opportunity to present our concerns. I want to thank you for the three hours for us to get more familiar with the Applicant. I think we can work something out when it comes to parking. I am not exactly sure. It seems like we have something here that is workable either by employees parking in the spaces or a chain across at ten o’clock so that customers can exit out the back hopefully before eleven o’clock. Something can work but I think that we also want to make sure that the broader question of access to the alley is something that we would like to get your commitment to help us with because it is not going to – working at it on our own does not seem to work and some policy on future use of the alley as well as current is justified. Thank you very much.

Chair Holman: Commissioner Tuma, is your question for the Appellant or for Staff? Okay. Thank you very much. So I will close the public hearing and come back to questions by the Commission. I have Commissioner Sandas first.

Commissioner Sandas: I have a couple of questions. This one is about the previous tenant, Quizno’s, what time did they close? Does anybody know?

Ms. Cutler: They didn’t have a use permit so we don’t know.

Commissioner Sandas: Does anybody in the neighborhood have any recollection of what time they might have closed? About nine, okay. I was just wondering because I would think that they would have a noisier crowd than the Ramen Club would.

Chair Holman: Commissioner Fineberg, questions.

Commissioner Fineberg: I am still a bit troubled by the question of the Staff Report indicating that there would be no physical changes except for interior decorations and the installation of a hood. That paints to me a very different picture than the installation of a kitchen that costs probably with equipment $25,000 to $100,000. To me it goes to painting a picture that I don’t understand what happened in reality versus what is described and I don’t know whether that is from the applicant or a misunderstanding with Staff. The Applicant indicated that they got their health permit today but I am still left with the question of did the installation of the kitchen equipment require a permit being pulled. I had asked a Staff member earlier and without giving much time for preparation his indication was a quick look, no. Does anyone in Staff have information about whether there was a requirement for building permits to be pulled? And then if they were required, were they granted?

Ms. Cutler: If so, they were not routed to me. So I am not aware of them. I do know that there was a requirement from Fire for a permit for the hood.

Ms. French: We wouldn’t necessarily get routed a plan that wouldn’t call for planning review such as a TI kitchen improvement. It could have escaped our notice in Planning. In other words,
just have been handled at the counter or something, except for the hood, if there was some other kind of improvement. They can open a restaurant there without any permit.

Commissioner Fineberg: But not with heavy equipment.

Mr. Larkin: None of that relates to a Conditional Use Permit.

Commissioner Fineberg: It relates to the integrity and the past performance of compliance.

Mr. Larkin: You can’t consider past performance or compliance except if you are going to revoke an existing use permit but since there is no use permit there is nothing to revoke.

Commissioner Fineberg: Aren’t we counting on the promises made by the Applicant for the CUP?

Mr. Larkin: No, we are counting on our own code enforcement efforts, police, and alcohol and beverage control.

Chair Holman: Commissioner Keller you have a question?

Commissioner Keller: Yes. To what extent are we allowed to condition as a condition of approval for the Conditional Use Permit closing access to the alley?

Mr. Larkin: To the extent that you make finding that the proposed use could exacerbate problems in the alley and you can make those findings based on substantial evidence then you can make that consideration only for that section of the alley that is accessed through this property.

Commissioner Keller: I mean closing access to the alley from the subject property.

Mr. Larkin: Yes, to the extent that you can make findings based on substantial evidence that access is or that is necessary to prevent problems for the neighborhood then you can do that.

Ms. French: However, I would like to add that Transportation Staff/Planning Staff we don’t think that closing the alley – you need to get out of that parking lot and the way to get out of that is pretty much the alley the way it is designed currently.

Commissioner Keller: Hence my question about whether it is possible or feasible to restripe the parking lot in order to provide entrance and exit through the driveway to allow it to leave. I am wondering whether that has been explored.

Ms. Cutler: Staff has taken a look at the size and space on the property and there is not sufficient space in some other configuration to do two-way driving and keeping the five spaces.

Commissioner Keller: Have you analyzed parallel parking along both sides of the alley?
Ms. Cutler: We have not considered any parking on the alley.

Commissioner Keller: I am sorry, I mean along the driveway. I don’t mean along the alley I mean the driveway. Have you considered parallel parking on both sides of the driveway of the existing parking lot in between the Ramen Club and the adjacent Happy Donuts?

Ms. French: We don’t have recollection of all of the possibilities that were discussed in this one meeting we had but it pretty much would seem that you would lose at least a space if not more. It would probably likely result in a reduction in the total number onsite and that was a concern.

Ms. Cutler: It could also provide difficulties in access to the residential unit in the back and getting through there.

Commissioner Keller: I am sorry I didn’t think of this earlier to provide it but according to the design that I have the building with the Ramen Club is 63 feet and two inches which as far as I understood is sufficient for three parking space adjacent to that and the adjacent Happy Donuts is approximately the same width which would be able to handle three parking spaces. So I am not sure about the width of this particular driveway and whether the driveway is wide enough to provide two-way access plus a row of parking on either side but if it is my calculation would indicate that that is sufficient for six parking spaces so I don’t quite understand.

Ms. Cutler: The difficulty is that there is no space at the rear of the property for cars to turn around once they have entered so there would be no way for them to exit the property once entered unless they have access to the alley because of that residential building in the back.

Commissioner Keller: Okay, so the problem is not being able to turn around. Thank you.

Ms. Cutler: Correct.

Chair Holman: Commissioner Lippert.

Commissioner Lippert: I have similar questions on the parking. If we were to grant the request here and were to chain off the parking lot, doesn’t that create problems? Already we are talking about it being substandard in terms of the amount of parking there. The number of spaces doesn’t comply with the FAR. I think the building is like 1,800 square feet and if you divide it by 200, which is what we normally would do, you would need about nine spaces I think.

Ms. Cutler: Yes.

Commissioner Lippert: So it doesn’t comply. We often times have what are called offsite parking agreements. Would they need to then enter into some sort of offsite parking agreement? It is a requirement that we have this square footage parked generally and in this case it is not compliant.

Ms. Cutler: Though this building is grandfathered in because of the age of the building.
Commissioner Lippert: Right, but it is grandfathered in for the number of spaces that it has.

Ms. Cutler: Correct.

Commissioner Lippert: So what we are doing is increasing the noncompliance.

Mr. Williams: How?

Commissioner Lippert: By denying the use of the parking that is there.

Ms. French: They are still provided. I think the intention was after hours when the spaces on El Camino are certainly more freed up that it is more of a concession to the neighborhood. The parking is still there it hasn’t been eliminated it is where they are directed. It will still be used by the employees and the resident there. So they may be mostly full anyway. I don’t know how many employees would be there at that point in time.

Commissioner Lippert: Okay. Then the second question that is a follow up to that is there is a handicap accessible parking space there. Again by chaining off or closing off the parking lot we are denying access to a disabled individual.

Ms. French: I think it could be chained off in a way that doesn’t block off an ADA space. I think we may need to look at where that is located with respect to the door and sort of thing.

Mr. Larkin: I don’t think the Commission is being asked today to decide exactly how access would be blocked off. I think now it is a condition that it not be used for customer parking after a certain hour.

Chair Holman: Commissioner Tuma is next. I am a little troubled by the question about the parking but also I think the concerns are about what Commissioner Lippert talked about as increasing a nonconformance because personally I have questions about allowing required parking to be on the street, and this is an under-parked site. So I think that is why these questions. Commissioner Tuma.

Commissioner Tuma: I have a couple of quick questions and then I would like to do something else. If the hours of operation that were being proposed were until ten o’clock and if there were no beer and wine being served would we be here? Would there be any CUP application?

Mr. Williams: No.

MOTION

Commissioner Tuma: Okay. So it seems to me that this discussion really is about an hour later and beer and wine. I think clearly there are some ... well, with that said I would like to make a motion that Planning and Transportation Commission recommend that the City Council approve a Record of Land Use Action approving the Conditional Use Permit as modified to further restrict hours of beer and wine, onsite customer parking to allow the establishment of a new
Ramen Club until eleven PM seven days a week based upon the findings and conditions of approval in the Record of Land Use as modified to reflect alcohol and closure to happen at eleven PM.

SECOND

Commissioner Lippert: Second.

Chair Holman: Commissioner Tuma, would you care to speak to your motion?

Commissioner Tuma: Just briefly. I think clearly there are some issues that are going on in the alley and the neighborhood. I live not too far from there but far enough not have a conflict. I spend time in that area. I think the issues that you folks are talking about are very, very valid and need to be addressed through the process. However, the Conditional Use Permit that is being applied for here is simply to go one hour later than would normally be required and to allow them to serve alcoholic beverages. I don’t see those two things as being something that sounds terribly objectionable to the neighborhood. I am impressed by the Applicant’s willingness to work with the neighborhood, wants to be a good resident, came here tonight asking for two o’clock, folks said eleven o’clock, they said they would be willing to do that. To me this should just go through.

Commissioner Lippert: In seconding this I want to say that this site is very similar to Antonio’s Nut House. We have already done this one before. They had a similar situation where there was noise being propelled onto the neighboring residential neighbor and it was problematic. The only difference is that instead of an alleyway behind the proposed site as with the site here there was a public parking lot. The solution was simply to chain off or restrict parking in the parking lot after hours. As an amendment I would recommend similar sorts of things where there is no parking in the alleyway after hours and that it be patrolled by Palo Alto Police.

There was one other condition, I asked for a friendly amendment on this condition, which is that in a year the Commission reviews this again. If in fact, there are numerous complaints we could revoke the Ramen Club’s Conditional Use Permit.

Mr. Larkin: A Conditional Use Permit is an entitlement that can’t be revoked without a public hearing. So you can’t automatically set a review.

Commissioner Lippert: Correct. It would be rescheduled, it would be noticed, and we would review it again.

Mr. Larkin: Well, you wouldn’t reschedule a notice and review again unless there was cause to do so. So if there were code enforcement complaints then it could be brought back for review.

Commissioner Lippert: Correct, that is what they did with Antonio’s Nut House. I am sorry. So that would be my friendly amendment.

Chair Holman: I don’t know that that requires an amendment.
Commissioner Lippert: It doesn’t?

Mr. Larkin: That is how it works. If there are code enforcement complaints it comes back for either alteration or revocation of the permit.

Commissioner Lippert: That is fine and we haven’t seen Antonio’s Nut House so they have complied.

Chair Holman: Commissioner Sandas, comments.

Commissioner Sandas: Yes, a couple of comments. I have a comment and a question. I am moved by the Applicant’s willingness to bend with the neighbors. I think it is wonderful that you have come to an agreement together to limit your operating hours to eleven and serve alcoholic beverages up until that point in time.

What I am worried about is I would hate to see the Applicant bending so far that you bend yourself right out of business. What little I know about the restaurant industry and any food business is that the profit margins are very low and I am not sure that the people who are living within walking distance are going to be enough to support your business. I believe that you will need to have people coming from a little distance out of the neighborhood and they will be coming in their cars and they are going to need a place to park. We hope that they can be as respectful as possible to the neighbors but I would hate to see you putting conditions on your business that will cause your business not to succeed. So I don’t have a recommendation but I am just urging a little bit of caution in blocking off your parking lot and chaining things and putting your employees’ cars in the parking lot doesn’t offer a space for a cash-paying customer to park. So this is just a note of caution.

The second thing is that a lot of this discussion has centered around that darn alley. We know an heir to the Barron Estate owns part of the alley but who is this person? What can the City do to ensure that this alley is maintained and that it is safe and that it is not a dumping ground for old mattresses and a playground for rodents? Especially when there are children who’s bedrooms border on the alley and who live so close. So my question is what happens now to fix this situation, to remedy it? I don’t know what the process is and who would initiate whatever it is?

Mr. Larkin: It is a lengthy answer and it probably isn’t directly related to this topic but we will come back and we can talk about that at a future meeting.

Chair Holman: Vice-Chair Garber. Staff, will you update the neighbors on progress?

Ms. Cutler: Yes, we can send a notice.

Chair Holman: Thank you. Vice-Chair Garber.

Vice-Chair Garber: I think my comments have been covered by the previous Commissioners. I will be supporting the motion.
Chair Holman: Commissioner Keller.

Commissioner Keller: I am wondering if I can request a friendly amendment that we get a report on the number of complaints that have occurred as a result of this property after one year independent of the revoking of the permit. I just think it would be helpful to get that out in the public record.

Chair Holman: City Attorney.

Mr. Larkin: That probably wouldn’t be part of the Conditional Use Permit because I don’t think we can require the Applicant but if you want to make that request we can forward that onto Council.

Commissioner Keller: It is a request of Staff to apprise the Commission and the Council if they wish with the number of complaints so that we can evaluate the effectiveness of this.

Mr. Larkin: This would be a direction to the Police Department Staff, which is not something the Commission can do directly. So we can forward that recommendation onto Council. If Council wants to direct the City Manager to direct the Police Department Staff to do that then they can do that.

Commissioner Keller: Yes, number and nature, please. And that is what I want added to the motion appropriately. Will the maker accept?

Chair Holman: Maker?

Commissioner Tuma: My only hesitancy to doing that is beginning this process of micromanaging Staff and asking Council to micromanage Staff on a CUP. It just seems excessive and I am not sure that it is our place to do that. I am open to talking about it but it just doesn’t seem like what we ought to be doing.

Commissioner Keller: Well, my reason for that is in some sense we are asked to make a decision. We don’t get feedback in terms of making the decision and my understanding of total quality management and continuous improvement is that the way we can make better decisions is to get that feedback. I am basically requesting that we close the loop and give us that.

Chair Holman: I think the City Attorney has said that if there were complaints that it would be a code enforcement matter. If there is an action or a requested action or an indication that an action by the City Staff to revoke the Conditional Use Permit and if that is appealed then that would come to us.

Mr. Larkin: If such a report were created it would be information only. The Commission would not be able to act on it because the Commission cannot direct Staff to do code enforcement. The Commission can make a recommendation to do code enforcement they can’t direct Staff to do code enforcement.
Commissioner Keller: Yes.

Mr. Larkin: So it would be pure information only.

Commissioner Keller: My intent is to get information for us to understand how effective the measures we put into place are.

Mr. Williams: If I could just add. I appreciate that. I am concerned that it is one more thing for us to sort of put on a list to try to record somewhere and remember and come back in a year with. If every use permit has to have this kind of reporting requirement it just detracts from and we just don’t have enough staff to keep up with what we have to try to do this.

We have a process where if we start having a lot of complaints about that I am sure that you are going to end up getting a report from us and letting you know that. But if we have one or two, for us to come back in a year and tell you we have had one or two and why where those, and have that discussion just seems to me to divert our attention from other things.

Mr. Larkin: As a practical matter it will be nearly impossible to distinguish which complaints are coming from the Ramen Club versus which are coming from Happy Donuts versus which are coming just off El Camino.

Commissioner Keller: Okay, I will withdraw it. Let me say two other things. One is that in contrast to what some of my fellow Commissioners have identified it seems to me that what I understand about restaurants is that very little profit is made on the food and most of the profit is made on the beverages, especially alcoholic beverages. As a result of that it is actually beneficial to the restaurant to close at eleven o’clock and to serve alcohol through eleven o’clock, for an hour and a half extra of alcohol service than it is to stop alcohol service at 9:30 and keep the restaurant open for food only until two. So while this is a concession of the restaurant owner I believe it probably accrues financially to the benefit of the restaurant owner for that particular accommodation. I appreciate the fact that the Appellant and the community is proposing that because I think that is a good accommodation between both of them to try to work it out together.

I am not sure how this should be related but with respect to the parking lot and such I am not sure exactly where we left that in terms of the parking lot being closed off or the parking lot being left open. I just observe that is you close it off at the alleyway after ten o’clock people will enter and it will be like the roach motel, you can get in but you can’t get out, especially since I have been told that you can’t get out that way because otherwise we would have people getting out that way.

The other thing is that if you closed it at the El Camino side people might think that the restaurant is closed unless there is appropriate signage saying ‘park on El Camino.’ So I think there might be some concern about that. I hope that the Applicant would work with the neighbors to figure out that nature.
Then finally, to the extent that the neighbors have shown that the upkeep of that alleyway is in
some sense a public nuisance I am wondering what course of action could be brought against the
alleyway owners and who would bring that action?

Chair Holman: Commissioner Keller, that is not a part of this action. It is an item of interest but
I think you can follow up with that separately.

Mr. Larkin: That is exactly what we would bring back for discussion in response to
Commissioner Sandas’ question.

Commissioner Keller: Thank you.

Chair Holman: Commissioner Fineberg.

Commissioner Fineberg: I think the troubling aspects of this project have more to do with
conditions on the alley than the, I will characterize it as, the wonderful compromises I have seen
between the Applicant and the Appellant. I think the neighbors are welcoming the restaurant and
the owners of the restaurant are working to satisfy the needs of the neighbors and I just think that
is great. That is what we would want to see to have comfortable neighbors and a successful,
viable business in place.

I am seeing on this project a property that is substandard with regard to parking. That is not any
fault of the Applicant. They are leasing a building that is coming to them that way. I am seeing
that maybe it is an opportunity for us to look, and it is beyond the scope of tonight, but to come
back and look at how should we be handling that kind of property. It is a discussion for another
night whether we allow the conditions to become worse within that property or we somehow
change the codes and the regulations when we have properties that are substandard, over-built,
under-parked, whatever the standard is. I think it is an opportunity for us to come and fix places
where we have those deficiencies and in certain situations like this might be making it worse. So
the code has guidance for us on how to make our decisions.

Given that I think the closure at eleven, the removal of alcohol and the late night hours where I
think it would cause the most problems with noise and disorderly conduct, I would be
comfortable approving the application.

The last thing for the residents who have stayed here so late thank you for being here, thank you
for sharing your voices, and I would urge you to continue to share your voices when it is
appropriate. If there is a fire in the alley call the Fire Department. If there are noisy people call
the police. Your voices will only be heard in the numbers when the incidents occur. So please
continue to stay active, stay on top of it, it is all of our homes. Thank you.

Chair Holman: I will be brief and quick in my comments. I do have a couple. I am going to
support the motion. I am going to ask for one change to the ordinance if I could. Section three,
number one, Conditional Use Permit Findings. It is similar to a comment I have made before,
strike the last sentence, please, which is the sale of alcoholic beverages will be conducted in a
manner that will injurious to property or improvements in the vicinity or detrimental to public
health, safety, and general welfare, or convenience. It basically states that it is compliant because it is compliant. So if you would please strike that sentence if the maker and seconder would approve that change?

Commissioner Tuma: It is fine.

Chair Holman: Seconder?

Commissioner Lippert: Accepted.

Chair Holman: Then I am going to approve this and just quickly with the eleven o’clock and eleven o’clock. As much as I absolutely appreciate and understand and have experienced the difficulties in the alley one of the question I asked of Staff is what jurisdiction or what kind of control do we have over the alley and the response was very little. So I don’t think it is feasible to try to block off the alley.

I would ask one other quick amendment which is very similar to what we did with Antonio’s Nut House because there were noise problems there. Staff can call up the language but to ask the Applicant to post signage inside and also outside of the building to ask patrons to respect the location and proximity to the neighborhood so when they are leaving the premises late at night. Staff will remember that language or something similar to that. Do you recall it enough to be able to repeat to Commissioners? You get the drift though. It is basically it is just asking the patrons to be good neighbors.

Commissioner Tuma: I think that is fine and appropriate so I will accept it.

Chair Holman: Seconder?

Commissioner Lippert: I accept that. I think maybe they should just look in the file for Antonio’s Nut House and see what the language was there.

Chair Holman: Yes, would Staff be amenable to that? Then one last thing, I am being quick here. One last thing is that the dumpster at the back, it is one of the conditions of approval under Public Works, actually this isn’t Public Works it’s Water Quality. What we have on other projects, and I think Antonio’s Nut House may have been one of those, is said that the garbage and recycling not be done after let’s say eleven o’clock, or if they close at eleven maybe 11:30, nothing later than 11:30. So we limit that too so we don’t have staff cleaning up at midnight and throwing stuff out in the recycling containing. Is the maker amenable to that?

Commissioner Tuma: How about if we just raise it as within a half-hour of closing?

Chair Holman: That is fine with me.

Commissioner Tuma: It is fine with me then.

Chair Holman: Seconder?
Commissioner Lippert: Agreeable.

Chair Holman: With that I am complete except one thing. Do we need to at all comment on the 20-minute parking in front which also to me seems quite problematic. It is not included in the ordinance so is that nothing that Staff is going to pursue then after this?

Ms. Cutler: We will look into it but it is independent. It was not a condition of approval.

Ms. French: In that meeting we had the Applicants were amenable to and interested in having the City look at doing the 20-minute parking. So we are working with our Transportation and we will work with police and all that.

Chair Holman: Okay. Good.

Ms. French: It is on El Camino so we have to make sure to check our bases but that is the plan.

Chair Holman: Okay, very good. Commissioner Keller.

Commissioner Keller: I realize we have closed the public hearing and whatever. I am just wondering whether 30 minutes is the right amount.

MOTION PASSED (7-0-0-0)

Chair Holman: It doesn’t matter. They will make it work. Don’t you think, Staff? They will make it work. Otherwise we are going to be back here again with a lot of complaints.

So with that we will vote on the motion to approve the Conditional Use Permit to allow operations of the Ramen Club including service of alcoholic beverages until eleven PM seven days a week with a change to the ordinance, section three, item one, striking the last sentence and adding the signage that will be pulled akin to the Antonio’s Nut House asking and 30 minutes after close of business for use of the dumpster and recycling facilities. With that all those in favor of the motion say aye. (ayes) Opposed? So that passes on a seven to zero vote. Good luck to you all. Staff will report back to the neighbors about the alley and what can be done in that situation. Thank you all very much.

With that we will take up again item number two and hopefully quickly conclude that. I will wait just a moment until the members of the public leave.

Okay I believe we are ready to take up item number two again. So if Commissioners would take their seats. Not to spring it on you but Commissioner Fineberg I believe you were the next speaker to speak to the motion. We are again back on item number two, the Green Building Code.

Commissioner Fineberg: It is a good thing made notes. I just need to find them.
Chair Holman: If we could ask members of the public to take their conversation out to the lobby that would be most appreciated. Thank you.

Commissioner Fineberg: Could I ask that the motion be repeated? I think that would be a good place to start this discussion.

Mr. Williams: The motion is to approve the ordinance and resolution tables with I have eight amendments. One is historic, that exemptions related to historic structures be reviewed by the HRB and recommended to the Director. Secondly that the Director have the flexibility to provide the appropriate checklist I think we would say particularly related to reuse or historic structures. In the section about the transition and ramping up the ordinance that the Director have discretion to allow self-verification when it is determined that there is lack of Green Building Inspectors. The fourth is to add the whereas/findings regarding AB32 and sea level rise. The fifth one was to report after one year regarding the status and progress of the ordinance. The sixth one is the on multi-family on Table B we include an asterisked reference that if there are over 30 units in the multi-family project that they complete a LEED ND checklist. Or homes? Oh, ND or LEED for Home. The seventh one was to restructure the definitions so that it is New Construction, Commercial and New Construction, Residential. The eighth one which I don’t consider a change to the ordinance but still a recommendation is to develop data and cost information from Built It Green and pass that along to the Council at the time they hear this ordinance.

Chair Holman: Thank you, Curtis. Commissioner Fineberg.

Commissioner Fineberg: I like the amendment to the resolution a lot. I think they will answer many of the questions that are still open in my mind. At my core I believe that the Green Building Criteria will move us in the right direction. My only hesitation is whether it is the right time or a little too soon to do them. Knowing that we have the ability to lead gets me over some of those reservations. I still think we need to understand more fully the implications of dewatering and whether these criteria need to disincent dewatering more than they do now. I think the potential negatives impacts if the anecdotal evidence we are hearing is indeed correct or if there is subsidence or other negatives down the pike if those are indeed real we are not taking them as seriously as we should to protect property and protect the future environment. So that is one of my big reservations about the criteria that we have now. I like them as a start. I like that they will be adaptable as for instance the new LEED ND Criteria come up to speed. I like that they can be layered and I will be voting for this tonight. Thank you.

Chair Holman: Vice-Chair Garber.

Vice-Chair Garber: I will be supporting the motion. I do have a couple of comments. Not as any part of the motion, but I would be interested in the growing checklists of criteria that will be evaluated during the testing period. There are a number of things, which I think my comments and the other Commissioners’ comments sort of point to as the sorts of criteria that will end up defining what this will be in three years.
Let me just list a couple of the ones that I have here right now. One of which is the whole verification process versus certification, creating sort of a new industry of reviewers of the project that are not specifically focused on Building Code but are focused on looking at project documents in the same manner but for a different set of criteria, obviously green criteria is new, and whether we can find that in the marketplace, whether we have to build it ourselves, what the real burden of that is on the City is unclear to me and I think we will find out in the next couple of years.

The whole issue of fees, fees is one thing there are also consequent costs for the industry both to learn how to do this, so there are startup costs for architects, contractors, and other consultants to get up to speed with this, but then there are also the costs that are not related to fees but are related with the ongoing management to make this happen. One of the big differences been Green Point and LEED at least in our office is the amount of paperwork that has to be submitted for the LEED projects in order to demonstrate that the certification can be made. That is not a part of any fee but that is something that is either borne by the consultants or the builder in some cases or passed onto the clients. So there is an imbedded cost there that is not always seen.

Then there are the operational pieces and what I mean by that are the operations of the City. Does the green review of the documents end up as part of the conditions of approval and get added to the document and does that get iterated and add to the process or is it simply a yes/no? I am not looking for an answer tonight but I am sort of curious as to how we address that. I suspect that that's only the tip of the iceberg.

Then just a caution in terms of grammar and syntax. Commissioning is not certification commissioning is a very set set of activities that occurs around building systems but is only a portion of the overall certification process and is only a subset of the overall costs. So being careful about when we are using those terms and when they are used in the process is important. I will stop there. Thank you.

Chair Holman: I have a number of comments and frankly I am not quite sure where I am going to end up on this. It depends on what the Commission might be willing to entertain or not. A couple of data points. One is that 50 percent of the homes that get built have basements using the eight inch wall or using the 16 inch wall and that is not the maximum that I have been told by architects, but just using those numbers that is 200 to 400 tons of concrete that is manufactured. If you look at the manufacture of concrete and its environmental impacts if you go online and look the numbers are everything from 40 percent to a one-to-one ratio of pollutants created with the manufacture of concrete. The Commissioner to my right has just said it is the highest carbon footprint of any of the materials. So it is an enormous, enormous impact that we are essentially incentivizing in Palo Alto because we don’t count it as square footage and I think it is an environmental impact that – it is one of the places where LEED and Green Building just don’t get the big picture. I think that is one of the areas. It may be because not all part of the country, of course Build It Green is California, but some parts of the country don’t have this kind of situation although much of this area certainly does. So if you look at how much pollutant carbon that puts out in the atmosphere on the low end it is 3,200 tons a year and on the high end it is 16,000 tons a year. That is just the concrete that goes into basement construction in Palo Alto in one year. So how environmentally friendly is that? How green is that?
In 2006 there were 85 single-family home demolitions, and this is just the single-family homes, and 78 in 2007. The 2006 Waste Characterization Study that was put out 78,000 tons of waste was created in Palo Alto. Almost half of that was C & D and almost half of that were problem materials that there is no recycling potential for. None. There is no market. If you read the Waste Characterization Study it clearly states that. So where this leads me is I have at least one issue about basements. I actually have more but I have at least that one issue that is quantifiable in terms of its impacts. In terms of demolitions all along I have been absolutely supportive and have been wanting the City to go towards a green building-like point system for granting permits for several years. However, I am still very disappointed that even though it is coming, it is very slow in coming, and it isn’t included here to any real measurable way, giving points that really are representative of the embodied energy in existing buildings.

I really do worry for a few reasons that exempting buildings will send the wrong message. We are exempting them which means you don’t have to satisfy any green points so we are essentially telling them that your building isn’t green you just get an exemption. That sends a wrong message to people. I have heard people say that they want to restore their building and rehab their building but they can’t make it green so they tear it down. That is the message that we are going to further impress upon people if we pass what we are looking at tonight.

Also, the people who are, it is not their fault. It is because of the systems, the LEED and Build It Green systems, the people who are going to be trained to evaluate these projects are going to have no training and no information as far as I can tell in historic preservation or in adaptive reuse or in the energy that is actually saved by using existing windows but doing other treatments like interior storm windows and those sorts of things that are alternatives. So I think we are going to lose buildings by just not having the proper training for people to deal with our community’s already built resources.

I mentioned earlier that we don’t count basements as part of square footage. Actually I very, very much like the language that was on the presentation. Curtis, I thought you did a great job on the presentation this evening. On the first page it says that Green Building means a whole systems approach to the design, construction, and operation of buildings that substantially mitigates the environment, economic, and social impacts of buildings. I think that is much better stated than how the ordinance is written, frankly. I think that language really hits the nail on the head when it comes to the more broad goals of a Green Building Code. So I am actually going to suggest some language changes there.

Under the Purpose of Draft Ordinance, again in your presentation this evening Curtis, the second, third, and fourth bullets say, encourage water and resource conservation, resource conservation is not used in the ordinance that I could find at least. I think that term speaks much better to what the overall goal of sustainability is that the Council passed. The third bullet is, reduce waste generated by construction projects. Again adaptive reuse would do a great deal to satisfy that goal but that isn’t included in any significant way in what is before us this evening. The fourth is provide durable buildings that are efficient and economical to own and operate. Probably a few of you have heard me say before when I have been on my little perch is that what we are doing is tearing down smaller homes, I know we are going to have a study session about
housing here before long, but we are not having a discussion here about house size at all. It is
going to be a difficult one to address but I think environmentally, socially, economically it is one
we have to take up and where we land is something else. But we are not addressing that at all
and again, it is part of the purpose of this ordinance. We are tearing down smaller homes, it says
that since you have been keeping track it is something like 1,575 square foot homes, and that
doesn’t include the garages, and we are tripling the cost or the sales price of the homes where we
tear down houses and build new houses with basements. It is easy to see a property go on sale for
$1.3 to $1.5 million and it comes back on the market for $4.5 million rebuilt with a full
basement. That is not sustainable. It is not socially responsible. It is not economically feasible.
We talk about jobs/housing imbalance and it is all relative in terms of what people can afford
here but we are making it harder and harder for people to be able to live and work in our
community.

The C & D Ordinance, salvage is referenced here but there is not much focus on it. We have had
the C & D Ordinance in place for some time and the salvage aspect of it is still not very well
implemented. I am not trying to blame anyone for that. I don’t know if it is availability of Staff
or training of Staff or what but it is still woefully lacking. A great deal still gets chipped up and
we can’t look at recycling as being as good as salvaging or reusing buildings. It just simply is
not.

I think one last comment and then I will try to make a handful of changes here. Actually, other
people have comments so I will go to them next. Two things actually. Under ‘Incentive’ and I
couldn’t find it although I know I read it in here somewhere it talks about reduced parking. We
just did the Zoning Ordinance Update and as a part of that we looked at parking requirements.
So personally I would not favor in any fashion parking reduction in exchange for Green Building
compliance. The other is and this is not in the ordinance but since this is going to be passed by
resolution it is a concern I think I need to bring up. Renovation on a couple of occasions was
referenced as interior improvements or remodeling. Renovation when it comes to existing
buildings, historic or not, can often times affect the outside too. So to limit it to just interior by
definition is very, very difficult I think to apply in the real world.

The last thing I will say at this moment is the exceptions are listed separately so you have to –
they are part of the ordinance but they are not obvious. They are certainly not a part of Table A
and Table B. So if you have an historic home and you go in and you ask for these checklists you
are not going to know that you are eligible for exceptions that I can tell. It sound like you want
to correct me there and I am happy to be corrected on that.

Mr. Williams: If all you are looking at is the table it is our job to tell you that it is not the table.
It is just like if you look at the tables in the Zoning Ordinance for CN it tells certain height things
and everything but there are sections after that that tell you more about it. We started out with a
table that if somebody got a hold of it they would just be overwhelmed by the amount of
information trying to fit it in a table. If you try to sort of get everything in there and in the
footnotes and it had 12 footnotes and more. So I understand that but I think is our responsibility
to tell them if they have an historic home that we have an exception process and lead them to
understand this is all one thing. It is not just the tables that they have to comply with.
Chair Holman: In a perfect world I agree with you and I do trust Staff will do due diligence but people are going to go online and download these Tables A and B and they are not going to see that. They are going to be talking to their architects and contractors and they are going to be down the road and come in with decisions made, I fear.

Two other Commissioners have lights on Commissioners Sandas and Keller and now Commissioner Tuma I see you have a question. Did you want to say something right now as a follow up?

Commissioner Tuma: Just to your point. Couldn’t the concern that Chairman Holman has on this particular issue be addressed if you put just some sort of notification in bold at the top of the table that pointed the applicant to make sure to review the whole thing and not just this page?

Mr. Williams: Yes, we certainly can a bold disclaimer essentially that this relates to that ordinance and please review all of this as one package.

Chair Holman: Commissioner Fineberg.

Commissioner Fineberg: Can I suggest some wording on that? Maybe something like ‘historic homes or homes with significant adaptive reuse may be eligible for extra points at the discretion of the Director,’ so that they get what it is for and that answers your semantic issues that it is points, it is green, it is not exemption.

Mr. Williams: We could probably do that as a footnote. Then this will be kind of overriding at the top or way at the bottom. The reference we are making here is to much more than the historic part of it.

Chair Holman: Correct.

Mr. Williams: We mean looking at the whole ordinance when you are considering what is in the tables.

Chair Holman: It was why I asked the question earlier of Staff and also of David Kaneda earlier this evening about how points were determined and there didn’t seem to be a good answer available. So I don’t know why we couldn’t use some kind of rational point system for adaptive reuse or restoration of building.

Mr. Williams: Well, I think the answer to that is it depends on whether we want somebody to get something that they can have certified through a process or not. Right now LEED and Built It Green are not going to recognize those points. We can’t write points for them.

Chair Holman: But if you are talking about single family residential and sometimes they are going to want to get accredited to but a lot of people are not going to want to go to that level, I don’t think.
Mr. Williams: Yes, so we can’t artificially change the rating systems. What we could do is consider doing something separate that recognizes those buildings in a special way as green if you do something as far as reusing the building and then maybe comply with certain ones of these items on the remodeling checklist or something like that. I think that is a customized process of creating our own list, which we have sort of been directed frankly not to do at this point so we can get out and get on the train moving forward on these Green Building checklists. There is not a reason why we couldn’t on a separate track here get something else going regarding acknowledging and recognizing and do our own, some kind of, program for the kind of building that you are talking about.

The whole rest of it as far as disincentives for basements and all that I think you know is a big economic issue in the community and in the region. We have started that discussion on a couple of occasions and it has not gone to a point where changes have been made. So I don’t know how to address that.

Chair Holman: I said I certainly acknowledge that it is a difficult discussion but I don’t know how we can not have the discussion. This body certainly hasn’t had that discussion. I believe Commissioner Sandas was next.

Commissioner Sandas: I am going to apologize ahead of time because I am only half awake. There are a couple of things. The first thing is that Chair Holman is just remarkable. I am so tired I am so sorry I am having a hard time saying this. You are remarkable. All those things that you have brought up I share those concerns and I didn’t even realize it until I heard from you. As the maker of the motion however, and I am not sure that I am saying this out of expediency so that this can get to Council, should it go to Council considering some of the points Chair Holman has brought up this evening? On the hand on the other hand, I am kind of toying in my own mind. I think that this is a starting point. I think we are talking about progress and not perfection. I am curious about our ability to revisit this ordinance as time goes on. I know Commissioner Lippert has mentioned that LEED won’t be the only game in town at some point so we should be prepared to readdress the Green Building issues when there are competitors in the marketplace to LEED. So I am thinking that we have had a lot of amendments to the motion. I think you said there were eight of them and they have all been accepted. How many?

Mr. Williams: Ten if you include the two footnotes.

Commissioner Sandas: Okay, so I don’t know if I can re-move the motion, say it again, but I think that let’s go with this starting point. Are we okay with going with this as a starting point? We have everybody speaking to their support of the motion and make sure that we have the opportunity to address these other issues that Chair Holman has brought up. Does that make sense to everybody at this late hour? It doesn’t make sense to Commissioner Keller.

Chair Holman: Commissioner Keller you had your light on too.

Commissioner Keller: Yes, thank you. Firstly with respect to Chair Holman’s comments I believe that Built It Green certification requires 50 points. Is that correct?
Mr. Williams: Their basic certification as opposed to what we are proposing, yes.

Commissioner Keller: Yes, and therefore to the extent that we allowed points to be counted for adaptive reuse or remodels for the 70 points, to the extent that we allowed for that, if they still got at least 50 points on the official Build It Green scale they could still get that certificate and be happy. So I think that to the extent that we allow additional points for those considerations as long as we didn’t allow more than 20 points it would still work for them to get a nice certificate they could hang on their wall.

Chair Holman: Is that an amendment?

Commissioner Keller: No, it is not an amendment. I don’t think it needs to be an amendment. I think that it is understood with respect to that.

I would like a clarification to one of the things that I said, just to be clarified. I referred to sea level rise of houses I also think it should refer to City facilities which are in the floodplain, commercial property, and Highway 101, which are all endangered by sea level rise. So I am not sure if that needs to be an amendment or it is just a clarification of that.

With respect, I am going to make this as a recommendation but not as a formal amendment, I am going to recommend that as part of this process that the Planning Department basically have a customer survey of some sort and ask the applicants to give feedback on how well this is working for them, and that that data be part of the data that comes back to us in a year. I think we would like to know how much is this costing them, how much the additional effort is, how much the benefit it, do the houses sell faster, or whatever. At least we will have some sort of data on that.

With respect to whether this is too soon, considering the life of these buildings is 50 years or more, I think it is not too soon. The experts tell us that we have maybe ten years to turnaround the amount of carbon dioxide that is being produced and start turning that to be lower. Considering vehicles are turned over much faster than buildings the sooner the better from my perspective. So I would like to see this go in the future.

One thing that I am not sure is part of the amendments to the ordinance but I believe it was something that in a written response to my questions was agree to by Staff is including basements whose height is seven feet or greater and including garages in the square footage. I just want to make sure that that’s part of the ordinance. Is that okay as an amendment if necessary by the maker?

Commissioner Fineberg: Is it in the ordinance?

Commissioner Sandas: Can you please repeat that?

Mr. Williams: It is understood by us. We don’t object to actually writing that where we have the part about the basements to also mention that attached garages would be part of the....
Commissioner Keller: Right. That basically basements be included in this, and being explicit that basement with a height of seven feet or greater and attached garages are also included in the square footage.

Commissioner Sandas: Does that need to be an amendment, yes or no?

Mr. Williams: To specifically put that language in the ordinance yes it needs to be an amendment.

Commissioner Sandas: I will accept that even though I said I wasn’t going to take anymore stinkin’ amendments.

Commissioner Fineberg: Clarifying question on that.

Chair Holman: The seconder first. Seconder?

Commissioner Tuma: Fine.

Chair Holman: Okay. Yes.

Commissioner Fineberg: For green purposes why does it matter whether the garage is attached or detached? It is still using resources.

Mr. Williams: It is but it is not connected to particularly the energy use of the house. My understanding is there are actually some provisions or maybe even a point in one of these systems for detaching garages because then you don’t have – there are certain energy losses that happen between the house and the garage if you have an attached garage. So you have to really seal if you are building above it or right next to it because that is not conditioned space. There are some energy implications related to that that don’t happen if you have a detached garage.

Commissioner Keller: I got distracted when you were reading your list of things. Can you remind me what number seven was?

Mr. Williams: Seven was the definitions, the New Construction that we break it out and call it New Construction, Residential.

Commissioner Keller: Thank you. I would just like to make two more quick comments. One is I would support not as a part of motion us at some point considering dewatering in more detail and basements. I am supporting that coming back to us at some point.

Lastly, in terms of adaptive reuse I think that is a very important concern. I am actually collaborating with Build It Green on a project that they are doing where they are trying to create a database and system of the measures to correlate with the point systems for Build It Green and try to quantify the greenhouse gas implications of doing those measures. I am with an organization that is actually giving them money to help them with this project. As part of that I would be happy to have them try to quantify the idea of adaptive reuse versus teardown and start

Page 33
from scratch. Perhaps that can be done as part of this database and system so that we could have
better data for future ordinances and for future point systems.

Chair Holman: Commissioner Lippert, you had put your light on.

Commissioner Lippert: I just want to say this is a first step. This is not a perfect process at all.
There are things that I am still unhappy with on this but I think that it is prudent and important
that we take that first step. There will be time and opportunities for us to improve this in the
future.

With regard to Chair Holman’s comments with regard to basements the process on basements
has evolved and the net result of that is there have been unintended consequences, which
continue to impact the whole issue of concrete and the carbon footprint it causes. One of them is
that because you can no longer pump out the foundation around a basement and pump it out to
the street those basements actually have to stay within the ground. The groundwater wants to
push the basement out of the ground so more concrete needs to be added to those basements and
those walls need to be made larger and dead weight has to be added so that they stay in the
ground. The net result of that of course is that concrete is a gross carbon polluter when it is
produced. It can be reduced by using more fly ash in it but then walls aren’t really retaining
walls and they are not heavy enough to be 3,000-psi concrete, which is what you need for a
retaining wall.

So again it is not a perfect process. I think that the Green Building Code will eventually hash out
a lot of these issues we just have to be patient with the process and let it play itself out. Until
then I think the best we can do is to adopt this ordinance with the amendments that we have
addressed this evening.

Chair Holman: Commissioner Fineberg.

Commissioner Fineberg: I wanted to follow up a little bit on Chair Holman’s comments about
how to handle the reduced parking requirements as an incentive for green. In certain projects
where they are located near the urban centers where they are near public transit....

Mr. Williams: I am sorry I am a little confused why – we are not considering any incentives at
this point in time. Those were in there listed as things that have been brought up to consider at
some point but right now that is just a laundry list of suggestions that have come to us and there
is nothing being proposed other than the ordinance has a sort of placeholder saying at some point
the City may adopt incentives.

Commissioner Fineberg: Okay, because I remember having seen it in the Staff Report and at this
late hour forgive me if I didn’t distinguish between future so thank you for that correction. That
does answer that.

Then I also want to talk a little bit about, Commissioner Lippert has talked about the unintended
consequences, there are going to be some surprises. We are not going to know where things pop
up. We are anticipating possible problems with basements. We are anticipating possible
problems with how when these are applied maybe historic properties get torn down. Are there any quick releases or triggers that if we are seeing something happening, trends happening, that either really are not green or causing distortions where we don’t want them what is a quick way to get on top of that? Are we prepared or do we have to go through some long process and continue to have those unintended consequences?

Mr. Williams: If there is something that is really egregious for some reason we can bring that forward quickly but what I am expecting is we are coming back in a year and frankly I think very little will have happened probably by that point. Again, we are talking about going through the planning process, and going through the building review process, so we will not have any homes or commercial buildings constructed to the point of determining their compliance level in that one year. It is going to be probably two-years. I think coming back in one year will be adequate to at least be able to assess what we have learned so far, as far as how these checklist work, what kind of additional cost and time constraint is that adding to the homeowner and the architect, and such and such? Have there been any issues that have arisen that might relate to historic buildings or how basements have been dealt with and trying to flag those things actually before they are out in the field being constructed? So I think one year is a good timeframe for that. We had talked about having this sort of one-year transition and ended up with a two year just because one year isn’t enough time to really be able to see what is happening as far as making the transition. We do want to come back because there will be some things that we learn in that year to report back to you. Some new checklists could be out then too.

Chair Holman: I have just a couple of wording things to add to the ordinance and then one clarifying question about Attachment B. Attachment B is the resolution and the resolution refers to Attachment A and Attachment B and those attachments refer to LEED NC checklist for instance but those checklists are going to change over time so I am wondering if there needs to be some other reference so that we don’t have people getting upgraded checklists and there be confusion. In other words, NC checklist as of X-date isn’t referenced.

Mr. Williams: Oh, yes and we originally had that but our concern was that those are going to change and then it won’t be on here and we will not have updated it and they change and we should be using the most current of each of those checklists. We could put that on here, ‘most current version of each checklist,’ or something like that.

Chair Holman: It is your choice I was just trying to avoid confusion.

Mr. Williams: We might be able to put that with the number two footnote that talks about compliance with other checklists. We are going to do a similar one for Table B so it probably wouldn’t hurt.

Chair Holman: Okay, great. Then Commissioner Sandas, as maker of the motion I do have just a small handful of language additions or changes I would like to add if you are so amenable. On Attachment A, the first page, again there is no reference on this page having to do with restoration. So in the third ‘whereas’ if we could add after ‘construction’ in that first line add ‘restoration’ and in the second line just to the right of that add ‘resource conservation’ as opposed to ‘efficiency,’ which is consistent with what was presented this evening. So it would
read, “Whereas green building design, construction, restoration, operation, and maintenance can
have a significant positive effect on energy, water, and resource conservation.”

Mr. Williams: So you added restoration and what was the other?

Chair Holman: Changed efficiency to conservation after resource. Are those agreeable to the
maker and seconder?

Then the same thing on page two, H, because the design, restoration, construction, and
maintenance of buildings and structures. So adding the word ‘restoration.’

Commissioner Sandas: Yes.

Chair Holman: Seconder?

Chair Holman: Then on page three, ‘the purpose of this chapter is to enhance the public health
and welfare,’ I really so much like the language that is used on your presentation this evening. It
talks about energy efficiency in building and water and resource conservation and reduce waste
generated by construction projects, provide durable buildings that are efficient and economical to
own or operate, promote the health and productivity of residents, workers, and visitors to the
city. That language is so good and I am not sure of the best way to incorporate that plus one
bullet, this is an easy one, add one letter (f) under the Purpose statement is to recognize the
energy in existing buildings. Would that be agreeable to add, Commissioner Sandas? Recognize
the energy in existing buildings and this under Purpose, (f).

Commissioner Sandas: Recognize the energy or the energy use?

Chair Holman: Well there is a lot of embodied energy in existing buildings, which is the term
that is used having to do with reuse.

Commissioner Keller: Can I suggest how about recognize the energy that was used to construct
the existing buildings?

Chair Holman: That is the embodied energy. Curtis.

Mr. Williams: I was going to say recognize and conserve the energy embodied in existing
buildings.

Chair Holman: Fine by me if that is agreeable to the maker.

Commissioner Sandas: Okay.

Chair Holman: Seconder?

Commissioner Tuma: Yes.
Chair Holman: I don’t want to try to wordsmith this it is too hard at this point but if the maker and seconder are agreeable to just trying to get in the Purpose section the language that is in the fourth box on the front page of the presentation, Purposes of Draft Ordinance, into this Purpose section. It is the front page of your presentation this evening, Curtis.

Mr. Williams: The fourth box, Purposes of Draft Ordinance, is that what you are saying?

Chair Holman: You know I am not the night person I used to be it is there. So thank you for that. Yes, it is pointed out to me that the second box, Green Building, means a whole systems approach is under Definitions but it is not under Purpose. I am not sure if that is where it best lies.

There was one correction in the Definitions. It talks about single family and R-2 seemed to be not mentioned, although it is mentioned under T. There was another place where it mentions single family and multi-family but it leaves out R-2 because it talks about three units or more and single family. There is no reference to two units so if you just scan through you will find it.

Mr. Williams: Okay, because R has it in it too, Residential New Construction, single family or two-family.

Chair Holman: Some places it is and some places it isn’t.

Commissioner Keller: I believe it is in definition E where it says any multi-family or single-family residential new construction.

Chair Holman: Thank you that is it. Thank you Commissioner.

Mr. Williams: Or two family.

Chair Holman: I think that is the end of my windy comments here.

Commissioner Sandas: Amenable.

Chair Holman: So with that we have two more. Commissioner Sandas and Commissioner Keller you have your lights on.

Commissioner Sandas: No, no.

Chair Holman: Commissioner Sandas not. Commissioner Keller your light is on.

Commissioner Keller: I just want to make sure that we do not need an explicit amendment to the motion or explicit guidance to you with respect to your being able to do the appropriate wordsmithing in response to my question seven.

Mr. Williams: Yes, we don’t need anything more than that. It is just an order issue. New Construction, Commercial and New Construction, Residential.
Commissioner Keller: No, my question seven not your item seven. My question seven had to do with the use of the LEED name and what certification and that.

Mr. Williams: Yes, we will put the trademark.

Commissioner Keller: Also clarifying the notion of certification versus verification sort of cleanup. Do you need that as part of the motion?

Mr. Williams: No, we already talked about it. That is just a cleanup item we will do.

Commissioner Keller: Great.

Mr. Williams: Another one to mention to you are the two tables where it says mixed use at the bottom refers to using the residential table or the commercial table and they are mixed up. It says Table A for the residential and Table A is actually the commercial so we will change that.

Chair Holman: The last thing I am going to say this evening other than let’s vote is I am really torn because part of me really wants to support all of this and I know it is going to pass. It is going to pass at least with six votes. I am sorely tempted to vote against it just because I want to impress the importance of these other aspects that are not addressed. So Commissioner Tuma.

Commissioner Tuma: Let’s call the question.

MOTION PASSED (6-1-0-0, Chair Holman voting nay)

Chair Holman: So the question will be voted on now, the motion as amended numerous times, which I don’t think we need to reiterate at this point.

I said that up front. I said I didn’t know where this would lead me or where I would come down. I said that up front. I did before, yes I did.

Thank you, Commissioner Tuma you are right. So all those in favor? (ayes) All those opposed? (nay) So that motion passes on a six to one vote with Chair Holman voting nay. Commissioners Tuma, Lippert, Sandas, Garber, Keller, and Fineberg voting aye.