



Planning & Transportation Commission Draft Minutes: December 11, 2019

Council Chambers
250 Hamilton Avenue
6:00 PM

Call to Order / Roll Call

6:04pm

Chair Riggs: [note – recording started mid-sentence] to order. We're going to start. Carolyn Templeton will be here, she's just running a little late so with that we'll do the roll. She'll be here in a little bit.

Mr. Vinhloc Nguyen, Admin Associate III: So, we'll mark her absent for now and then when she comes in, we'll adjust the time. We have a quorum, thank you.

Chair Riggs: Alright well welcome to the December 11th meeting of the Planning and Transportation Commission, Palo Alto.

Oral Communications

The public may speak to any item not on the agenda. Three (3) minutes per speaker.^{1,2}

Chair Riggs: Do we have any... I don't have any cards in front of me. Any oral communications?

Ok.

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1 **Agenda Changes, Additions, and Deletions**

2 The Chair or Commission majority may modify the agenda order to improve meeting management.

3

4 Chair Riggs: Any addition, changes to the agenda? Excellent.

5 **City Official Reports**

6 1. Assistant Directors Report, Meeting Schedule and Assignments

7 None.

8 **Study Session**

9 Public Comment is Permitted. Five (5) minutes per speaker.1,3

10 None.

11 **Action Items**

12 Public Comment is Permitted. Applicants/Appellant Teams: Fifteen (15) minutes, plus three (3) minutes rebuttal.

13 All others: Five (5) minutes per speaker.1,3

14

15 2. PUBLIC HEARING/QUASI-JUDICIAL. 470 Olive Avenue [18PLN-00148]:
16 Recommendation on Applicant’s Request for a Zoning Code Text Amendment to
17 Allow an Exception to the Nonconforming Use Amortization Provisions that are
18 Applicable to the Site. The Applicant has Requested the Text Amendment to Allow an
19 Existing Office Use to Remain in a Single Family Residential Zoning District for Five
20 Years. The Existing Commercial Structure is Located on Two Parcels: 470 Olive
21 Avenue is Zoned Single Family Residential (R-1) and 2951 El Camino Real is Zoned
22 Service Commercial (CS). Environmental Assessment: Exempt from CEQA Per
23 Guidelines Section 15301 (Existing Facilities). For More Information Contact the
24 Project Planner Samuel Gutierrez at samuel.gutierrez@cityofpaloalto.org

25

26 Chair Riggs: Alright so we now have (interrupted)

27

28 Vice-Chair Alcheck: (off mic) Final meeting of the decade.

29

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1 Chair Riggs: Final meeting of the decade so we have one item this evening. I have no cards so
2 we'll turn it over to Staff, we'll have a presentation. If there are any speaker cards, we can take
3 them after the presentation and then we'll go to our own deliberations so, without further ado.

4

5 Mr. Sam Gutierrez, Project Planner: Good evening to the Commissioners of the PTC. My name is
6 Samuel Gutierrez and I'm presenting the 470 Olive Text Amendment project before you today.

7 This item did previously come into the PTC about a month ago. Here you can see that the
8 applicant originally requested a 5-years extension of their Amortization Clause that's found in

9 Title 18 of the Municipal Code for an office use to legally occupy the property at 470 Olive

10 which is zoned R-1 with the Comp. Plan designation of Single-Family Residential. After some

11 discussion with the proposed denial presented by Staff, the PTC directed Staff to come back

12 before you to have a draft amended with a short duration of time than the applicant requested

13 and that is what we're here before you now.

14

15 Just to refresh your memory this happened on October 30th, 2019 when it was last before you

16 so just briefly go through the project again. This is a Zoning Map snip of the site. You can see

17 there is the R-1 Zone that abuts the CS Zone and the 470 Olive parcel... you got a mouse over

18 there? Is located right here and then there is an El Camino parcel which is also commonly

19 owned by the same property owner.

20

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1 Here's the existing conditions off of Olive of this building. Again, it's a continuous older building.
2 You can see this is a bit from the adjacent residential property. This is from the El Camino view
3 and again, further El Camino and an aerial view of the property here. And you can see how the
4 buildings continue from El Camino and go over to the Olive parcel where it's zoned R-1.

5
6 During the last PTC meeting, there was a site plan that was presented to you but it was a little
7 inaccurate in that the jog that you notice here that's clouded wasn't represented accurately. So,
8 the PTC did ask Staff to have that revised to accurately show that and this was included in your
9 Packet. And I'm showing here in the presentation to so that jogs, the properties don't perfectly
10 align.

11
12 So, going what I repeated earlier is that the PTC recommended to Staff or directed Staff I should
13 say to come back with a draft ordinance in lieu of the denial that we recommended before to
14 give you something to work with, with a 1 to 2-year period. Staff opted to go with the 2-year
15 period and this is a snip of the proposed section. And it's really to allow the non-conforming
16 office use located at Olive Avenue to allow them to stay until December 31st, 2021 and that
17 would be that 2-year period.

18

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1 And Staff recommends that the PTC take the PTC takes the following action. We recommend
2 that your adoption of the draft ordinance to extend the amortization of the non-conforming
3 office use or excuse me uses at the 470 Olive. And that concludes Staff's presentation.

4
5 Chair Riggs: Alright thank you. Any questions from the Commissioners before we... we do have
6 one comment card so before we open the hearing for the public. Alright so with that said we
7 have one comment card, Herb Borock. So, we'll have 3-minutes if I get my... Vice-Chair Alcheck
8 if you could set up our timer on that.

9
10 Mr. Herb Borock: Good evening Chair Riggs and Commissioners. I got interested in this property
11 when I saw there was a public hearing for this evening and also that during that time, I noticed
12 that the North Ventura Coordinated Area Plan Committee was meeting. And I've since learned
13 they've been going on 2-years and from your last meeting, there's funding for 3 more years. So,
14 that's going to be 5-years while development is going on in the area that's supposed to be
15 providing an area plan for. A better way and common way of doing this is to place a
16 moratorium on development and under State Law Government Code Section 65858 that can be
17 done up to 2-years. But at the rate this is going it doesn't seem that there's any pressure or
18 incentive from either the Council or the Staff to do that in such a short time. And so maybe
19 what should be done it just to give back the money to the granter and to the property owner

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1 because development such as this proposal can continue and just as other proposals have come
2 to you before without that.

3
4 You've been presented with a proposed project as rationale for the Text Amendment but that's
5 not part of an application for a Text Amendment. It's part of an application for a Planned
6 Community Zone and Council suspended doing Planned Community Zones. When you do a Text
7 Amendment anything that the Text Amendment allows can be done regardless of what's being
8 shown to you in regards to what timeline is being told to you.

9
10 There's... as I understand it from the public record Staff knew that the... at the time that it
11 happened... that the Council made a decision to extend an Amortization subject to certain
12 conditions that the applicant at that time refused to accept and so Staff didn't need someone
13 from the public to complain. It was Staff's responsibility to enforce the law and for some reason
14 on the success of City Managers and Planning Directors that did not happen. I think that's a
15 serious problem.

16
17 As far as the site use now the only thing, I can depend on are the Business Registry Certificates
18 that are easily acceptable. I had requested them for another property and received the list for
19 the years 2016 through '18. At 470 Olive listed Door Dash for 2016 and doesn't list anyone
20 having a Business Registry Certificate for 2017 or 2018. 2019 is not yet up and the earlier years

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1 are at an offsite storage and I've been promised to get those by the 20th which will be too late
2 to tell you about this evening.

3

4 So, there's something broken in the City process when the Staff and even I guess the Council as
5 well since they're the ones who made a motion to extend an Amortization so certain conditions
6 were never met (interrupted)

7

8 Chair Riggs: So, Mr. Borock, if you could just wrap up this, is [unintelligible] (interrupted)

9

10 Mr. Borock: The light isn't working; it hasn't been turned on here.

11

12 Chair Riggs: We got a timer here so (interrupted)

13

14 Mr. Borock: No, that doesn't help me. The light... you have a switch for the light and if you use it
15 then I would know.

16

17 Chair Riggs: We... sorry, the system is not working sir. If you could just take 20-seconds to wrap
18 up.

19

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1 Mr. Borock: Fine so basically the system is broken and the simplest way to motivate people to
2 get it fixed is to deny the applicant. Thank you.

3

4 Chair Riggs: Alright with that the public hearings closed and we will bring it back to the
5 Commission. I think... I want to... I guess we should maybe... does the applicant want to make
6 any comments? Thank you Commissioner Waldfogel.

7

8 Mr. William Agramonte: Only that we're comfortable with the recommendation of Staff. Thank
9 you.

10

11 Chair Riggs: Thank you. Now we'll close up the hearing. Ok so back to the Commission, I think
12 what I'd like to do is try to be structured and maybe we'll start on... don't feel like you have to
13 be obligated to make comments but maybe start with Commissioner Lauing and then end with
14 Commissioner Waldfogel. And I will... if someone would like to make a motion at that point, I'd
15 welcome it and again, if you have no comments feel free to pass the torch. Commissioner
16 Lauing.

17

18 Commissioner Lauing: Ok thanks. First of all, thanks for getting these back so quickly. I
19 appreciate the response and I know we don't actually technically direct Staff but we asked for
20 it, we got it and we really appreciate that.

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1

2 On Packet Page 12 when you are itemizing what we asked for you say that Item One, come back
3 with a proposal that satisfies the Text Amendment vehicle for continue with use with
4 relationship to the NVCAP process, etc. and should come back with a shorter time duration that
5 the requested 5-year period. So, the second item I believe is correct but it wasn't 1-year as
6 you've just already stated. You chose that. It was in the 1 to 2-year time frame so that's correct.
7 I think in the final motion we actually decided not to reference the NVCAP because of the
8 situation that that could take forever. Meaning we can't put a date certain on that so we
9 shouldn't be referencing that and holding up any sort of development. So, I just wanted to call
10 attention to that as we contemplate this tonight.

11

12 And then secondly, I just wanted to make sure to review the pertinent dates and a lot of this is
13 inconsistent with your Packet Page 17 of today's Packet. And I won't go over all of these but so
14 in '78, it was rezoned R-1 is what you said and so from that time on it's been legally non-
15 conforming. I believe the current owner took ownership in 1994, is that correct?

16

17 **[note – unknown female]:** '93.

18

19 Mr. Agramonte: '93.

20

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1 Commissioner Lauing: '93, ok and then this commercial use was supposed to be done as of
2 9/11/98 via the Amortization. Then in '14 the developer... the owner started office use and did
3 not have an Occupancy Permit, is that correct? So that means that however, you look at this at
4 the very... the office use has already been in violation for 5-years. So, then the Council looked at
5 this on 10/12/17 and were generally not supportive of what was there. And I reviewed all those
6 minutes and one answer to the question by Director Lait... now Director Lait, anything after
7 1998 was not an authorized use. So, obviously, this means it been going on since 1998. So, my
8 second question in regard to that is that why did Staff not order the end of the office in
9 10/12/17 after that Council meeting? Was there some reason to delay it at that point?

10

11 Ms. Rachael Tanner, Assistant Director of Planning: My understanding is that the City Council
12 encouraged the applicant to submit for this Text Amendment and which they did do and has
13 been under review unfortunately for a period of time with our department in part because it is
14 such a unique and perhaps atypical situation and is now coming before you. So, while it did
15 come back quickly from October 30th to now, it has been unfortunately with us for some time
16 and we did want to try to advance in part because of the length of time that has passed.

17

18 Commissioner Lauing: Ok, great, excellent that was a very thorough answer to address my
19 question. However, that said, in that year and a half or since '14 there's been 5-years where

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1 nothing else has been presented as a potential project. Until we heard at the last meeting that
2 there's an idea for a potential multi-use. Yeah alright so that (interrupted)

3

4 Ms. Tanner: That's accurate.

5

6 Commissioner Lauing: So, the original request then would mean that from '14 to '25, this is the
7 request that we turned down last time, there would be office use there which is a 11-years.
8 What's being proposed now is '14 to '21 which is 9-years of office use that is non-conforming.
9 That's what we're talking about.

10

11 Ms. Tanner: That would be one way to do the math on that.

12

13 Commissioner Lauing: So, my biggest concern here is that there's already been a lot of time a
14 lot of years that the applicant could have come back with something and instead we don't have
15 it. And whatever amount of time that we might decide to extend this for the question is what
16 can be done in that timeframe to show good faith and I'm not sure there is. Upon reflection,
17 since the last meeting, I'm not sure what the applicant could come with but whether it's a year
18 or 2-years, if we were to extend it, I think we should want to see something from the applicant
19 or it would be immediately... immediately revoked or the alternative is to go back to your
20 original which is to say that hey it's already been 6-years now. Enough is enough, come up with

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1 something else to do with the property and let's get on with it. So, I think I see that as the two
2 options tonight.

3

4 Ms. Tanner: Well I think that part of what the Commission discussed last time was even though
5 this particular action is not tied to NVCAP. So, let's say suddenly the North Ventura process just
6 stopped or it took longer or what have you or it was more quick than projected; that if there is
7 rezoning that happens as a part of that process, which is anticipated, that could take place. And
8 then this property might be able to produce let's say more housing than currently zoned or
9 have different uses than what are currently zoned. And so, I think part of the idea of the 2-years
10 was to allow that process to unfold which is slated to go by the end of next year to adoption
11 hearings. And so that is the end of 2020 and so 2021 they might be looking at let's say new
12 zoning that they could submit an application to the City for whatever that use was. They also...
13 the applicant suggested that they are undergoing some efforts to assemble more parcels in
14 order to bring forward a proposal. Now that's a best-case scenario. Worst case, as you say,
15 they... nothing happens. The office use continues, there are no efforts made or there are efforts
16 that are made that are unsuccessful to bring forward a project that would be multi-family. In
17 any case, this expires in 2-years and that use would need to cease or the applicant would need
18 to submit a new request for a Text Amendment. And if the use is no longer permitted the City
19 would need to begin enforcement action to get them to abate that use at that site but at least
20 now it's very clear when that is. Its near term, it's not 10-years from now, which I think is part

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1 of the challenge of the earlier actions. There were many, many years in between the beginning
2 of the action and the end of the action. So, we are hopeful that this could lead to some fruitful
3 developments whatever they may be.

4
5 Commissioner Lauing: Yeah, I think that would-be worst-case scenario. That the applicant
6 comes back and says well we didn't do anything because we thought it was going to go this way
7 and it didn't and so now, we have to restart. So once again I thought that the sense of the
8 memo was that we should not be referencing the NVCAP just for that reason but that's all for
9 now. I'd like to listen to my colleagues.

10
11 Chair Riggs: Commissioner Roohparvar.

12
13 Commissioner Roohparvar: Ok so my recollection is also that the Council asked the applicant to
14 submit for a Text Amendment so I'm comfortable with that. Regarding the NVCAP the way the
15 ordinance is drafted is it says that it's to allow for the potential coordination with planning
16 efforts associated with the NVCAP. Again, I'm comfortable with that because I don't see that
17 holding up the process, it only allows for the potential for coordination.

18
19 Again, I would have a problem if 2-years down the road nothing happened but I don't think it's
20 fair to fault the applicant for nothing having happened. So far when the process with the City

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1 has been murky and we... they didn't know which way it was going to go. I mean you can't fault
2 them for not having brought a project... been further along when they have no idea what the
3 City is going to do. I think those are my only comments.

4

5 Chair Riggs: Commissioner Alcheck [note -Vice-Chair Alcheck]

6

7 Vice-Chair Alcheck: So well let me... so my recollection was that we grappled with this situation
8 which is quick unique with these adjoined properties on two parcels with separate zoning
9 designations. My sense was that we grappled with this situation because it was very difficult to
10 reconcile why the City in the '90s was willing to accept the use subject to some very
11 insignificant conditions... to accept a non-residential use I should say subject to some
12 conditions. And for whatever reason, the prior owner decided not to satisfy those somewhat
13 negligible conditions. And so, the retail use on a residential parcel which we were as a City
14 comfortable with two decades ago resulted in some transitions into more of an office use and
15 then it's existed for what may be over two decades. And so, like the uniqueness... I think that
16 was a big part of why we struggled with this because we couldn't reconcile our previous or the
17 City's previous interest in, I guess flexibility with that parcel with the suggestion that today
18 housing is the only option.

19

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1 I think that the Staff's recommendation limiting the time to 2-years instead of the 5 we
2 originally contemplated is a good decision. I think regardless of however much time we want to
3 allow the property owner to operate their currently non-conforming use, regardless of what
4 time period we choose there should be a rationale behind it. And for that reason, I think
5 including the reference to the NVCAP is important because that provides me with some logical
6 connection. It's my impression that the NV... I think there is an end date for the NVCAP. I think
7 it must conclude by the conclusion of 2021 but let me double-check with Staff.

8
9 Ms. Tanner: Through our grant obligations we do have an extension through 2022 but I don't
10 know that our funding will be lasting that long. And so, I think we will be trying to conclude the
11 adoption hears at the end of next year, possibly a little bit into 2021. Just depending on how
12 the hearing schedule goes.

13
14 Vice-Chair Alcheck: So, I think the second component of this that I... it's my impression with
15 respect to the timeline that you referenced was that I think once the applicant became aware
16 that the Staff wasn't going to recommend... was recommending not to adopt a Text
17 Amendment. I think at that point it became clear to the applicant that they would need to
18 come up with an alternative. If 5-years ago the applicant was under the impression that at
19 some point in the near future there would be a Text Amendment allowing them to operate,
20 that would suggest that they would have no reason to consider a redevelopment. So, I think the

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1 failure... I think the suggestion that there's no project that's been put forward is problematic
2 because you wouldn't know that you needed to necessarily have a backup plan if you were
3 under the impression that within some period of time you were going to get a Text
4 Amendment. Only to find out 5-years later that those work for the Text Amendment has been
5 done but Staff's actually recommending not adopting it. At which point we better kick it into
6 high gear and have Plan B. So, I'm not... my impression is the reason we learned of an
7 alternative project is because they need to come up with one.

8

9 So, I think that considering that the ideal scenario for this parcel is one that sort of developed in
10 a way that's consistent with a vision that we have for this area. And that vision is being worked
11 on and effected by the NVCAP process which is likely to conclude in 1 or 1 ½-years which should
12 give the applicant an idea of the direction they can begin to pursue with their potential changes
13 that they should make to their... that they might want to make to their site if they don't want it
14 to be vacant. That seems both rational and to some extent compassionate. And I don't feel like
15 there's any component of this situation that would suggest that rational and compassionate
16 treatment is not appropriate. It doesn't seem like there was some sort of nefarious effort to
17 avoid enforcement. As I understood from our last meeting the parcel owners brought this to
18 Staff in an effort to get... to come into compliance. So that's... I really want to suggest that as a
19 Commission and as a City we treat property owners who make an effort to bring any issues into
20 compliance as something that... an individual should be recognized for that type of effort. Not

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1 necessarily rewarded but it is the kind of behavior we want to encourage, not discourage. And
2 as a result, I think sort of a rational compassionate response like the one that Staff has
3 suggested here is appropriate. I am also happy to learn that the applicant is comfortable with
4 the suggestion. So, when we're done with this session, I'd be happy to make the motion or
5 support the motion.

6

7 Chair Riggs: Ok I'm just going to take my comments inline. I think this is a reasonable solution to
8 a complicated one-off situation but one thing that you said Rachael gave me pause. If there's a
9 chance that the NVCAP will extend into 2022, to me it seems that we want to map the duration
10 of this ordinance to the worst-case scenario. So, I guess I don't know why we wouldn't be using
11 3-years and so I think that gave me pause because I do... I did see that is as being linked to that
12 plan. And if there's even a remote possibility that it is delayed or requires more funding then it
13 seems like the term should reflect that. So, I'll just put that out there, I don't know that it
14 warrants a response. I don't know how the rest of the Commission responds. I know that that
15 was one of the points of discussion before when you came forward with the 5-years originally
16 but I would... I don't feel like we should rehear this in 2-years simply because we didn't plan
17 accordingly for a contingency related to another effort that we don't know the timeline for.
18 So... or we guessed the timeline, we're not certain.

19

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1 Ms. Tanner: Well the grant obligation... I should be more specific... because we needed an
2 extension the way that the grantor offers extensions is one time, 2-year extension. So that's
3 just the automatic extension so our contractual obligation with the grantors is to end by 2022
4 but all of our contracts are ending next year. So, in terms of our consultant and things of that
5 nature. So, I'm not one to predict the future but given the way the current funding situation has
6 evolved with the City Council, we would need to conclude in the next year.

7

8 Chair Riggs: Unless the award additional funding or (interrupted)

9

10 Ms. Tanner: And people do change their minds so that could happen.

11

12 Chair Riggs: I just, again I would just want to plan for the unexpected. That was the only reason
13 it gave me pause.

14

15 Ms. Tanner: Certainly.

16

17 Chair Riggs: Sorry, I have a job to do. Commissioner Templeton.

18

19 Commissioner Templeton: Hi, thank you. Did the application begin in 2014 or 2017?

20

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1 Mr. Gutierrez: It began in 2017.

2

3 Commissioner Templeton: Ok so I ask that because I was thinking about Commissioner Lauing
4 question about the 5-year. So, it's only 2-years since they became aware of the zoning changes
5 preventing the work they were trying to request.

6

7 Ms. Tanner: To our knowledge.

8

9 Commissioner Templeton: To our knowledge, ok. I'm hopeful that we don't move the bar. We
10 did hear this before and set some expectations. I think Staff has come back with a very sound
11 proposal. It sounds like the applicant is on board.

12

13 Regarding the timeframe, I agree with Chair Riggs about the wanting to make sure we are able
14 to maximize the use of that space based on the outcome of the NVCAP zoning that way it
15 allows for more housing. But I also think that having a 2-year timeline on this may provide some
16 motivation for the NVCAP group to consider that area as soon as possible. So, I..., in the end, I
17 think I'm ok with the 2-year.

18

19 I have a question for the applicant. Have you been able to attend an NVCAP meeting since your
20 last time here?

-
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Mr. Agramonte: No not yet.

Commissioner Templeton: I highly encourage it and probably even everyone if you can as you are... the more you understand the neighborhood that your building is in and meet with the neighbors who may be inspired about how to proceed. So, they have an excellent neighborhood association as well led by Becky Sanders that you may want to reach out and just have a conversation with her as well.

And the last thing is what happens if no housing plan is in place by December 2021? Do we need to describe that in our plan?

Ms. Tanner: At that time the use would again continue to be non-conforming, not a legal use, and the City would need to enforce our zoning through our Code Enforcement. And so, we would ask that the property owner cease the use at that time and if the use was not stopped would continue through the Code Enforcement process.

Commissioner Templeton: Is that a complaint-driven Code Enforcement or would it automatically start?

-
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1 Ms. Tanner: Typically, our Code Enforce is complaint-driven. I think in this case we are
2 establishing something if the set Council approves this. That would be pretty unique and pretty
3 specific that I think would clearly indicate the City should take responsibility at that sunset time
4 to enforce the regulations.

5
6 Commissioner Templeton: I agree. I think that would be highly motivational for everybody
7 concerned and just thinking again to Commissioner Lauing's comments that we wouldn't want
8 to let this continue to drag on. We really do want to see development in that area so thank you
9 very much.

10

11 Ms. Tanner: Absolutely, thank you.

12

13 Chair Riggs: Commissioner Summa.

14

15 Commissioner Summa: Thank you to Staff and the applicant for being here tonight. You know I
16 think that whether or not there should be a moratorium on entitlements in the NVCAP area is
17 an interesting issue but not one that's agendize for this evening and something I guess the
18 Council could take up if they were interested.

19

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1 I also reread the City Council transcript and noticed at that time it was a pre-screen for a Zone
2 Change which the Council... I thought it was a pretty resounding no on that for a pre-screening.
3 In fact, three of the four nos', there were eight presents, are... three of them are Lydia Kou,
4 Tom DuBois and Eric Filseth, the Mayor, are on the Council now. And the reasoning was
5 because what we want to... what we need and want is housing, not office space. So, and the
6 other members present, there were two that were kind of in the middle and two that were
7 really wishy-washy. So that was a big... that was interesting to me so I guess what they decided
8 was to try a different route. I didn't hear strong encouragement to try a different route from
9 Council. What I heard was strong encouragement to let's have housing or retain housing so that
10 informed me.

11

12 Also, there is no project pending. There is an extremely hypothetical idea that sometime in the
13 future if they get more land. They don't have the land to do it now. They mentioned an acre,
14 they would like to do multi-family housing. That's totally hypothetical and while I am also a
15 compassionate Planning Commissioner I... they acquired the property in 1993 and look, I've
16 brought property. You sign page after page after page to know what you're buying so I think it
17 behooves them to have known what the property was zoned as etc. And I do not think its part
18 of the City's job or this body's job to preserve private investment expectations of the highest
19 level. I think it's our job to maintain zoning.

20

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1 So, I'm not... it's not that I'm unsympathetic, it's just that they have at least till 2014 when they
2 applied for a UNO Permit, they have been out of compliance. That's the best-case scenario. The
3 whole property has been out of compliance for 30-years. They've owned it since 1993. I won't
4 go so far as to presume what they knew or didn't know before 2014. Since that time, we have a
5 penalty schedule in our Municipal Code which Staff can correct me if I'm wrong. The last time I
6 looked for zoning non-compliance the penalty is \$500 the first day, the second day it goes up to
7 \$750, it's a \$1,000 after that. So, in honesty I consider this to be a case where they not only
8 received a higher rental possible from an office that is not compliant but they also weren't
9 required to pay any penalty fees. And I struggle to understand how that's fair to other
10 applicants... other property owners in the same situation and I also struggle with the message
11 we'll be sending. We are not trying in fact to prioritize housing and is this a precedent where
12 every or many residentially zoned property owners that are adjacent to especially abutting
13 commercial zones will want the same privilege we're extending here. And that neither seems
14 fair, smart, or wise. I feel like I don't want to penalize the applicant but I don't want to reward
15 them for a situation where they've benefited greatly financially to the... in comparison to those
16 who have followed our Zoning Code.

17

18 So, I wasn't in favor of this before, I'm not in favor of it now. I appreciate the Staff came
19 forward with what seems to be a reasonable recommendation based on the Council...
20 Commission majority but I also find that the Findings, the last clause of D and E are based on

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1 this hypothetical building that may or may not ever come to fruition and let being in D, “and
2 professed an interest in future development of multi-family housing on site.” And then in E,
3 “while exploring the possibility of developing multi-family housing.” I could not... even if I was
4 whole in favor of this given the unfairness I think and the advantage to one parcel owner over
5 many others I could not make those Findings. I mean maybe if we wanted to somehow bind
6 them to creating multi-family, I don’t know, through some sort of financial bond or something
7 but you know we don’t typically do things like that in this City. So, not only am I not in favor of
8 this for the reasons that I stated before, I like everybody to make as much money as they can
9 off of investment property but I don’t once again think it’s our job to somehow make that
10 happen for parcel owners. And I really... even if I was a wholeheartedly in favor of giving them
11 this special advantage, I would not be able to make the Findings on D and E based on what I
12 said. Thank you.

13

14 Chair Riggs: Commissioner Waldfogel.

15

16 MOTION

17

18 Commissioner Waldfogel: Thank you. Thanks again for bringing this back so quickly. I wasn’t
19 expecting it in what is it 30-days, 40-days? I’m inclined to support Staff’s recommendation
20 tonight. I hope that it’s abundantly clear that we’re dealing with a special case and not setting a

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1 precedent for future land use. I mean I also want to emphasize that I don't love the history on
2 this site. I don't think any of us do. I want to deal fairly with the current situation even if the
3 current office use, I think we heard at the last meeting, was a result of trying to avoid falling
4 under the Retail Preservation. So, I mean we should be clear that there are many dimensions to
5 this.

6
7 As far as NVCAP, I think it's great to coordinate with NVCAP. I think NVCAP is... right now that
8 work is directional. It's hard to know exactly where it will go and whether it will produce a
9 result. I'm not sure that all the stakeholders are fully committed but time will tell. And I think
10 truth be told I think this project may be the horse that drives the NVCAP cart. I mean I think I
11 would urge the property owners to actually put together a proposal that you think makes sense
12 as you're able to do what you're doing; accumulate parcels or whatever you're doing and work
13 with Staff because I think this may inform where the NVCAP process can go. I mean you should
14 be working with stakeholders; you should go to those meetings; you should be participating but
15 I would just urge you to think about what makes sense here because it's just hard to say if the
16 timing will line up. I mean that process will take time, it will take time to develop zoning as a
17 result of that process. So, it would be nice if you could move faster than that. You're the private
18 sector, move faster than government.

19

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1 I'm also pleased to hear that Staff is taking my colleague's recommendation, also Mr. Borock's
2 recommendation, about being proactive on enforcement. So that's good news, we may want to
3 develop some more active amortization monitoring enforcement. I don't know how many other
4 parcels are involved. I'm not going to try to second guess what happened 5, 10, 20-years ago
5 but something that we should just be on top of.

6

7 So, given that and also given my colleague's comments I'd like to make a motion for the Staff
8 recommendation to recommend adoption of the Attachment A Ordinance.

9

10 SECOND

11

12 Vice-Chair Alcheck: I'll second.

13

14 Chair Riggs: Seconded by Commissioner Alcheck [note – Vice-Chair Alcheck]. With... unless
15 there's any discussion on the motion I feel like we should vote. Ok, Commissioner Lauing?

16

17 Commissioner Lauing: Yeah, a couple things. Once again, our discussion at the last meeting was
18 sort of, I would say conditioned on at the end of whatever time period came back with that
19 there would be a proposal for a project. So how can we tie that in here to say that at the end of

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1 that time period we are expecting an application for some kind of project or are you just more
2 comfortable saying that if we don't see it the fines start the next day?

3

4 Ms. Tanner: So, I just want to remind the Commission that Staff is not in favor of a Text
5 Amendment but Staff did come back because the Commission voted in majority to come back
6 with a Text Amendment for a shorter period of time than requested. Staff remains opposed to
7 this Text Amendment but again, is bringing it forward through our democratic process. And so,
8 in that regard, I find it difficult to find any practical means to require a property owner to take
9 an action to develop plans to do something with their property. They have stated that they
10 want to do it, we've put it into the record to remind future Planning Commissioners, future City
11 Council, future property owners that the intention of this action is that it become multi-family
12 housing. And it would be up this body, future planners, future Council Members to decided that
13 if at the end of the 2-year period no action has been taken that is sufficient whether they would
14 entertain an application to either extend the Text Amendment or to approve projects that
15 might come before this body. That may not be the answer that you want but I think that's the
16 most honest answer that I can provide.

17

18 Commissioner Lauing: Very thorough again, thanks, appreciate that. Any project that would
19 come up before the NVCAP was done, regardless of what timeframe that is. Let's say it took 6-
20 years and something got going in 2-years. Once that NVCAP's in place, there's not going to be

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1 any going back on the project. So, the point is that there's no delay at all if this is passed tonight
2 or not frankly. You can start tomorrow on finding something to do as an alternative in that
3 space and would argue that you should.

4
5 I frankly was more comfortable with the 1-year than 2. I don't think that's worth discussing
6 from what I've heard up here tonight but I definitely feel like it should be short term. And there
7 should be action here and that this absolutely should be the last extension unless there's a
8 project underway.

9
10 Chair Riggs: Commissioner Summa followed by Commissioner Alcheck [note -Vice-Chair
11 Alcheck].

12
13 Commissioner Summa: Just a question for Staff, since their hypothetical project that they may
14 or may not want to do someday, they did state that they wanted 1-acre. Is there even 1-acre of
15 CS zoning available that's contiguous to their property? And I would remind everybody that CS,
16 you can already have multi... mixed-use which would include multi-family (interrupted)

17
18 Chair Riggs: I would just cautious us to not talk about a project that doesn't exist.

19
20 Commissioner Summa: But we're basing (interrupted)

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Chair Riggs: I think it's very speculative.

Commissioner Summa: I know but some of us are basing our decision on a speculative project.
I am not but.

Ms. Tanner: So, your question is if there is even an acre of land that could be assembled
(interrupted)

Commissioner Summa: At this time (interrupted)

Ms. Tanner: That's contiguous?

Commissioner Summa: That's contiguous to their CS.

Ms. Tanner: Sam, are you familiar with the neighboring (interrupted)

Mr. Gutierrez: I could speak to that. The two adjoining parcels to the El Camino parcel they commonly own, if you were to purchase those two and then combine them with the El Camino parcel and this 470 Olive it would approximate an acre together, yes.

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Commissioner Summa: Ok, that's interesting.

Chair Riggs: Commissioner Alcheck [note – Vice-Chair Alcheck]

Vice-Chair Alcheck: Yeah, ok, I just want to address a few things. Number one, the motivation I have for supporting this motion is entirely unrelated to an individual property owner making money or not making money. The consequence of not adopting this Text Amendment is that assuming Council reviewed it tomorrow, the very next day the use would have to terminate, and the property unless occupied as a residence would have to be vacant. The assumption is that is wholly unfit to be a residence and the effort to redevelop it would co-exist with a vacant property. And the motivation from me... on my part for supporting this motion is that a vacant unused property would be blight inducing and the neighborhood would have absolutely no benefit there. It would injurious to the neighborhood. So, the flexibility that I think we should be considering here is in an effort to give them an opportunity to get ahead of this so that the transition between the uses does not also create what I would consider harmful neighborhood presence of a vacant lot.

I think a second thing I want to mention here is the answer to your question is this has no relationship to a project. The City has absolutely... I mean there's a fundamental flaw I think in

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1 the... your understanding of how this works because the City has absolutely no power to
2 require this property owner to develop anything. They only have the power to determine that
3 their use is not permissible and must end. And if they make that determination, the use has to
4 end or they get fined and then presumably at some point they stop the use because the fines
5 become overwhelming and then the property can essentially exist in perpetuity as a building.
6 What we're trying to do is not force the property owner to build because we don't have that
7 right or that power regardless of how we draft this Text Amendment. Our attorney can tell us
8 that there's no bond that we can create. It's completely outside of the bounds of the City's
9 authority. What we can do is say we appreciate that vacant properties are unappealing in our
10 communities, especially our residential areas. And we'd like you to conform... create a plan to
11 conform this property and we're going to give you a period of time to do that. So that while we
12 wait for you to hire architects, engineers, apply for Building... for planning approval and Building
13 Permits we don't also have the equal problem of a lot that is literally fenced up. It's not... and I
14 say that because I'm under the impression that they couldn't operate it as a retail space either
15 because that was what would have been permissible if they had satisfied the condition in the
16 '90s. So, the permissible use would be residential, is that right?

17

18 Ms. Tanner: The only permissible is uses in R-1 use or other uses that are permitted in R-1
19 zones so again we did discuss there are other uses daycare; afterschool programs; educational
20 uses. That could be permissible as of right and certain uses that could be applied for under

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1 Conditional Use Permit in R-1 zones. So, there are other options besides a dwelling unit than
2 the office use.

3
4 Vice-Chair Alcheck: So, barring the intent of operating it a nursery or something similar I think

5 the assumption is that the lot would likely become unused. So again, I think our... the decision...

6 the motivation to permit this flexibility is really in an effort to create a real incentive for you
7 guys to get started. And a few Commissioners have given you some advice and I would add to

8 the advice which is you should create a plan based on what you can do today and create a
9 second plan based on how you feel the NVCAP may or may not facilitate other options. And

10 both of those plans could theoretically I think Commissioner Waldfogel's suggestion that you
11 participate in the process. I think he is correct in assuming that the discussion about this

12 particular parcel may really inform the entire process. I don't imagine that you will have a
13 submitted and approved plan in 2-years' time. That hasn't happened in the 9-years I've been

14 here but hopefully; the property won't be vacant too long or underutilized for too long. I
15 assume that... I think the suggestion that Staff has created is going to be a band-aide that

16 covers the majority of the time it's going to take you to get this job done. I don't think it's going
17 to cover the entirety and I'm comfortable with that.

18
19 Chair Riggs: Ok, Commissioner Summa I have you... your light on again is that... did you want to

20 speak again?

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Commissioner Summa: I did. Staff actually covered... I was going to remind everybody that there are other R-1 uses besides residential. And I also wanted to just mention that Director Lait at the October 17 meeting did say they had satisfied... this owner had satisfied through some improvements the retail requirements. So, we never discussed that but we didn't discuss it because the applicant did not want that. And I wanted to point out that two doors down or three doors down on Olive there is a building that appears to be a commercial building that was renovated into a home. Which is a very interesting and useful option also so I'll just leave it at that.

VOTE

Chair Riggs: Alright so I'd like us to vote if that's ok if there's no other questions? Ok, so all in favor of the motion on the floor which is to support Staff's suggested ordinance. All in favor? Any nays? Any abstentions? Ok, so motion carries 6-1.

MOTION PASSED 6(Lauing, Roohparvar, Alcheck, Riggs, Templeton, Waldfogel) -1(Summa)

Chair Riggs: Alright Doria... Commissioner Summa, would you like to speak to your decent?

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1 Commissioner Summa: I don't think I need to say anything else. I think I've made my feelings
2 clear.

3

4 Chair Riggs: Alright so thank you all for being here and thanks to the Commission for their
5 thoughtful deliberations on that item.

6 **Commission Action**: Motion to approve by Waldfogel, seconded by Alcheck. 6-1 vote (Summa
7 against)

8

9 **Approval of Minutes**

10 Public Comment is Permitted. Five (5) minutes per speaker.^{1,3}

11 3. November 13, 2019 Draft PTC Meeting Minutes

12 Chair Riggs: That's our only item for this evening but we do have some administrative items
13 including approval of the minutes for November 13. So, if we get a motion to approve those
14 minutes?

15

16 MOTION

17

18 Commissioner Summa: I'll make a motion.

19

20 Chair Riggs: Ok so Commissioner Summa.

21

22 SECOND

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Commissioner Roohparvar: I'll second.

Chair Riggs: With a second by Commissioner Roohparvar. So those minutes are approved.

MOTION PASSED UNANIMOUSLY

Commission Action: Motion to approve by Summa, seconded by Roohparvar. 7-0 vote

Committee Items

Chair Riggs: We don't have any Commissioner... Committee items.

Commissioner Questions, Comments or Announcements

Chair Riggs: And we do have one Commissioner comment. This is in front of you when you sat down you had a Chair's Memo from me to the Council doing two things really. Just summarizing all the things, we did and we actually did quite a bit and so if you want to look at that. This is actually not a discussion item. We... the way it was agendize we cannot discuss this but this will go from me to Council as the Chair and it also has some ideas of things that I think could be opportunities that the Commission could seize in the future and perhaps lead on. So, I will leave it at that and I think the memo speaks for itself in its own right.

So, with that said I think if there's any other questions or comments from the Commissioners?

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Ms. Rachael Tanner, Assistant Director of Planning: I just wanted to... I know I didn't give a Director's Report in the beginning. I just speak a little bit to the NVCAP, that's probably the most notable items that's happened since you all last met. When the City Council did meet to consider a Budget Amendment to essentially pay for the expanded scope and contract... amendment contract with Perkins and Will. That required kind of a supermajority so it needed at least five votes to pass, we did not secure the five votes, there were three no votes from the City Council and so that motion failed. Which means we need to work with our consultant to figure out how to accomplish the goals of the project and of the work with a smaller budget than we had hoped. I remain confident that we can work with our consultant. Already have been in really positive discussions with week about how we can achieve the same quality of work, the same goals that the project has embraced and been assigned from the City Council and still with a great deal of community engagement. So, while it wasn't certainly what we hoped to receive, I think that it is not the end of the project by any means and I think we have some good momentum where we're moving forward. And I remain hopeful that it will be a very fruitful project that can hopefully yield significant housing for our City and really enhance the neighborhood for those who live there and those who may live there in the future.

Chair Riggs: Commissioner Summa.

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1 Commissioner Summa: I just wanted to... I was going to report on the NVCAP also and I was
2 going to say we had a... we have... the Council authorized a separate consultant, hydrologist
3 consultant to look at the creek issues and we've had two really great reports from them.
4 They're really coming forward with really concrete data and ideas so that is very hopeful. And I
5 understand that some of... it might be a heavier burden for Staff without as much consultant
6 contribution but I am really feeling that Staff could do a very good job on their own with that
7 anyhow. So, I think we can move ahead in a progressive way.

8
9 And I just want to ask the Chair so this... so we will not be transmitting a Commissioner annual
10 report to the Council? Does it... your transmission is in lieu of that?

11
12 Chair Riggs: I believe the tradition has been that the Chair issued a memo. The way this... and
13 you can... if you need to shut me up you can but the way we structured this meeting we are not
14 able to... the way we agendize this item we are not able to discuss it. I... it was... can we be
15 honest?

16
17 Ms. Sandra Lee, Assistant City Attorney: Mr. Chair you can answer the question though I mean I
18 think it's pretty limited but could I just say that my understanding from speaking to folks who
19 have been on this Commission. And also, those who have supported the Commission is that
20 there is an annual letter, at least in the last few years and maybe skipping a year or two, where

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1 that comes from the Chair of the Commission and not an annual report from the Commission as
2 a whole to the City Council. Some years there's an opportunity to have a joint study session
3 with the City Council.

4
5 Chair Riggs: And in honesty, I was out of the country and Rachael and I were communicating
6 back and forth. And we were going to agendize it in a way that we could discuss the memo and
7 we could all... you could all inform it. It got left off the agenda.

8
9 Ms. Tanner: Apologizes.

10
11 Chair Riggs: And nobody... I'll take the blame because I left the country from 2-weeks after I
12 wrote the memo. And then when the agenda got issued it wasn't on there and I said what the
13 heck? And we figured out a way to submit the memo but we just can't discuss it.

14
15 Ms. Tanner: And I think this process in terms of the submission of the memo from the Chair to
16 the City Council mirrors what the ARB does. I think ARB does, in addition, have a report that is
17 perhaps a little bit more Staff driven I think than this memo that's from the Chair to the City
18 Council. But I think in part Sandy and I are trying to learn from other Staff of what has
19 happened in years past and sometimes there's not always consistency from year to year so.

20

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1 Chair Riggs: I think it's a tradition, it's not a requirement and therefore it's not a... there's
2 nothing prescriptive about how it has to be done.

3

4 Ms. Tanner: I would agree with that.

5

6 Chair Riggs: I do want to... I don't want to cut you off Commissioner Summa but if you... I do
7 want to cover a couple more other things and I'm not going to achieve my be out of here by 7
8 o'clock threshold. Sorry, Asher.

9

10 Commissioner Templeton: (off mic) So close.

11

12 Chair Riggs: If you want to look on Page 6, I want to make sure everyone has a look at the 2020
13 schedule. Our next formal meeting we had discussed trying to do... [unintelligible] trying to do a
14 meeting on the 8th of January but Staff informed me they wouldn't really have... there was a lot
15 of uncertainty whether or not they'd have any items for that. It's after the holidays. Our first
16 meeting of the year will be on the 29th.

17

18 One thing I want to highlight is we have assigned Council representatives based on last year,
19 here at the bottom. If you could take a look at that if there are any glaring... if there's anything
20 glaring from your schedule. I know Commissioner Waldfogel, we've slated you in, in February

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1 and that's TBD based on your status. So, but otherwise if you see yourself on here and there's
2 some... there's scheduling difficulties if you could just see me after and we will... we can
3 massage this as needed but I want to highlight that.

4
5 And also, so a couple of items I think we can expect in the new year. I know we can expect I
6 think there's a couple percolating housing things and also we are going to see Castilleja in the
7 new year and at least based on my conversations with... at the last meeting with Planning
8 Director Lait we are going to get back the Cubberley project at some point I think; hopefully.

9
10 Ms. Tanner: I wanted to note that unfortunately, it looks like Page 5 the dates are on Thursdays
11 but those should be on the Wednesdays of the year so please don't copy this. Am I looking at
12 the right one? I'm looking at 2019.

13
14 Chair Riggs: No, that's last year.

15
16 Ms. Tanner: That's wrong, I'm looking back. I was like oh my gosh everything is (interrupted)

17
18 Chair Riggs: It's Page 6.

19

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1 Ms. Tanner: On a Thursday, what's going on but now I'm looking at the right one. I almost had a
2 little heart attack there. I was so what happened? Ok, everything looks right.

3
4 Chair Riggs: So, Commissioner Templeton just said we will be electing new leadership in the 29th
5 meeting. We're going to determine when in the meeting we'll do that. It may be a really heavy
6 meeting. We... at least I've been told it could have six or seven items at that meeting. So, I don't
7 know did you tell me that or am I making that up?

8
9 Ms. Tanner: I don't know if it will be six. It might feel like six or seven items but certainly the
10 wireless item (interrupted)

11
12 Chair Riggs: Tell this into [unintelligible] weeks. He's a fool.

13
14 Ms. Tanner: We might have... we have at least two items and possibly a third item.

15
16 Chair Riggs: That's clearly six or seven. Oh, that was a big fish. Alright, any other questions or
17 comments?

18
19 Vice-Chair Alcheck: I don't think we need to go over it right now but if Staff wouldn't mind can
20 you circulate the written guidelines or the process for election to everybody on the Commission

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1 sooner than later? So that it's not like the Thursday before the meeting just so that we have a
2 little bit more time to understand the process before we walk into that meeting.

3

4 Ms. Tanner: Yes, we can do that.

5

6 Chair Riggs: Alright I see no lights, I see no hands, with that said unless Staff has anything else, I
7 think we (interrupted)

8

9 Vice-Chair Alcheck: (off mic) I feel like we have to gavel this one out.

10

11 Chair Riggs: Oh, I have to gavel this one out. I hope everyone has a great holiday and with that
12 said I think we are done for the decade.

13 **Adjournment**

14 7:05 pm

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Palo Alto Planning & Transportation Commission

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Vice-Chair Michael Alcheck

Commissioner Ed Lauing

Chair William Riggs

Commissioner Giselle Roohparvar

Commissioner Doria Summa

Commissioner Carolyn Templeton

Commissioner Asher Waldfogel

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Material related to an item on this agenda submitted to the PTC after distribution of the agenda packet is available for public inspection at the address above.

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