



PLANNING & TRANSPORTATION COMMISSION MINUTES

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Wednesday, September 24, 2008

Special and Regular Meeting, Council Chambers

Civic Center, 1st Floor

250 Hamilton Avenue

Palo Alto, California 94301

ROLL CALL: 6:00 PM

Commissioners:

Daniel Garber - absent

Samir Tuma - Chair

Susan Fineberg

Paula Sandas - V-Chair

Arthur Keller

Lee I. Lippert

Karen Holman

Staff:

Curtis Williams, Interim Planning Director

Larry Perlin, Chief Building Official

Bob Morris, Senior Project Manager, Public Works

Clare Campbell, Planner

Zariah Betten, Admin. Associate

AGENDIZED ITEMS:

Study Session:

1. Study Session Regarding Basement Construction Impacts (e.g., Dewatering, Concrete Use, etc.)
2. Study Session Regarding Potential Revisions to Open Space (OS) District Zoning Regulations.

AT 6:00 PM

Acting Chair Tuma: Good evening and welcome to the September 24 Special Meeting of the Planning and Transportation Commission. Secretary, call the roll, please. Thank you.

Item number one which is our only item that we will either conclude by seven o'clock hopefully or if not we will decide at the end what to do about it but we do have to start the Regular Meeting at seven.

The first item is a Study Session regarding basement construction impacts. This is on for presentation and discussion and no action. In keeping with what we have been doing recently we will have presentation from Staff, then go to the public which at this point we have four cards for, and then we will come back for consolidated question and comment from the Commission. Staff would you like to make a presentation?

NEW BUSINESS:

1 **Study Session:**
2

- 3 1. Study Session Regarding Basement Construction Impacts (e.g., Dewatering, Concrete
4 Use, etc.)
5

6 Mr. Curtis Williams, Interim Planning Director: Thank you Chair Tuma and Commissioners.
7 This study session is an outgrowth of previous discussions that you and the City Council have
8 had most recently in relationship to consideration of the Green Building Ordinance and
9 regulations. There was particular concern expressed at that point about the components of
10 basement construction that relate to a number of issues but most directly to dewatering of
11 basements and how much water is being pumped out of the localized groundwater area and
12 discharged to the storm sewer system or down stream elsewhere. Another concern was the
13 amount of concrete associated with basement construction and the sort of embedded CO2 in
14 concrete and the resultant impacts as far as greenhouse gas emissions go.
15

16 The Staff Report outlines several things. It focuses on both of those items as well as a bit of
17 discussion on impacts on neighboring properties. We have indicated that in recent years we have
18 seen permits for 65 new single-family residential basements in the last two years. Basement
19 construction appears to have increased over five or six years ago. It has been pretty steady the
20 last three years at about 30 to 35 permits a year and that is out of a total of I think 181 new
21 single-family home permits and then a number of major reconstructions and additions as well
22 overall. So maybe one-third or so of new homes having basements associated with them.
23

24 The dewatering issue, the Public Works Department has indicated that they require dewatering
25 permits and that the last couple of years we have been running about five permits per year. This
26 year there have been three. The Public Works Department has made some revisions over time
27 and continue to revise their regulations for policies for dewatering and have now put a timeframe
28 within which that can occur and have a number of other cautionary steps in terms of geotechnical
29 analysis and defining where the groundwater is and controlling the discharge of that pumping
30 when it does occur. The Public Works Department put together an informational memo on June
31 9 that went to the Council and the Commission got copies of that as well. It addresses some of
32 the technical points related to dewatering in particular. That in conjunction with the
33 environmental report that we had produced a few years ago by EIP Associates we feel that most
34 of those technical issues are addressed but there still is the issue of how much water are we
35 pumping and is that a wise policy to be taking water out of the ground and discharging it. You
36 are inevitably losing some of it in that process but most it is returned ultimately to the hydrologic
37 system in one shape or another but it is lost from that immediate area for the time being. So we
38 think that we would appreciate Commission discussion and indication of whether it is
39 appropriate to further limit or prohibit basement construction where dewatering is required. In a
40 minute I will get to some of the potential options available to the Commission.
41

42 Impacts on neighboring properties, there have been concerns about site stability, trees,
43 subsidence, and whether those impacts could occur from basements impacting the properties
44 adjacent to them. Our feeling again is that technically we feel like generally those are not issues
45 but that there is some concern about the fact that basement are being built essentially to a

1 property line adjacent to residential lots and that it might be prudent to try to provide some
2 additional buffer there to enhance the site stability impacts, impacts on neighbors' trees and such.

3
4 Then the third area of issues was the Green Building regulations and implications of basement
5 construction. This is primarily related to the use of concrete for basements and the extensive
6 amount of energy required to produce concrete. We have provided you with some numbers as
7 far as the amount of CO2 emissions associated with concrete production and cement production
8 in particular. The Green Building regulations that were adopted don't address basements directly
9 however they do require additional measures to be taken, additional points to be achieved for
10 larger homes, and the basement counts as part of that. So there is some compensation that is
11 required in the Green Building regulations for a home and essentially one additional green point
12 required for every 70 square feet of area whether it is basement or other above grade
13 construction.

14
15 One piece of information that I neglected to put in the Staff Report is Larry ran some numbers
16 again. We had this question in a previous discussion of yours about the amount of concrete that
17 is required for a basement. This is close to the number you had before but it has been updated a
18 little bit. We just assumed that if you had a footprint of 2,500 square feet of basement area and
19 in his research we had generally ten inch thick walls and 12-inch thick slabs, and that with nine
20 foot high basement walls you then would end up with anywhere from 300 to 325 tons of concrete
21 associated with a typical kind of basement construction. We didn't back that up to use those
22 numbers as far as what the CO2 generation would be but we could do that if necessary.

23
24 Acting Chair Tuma: Curtis, a couple of Commissioners missed that. What was that statistic?
25 Could you say that one more time?

26
27 Mr. Williams: Some 600,000 pounds or 300 tons of concrete associated with a 2,500 square foot
28 basement.

29
30 Commissioner Lippert: Is that wet or dry?

31
32 Mr. Williams: I don't know. In place, dry.

33
34 So we identified a few options that we think may be viable for the Commission to consider and
35 provide direction on. one is continuing to permit basements and continue to have as I have
36 indicated Public Works is fairly periodically here sort of ratcheting in and confining how
37 frequently dewatering in particular can be used so that we are seemingly seeing less and less of
38 that component of the basement construction, so continuing to look at that.

39
40 The second was to prohibit basement excavation that is within three feet of a low-density
41 residential property line so you could not build out all the way to the property line with it. It
42 would essentially allow building – right now we do allow building to a six foot setback and then
43 three foot for light well in a side yard but then when you actually go in to excavate for those light
44 wells and have to backfill later you can back up all the way to the property line. So something
45 like this would then require essentially that either the light wells be built on a different side of the

1 house or that the construction be moved over or certain other techniques be used so that you
2 would not be excavating right up to a property line.

3
4 A third option was to try to define an even more limited timeframe for basement dewatering or
5 maybe even based on an estimate of the amount of water that would be discharged during the
6 dewatering process so that if it were not very extensive, the groundwater was just a foot high or
7 something and it wasn't nearly as extensive as others, that maybe it would be permitted and if it
8 were more extensive than that then perhaps that would be prohibited.

9
10 On the Green Building side we could look at ways to either add additional compensation in terms
11 of maybe doubling basement square footage in terms of the amount of green building points that
12 are required. We did provide one article about someone who is looking at a different method of
13 producing concrete or if they are using other materials that there might be some kind of reduction
14 for the use of basement construction materials that reduced that imbedded energy in the concrete.

15
16 Then the last one that we pointed out is something that basically came up on the 278 University
17 project. It was allowing existing basements for nonresidential properties. I don't think this
18 would generally happen in residential properties but maybe there too, to be excluded from floor
19 area calculations if they are restricted to non-habitable uses even if they might be classified
20 under the Building Code as habitable space. The reasoning for that would be so that they were
21 not removing it, which causes the issue of disposing of a lot of concrete and then rebuilding a
22 shorter or slightly reconfigured in some way basement that then uses new concrete and creates
23 all the impacts associated with that. So there might be some benefits to allowing that and we
24 have seen a fair amount of desire to use or continue to use existing basements in Downtown but
25 sometimes they are not able to do that for some of these other reasons. So those are just some
26 starter ideas of direction that the Commission could look at.

27
28 I want to let you know that this is Bob Morris from the Public Works Department. You know
29 Larry Perlin, our Chief Building Official. They are here to help answer questions as well. So we
30 can either take questions or go to the public.

31
32 Acting Chair Tuma: Thank you. At this point we are going to go to the public. We have now
33 six cards. Each speaker will have three minutes and the first speaker is Steve Broadbent to be
34 followed by Catherine Davidson.

35
36 Mr. Steve Broadbent, Palo Alto: Good evening. Several months ago I saw one of those tiny
37 white signs in front of a house in my old Palo Alto neighborhood. I immediately called the
38 Planner and raised objections to the proposed basement. I was shocked when the Planner told
39 me that the single-family review only addresses the above ground impacts of a proposed
40 development. He told me I could argue the two-story home might block my sunlight but he said
41 that basements were not considered in the single-family review.

42
43 You have received a number of letters and heard public comments that basements just like
44 second stories infringe on neighboring properties. In fact, during Council's review of the Green
45 Building Ordinance Councilman Jack Morton raised his firsthand accounts of the adverse
46 impacts that basement construction and dewatering have had on his property.

1
2 My first request is that you amend the single-family review policies to include basement
3 construction as an arguable consideration in evaluating development permits. My second request
4 is that you scrutinize the negative affects of dewatering from basement construction. I urge you
5 to halt this undesirable practice.
6

7 The City of Palo Alto should disallow basement construction on sites with a high water table.
8 The pumping and discharging of groundwater should be expressly prohibited. Palo Alto has
9 strong regulations to protect our trees. With global warming threatening the water supplies in
10 our region we need equally strong regulations to protect our groundwater. We also need strong
11 regulations to protect neighboring properties from damage caused by basements during
12 construction dewatering. The negative effects of dewatering operations are well documented.
13 Dewatering removes buoyancy from the soil, it increases the effect of stress, which can lead to
14 subsidence and structural damage. The zone of influence of the drawdown wells extend far
15 beyond the boundaries of the construction project thereby jeopardizing structures on neighboring
16 properties. The drawdown of groundwater under adjacent properties can and does cause
17 localized subsidence. After 75 years the foundation of my old house shouldn't be settling any
18 more but I saw cracks in the plaster and cracks in the pavement developed during the extended
19 dewatering at 2164 Webster. All the neighbors saw similar subsidence impacts. After they have
20 been constructed basements create a damming effect and divert the groundwater flow around the
21 sides of the structures. This can and does cause flooding of adjacent properties. Palo Alto
22 homes have seen flooding of the utility basements following construction of basements on
23 neighboring properties. The Staff Report asserts that dewatering does not impact trees however
24 the EIP study and numerous other techno papers contradict those assertions. Tree roots do not
25 need to extend into the aquifer to benefit from groundwater. The significant capillary effect of
26 our clay soils draws water toward the surface in which the (beto zone) find an abundant source of
27 water. With basement construction that draws the water out and lowers that beto-zone and that
28 saturation of the zone.
29

30 Through your leadership Palo Alto enacted its Green Building Ordinance. The significant
31 environmental impacts of dewatering operations cannot be mitigated with green point offsets.
32 Palo Alto needs your leadership to enact an ordinance, which would prohibit dewatering from
33 the construction of residential basements. Thank you.
34

35 Acting Chair Tuma: Thank you. Catherine Davidson to be followed by David Sondstrom.
36

37 Ms. Catherine Davidson, Palo Alto: Good evening Commissioners. I am a third generation Palo
38 Altoan. One of my favorite places I the Magic Forest at Rinconada Park and the redwood tree
39 next to the Girl Scout House. Sadly, I have noticed that these poor trees look sick and that they
40 are drying out. The top growth of the redwood tree at the Girl Scout House and many of the tips
41 on the new growth at the Magic Forest are crisp brown. I am wondering if this has something to
42 do with the underground water supply.
43

44 Another strange occurrence happened to an old maple tree after a home next to a friend of mine's
45 pumped out groundwater. Leaves on one side of the tree turned all fall colors and the other side
46 was perfectly green. I am not sure that the sick maple tree will be able to survive. The homes

1 neighboring this house and the street surrounding cracked. I think it has something to do with
2 pumping out groundwater.

3
4 When my mother was my age she loved these trees as I do now. I am worried that these same
5 trees won't be here for my children to love. These trees have done quite well in the past but ever
6 since citizens have began withdrawing millions of gallons of groundwater I suspect they have
7 been taking this water away from nearby trees. I hope that you will recommend to the City
8 Council to stop taking precious water supplies away from our city's trees. Thank you.

9
10 Acting Chair Tuma: Thank you. David Sondstrom to be followed by Ellen Wyman.

11
12 Mr. David Sondstrom, Palo Alto: I thank the Commission for considering the issue. I am a
13 professional hydro-geologist and since 1979 I have lived in Palo Alto. I live in a house that was
14 built in 1920 that has a basement that floods every time we have a wet rainy season. I can attest
15 from experience what damage that causes to the foundation.

16
17 I have two very pragmatic concerns. One is in looking at the Staff Report dated September 24 it
18 states that excavation for the basement wall may extend to the property line. As Curtis was
19 mentioning this poses obvious risks and I think this would seem to a reasonable person to be a
20 reckless and irresponsible to allow excavation right up a property line. I have seen it in my own
21 neighborhood. It seems just very hazardous if there is a cave-in when children are playing in the
22 adjoining property. I think there needs to be a prudent setback.

23
24 The other thing is in the City Manager's Report the statement that if a site has high groundwater
25 the contractor will need to dewater the site and this typically includes pumping water from the
26 shallow aquifer below the site to a tank and then to the closest storm drain inlet in the street. So
27 it seems that the standard operating procedure is to allow basements that penetrate the water
28 table and the Building Code disallows construction where the building would be subject to
29 flooding. A building can be subject to flooding from groundwater. The groundwater table is not
30 a static thing it goes up and down depending on whether we have had wet seasons or dry
31 seasons. It seems what the City really needs is some kind of a map that would show what the
32 maximum permissible basement would be. It looks like you have a good start here. So thank
33 you for considering my comments.

34
35 Acting Chair Tuma: Thank you. Ellen Wyman to be followed by Martin Bernstein.

36
37 Ms. Ellen Wyman, Palo Alto: You have heard the technical talk. I am going to give you the
38 anecdotal. There are a number of houses within my immediate neighborhood, probably a block
39 or a block and a half from me, that really have had problems that the owners are sure because of
40 nearby basements. My back fence abuts a neighbor who has lived in this house for about 50
41 years never ever had water in the basement until the house next door built a big basement. Now
42 every time we have a heavy rain or a season of a lot of rain they have water in the basement.

43
44 Another one, a new house was built and they excavated right to the property line. The woman
45 next door is in a house that looks like it was built in the 1950s. The cement garage floor buckled.
46 The driveway cracked all along. It was harder to open and close the windows and doors on that

1 side of her house. On the other side of that same house the homeowner lost a tree. He had a
2 brick wall in the garden that has a major crack in it and looks terrible. Another friend on Nevada
3 that is not very far there was a big basement built and the house next door lost a mature olive
4 tree. It was the focus of the front yard. It was a beautiful tree and it died just months after this
5 basement was built next door. The house on the other side of that same house again had
6 windows and doors that did not open well. The last one I will mention had a big house built next
7 to her with a big basement and during the 1989 earthquake she had cracks throughout the house
8 and they had been repaired. When they did this next door apparently the ground shifted enough
9 that those same cracks reopened.

10
11 So I can tell you that a lot of people in town are indignant. They are angry. They are really mad
12 at the City because they think the City is greedy and the reason they are permitting all these big
13 basements is it increases the value of the house and therefore the tax base to some extent. So I
14 hope you really do address this seriously. It is a problem. When that many people perceive it as
15 a problem it is a problem.

16
17 Acting Chair Tuma: Thank you. Martin Bernstein to be followed by Jody Davidson.

18
19 Mr. Martin Bernstein, Palo Alto: Thank you Chair Tuma. I am speaking as an individual. I
20 have five points. One is that if there are any restrictions or new regulations on basements that
21 commercial and residential be treated equally just so that there is no perception of any financial
22 bias on potential regulations.

23
24 Next point is regarding historic properties. I believe if there are any restrictions on basements
25 that there should be an exception to historic properties for any basement limitations because if
26 you have for example a relatively small under FAR historic house, and right now people are
27 allowed to put in basements to get more square footage and retain the historic quality of the
28 historic building, if that square footage is no longer allowed for example there may be an
29 incentive for the owner just to demolish the historic building so you can get your full FAR above
30 ground. That has a negative environmental impact to demolish an historic building or actually to
31 demolish a building. So we have to look at in terms of balance what is happening to the
32 environment with any regulation. So encouraging basements actually could be a plus because
33 you are not demolishing an historic structure, also good for the neighborhood character, also a
34 high Palo Alto priority for maintaining neighborhood property character. If basements, right
35 now they are not counted toward FAR, if there is any restriction to that perhaps that is taking
36 away a property right to build that square footage, something to consider. What would be the
37 outcry for that from homeowners who are thinking of adding that square footage because they
38 can't do it above ground?

39
40 Fourth item and Curtis Williams mentioned something about the idea of overall impact and
41 recycling. So maybe that water that gets dewatered maybe that gets recycled somehow to the
42 aquifer in some way.

43
44 Fifth point, as Curtis Williams also mentioned that there may be some investigation looking at
45 green point alternatives. Example, Title 24 of the California Energy Code, you can make a glass
46 house. It might be environmentally not meeting the code but if you have an all glass house you

1 will have a lot of heat loss, if you compromise it by doing something else with the roof and
2 ceiling you can meet Title 24. So maybe something with those two if you allow for the
3 basements – do you have a question about that? So the by the overall package you can meet the
4 requirements of green points, Title 24 for example. So I think there is a balanced approach to
5 allow basements. Thank you.

6
7 Acting Chair Tuma: Thank you. Jody Davidson to be followed by Norman Beamer.

8
9 Ms. Jody Davidson, Palo Alto: Good evening Commissioners. As you proceed with your study
10 session on basement construction impacts I would like you to consider the following. I would
11 like you to prohibit dewatering in construction of residential basements in areas where the water
12 tables are high in our city. Construction of homes with basements could cause problems to other
13 homes in the area such as fracturing during the dewatering and then flooding after a light rain.
14 Dewatering causes desiccation of the clays and when the water table returns to its natural height
15 after we have had a light rain it can cause flooding onto other properties. The basement walls
16 create a barrier to flow. Once the water tables return to their natural heights in non-drought years
17 they reach a point of saturation. There is nowhere for the water to flow except laterally. This
18 would create a compressible soil condition for the homes in the surrounding area and create
19 subsidence-like conditions after awhile.

20
21 Quite a few residents have written into Council that their homes and driveways began to tilt
22 toward the home with the basement. The water, which lies below most of Palo Alto passes
23 through a thick clay layer. The clays are able to purify the shallow water. The water in many
24 places is in fact drinkable at a depth of approximately 32 feet if we are out of the zone of
25 influence of one of our plumes.

26
27 Our shallow groundwater must be protected in the event of a catastrophe where underground
28 piping systems to our emergency water supply tanks could rupture, which our City is currently
29 working on in the Utilities Department. This valuable resource is being stored beneath our feet
30 for free. Since water is such a critical resource I feel that it should not be allowed into any new
31 green building program. This resource is so precious that it cannot be mitigated with any green
32 point offset.

33
34 I disagree with Staff's assertion that our recharge comes from residential watering of the
35 District's Recharge program. I have a letter dated February 11 from Rosemary Kami, Chair of
36 the Santa Clara Valley Water District. She sends a letter to me after three of my letters were read
37 at their Board Meeting. In this letter Mrs. Kami states that our sources of water for the shallow
38 area are primarily dependent on recent local hydrology. In other words, infiltration of rainfall
39 both in that area and in areas up greened. As you all know we have not had rain here. So our
40 recharge is coming from rainwater. Thank you.

41
42 Acting Chair Tuma: Thank you. Norman Beamer to be followed by Bob Moss.

43
44 Mr. Norman Beamer, Palo Alto: Thank you. I would like to urge the Commission to not impose
45 significant new regulations on single-family houses and the ability to expand into the basement
46 to create useful living space in the basement area. First it significantly will decrease the value of

1 the property to impose such significant regulation. Of course I defer to the experts I am not
2 opposed to reasonable regulations but some of the speakers here are urging I think fairly radical
3 new regulations. Many families want to expand their living space, create new useful areas in
4 their property, and to prevent them from going down means there will be an additional incentive
5 to spread out or to go out. I think that from the standpoint of neighborhood compatibility and all
6 the concerns about second story housing and single story areas to impose this additional
7 restriction would just further exacerbate that problem.

8
9 Talking about incursions near to property lines, well if you can't build a basement then they
10 might want to build an addition to their house on the surface and it would be even more of an
11 incursion.

12
13 Historic preservation is an important point that has already been brought up. A great incentive to
14 encourage someone to preserve their historic house is to allow them to expand into the basement
15 where there is the least impact on the historic character of the house, not to mention the
16 possibility of a teardown being avoided.

17
18 I would like to call the Commission's attention to the FEMA regulations which allow – right
19 now the zoning does not allow basements in the flood zone but that is not necessary. The FEMA
20 regulations allow basements in flood zones if the Building Code is amended to provide for
21 special provisions and measures to make sure that the basement is sufficiently waterproof. So I
22 would actually urge that the regulations be further liberalized to allow particularly for historic
23 residences in floodplains to allow for basements provided these FEMA regulations are included
24 in our flood ordinance. I will send a copy of those to you so that you will have more details
25 about what I am talking about. Thank you.

26
27 Acting Chair Tuma: Thank you. Bob Moss and that is the last card I have for this item.

28
29 Mr. Robert Moss, Palo Alto: Thank you Commissioner Tuma and Commissioners. I happen to
30 disagree with Mr. Beamer almost totally. I think that the basements should be counted toward
31 the FAR because what I have been seeing and especially in the new homes, I have been in
32 several of them in Barron Park, is people are putting basements in that don't count against the
33 FAR and are totally finished, completely ready for somebody to move in. What they have done
34 is created a duplex in a single-family area and they have done it underground where the Staff and
35 inspectors are not aware of it. What they do is put in all the piping and the water in and it is all
36 ready to go but they don't actually put the toilet in. They wait until it has been inspected and
37 then they bring the toilet in and install it. They have a kitchen in, all the facilities are in, but they
38 don't put in three kitchen appliances they only put in two. After it is inspected they put in the
39 third.

40
41 You may recall we had a big, big hassle a few years ago about duplexes. The City Council made
42 a strong statement that they did not want unmitigated propagation of duplexes in the R-1 zone.
43 Basements do precisely that and it is recognized in the ordinance where it talks about how
44 basements won't be counted if they can't be livable. The way they keep them from being
45 livable is by saying you can't put a toilet and you can't put a kitchen in there. If all the plumbing

1 and wiring goes in and the inspector goes away and they put it in that is exactly what they have.
2 So at the very least the basement should count for .6 to .8 against the FAR.

3
4 Second, the basement should be made smaller than the footprint of the house to make sure the
5 excavation and the concrete in no way impinges on the neighbors. Third, no basements should
6 be allowed in any area where the groundwater is less than 20 feet below grade. So if you look at
7 the map, Attachment G, certainly everything in red basically from El Camino to the bay, from
8 Oregon Expressway to the south only ten feet deep that is just asking for trouble when somebody
9 digs in there and gets into the aquifer.

10
11 The amount of water we are talking about taking out to give you some perspective in the areas
12 where they are doing mitigation of contaminated groundwater in the Research Park and they are
13 pumping and treating, and also this is true of Moffett Field and MEW in Mountain View, the
14 maximum amount they will take out of any of these areas is six to seven million gallons a year.
15 In some of these buildings where we are getting into the groundwater, and you have heard about
16 them tonight, they are taking that out in a matter of weeks if not days sometimes. It is excessive.

17
18 So what we should be doing is requiring people who put basements in to make them compatible
19 with the community and count them against the FAR.

20
21 Acting Chair Tuma: Thank you. With that we will close public comment. Commissioners, we
22 have about 20 minutes left before the start of the next item. Let's dig in and see how far we can
23 get but we are going to have to make a decision just before seven if we are not done, which I
24 suppose we won't be, whether to continue it after this item or continue it to another date. So
25 with that in mind I believe Commissioner Fineberg is first.

26
27 Commissioner Fineberg: Clarifying question for Staff, probably Public Works. I am wondering
28 about the question of whether when the water is taken out of the basement and it runs onto
29 impervious surface, the gutters, the storm drains, except for maybe San Francisquito Creek are
30 there areas in the city where that water is reabsorbed into the local groundwater or except for San
31 Francisquito Creek is it always ending up in the bay?

32
33 Mr. Bob Morris, Senior Project Manager, Public Works: It is always ending up in the bay except
34 for San Francisquito Creek that is the only losing creek where water is lost back to the
35 groundwater aquifers. The other creeks are lined so of course the water that goes into those
36 creeks goes out to the bay.

37
38 Commissioner Fineberg: So is it an accurate assessment to say that it works its way back into
39 the system? I thought I read that in Staff Report.

40
41 Mr. Williams: The intent there was that some of it does as he said from San Francisquito Creek
42 but the bay is part of the system too. It is all part of the hydrologic system so the intent was to
43 say that it is not lost to evaporation or some other means of water being gone from the
44 hydrologic system entirely. It is not in that local area but there are other sources that replenish
45 that so the overall aquifer is not being reduced in terms of the total amount in either the shallow
46 aquifers or in the overall deep aquifer that the Water District regulates.

1
2 Commissioner Fineberg: Okay, then that actually is a great segue to my second question. I am a
3 little perplexed at whether to think of this in terms of an issue in a specific spot or kind of global.
4 If I had a house and it was next to a basement that was being dewatered I don't think it would
5 matter to me that the water remains water on Earth. It would matter to me whether there is water
6 where it belongs under my house, and that there not be settling under my house, and that there
7 not be damage. So I think the right perspective is, and correct me if I am wrong on this, what are
8 the impacts on the immediately adjacent properties. I don't think it matters that the water
9 remains water and it is coming out of a concrete channel ten miles away or five miles away. So
10 if we focus on those micro effects in the immediate areas adjacent to dewatering is it correct that
11 the EIP study stated the more significant impacts than what I am perceiving were in the Public
12 Works report?

13
14 Mr. Williams: I don't think the EIP report had more significant impacts. That may acknowledge
15 that there are local changes and temporary changes in that groundwater but they did not indicate
16 that it was to the point that it was doing damage to the neighboring property specifically and
17 generally that is not the case. We are certainly more than willing to have, and Bob should really
18 probably answer this more than me but, how many complaints have we received or people have
19 come to Public Works and said we are experiencing x, y, or z and had them investigate and find
20 whether this is accurate or not. Certainly we are willing to look into that more and see on some
21 examples whether there are some of those effects. People talk about trees being impacted. I
22 don't get complaints like that. Dave Dockter has had a couple and he has determined that the
23 basement has not been the issue related to trees. I don't know what kind of concerns have been
24 registered with Bob but it is not a pervasive type of concern that we hear from neighbors. So
25 maybe it is happening and they are just not telling us but we are more than happy to investigate if
26 they think these concerns are there. Like I said, Public Works each year seemingly creates some
27 additional constraints on basement construction if we find something is in fact having an impact
28 we had not anticipated. We would try to address that and be more restrictive.

29
30 Commissioner Fineberg: Okay. My final quick question. I am hearing residents coming and
31 complaining at PTC meetings. That may not be the forum to trigger enforcement though. If a
32 resident has a complaint who is the appropriate person from Staff that they should register that
33 complaint with so that it would get logged, so it would get investigated?

34
35 Mr. Williams: Probably depends on the nature of the complaint but it is one of these two guys.
36 So if it is related to impacts of water table on adjacent properties probably Bob and if it is related
37 to the stability of the cut next to a property line I would assume Larry and the Building
38 Department would handle that. If it is a tree issue specifically again our Arborist would be the
39 one who would ultimately take a look at that.

40
41 Commissioner Fineberg: Thank you.

42
43 Mr. Larry Perlin, Chief Building Official: Generally during construction complaints would come
44 to my office. The fact of the matter is on a complaint such as that there is very little that we can
45 do. It is akin to a complaint of an adjacent property owner that compaction activity going on on
46 an adjacent site where you have earthwork equipment, vibratory rollers that are going back and

1 forth, and they are vibrating and they are causing cracks say in the wall of the neighbor next
2 door. There is nothing that the Building Department can do about that. I can't shut the job
3 down. I can't stop the construction. It becomes really a matter of one property owner being
4 harmed or damaged by the activities of an adjacent property owner. So it is incumbent that the
5 two property owners have to resolve that amongst themselves. I can't intervene. So if a property
6 owner were to come to me and say I think my house is settling as a result of dewatering that is
7 going on next door with this basement construction, I want you to stop it, I can't stop it. They
8 have no proof. There is nothing that they can provide to me to substantiate the damage. If on the
9 other hand there was dewatering going on and they are shooting the water onto the adjacent
10 property and it is obvious that they are causing erosion and problems like that then yes, we can
11 step in and intervene in that sort of a situation. However, for these types of complaints that
12 might get lodged there is quite frankly very little that we can do.

13
14 Acting Chair Tuma: Okay thank you. Commissioner Holman.

15
16 Commissioner Holman: I had sent in a few questions ahead of time and one of them had to do
17 with zero waste issues that I had brought up at the last Commission review of this issue. Does
18 Staff have any response to that? My question is basically that. It seems that allowing basements
19 we are actually incentivizing demolition. So there is a lot of concrete that goes off a site as a part
20 of demolitions. So how would Staff respond to the zero waste aspects and components having to
21 do with basement construction and scraping?

22
23 Mr. Williams: Well, I tried to get a response from the folks in Public Works and Annette
24 Puscarich was gone until next week. So Russ Reiserer provided what I did respond to and didn't
25 get back to me on sort of follow up questions more along the lines of what you are asking now.

26
27 Certainly to the extent that basements are not allowed whether that would limit the amount of
28 teardowns my conjecture is that yes, it probably would and it would reduce the amount of
29 demolition and the amount of material that has to be sent off as well as the amount of concrete
30 used in constructing the basement. I think that is a basic policy question of whether the City
31 wants to go to that point in terms of the flip side of trying to restrict some of the FAR and heights
32 and such above grade in the city the way that we do without allowing the opportunity to go
33 below grade. I think taking that on is just a very major policy question as to how far you would
34 go as opposed to trying to do everything we can do in terms of construction, demolition, debris,
35 recycling or reuse or salvage, and those kinds of methods. So again I think it is a policy issue.
36 What you are talking about is whether to allow basements or not.

37
38 Commissioner Holman: I am not being quite that black and white but I think if we are talking
39 about the green aspects of what we are looking at here in terms of what we are going to consider,
40 I think we need to consider the zero waste impacts of basements and allowing them and what
41 happens with the refuse and concrete. From my study both as a part of the Zero Waste Task
42 Force and otherwise my study is that there is not very much opportunity for reuse of concrete
43 salvage or recycling. We can use it for roadbeds but there is only so much application for that.
44 So given the time I am just going to ask the one question and pass it on.

45
46 Acting Chair Tuma: Thank you. Commissioner Keller.

1
2 Commissioner Keller: Yes, thank you. I live in a floodplain and I notice that if I am not doing a
3 lot of watering of the ground with sprinkler system that my shed near my property goes up and
4 down with the seasons. It goes up when it rains and the ground fills with water and it goes down
5 when it doesn't rain and the ground dries up. It could make a difference of several inches. The
6 reason I know this is because there is a gate in it and the gate sometimes doesn't latch because of
7 the position. I am not sure the extent to which that affects this or not but that is relevant.

8
9 I notice that there was actually a pool around the corner from me that was built and may be part
10 of the floodplain or not and there was dewatering of that. For awhile it was dewatering onto the
11 curb and then later on it was dewatering into the sewer system. I am wondering does all the
12 dewatering from basement construction go into the storm drain or is some of it going into the
13 sewer system? Have we looked at if any of it goes into the sewer system and the implications of
14 sending more fluids that have to be processed in the sewer system?

15
16 Mr. Morris: Well with regards to the pool I am not sure. Was the water being lowered in the
17 pool? Was that where the water was coming from in the pool? That kind of water is supposed to
18 go to the sanitary sewer but any other type of dewatering for basement construction or in older
19 basements which we allowed perforated pipes behind the basement walls to collect rainwater that
20 seeps through the ground, that water is often times discharged out into the street gutter which
21 flows down into the storm drain system. The only water that should be going to the sanitary
22 sewer is pool water when you have to drain your pool to repair it for instance or if rain fills up
23 your pool and you need to take a few inches off that water is supposed to go into the sanitary
24 sewer because it has chemical in it.

25
26 Commissioner Keller: I am sorry if I was not clear. This is a new pool construction that was
27 going on around the corner from my house, down the street and a couple of blocks away. So
28 when they were constructing they were for quite a period of time dewatering around the pool.

29
30 Mr. Morris: Well assuming they had a dewatering permit from Public Works then that water
31 would go into the storm drain system. It is piped to the closest inlet typically.

32
33 Commissioner Keller: Yes, they were pumping into the sewer at one point. Is there any
34 discussion with respect to the quantity of water that is being dewatered for a typical basement
35 construction compared to, I know there were discussion when we were talking about emergency
36 water supplies and well water withdrawal, is there a way to sort of quantify? I remember we
37 were talking about limits on well water draws and how much they could draw for how many
38 days or how many gallons. I am trying to understand the nature of that kind of water drawing of
39 which we were talking about strict limits and the amount of water that is being drawn in this kind
40 of dewatering, particularly when we are talking about some three dozen or so basements being
41 constructed a year.

42
43 Mr. Morris: Well three dozen basements may be constructed a year but that doesn't mean they
44 are all being dewatered. This year we have only issued three dewatering permits and last year
45 we issued seven. So on average let's say five dewatering permits a year for 35 basements if that
46 is any kind of an average. Now how much water is being dewatered depends on a lot of different

1 factors but typically it is 30 to 50 gallons a minute for three to six months, which amounts to
2 anywhere between 6 and 12 million gallons of water. It is roughly 2.0 million gallons of water a
3 month. So if there is a project that has gone on for months and months it could very well get
4 above 10 million maybe even 20 million gallons of water that have been dewatered, more
5 typically it is usually in the three to four to five month timeframe and the gallonage might be 8 or
6 10 million gallons of water have been pumped out of the shallow aquifer and into the storm drain
7 system.

8
9 Now we have done a couple of things recently to reduce that. We have now lessened the
10 window for dewatering to the dry season. We don't want this water in our storm drain system
11 during the rainy season for obvious reasons. We don't want it competing with rainwater. So we
12 now limit dewatering operations from April to October so it is a seven-month window. Now
13 somebody could theoretically use that whole seven-month window but more likely they would
14 not.

15
16 As Curtis mentioned earlier what we could also consider is limiting either the length of
17 dewatering let's say to three or four months or the gallonage of water to be discharged from the
18 site. Every site discharges a different volume of water. Some the water table is high and they
19 have to dewater a lot and some it is lower and they don't need to dewater that much. Some
20 basements are built fast and some are built slow. The verosity of the ground has a factor as well.
21 So there are lots of different factors that play into how much water is being dewatered.

22
23 Commissioner Keller: One last quick question. Is there an expectation that the water table
24 might rise as sea level rises? Is there a correlation there?

25
26 Mr. Morris: Maybe near the bay but no, the water table rises and lowers with the wet or dry
27 season basically. There is fluctuation if you looked at the map from the Santa Clara Valley
28 Water District that map says the depth to the highest ground water. The water table fluctuates
29 during the year, it depends on the site but let's say two to four feet maybe on any one given site
30 as the rain fills up the ground water aquifers and then as the summer dries it out that fluctuation
31 occurs.

32
33 Commissioner Keller: Thank you.

34
35 Acting Chair Tuma: Commissioner Lippert and then this will be the last set of questions. Then
36 we will decide here in a minute what we are going to do because obviously we are not getting
37 finished.

38
39 Commissioner Lippert: Do we require geologist reports when people do basements?

40
41 Mr. Perlin: Yes we require not necessarily geologist reports we do require geotechnical
42 engineering reports. In some locations the geotechnical engineering has to be backed up by what
43 I refer to as engineering geology. So they are different but yes, all basements require a
44 heightened level of design parameters that are provided by a design professional.

45
46 Commissioner Lippert: Do we ever require in areas of high water hydrologist reports?

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Mr. Perlin: No.

Commissioner Lippert: Okay. Then when it comes to building basements it requires in some cases shoring especially when you come close to a property line. Is that ever inspected by Building Inspection?

Mr. Perlin: It is looked at but we don't permit the shoring the system. We do require a set of engineered shoring plans on sites that do need shoring. We will intake those plans, we attach them to the copy of the plans that we have in the office and we require a copy to be maintained onsite. The Building Inspectors will look at the shoring system but they are not really inspecting it. They are not signing off on anything they are just observing the shoring system. The shoring system is actually required to be inspected by the designer of the shoring system, which is what we require.

Commissioner Lippert: So in other words it is almost like a special inspection.

Mr. Perlin: Yes.

Commissioner Lippert: The engineer would have to sign off on that as well?

Mr. Perlin: Yes, we require some acknowledgement from the designer of the shoring system whether it is a geotechnical engineer or a structural engineer that they have looked at the installed shoring and that it is in accordance with their design.

Commissioner Lippert: We require that on commercial work. Do we also require that on residential work?

Mr. Perlin: Yes.

Commissioner Lippert: Is there a limit in terms of how close to the property line before they have to do that?

Mr. Perlin: It really is dependent on the designer of the project. The designer really has to take into account the conditions on the site, the depth of the basement, the depth of adjacent properties, and really what the designer has to determine is what is the prudent way to protect the excavation.

Commissioner Lippert: When you say designer you mean engineer?

Mr. Perlin: Engineer, yes, soil engineer, structural engineer. They have to really assess what is the appropriate way to protect the excavation both from a constructability standpoint as well as a liability standpoint both onsite and offsite. They have to ensure that the excavation will be safe for workers, and contractors, as well as inspectors to go down into the excavation as well as they should be taking into account the offsite concerns that would be adjacent property. They don't want to cause damage to adjacent property by a cave-in or a failure of a cut slope. There are no

1 Building Code requirements that dictate how sites need to be protected it is very site specific and
2 has to be determined by the soils engineer and the structural engineers.

3
4 Commissioner Lippert: Okay. Chair, I have some comments but I will make those if we
5 continue the item.

6
7 Acting Chair Tuma: Okay, so we are at seven o'clock so we need to start the next item and start
8 the Regular Meeting. I have some thoughts or perhaps even a proposal. We have not even
9 gotten through the questions. There are still Commissioners who have not asked questions and
10 we certainly have not gotten to comments and guidance. Based on some of the questions that I
11 have heard and most of my questions quite frankly are around data, which I don't think we have
12 in front of us. So I think it might be a little difficult to get to true recommendations tonight. So
13 my inclination is that we come back after item number two but limit ourselves to some period of
14 time tonight to ask additional questions knowing that we will be back again on this topic before
15 we get to recommendations on something to be brought back. Does that make sense to folks?
16 Okay. So let's shoot for let's say no more than one additional hour after the next item. If we can
17 get through the questions and requests for additional data before then that would be great, then
18 assuming that we will need to come back to review the additional data that is given to us.
19 Commissioner Holman.

20
21 Commissioner Holman: Since some Commissioners have not asked any questions I think the
22 one-hour is probably quite optimistic given the complexity of the issues. So are you proposing a
23 hard and fast one-hour?
24

25 Acting Chair Tuma: Not necessarily a hard and fast one-hour but the thinking is we will be back
26 on this item before we make a recommendation. I think if we focus on things that we don't
27 know the answers to yet that perhaps Staff also doesn't have the data for with some questions but
28 that they come back next time with the answers to those questions that are still open, and at that
29 point we get to recommendations. I think it is a bit hard to make recommendations now with
30 some of the data that is missing. So not hard and fast but certainly let's make a real effort to
31 stick to that if we can. Okay. Do we need a motion to put it over and come back? Okay.
32

33 **AT 7:00 PM**

34
35 Acting Chair Tuma: With that we will go to item number two, which is our regularly scheduled
36 meeting. So this will start the second half of our session tonight. Prior to actually going to item
37 number two first we will ask for Oral Communications, which is an opportunity for any member
38 of the public to speak to Commission on any matters that are not before us tonight.
39

40 *ORAL COMMUNICATIONS*. Members of the public may speak to any item not on the agenda
41 with a limitation of three (3) minutes per speaker. Those who desire to speak must complete a
42 speaker request card available from the secretary of the Commission. The Planning and
43 Transportation Commission reserves the right to limit the oral communications period to 15
44 minutes. I have one card from Brian Schmidt and this is not in regard to the second item? Okay.
45 Welcome.
46

1 Mr. Brian Schmidt, Committee for Green Foothills: Thank you. I just thought the Planning
2 Commission would be interested to know about the Santa Clara County Board of Supervisors'
3 action on Tuesday where they were providing direction for staff on a Green Building Ordinance
4 for county jurisdictional land. They looked extensively at Palo Alto as a model. So it was very
5 useful for the county to rely on Palo Alto's model.
6

7 They did make one change from what Palo Alto did with its Build It Green and the use of points
8 and an escalator. Palo Alto has a cap of 150 Build It Green points and then they don't require
9 further development. On the suggestion of Committee for Green Foothills the direction of the
10 County Supervisors was to not impose a cap but instead after a certain point, after 150 points, to
11 keep increasing the point requirements but a slower rate. So the felt that there were still some
12 reasons why you should up the amount of Build It Green requirements as homes get larger but
13 not at the same rate as before. I think this will provide more incentives against very large homes.
14

15 So it is something Palo Alto might want to look at in the future. As it stands, Palo Alto is
16 probably a little bit more stricter on the small to medium scale homes and the county wound up
17 being stricter on the larger homes. So eventually Palo Alto might want to take a look at that.
18 Thank you.
19

20 Acting Chair Tuma: Thank you. I have one more card for Oral Communications from Lynn
21 Chiapella.
22

23 Ms. Lynn Chiapella, Palo Alto: Sometimes you win a battle but you don't actually succeed
24 because the major point really hasn't been recognized. When I filed my appeal, which you
25 kindly listened to for quite a long time, my real point is that the DEEs are being used in such
26 number and such combination with CUPs, zone changes, Variances, Director's prerogative to
27 reduce a, b, c, or d, whatever it is that it becomes a land use issue which I think should be
28 coming to you at some point prior to going through such a lengthy ARB process where people
29 feel that they have invested a lot of money, a lot of time and energy. Sometimes by the time you
30 get it I think there is an investment made by the applicant where he sort of feels like there is a
31 pressure to be entitled to his project. The combination is what concerns me more than anything
32 else. It is not a single DEE for height or a single DEE for setback it is the combination of all
33 these things together that upsets me because it changes the actual condition or land use.
34

35 The latest one I did read was at an ARB meeting I think in August on Birch Street. What they
36 asked for was a DEE in an RM-40 residential zoned area. They asked for a PTOD or some
37 change but in addition they wanted a DEE to convert that to where 5,000 square feet of
38 commercial would be allowed they wanted 10,000 square feet of commercial with the use of a
39 DEE. Again, I think this is an inappropriate use of a DEE where only 5,000 would be allowed if
40 you got the zone change but now you want 10,000. In the process of course, as you know RM-
41 40 going to this sort of a use the zoning of 40 units per acre was then reduced to 27 units per
42 acre. This to me is land use problems that should not be handled at the ARB. I think these
43 things need to come and you need to see the kinds of projects that are coming in so that you have
44 a better picture of why I am down here complaining. Thank you.
45

1 Acting Chair Tuma: Thank you. Now I think we are ready to go to the second Study Session. I
2 will close Oral Communications for the evening. The second matter before us is a second Study
3 Session this time regarding the potential revisions to the Open Space District Zoning
4 Regulations. We will follow the same sequence, which is the Staff presentation followed by
5 comments from the public and then our discussion and comments and questions. Staff you have
6 a presentation to make.

7
8 *AGENDA CHANGES, ADDITIONS, AND DELETIONS*. The agenda may have additional items
9 added to it up until 72 hours prior to meeting time.

10
11 **Study Session:**

12
13 **2. Study Session Regarding Potential Revisions to Open Space (OS) District Zoning**
14 **Regulations.**

15
16 Mr. Williams: We will do this in combination with the Chair. First of all, the Commission
17 reviewed and commented on the Open Space Zoning District as part of the Zoning Ordinance
18 Update in June of 2007 and made some changes there and then the Council adopted that chapter
19 of the Zoning Ordinance Update in September. Part of the Commission's direction at that time
20 was there were a number of other issues that you wanted to have looked at but felt that those
21 were bigger issues that we should spend more time working with the community on and directed
22 us to assemble a working group to evaluate approaches to address house size, floor area ratio,
23 and what counts and doesn't count as impervious cover or percentage of impervious cover, etc.
24 So we have done that and invited the property owners/residents of the Open Space District to
25 meet with Staff and Commissioners Tuma and Garber, as well as Brian Schmidt of Committee
26 for Green Foothills met with us. We had extended an invitation to Acterra as well but they were
27 not able to participate. We met a handful of times and I think Chair Tuma would like to report
28 and sort of summarize the subcommittee's thoughts.

29
30 Acting Chair Tuma: Thank you. So the first couple of things are just to remind the public as
31 well as ourselves a little bit of the background. We gathered some information about the initial
32 purpose of the Open Space District from the 1978 revisions to the Zoning Ordinance Update.
33 Essentially what we were looking to do was to protect the Open Space, assure that certain uses
34 were allowed going forward, and also at the same time to prevent a reasonable amount of
35 development in that area. I think it is important to keep that in mind.

36
37 There are a number of Comprehensive Plan provisions that are relevant here like Policy L-1,
38 again just to give us a little bit of context, in terms of what the Comprehensive Plan says about
39 this zone in terms of limiting future urban development, retaining some undeveloped land west
40 of Foothill also noted on the other side in the Baylands but not necessarily relevant to tonight's
41 discussion. Then allowances made for very low intensity development consistent with the Open
42 Space, so again a balancing between preserving the Open Space and allowing some non-
43 intensive development.

44
45 Prior to the action that we took last year, just to remind folks, the impervious cover was limited
46 to three and one-half percent of the lot and the materials all were considered 100 percent

1 impervious. There was a 25 foot height limit, and also prior to that action the Comprehensive
2 Plan OS criteria were not in the zoning code and we put them in there.

3
4 Mr. Williams: Could I just make a correction? I think you said on that first one that the
5 impervious cover was always limited to 100 percent pervious and it was either one or the other
6 percent permeable if there was any permeability at all.

7
8 Acting Chair Tuma: Right. Okay. So what we recommended and Council followed up on in the
9 revisions were to make impervious cover to include all paved surfaces except for gravel,
10 incorporate the OS criteria into the zoning code, with respect to landscaping and trees we added
11 a requirement for an Arborist to review that after five years, and also that while it was a practice
12 of the City to require story poles it wasn't necessarily codified up until that point so we put that
13 requirement in as well. Then we deferred the discussion about floor area ration, house size, and
14 those such things for study and that is why the group got together to talk about these things.

15
16 The primary concerns expressed by the Planning Commission which I think were reflective of
17 the public at that time fell into two categories of impervious cover and how we were going to
18 calculate that and also floor area and house size. There are some more details in terms of what
19 the concerns were but at a high level those were the concerns.

20
21 When Staff met with the residents in the Open Space District they were concerned about those
22 two issues in the sense that what was Council and Planning Commission going to do about that
23 and they also took the opportunity to raise a series of additional issues related to their district, the
24 district that they live in. So those issues became the subject of some discussion and also some of
25 the proposed changes. So those were not necessarily on the table when we started but they
26 seemed appropriate to discuss and come up with some changes as a part of this process. So we
27 did expand slightly the initial task.

28
29 Before I turn it back over to Staff I want to make some general observations and these
30 observations I was asked to note for Commissioners as well as for the public that our normal
31 Chair Garber was not at all pleased to not be able to be here tonight. He has been very involved
32 and I will do my best to carry forward his thoughts and observations throughout the course of
33 this matter. One of the things that we both, and I think perhaps Staff as well, discovered that
34 often times in the other parts of town it is easier to come up with regulations that apply across a
35 large number of parcels. We tend to have slightly more uniform size and circumstance. That is
36 much, much less so in the Foothills. As you get up there you see there is a lot more variation.
37 So it was our observation that one size does not fit all, which makes zoning difficult.
38 Nonetheless we moved forward. The other thing we observed is contrary to maybe some popular
39 opinion or opinions expressed by some the folks that we interacted with and dealt with were a
40 diverse group of folks, not everybody is up there to build a big, huge mansion on a small, little
41 plot of land. In fact what we found were a bunch of people who had chosen to live up there for a
42 variety of reasons and not everybody has a big pot of money and not everybody intends to build
43 a big mansion. So I think it is important to dispel sort of some myths I think that have been
44 floating around the community on that front.

1 The other thing is that a lot of the concerns that they raised became now the subject of
2 recommendations. I think it is important to recognize that because it tells us that this process
3 was productive not only from the initial issues that we were after but that this is an engaged,
4 caring segment of the community. A lot of the issues that they raised you will see as we go
5 forward are issues that become part of the recommendation and perhaps eventually part of the
6 modification to the Zoning Ordinance.

7
8 I also want to thank on behalf of both myself and Chair Garber not only Staff who always does a
9 great job in pulling these things together but as I think we will see tonight the participation from
10 the residents in the district was constructive, productive, and lots of it. In our view and my view
11 in particular that is very welcome and I think we wind up with a better result at the end. So with
12 that I will turn it back over to Staff.

13
14 Mr. Williams: Thank you. So we did have five working group meetings with the residents and
15 Open Space representatives, two Commissioners, and Staff. The two Commissioners did go on a
16 tour with some of the residents of properties in the Open Space District as well. So those
17 meetings did as just mentioned provide an opportunity to share not only concerns about the
18 issues the Commission had put on the table but also a number of others that the residents were
19 concerned with.

20
21 I think you are generally familiar with the Open Space zoning. It is in several different pockets
22 and generally bounded in many cases by Foothills Park or Arastradero Preserve or other Open
23 Space lands.

24
25 I am going to walk through the main topics that were addressed and briefly summarize what at
26 this point is Staff's proposal to the Commission. We would take these after hearing your
27 comments tonight and go back and craft a draft ordinance and bring that ordinance back to you at
28 a future meeting, probably in November, to consider.

29
30 First of all, impervious coverage, the definition of impervious coverage and the calculation of
31 impervious coverage, these two bullets basically. The existing code requires a limit of three and
32 one-half percent of impervious coverage on the property and as amended by the Commission last
33 year would essentially count pretty much any kind of paving material as impervious with the
34 exception of gravel. We made that exception it has long been kind of a history of the City to
35 exempt that. The changes that we have suggested are that rather than counting everything either
36 as entirely impervious or as entirely permeable, which is the way it had been done up to 2007,
37 these materials – it is relatively easy these days to calculate the permeability of these different
38 materials so that we ought to be using the actual or close to the actual permeability. What we
39 suggested was any material that comes in was either zero to 25 percent, 50 percent, 75 percent,
40 or 100 percent permeable. We would require seeing specifications on how the material is
41 constructed and we would use our engineering staff, which is very well versed in those kind of
42 analyses to make that determination for us when it was not pretty clear from the materials we
43 have gleaned as far as what counts as impervious cover again basically all types of paving
44 materials.

1 Pools, which have not historically counted, and we are talking about the surface water area here
2 not the decking around the pool. The decking is impervious material and would count as the
3 percentage permeability but the water surface area would not count as impermeable. That was
4 partly because of the historical way it has been counted but it is also because there is some
5 benefit from a fire protection standpoint in having pools on these sites remote from urban
6 surfaces.

7
8 The other exception was gravel, which is still noted as being 100 percent permeable although it
9 is not. Staff feels that it in many, many cases acts as an impermeable material that is packed
10 down in a way that water does run off it relatively easily but because it does have a rural
11 appearance to it that is consistent with the Open Space area and because we would probably
12 encounter a great deal of difficulty in terms of nonconforming situations if we started counting
13 gravel as permeable we think it is reasonable to retain that approach to gravel.

14
15 The other aspect to impervious cover that we have addressed, and it was suggested initially by
16 the residents, was to develop a sliding scale of impervious coverage requirements. So that
17 instead of having a three and one-half percent impervious coverage requirement that that would
18 apply if you had a conforming size lot of ten acres or more but that as the lots got smaller that the
19 impermeability percentage would increase to a maximum of seven and one-half percent on sites
20 that were less than one acre in size. The basic reason for that is there were a few Variance
21 situations that were very obviously highly constrained these lots at three and one-half percent
22 and Variance were granted that were considerably more than seven and one-half percent. So our
23 hope would be that by using what we consider to be a reasonable number there that we would
24 avoid the need for Variances that even exceed that and it would still be a pretty minimal amount
25 when you got to these smaller lots. There are quite a few smaller constrained lots out there. So
26 that is impervious cover.

27
28 Floor area ratio does not exist right now in the Open Space area. This is, as I am sure you will
29 hear, an area that the residents have objected to having such limits but it is where we believe the
30 Commission provided direction for us to evaluate looking at some limitation on house size or
31 floor area ratio. We thought that floor area ratio was more reasonable than house size because of
32 the very wide range of lot sizes that we are dealing with in the Open Space. So we again created
33 in the table shown here and in your packets a sliding scale for floor area ratio that begins at three
34 and one-half percent and goes up to six percent. We also included a bonus to allow a little more
35 than that on lots if a very high percentage of the rest of the site is left in a natural state or is
36 restored to a state of native vegetation. So we felt it would provide some incentive for assuring
37 that we had more natural area preserved. Currently there is not any restriction and you may only
38 have three and one-half percent impervious cover but you could then have a lot of areas that are
39 disturbed by grading or planted with ornamentals and not really used for preserving the native
40 vegetation. So that is the suggested approach rather than having a maximum house size type of
41 requirement.

42
43 The review process itself as you all know all but pretty minor projects go through Site and
44 Design Review, which means ARB, Planning and Transportation Commission, well not usually
45 ARB on a home but once in awhile, but Planning and Transportation Commission and Council
46 full hearings, etc. We have suggested that there are a number of projects that have been highly

1 protected areas that are not real visible and minor projects that could go through a more
2 expeditious process with all the appropriate appeal procedures, etc. still left in tact.

3
4 So we have defined three different types of permits. One would be a minor permit, which is like
5 fences and some very small structures and such that we would have Staff level architectural
6 review on those. Those currently in many cases are done at a Staff level but they are considered
7 Minor Site and Design or something which is a more expensive and extensive process. We think
8 this just does the same thing in a more expeditious way.

9
10 The second class, we will call it Class A for lack of a better name is anything that is equal to or
11 under 2,000 square feet of floor area or impervious cover. So in those cases we would have Staff
12 review of those and then put them, as we do with other Staff review projects, on a Consent
13 Calendar at the Council. If there were objections or concerns then the Council could pull it and
14 set a hearing to consider those. Those are going to be for the most part either a second lesser
15 structure on there or an addition to an existing home. They are not likely to be a new home that
16 is under 2,000 square feet.

17
18 Then new homes or other major additions that are 2,000 square feet or more would come through
19 the Commission, the Commission would have the full public hearing and review, and
20 recommendation on the project. Then we would place that on a Council Consent Calendar as
21 well. So if the Council agreed with the Commission's decision then they would not have to pull
22 it and if there was some objection or concern about it then three Council Members could pull it
23 off and set it for a public hearing.

24
25 So we feel like these still preserve the opportunity to review and in many cases will allow for a
26 more expeditious review than we have currently. I forgot this development example. We did
27 provide some examples under those proposed impervious coverage and floor area restrictions of
28 what the difference would be between the current code and the proposed code for both
29 impervious cover and for floor area. So what you generally see is that the smaller lots have a
30 little bit more impervious cover and floor area that are likely under what is proposed particularly
31 if the bonus for natural area is used. As you get to the larger lots there it is somewhat more
32 restrictive under what is proposed than the current standards would allow. These are based on
33 some assumptions at the bottom of that page that are probably arguable but we think are
34 reasonable on an average case.

35
36 Some other topics, there was some language that the Commission had added last time regarding
37 an Arborist follow up report after five years or something like that that required documenting all
38 the condition of the vegetation and the natural area on the site that it was still in good condition,
39 etc., etc. It was kind of a monitoring and follow up analysis that was very broadly worded and
40 we have tried to focus that down a little bit so that it is just pertaining to either protected trees or
41 to landscape screening or other trees that have been specifically called out as part of the project
42 approval to be protected and reported on so it isn't so broad as how it was written originally.

43
44 Second dwelling units, we would recommend reducing the minimum size from the ten acres
45 currently to three acres and they would then be subject to the same development standards as the
46 RE District standards, which are 900 square feet and one story, etc., unless they are part of the

1 house itself. We believe that three acres is large enough to accommodate a second unit. It
2 comes out of the impervious coverage and floor area so it is part of that so if someone chose to
3 do that they would have less square footage to put into the house, and that it still is consistent
4 with the Open Space District at that size. There was some push to go smaller than that and we
5 don't feel that, we feel on any smaller lots it starts to become an RE property and not an OS
6 property any more.

7
8 Parking in the 200-foot special setback. We do have 200-foot special setbacks along Page Mill
9 Road and Skyline. So those are very extensive and helps move the houses back off the road but
10 there are many of those properties that are constrained in doing that. So particularly if they have
11 additional parking areas it is very difficult to locate all of that beyond that 200-foot line. So we
12 thought it was reasonable to allow anything beyond the required parking spaces to be located
13 within that area as long as it is at least 30 feet from the property line. I think the Attachment you
14 had said 100 feet and that is where we were at one point in time but I think we ended up at 30
15 feet as long as it is adequately screened and shielded from the road. So it is not like you are
16 looking at a parking area from the scenic road.

17
18 Trash enclosures. Residents made a point about garbage trucks not coming all the way down
19 their long roads to pick up their trash so they had to put it out at the curb and that was unsightly
20 and inconvenient. We could allow within the setback up near the street enclosures for trash and
21 we think that is reasonable as long as they are less than six feet high with self-closing gates, they
22 are screened, and we have design review over those.

23
24 Skylights, this is just a clarification of the language the Commission had adopted previously that
25 indicated no clear or white skylights were to be used. The residents pointed out that was very
26 restrictive and there are a lot of cases where you can use clear or white skylights and they are not
27 visible to anybody and do not create a lot of night light. So we have some more general
28 language about minimizing the light that is emitted through skylights.

29
30 Then the last item is the name of the district, the residents were concerned about the title being
31 just Open Space not recognizing the fact that there is a residential component to it. So we
32 suggested the term Open Space Residential for the zoning district, which I think they concur
33 with.

34
35 There are some other issues, which have not been entirely addressed here. I am sure you might
36 have others as well. One is basements. Right now this isn't an issue because we just have
37 impervious coverage limit but if we go to an FAR do we treat basements the same as we do in
38 say the R-1 zone that they don't count and you just had your basement study session so I am sure
39 you will consider this carefully. Our feeling is that we should treat basements similarly in these
40 different areas so if that is the way we treat them in the R-1 zone that we should treat them the
41 same way and exclude them from the floor area in the OS zone assuming that there is an FAR
42 limitation adopted.

43
44 Then the other is that there were some good points brought up about there are types of structures
45 like greenhouses, maybe barns, other things that are consistent and compatible with an Open
46 Space use for particularly agricultural purposes that may require increased coverage and/or FAR.

1 Most of those uses require a Conditional Use Permit by the code and so there could be ways that
2 we could allow for some flexibility to permit those in addition to residential use either by
3 establishing some specific limit on how much impervious coverage and floor area for those types
4 of uses or by requiring that their Conditional Use Permit comes specifically to the Commission
5 and the Commission evaluate whether that addition was appropriate or not for that particular
6 kind of use.

7
8 So again, what we anticipate at this point is that in the November-December time period coming
9 back to you with code revisions and then moving to Council early next year with your
10 recommendations. We would be glad to take questions.

11
12 Acting Chair Tuma: Okay, thanks very much for the presentation. At this point we will go to
13 the public for their comments. Right now I have six cards, three minutes apiece. If it is okay
14 with Commissioners we will push through the public and then take a break. Okay. The first
15 speaker is Sharon Luciw to be followed by Richard Geiger and again you will have three minutes
16 each.

17
18 Ms. Sharon Luciw, Palo Alto: Hi I live in the Open Space District of Palo Alto. I want to thank
19 the Staff for giving up so many of their evenings to meet with the property owners. I applaud the
20 idea to create fair and reasonable zone regulations for the Open Space. However, I don't see a
21 clear and fair outcome from the series of meetings of the last several months between the
22 property owners and the Staff. The changes proposed by the Staff appear to support the personal
23 objectives of certain members of the City and the Commission. In the second to last meeting the
24 Staff revealed the motive for changes and the direction the Staff were given. No mega homes.

25
26 Looking at the Variances approved by the City for mega homes in Palo Alto why should the
27 property owners of Open Space be punished for the actions of the City? Creating reasonable and
28 clear zoning regulations is the goal of the property owners. It is too bad the City does not share
29 this view. I am disappointed to think these meetings and the other changes in the Zoning
30 Ordinance were an attempt to distract the property owners from the ultimate goal of preventing
31 the development of mega homes. With a high degree of certainty the property values will
32 decline if the changes proposed by the Staff are approved.

33
34 Clearly the process that has taken place over the last several months has not produced a
35 satisfactory result for the property owners. In this litigious society these meetings appear to be
36 an attempt to show how the City acted in a fair and equitable manner. Please help me to
37 understand what steps can be taken to produce a positive outcome for both the City and the
38 property owners. Thank you.

39
40 Acting Chair Tuma: Thank you. Richard Geiger to be followed by Brian Schmidt.

41
42 Mr. Richard Geiger, Palo Alto: Good evening Commission members. I wrote an email which I
43 am sure you got last night or this morning that is two pages. It really covers my positions and a
44 lot of the reasons why I keep coming up with more ideas to talk about. I am going to tell a
45 personal story of how in 1957 I bought this piece of land, it is over ten acres on Page Mill Road,
46 and it was in the county and zoned one acre. I didn't live there or build a house at that time. My

1 neighbors did and I wasn't married and so I lived down in the city. I love Palo Alto and came
2 from Oregon and I like country living so I bought that land, thought it was great.

3
4 I went away to the military for a period of time. I went to work for Boeing in Seattle for a period
5 of time and I came back and worked at Lockheed Research for a period of time. In that time the
6 City annexed the area primarily because one of the large landowners I believe, Mr. Burns who is
7 an attorney owned most of the land up there, and John Dahl who has Dahl Plumbing owned a
8 large parcel also. He was a cowboy type and had cattle up there. I think the real thing that
9 happened is John Dural, I think that is the person who owned the *Palo Alto Times* at the time,
10 was against everything going on up there. He wrote articles in the paper, I don't recall the exact
11 timing. Mr. Burns and I am not sure who else proposed to the City to build thousands of houses
12 up there, one acre sites and a whole new shopping center up at the Montebello Road area.
13 Probably at that time Mr. Dural, I think that is his name, started writing articles in the paper
14 about it, and was very anti-development up there. I agreed that houses on one acre all over the
15 hilltops would be terrible and the Page Mill Road obviously would not support it. Anyway, so I
16 suspect people in Los Altos Hills and Green Foothills was formed to fight it, people in Portola
17 Valley, people adjacent to it more than people in Palo Alto objected and they created some
18 In the meantime, the City installed utilities for one-acre development and we were assessed for
19 it, we paid for it. There was enough outcry that the City down zoned this by a factor of ten. That
20 was pretty shocking. In the meantime I had gotten married and we had kids up there and built a
21 house in one corner of my property because I planned on splitting it up and this was close to the
22 road and didn't require a lot of excavating or anything. I planned on eventually

23
24 Acting Chair Tuma: Mr. Geiger, I am going to have to ask you to wrap it up if you could.

25
26 Mr. Geiger: I could go on for quite awhile but my main – I think considering the thousands of
27 acres of Open Space the minimum size after it was down zoned at bargain prices because at that
28 time houses were selling for like \$35,000, high priced houses were \$35,000, and people were not
29 going to buy ten acres and live out there. So the mid-peninsula open space district was formed, it
30 is a Los Altos Hills based organization I think.

31
32 Acting Chair Tuma: Sir, in fairness to the other speakers we allot a certain amount of time for
33 each person and we have a lot to go over.

34
35 Mr. Geiger: I am going to ask is it possible to have meetings with each of you to tell my story
36 and tell me my opinions on what is going on and why this came about. I think 90 percent of the
37 people in Palo Alto aren't even aware of the area up there. I talked to a lot of people in the last
38 few months and they had no idea what is up there, what is going on, and why this is happening.
39 Considering up there there are thousands of acres of Open Space and the idea of a few dozen
40 houses being built or a few parcels, well I wrote this in my email I think.

41
42 Acting Chair Tuma: Thank you, Mr. Geiger. We do acknowledge the receipt of your email. If
43 there are additional thoughts you are certainly welcome to send additional email to us and that
44 will be considered.

45
46 Mr. Geiger: Okay, thank you.

1
2 Acting Chair Tuma: Thank you. Mr. Schmidt to be followed by Leonard Lehmann.

3
4 Mr. Brian Schmidt, Palo Alto: Thank you, Brian Schmidt for Committee for Green Foothills. I
5 want to thank Staff for all their work it was very helpful and the landowners as well. I have dealt
6 with many landowners and this has been a very reasonable bunch. I didn't get screamed at once
7 the whole time, which is kind of unusual so I really appreciated that. It speaks well of them. Of
8 course there are a few disagreements.

9
10 Going through it quickly I wanted to go through some of the recommendations. Generally we
11 support the Staff position on what should be done. The floor area ratios I think are crucial that a
12 floor area ratio be in these changes that are under discussion. What we think is missing is not
13 having a house size limit on top of the floor area ratios. Failing to do that means you can have
14 this problem of monster mansions. It is a problem that needs to be addressed not including that
15 means it is a significant thing that is missing.

16
17 Going through some of the other recommendations, the follow up Arborist report that is also
18 very important. We found throughout the county many mitigations that are required of projects
19 are not actually done or they are done poorly. So it is really important that you have somebody
20 coming back later to look at it and having a follow up five years later is important for that.

21
22 Second dwelling units, Palo Alto has a significant problem with inadequate housing considering
23 its ratio of jobs to housing. However, putting it up in the Foothills is not the right place for that
24 to occur. Our preference would have been to keep it at the ten-acre minimum for the second
25 dwelling units. Staff suggested moving down to three acres and we don't really like that. I said I
26 would basically grudgingly go along with that but if it were up to us we would keep it at the ten-
27 acre level.

28
29 The impervious surface cover calculation, which generally seems to be good. If there are
30 exceptions which they note here on the discussion on page two that there could be certain
31 exceptions such as pools then for CEQA, California Environmental Quality Act, purposes those
32 exceptions should be taken out and considering the total impervious surface affects. There
33 probably should be some type of notation in that. I am not familiar with Palo Alto but most
34 cities have some type of CEQA handbook specialized to their city and it should note they should
35 not just take impervious surface calculations from the building permits and plug them into
36 CEQA. It won't work.

37
38 Finally, there was a suggestion by a landowner that something should be done about light
39 pollution from the other parts of Palo Alto. I think that was an excellent suggestion. Maybe it
40 should be put some type of work-study calendar for the future of reducing light pollution so
41 when residents up in the Foothills or anyone from anywhere else gets up in the Foothills at night
42 they have a chance to see a night sky, a better night sky. I would be happy to answer any
43 questions.

44
45 Acting Chair Tuma: Thank you. We do have one question.

1 Commissioner Holman: Yes, one of my questions for Staff was going to be that I noted in the
2 Staff Report there were comments by the neighborhood association and none by the other
3 participants. So I wanted to actually ask Mr. Schmidt if he had any other comments that you
4 wanted to make because you were not represented or your interest of the Open Space and the
5 environmental group was not represented in the Staff Report. Did you have anything else that
6 you wanted to mention?
7

8 Mr. Turner: I could go on a lot longer but I think I covered the most important points. Staff did
9 get our comments during the discussion. I can't remember if I ever submitted written comments.
10 I might have submitted a little bit but I am hearing that I did not.
11

12 I would note on page one it says, Open Space advocates, it should be Open Space advocate. It
13 was just me but I do appreciate that they invited others.
14

15 Commissioner Holman: Thank you.
16

17 Acting Chair Tuma: Thank you. Leonard Lehman to be followed by Cathy Cartnell.
18

19 Mr. Leonard Lehmann, Palo Alto: Thank you. I am a property owner in the Open Space District
20 and was also very thankful to have been invited to be a part of the process of the working group
21 these past five or so meetings and my thanks also go to Staff.
22

23 I and many of the property owners think that we can do better when it comes to the FAR ratios
24 and that this is deserving of further study. The reasons include that if the problem we are
25 addressing is large house sizes as the previous speaker mentioned it is still possible to build a
26 substantial house with these proposed changes, over 30,000 square feet on 20 acres.
27

28 Secondly, there are the unintended consequences of these changes that would further limit the
29 ability of the small parcels to develop a residence. For example, a one-acre parcel would
30 struggle to build a home of 2,700 square feet or so. These proposed changes arguably make it
31 even further restrictive to build a home on an acre.
32

33 I think the biggest concern that I have is other uses of property. This was mentioned as an item
34 by Commissioner Tuma as merits further study and I agree with that. An important element of
35 desirability in the Open Space is diversity of use to include agricultural, educational,
36 recreational, old age homes for example, lots of other uses under Conditional Use Permits.
37 Much of the language that we heard about in the presentation and the focus of our discussions in
38 the working group had to do with residences but we shouldn't forget that there are lots of uses in
39 the Open Space and we don't want to turn this into a monoculture of just large homes or home.
40 We want to make sure that the area remains potentially welcoming to wineries and to all these
41 other uses and so I would encourage the Planning Commission to consider that these other uses
42 be permitted under a Conditional Use Permit and that these FARs not apply blindly to all these
43 other uses. Thank you very much.
44

45 Acting Chair Tuma: Thanks. Cathy Cartmell to be followed by Daniel Dulitz.
46

1 Ms. Cathy Cartmell, Palo Alto: Good evening Commissioners. I too would like to thank
2 Commissioners Garber and Tuma and the Planning Staff for meeting with us on an ongoing
3 basis. At this time it is a little hard to comment because we don't know what you guys are going
4 to say. We have been talking about this for actually about a year now and you have been out of
5 the conversation. So we are wanting to know what your opinions are and what you have to say
6 about these issues so we can comment about what you have to say also.
7

8 My comments mostly are going to be general because of that but I am going to start off by
9 saying on page two of the Staff Report it says the general desire of PAPOS would be to have no
10 restrictions on the house size and supports a sliding scale approach to the impervious coverage
11 calculations. I would like to clarify that in that the general desire of PAPOS would be to have,
12 and this is the key word, no additional restrictions. That is because the Open Space District
13 already has the strictest zoning regulation by a long shot in the City of Palo Alto. We wonder
14 why the Planning Staff and the City think the Open Space zoning code is not restrictive enough.
15 The Open Space District is currently regulated with a three and one-half impervious coverage.
16 This not only controls impervious coverage but also already controls the house size.
17

18 This paper represents what three and one-half coverage is on this paper. You can see it is just a
19 little square. If you compare that with the R-1 zoning, this paper represents what the R-1 zoning
20 impervious coverage is and the darker area represents what the building coverage could be. So
21 you can see already that we are highly regulated and have very small sizes to work with. In
22 addition 28 percent of the parcels have a 200-foot setback imposed to contend with. I personally
23 would like to see this setback reduced.
24

25 I do want to remind you that these are residential properties so these homeowners are
26 shouldering unnecessarily enormous expense and huge time commitment to go through the
27 current approval process for just a house. I am for the Planning Commission and government in
28 general focusing on health, safety, and welfare issues, fewer, simpler regulations, and less
29 government. For instance you can see how the Arborist report has crept from just a report on
30 trees after five years to include significant landscaping after five years. To my experience that
31 will mean all landscaping will have to be confirmed by an arborist after five years.
32

33 We have basically four issues we would like you to be thinking about and that is the impervious
34 coverage, more leniency for ag buildings, an easier approval process, and second dwelling units
35 allowable on all parcels as only 11 parcels are prohibited under the three-acre rule. Thank you.
36

37 Acting Chair Tuma: Thank you. Daniel Dulitz to be followed by Mark Conroe.
38

39 Mr. Daniel Dulitz, Palo Alto: Thank you. Thanks to Staff and to all the participants in this
40 program. I was one of the members of the working group during this almost one-year process
41 that we have been through.
42

43 One initial observation, as Ms. Cartnell points out we have not heard what the full and complete
44 and true goals of the Commissioners are. Only recently did we come to understand that
45 controlling house size was a primary goal. I think that this lack of explicitness or clarity has

1 impeded our ability to come to a common ground that satisfies everyone's honest concerns. I
2 hope that there will be an opportunity in the remainder of this process for us to be more explicit.

3
4 I want to make one comment about the impervious coverage and floor area slide. There is a
5 missing case. There are five rows in that slide and there need to be six. If the second row is one
6 to three acres, and the third row is three to five acres, then there is no row for five to ten acres.
7 You can divide it up in any other way.

8
9 I have some other observations about the approval process overall. Firstly, I would point out that
10 Planning and Transportation Commission review plus Council consent essentially for all new
11 houses is an onerous requirement. It is less of a requirement than exists today but it is
12 nonetheless onerous. In current code this review is arguably justified because there are no FAR
13 rules. With stricter rules there is much less justification for Planning and Transportation
14 Commission review.

15
16 Secondly to the point of one size does not fit all, not only do large setbacks, well one example of
17 this is that large setbacks do not mesh with small lots. If you have a lot that is less than one acre
18 in size a 50 or much less 200-foot setback totally blows away a large part of the lot. I also want
19 to point out that they don't mesh with larger lots that drop off sharply. So I will point out also
20 that most large lots today are almost completely undeveloped. Only a small portion of them are
21 developed. Page Mill Road is built on a ridge with terrain falling off steeply on both sides.
22 Skyline is also with terrain falling off steeply on the Palo Alto side. Large setbacks push the
23 houses that exist today into what is now undeveloped land and off of flat areas onto very steep
24 terrain. While the motivation behind a setback is meritorious the actual practical effect of this on
25 many lots is pretty awful.

26
27 Finally in regard to the goals of the City, I personally agree that there are homes that are too
28 large in the Open Space District. I think not everyone does but that is my personal opinion.
29 Sadly they exist today because very large landowners persuaded the Council and the Planning
30 and Transportation Commission to approve them. The FAR as is proposed here is lower than it
31 needs to be in order to avoid the monster mansions that are actually causing I think a lot of the
32 concern here. So thank you for including me in this process and I look forward to moving onto
33 the next stage of developing the policy.

34
35 Acting Chair Tuma: Thank you. The last speaker I have on this item is Mark Conroe.

36
37 Mr. Mark Conroe, Palo Alto: Members of the Planning Commission, thank you for taking time
38 out this evening to hear us as we kind of conclude a one-year process, which I too have been
39 involved in. Our family has owned land for 15 or 20 years out in the Open Space District. I
40 would also like to thank Samir and his colleague who were courteous, professional, thoughtful in
41 their involvement and to the Staff, Curtis and Clare, who were open minded, truly caring and the
42 Open Space representative Mr. Schmidt who is fair minded and actually is a nice person while
43 still representing faithfully the advocacy issues for Open Space in Palo Alto.

44
45 I really have two points and both relate to the table on the first page of Attachment B. First of
46 all, and this has been touch on a bit, the calculations are misleading in two respects. First of all,

1 it assumes 100 percent of the FAR is dedicated to a home. As has been pointed out the Open
2 Space District has a long history of agricultural use. Our land for decades was used for growing
3 vegetables and other things. So I think under the proposed regulations you wouldn't be able to
4 build a 5,000 square foot one story house with a 1,000 square foot garage and a barn of 3,000
5 square feet. So here you are basically eliminating all nonresidential uses or severely restricting
6 the size of a house.

7
8 Also on the calculation again it appears to be insignificant but it assumes 80 percent of the
9 allowable square footage under the existing code goes towards a structure and 20 percent
10 towards site uses for impervious calculation. If you simply change this to 85 percent on a five
11 acre site you effectively have a 33 percent down zone. So there is a significant, you are going
12 from a six FAR under current code to a four percent FAR. So again the numbers are important
13 and there is significant reduction being asked for or being proposed.

14
15 The second point has to do with this bonus. Again, I think many of us support keeping the Open
16 Space in a native state but if we were going to have a bonus we should make it realistic and
17 achievable. Currently keeping 90 percent of a site undisturbed and allowing a bonus for that I
18 think is unrealistic. That would mean about 20,000 square feet on a five-acre site that over
19 200,000 square feet. So again I would encourage you to pick a standard that is achievable and
20 encourages people actually to leave their land in a native state. Simply planting fruit trees would
21 take up all your square footage and you would not be able to apply for a bonus and I don't think
22 that would be the intent or I hope that wouldn't be the intent given the agricultural use history for
23 the Open Space. Thank you for hearing our comments or my comments.

24
25 Acting Chair Tuma: Thank you. Commissioners, five-minute break since we went from item
26 one to item two and then we will come back. Before we do take that break I will close public
27 comment and we will be back in seven minutes. Thanks.

28
29 Let's get started again. Before we get into the discussion there are a couple of things that I
30 would like to do to help frame the discussion a bit. First is I was asked to reiterate the reason
31 that the Open Space District was put into place which was slide three in the presentation, the
32 1978 purpose statement. I will just read it into the record. Protect the Open Space land as a
33 limited and valuable resource. Permit reasonable use of Open Space while at the same time
34 preserving and protecting its inherent open space characteristics. Ensure availability for
35 agricultural, scenic, recreation, conservation, or natural resources. Containment of urban sprawl.
36 Retention in natural or near natural state. Protection from fire, flood, and seismic hazards. So
37 that is the backdrop against which we need to operate.

38
39 The other question or concern was what were the concerns that started this process and again I
40 will point to what I believe is the seventh slide dealing with impervious coverage and house size,
41 floor area ratio. This is my recollection, there were concerns in the community, at Council level,
42 and also at the Planning Commission level about the growth in house size, and also how
43 impervious coverage was impacting house size over time. I certainly would love to hear other
44 Commissioners' recollections as to why we got started with this but that certainly was my
45 recollection as well as Staffs'.

1 The other thing that I think would be helpful is there really are sort of in my mind two areas of
2 topics. There is a lot of ground to cover here and there are two areas of topics. One was the
3 things that initially started this process and those had to do with the issues that the Planning
4 Commission raised. The second was the additional items that had been raised by the residents.
5 Interestingly enough, I am going to go out on a bit of a limb here and say that a good number of
6 the issues raised by the members of the community were issues that were not terribly
7 controversial from Staff's perspective and were in some part agreed to. So the sense that Staff
8 had and that Commissioner Garber and I had was that by and large those items under the
9 additional issues raised were again by and large, not 100 percent, but by and large agreed to. So
10 I think in the interest of sort of framing our discussion what I would propose is that we – again,
11 tonight our charge is give Staff some input, guidance, and thought for them to come back at
12 another meeting to actually give us the ordinance. So what I would propose is that we focus the
13 first part of the discussion on the second set of items where we talk about those on an exception
14 basis in that if Commissioners have thoughts or disagreements or comments or suggestions about
15 Staff recommendation on those items we focus on that and not necessarily feel compelled to
16 comment on all of those items if we are in agreement with them. Then we come back and focus
17 on the broader and I think more difficult issues second. Commissioner Holman.

18
19 Commissioner Holman: We have not had questions yet.

20
21 Acting Chair Tuma: I understand that. I intended again but maybe I wasn't quite clear at the
22 beginning to do questions and comments at this point. So we do questions and comments now
23 because we are obviously not going to go back to the public.

24
25 Commissioner Holman: So you want combined questions and comments? You want us to do
26 questions and then come back with comments addressing these areas? I have clarifying
27 questions I need to have answered.

28
29 Acting Chair Tuma: Sure. Questions and comments combined but if we could let's focus on the
30 items under Additional Issues Raised first. Let's do questions and comments about those first
31 and then go to the other two items unless anyone has an objection to that.

32
33 Commissioner Fineberg: I may have a problem with that because some of the clarifying
34 questions I have about impervious coverage may lead me to have very different thoughts about
35 the specific items in the second part of that list.

36
37 Commissioner Holman: If I might, I have some broader questions to help understand some of
38 the information here before I can address those.

39
40 Acting Chair Tuma: Okay. Let's go down through questions first. If we could try to do broader
41 questions first and then we will see if we can try to bifurcate this thing because I think there are a
42 ton of issues here and again I just don't necessarily think we want to spend time going over
43 ground if there is not a lot of controversy about it. So with that said, Commissioner Lippert.

44

1 Commissioner Lippert: Unfortunately I wasn't present when the Commission had forwarded
2 their recommendation to Council. So in some ways even though I am familiar with these it is
3 almost as though I am reviewing this for the first time.

4
5 I have a question for Staff. During the last go around I had mentioned something about slope
6 density and that was summarily dismissed. What was the rationale or the basis upon which slope
7 density ratio was sort of dismissed or overlooked?

8
9 Mr. Williams: There was discussion about it. I think we discussed it at the Commission at that
10 time and then discussed it somewhat with the working group as well. There were a couple of
11 concerns. One was that it is a fairly complex idea to grasp in terms of coming up with formulas
12 and the right numbers and such. It is a totally new sort of concept for the City to start dealing
13 with. The flip side of that is that most properties out there are developed, some of them are
14 redeveloped, but most of them are developed at this point in time and we would be creating a lot
15 of nonconformity situation by trying to introduce these new standards at this juncture. If it were
16 an awful lot of open lots out there and it was very sparsely developed at this point that probably
17 would be entertained more seriously but with this stage of development I think we just felt it was
18 too problematic to try to introduce that concept to start applying to a limited number of
19 properties and create nonconformities that it would for many of the existing properties.

20
21 Commissioner Lippert: I have a follow up to that if you don't mind. With regard to your matrix
22 or chart in terms of the proposed FAR and the lot scale and then there was a bonus FAR. The
23 idea is to try to identify you can have so much FAR in the main house and then so much bonus
24 FAR in additional structures?

25
26 Mr. Williams: No, the intent wasn't that it had to be in an additional structure it could be part of
27 the house as well. In order to get that additional square footage you would have to commit to
28 preserving a very substantial portion of the site as native vegetation or restored if an area were
29 already disturbed.

30
31 Commissioner Lippert: I understand. If that were the case, just thinking of monster house size
32 and trying to reduce that and break it down wouldn't it make more sense to go to an 80/20 rule
33 where 80 percent of the FAR could be in the main structure and the rest of the 20 percent, and I
34 am just using that number because that is what a lot of communities like Los Altos Hills and
35 Portola Valley use. Create it so that you have to break it up into separate structures.

36
37 Mr. Williams: That would be fine. I think that is a policy determination. Eighty percent in this
38 case is still going to be a pretty large house probably but if the Commission would like to go
39 there that is one option. I would certainly suggest that not be the rule when you get under a
40 certain size property because then it really can be very restrictive at that point on a one acre lot
41 for instance where you only have 3,000 square feet to start with.

42
43 Commissioner Lippert: Okay, but on a larger lot it is appropriate.

44
45 Mr. Williams: It is not inappropriate. It is appropriate for you to discuss that and if you feel like
46 that is a good adequate cutoff that would be fine with us.

1
2 Commissioner Lippert: Thank you.

3
4 Acting Chair Tuma: Commissioner Keller.

5
6 Commissioner Keller: With respect to the fire protection zone, I think there is a zone around a
7 building in the Open Space where you are supposed to trim shrubbery and such. I am wondering
8 how that fits in with your idea of leaving the site undisturbed. So I am trying to understand the
9 interaction of those two calculations and the bonus FAR particularly on smaller sites.

10
11 Mr. Williams: I don't know if it is 30 feet or whatever the buffer is that it needs to be but that
12 can be with native vegetation. That many times is the most fire retardant vegetation as well. So
13 it could have that and be considered part of that natural area too or at least a good portion of it
14 could.

15
16 Commissioner Keller: Thank you. To follow up on Commissioner Lippert's question, if you
17 were to have slope density how would you interact that with setbacks? Would that calculation
18 become much more complicated when you have a 200-foot setback along scenic route?

19
20 Mr. Williams: Well, usually when a slope density calculation is done it gives you a number out
21 the other end of total amount of development you can do, which is what we have here as well it
22 is just a different formula for getting there. So then you have the setback and it really doesn't
23 matter if the formula of square footage allowance came from the slope density formula or from a
24 table like this. It has to be placed a certain way on a site. Now if you are looking at specifically
25 building on certain slopes then that gets into more of the issue of this with the setback and as one
26 of the speakers was saying you have certain areas where along these ridges, Skyline or whatever,
27 it drops off steeply and there may be severe restrictions then if you have a slope density formula
28 that really says you can't build more than such and such on slopes over 30 percent for instance or
29 something like that. You may either be forcing houses to sit right on top of a ridge, very visible,
30 or you are pushing them into that setback area and causing additional and that is another
31 component that complicates that whole slope formula.

32
33 Commissioner Keller: In term of Attachment E there are some very large parcels. Are those
34 Open Space parcels, the 314 acres, the 164 acres, and the 140 acres or are those privately owned?

35
36 Mr. Williams: We didn't have the breakdown.

37
38 Commissioner Keller: So it looks like these do not include Open Space parcels. These three
39 parcels are privately owned?

40
41 Ms. Clare Campbell, Planner: That is correct. On the very top of the chart it tells you that these
42 parcels in the table do not include City-owned parcels, the golf course, and the Mid-peninsula
43 lots.

44
45 Commissioner Keller: Okay. Do we know which of the list of the 79 parcels have actual houses
46 on them or are uninhabited?

1
2 Mr. Williams: We had done that not specific to these addresses but we had done assessment of
3 the total number of vacant lots versus developed lots. Clare is looking at that and maybe she can
4 find it and we can report that back to you in a few minutes.

5
6 Commissioner Keller: Great, thank you.

7
8 Acting Chair Tuma: Commissioner Holman.

9
10 Commissioner Holman: Attachment B, the second table on the page, a clarification please. It
11 says examples of current proposed allowable development assuming above revisions. One of the
12 reasons we were changing this is because in 2007 what Staff started counting as impervious and
13 permeable changed because of the development of other kinds of paving materials that were
14 more permeable. So is this literally what the current code calculations would be and is there any
15 comparison to what the pre-2007 calculations would be?
16

17 Mr. Williams: This is what the current code allows. So we are assuming that for the most part
18 that paved surfaces are impermeable. The pre-2007 you could essentially theoretically take the
19 allowed impervious – the pervious cover number itself is the same either way but how it
20 translates to floor area is what changes. So I think what you were seeing or concerned about
21 with the previous code was for instance the 1,525 square feet could become basically 3,000
22 square feet of floor area with a two story structure and nothing else counts as impervious because
23 they are using alternative materials. That was before. So now under this we are making some
24 assumptions here that of that impervious cover that 80 percent of that is used for the house
25 footprint and that the other 20 percent is for other impervious surfaces like patios, walkways,
26 parking, and those kinds of things. Then also that we have a house that has essentially a second
27 story that is 80 percent of the size of the first floor. So those were just two very basic
28 assumptions we made to get to that site floor area number but it is today's code not the pre-2007
29 code.
30

31 Commissioner Holman: The reason I bring it up is because even in the short time since 2006
32 let's say there was a change because of the development of more permeable paving materials.
33 So one of my frustrations in going through this the last time was that, and I could hear it in the
34 comments this evening too, is that people feel like something is being taken away when actually
35 things got much more liberal in 2007 without a change of code. So if we can just keep that in
36 perspective I think we will all get along better and understand better what the basis is of any kind
37 of change. So that is one question.
38

39 Mr. Williams: That change occurred over actually from 2002 until 2007 or whatever I think is
40 what you are talking about over time got more and more things counting as permeable.

41
42 Commissioner Holman: Yes, I thought I heard you say 2007 so sorry if I misunderstood that.
43 Without any change in code things got more lax and more development was allowed. So I think
44 we need to keep that in perspective as well.
45

1 Then I was interested in two things. One is the genesis of the incentives or the FAR bonus and
2 the other is on the smaller lots, especially the ones on Page Mill with the scenic setback on them,
3 why the impervious coverage got to be a greater percentage as opposed to addressing it through
4 the use of permeable materials and then exempting it and sticking with the three and one-half.

5
6 Mr. Williams: You quickly used up the impermeable – you ended up with a very, very
7 restrictive house size unless you could do 100 percent permeable everything for the patios and
8 decks and parking areas and such.

9
10 Commissioner Holman: I was looking for simplicity so I was wondering if you had looked at
11 that so that you didn't penalize someone with a smaller parcel and with a scenic setback that
12 required a longer driveway by utilizing as best as possible permeable materials and in areas
13 where they couldn't then just exempting that but sticking with the three and one-half percent.
14 That approach kind of seemed simpler to me and more straightforward and more in keeping with
15 the intention of the original code. So I was just wondering if that was considered or not
16 considered.

17
18 Mr. Williams: It was considered but the three and one-half percent was still very restrictive on
19 those small parcels. We did have some language and do have some language saying that the
20 portion of the primary driveway located within the scenic setback would not be counted as
21 impervious assuming that the house is located beyond the setback. So there is a provision to
22 exempt a lot of that. If you don't exempt that that uses up all your impervious coverage right
23 there but if you just take the three and one-half percent and start using it on other things right
24 around the house you are quickly down to next to nothing left for the house. So that just seemed
25 to be very restrictive to do that and leave it at three and one-half percent and the seven and one-
26 half that you see doesn't appear to us to result in especially large house.

27
28 Commissioner Holman: Not to beat a dead dog on that but you are also counting all the
29 coverages too. So I guess I would have been helped to see that kind of comparison.

30
31 Mr. Williams: Comparison between just leaving the three and one-half percent impervious but
32 having essentially everything else actually being permeable materials?

33
34 Commissioner Holman: Yes.

35
36 Mr. Williams: Well, I think generally that gets us back to the one acre impervious cover at three
37 and one-half percent is 1,525. So if you wanted to make that assumption then you would
38 probably be pushing a 3,000 square foot house at that if everything else could be permeable. I
39 just don't think that is probably realistic.

40
41 Acting Chair Tuma: Commissioner Fineberg.

42
43 Commissioner Fineberg: A question for Staff. Can you talk a little bit about what the intent of
44 measuring the impervious coverage was when the initial development criteria were established?
45 Was it simply meant to measure groundwater runoff or was it a stand-in some way to quantify
46 the impacts of other things like visual intrusions, traffic, and development, which might be

1 harder to measure with a hard variable? The reason I am asking that is if it was meant to be a
2 stand-in does the percentage of permeability matter or it really that you have developed the
3 property? So I would love to hear your comments.
4

5 Mr. Williams: I don't think we know everybody's thought process when it was originally
6 adopted. As much as we can glean I think it is a combination of all of those things. I think it is
7 clearly intended in that area to be partly to reduce runoff and provide for a more natural flow of
8 the drainage, the drainage patterns. I think it is partly to provide more a visual consistency with
9 an open space area to be able to minimize the amount of impervious surfaces and to encourage
10 things that are not so permeable. The fact that we exempted gravel for all that time that part is
11 probably largely because that is a rural appearing type of material. Then it also is sort of the
12 stand-in for intensity of development on the site. It is really the only thing that regulates out
13 there other than height, the combination of impervious surface and height are really what
14 regulate the intensity of the development on the site. We don't have any FAR or the house size
15 limitations. So I think it is probably all three of those wrapped together.
16

17 Commissioner Fineberg: Okay, so it works as a great measurement then of preserving the
18 natural flow of groundwater. The piece of it where the impervious coverage is meant to be a
19 stand-in for development intensity it doesn't matter then how pervious or impervious the surface
20 is. If you are using a 75 percent permeable paver and you have paved a huge area that is the
21 same visual intensity of development as if it was impervious concrete. So I think it might bear
22 some discussion as to whether or not a gradient of what the materials are matters when you are
23 looking at the goals of the Comprehensive Plan. So I would love to hear some conversation from
24 my colleagues about how increasing the development intensity is consistent with the original
25 goals in the Open Space. I think we kind of need to go back to some of the conceptual
26 foundations of what Open Space is there for. I don't have the answers but I know I am looking
27 for more answers on that.
28

29 Commissioner Lippert: With regard to your question there when it comes to roads counting
30 towards lot coverage in this area, an impermeable surface, and a thought also isn't just runoff but
31 it is also in the length of that road. If you have a particularly deep site and somebody were to
32 build a long road to say get to their house that house would be reduced in size because the road is
33 longer and it counts towards that permeable surface. If they went with something that allowed
34 for more water to penetrate through that surface they could build higher thereby they are creating
35 a more rural feel to that road, so that is kind of where that would come into play.
36

37 Acting Chair Tuma: Okay. Commissioner Sandas.
38

39 Commissioner Fineberg: One more question, please. What would happen or what would the
40 impact be if we were not to revise these criteria? What would the negative impacts be and then
41 on the flip side how much additional development do you think we might see if we were to
42 recommend the proposed Staff recommendations?
43

44 Mr. Williams: I think the impact is number one, in terms of actual permeability of sites a more
45 realistic assessment of that then when we had everything was 100 percent or zero. I think the
46 visual component, the impact potentially of that is nothing probably because every project is

1 reviewed for that and there are Open Space criteria that Staff and the Commission use to assess
2 those types of visual impacts. The intensity impact my guess is probably a draw in that it is
3 somewhat more intense on smaller lots and somewhat less intense on larger lots in terms of sizes
4 of buildings and such. That is where I think it is headed.

5
6 Acting Chair Tuma: Okay. Commissioner Sandas.

7
8 Acting Vice-Chair Sandas: This is just something that has been bothering me since I read the
9 Staff Report and the Attachments so I thought I would ask about it. On Attachment C, the
10 PAPOS Position Paper on Open Space Zoning Regulations with Staff Responses and PAPOS
11 Responses on the first page under Lot Sizes the rules don't match actual property sizes. If you
12 go about halfway down there is a sentence that reads, Of the 80 lots, only six are larger than 20
13 acres, only 22, which is 27.5 percent meet the ten-acre requirement, and the majority, 58, of the
14 lots are less than ten acres. Of these 58 approximately nine have a development deal with the
15 City, which gives them the development rights of ten acres. This is something that is bothering
16 me. What is a development deal and who makes a deal and what are we talking about? It is here
17 in writing and it is part of the public record and I just want to know.

18
19 Mr. Williams: That is a subdivision that was approved by the City Council with a Development
20 Agreement associated with it that specifically allowed for lots that are smaller than ten acres,
21 they are only a few acres like three or four acres, but set aside one large common area of natural
22 area that was much larger. It was sort of the exchange of setting aside that open space, allowing
23 them then on those smaller lots, it may be three acres, but they could essentially develop it with
24 the same criteria as a ten-acre lot. They could assume that they have ten acres when they
25 calculate their impervious coverage and such. They use it just like it is a ten-acre lot. It was that
26 one unique situation with one subdivision that occurred.

27
28 Acting Chair Tuma: Excuse me, public comment is closed. Commissioner Holman.

29
30 Commissioner Holman: I had asked two questions previously and I realize we only answered
31 one of them. What was the genesis of the FAR bonus and the quantification of it?

32
33 Mr. Williams: It was generally from what I think we have consistently heard a theme when we
34 discuss Open Space properties from the Commission and to some extent from the Council but
35 primarily from the Commission about one of the real intents of the Open Space District is
36 preserve native vegetation and the realization that just by limiting impervious surface doesn't
37 necessarily do that. There are a lot of uses somebody can do on their property that doesn't have
38 anything to do with creating impervious surfaces or buildings but can strip vegetation away from
39 there. So it was in order to achieve some of these FARs that would get someone back pretty
40 close to where they might be today that there should be some compensation there in terms of
41 going above and beyond in terms of protecting native vegetation or if the site is already disturbed
42 to a large extent an opportunity to for the applicant to agree to restore it in exchange for some
43 bonus. The way those numbers were derived was primarily from working backwards from some
44 of the impervious coverage assumptions plus assuming that some area around a house is going to
45 be landscaped within proximity to that house. Then taking what is leftover as being what we
46 thought, we heard some objection before, but what we thought was a reasonable percentage of

1 natural area to be retained or restored. So that is kind of where it came from and how we got
2 there.

3
4 Commissioner Holman: So how would you relate that to our normal Site and Design Review?
5 To use an egregious example, if an owner came through and wanted to propose X house and
6 three acres of lawn we would never, every approve that in Site and Design. So put those in
7 context if you would for me, please.

8
9 Mr. Williams: We tried to create numbers that we thought were above what would likely be
10 approved. There is some lawn area that you would allow, there are some other uses that might
11 occur, and so we did look at it from the standpoint of not that somebody would necessarily do
12 that but that what was sort of reasonable to think someone could get approved, which would be
13 less than ten percent, it might be 15 or 20 percent, and we are saying come up to 90 percent
14 natural instead of 80 or 85, which might have seemed like it was a reasonable amount that the
15 Commission had approved on other projects. It is certainly not perfect or precise in that respect
16 and we would entertain any better ways to sort of look at it. I think what was important was
17 getting the concept out there of trying to provide that there might be an opportunity to allow
18 some more development particularly if it were not done in a sensitive way and if these goals of
19 native vegetation protection and particularly on sites where maybe it had already been damaged
20 in some way over time or it was just not in a particularly natural state it would be an opportunity
21 to request restoration. The Commission has done that on a fairly small scale before but I think
22 this might allow for more opportunities for that than you currently have.

23
24 Commissioner Holman: Thank you, Curtis.

25
26 Acting Chair Tuma: Commissioner Sandas.

27
28 Acting Vice-Chair Sandas: My needle is stuck a little bit with the native vegetation versus
29 somebody planting an orchard or a vegetable garden. How again is it that we account for a
30 garden? Does a resident have to have a CUP to put in an apple orchard that reduces the amount
31 of native vegetation?

32
33 Mr. Williams: No they would need a CUP if the property was going to be an apple farm or
34 something like that but no they don't need that. So the choices here the way it is laid out and
35 certainly subject to change but the way it is laid out you can do that and you get the base amount
36 of FAR and impervious cover. If you want more than that that is when that percentage kicks in,
37 if you don't then that's not there and you have the Site and Design Review process to look at sort
38 of what is appropriate on that site but you don't have to kind of go above and beyond on the
39 native vegetation part. That is at the option of the property owner to do that. Now, that said,
40 there may be good reasons also why you would expand this to be more than just native
41 vegetation too. If you feel like orchards or other particular things like gardens and such are
42 appropriate and desirable in this district then maybe you lump those into that 85 percent or 90
43 percent and count as part of that. So we are certainly amenable to discussing that. We would
44 like to hear if you believe that that should be part of that calculation and help encourage those
45 kinds of uses.

1 Acting Vice-Chair Sandas: Good. Thanks.

2
3 Acting Chair Tuma: Commissioner Keller.

4
5 Commissioner Keller: I am wondering if part of the reason for encouraging native vegetation is
6 in order to promote habitat for native wildlife and things like that.

7
8 Mr. Williams: Absolutely.

9
10 Commissioner Keller: So then maybe perhaps an orchard or whatever might not necessarily fit
11 such a criteria.

12
13 I am wondering with respect to the notion of leaving the site undisturbed if the site is naturally,
14 whatever naturally means in this case, has some invasive species like scotch broom and whatever
15 would you require that that invasive species be removed prior to it qualifying under this bonus?

16
17 Mr. Williams: I think we would certainly look towards something like that possibly. I think
18 there are obviously as you are discussing this a number of details to be sifted through if we go
19 this way and we would like to have an opportunity to look at those kinds of details. What we are
20 here for tonight is to kind of get some feedback as to whether that is an approach you want us to
21 delve into more deeply in which case we certainly can put together then a detailed proposal as
22 part of the ordinance.

23
24 Commissioner Keller: If we go this way am I correct in assuming that if the property were say
25 three acres that they would have to meet the 85 percent of the three acres in order to get any of
26 the density bonus that they wouldn't get the first acres worth of density bonus by meeting the 80
27 percent requirement, is that correct?

28
29 Mr. Williams: If it is three acres they wouldn't get any bonus unless at least 85 percent of the
30 site.

31
32 Commissioner Keller: You are going to have to word that very carefully to make sure that that
33 portion is not also considered incrementally.

34
35 What happens if somebody qualifies under the density bonus, the FAR bonus, for having the
36 native vegetation and the next owner comes along and decides they want to put in an orchard, do
37 we require them to take out a piece of the house or what do we do?

38
39 Mr. Williams: I think we would have to discuss that. There could be options of maybe they
40 reduce impervious surface to compensate for that or some other mechanism. They would have to
41 justify how and why they would be doing that. Obviously I don't think we would change the
42 house per se but there may be outbuildings on the site and they trade that off for the orchard. So
43 I think there are a lot of these sorts of definitions and obviously enforcement issues that we
44 would have to address.

45

1 Commissioner Keller: Would it make sense if we gave an FAR bonus to put a covenant on the
2 property requiring that the vegetation remain native otherwise they would have to apply for a
3 change in the covenant appropriately?
4

5 Mr. Williams: I think it absolutely would make sense to do something like that.
6

7 Commissioner Keller: Thank you.
8

9 Acting Chair Tuma: Commissioner Lippert.
10

11 Commissioner Lippert: Just following up on Commissioner Keller's question. What about
12 annexation of the land? In other words, if we gave a density bonus and it was put in place in
13 return for that that remainder portion would maybe go to the Open Space is that a possibility
14 where it would be maintained by the Open Space District?
15

16 Mr. Williams: There may be cases where that is a possibility. I don't think in many cases but I
17 don't as a regular rule I wouldn't see that happening but maybe.
18

19 Commissioner Lippert: On larger parcels?
20

21 Mr. Williams: I would say if it is a larger parcel and it is immediately adjacent to Open Space
22 where it creates to contiguity maybe that is a possibility but I don't think the Park's people or the
23 PAN is interested in little spots of open space on individual parcels. That is not the kind of
24 thing...
25

26 Commissioner Lippert: But it could be done on a contiguous basis and as that jigsaw puzzle fills
27 in it might even become more contiguous.
28

29 Mr. Williams: Possibly, yes.
30

31 Commissioner Lippert: Okay. Then one other question. How many Open Space development
32 applications do we get a year? I can only remember maybe three that we saw this year.
33

34 Mr. Williams: Yes, very few. We probably get two a year is my guess and those are not
35 necessarily new homes. I think you have seen one that was a second unit or guesthouse or
36 something like that.
37

38 Commissioner Lippert: The accessory building.
39

40 Mr. Williams: Yes, the accessory building.
41

42 Commissioner Lippert: John Chambers' project.
43

44 Mr. Williams: Right, which was essentially a substantial remodel of an existing house.
45

46 Commissioner Lippert: Okay, thank you.

1
2 Ms. Campbell: If I could just interrupt really quickly to give you that number you were looking
3 for. Out of the number of lots that we have that are developable I identified approximately 32 of
4 those lots as being undeveloped. I just pulled that from our GIS data and lots that didn't show
5 any county square footage as having buildings. That is how I got to this number so it is not 100
6 percent accurate by any means.

7
8 Acting Chair Tuma: Sure.

9
10 Commissioner Keller: What would be interesting to know – that is actually very interesting data
11 so basically since you said there were 79 developable parcels and 32 are undeveloped now that is
12 interesting because that is about 40 percent I would guess. So what is interesting is how many of
13 those currently undeveloped parcels might be developable under these regulations. I think that
14 would be a very interesting question to know.

15
16 Mr. Williams: Very hard to tell that without going on every lot and determining how
17 developable they were. Some of them may be under common ownerships that they would be
18 developed as one parcel.

19
20 Commissioner Keller: Right.

21
22 Mr. Williams: So there are a lot of variations there.

23
24 Commissioner Keller: For example if the undeveloped parcels tended to be smaller ones then
25 these regulations would have more impact than if it were the larger ones.

26
27 Acting Chair Tuma: Commissioner Sandas.

28
29 Acting Vice-Chair Sandas: One of the comments that have been made in several places is that
30 nearly all of the properties in the Open Space are in rugged terrain. So when you put your chart
31 together, that one and the other chart, for development and FAR and so forth on I am assuming
32 that you took into account the amount of the property that is actually developable.

33
34 Mr. Williams: No we didn't. We don't have – this is not a site-by-site analysis you have to look
35 at each site. So this is just assuming the size. So yes, they may be constrained. It just probably
36 depends more on where on the site that development goes that the site is going to constrain it to
37 numbers less than what is shown there.

38
39 Acting Vice-Chair Sandas: Right. Okay, thanks.

40
41 Acting Chair Tuma: Commissioner Fineberg.

42
43 Commissioner Fineberg: I have some questions on Attachment E. If I understand it properly it
44 says that there are 114 parcels in the Open Space and then there are 79 of them that are
45 developable. Is the list that is below the chart the list of those 79 parcels?
46

1 Ms. Campbell: Yes it is.

2

3 Commissioner Fineberg: Okay. So tell me if I misstate anything if I am not reading this
4 correctly. There are three parcels under one acre so any regulations that we might recommend to
5 Council would be very important to those three landowners but would affect three properties,
6 correct?

7

8 Mr. Williams: Yes, that any regulations under one acre would affect specifically those
9 properties.

10

11 Commissioner Fineberg: So in terms of consistency with Comprehensive Plan unless there was
12 something egregious on those three parcels we would not be promulgating something that would
13 cause noticeable numbers of less than one-acre lots. There just are not the numbers there. We
14 are not going to have farms of houses.

15

16 Mr. Williams: That is right.

17

18 Commissioner Fineberg: Okay. Then order of magnitude in that one to five acre is maybe ten or
19 15 so again not a huge order of magnitude and then slightly more than that in that five to ten
20 maybe 20 or 25 and then ten in that above ten. So one of the ways I am thinking about this is
21 what would the impact be of the tiered development criteria? So if the City zoned more
22 generous development rights for those few smaller it would have more impacts on a small
23 number of lots and conversely on those over ten acre lots if there was a more rigorous FAR limit
24 compared to acreage it is happening only on a few large lots not many of the medium lots.

25

26 Mr. Williams: Right.

27

28 Commissioner Fineberg: Okay.

29

30 Mr. Williams: It is a few on either end kind of.

31

32 Acting Chair Tuma: Okay. So maybe not surprising I don't have a lot of questions myself. I
33 have been a part of this process. I will have comments when we get there. It seems like we are
34 ready to go to comments from Commissioners. So I will explore the idea that I set out before
35 especially based on what I have heard so far in terms of what the questions are. Does it make
36 sense to first try to address the second set of issues up there? Actually I have three to add
37 because they are on other slides. But does it make sense to try to by exception, in other words if
38 you have issue with the recommendation maybe or if you are particularly supportive I suppose of
39 those issues but not necessarily compelled to comment on each one. Does that make sense,
40 Commissioners?

41

42 There are three issues that I think would be potentially helpful to Staff that are not listed there
43 but are listed in other parts of the presentation. Those are number one, whether pools should
44 count as impervious coverage. The Staff recommendation is that they not count the surface area.
45 The second one is should we treat the floor area of the basement any differently in the Open
46 Space than we do in the other parts of the city? Staff recommendation is that we treat them the

1 same. The third area is one that was of special concern to one of our speakers, which is for
2 nonresidential commercial do we simply require a CUP that gives us the opportunity to review or
3 should there be some other control on nonresidential commercial property up there. As we know
4 this is not all necessarily residential. So who wants to go first? Commissioner Holman.

5
6 Commissioner Holman: So we are undertaking review process first, correct? Below the line.

7
8 Acting Chair Tuma: What I would say is as we go down the path if you want to undertake all of
9 the items below and any comments that you have regarding any of those items, not necessarily
10 just the review process but any of those.

11
12 Commissioner Holman: I think my brain would only work through at a time this evening.
13 Actually my comments about the review process I will just throw them out there. I appreciate
14 some of the aspects of this and I agree with some of it and some of it I disagree with. I will give
15 you reasons why I agree with the parts that I think are easily recommendable.

16
17 Accessory structures that are 200 square feet or less certainly Staff level. One clarification
18 however is minor architectural review Staff level and I should have looked this up and didn't.
19 Section 18.77.070 I am not exactly sure what the review process says and how it relates to Site
20 and Design Review which is of course a bit different than architectural review. So that would be
21 a clarification I would like to see when it comes back.

22
23 Major Site and Design, Class A, I have difficulty with the 2,000 square foot area and I can
24 hopefully clearly state why. Two thousand square feet is a house. If you look at the chart, which
25 is Attachment B, on the smaller parcels, the one-acre parcels, the floor area that is allowed
26 currently is 2,196. If you look at the other chart most of those smaller parcels are in the scenic
27 route that being Page Mill Road with the 200 foot scenic setback. So to me those are very, very
28 important and critical projects to get reviewed at the Planning Commission level. So I would be
29 amenable to a 1,000 square foot floor area as a Class A but not the 2,000 for reasons stated. I
30 will stop there.

31
32 Acting Chair Tuma: Commissioner Fineberg.

33
34 Commissioner Fineberg: Comment a little bit about the Arborist follow up report. I am
35 wondering whether the concept of follow up report should be broadened to not just be an
36 Arborist. For instance if when the property is developed and the home is built there might be a
37 gravel road, what happens if two years later the gravel road is paved? That is not something
38 necessarily within the purview of the Arborist. Or let's say there are an excessive number of
39 small out structures. I wouldn't go so far as to recommend an undue burden of enforcement but
40 especially if we are giving bonuses should there be a broader review of compliance with the said
41 development criteria? I am not sure what would be appropriate but that is one thought.

42
43 I would absolutely concur with Commissioner Holman that I am concerned about a 2,000 square
44 foot structure being built without Commission review. That is not an immaterial size for a home.
45 It can be a comfortable home if designed well.

1 I think that a number of the other items on there are good, having the trash enclosures with Staff
2 review I think certainly is something that would work well. I have concerns about the second
3 dwelling units. If the goal of the Comprehensive Plan is to keep it in its natural character, keep it
4 from increasing urban sprawl I think second dwelling units are inconsistent with that though
5 allowing basements to be the second units or allowing second units I think raise serious issues
6 for me.

7
8 Acting Chair Tuma: Commissioner Lippert.

9
10 Commissioner Lippert: I think the whole thing boils down to really a quality and compatibility
11 issue here. We really value and prize the Open Space but I think as has been clearly represented
12 these are private lots that we are talking about. These are individual lots that were setup for
13 development initially. There really aren't an awful lot of these projects that come through on an
14 annual basis and I don't think that it really clogs the docket here very much. We are actually
15 able to dispatch fairly quickly in an efficient manner the number of projects here. So I don't see
16 any necessity or need to begin to monkey around with the rules we have here. That what we
17 have in place in terms of Site and Design Review has worked very well over the years and with a
18 little bit of tweaking I think it will serve us well for the next ten years. It is just not a big enough
19 issue for me to want to start playing around with it. As the complexion of the Board changes it
20 may become even more restrictive in terms of what is done out there.

21
22 We do have the Sustainability Guidelines and the Green Building Code, which is now in effect
23 that are going to begin to make changes as to how people look at architecture, and how it fits in
24 with nature, and reducing the carbon footprint of these projects. So when it comes to
25 streamlining I think the process that we have right now works particularly well. I do however
26 agree with my colleagues, Commissioners Holman and Fineberg, that for some small projects
27 yes, maybe it can be handled at the Staff level and it isn't a necessity for the Board to put its
28 fingers on it.

29
30 With regard to the next item, the Arborist follow up report, I think on some projects it is
31 important that there is Arborist follow up. Specifically if you look at the Chambers' project
32 where we are putting in some new trees and we want it to blend in with the natural vegetation
33 there. It is very important that that be maintained and that we note whether in fact it is keeping
34 up and being maintained and maturing.

35
36 With regard to second dwelling units I am really torn on this one. Part of it is this, these estates
37 or pieces of property are big enough to actually warrant having people living out there and
38 working on those properties. So I don't like the idea of having help having to commute all the
39 way out there every day thereby increasing the carbon footprint so to speak with a motor vehicle.
40 On the other hand I don't want more people living in the Foothills and having to commute into
41 the city. So what I am looking for is a happy medium there. If there was some way that we can
42 get that to work by maybe limiting maybe the size of the dwelling unit, kitchens in there, I think
43 it is really going to help a lot to break these up into separate structures so that you don't have all
44 of the massing say in the main house. So I think it is going to be helpful – my gut reaction is to
45 say let's allow for some smaller second dwelling units for people that live and work out in that
46 area.

1
2 Parking setback I don't have a problem with. Trash enclosure, I think they are a necessity. We
3 don't want garbage trucks driving up long driveways to pickup refuse. If there is some way to
4 create unified trash enclosures that are by the street and make it easy for PASCO and waste
5 collection to pick up those that would be great. Skylights, I am still pretty much a proponent of
6 banning white skylights. Clear ones I don't think create the light pollution. The bronze ones
7 definitely don't. A lot of other communities have bans on white skylights in place. Those are by
8 far the most light polluting you can get. Lastly, the district name, yes let's have a district name.
9 I am tired of calling it Open Space. It is really Open Space with housing.

10
11 Acting Chair Tuma: Okay. Commissioner Holman.

12
13 Commissioner Holman: One thing before I forget, there was one thing I meant to mention as
14 part of the Class A Major Site and Design Review. I thought it would be helpful if that does go
15 through with hopefully no more than 1,000 square feet. It might be helpful to have a
16 subcommittee of the PTC or a liaison from the PTC such as what the ARB does. The reason for
17 that is so that at least some part of the Planning Commission can keep their finger on the pulse of
18 what the trends are and what kinds of applications are coming through. Otherwise I think we can
19 lose touch with what is going on. I don't think we can rely on Staff to remember and prod them
20 and burden them with having to report to us all the time on that.

21
22 Arborist report, I absolutely agree with that. Second dwelling units, I like Commissioner
23 Lippert, am a bit torn on this. I think the size of them should be limited. I don't recall what the
24 maximum size is in the RE District.

25
26 Mr. Williams: It is 900 square feet.

27
28 Commissioner Holman: Okay. And we might want to look at also some proximity to the main
29 house so we aren't creating a whole lot more roadways. I would rather see it applied to a
30 minimum of five-acre lots as opposed to three. Parking in the 200-foot special setback I guess
31 what we have in the Staff Report is different than what was put up on the screen. This says may
32 be allowed in the 30-foot special setback if located at least 100 feet from the affected property
33 line. Could Curtis clarify that?

34
35 Mr. Williams: I had mentioned that those discrepancies were in there and it is 30 feet is what is
36 intended that is what we discussed with them and it didn't find its way into the revision of the
37 other document.

38
39 Commissioner Holman: I have to say I am really opposed to that. I am terribly opposed to that
40 again because these special setbacks are on the scenic route of Page Mill Road. Thirty feet is a
41 little more than half of the majority of the standard parcels in Palo Alto. That is really close to
42 the road, really close. So if parking is allowed there and I see no limitation on the number of
43 cars or the length of time they can be there. I can see those areas becoming parking lots and that
44 is absolutely counter to the Comprehensive Plan policies ascribed to the Open Space District. So
45 I am absolutely opposed to parking in that special setback. Trash enclosures, I would rather see
46 them referred to as they are secondarily here as trash and recycling enclosures. A maximum six

1 feet tall, covered, fitted with self-closing gates, and screened. I am fine with that. I think there
2 ought to be a maximum footprint because how much size do you really need for those kinds of
3 functions. You could see where that could go if we don't put a maximum on that. I agree with
4 Commissioner Lippert on the white glass creating the most problem but also we just can't rely on
5 shading systems and interior light placement. We have no control over that. So I am not in
6 favor of that. District name, if you look at the purpose of the Open Space District the purpose is
7 not to provide residential use. So I am actually rather favoring the current Open Space District
8 not Open Space Residential. I think that is inconsistent with the purpose of the district and the
9 land out there. We will come back and address your other three I guess, Commissioner Tuma?

10
11 Acting Chair Tuma: Yes. Just for clarification. Curtis, the proposal on parking in the special
12 setback 30 feet from the property line was that 30 feet from the road or 30 feet from the
13 adjoining parcel?

14
15 Mr. Williams: It is supposed to be from the road where the property line is along the road. So
16 that may or may not be the road actually it just depends on where the right-of-way is and the
17 property line.

18
19 Acting Chair Tuma: Okay. Commissioner Sandas.

20
21 Acting Vice-Chair Sandas: I will pass. I tend to agree with most of the things that my fellow
22 Commissioners have said in terms of bringing this back for a follow up. So that is it. Personally,
23 I don't have an opinion either way about what the name of the district should be whether it is
24 Open Space or Open Space Residential. Thanks.

25
26 Acting Chair Tuma: Commissioner Keller.

27
28 Commissioner Keller: Well, I agree with a lot of things that have been said already. I am
29 wondering whether it does make sense to add for an escalated if you will Site and Design
30 Review to be when it is part of a scenic setback, which would more likely be visible from a road.
31 I am not sure if that makes sense or not or a parcel adjacent to one of the parks. I want to think a
32 little bit more about the visibility of the house from the Open Space and whether the criteria
33 about that visibility for which additional review might be necessary.

34
35 To the extent that we have a FAR bonus for restoration of native vegetation I think that there
36 needs to be some sort of follow up to ensure that the vegetation has been restored and has
37 established itself so some follow up needs to happen there.

38
39 Two comments in follow up to Attachment E. It would be helpful based on my question and a
40 question from Commissioner Sandas for this table to be annotated with a column indicating
41 which of these lots are currently undeveloped. I think that would be helpful for us to understand
42 the distribution of those. In addition, which of these lots are deemed to be ten acres even though
43 they are smaller because they are part of a Development Agreement with Los Trancos Road
44 area?

1 I am sympathetic with the idea of people in the hills worried about light pollution from the
2 flatlands. My guess from being in airplanes is most of that light pollution comes from
3 streetlights and parking lot lights and not necessarily individual houses. They tend not to
4 produce very much light pollution but streetlights and parking lot lights produce a lot of light
5 pollution. So to the extent that that could be thought of when we replace the streetlights with
6 LED lights that is something that should be considered.

7
8 Acting Chair Tuma: Commissioner Lippert.

9
10 Commissioner Lippert: I just want to follow up on a comment that Commissioner Holman
11 made, which I am in agreement with. The idea of maybe forming a short Board of three
12 Commissioners to – well, you had said a follow up with Commissioners in terms of the smaller
13 1,000 square foot development projects. I was thinking more along the line of maybe a short
14 Board of maybe three Commissioners serving randomly, a rotating body. Maybe what we do is
15 look at 1,000 applied to the smaller acre lots and 2,000 applied to the larger acre lots. So maybe
16 Staff can take a look at that.

17
18 Acting Chair Tuma: Commissioner Fineberg.

19
20 Commissioner Fineberg: I would like to echo Commissioner Holman’s comments that the name
21 should not be changed to include ‘residential.’ I think before we would consider that we need to
22 look back at the original intent, why the district was setup, whether it was grandfathering
23 existing developed properties and granting limited development rights or whether it is intended
24 to give equal development rights to all residents of Palo Alto. If we confer a residential named
25 zone it changes the intent. It means that we do want residences developed. We do intend for it
26 to be residential. I am not sure we are that far. So my inclination right now would be to leave
27 the name as is.

28
29 Acting Chair Tuma: Commissioner Keller.

30
31 Commissioner Keller: I am sympathetic with the idea of keeping the current name of the zone. I
32 have a question about the threshold of Major Site and Design Review in terms of projects. It
33 seems to me that since second dwellings are 900 square feet even under the 1,000 square foot
34 threshold we would not be reviewing second dwellings. That seems to be a bad idea. I can
35 understand the idea of a small accessory structure not being analyzed. I could also understand
36 the idea of an addition to an existing building and making it larger in some sense might be
37 considered a not very major project but the sighting of a new dwelling whether it is a second
38 dwelling or a small new dwelling in an undeveloped parcel I think that should undergo the higher
39 and be considered a Class B project.

40
41 Acting Chair Tuma: Commissioner Lippert.

42
43 Commissioner Lippert: At the thought of finding a middle ground for the name of the zone I
44 have a suggestion, Open Space Habitat, which could refer to humans or animals.

1 Acting Chair Tuma: Okay. I am going to jump in here with a few comments. Essentially other
2 than what I am about to say I am still in agreement with the recommendations of the Staff Report
3 including a couple of things that have not been mentioned here because they are not on the list. I
4 enumerated them but I just want to bring them out one more time for people to think about.
5 Including not counting pool surface as impervious, I am in support of treating basement FAR the
6 same way we would in R-1, which hasn't been discussed much and perhaps people are just in
7 agreement with that. As regards nonresidential commercial uses I do think that we need to have
8 the opportunity to allow for increased coverage and/or FAR but only with a Conditional Use
9 Permit and it should come before PTC.

10
11 Then as far as issues that have been discussed I am sympathetic to and would support lowering
12 the threshold to 1,000 feet in terms of triggering PTC review. I absolutely am very much in
13 support of changing the name. I think that the current name doesn't reflect the reality of what is
14 going on up there and I think we do have to come up with something other than strictly Open
15 Space. There is activity up there that is permitted, people are entitled to do it, and I think not
16 doing it doesn't really reflect the reality of what is going on up there. I think it is sort of doesn't.

17
18 One other suggestion that was brought up was things below 1,000 feet would have PTC
19 representation or someone going to those meetings. I am not opposed to it but at the same time I
20 am not necessarily supportive of it. I think at some point we have to let go and let the process
21 take its role. I think below 1,000 feet I am comfortable with Staff and then on the Consent
22 Calendar but if that was the majority of the Commission I wouldn't necessarily oppose it but I
23 don't think it is a necessary mechanism to have in place.

24
25 So with that I don't see any other lights for the items below the line unless anyone wants to
26 comment on pools, basements, or nonresidential commercial. Three lights. Commissioner
27 Holman.

28
29 Commissioner Holman: Pools, I am okay not counting the water surface, which is all we are
30 talking about. I am okay with not counting the water surface. I do wonder on the larger parcels
31 if we need to put a maximum, footprint isn't the right word, but you get that. I just don't know
32 because I think there is one I am thinking of that has two pools if I am remembering correctly.
33 So just one possible consideration for that.

34
35 The floor area for basements. The Open Space District isn't the R-1 District though and part of
36 the issue that would come up with basements is cut and fill. It is a huge issue in the Open Space
37 District so I am actually opposed to – I think basements in the Open Space District if they ever
38 turn up I think they should be counted as part of the floor area for environmental reasons, for
39 open space protection reasons, cut and fill reasons, and it is not the R-1 District. So I think the
40 argument of parody just doesn't apply here.

41
42 Nonresidential commercial, there does need to be some mechanism and I certainly don't have the
43 answer tonight for what the perfect solution to that is. It wasn't one that I considered before
44 coming to tonight's meeting. It is one of the other reasons why I don't support Open Space
45 Residential because if this is supposed to maintain as best as possible an agrarian kind of
46 atmosphere we might want to encourage these kinds of uses but something probably along the

1 lines as Commissioner Tuma but then what happens when ownership changes and somebody has
2 a winery there or some kind of agricultural operation there and then they sell the property to
3 somebody else then you have the structure there and they don't want to be in the agrarian
4 business. So what do you do with that? I don't have the answer to that one this evening but I am
5 interested to hear what other people have to say about it.

6
7 Acting Chair Tuma: Commissioner Keller.

8
9 Commissioner Keller: I find it ironic in some sense that pools had better be impervious because
10 otherwise they will leak but nonetheless they are not above ground. They do involve some cut to
11 put them in. I am sympathetic with the idea of allowing some exemption up to a limit for pools
12 but not entirely excluding them.

13
14 As far as basements are concerned I can see some issues in which basements make sense and
15 some issues in which basements don't make sense. Let me give you an example. If you are
16 along a hillside and you can't build on top of the hill because we don't allow that but you are
17 building on a slope somewhere on the side of the hill and when you are building along a slope it
18 might be multiple levels because of the slope and the question is how much do you cut into the
19 slope in order to make your floor level and how far in do they go? So I am a little torn on that
20 because I don't really want people digging a big hole in the ground under a relatively flat
21 building but I am sympathetic with the idea of extending a level into a hill where that is a ground
22 floor level further out on the hill, if you can understand what I am saying. So that is where I am
23 torn and I am not sure how to express that kind of nuance in the code. I think what we need in
24 some sense is an Open Space definition of what a basement is and understand what is allowed
25 and what is not allowed. I am also sympathetic with the idea that some people may want to have
26 wine cellars and such, naturally cooled things like that. Some allowance to allow things like that
27 which people might want in the ground or in the side of a hill might make sense. So I am not
28 sure exactly how we want to handle that but I think that needs to be studied.

29
30 As far as nonresidential commercial use permit, a Conditional Use Permit for nonresidential
31 commercial work I am very sympathetic with Commissioner Holman's comments that relate to
32 some of the questions I had earlier about when you offer bonus FAR in exchange for restoration
33 that doesn't stay restored. How do you do that? This also relates to the question that if you have
34 a covenant who is allowed to enforce that covenant? Is it only the City of Palo Alto that is
35 allowed to enforce that covenant? Who has the right of action on that? I think in this case if you
36 did have a Conditional Use Permit the thing that is odd about it is if it is a Conditional Use
37 Permit it means that you can revoke it but if you revoke it then you are allowing that additional
38 floor area to remain even though you have essentially revoked the conditions that allowed that
39 floor area. So there is sort of a contradiction in that notion that I am not sure how to resolve.

40
41 Acting Chair Tuma: Commissioner Lippert.

42
43 Commissioner Lippert: I am inclined to support the notion that swimming pools don't count
44 towards the lot coverage. The irony of it however is that the water that is collected in the
45 swimming pool actually in the overflow goes into the sanitary sewer system not into a storm

1 sewer system. It is not reclaimed on land generally. I think for the purposes of fire safety it is
2 important to have reservoirs out there.

3
4 The second item with regard to basements I think a lot of the discussion we have with regard to
5 basements coming up will lead us into the appropriateness of basements in the Open Space. I
6 can see a number of uses for basements where I would not want them to trigger FAR and one is
7 utility space. I would much rather have mechanical utility spaces under the house than to have
8 them be rooms expressed above ground on a building. When you get into sustainability one way
9 of heating and cooling a house actually is with rock storage. It requires you to have a rock
10 basement where air can actually circulate through that and the heat or cooling is stored there. A
11 third aspect is of course wine cellars. It is a lot of storage, cool storage, or as my colleague put
12 mushroom farms. For storage purposes I think basements are appropriate and could actually
13 relieve in terms of the mass of the house. So I think the FAR discussion will lead us in that
14 direction.

15
16 What was the last item?

17
18 Acting Chair Tuma: Nonresidential commercial and the option of having a CUP to allow more.

19
20 Commissioner Lippert: I think CUP I would prefer this to be an open space habitat zone. So the
21 CUP should be on a per use basis.

22
23 Acting Chair Tuma: Commissioner Fineberg, you had one last comment, and then I think we
24 will go to the other two remaining issues.

25
26 Commissioner Fineberg: Just a quick question on Commissioner Lippert's comment. How
27 many of the developed parcels in the Open Space are served by the City sewer system versus
28 how many have their own septic systems?

29
30 Mr. Williams: We will have to find that out. I don't know. I think most of it is on sewer.

31
32 Commissioner Fineberg: Thank you.

33
34 Acting Chair Tuma: Okay. So I think that gives you plenty to chew on for those items. So let's
35 go to the impervious coverage, FAR, and these are so interrelated I don't think we can sort of
36 carve them apart. So let's have that discussion and first up is Commissioner Lippert.

37
38 Commissioner Lippert: When we go to quality and character issues and compatibility in the
39 Open Space I think really what it boils down to is FAR. I could feel a lot more comfortable
40 dealing with an FAR number than the whole issue of the lot coverage. These sites because of
41 where they are are problematic. There are a lot of sites that are hilly, they have slopes, and it is
42 going to take a lot of paved surface in order to get up to those sites. I would like to look at the
43 whole idea of what is an appropriate structure on an Open Space site. I think that is really where
44 it is in a nutshell. One of the things that can help us begin to deal with that is an appropriate
45 FAR for the Open Space Habitat District.

1 The other item is that I think the lot coverage or the site coverage goes hand in glove with that.
2 Somebody can put in a road and pave it with asphalt. There are all sorts of issues associated with
3 it. In fact, a paved asphalt road is in fact in some ways a pervious surface. It leeches out oils
4 that are used in the asphalt process into the ground itself. So in some ways maybe it makes sense
5 to promote or begin to encourage the residents out there to begin to think about gravel for
6 extended driveways and begin to use more impervious surface and begin to regulate what we are
7 looking at here from an FAR. It doesn't make sense to spread out a house. Maybe it makes
8 sense to build it taller and leave more area as impervious surface. That is one of the reasons why
9 I think that slope density ratios on hilly sites are appropriate tools in terms of regulating how
10 much FAR or lot coverage/site coverage there is on a site. With a flat site you could figure it out
11 but geography really is the governing factor when it comes to a building's mass, how it is seen,
12 how it is perceived, the quality and character, compatibility issues, and in terms of the usability
13 of the soil.

14
15 One last issue I want to make here is again when we get into slope runoff happens much faster
16 on sloped sites than it does on flat sites. With a flat site you have the whole idea that the water
17 can actually sit there and can penetrate down into the soil. Where you have a steep site the water
18 hits the soil, it runs, you wind up with erosion, there need to be erosion measures taken, and it
19 gets to be very complex. So again I would urge both Staff and my fellow Commissioners to look
20 at the idea of slope density rather than FAR or lot coverage.

21
22 Acting Chair Tuma: I find it difficult to believe that there aren't any other comments.
23 Commissioner Keller.

24
25 Commissioner Keller: Can we go back to the issues chart just for a second? What we have here
26 is impervious cover and FAR house size limits. It seems to me that if you think about it these are
27 in some sense ways of trying to get compact development is what impervious cover is. In some
28 sense you want to have the development so it is not sprawled out over a large site, that it is sort
29 of compacted in some way. The FAR is really talking about the building size so that you don't
30 have these monster buildings. In this regard my interpretation of rules like this is that the
31 projects are trying to blend in to the surroundings instead of sticking out like sore thumbs. I
32 would be sympathetic to a sort of multiple envelope approach. In some sense we have the one
33 envelop is the impervious cover measure and you have to meet that. Another envelop that you
34 have to meet is the building size and the FAR. I would be willing to consider adopting a slope
35 density formula as a third envelop and you have to essentially meet all three of those as opposed
36 to slope density replacing either of the other two measures. In some ways this way we would
37 avoid the runoff question. I am concerned that for larger parcels a slope density formula might
38 result in too large a figure particularly if the larger parcels are relatively flat.

39
40 I think that I am sympathetic with the idea, and we are doing this, providing a larger ability for
41 smaller parcels to build houses on those parcels and to make it more feasible for the smaller
42 parcels to build larger homes. I think that on the flip side I think that in terms of larger parcels I
43 do think that if you have a parcel that is really large I don't know that we want to have really big
44 compounds on there that if you have a significant parcel of 20 acres do you really want to have a
45 30,000-plus square foot house. So in some sense maybe there should be some sort of cap on it
46 for the largest or parcels over a certain size, and it just doesn't go any further just as in the

1 flatlands. No matter how big your parcel is you can't have a house that is bigger than 6,000
2 square feet. Maybe we want to have some sort of cap.

3
4 In terms of the exact size for the smaller parcels the kinds of additional data I had requested in
5 terms of Attachment E I think that may be helpful in understanding that. If it turns out that most
6 of the undeveloped parcels are small parcels then it would lend credence to the idea that the
7 limitations in the current zoning rules are the cause of those not being developed. On the other
8 hand if it turns out that relatively few of the undeveloped parcels are smaller parcels then it
9 would lend less credence to that. So in some sense the understanding of how effective this
10 would be in terms of allowing these parcels to be built would indicate where those 32
11 undeveloped parcels fit along this range. Thank you.

12
13 Acting Chair Tuma: Commissioner Fineberg.

14
15 Commissioner Fineberg: If I can borrow a phrase from Commissioner Sandas, my needle is
16 stuck on using impervious surface area as the sole measure for limiting the size. It is what we
17 have done in the past and it may have worked when almost all development was then considered
18 impervious but now that we are going to some materials are impervious and some materials are
19 semi-impervious it doesn't capture that spirit of what is the impact on the parcel. So having lost
20 that I think we do need to have other variables then that measure the intensity of development on
21 the parcel. So floor area ratio captures that. I don't know whether the slope density would
22 overcomplicate matters but if on the steeply developed slopes if it better captures the impact on
23 the parcel I think it might be worthy of consideration, if it becomes an undue burden on Staff
24 without adding value maybe not. If we did use floor area ratio in tandem with the surface area I
25 think you would then capture the runoff, you would capture some criteria of how much impact
26 we are having on a parcel. So I would concur with Commissioner Keller that using both would I
27 think yield better outcomes. Having a tiered approach I think would also be good. I am not sure
28 that our intent is to make these smaller parcels easier to develop but because of their limited
29 number I don't think that is a horrible impact. So I don't know that I would object to it. I don't
30 think it should be the intent of what we are trying to accomplish.

31
32 I think that something that limits the size, and the mass, and the scale on the larger properties,
33 and I really do mean the larger ones, so that we don't have 30,000 square foot compounds I think
34 would be good to not have those happen because it is completely inconsistent with the Open
35 Space. It is an urbanization of what the Comprehensive Plan says to keep rural in character, in a
36 natural state, and there is nothing you can do to camouflage large, large structures. So where the
37 sweet spot is, certainly you don't want some thing that is 30,000 square feet, whether it is 3,000
38 or 5,000 or 10,000 I can't say right now, but somewhere there is a sweet spot that it is big
39 enough that people have good homes, that people have wonderful homes, but it is not so
40 intrusive on the public benefit of what is intended in Open Space.

41
42 Acting Chair Tuma: Commissioner Holman.

43
44 Commissioner Holman: My comments run pretty much in line with the other Commissioners. I
45 am not sure I want to look at slope density because I think it complicates matters but I think the
46 other comments I am pretty much in agreement with. These are different times and we want

1 people to use permeable materials and semi-permeable materials. We want to encourage that.
2 At the same time we have adopted a Green Building Code and we have adopted a policy to
3 reduce our carbon imprint so having all those advancement we don't want to then like counter
4 those with allowing still greater sized houses because even the greenest house, a bigger green
5 house takes more materials and uses more energy than a smaller green house. So I think I am
6 also looking at some kind of combination between the impermeable surface calculations and a
7 floor area maximum. I also don't know, to use Commissioner Fineberg's term, I don't know
8 exactly where the sweet spot is but I am sure we will come to that at some point when we meet
9 next on this topic.

10
11 On Attachment B, page two, the sliding scale of impervious cover a couple of things about this.
12 One is I am presuming, and don't want it to be unstated, I am presuming that we are still talking
13 about 20-foot roadway maximums as was in the existing code, that maximum width otherwise it
14 counts as impervious. The third one down here under C, Pavers, that is pretty general so more
15 specificity of what is intended there. Grass cell block, I have seen some grass cell block that 25
16 percent seems pretty generous to some of the ones that I have seen but I am not going to nitpick
17 that.

18
19 Mr. Williams: These are just thrown out there of just examples of something that may fall in
20 those categories. Rather than not putting anything there it is just sort of a sense of we would
21 treat different materials differently. As far as the percentage we are not saying that they are
22 necessarily going to get that. They would have to come in demonstrate what the actual
23 permeability is.

24
25 Commissioner Holman: Understood, okay. I think that is all I need to say.

26
27 Acting Chair Tuma: Commissioner Keller.

28
29 Commissioner Keller: I have an interesting question about – I understand why we might want to
30 encourage porous concrete because I assume it doesn't leech much stuff out. I am wondering
31 whether porous asphalt would leech oil into the soil more than none porous asphalt. In other
32 words if we go to porous asphalt do we actually cause more environmental harm by being porous
33 than we did if it was nonporous? I don't know the answer to that but it is worthwhile figuring
34 out.

35
36 Acting Chair Tuma: Okay. So my comments are essentially again still supportive of the
37 recommendation using combination of FAR and lot coverage. I would not be in support of
38 adding another layer, slope density. I think that the other two give us enough of the ability to
39 regulate the house sizes. I also think from what I have been told, and I am happy to visit this
40 issue again when we talk about it again, but from what I have been told the complexity of slope
41 density calculations and I think the added uncertainty that that puts in the process from the
42 perspective of the landowners I think perhaps we are being a little bit too cautious to have yet
43 another one. If we could have the debate about slope density versus the two that have been
44 proposed but to have all three of them that you have to meet I think is a bit onerous. So those are
45 my comments. Commissioner Holman, one more?

1 Commissioner Holman: Just one. It goes back to a question I asked previously. I think when
2 this comes back just so that we don't lose sight of where we were until fairly recently, if the chart
3 that is provided could include where we were prior to the advancement of paving materials,
4 again just so we can track where we have been and where we are going.

5
6 Mr. Williams: Is that prior to the advancement of pavers – we have where we are now and we
7 have pre-2007, which is with the advancement of paving materials.

8
9 Commissioner Holman: What I was looking for is prior to wherever you said it started changing,
10 2003 or whatever it was, where the code didn't change but materials changed so we started
11 calculating the impervious coverage differently. So in other words, according to code if there
12 had been no change in materials where we would be.

13
14 Mr. Williams: Which is what the current is. You changed it back to that. That was your change
15 last year was to basically go back to where we were before the materials changed. So that is
16 what this current column reflects.

17
18 Commissioner Holman: There were some changes like excluding some things and allowances
19 for semi-permeable.

20
21 Mr. Williams: Okay, we will have to look at that and see.

22
23 Commissioner Holman: Okay.

24
25 Mr. Williams: At the risk of belaboring discussion, which I don't want to do, none of you said
26 anything about the bonus/natural area. Is that a concept you want us to continue to look at and
27 bring back?

28
29 Acting Chair Tuma: I think the consensus of the Commission is yes.

30
31 Commissioner Holman: For me personally it depends on where we end up with a maximum
32 house size or a floor area comparative. Otherwise I am interested.

33
34 Acting Chair Tuma: On this particular issue? Okay.

35
36 Commissioner Fineberg: What you just mentioned made me realize that if the development
37 criteria changed there will be some projects coming forward that may be grandfathered non-
38 complying. Do we want to consider any kinds of guidelines or criteria? So for instance if
39 something has more impervious space than is currently allowed but they have the right to then
40 develop another X amount of extra floor area ratio under the FAR criteria does one trump the
41 other, or do we allow them to reduce the amount of noncompliance, or do we require them to
42 remove the noncompliance? If there are two criteria or do they both have to comply?

43
44 Mr. Williams: They both have to comply. So I think if there was some desire for them to do
45 something differently where they maybe would want to tradeoff reducing some noncompliance
46 with an increase in FAR for instance then a Variance would be the way to do it. You would have

1 to consider whether that existing condition of being non-complying was unique enough to allow
2 that to happen.

3
4 Commissioner Fineberg: Would that be a Variance or a DEE?

5
6 Mr. Williams: It would be a Variance. DEEs are only for commercial projects.

7
8 Acting Chair Tuma: Commissioner Lippert.

9
10 Commissioner Lippert: I just want to say that I think there is some misunderstanding when I talk
11 about slope density. First of all I think it would be helpful to have an example of what a slope
12 density calculation is. Basically in a nutshell is when you have a sloped site, and it could be a
13 large sloped site, multi-acres, ten acres you may be able to build less square footage on that site
14 than a smaller size parcel that is flat. That is really where you get into the nuts and bolts of
15 quality and character and compatibility. It is the site and the geography that dictates the amount
16 of FAR that you can build there. That is where we are trying to get. There is a reason why Los
17 Altos Hills, Portola Valley, Woodside all the way up through San Carlos and Belmont-Ralston
18 all have slope density ratio calculations for building on hilly sites. Palo Alto wants to be unique
19 and wants to be different, and wants to do it a different way, but the truth of the matter is that this
20 has worked in these communities. They have been very successful with new technologies, with
21 surveyors that now use GPS, they are able to very quickly go through a site be able to establish
22 the boundaries, they are able to establish the topography of the site, and they can even calculate
23 how much permeable or impermeable surface area there is. So at this point it may appear to be a
24 complex way to go about doing it but we are going to wind up in some cases with a much more
25 satisfying result.

26
27 Acting Chair Tuma: Okay, great. I think it may bear at the next meeting for particularly us lay
28 folks how that works. Just to clarify my earlier comment too, I not necessarily opposed to that
29 but I wouldn't pile on three different criteria. Okay, so with that we will go to Commissioner
30 Sandas.

31
32 Acting Vice-Chair Sandas: Thanks. I just wanted to say one thing. Chair Tuma had suggested
33 either the two, the IC and the FAR, and I would like to suggest that we weigh that against the
34 slope density. Do a comparative to see where we come out because that has been my concern
35 too in the questions that I was asking about how many of these lots – when were taking a look at
36 trying to create these formulas how many of the lots did we look at for how much actual
37 buildable surface do they have compared to how much drop-off there is. Somebody could own
38 ten acres with only an acre and a half that is actually buildable and usable. So I think that the
39 slope density tools that we now have may provide us with better answers than trying to assess a
40 formula based on limited knowledge.

41
42 Mr. Williams: I was trying not to say anything more but I can't. Having been Director of
43 Planning in both Los Altos Hills and Woodside where they have slope density formulas those are
44 totally appropriate there they have had them for years and years and years and had most of the
45 development in those communities come through in that process. They are not down to their
46 final third of the lots left to be developed and suddenly applied and then had to go back and

1 apply it to everything else. So I think that is a major thing. We will try to do some estimate of
2 what this is but the other part of it is it can be very misleading. First of all in trying to do an
3 example you can't do an example like we did there. You have to do a survey, a topographic
4 survey. You have to calculate all the slope categories. So I can't do an example. We can see if
5 we can get Engineering or someone to look at doing that and do some ballpark. The other thing
6 is it is not at all unusual to see properties that have a couple of areas of steep slope and then they
7 have an area in the middle that is flat and would accommodate a lot of development, but under
8 the slope density it get penalized terribly for those steep slopes. Whereas another site may have
9 kind of a gradual slope over the whole thing and it gets the benefit of that gradual slope so you
10 are building on a slope instead of on a nice flat area that gets penalized because of the steep
11 slope. So there is a lot of variety in the way it is applied and it start again to get very complex
12 but we will see what we can do in the way of some kind of better explanation and quantification
13 of what that might look like.

14

15 Acting Chair Tuma: Commissioner Sandas.

16

17 Acting Vice-Chair Sandas: Thanks. I am wondering if there is a way to quantify rather than
18 talking about the total size of the lot, say somebody has a 10.12-acre parcel, but realistically
19 there is only a certain amount that is developable. I am wondering if we can make the
20 recommendations based on the developable part of the lot rather the total lot size. That is what I
21 am concerned about. Thank you.

22

23 Acting Chair Tuma: Okay. One last comment from Commissioner Keller.

24

25 Commissioner Keller: I am going to withdraw my suggestion of trying to do a triple approach. I
26 am going to say that I am concerned about the slope density formula approach for a reason that
27 was not mentioned by Curtis and that is if you think about a hill and the only flat area is on top of
28 the hill then the slope density formula would say okay, you are supposed to build on top of the
29 hill, which I suppose would be perfectly fine in Los Altos Hills or Woodside but is not the kind
30 of development that we are promoting in Palo Alto. So in some sense we want people to not
31 build on top of the hill we want people to build off the hill so they are not visible. So the kind of
32 thing that a slope density encourages is different from the kind of development that we are
33 looking at.

34

35 Acting Chair Tuma: Okay, with that comment we will close this item and send it back to the
36 capable hands of Staff to see if you can make sense of all the comments that were made tonight
37 and we will see you back on this topic.

38

39 So I would like to get a sense of Commissioners. It is now 10:10. My view is we should spend
40 at least some more time this evening if nothing else to get through some additional questions and
41 comments. Are people, and I do think we are going to come back on this item as a continued
42 study session, so with that being said is there need to go beyond eleven o'clock because if we are
43 going to do that we should decide that now. That leaves us 50 minutes but it is 10:10 at this
44 point. Commissioner Lippert.

45

1 Commissioner Lippert: Can I make a suggestion? Why don't we give each Commissioner an
2 equal amount of time, we can just go down the row, everybody can either ask questions or make
3 comments and we are done and we are out of here?
4

5 Acting Chair Tuma: That works for me.
6

7 Commissioner Fineberg: Can we have a two-minute break first?
8

9 Acting Chair Tuma: We will take a break. The timer is set for three minutes so if we could do
10 that that would be great. Thanks.
11

12 We are back to item one and I think Commissioner Lippert's suggestion is an excellent one. We
13 will finish at eleven o'clock. It is 10:20 right now, 40 divided by six is six and one-half minutes.
14 Okay, five minutes each, does that work for everybody? Commissioner Lippert you are up.
15

- 16 1. Study Session Regarding Basement Construction Impacts (e.g., Dewatering, Concrete
17 Use, etc.)
18

19 Commissioner Lippert: I think that basements have been a sore point for along time. It is time
20 that we examine it, time that we take a look at it, and see if there are some things that can be
21 done to improve the quality of basements. I am in agreement that whenever somebody digs a
22 hole there are some geological issues that are involved and that they need to be adequately
23 addressed and hence my questioning of Larry Perlin with regard to the shoring and shoring
24 inspection that the rules are being followed and that they are not impacting the adjacent
25 properties when basements are constructed.
26

27 I do feel that the rules however should be applied equitably to both residential basements as well
28 as commercial properties such as where we have parking structures. I think in some cases some
29 of the basement structures in here in some ways rival the houses that sit above them.
30

31 Perhaps beginning to put some limitations on basements and my thoughts behind it are maybe
32 what we want to look at is basements in terms of displaced volumes rather than floor area. The
33 idea here is looking at maybe if we took for instance the footprint of a house and just simply by
34 expressing that as you are allowed to build a basement that is say, and I am just using this as a
35 rough number, 50 percent of the footprint of the house and that could be expressed as a full eight
36 or nine foot deep basement in terms of volume, or if you were to elevate the house a little bit and
37 have the basement begin to peek above ground it could be expressed as the whole footprint of a
38 building. So that what you wind up with is less volume actually going down into the
39 groundwater and I don't think you would hit the aquifer but at least it is not displacing
40 groundwater. That is basically where I am beginning to go is maybe some sort of measure or
41 volume by which we can begin to regulate or get a handle on the quantity of basements that are
42 built.
43

44 I know that my colleague, Commissioner Holman, has a great concern about two story
45 basements where they go down multiple floors. I know that would immediately address that

1 problem. You could have a two-story basement but you would still only be allowed to have that
2 same volume expressed three-dimensionally. So that is one of the thoughts that I had.

3
4 I do think that maybe holding back from the property line a certain distance, maybe two or three
5 feet, also isn't a bad idea in terms of being able to shore and properly support the bank, and give
6 some separation between neighbors so that we don't have the issues. I definitely would not
7 support building a basement in a residential front yard setback or a rear yard setback. Those are
8 basically my thoughts, or comments, and where I am coming from in a nutshell.

9
10 Acting Chair Tuma: Great. Commissioner Fineberg.

11
12 Commissioner Fineberg: I would like to start by thanking our members of the public who have
13 stayed with us to this late hour and members of the public who out there in TV land also, thank
14 you. There is one sentence in the Staff Report that sums it all up for me. It is on page three and
15 says the key issue for Commission discussion is whether some change in policy or codes such as
16 the minimum setback for excavation would better protect neighboring properties without unduly
17 infringing on the potential for property owners to construct basements. Without focusing just on
18 that one particular suggested policy change I think that sums up the situation.

19
20 This issue has been going on four, five, six years. We keep having members of the public
21 presenting with anecdotal evidence. I hear from Staff that there are stringent engineering
22 requirements, that there are codes, that there are licensed professionals who are required to
23 ensure that public safety, and inspectors who ensure an adequate job is being done. I hear from
24 the public that there is a feeling that damage is being done and then I hear from Staff that they
25 don't the means of enforcement when there are problems. We saw in the newspaper where
26 shoring was done under an adjacent property, citizen comes to the City asking for some means
27 address, and apparently is told it is a matter of civil litigation. I think we owe property owners
28 more protection than telling them to go litigate in court.

29
30 I think that there is an inherent conflict of interest between a property owner who wants a big
31 basement and who wants to minimize cost and have a quality job with neighbors who may not
32 want the consequences of what is happening on the adjoining property. It is the obligation of the
33 City to make sure that we can use codes and policies that we protect the adjacent property
34 owners from the permitted activities, which the City governs. So I view our responsibility as
35 something larger than just saying it is okay nothing bad should happen.

36
37 So with that kind of a framework, I am not an expert at what shoring should look like. I am not
38 an expert at the best ways to engineer basements to minimize impacts. So if there is a belief that
39 that needs to be done can Public Works or Engineering or the Building Department come back to
40 us with suggestions of ways to accomplish that without undue burdens? Maybe I am asking for a
41 magic solution but I can't come up with what those solutions are other than decreasing setback.
42 That is from the perspective of safety and protection of adjacent properties.

43
44 There is also the question of environmental impacts, concrete CO2, not to minimize those but we
45 need to address those and we need to figure out if we want to codify things like should we
46 mandate greener concrete? Are there other construction materials that would reduce those

1 impacts on CO2? Is there anything else we can do to minimize subsidence? Are there other
2 technologies other than dumping the water? Is there a way to disburse it and reintroduce it into
3 the local groundwater tables? Is there something else we haven't thought about that would
4 minimize what is perceived as negative impacts? Those are my thoughts.

5
6 Acting Chair Tuma: Commissioner Sandas.

7
8 Acting Vice-Chair Sandas: Thanks. I have six comments. Comment number one, I am pointing
9 out the obvious. When I was looking at the Staff Report where it talks about recent basement
10 construction I noted that 35 percent of our permits for new single family residential homes in the
11 last two years included basements, over one-third. The second obvious point based on the data is
12 that it is a 50 percent increase per year in the last two years over the average of the three years
13 previously, which to my mind is a lot.

14
15 Comment number two, several people have suggested prohibiting or restricting basement
16 excavation within a certain number of feet of residential property line. I would comment that
17 basement excavation should not extend into the six-foot setback of the property line at all. If you
18 don't have enough width around your house to build a basement that doesn't extend into the
19 setback you don't get to build a basement.

20
21 Comment number three, the Staff Report made a comment that "basements are often more
22 energy efficient than above grade floor space." I would like to see a comparison of the carbon
23 tradeoff between concrete use and construction of basements versus the amount of energy for
24 heating and cooling that is saved before we all start burrowing underground. It would be really
25 good to know this.

26
27 Comment number four, to follow up to Commissioner Fineberg's questions about neighbors
28 making claims of property damage caused by adjacent dewatering and so for and/or basement
29 construction. We have had anecdotal information. I would like to number one, explore the
30 option of querying the community about any damage real or perceived caused by neighbors'
31 projects that has already occurred, and two, announce to the community where they can go with
32 such complaints, and three, keep a record that can be reviewed periodically, you recommend
33 how that can be done, to enable policy adjustments if necessary. The community is buzzing
34 around itself but it has no place to go with this kind of stuff.

35
36 Comment number five, I would like to have a discussion about a suggestion made by Tom
37 Wyman in his September 14 memo to "require a significant bond be posted to assure that any
38 repair or remedial costs on neighboring properties attributable to basement excavation or dewater
39 operations are fully compensated." I would like to have that discussion. While our City Staff
40 member said that of course it is not a City issue it is a civil issue when one neighbor does
41 something that affects the other neighbor's house but I think that the City is in the middle of that
42 issue by virtue of the fact that the City allows basement construction and there are unintended
43 consequences of that construction. So I would like to have a discussion about having the City of
44 Palo Alto require posting a bond.

1 Number six, finally, I would like to have the discussion of the option of not allowing residential
2 basements in areas that require dewatering. I say residential because I don't know much about
3 commercial basements but I would like to have that discussion. Thank you.

4
5 Acting Chair Tuma: Commissioner Keller.

6
7 Commissioner Keller: One thing that would be helpful for me is to have a visual map of where
8 houses have been constructed with basements, without basements, and dewatering, and overlaid
9 on this map where the floodplain is so we can actually get an idea of where this is occurring. I
10 don't know how many years you want to go back in this map but at least several years would be
11 helpful.

12
13 I agree with the comments of Commissioner Sandas with respect to considering eliminating the
14 potential for dewatering for basements in residential areas if you have to dewater then maybe
15 nature is telling us that you shouldn't have a basement. I also agree with, I am not sure who
16 suggestion it was, with respect to ensuring that the excavation for the basement be within all the
17 setbacks. That was also Commissioner Sandas, thank you. I think that is also important. I it
18 was also Commissioner Lippert who said not in the front and rear yard setback and I would
19 certainly agree with that. I agree with the bond for remediation. It does make sense. In some
20 sense part of our job in what we do is to ensure the public health and safety and this bond in
21 some sense is a way of ensuring the safety of the adjacent properties and the property owners.

22
23 With respect to depth limits I am sympathetic with the idea of Commissioner Lippert's of
24 displaced volume as one measure. I am wondering whether there should also be some sort of
25 overall depth limit. In some sense this displaced volume does indicate some degree of
26 excavation is happening and a degree of concrete. I am also sympathetic with the idea of
27 increasing the amount of green points that are required when a basement is constructed
28 particularly a big basement is constructed. Right now I think it is just counted as one for one
29 perhaps it should be based on the amount of concrete that is used for the basement or the amount
30 of excavation that is used for the basement. Perhaps there should be some measure for that that
31 requires bonus points for that. Also, I did note that there was a comment made, as long as we are
32 talking about the green point issues, by a member of the public in terms of not counting 150
33 points. When we eventually get to revisiting that that would be worthwhile reconsidering.
34 Thank you.

35
36 Acting Chair Tuma: Commissioner Holman.

37
38 Commissioner Holman: I have to talk fast here. So page five of the Staff Report, number five
39 starts to address allowing existing basements on nonresidential properties to be excluded from
40 floor area. I think that came up as part of 278 University Avenue and I think that is whole other
41 subject. There are many, many broader aspects to discuss having to do with that than we could
42 address with this.

43
44 The letter from Tom Wyman actually I concurred with every one of his recommendations
45 including the bond as Commissioner Sandas stated. Whatever extent of basements we continue
46 to allow I think there should be a maximum depth of the basements. No basement should be

1 allowed if dewatering is required possibly with some limited application if it is an historic
2 property.

3
4 Comments that I made previously when this was in front of us still apply having to do with zero
5 waste, concrete pollutants, larger houses, incentivizing demolitions, the transportation of
6 concrete. I have also subsequently learned more about other pollutants that are used and toxins
7 that are used in the manufacture of concrete. There is the street wear and tear of all the trucks
8 that haul the dirt from the sites, setbacks. My comments definitely go with previous comments
9 including those by Commissioner Fineberg having to do with I am sure the project was on 250-
10 270 Homer is the one that I am remembering where it became a civil matter. While the City
11 doesn't permit the shoring they do permit the underground garage so there is an implication that
12 then there is the shoring that happens and sometimes under or at somebody else's property line.
13 So there is the rule do no harm and I think that just sets up a situation that is really troublesome
14 and troubling. So from my perspective as well as other Commissioners that I have heard no
15 excavation in the setbacks.

16
17 One quick comment too about below grade patios and reviewing the code again about what the
18 maximum size of those are, maximum dimensions. I have seen some out there that are certainly
19 exceeding that.

20
21 Potentially I think we should look at some options and alternatives here including maximum
22 basement size, again perhaps larger for historic as incentives because of potential limitations
23 above ground for development. I think we could also look at increased green points required for
24 basements. I am going to pose something else here that would be something I have had in my
25 head for many years actually and this might be one way to accomplish it is I wish there were a
26 fund here that was managed by perhaps some nonprofit that perhaps carbon offset points, which I
27 am not a big fan of typically, but if someone wanted a basement of X size, and again I don't
28 know what that size is, that they also purchase carbon offset and they put money into a fund that
29 would then be accessible to people with lower incomes that they could use to repair their homes
30 towards energy efficiency.

31
32 I have a USGS article that talks about subsidence in Santa Clara County and it says that
33 subsidence has been arrested in Santa Clara County largely due to the transport of surface water.
34 I don't have time to read all that but there is more about subsidence and how it continues to be a
35 concern in Santa Clara County.

36
37 I sent a question to Staff about the EIP report that was answered and I think you all have a copy
38 of that. I was persuaded by the letter from David Stonestrom. I have been reading a fair amount
39 about green and concrete as well and I read an article that talked about green concrete was akin
40 to a vegetarian meatballs. That is the term that they used. It says because of the other chemicals
41 that are used and because of the increased demand that any increased demand by allowing the
42 construction that uses concrete it more than offsets any green aspect of concrete manufacture. I
43 agree with every single one of the comments that Commissioner Sandas made.

44
45 My last two things have to do with trees. I am not convinced that there is not an impact. I too
46 have heard a lot of comments from the public and it would be interesting in addition to people

1 having a place to report it would be helpful I think to know where basements have been
2 constructed and where trees have been lost adjacent to or near those construction sites. Time is
3 up.

4
5 Acting Chair Tuma: A few things. One is I very much agree with the comment earlier about
6 commercial and residential. We need to look at applying these concepts in both contexts not
7 simply residential. The other thing that I would agree with is I think we need more data on the
8 energy efficiency of basements versus above ground built space.

9
10 Beyond that I have to tell you I am not nearly as far down the road in terms of limiting
11 basements as several of my fellow Commissioners. The primary reason is because of what I
12 perceive to be a lack of hard data on this topic particularly with respect to impacts on
13 neighboring properties. We have heard a lot of anecdotal evidence and that is concerning but it
14 doesn't get me to the point of saying we definitely need to do something perhaps as drastic as
15 some of the ideas that are being talked about. I think what I would like to see when we come
16 back is some more data that addresses the issues of site stability, trees, and subsidence. I realize
17 that what I am asking for is data that talks about that something is not happening and sometimes
18 it is difficult to prove a negative. Nonetheless, if there is data available that shows whether that
19 is by going out and looking at sites where we have had complaints and finding out what is going
20 on and doing some research and studies into that but I do think this is something where we do
21 need some more data on it.

22
23 A couple of other things. If we do go down the route of non-habitable uses in basements I think
24 we need to have a mechanism that has real teeth in a violation because otherwise people could
25 build these spaces, they may be able to meet the building codes, they say they are not going to us
26 it but where does that leave us if they actually do?

27
28 The one other area that I am in agreement with is excavating straight to the property line. Just
29 common sense, I don't necessarily need the data to say common sense, if you excavate right to
30 your property line part of your neighbor's property is going to fall onto your property. There is
31 just no way around it. Even with the slightest bit of movement you are going to have that. So I
32 think excavating right up to the property line is problematic. I don't know that not getting into
33 the setback at all is right. I think we need more data on understanding from a geological
34 perspective what goes on.

35
36 My intuition tells me what the anecdotal evidence tells us but I am just not quite there yet and I
37 do think we need some more hard data on that so I would like to see that happen before we come
38 back.

39
40 Commissioner Fineberg, did you have one follow up?

41
42 Commissioner Fineberg: One of the Commissioners made a comment that I have a question that
43 might be a good idea. When an applicant is going to excavate are there any extra fees that
44 compensate the City for the damage to the roads of the earth being hauled out and the concrete
45 being hauled in?

1 Mr. Morris: We did consider a street impact fee on that very issue but were advised by the City
2 Attorney that it was illegal.

3
4 Commissioner Fineberg: Don't other cities have that fee?

5
6 Mr. Morris: The ones that do, the City Attorney felt like they were rolling the dice.

7
8 Commissioner Fineberg: Okay, thank you.

9
10 Mr. Williams: I think Atherton had that fee and I believe they ended up having to refund a
11 bunch of money to some people. Woodside when I was there had a fee. I don't know if they
12 still have it or not. I don't think anything negative ever came of it.

13
14 Commissioner Fineberg: I believe Atherton's refunds were because they had an arbitrary
15 application of who was being charged the fee. So it may be that the magic is in a proper method
16 rather than – but I would have to defer to the City Attorney's opinion on the legality.

17
18 Mr. Williams: I think it has gone to the Council as well and with that opinion from the Attorney.

19
20 Commissioner Fineberg: Thank you.

21
22 Acting Chair Tuma: Commissioner Lippert.

23
24 Commissioner Lippert: Following up on I guess Commissioner Holman and Commissioner
25 Fineberg is it possible to have a discharge meter? In other words, where you have a hose coming
26 out and they are pumping groundwater?

27
28 Mr. Morris: Yes, that is something that they could do very easily.

29
30 Acting Chair Tuma: Commissioner Holman.

31
32 Commissioner Holman: My understanding is with Atherton they determined that there was a
33 direct impact between the weight and the number of truck trips that were required due to
34 basement construction activities. My recollection is the same as yours Commissioner Fineberg
35 about why some fees were refunded. It had not to do with there not being a direct correlation
36 between basement street impacts.

37
38 Acting Chair Tuma: Commissioner Keller.

39
40 Commissioner Keller: Two things. One is there is a loose end that we talked about awhile ago
41 and I think I should bring it up now because it was something that seems to have been missed.
42 When in commercial property and a basement is built that requires either shoring up against the
43 City property or is actually constructed underneath the City sidewalk then the City should
44 consider being compensated for providing that service. It shouldn't necessarily be free because
45 that is a gift of City funds.

1 The second thing is that with respect to the issue of allowing basements for non-habitable
2 purposes in commercial zones I think that is certainly interesting to think about and it was
3 brought up at the meeting last week. I think we should think about exactly the issue of
4 basements in commercial districts in general more clearly. I think making this incremental
5 change may not be the right appropriate thing to do first. We have to think about the
6 implications of that beyond, in other words, the extent to which we want to encourage that kind
7 of use.

8
9 Acting Chair Tuma: Commissioner Holman and then I think we need to get to a place where we
10 – do we need a motion? Okay. So we will just continue the study session to a date uncertain.

11
12 Commissioner Holman: I do apologize I had stated earlier that I thought the commercial
13 basements especially in the Downtown area should be a separate topic. If other Commissioners
14 are making comments on this and I happy to get to it sooner rather than later but if we are going
15 to discuss it as a part of this, which I am fine doing, I think it ought to be broken out separately
16 because it is a very, very different applications having many broader implications. So if Staff's
17 intention is to have that discussion as a part of this basement discussion I am happy to get it done
18 sooner rather than but can we break it off separately? I am looking to the Chair for that as well.

19
20 Acting Chair Tuma: That makes sense to me.

21
22 Commissioner Holman: Okay. So is that okay with Staff? All right, thank you.

23
24 Acting Chair Tuma: Commissioner Fineberg.

25
26 Commissioner Fineberg: Can we have some additional information about what Norm Beamer
27 spoke about, whether or not FEMA allows basements in the AEA flood zones or the San
28 Francisquito Creek flood zones, and if FEMA's rules are less restrictive than City rules should
29 we have a discussion about whether the City's rules are appropriate or maybe I am not
30 understanding what Mr. Beamer was saying and our rules are consistent. That might be worth us
31 coming back with some more information.

32
33 Acting Chair Tuma: Okay, with that we will continue these discussions to a date uncertain when
34 Staff has the opportunity to gather the data that was requested and respond to the questions that
35 were not able to be responded to this evening.

36
37 The next item on the agenda is Approval of Minutes from the Regular Meeting of August 27,
38 2008. At that meeting there was a study session on DEEs, Variances and there was also the 3000
39 Alexis Drive. Do I have a motion?

40
41 **APPROVAL OF MINUTES**: Regular Meeting of August 27, 2008.

42
43 MOTION

44
45 Commissioner Sandas: So moved.

1 SECOND

2

3 Commissioner Lippert: Second.

4

5 Commissioner Holman: I have to not participate in 3000 Alexis portion.

6

7 MOTION PASSED (6-0-0-1, Commissioner Holman abstaining from the 3000 Alexis Drive and
8 Chair Garber absent.)

9

10 Acting Chair Tuma: All those in favor? (ayes) Opposed? That passes six to zero with
11 Commissioner Holman abstaining from the 3000 Alexis Drive and Chair Garber absent.

12

13 Reports From Officials and Committees, Commissioner Keller.

14

15 ***REPORTS FROM OFFICIALS/COMMITTEES.***

16

17 Commissioner Keller: Thank you. There was a Council Meeting on September 5 and there were
18 three items of interest. The first item is the approval of the Mitigated Negative Declaration, and
19 Site and Design Review, Conditional Use Permit, and Record of Land Action for 3000 Alexis
20 Drive, which we just referred to.

21

22 There was an amendment made to condition the expansion of the social membership beyond 175
23 members I think it was approved up to 200 members based on Mitigation number four which I
24 believe was the Transportation Demand Management program. That amendment was made on a
25 six to three vote and the motion overall to approve this after the amendment was on a nine to
26 zero vote.

27

28 The second item was the appeal of the Director's Approval of 278 University Avenue. The
29 ultimate decision was to uphold the appeal. There was basically a straw vote on four that
30 became three items. The straw vote was essentially first on height versus shape and the decision
31 was to whether or not to go above 50 feet. Three of the Council Members were willing to go
32 above 50 feet, the six Council Members were not willing to go over 50 feet, and they thought
33 that going over 50 feet was a significant policy issue. All of the Council agreed to grant a
34 Variance to the four-foot setback instead of required seven-foot setback. Yoriko did express
35 concerns about whether the findings in fact were met and there was a question on whether the
36 Commission should revisit that zone in order to change the setback from a seven-foot setback to
37 a four foot setback since that seems to be what we are approving anyway.

38

39 Then with respect to basements there was a bunch of discussions about that. It was not exactly
40 clear. There was a comment regarding the basement issue of whether conversion should be a
41 Variance rather than a DEE. It was mentioned that it should be conditioned based on not having
42 the mechanical equipment but having all of it in the basements. There was a comment about
43 having the reuse of the existing basement is a good thing although I was not clear on whether
44 they are going to reuse existing basement or whether they have to rebuild it. I don't remember
45 the answer to that whether they can actually build a new building on the existing foundation,
46 existing basement. Curtis says yes, good. One of the Council Members also made a comment

1 that he thought that the use of it for mechanical equipment was good but he didn't see a problem
2 with using it for retail storage as well, which he thought was a good thing. I think that that
3 Council Member was not clear on, because it didn't actually come out, the issue of that if it were
4 used for retail storage it would count as FAR but using it for mechanical equipment since you
5 can't put retail storage on the roof as far as I can tell, you can put mechanical equipment on the
6 roof, that that was a distinction that actually made a difference. So that was a degree of
7 confusion there.

8
9 There was also a question about the impact of exempting the basement and of counting part of
10 the basement and this issue was not completely resolved as far as I could tell. Basically, it was
11 given in summary, the appeal was upheld, and it went back for a redesign the way I interpret it
12 with maximum flexibility for the Director to make the appropriate determinations as to where to
13 go in terms of the Variances or DEEs.

14
15 Acting Chair Tuma: Okay.

16
17 Commissioner Fineberg: Question on that?

18
19 Acting Chair Tuma: Yes.

20
21 Commissioner Fineberg: Was there any discussion by Council of process? We had that second
22 part of the conversation, was there any discussion of sort of the bisected review by ARB and
23 PTC?

24
25 Commissioner Keller: Interesting question. Two things about that. First of all, I did handout
26 something that summarized our discussion and at least one of the Council Members appreciated
27 receiving that document. The second thing was that at the end I had asked the Mayor about
28 whether they were going to address any of the generic questions that we had raised and the
29 Mayor mentioned that he has a policy of, and I am not sure whether this is City Council in
30 general or just specifically him, of not addressing generic questions in an issue involving a
31 particular project. So those issues were not really raised but on the other hand I think that based
32 on what I was hearing in sort of reading between the lines I think they heard that that was a
33 concern of ours. We can also initiate discussions along those lines and we are already
34 considering the issues of DEEs and Variances and to the extent that we want to expand that I
35 don't think that the Council will have any problem with that.

36
37 Acting Chair Tuma: Okay. Any other Reports from Officials or Committees?

38
39 ***COMMISSION MEMBER QUESTIONS, COMMENTS, AND/OR ANNOUNCEMENTS.***

40
41 Commissioner Holman: No report just a question. Trying to keep us on track here for the next
42 Report to Council, is there any update on when the data will be available?

43
44 Mr. Williams: Julie said it was going to be October but I don't know if that is early October or
45 mid-October or what by the time Roland gets it and sort of formats it for us.

1 Acting Chair Tuma: Okay. Commissioner Keller.

2
3 Commissioner Keller: One thing I forgot to mention that was done. The last thing on the City
4 Council Agenda last week was a Colleagues Memo on agendizing a valuation as to whether the
5 City Council should endorse or oppose the BART Sales Tax Measure. So it was approved to
6 agendize it and that will be on a future Council Agenda presumably prior to it going before the
7 voters.

8
9 Acting Chair Tuma: Okay. We have Commission representation for September, October, and
10 November with City Council. I will leave that at that for now.

11
12 Mr. Williams: If you are doing your calendars just for your information there is no Council
13 Meeting next week. There is a Council Meeting on October 6 and on October 20 scheduled.

14
15 Commissioner Sandas: And that's it?

16
17 Mr. Williams: That looks like that is going to be all in October.

18
19 Acting Chair Tuma: Okay. So our next meeting is scheduled for October 1, a Special Meeting
20 at six o'clock. I notice going forward we are pretty much at six o'clock for the balance of the
21 year.

22
23 **NEXT MEETING:** Special Meeting of October 1, 2008 at 6:00 PM

24
25 Mr. Williams: Julie has suggested if we don't already have something scheduled for six having
26 study sessions on the Comprehensive Plan, at least having that on a Tentative Agenda all the way
27 through. We can cancel them if we don't need them but trying to carve out frequent updates
28 from you on specific topics as we go along.

29
30 Acting Chair Tuma: Okay, with that I will see you all back on October 1, 2008. We are
31 adjourned for the evening.

32
33 **ADJOURNED: 11:00 PM**

34
35