



PLANNING & TRANSPORTATION COMMISSION MINUTES

=====MEETINGS ARE CABLECAST LIVE ON GOVERNMENT ACCESS CHANNEL 26=====

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*Wednesday, October 25, 2006
Council Chambers
Civic Center, 1st Floor
250 Hamilton Avenue
Palo Alto, California 94301*

ROLL CALL: 6:00 pm

Commissioners:

*Karen Holman - Chair
Lee I. Lippert- V-Chair
Patrick Burt
Paula Sandas
Arthur Keller
Daniel Garber
Samir Tuma*

Staff:

*Curtis Williams, Chief Plan./Transp. Official
Donald Larkin, Senior Deputy City Attorney
Julie Caporgno, Advance Planning Manager
Amy French, Current Planning Manager
Paul Mennega, Associate Planner
Zariah Betten, Executive Secretary*

AGENDIZED ITEMS:

SPECIAL MEETING AT 6:00 PM

STUDY SESSION:

1. Zoning Ordinance Update: Study Session for Chapter 18.88 – landscaping criteria.

REGULAR MEETING AT 7:00 PM

2. 3270 West Bayshore
3. Zoning Ordinance Update: Ordinance Amending Title 18 to delete Chapters 18.28 and 18.64 and to adopt a new Chapter 18.23

APPROVAL OF MINUTES: September 27, 2006

SPECIAL MEETING AT 6:00 PM

Chair Holman: Good evening. I would like to welcome you to the Special Meeting of October 25 and we are convening at six o'clock this evening for a special study session about the Zoning Ordinance Update pertaining to landscape standards. Would Staff like to make a presentation?

We have no Oral Communications this evening because there is no one here and that would be taken up at seven o'clock.

STUDY SESSION:

1
2 **1. Zoning Ordinance Update:** Study Session to discuss changes to Chapter 18.88 of the
3 Zoning Ordinance to address landscaping criteria.
4

5 Mr. Curtis Williams, Chief Planning and Transportation Official: Thank you. I will just briefly
6 make a few comments before turning this over to Dave Dockter. We are coming to you tonight
7 with our initial discussion of potential landscape requirements for the Zoning Ordinance Update.
8

9 We currently have a section of the code that has a number of miscellaneous types of standards in
10 it and we anticipate that landscape will be one of those subsections of that code chapter as it is
11 reconstituted in the new zoning update.
12

13 Some other items that are also going to be in that same chapter include wireless communications,
14 the cell towers and guidelines for those as well as some requirements for streambed impacts and
15 setbacks from creeks and other water resource related issues that we are required to implement
16 by state and federal law. Those two items you will be discussing next week at a study session.
17 We had originally intended to combine all three in one study session for you but Mr. Dockter is
18 not available next week so we moved him up to tonight.
19

20 What we would like to do is just have Dave talk about some of the concepts that are in the Comp
21 Plan and that he is familiar with that we might look at incorporating into landscape criteria. We
22 are also looking at developing a landscape technical manual similar to what we have for tree
23 technical manual so a lot of the more detailed landscape information can go in there. We would
24 like at this point have Dave make a 15 to 20 minute presentation to you and then just open it up
25 for any thoughts that you have about what direction to go. We will try to come back to you
26 probably in a month or five weeks or so with some draft language to consider along with those
27 other issues that I discussed. It would probably be most efficient if we let Dave get through his
28 presentation before having questions. I would also note that Commissioner Keller sent a few
29 questions about the landscape issue and with his indulgence I would suggest also that we let
30 Dave make his presentation because I think it will respond to some of those questions. Then
31 subsequent to that if you still have questions raise them with Dave.
32

33 We also have Whitney McNair here tonight. Whitney has been working with Dave on
34 developing some of these criteria and looking into how to reformat our Zoning Ordinance to
35 include them. I think all of you probably know Dave Dockter who is our Managing Arborist but
36 he is more than that I think you are probably familiar with the fact that he does quite a bit of
37 outreach with the community as far as trees in particular as well as other landscape issues and in
38 fact does a lot of outreach with a lot of communities. He has been speaking to other cities and at
39 state functions and on radio programs and wherever else he can get the word out. With that I
40 would like to let Dave go ahead and begin his comments. Then afterwards all of your comments
41 that you make tonight we will take back with us and if you have subsequent comments you
42 would like to email to us that is fine too. If you want to sit down with Dave I am sure he would
43 be glad to do that on an individual basis. Thanks.
44

45 Mr. Dave Dockter, Managing Arborist: Good evening Commissioners and Chair Holman.
46 Thank you Curtis for the introduction. I think we will jump into some of the things that we have

1 jotted down here as considerations. By no means is what you are going to see here tonight
2 exhaustive or comprehensive and complete. These are just ideas that we want to pull in. The
3 details will of course be coming forth in a draft. We really want your input on some of the
4 direction on these topics that we have here for sure and any other details that you might have
5 stored up over the years that need addressing in a landscape ordinance. We definitely want to
6 encourage you to pass them all to us.

7
8 Our existing landscape criteria are found in a few places particularly the zoning code has a few
9 in design standards and parking facilities, as you are probably aware, 18.83 is where they are
10 both found. Landscaping is referenced in our Comprehensive Plan so there is direction that Staff
11 and the Boards and Commissions and Council receive from the Comp Plan but it is not codified.
12 We do find direction for landscaping there. The other projects like the Sand Hill Road,
13 Arastradero Corridor, Charleston Corridor and the Arastradero updates also have landscape
14 specific direction that we receive for development projects. The Architectural Review Board
15 also imposes landscape conditions on projects. All of these or most of these actually direct Staff
16 that we have to do quite a bit of conditional approvals to be pretty site specific but also because
17 there is a lot of fill-in and quality control that is left up to the discretion of the project designer or
18 Staff to make sure that there is a quality element that we want to see. The landscape section is
19 past due and we are really looking forward to shoring up the quality control that we want to see
20 in Palo Alto.

21
22 The existing Zoning Ordinance that we have discusses landscaping in two areas or it divides
23 landscaping into basically two boxes those inside a parking area and those outside of a parking
24 area and that's it. So those boxes there are the direction that Staff receives to actually create
25 some of these site-planning scenarios that we go through. I think the goals of the landscaping
26 standards that we want to entertain, that you will be key in drafting is we want to not fit
27 everything into a couple of boxes but we want to really treat each site as it should be without the
28 hardcore boxes around it. So we want to be a little bit more liberal in how we address the
29 required details that we end up codifying. In that we want to integrate landscape design with a
30 concept of it is actually becoming infrastructure. We want landscape to be considered a very
31 major and primary element in a site. With that is going to come some of the requirements that
32 we will have imbedded in the landscape section. That will play huge role in storm water
33 management and in several other items that we will be touching on here. Having this concept
34 about landscape it will also be extending the life of all of our infrastructure that we are planning
35 on and it will make things more efficient and cheaper to operate for the private property owners
36 that build with these new landscape standards. Of course we will be pulling in all of the current
37 best management practices and all the new technology that we have available.

38
39 Part of the concept of this update will be referencing a landscape technical manual that will be
40 companion document to the ordinance. It will directly reference it. We put all of the details and
41 boring, tedious things in this landscape technical manual document. The real specs will be there,
42 alternatives, changes, choices that Staff may have or a property owner developing. Those we
43 envision to be housed in this companion document similar to the tree technical manual so we
44 leave the code pretty much just pure with formulas and true requirements.

1 We have a couple of areas in the Comprehensive Plan as noted here that are really elevated in
2 importance around creeks, riparian areas and the Open Space District and we did include the
3 Bayland areas. Those three I guarantee are going to be a major emphasis that we have creating
4 standards for these areas that are probably the three biggest missing links for Staff anyway and I
5 think Council and the Commissions that actually review projects that wish there were standards.
6 So I think this will greatly help our consistency with the Comprehensive Plan to have some
7 identified standards to build by and design with.

8
9 A mention on the streetscapes, the street trees that we have there is a lot of reference in the Comp
10 Plan and the community, the El Camino Master Plan, how we are looking at the Zoning
11 Ordinance Update that we have in front of us tonight that we are looking at is we have decided it
12 is important to leave the street improvements to be included in the Street Tree Master Plan
13 predominantly. I don't know if you have heard yet but we can use tonight as a springboard to
14 announce that we are considering updating the whole Street Tree Master Plan concept. The last
15 update of that or the creation of it was 1984 so it is a timely document that will cover all of the
16 future design, street tree plantings, sidewalk right-of-way use of the future. So this Zoning
17 Ordinance Update that we are going to be entertaining here is really going to be predominantly
18 applying to the private property aspects of our city. The Street Tree Management Plan may
19 choose to reference the guidelines that we are setting up here. We will absolutely be referencing
20 the Street Tree Management Plan. So some of the concerns that are identified in the
21 Comprehensive Plan like fine clean trees that don't make any litter or mess those type of things
22 we are going to leave that up to the Public Works Lead in the Street Tree Management Plan that
23 will be updated to find those perfect trees. We will help them all we can. So as you can see, the
24 El Camino Master Plan, the Charleston Corridors those other specific plans we will be pointing
25 to and acknowledging in the Zoning Ordinance. So we are going to make sure that everything is
26 cross-referenced and not too much is left out of our designing so that everything that gets built
27 can have context with the rest of the town.

28
29 Now I am going to bounce off some of these bullets like little stepping-stones in a creek. They
30 are more to just prompt consideration by the Commissioners tonight. Landscaping around
31 single-family homes is an area that we are wedded to but we want to be very careful and consider
32 it. There are some areas though that we do want to try to identify and try to clear up in the
33 landscape section here. One is below-grade patios that end up being quite large, light-wells,
34 above ground utilities on a single-family residence. We may want to see some definition of
35 landscape screening and suggestions there again to give more tools to Staff and the reviewers for
36 single family Individual Review. Planting of street trees is not a mandatory requirement
37 currently. It is something that we may want to consider if a second story is being put up or if
38 there are no street trees or if there is a rolled curb and sidewalk and no street trees maybe it
39 should be a requirement to have at least a tree in the front setback. It is something we would
40 definitely look for the Commission to provide some guidance on. Vegetation, types of
41 screening, I think we do need a list of some sort to get property owners in the ballpark of what
42 kind of trees and screening would be appropriate for the some of the skinny, narrow areas that
43 they have to deal with for privacy. There has been some discussion on several trees are not
44 protected however they might be quite sizable and pretty enhancing for a given neighborhood in
45 the front. They are not protected so should the Tree Ordinance be expanded, nothing to do with
46 the Zoning Ordinance. There have been discussions of how could single family Individual

1 Review have a little bit more authority in designing around other important trees that may not be
2 oaks or redwoods protected by the Tree Ordinance. It is just a thought and is there a way?
3

4 Next we want to provide some guidance for expectations of builders regarding rooftop gardens,
5 garden planters or rooftop almost lawns or a full garden. There is a big difference in the industry
6 of full-blown roof garden or just rooftop planters. So we would like to provide a little bit of
7 definition so that designers know which of the two types of growth up on a roof they might want
8 to entertain. There is a big difference in success rate and survivability.
9

10 Obviously in our update we want to include the storm water best management practices. We
11 want to somehow encourage landscapes to do double or triple duty and not only be a nice
12 aesthetic thing to look at but actually get people out there using it to be a usable landscape.
13 Somehow in the code I think we can encourage that. It may not be mandatory but it could be a
14 level of maybe a carrot that we can provide for property owners.
15

16 Other areas, again screening and vegetation are really critical. We want to identify some specific
17 areas and we want to specifically target types of concepts for screening the bumpers of cars in
18 parking lots visible from public streets, side yard plantings between buildings there is a big
19 difference between single family homes with only a six foot side setback and a requirement to
20 screen between two windows. That can be a real challenge and a similar challenge for
21 commercial buildings. What kind of screening is the appropriate thing? We are going to want to
22 provide some sort of guidance in size, shape and a little bit of the solar orientation with that too.
23 We always have with us utility cabinets. We also want to provide some guidance to designers
24 for utility cabinets that get put on property and also maybe some suggestion for some of our
25 right-of-way utility cabinets. Maybe the same list could be appropriate for both.
26

27 Some of the Comprehensive Plan areas are very specific and we want to address that in the
28 Zoning Ordinance landscape section and get some formality to some of the mandatory elements
29 that we expect of every single project. This will greatly help Staff if we can codify some areas
30 that will give creativity and liberty to a property owner and consistency and security for the
31 environmental aspects of a project. Fire safety, preservation of quite a few trees, landscaping,
32 retaining walls, I think there is really an opportunity to really get into some details there.
33

34 Similarly, with the Baylands we have interface areas around the harbor that whole area is pretty
35 dated and it is going to come up on the chopping block probably some day so I think this is the
36 appropriate time to provide for that day to integrate Baylands areas, Bayland type theme
37 landscaping.
38

39 Again rooftop gardens, usable open space – what is it and how can we encourage that? That is
40 our challenge and our opportunity. Usable open space, the size of the project dictates what can
41 be done with it but I think we can provide in our landscape codified section something for
42 everybody, for the larger properties in the Research Park down to the small commercial areas
43 that want to put a little lunchroom in the parking lot type design. Water pollution remedies we
44 are going to be specifically codifying some areas of designing with pollution control aspects in
45 mind and design standards for parking lots will become key in that. We are doing that now on a

1 project-by-project basis but it is a lot of custom hard work by Staff and it would be nice to have
2 more standards available to us.

3
4 We want to give a provision and guidance to smaller retrofit projects like the anthropology on
5 the right is the before shot, it is just a blank asphalt parking lot, we came up with something
6 pretty creative. For a retrofit semi-temporary parking lot we have structural soil, we retrofitted
7 with good shade trees, we did a pretty good job on a very, very problematic site. Again, parking
8 lot standards, this is our most recent challenge. When we get something that is a retrofit how do
9 we deal with it and how do we incorporate best management practices? That is some guidance
10 we want to provide in this update.

11
12 New construction where it is an entirely new site design we want to provide like a different level
13 of designing with infrastructure in mind for these. This is where I think the opportunity for
14 planning for the long term is at its best. So we will provide for that.

15
16 The last bullet is very, very important. We have a Comp Plan policy that goes after 50 percent
17 shading in ten to 15 years. That is achievable if we have some kind of a monitoring and
18 compliance provision. This standard is out there in California but I hear that the biggest problem
19 is actually monitoring it and maintaining that level.

20
21 This is just a fact of life that I can't help but put in but trees do pay us back and everything we
22 can do in this Zoning Ordinance Update section here will really payoff for us as a city. It really,
23 really will. We will spend less money and we are doing the property owners a favor by
24 designing for the future.

25
26 Very quickly just to wrap up, sustainability and green building design is going to be integrated in
27 the landscape section. We will be encouraging property owners to consider use of gray water
28 techniques, planning for the plumbing and the piping that may use that in the future, again the
29 whole brand new site renovations projects definitely lend to that where small infill projects may
30 not. Lastly, this update is intended again to cross-reference with all the other important guiding
31 documents that are existing now and become a part of our community. So this is just a partial
32 list but we do want to convey that we don't intent this to be a shortsighted or just an if the money
33 is not there we have to cutback on comprehensiveness. So if you have things that you want to
34 see included or referenced here now is the time to bring it up.

35
36 The last slide is our next steps. Maybe is I could let Whitney just talk about these two next steps
37 here as a wrap up.

38
39 Ms. Whitney McNair, Consultant: Staff will be trying to write up a draft ordinance for review
40 that will come back to the Commission. The timing of that is within the next couple of months.
41 I understand the next month and a half is our goal. We don't have that date yet determined and
42 then we would take that to City Council for adoption. I know we have a half hour left of this
43 study session so we are open to getting email as well if there are other items that don't get
44 discussed tonight or if it gets continued.

1 Chair Holman: Thank you Staff. Commissioners it is a broad topic that has a lot of implications
2 in pretty much every zone. We can anticipate that half an hour is not going to be long enough to
3 discuss this. So I guess a question to Staff would be, the more presentation we get in addition to
4 our reading materials it is almost like we could divide this into sections and I am looking to Staff
5 for some guidance here. If we wanted to deal with certain areas or certain zones as opposed to
6 just broad brush if that might be helpful.

7
8 Mr. C. Williams: I think that would be fine except I am concerned that you won't get through it
9 all doing it that way. It might be better for the purpose of this meeting as sort of an introductory
10 thing to let everybody say what is kind of on their mind and then if there are some subjects that
11 come up and if you have time you can focus on them, maybe you can work it that way.

12
13 Chair Holman: I was thinking that one study session might not be enough for this topic given
14 that we have half an hour to do it. So we will go and people can make comments on what their
15 most important topic is. Commissioner Sandas.

16
17 Commissioner Sandas: Actually I have a question for you Dave that is a little bit off the topic
18 but I am wondering where traffic circle landscape fits in. I know it doesn't fit in to what we are
19 talking about because we are talking about private building and parking lots.

20
21 Mr. Dockter: It does.

22
23 Commissioner Sandas: Well, I haven't heard any discussion then of traffic circle landscaping
24 and would love to make sure that there are some guidelines for that as well.

25
26 Mr. C. Williams: Before Dave answers, it really doesn't. We are talking about the Zoning
27 Ordinance and this is generally private property so with the exception of if it is within the
28 boundaries of a property like say the Hyatt Rickey's site redevelopment internal roads and all
29 that it would otherwise it is public right-of-way and that is a City issue. It is an important issue
30 but it won't be dealt with in the Zoning Ordinance.

31
32 Commissioner Sandas: So that is what I am asking, where will it be?

33
34 Mr. C. Williams: So you should be asking Dave where is that?

35
36 Commissioner Sandas: That was my question. Where will we be able to pick that up?

37
38 Mr. Dockter: That is a perfect concern. I think that the updated Street Tree Master Plan
39 probably is the place for that. The Street Tree Master Plan may even be re-titled and broadened
40 to be like an urban forest strategic plan. I think that would be the area that defines right-of-ways,
41 landscaping planter strips and I that would be a simple element I think for that project to
42 entertain and establish some standards for it. A transportation project, how it gets built would
43 become a Transportation/Public Works project and it would be subject to its design criteria just
44 on its own but to provide that guidance I think still the Public Works document they would be
45 the lead but I am sure Planning Commission and Council would have input to that document too
46 because it would be a city-wide guidance document.

1
2 Chair Holman: Okay, I am going to start at the end with Commissioner Tuma.

3
4 Commissioner Tuma: Sort of a structural question. One of the things that it sounded like you
5 were interested in some input in is which items should go in the Zoning Ordinance Update as
6 opposed to those that would potentially go into the landscape technical manual. Developing the
7 manual and going through the process of what is to be included and what it is actually going to
8 say how does that work procedurally? Is that something the Commission is also involved in?
9 Does that happen after the Zoning Ordinance Update? Does that get approve by Council? What
10 is the process for that?

11
12 Mr. C. Williams: I will let Dave describe I think the tree manual is probably a model for that so
13 you can talk about how that process works, Dave, but it would be done after the Zoning
14 Ordinance Update is completed. Then we would begin on the technical manual.

15
16 Mr. Dockter: The technical manual the way we envision it would start out to be literally like a
17 folder that would collect some of the major details for designing which literally would just be
18 schematic details to build to. Added to that would be some form code suggestions of alternatives
19 or types of say paving materials that are like an approved list. So we would get to start with city
20 preferences in color, sidewalk or concrete types. We would add to that then landscaping again
21 suggestions or choices, lists of trees, shrubbery, screening elements. What the technical manual
22 will do is enable us to change the elements within it without a code amendment. So as policy or
23 a new concept may come up we can literally change it just by rule of the Director or a
24 recommendation from Commission or other things that make sense.

25
26 As far as the process of adopting it the Tree Technical Manual was issued by the City Manager.
27 I think that was the official process so it didn't go through a City Council approval process
28 neither did it go through a Planning Commission process for that. So it was issued by the City
29 Manager as like the best management practices to implement the regulations of the Tree
30 Ordinance. So this would implement the regulations of the Zoning Ordinance. How do we
31 implement that? Things can change over time.

32
33 Commissioner Tuma: Okay, so you envision that as sort of a living document that changes over
34 time and it wouldn't come back. So I think that just may impact to some extent what we would
35 be comfortable putting in the ZOU as opposed to the technical manual.

36
37 One follow on question with that. So what is in the manual is more along the lines of guidelines
38 as opposed to requirements or?

39
40 Mr. Dockter: It would have both within it. Requirements would be more of a fundamental thing
41 in the technical manual. The Zoning Ordinance would require something to be addressed of a
42 certain nature within the technical manual. Like you must have pervious paving in this area.
43 You go to the technical manual and you find out what types of pervious paving you can choose
44 but you have to have one of them for instance as one item. It is the way it probably would work
45 most commonly.

1 Chair Holman: I think what I would like to do is have two questions or comments and go down
2 the row and then if we have extra time we will come back around if that is agreeable to folks.
3 Commissioner Garber.

4
5 Commissioner Garber: Commissioner Tuma talked about the organization. I have a bunch of
6 questions about the organization as well but you have already hit them so we will move on.
7

8 You had included some additional information in the back of your Staff Report that included a
9 description of the Oklahoma Landscape Ordinance. Am I recalling that correctly? Were you
10 trying to suggest that possibly this point system should be something that should be considered
11 for Palo Alto or was this just a sort of interest? What should we look for in here or what should
12 we learn from it?
13

14 Mr. Dockter: The attachment there was more of an information item that there can be a formula
15 applied to achieve the 50 percent shading goal of a parking lot. My intent there was just to
16 acknowledge the fact that there could be a formula applied. Right now we don't necessarily
17 have a shading formula applied to achieve this 50 percent goal. It is just sort of that we hope that
18 the standards that are in our parking guidelines now will achieve good shading but it is just hit
19 and miss. A point system could be one of many. Oklahoma is one in California Davis has
20 another type of formula that is geared at achieving this 50 percent goal. Our existing formula is
21 not geared that way at all so we want to change the way that we look at shade trees and plants.
22 Basically, a big tree would get a lot of points and a small crepe myrtle would just be a few
23 points.
24

25 Commissioner Garber: So you included this as one of many possible methods of determining the
26 50 percent mark?
27

28 Mr. Dockter: That is correct.
29

30 Commissioner Garber: Okay. I will take my second one and then I will move on. There are just
31 a couple of things and I won't discuss them but a couple of things as you were skipping through
32 the stones of your bullets that are things that I would like to return to one of which is the light-
33 wells, the sizes, how they are landscaped, etc., would be a topic worth further discussion. Also,
34 the issue of permeable surfaces which came up in a recent hearing the ratio of how much surface
35 area we are taking up, is there an unrealized consequence that even though we are creating
36 surfaces that are permeable we end up if they solid we are also losing green stuff which we
37 would also prefer to have. So that I think is worth additional conversation as well. I will save
38 my others, thanks.
39

40 Chair Holman: Commissioner Keller, and we do need to be brief. My apologies but the clock is
41 the clock.
42

43 Commissioner Keller: Thank you. Because of the need to be brief I sent in some questions
44 which you can address offline rather than taking up time now. I will use my time now to just
45 mention briefly some issues that I think you should think about. One is in terms of landscaping
46 particularly on single-family residential lots around utility poles and making requirement that

1 there be sufficient clearance so that utility workers can have access to that pole. If you plant
2 shrubs or something like that they don't have access and they are not too happy. So I am not
3 sure to the extent that that should be in a landscape ordinance or not but think about that.
4

5 In terms particularly in commercial properties, which are wide expanses, and on multi-family
6 residential there are the issues of things like pesticide use and the contamination that accrues into
7 the soil and into the water table and also in runoff. Related to that is the issue that if we are
8 having permeable surfaces where cars drive or park on how do avoid contamination by vehicle
9 fluids? That is something interesting to think about. If I may make a comment related to what
10 Commissioner Garber said I wonder the degree to which so-called permeable surfaces are really
11 permeable compared to natural surfaces. Therefore to the extent that permeable surfaces are not
12 as permeable as natural groundcover perhaps that there should be some weighting to them
13 depending on the degree of permeability.
14

15 Chair Holman: Thank you. Vice-Chair Lippert.
16

17 Vice-Chair Lippert: Actually I have seen this now for maybe eight years between the ARB and
18 the Planning Commission having been involved in this particular section. I think that over the
19 years, in the past I had to say at least 15 to 20 years, landscaping has become a very, very
20 technical part of development. As such I think there are three legs to this stool that make up a
21 really great environment. That is the parking development part, the natural environment part and
22 then there is the water resources part. I don't think the City has a handle on integrating all three
23 of those elements so that is one area that I think that this ordinance really needs to focus in on. I
24 will give you a couple of examples. You have alluded to this in your presentation about the gray
25 water irrigation aspects. It took years to get Public Works to begin to look at that and accept that
26 and that really needs to be integrated a lot more into the Zoning Ordinance. We have seen over
27 the years parking and development, actually parking, competing with landscaping. There really
28 needs to be some address between parking and the landscaping portion of that if we are going to
29 arrive at the 50 percent goal. Part of that might simply be that we are in a time where we are
30 now encouraging small cars again we really need to press for those compact spaces and take the
31 land that we would conserve, those little remnants of land that we would be able to get back from
32 smaller parking spaces, and put them into more landscape. Now, this is where the rubber meets
33 the road. There is no enforcement and big vehicles park in those small parking spaces. So again,
34 the Parking Ordinance needs to be integrated with the landscape section that allows for these two
35 elements to sort of work together. That is where I think really we need to begin to look at some
36 of these things. That will be it for my comments for now and then I will come back on second
37 pass.
38

39 Chair Holman: Commissioner Sandas, did you have one more?
40

41 Commissioner Sandas: I wanted to follow up a little bit with the notion of a point system just to
42 expand on it a little bit and talk about perhaps an incentive system, big trees being better than
43 smaller trees like crepe myrtles and so on. I just wanted to throw that out there as a procedural
44 policy idea.
45

46 Chair Holman: Commissioner Burt.

1
2 Commissioner Burt: First I wanted to see if we could request for our next meeting on this maybe
3 copies of your PowerPoint presentation. Most of the Commission probably doesn't have what I
4 had been fortunate to receive from you – a copy of the structural engineered soils and the
5 benefits of those. Then some other materials that I think you may have on rooftop gardening and
6 the trends associated there as well as information on local native vegetation because I know
7 historically the prior Commissions were not terribly familiar with what really constituted native
8 vegetation and native vegetation in different areas of the city, all the way from the top of Skyline
9 down to the Bay it is not the same thing. Also, information on perhaps the Valley of Heart's
10 Delights program so that as we talk about native and edible landscaping or agricultural
11 landscaping in perhaps some of the Research Park areas we would have that background. Then I
12 don't think I got Commissioner Keller's questions I don't know if they went to the whole
13 Commission but maybe we could get that too.

14
15 Then related to Open Space there were two things that came to my mind. I saw that there was an
16 intention to retain trees above 11.5-inch diameter both native and nonnative. I am not sure that
17 we want to work toward retention of nonnative trees. In fact, in a lot of circumstances I would
18 be willing to give points for people removing eucalyptus in the natural environment and things
19 like that.

20
21 Then the issue that Commissioner Keller brought up on the semi-pervious hardscape that when
22 we first saw this in the Open Space area we thought what a neat thing and then we realized that it
23 as a tradeoff we were allowing a greater construction lot coverage when we did that and also
24 perhaps it is not as pervious as native soils. Then finally that it is not a vegetated surface. So
25 even though it may be pervious it is not providing vegetation and thereby not addressing all those
26 other benefits that we get from vegetation of different sorts, which brings up the other thing I
27 should have asked for is any aspects of the Green Ribbon Task Force and their efforts at CO2
28 reduction that would come into play with our landscaping efforts. So I will have more if we
29 have more time otherwise I will email my additional questions and comments.

30
31 Chair Holman: Okay, and I will take a quick shot here with a few things. A lot of things have
32 been said that I think are good questions. One thing that hasn't been addressed specifically as
33 I've heard it at least is Site and Design in the Research Park. We talked about Open Space but
34 not Site and Design in the Research Park.

35
36 I was kind of curious as to why we might or might not have a combination manual, the tree
37 technical manual and the landscape manual be merged if that might be practical since they are so
38 closely related.

39
40 That edible gardens be considered as a part of multi-family and affordable housing projects.
41 Again, that goes along with the Valley of Heart's Delight. We are not talking street trees that are
42 going to be messy and that sort of thing. They are going to be on private property.

43
44 There has been some talk including at the last Council Retreat of a point system for permitting. I
45 think as the Commission is very interested in sustainability and is actually looking to have a
46 sustainability study session, which hopefully will be longer than an hour, I think that would be

1 something we could look to and look at different sections of guidelines in code that would need
2 to be satisfied in order to get permits. That is one way to go. So I am going to stop there and go
3 back around just real quickly. We have about ten minutes so Commissioner Tuma.

4
5 Commissioner Tuma: I will just briefly follow up on something that Commissioner Garber has
6 mentioned because it was one of my issues coming in and that has to do with the below grade
7 patio or light-wells. I think we have seen a lot more of those in recent years. I think they are a
8 terrific way to create nice space. I would not like to see us do things that make that significantly
9 more expensive or difficult for people to do because I do think it is a way to allow some growth
10 but keep it underground and creating nice space. I have a lot more thoughts on that but I will just
11 leave it at that being brief.

12
13 Chair Holman: Commissioner Garber.

14
15 Commissioner Garber: The other topic that I know is often a topic with single family home
16 owners is the issue of trees in the parkway especially when driveways have to be move around
17 and inevitably there are trees that have to be moved around too. I don't know if there are
18 opportunities to make some of the policies that the City has more clear to set expectations
19 appropriately. There may be some opportunities there.

20
21 Although it has already been talked about in a couple ways here the organization piece, it sounds
22 like you are contemplating having more sections in the code to address a slightly different
23 organization than parking lots and then everything else, which I think would be a good idea.
24 Obviously I look to Staff to guide us to as to what those sections actually are and how they are
25 divided up whether they are by actual location or by concept. You sort of outlined it both ways
26 in your Staff Report so I am not exactly sure what the intention is.

27
28 Then obviously things that are part of the zoning are things that can be enforced or will have
29 explicit enforcement criteria to them versus the things, which are guidelines and are not again
30 somehow that all needs to be clarified.

31
32 Chair Holman: Commissioner Keller.

33
34 Commissioner Keller: Thank you. Following up again on what Commissioner Garber said, one
35 of the categories of things should be screening kinds of plants. I think that is one of the things
36 you talked about in the nature of that screening. I think the particular thinking about water use
37 and reducing – I think we would all be surprised at how much drinking quality water is used for
38 irrigation, for outdoor plant irrigation. I think that reducing that partly through gray water, partly
39 through low water plants and xeriscaping is something to think about. I can understand the
40 reasoning for putting lawns in around single family residences or areas where there are
41 residential because people like to walk on the lawns but I have a hard time understanding the
42 reasons for large expanses of lawns around commercial buildings. I think that there are much
43 better uses for that space that use less water and are more attractive.

44
45 Chair Holman: Vice-Chair Lippert.

1 Vice-Chair Lippert: Continuing my tirade earlier, again parking competing against landscaping.
2 One thing to look at is parking structures being used to free up more landscape area particularly
3 in the Research Park. I think we saw that on the SAP project where it was built on a hillside. It
4 was ideal to build a semi-submerged parking structure and begin to free up more of that area for
5 landscaping and therefore structured parking is a way to get more landscaping. That is an
6 obvious thing.

7
8 The other thing is landscape reserve where there are applicants that do come forward and they do
9 ask for more parking spaces than what would be permitted. There should be some sort of
10 measure by which we can actually require that the quality of the landscaping be even better if
11 they require those extra parking spaces because it is actually displacing landscaping.

12
13 Then the last point I want to make is I agree with some of the comments that Commissioner Burt
14 has made with regard to older trees and not necessarily being viable, they are nonnative species,
15 but also we need to look at an appraisal of some of the more mature trees in terms of being an
16 asset. Maybe what needs to happen is that there needs to be some sort of an appraisal made of
17 those trees and allowing them to be taken out but then be replaced with something of equal
18 value.

19
20 Chair Holman: Commissioner Sandas. Commissioner Burt.

21
22 Commissioner Burt: Just following up on some of the comments other Commissioners have
23 made I think a lot of them might be grouped in a sense of qualitative versus quantitative
24 landscaping. In that theme we have talked a lot about trees but trees are not the only important
25 part of landscaping. As we are having a loss of native habitat a lot of the other plants are even
26 more important than trees in terms of sponsoring habitat. One of the most important things that
27 has been happening in our whole region is loss of milkweed, which is essential for monarch
28 habitat. We are seeing it vanish and we are going to lose a lot of our monarch population. So we
29 may want to really look at ways we can promote widespread use of native vegetation. I think
30 that the commercial areas, the Research Park, and others have some tremendous opportunities
31 there.

32
33 Along the same theme you have demonstrated in the structural soils about what tremendous
34 potentials are there for allowing a much greater variety of trees as a result of that, of having
35 rooftop gardens more, and I think those are just great opportunities that exist there.

36
37 Then finally I didn't hear anything about the more recent recognition that we have had, we have
38 planted the wrong gender of trees and created great pollen problems in the region. Are there
39 ways in which we should begin to alter that process going forward?

40
41 Chair Holman: Commissioner Garber, you had one more?

42
43 Commissioner Garber: I can only emphasize some of the other things that were just said
44 regarding the organization again and that is that there are a number of opportunities where
45 obviously landscaping impacts some of the other existing zoning, surface area, the permeability
46 issues, obviously into the building codes relative to having rooftop gardens and being able to

1 support those rooftop gardens with detailing, flashing, etc. There is a lot of opportunity for
2 integration within the zoning. It would be great to be able to find those ties that create that
3 comprehensive policy.
4

5 Chair Holman: I had just a couple more to throw out. One is it would be nice to know what the
6 impact is, I don't know how accurate this is, but I have heard for a good while how the building
7 height affects the viability of trees and what kinds of trees especially at the street. I am sure it is
8 a light issue. If there is some information that you have about that that's relevant it would be
9 nice to have.
10

11 Then also, having to do with creek setbacks the county has been working on updated creek
12 setbacks and I would like to get some updated information about that and not just about the creek
13 setbacks that are current natural creeks but also where there might be opportunities to, not now
14 we have to plan for the future, there might be some time in the future when some of these
15 concreted creek beds might be re-naturalized so that we look at the future and see what those
16 setbacks should be too and see what guidance the county has offered to this point and if there is
17 something that we feel like we have enough information to go ahead and adopt.
18

19 Mr. C. Williams: If I could just add that next week you will be getting a lot of information on
20 creek setbacks as part of the water resources discussion of that workshop.
21

22 Chair Holman: We have time for one more question Commissioner Keller.
23

24 Commissioner Keller: In terms of creeks the Santa Clara Valley Water District is in the process
25 of passing an ordinance that allows communities like the City of Palo Alto to enforce the issues
26 about the 50 foot right-of-way either side in terms of approving and is something we will have to
27 think about.
28

29 I would personally have no objection in general if the questions that I send in advance to Staff
30 were made available to all the Commissioners and the public. That might be the best way of
31 handling that in the future.
32

33 Mr. Don Larkin, Senior Deputy City Attorney: I just have a couple of comments in response to
34 the email questions. One is that when we answer the questions we will provide that all of the
35 Commissioners. One of the concerns I have is that Council has the one-hour rule, Planning
36 Commission has a deminimus hour rule, as little time as possible, so if they are questions that
37 are quick to answer that is appropriate to be submitted. But if they are questions that are going to
38 involve a detailed amount of work on the part of the Staff those probably ought to be asked but
39 understand that the answers may not be as forthcoming as you might like depending on the
40 complexity of the question.
41

42 Chair Holman: Two things, one is that Commissioner Keller's questions because they have been
43 submitted now are a matter of public record at this point anyway so they will just be sent to us.
44

45 Mr. Larkin: That's right. So I think the general practice is to send them along with the answers
46 but we haven't had a chance to do that yet.

1
2 Chair Holman: Could you clarify something for us, please? Yes, there is the one-hour rule, if
3 Commissioners ask questions of Staff as you say there is the deminimous one-hour rule,
4 however, if it gets raised at a Commission meeting and a number of Commissioners want
5 information along the same lines then can you tell us what would come into play then?
6

7 Mr. Larkin: We use our best efforts to answer all the questions it is just a concern that if we are
8 being asked to basically drop all of our other work to do research it is going be somewhat
9 difficult. It depends on the complexity and the number of questions. Most of the questions are
10 real easy to answer and we will do that.
11

12 Chair Holman: Right, I was just thinking and then I will go to Commissioner Burt, I was just
13 thinking maybe incorrectly I was remember the Council for it to be longer than an hour that it
14 has to be a majority of the Council Members or a number of Council Members to approve that
15 time expenditure. Commissioner Burt.
16

17 Commissioner Burt: Just the one that City Attorney Larkin just mentioned was that normally the
18 practice would be to give the Commission copies of the questions along with the answers and I
19 don't believe that is the normal historic practice because among other things it does not enable
20 the rest of the Commission to see whether they concur with the need for the question prior to
21 Staff determining whether it is one Commissioner's issue or represents an interest of the entire
22 Commission or a majority.
23

24 Mr. Larkin: I don't want to get into a long discussion but we have generally held off on
25 answering email questions in email responses but you are right I misspoke when I said it. If we
26 answer the questions be email we are required to make those public and we would present them
27 to the full Commission.
28

29 Commissioner Burt: I just need to clarify what my statement was. I wasn't talking about
30 answers. I said that the questions would be forwarded to the Commission in advance not
31 awaiting the answers before the Commissioners would see the questions. That is the point I was
32 making.
33

34 Chair Holman: Okay. Curtis.
35

36 Mr. C. Williams: I just want to thank you for being concise with your comments. I know an
37 hour is a short period of time. We will try to schedule – what we will do when we come back is I
38 don't think there is any way we can expect to have a final ordinance for adoption type of thing so
39 I think we will do either another study session or it will be somewhere sort of in between so that
40 we will have maybe bulleted points of what we anticipate to be in the ordinance, responses to
41 your questions and issues, and then you can work from there. It might be better rather than
42 calling it a study session to call it a regular item so that you can give us some direction as a
43 consensus direction on where to go with some of the key issues that come up.
44

1 Chair Holman: Thank you. Thank you to Mr. Dockter and Ms. McNair for bringing this matter
2 to us. We appreciate it and obviously we don't have enough time with you in front of us because
3 we have lots of questions and appreciate your expertise.

4
5 So we will adjourn the study session at this time.

6
7 Before I call to order the regular meeting with item number two I neglected to ask the Secretary
8 to call the roll for the study session. Would you care to do that for the study session first? There
9 is a reason for doing it for both.

10
11 Ms. Zariah Betten, Secretary: All seven present.

12
13 **REGULAR MEETING AT 7:00 PM**

14
15 Chair Holman: I will call to order the regular meeting and we have to say good-bye to
16 Commissioner Sandas who isn't available to stay with us for the other two items this evening.

17
18 At this time there is an opportunity for Oral Communications. If there are any members of the
19 public who would like to speak to us on any matter that is not on the agenda.

20
21 *ORAL COMMUNICATIONS*. Members of the public may speak to any item not on the agenda
22 with a limitation of three (3) minutes per speaker. Those who desire to speak must complete a
23 speaker request card available from the secretary of the Commission. The Planning and
24 Transportation Commission reserves the right to limit the oral communications period to 15
25 minutes.

26
27 *AGENDA CHANGES, ADDITIONS AND DELETIONS*. The agenda may have additional items
28 added to it up until 72 hours prior to meeting time.

29
30 Chair Holman: I have no cards. So we will go to item number two which is a public hearing for
31 3270 West Bayshore Road, a request by West Bayshore Associates on behalf of Classic
32 Communities for approval of a Vesting Tentative Subdivision Map for a proposed 96-unit
33 residential condominium project. Would Staff care to make a presentation?

34
35 *NEW BUSINESS*

36 *Public Hearings:*

- 37
38 **2. 3270 West Bayshore***: Request by West Bayshore Associates on behalf of Classic
39 Communities, Inc. for Planning and Transportation Commission review and
40 recommendation to City Council for approval of a Vesting Tentative Subdivision Map for
41 a proposed 96-unit residential condominium project. Environmental Assessment: An
42 Initial Study has been completed and a Negative Declaration has been approved for this
43 project in accordance with the California Environmental Quality Act (CEQA)
44 requirements. Zone District: Research, Office and Limited Manufacturing (ROLM).

1 Mr. C. Williams: Yes. Commissioners I would like to present to you Paul Mennega who is an
2 Associate Planner who I don't think has made a presentation to you before but some of you may
3 know Paul. He is the Project Planner on this case and will present it to you. Thanks.
4

5 Mr. Paul Mennega, Associate Planner: Good evening. This Vesting Tentative Map application
6 follows from previously approved design of a 96-unit condominium development located at 3270
7 West Bayshore Road.
8

9 The design elements of this project including residential structures, landscaping and site planning
10 all received final approval from City Council on June 19, 2006. The Vesting Tentative Map
11 itself involves the merger of two existing parcels totaling approximately 6.5 acres in size and
12 then the subsequent creation of 96 for sale condominium units.
13

14 A timeline of the progress at 3270 West Bayshore is included in the Staff Report prepared for
15 this hearing. Highlights of this timeline include Director's approval of the design elements of
16 this project on March 23, 2006 and subsequent City Council approval on June 19, 2006.
17

18 This application has been reviewed by the necessary City departments to ensure compatibility
19 with the Comprehensive Plan and compliance with all applicable regulations. City Staff requests
20 that the Planning and Transportation Commission recommend approval of this Vesting Tentative
21 Map.
22

23 In terms of environmental review a Negative Declaration, which reviewed the environmental
24 issues, related to both the development and the subsequent map as required by the California
25 Environmental Quality Act was circulated for a 20-day public review period from December 14,
26 2005 to January 12, 2006. Don Larkin, City Attorney, will now speak to this item. I would then
27 like to invite the applicant, Scott Ward, to give a brief presentation and answer any questions you
28 may have. Thank you.
29

30 Mr. Larkin: Thanks. The Chair asked me to clarify a couple of things. The first is we haven't
31 seen many Vesting Tentative Maps at this stage and there was some confusion as to what that
32 actually meant. When an applicant files a Tentative Map they have an opportunity to basically
33 market as a Vesting Tentative Map the same as any other Tentative Map with the exception that
34 a Vesting Tentative Map vests all of the existing regulations at the time of the approval of the
35 Tentative Map so that way if the City was to come along later and adopt new fees or new
36 regulations that those would not apply to this map once the Tentative Map is approved.
37 Procedurally it is no different from any other Tentative Map the process is that it goes for public
38 hearing before the Planning and Transportation Commission and before the City Council and
39 then the Final Map would go only to City Council and it would go on the Consent Agenda.
40

41 The Commission's purview with regard to the review of this Map is limited, as I have said
42 probably in-artfully before, to the lines on the paper and that is really what we are talking about.
43 The design of the project and the project itself has already been fully approved. There are
44 elements that the Commission can comment on and that is any dedications and public
45 improvements that are a part of the Map or any maintenance issues that are going to arise as part
46 of the subdivision those are all areas that you can talk about. In terms of the design of the project

1 and in terms of the features that have already been approved those are outside of the purview of
2 this hearing.

3
4 Chair Holman: The applicant has 15 minutes to make a presentation. I do not have a card so if
5 the applicant would come forward. My apologies I thought this was for a member of the public.
6 So Scott Ward you have 15 minutes.

7
8 Mr. Scott Ward, Representing Classic Communities: Good evening Chairperson Holman and
9 Commissioners. I won't be utilizing the entirety of the 15 minutes allocated to me. I am here
10 tonight to urge you to adopt the Staff recommendation to recommend to the Council approval of
11 the Tentative Subdivision Map for the proposed development.

12
13 As you know, on June 19 the City Council considered and on an eight to one vote denied the
14 appeals of the Director's approval of the project issued on March 21, which was made pursuant
15 to approval by the Architectural Review Board, which was made on March 16. With this vote
16 the Council affirmed the ARB's determination and the Director's Decision to uphold the ARB
17 approval, validated the finding that the proposed development could not have a significant effect
18 on the environment, and acknowledged and abided by a zoning ordinance amendment that was
19 enacted in October of 2005 which established RM-30 residential use as a principally permitted
20 use of the property.

21
22 As a result of the Council's action the conformity of the proposed development with the
23 Comprehensive Plan and zoning has been established and the project design has been approved.
24 The proposed Vesting Tentative Subdivision Map is consistent in every respect with the
25 approved project design.

26
27 The action that you are asked to take tonight will simply enable the property to be subdivided in
28 the manner required to accommodate the approved project design.

29
30 In our opinion there are no grounds for denial of the Tentative Subdivision Map based on the
31 merits of the map itself, based on previous actions taken by Council, ARB and the Director with
32 respect to the proposed development, based on the findings tests that are stipulated in the
33 Subdivision Map Act and based on recent Commission review and approval of Tentative Maps
34 for similarly entitled properties.

35
36 Classic Communities was very gratified by the Council's recognition of and support for the
37 merits of the proposed development. I realize you don't observe much about the project from a
38 Tentative Subdivision Map so if you so desire I have a handout for you which presents the site
39 plan and elevations for these buildings if that would be helpful to you but we are focused on the
40 map itself tonight of course. The merits include the fact that the proposed project is conforming
41 with all of the many development standards for the RM-30 zoning district with the exception of a
42 very limited number of Design Enhancement Exceptions. Those standards include density,
43 building coverage, floor area ratio, front, rear and side yard setbacks, building height and parking
44 requirements.

1 The existing zoning in fact allows a maximum of 30 units per acre for a total of 195 units on the
2 property. The density of the proposed development at 96 units is less than half of the maximum
3 allowed. In fact, the proposed density of 14.75 units per acre is almost 20 percent lower than
4 two residential projects that this Commission approved not too long ago that were at a density of
5 17.25 units per acre.

6
7 Thirdly, the approved development improves the adjacent under-utilized if not derelict City-
8 owned Sterling Canal property into an attractive pedestrian/bike path, which can and should be
9 the first leg of a significant pedestrian/bike route extending from Greer Park to the Baylands.

10
11 Fourth, the proposed development requires a number of improvements that offer the prospect of
12 humanizing West Bayshore Road and making it into something other than only a vehicular
13 expressway. These improvement include the construction of a sound wall separating West
14 Bayshore from the highway, orientation of the residential units to front on West Bayshore,
15 retaining the mature trees that align the West Bayshore and Loma Verde frontages, and
16 providing a dedicated right turn lane at the West Bayshore – Loma Verde intersection.
17 Moreover, the proposed project will by virtue of the change in use reduce the number of
18 vehicular trips generated by this site. Incidentally, neither the improvement of Sterling Canal nor
19 the West Bayshore frontage improvements were required by code. They are voluntary on our
20 part designed to improve the quality not only of this development but of the neighborhood as a
21 whole.

22
23 Fifth, the project has a very well conceived plan which integrates into the existing neighborhood
24 providing a density and height gradient extending from Sterling Canal to the West Bayshore
25 edge and by providing ingress and egress from both West Bayshore and Loma Verde making it
26 possible to access the development from West Bayshore without traversing the Midtown
27 neighborhood. The plan also organizes the homes around two large open space areas and
28 features an unusual diversity of home types including single family units, town-home units, and
29 condominium units.

30
31 Sixth, the proposed development has the highest level of below market rate units of any recently
32 approved project. Since the site is over five acres the BMR obligation is 20 percent, not 15
33 percent of the units, and this obligation is being met through a combination of onsite units and in
34 lieu fees as requested by the City. In addition to the ten BMR units to be provided onsite and in
35 lieu fee of approximately \$4.5 million will be paid and these funds will likely leverage
36 significant more monies to underwrite a large scale targeted all BMR development.

37
38 Finally, the proposed development has the fewest Design Enhancement Exceptions of any of the
39 recently approved residential developments. For instance while ten percent of the units in this
40 development have tandem garages approximately 65 percent of the units in 928 and 1101 East
41 Meadow projects have tandem garages. Developing a project of this scale with only two units
42 with daylight and setback encroachments is a significant design accomplishment in and of itself.
43 Moreover, these encroachments have no impact on any residential property adjacent to the site
44 they affect only the commercial property to the north, which has not objected to the
45 development.

1 We appreciate the opportunity to offer these comments and urge you to support the Staff
2 recommendation and we are prepared to answer any questions that you may have of us.

3
4 Chair Holman: Are there any questions for the applicant? Commissioner Garber.

5
6 Commissioner Garber: Have you done any analysis that there is a net add or loss of earth to the
7 property? Just scanning your site plan it looks like there is a net add is that true?

8
9 Mr. Ward: That is true.

10
11 Commissioner Garber: Has the Staff evaluated that and/or conditioned the coming or taking of
12 that earth?

13
14 Mr. Mennega: The Public Works Department have been reviewing it for flood plane and flood
15 zone compliance has reviewed the proposed addition, essentially the raising of the finished floor
16 level of the proposed residential units. The project as proposed meets all City requirements.

17
18 Commissioner Garber: So does the first floor then extent, is there a flood plane issue? The first
19 floor is at or above that plane?

20
21 Mr. Mennega: Correct. The site is in the AE8 flood zone and is approximately four feet I
22 believe below the base flood elevation per FEMA requirements so they will be required to bring
23 the finished level of the first floor of the residential units, the residential portion of the units not
24 necessarily the garages up above that flood elevation.

25
26 Commissioner Garber: Are the adjacent properties also raised up now or are they at the current
27 level of the street?

28
29 Mr. Mennega: I would say the immediately adjacent properties are probably at the current level
30 which would be below. They were done before the requirements were in place so they are
31 probably at but I can't say for certain all of them are but I would say the majority of the adjacent
32 properties are.

33
34 Commissioner Garber: I have others but I will wait my turn.

35
36 Chair Holman: Are there any more questions for the applicant? Commissioner Keller.

37
38 Commissioner Keller: Yes. I understand from the drawings in particular drawing TM07,
39 Section C-C that in order to address the flood plane issues that you are berming around the
40 property and that you are lifting the finished floor to above the eight foot elevation because of
41 the AE8 zoning. What I am wondering is that since part of that appears to be at the existing
42 grade what is the height difference between the existing grade and the very top of the buildings
43 along Sterling Canal.

44
45 Mr. Ward: I am not sure I understand the question. We are raising existing grade approximately
46 three and a half to four feet over the entire site.

1
2 Commissioner Keller: What I would like to know is of the buildings along Sterling Canal
3 compared to existing grade which I understand from the drawing is at the grade at the back of the
4 building closest to Sterling Canal what is the height of the building compared with the height of
5 the existing grade? Does that make sense? How tall is the building compared with existing
6 grade?
7

8 Mr. Ward: There are two building types along the Sterling Canal edge one of which is
9 approximately 27 feet in height the other is approximately 30 feet in height, plus the building
10 itself, then with the grade change you would add the three and a half to four feet to get to height
11 from existing grade.
12

13 Commissioner Keller: So I take it from your answer that the height of the top of the building
14 minus the existing grade is less than 35 feet?
15

16 Mr. Ward: Correct. That has been checked and rechecked.
17

18 Commissioner Keller: Thank you.
19

20 Chair Holman: Vice-Chair Lippert.
21

22 Vice-Chair Lippert: Can you describe for me very briefly, you have vehicle access to the site but
23 then you have some pedestrian access that goes to Sterling Canal. Can you just talk a little bit
24 about what that connection is going to be?
25

26 Mr. Ward: It will be an arbor that is approximately ten feet tall with a gate that will be an open
27 gate and those arbors and the pathways connect to the onsite open space areas. So there was a
28 continuous open space network associated with the offsite access to Sterling Canal. We will
29 improve Sterling Canal, which is approximately a 50-foot wide swath of City-owned property to
30 make it a fully functional pedestrian and bike path.
31

32 Vice-Chair Lippert: With regard to those connections, this is private property and there is
33 potential for an exchange between say the public and the residents there. Will there be any
34 barriers preventing just anybody to walk into the development and go into the open space area?
35

36 Mr. Ward: There will be, as I say there will be a gate there. The question is is it a locked gate or
37 not a locked gate and then do the residents of this development have keys to that lock and I think
38 that question is open-ended at this point. We haven't resolved that at this point.
39

40 Vice-Chair Lippert: Okay. Then I have one other question. You have this I will call it a
41 driveway because it is not really a street that comes down and bisects the site in half and then
42 you have a path that goes up and T's and goes into two of the units. Did you look at bringing
43 that straight through so that there is a way to sort of cut through the site?
44

45 Mr. Ward: To bring the street section through?
46

1 Vice-Chair Lippert: Not the street itself but the pedestrian portion of that.
2
3 Mr. Ward: Well, at one point we did have a third connection there and we weren't able to
4 maintain that connection. We could look at reintroducing it but I think that is an element of
5 project design that we would have to amend the map to do that.
6
7 Vice-Chair Lippert: Let me tell you what I am looking at here and then you can tell me if it is
8 appropriate or not.
9
10 Mr. Ward: Okay.
11
12 Vice-Chair Lippert: What I am looking at here is that this is private property but this is really a
13 really large site so much so that I am questioning whether these should be dedicated right-of-
14 ways just looking at that and thinking that. If that were the case then there might be some
15 dedicated open space and connections and those would be those pedestrian thoroughfares
16 connecting to this Sterling Canal. If this canal did not exist here and this was private property
17 abutting private property I wouldn't even go there but Sterling Canal has the potential of being
18 an asset to this community.
19
20 Mr. Ward: Understood. I will defer to Staff.
21
22 Mr. Larkin: Dedications are a subject that is a subject of Map. It is a difficult subject because
23 for example grading is a subject of the Map, building heights aren't but it is kind of a domino as
24 you start making changes to the Map that affect the already approved project. It can have a
25 domino effect that isn't very pleasant but if you want to discuss dedications that is within the
26 purview of the Commission.
27
28 Vice-Chair Lippert: Right and that is the reason why I am asking these questions and I am
29 asking it very carefully because I don't think that the City might want to undertake the dedicated
30 right-of-ways in terms of the streets but the dedication of those walking paths are very desirable.
31
32 Chair Holman: Commissioner Tuma, did you have a question for the applicant? Commissioner
33 Garber, did you?
34
35 Mr. Ward: You would have to take the dedication of the streets along with walking paths
36 otherwise you have a public path that leads to a private street and we would certainly resist that.
37 Unless the City wants to hold us harmless and wants to take it as a dedication and assume all the
38 responsibility associated with that we are not in a position to build a private street and then have
39 all the responsibility and liability associated with public access. If I understand the question
40 correctly.
41
42 Vice-Chair Lippert: Our purview here though is to either approve or not approve the Vesting
43 Tentative Map and my line of questioning really started out with that street that was bisecting it
44 and that carrying through in terms of pedestrian.
45

1 Mr. Ward: You are saying that one of the pedestrian paths would be connected to a spine public
2 right-of-way that would be intersected by private streets?

3
4 Vice-Chair Lippert: Correct.

5
6 Mr. Ward: I guess

7
8 Mr. C. Williams: Madam Chair, if I could interrupt. I don't think we should be engaging in a
9 dialogue with the applicant. If you have questions to answer that's fine but back and forth as far
10 as trying to resolve, we should finish the public hearing first and then come to the Commission
11 for suggestions.

12
13 Chair Holman: Right. I think Commissioner Garber had a question for the applicant.

14
15 Commissioner Garber: What limits the height of your sound-wall?

16
17 Mr. Ward: The ten foot sound-wall accomplishes the ...

18
19 Commissioner Garber: Is it a state requirement?

20
21 Mr. Ward: No, it is not a state requirement.

22
23 Mr. Larkin: It is actually not part of the Map.

24
25 Commissioner Garber: It is a line on the drawing.

26
27 Mr. Larkin: It is a line on the drawing but it is part of the ARB approval.

28
29 Commissioner Garber: So it is a public benefit that is being provided as part of this.

30
31 Chair Holman: I just had that conversation with another Commissioner. Okay, thank you very
32 much. I do have one card from a member of the public, Joy Ogawa. You have five minutes.

33
34 Ms. Joy Ogawa, Palo Alto: Thank you. I thought I heard the applicant state that this 96-unit
35 project is on more than five acres and therefore should have a 20 percent BMR requirement,
36 which should mean 19 units, right? And they are only providing ten plus \$4.0 million in in lieu
37 fees at the request of Staff. I am wondering why is Staff suggesting requesting that in lieu fees
38 be paid instead of having BMR units. Are they making policy in terms of we are going to have
39 in lieu fees instead of BMR units? Is that the direction of the City? The City has done that
40 recently which I find extremely troubling and that is to separate out instead of having integrated
41 BMR units which how the BMR program is supposed to work. Comparable BMR units
42 integrated within the development. We are now heading into segregation. It almost seems to be
43 the developers just automatically go that route practically. We have segregated lower income
44 units that are you know, get the riff-raff out of the luxury homes area and we will just give you
45 money or whatever and you can go and segregate out the BMR units and locate them in some
46 lower quality location with more noise, more pollution, smaller units, lower quality buildings and

1 we will just squeeze them all into some low income development and keep the riff-raff
2 segregated from the higher quality homes. There are excuses that are made for that and one of
3 the excuses is well, we can stretch our dollar that way and oh gee, most BMR people can't afford
4 to even buy the BMR homes when they are larger units anyway so we are really doing lower
5 income people a favor by segregating them out. We get higher numbers so that we can tell
6 ABAG we have more units so as far as ABAG is concerned we are doing better by providing
7 larger number of units. They may be of lower quality, they may be segregated but oh well. So
8 there is an overall policy concern that I am concerned about. There is also the specifics of this
9 particular instance where I thought I heard the applicant say that it was Staff's request that \$4.0
10 million of in lieu fees be paid instead of all the required BMR being provided. I just want to
11 know where that is coming from.

12
13 I am also very concerned about how the BMR in lieu fees are being used at this point. So I am
14 very much concerned about how this kind of shift in policy is affecting our low income housing
15 in the city and really leading towards segregation of higher income and lower income. I think
16 that is a very sad direction to be heading in. Thank you very much.

17
18 Chair Holman: Thank you. I have one other speaker card from Lynn Chiapella. If anybody else
19 would like to speak to this I request you turn your card in now please.

20
21 Ms. Lynn Chiapella, Palo Alto: I totally agree with what Joy Ogawa is saying. I think if you
22 were to look at the history in Palo Alto particularly of the BMR units by the time you collect the
23 fees and then get around to building the BMRs, this you can verify, frequently the money that
24 has been contributed doesn't even provide a BMR unit. So while today you think to yourself, oh
25 boy, \$4.0 million isn't that a lot of money we can just build a whole bunch of stuff with that. By
26 the time you actually approve it in many cases it has doubled. I can remember at one time most
27 developers went for the in lieu fee it was so cheap compared to providing a unit particularly over
28 time if you think of the income or the sales of that unit. So I think it is a very slippery slope
29 when you decide to take money in place of units. I also think that eventually you do end up with
30 kind of a segregated kind of society. I know that most of you don't live in areas where these
31 things happen perhaps you maybe live in single family enclaves but I think that you really need
32 to look at a bigger picture and you need to really think strongly about how soon will this be built,
33 does the \$4.0 million really provide those missing units whether they are five units or nine units.
34 I don't know whether he is missing nine units or five units actually. I don't know if he should be
35 building 19 as Joy Ogawa mentioned or 15 but in any case the \$4.0 million will not go, in this
36 city for the kind of things you build, very far. Thank you.

37
38 Chair Holman: Thank you. I will close the public comment. Staff?

39
40 Mr. C. Williams: Yes, I would like to respond to the BMR issue. I am not familiar enough with
41 all the details to tell you exactly how and why it broke down this way. I do know that the
42 Housing Staff believe and Julie can answer that. Let me then also indicate that this letter
43 agreement was part of the package that Council approved. The Council is familiar with this and
44 has said that this is adequate.

45

1 Ms. Julie Caporgno, Advance Planning Manager: I just wanted to point out to the Commission
2 that the money from this, the \$4.5 million that Mr. Ward discussed, was something that was
3 negotiated with Staff. That money is to be used for the development of the Alma substation
4 affordable project and the Council is well aware of that. When the discussion for the acquisition
5 of the Ole site adjacent to the substation property was discussed by Council a month and a half
6 ago they were aware that the way that the City was going to purchase that property was through
7 the use of the money from this project.

8
9 Mr. C. Williams: I also wanted to acknowledge I forgot to bring my copy down but that
10 Commissioner Keller had sent a few questions on this item and I can go ahead and respond to
11 some of these.

12
13 There were questions about the sound-wall. In fact several of these I think we would generally
14 not respond to because they are part of the design and not part of the Map. The sound-wall I did
15 want to note is required to come back to the ARB for a noticed public hearing before it is
16 designed. There were questions about its relationship to 101 and potential reconstruction. I
17 don't know if Paul you had mentioned you had some background on that.

18
19 Mr. Mennega: Yes, the engineering of the sound-wall has essentially been finalized as much as
20 it can at this point with Staff in regards to will it be on City land versus CalTrans land and how it
21 is going to interact with potential for flooding and all of the various engineering issues have
22 essentially been dealt with. The aesthetic design of the wall including the ultimate height of the
23 wall is an issue that will come back to the ARB. It is a separate project that will come in in the
24 near future.

25
26 Mr. C. Williams: Then there were questions about impacts on school facilities and other
27 facilities. Those were major issues of discussion at the Council level and I think our part of the
28 reason why the Council is looking at trying to move forward quickly with the Comprehensive
29 Plan Update and to address some of these things because they are difficult to address on a single
30 project basis and we are going to be working on addressing those specifically through that. Did
31 you have a comment?

32
33 Mr. Larkin: Yes. It is illegal to address with regard to a specific project school impacts.

34
35 Mr. C. Williams: Okay. So the remaining questions were to breakdown some of those fees I
36 think you had in here a total amount of fees. If you are still interested I think Paul could get you
37 at a later date a breakdown of how those fees and what each one of them goes to.

38
39 Mr. Mennega: One item of clarification. An error in the Attachment A, the Proposed City
40 Council Action, Section 3, Item 3 on page 3 states the site will be improved with new office
41 building and that should say, and in the updated version which will go to Council says
42 'residential structures' versus 'office building.'

43
44 Mr. C. Williams: Thank you for that correction. That is a correcting that we will make as this
45 moves forward to the Council.

1 Commissioner Keller: There is an additional sheet of questions.

2
3 Mr. C. Williams: We did get those. You have asked the question about the height of the
4 buildings along Sterling Canal. Then the other two related to the raising of the grade level and
5 flooding impacts and those were evaluated by the Public Works Department and determined not
6 to be significant impacts.

7
8 Chair Holman: Okay, given that are there questions for Staff or are we ready for comments.
9 Commissioner Burt, do you have any questions for Staff?

10
11 Commissioner Burt: One on the in lieu fee aspect. Is it even within the purview of our
12 discussion tonight to comment on that?

13
14 Mr. Larkin: Only because it is something that the Council has already provided direction on it
15 tangential to the Map and the final BMR agreement gets adopted at the same time as the Final
16 Map but it really is outside the scope of the Tentative Map process.

17
18 Commissioner Burt: Well, recognizing that then and without any intention to have this have a
19 bearing on approval of this Tentative Map I would just like to comment on the record that the
20 Commission and the Council and the Staff might want to look in the future at occasions such as
21 this where we have two different community interests. One is funding something like the Alma
22 affordable housing site, which is going to serve a very valuable community interest, and then the
23 other is wanting to integrate affordable housing throughout the community. Maybe what we
24 should be looking at is a split formula rather than taking all of the affordable housing funds from
25 a given site and moving them offsite maybe we ought to have a concept, and it looks like Julie
26 has a good comment to add to this, of having some portion be able to be allocated for offsite and
27 retain a certain amount onsite.

28
29 Ms. Caporgno: That is exactly what we did. There are ten units that are going to be integrated
30 into the project and then nine more units that should have been in the project that is the \$4.5
31 million that will go to the Alma substation project. Actually it kind of leverages the project.
32 You are losing nine BMR units in the project but you will be getting a 55 unit substation project
33 because we wouldn't have the funding available to build that project without this \$4.5 million.

34
35 Commissioner Burt: Great. I didn't appreciate that and that sounds like an excellent outcome.

36
37 Chair Holman: Commissioner Keller, you had a question?

38
39 Commissioner Keller: Yes. I understand that because this is a Vesting Map that it locks in the
40 regulations that might be imposed in the future. I understand that the City Council has adopted a
41 Quimby Act and I would like to know whether the Quimby Act applies to this property and how
42 if so how?

43
44 Mr. Larkin: It doesn't because the Quimby Act by its terms would exempt this project based on
45 the date of application and the date it was deemed complete.

1 Chair Holman: Vice-Chair Lippert.
2
3 Vice-Chair Lippert: About a year ago we had looked at in our Zoning Ordinance Update of the
4 LM, GM and ROLM districts. Is this based on last year's amendments to that Zoning Ordinance
5 or was this conceived prior to that?
6
7 Mr. C. Williams: This was conceived prior to that. In fact part of those amendments was to
8 require a conditional use permit for residential use in this zone and that is one of the reasons I
9 think why the Council was comfortable with moving the project forward was because it was in
10 the process before those amendments took place.
11
12 Vice-Chair Lippert: Okay, that is what I wanted to make sure of. Thank you.
13
14 Chair Holman: Are we ready for comments among Commissioners or a motion? Commissioner
15 Tuma? Commissioner Garber.
16
17 MOTION
18
19 Commissioner Garber: I will move that we accept the Staff's recommendation.
20
21 SECOND
22
23 Vice-Chair Lippert: I will second that.
24
25 Chair Holman: Would you care to speak to your motion, Commissioner Garber?
26
27 Commissioner Garber: No, I think it has been discussed fully prior to this moment and I think
28 our questions have been answered.
29
30 Chair Holman: Commissioner Lippert do you want to speak to your second?
31
32 Vice-Chair Lippert: Yes. I agree with Commissioner Garber's comments here. I just wanted to
33 add that I only have one minor concern and that this wind up as a gated or perceived to be a
34 gated community. One of the things that I think that the developer and architect have done very
35 well is to make pedestrian connections between the public right-of-way and the piece of land
36 strong. What I would encourage is that they actually be strengthened and I would discourage
37 gating or closing of those pedestrian accesses.
38
39 Chair Holman: Commissioner Keller.
40
41 Commissioner Keller: Yes, I would like to make a friendly amendment that the Attachment A,
42 Section 3, Item 3, page 3 be amended as per the Staff's comment of change.
43
44 Commissioner Garber: I would accept that.
45
46 Vice-Chair Lippert: I will accept that as well.

1
2 Commissioner Keller: Secondly I think that some people in the community might feel that we
3 had been objecting to the amount of housing being developed and I think what is important to
4 realize is that we here on the Commission are required to approve things based on the regulations
5 in force that apply to the project. So now similar properties along West Bayshore cannot be
6 converted to residential without a conditional use permit but this project is sort of grandfathered
7 in before that. So the interesting thing that I would like to encourage people from the community
8 is that if you complain about a project what you should really get involved in is at the time that
9 the Zoning Ordinance Update happens and at the time that the rules are put in place because
10 those are the ones that we have to make decisions by and I think that is an important thing for
11 people to consider.

12
13 Chair Holman: I just have one comment and I think it is a procedural one. I think Commissioner
14 Lippert's comments earlier about the pedestrian access and our late access to this Vested
15 Tentative Map is a bit of a challenge let's say.

16
17 MOTION PASSED (6-0-1-0, Commissioner Sandas absent)

18
19 So with that we will vote on the motion as amended by Commissioner Keller. Does Staff have
20 the amendment? Okay. So we will vote on the motion. All those in favor say aye. (ayes)
21 Opposed? That passes on a six to zero vote with Commissioner Sandas absent.

22
23 We will take a seven-minute break before we take up item number three. I have no cards from
24 members of the public at this point so if you are interested in speaking to item number three
25 please turn your cards in. Thank you.

26
27 At this time we would like to reconvene our meeting and take up item number three. The Zoning
28 Ordinance Update, review and recommendation of an ordinance amending Title 18 (Zoning) to
29 delete Chapters 18.28 (Multi-Family Residence District Guidelines) and 18.64 (Additional Site
30 Development and Design Regulations for Commercial and Industrial Districts) and to adopt a
31 new Chapter 18.23 (Performance Criteria for Multi-Family, Commercial, and Industrial
32 Districts). Would Staff like to make a presentation?

- 33
34 **3. Zoning Ordinance Update:** Review and Recommendation of an Ordinance Amending
35 Title 18 (Zoning) to Delete Chapters 18.28 (Multi-Family Residence District Guidelines)
36 and 18.64 (Additional Site Development and Design Regulations for Commercial and
37 Industrial Districts) and to Adopt a new Chapter 18.23 (Performance Criteria for Multi-
38 Family, Commercial, and Industrial Districts); Environmental Assessment:
39 Comprehensive Plan Environmental Impact Report.

40
41 Mr. C. Williams: Yes, thank you Commissioners. We are here tonight with the draft chapter on
42 Performance Criteria to address potential impacts from Multi-Family, Commercial and Industrial
43 Districts particularly when they are located adjacent to residential uses. The existing code has
44 two chapters that currently go part of the way towards doing this one is 18.28 which deals with
45 Multi-Family zoning and the other is 18.64 which deals with Commercial and Industrial Districts
46 and provide some of these Visual, Lighting, Landscaping criteria adjacent to residential uses.

1 Our feeling was that there was some improvement that we could make in these and that generally
2 there was enough of an overlap that we ought to just combine it in one chapter and they would
3 apply as they are pertinent to the specific use be it Multi-Family, Commercial or Industrial.
4

5 The ordinance generally applies to all of those zoning districts and also to Planned Community
6 Districts as well if they would have a particular impact. As the existing ordinances state they
7 generally state that these criteria apply when you are located within 150 feet of a residential zone
8 or a residential PC and we have maintained that same criteria here of 150 feet generally in this
9 document.

10
11 Attachment B is the redlined version of the ordinance and I just want to point out that that's not a
12 sort of verbatim redline version in that we have consolidated and combined so many different
13 parts of those other ordinances that it would be unreadable if we tried to actually scratch out
14 every word we changed and every addition we made. It does show substantively the new
15 sections that we have added. We haven't really deleted anything that exists now we have just
16 generally either added to it or upgraded it in some way.

17
18 So I am very briefly going to go through the major changes that we have made, the most
19 significant changes and then what I would like to do because we know that hazardous materials
20 is an issue that the public has weighed in on, Dan Firth, Fire Chief is here in the audience and is
21 responsible for the City's Hazardous Materials Programs. He will make a brief presentation to
22 you to outline some of the basics of what the existing processes are for reviewing applications
23 and what some of the issues are that they face.

24
25 So we have addressed about nine different subjects. Trash Disposal and Recycling the existing
26 code already addresses to some detail. We have added some requirements from a visual
27 standpoint to specify ARB review and architectural compatibility.

28
29 Lighting is also addressed in some of the existing language. We have tried to provide a little
30 more specificity in terms of measuring at the abutting property line as well as some requirements
31 for addressing interior lighting and demonstrating how an applicant intends to have timing
32 devices or other controls to address after hours when there isn't anybody left at the building or
33 low occupancy as well as those interior lighting impacts.

34
35 The Late Night Use and activities is a completely new section. It mirrors what you saw in the
36 Commercial zoning districts where we had this kind of language that we have also talked about
37 abutting or within 50 feet. You will see that same language here on those provisions and noting
38 that a conditional use permit is required for these types of service and retail uses that operate
39 between 10:00 PM and six o'clock in the morning.

40
41 The Visual Screening and Landscaping is a compilation of quite a number of existing criteria in
42 those two existing chapters. We have made a few changes to specify that plant species should
43 allow for mature appearance within five years. It just says some general language about over a
44 period of time or something but it wasn't specific to the time period. Also the preference for
45 textured and permeable paving materials to be used in pedestrian driveways and parking areas.
46

1 Noise and Vibration again there are some existing code standards. The Noise Ordinance is not in
2 the Zoning Ordinance I should point out it is in another part of the Municipal Code. We do have
3 additional requirements here that rather than waiting until potential problems arise and then
4 getting out there and trying to measure noise that at the time of building permit issuance for new
5 construction or modifications that the applicant provide a study by an acoustical engineer
6 indicating that they have done noise readings as well as estimates based on the specifications of
7 the equipment and any mitigating measures that they may use and what that noise level at the
8 adjacent property line will be. Then following that up that if that is anywhere close to what the
9 limits of the Noise Ordinance would allow, it would have to be below it but if it is getting close
10 to it, then we would require them to demonstrate prior to final inspection that that equipment
11 does in fact meet those requirements so that we have some knowledge going in there before we
12 have issued final inspection on a building that the Noise Ordinance is complied with regarding
13 the mechanical equipment.

14

15 We have not suggested changing the Noise Ordinance here. I know that is an issue of some in
16 the community and some Commissioners. We don't have that scheduled. Council hasn't
17 directed us to do that right now. There is a policy in the Comp Plan that says that we should do
18 that but it also is technically a police issue not our purview. If the Council directs us to do that
19 and if you are interested in that it may be appropriate for you to make that suggestion to the
20 Council that that be a priority and that we move in that direction.

21

22 We have added some criteria, the existing code provides some criteria as far as carport structures
23 and their compatibility and underground parking, we have added some language to encourage
24 parking behind buildings away from the street as our context based design criteria tend to do
25 anyway, more feasible breaking parking into smaller groupings, and being sure that with
26 underground parking garages that we are not getting so close to property lines that we are
27 precluding effective screening because of the grading that occurs beneath where the landscaping
28 would be.

29

30 Vehicular, Pedestrian and Bicycle Access there is some language currently related to that. We
31 have added some language about truck deliveries not being prior to six o'clock in the morning or
32 after ten o'clock at night and about avoiding conflicts with pedestrian and bicycle walkways and
33 facilities. The other criteria deal with primarily location of driveway shipping areas, receiving
34 areas, and loading docks and trying to maintain those away from the residential uses adjacent.

35

36 Air Quality is a new section and has some pretty general language which specifically tries to deal
37 with the cooking odors, smoke, and other similar air contaminants be addressed and if necessary
38 that the applicant provide the specifics of the mechanisms for doing that. We have pretty
39 standard requirements for during construction dust control and that kind of thing. This is more
40 the longer-term types of impacts.

41

42 Then the last section is Hazardous Materials. Currently hazardous materials are not in the
43 Zoning Ordinance anywhere and they are not in very many zoning ordinances anywhere. They
44 are regulated through a combination of local, state, and federal requirements. In our city the Fire
45 Department is the principle agency involved with the regulation and review of those facilities.
46 We have tried to do two things in response to concerns that we know exist in the community.

1 Actually it is trying to do one thing in two ways. The one thing is to provide right to know, what
2 we consider to be right to know, to the residents that are in some proximity to these kinds of
3 facilities. Currently you may visit the Fire Department and find out who has these and what
4 types of materials and quantities they have, that kind of thing, but you have to know to do that.
5 You don't regularly know that something is happening to change that. So we have suggested
6 first of all that most hazardous material uses are governed by the Health and Safety Code 6.95
7 and Title 15 of our Municipal Code. There are certain thresholds above which you are required
8 to get a permit and develop certain plans that the Fire Department reviews. For all of those cases
9 there are pretty standard review processes. We have suggested that after the Fire Department has
10 looked at something and approved it that we would send notice within five days of that to let
11 adjacent or nearby, within 150 feet, property owners know that that type of facility has increased
12 the amount of hazardous materials or is starting to use different materials or it is a new facility
13 that is using these materials that are above this threshold. So the focus again is primarily on
14 allowing the public to know that these facilities exist and that they are in proximity. If they
15 choose to they certainly can look at the details at the Fire Department.
16

17 The second level of hazardous material is governed by Title 19 of the California Code of
18 Regulations. These depend on quantities and types of materials and are much less frequently
19 found but are much more serious in terms of their potential damage. So there is a requirement
20 through the county that an Accidental Release Plan be developed. A Risk Management Plan is
21 developed and sent to the Fire Department here and is available for public review for a period of
22 45 days. What we have suggested with these types of facilities is that when the Fire Department
23 receives notice that we would notify any property owner that is within what is called 'the
24 affected area' that is defined by that Risk Management Plan. It maybe 150 feet or it may be
25 three miles. So however that area is defined we would notify everyone within that area that such
26 a plan has been developed and is on file and can be reviewed and commented at the county. We
27 have also added a provision that our Fire Department would not issue any permit for that facility
28 until that 45-day review period has run and they have seen the comments on that. So it does
29 provide the public some opportunity for input to that process. It still leaves the actual approval
30 ultimately to the county and to the Fire Department to do those. Dan Firth can fill you in a little
31 bit more on that process and correct anything that I have misstated here. I think I will just turn it
32 over to him to do that.
33

34 Commissioner Keller did have a few questions that I will respond to after Chief Firth makes his
35 comments.
36

37 Chair Holman: Thank you and welcome Chief Firth.

38
39 Dan Firth, Fire Marshall: Good evening and thank you for the invitation to come here this
40 evening. Thanks to Curtis for the promotion, I am Fire Marshall not Fire Chief.
41

42 So I thought what I would do if I could take about ten minutes is give you a brief overview of
43 some of the regulations and quickly how our Hazardous Materials Program works within the Fire
44 Department. Then I can answer any questions that you might have.
45

1 The regulations are complex. Hazardous materials are regulated at the local level, the county
2 level, the state level, and the federal level. There are probably three programs that most directly
3 affect what we are working with here and at the federal level that is Emergency Planning
4 Preparedness Act, EPPA. At the federal level you also have the Risk Management Plan it is
5 called the Chemical Accident Prevention Rule and they have set federal requirements for an
6 accidental release program. Federally they also regulate hazardous wastes and EPA also passed
7 the Clean Air Act, which has an impact or directs the regulations implemented by the Bay Area
8 Air Quality Management District. The EPPA program, the RMP program and the Hazardous
9 Waste Program, the federal programs have all been delegated to California. California
10 Environmental Protection Agency, the Cal EPA, has been given the authority to implement those
11 programs in California in conjunction with the Governor's Office for Emergency Services for the
12 Hazardous Materials Business Plan and the Risk Management Plan. Then for hazardous waste is
13 Cal EPA in conjunction with the Department of Toxic Substances Control.

14
15 In 1994 the state legislature consolidated six major environmental programs including these into
16 one unified program with the idea of consolidating the regulations across the state and improving
17 the consistency of the implementation of those regulations across the state. Prior to the passage
18 of that law in 1994 there were over 1,100 local agencies implementing regulatory programs in
19 these areas, hazardous waste, and hazardous materials business plans. So the idea was let's make
20 it more of a level playing field across the state. When they passed that law they created local
21 agencies called Certified Unified Program Agencies, CUPAs. It is a terrible acronym but we live
22 with it. The CUPAs in general, there are 85 of them in the state and they are generally county
23 agencies, county health departments or environmental health departments, maybe a little less
24 than half are local fire departments. There are an additional 35 agencies called Participating
25 Agencies that are subordinate to the CUPA that manage some of these six major programs.

26
27 Palo Alto is a Participating Agency. The Santa Clara County Health Department or Department
28 of Environmental Health, excuse me, is the CUPA for our area. We entered into a contract with
29 them in 1997 to administer the Hazardous Materials Business Plan Program, the Fire Code
30 Equivalent Program, the Underground Tank Program and the Above Ground Tank Program.
31 The county retained responsibility for administering the Hazardous Waste Program and the Cal
32 ARP program, which is the Risk Management Plan.

33
34 We have had a very close working relationship with Santa Clara County Environmental Health
35 since 1983. All of the fire departments and the county and a number of other environmental
36 agencies in the Santa Clara County formed a task force and wrote a model Hazardous Materials
37 Storage Ordinance in 1982. In 1983 all the agencies in the county including the county adopted
38 that as regulation and we have been implementing that ever since. That is our Palo Alto
39 Municipal Code Title 17. In 1988 most of those requirements were incorporated into the
40 California Fire Code that is part of the Uniform Fire Code, which is used by 11 western states.
41 So the requirements that we drafted here that we implemented here were spread to the 11 western
42 states that use the Uniform Fire Code. As I said we have had a very close working relationship
43 with the county. We deal with them on a frequent basis. Annually both we and they submit
44 reports to the state on the status of our implementation of those programs.

1 The Fire Department, the Hazardous Materials Program, we administer the California Fire Code
2 and for the HAZMAT program specifically those provisions of the code that deal with hazardous
3 materials. We implement Titles 15 and 17 of the Municipal code. Title 15 contains the Toxic
4 Gas Ordinance and the Fire Code adoption and Title 17 is the Hazardous Materials Program. We
5 also implement the Health and Safety Code Chapter 6.95, the Hazardous Materials Business Plan
6 portion of it, and Chapter 6.5 of the Health and Safety Code, which is the Underground Tank
7 Program. Our role is to ensure compliance with these regulations. I have a staff of inspectors
8 who perform annual or routine compliance inspections at all businesses that have hazardous
9 materials in the city. We permit them to store those hazardous materials. There are about 500
10 facilities of that nature and about half of those exceed the state's reporting threshold that triggers
11 the state's Hazardous Materials Business Plan. The other half have hazardous materials but they
12 are very small quantities and we have an abbreviated permitting and less of a permit fee for those
13 facilities, although, all of them have to comply with the performance standards that we have in
14 our ordinance and in the Fire Code.

15
16 That is one of the big differences between the federal law and the state law and our local
17 ordinance. Both federal law and state law are primarily reporting requirements. You have to file
18 a business plan and tell the world what you do, what you have, and where you store it. Our local
19 ordinance and the Fire Code have performance standards that say you shall have containment,
20 you shall monitor, you shall separate, and you shall do a number of things. My staff conducts
21 inspections to ensure compliance with those requirements, we review plans for new construction
22 and tenant improvements that relate to the use and storage and handling of hazardous materials,
23 we conduct enforcement when we have to and I think that's it.

24
25 I don't know much about the Air Boards, the Bay Area Air Quality Management Districts
26 program on the Toxic Air Contaminants Program. I think it is Rule 2, Regulation 5. They have
27 a requirement that either new or existing facilities that want to increase their production or bring
28 in materials have to go through a review and approval process if they use certain toxic materials
29 and if those materials would be released to the environment in any way. So there are some
30 control requirements that apply. To my knowledge there is no public hearing process in that
31 program. There is no public hearing process in the Hazardous Materials Business Plan Program.
32 There is in the Risk Management Program as Curtis indicated. If a business exceeds the
33 California Title 19 thresholds they are required to file a Risk Management Plan with the county,
34 the county is required to publish a notice and make the Risk Management Plan available for
35 public review in a reading room for a period of not less than 45 days. They are required to
36 review that Risk Management Plan and review any public comments that are received. As Curtis
37 indicated we have two facilities in Palo Alto currently that have a Risk Management Plan out of
38 the 500 businesses that we permit.

39
40 Chair Holman: I see Commissioner Garber has a question for you.

41
42 Commissioner Garber: Two questions. The first one is just so I get it straight in my own head.
43 The level two hazardous materials that Curtis had described the responsibility for those are at the
44 county level as opposed to the city level, is that correct?
45

1 Mr. Firth: Only the requirement to file a Risk Management Plan. Any quantity of hazardous
2 materials is subject to our performance standards. So if you have five gallons, 50 gallons, or
3 5,000 gallons of a material you are subject to the controls that exist in the Fire Code or Title 15
4 or 17.

5
6 Commissioner Garber: Does the county have its own set of inspectors that does its own work?
7

8 Mr. Firth: Yes it does.
9

10 Commissioner Garber: It is in addition to your auspice or is there an overlap there?
11

12 Mr. Firth: There is an overlap. As I said they manage the Hazardous Waste Program. So most
13 of the businesses, probably half of the businesses in the city that we permit also generate
14 hazardous waste and they are subject to inspection by the county. Any of the large users would
15 very likely be inspected by both us and the county.
16

17 Commissioner Garber: So at the moment the City is interested in storage and the county is
18 interceded in waste.
19

20 Mr. Firth: Correct. And hazardous waste is a hazardous material by definition. So we inspect
21 the same material. We are looking for containment, monitoring, those performance standards
22 and they are looking for compliance with state hazardous waste laws.
23

24 Commissioner Garber: Putting it differently the City is concerned about what stays on the site
25 and the county is concerned about what leaves it.
26

27 Mr. Firth: Very good, yes.
28

29 Commissioner Garber: Okay, the second question. Could you just walk us through briefly the
30 permit procedure for both a business that wants to introduce a new substance and then secondly a
31 business that wants to change the amount or the type or the quantity, etc. of the substance they
32 already have?
33

34 Mr. Firth: If the change is not significant it is merely a requirement that they provide notification
35 to us. So if they are increasing a quantity of a previously disclosed material and they are not
36 increasing it a significant amount, I think the state has defined significant as an increase of 100
37 percent, so if they are not increasing it a significant amount they merely need to notify us within
38 30 days of when they have made that change. If we feel that there is a problem we can take
39 action at that point. We can certainly require them to reduce their quantities if we find
40 deficiencies. If they are adding a new hazardous material that presents a new hazard like
41 bringing in a toxic gas where they didn't have one before or they are significantly increasing
42 their quantities Title 17 requires that they obtain an additional approval before they bring that
43 material onsite. So they would make an application, they would advise us of what they are
44 planning to do, and we would review that application, determine compliance with our
45 requirements and either approve it, approve it with conditions, or reject it.
46

1 Commissioner Garber: So right at the moment in both those conditions as you had mentioned
2 there is no public hearing however there is a 45-day public comment period?
3

4 Mr. Firth: Not unless they exceed the state's reporting threshold that Title 19 threshold. We
5 have several thresholds here. The business plan threshold with a few exceptions is basically 55
6 gallons, 500 pounds, or 500 cubic feet of a hazardous material, any single hazardous material.
7 So if you have a drum you are subject generally to filing under the state's Hazardous Materials
8 Business Plan requirements and you would be in Palo Alto as well. If you have less than that
9 amount you would file what we call a registration form which is a two-page form that gives us
10 some basic information about what you have and where it is.
11

12 The Title 19 thresholds are generally much higher than that, there are some exceptions but
13 generally they are much higher than that. They deal with extremely hazardous substances. The
14 same hazard category information that we do but at a higher threshold. If you exceed that or if a
15 business exceeds that amount they would need to file a Risk Management Plan with the county.
16 I am not sure if I answered that question for you.
17

18 Commissioner Garber: I am getting the gist of it. One quick clarifying question to Curtis. The
19 recommendations that you are making in the Zoning Ordinance are that you create a 45-day
20 public comment period?
21

22 Mr. C. Williams: No, just that on those facilities that are exceeding the Title 19 limitation that
23 we dovetail with that existing 45-day review. I think the only notice that goes with that is
24 something in the newspaper so individual neighbors don't get notice of that. What we are
25 suggesting is that we would follow up on that as the City sends out that notice to the individual
26 neighbors who would then have a chance to look at that RMP.
27

28 Commissioner Garber: I have more but I will wait.
29

30 Chair Holman: Vice-Chair Lippert.
31

32 Vice-Chair Lippert: I will follow up on Commissioner Garber's questions. With regard to the
33 Title 19 threshold or even any of the other thresholds do we have the ability within our ordinance
34 to require a conditional use permit?
35

36 Mr. C. Williams: We have the ability it wouldn't be in this section it would be within whatever
37 the zoning district was. If it were in the GM zone and you wanted a conditional use permit for
38 any facility that required certain levels or used certain levels of hazardous materials we could do
39 that. I think we have talked about some facilities like daycare or something like that that might
40 be close to these areas them having conditional use permits to evaluate whether that is an
41 appropriate location. To go the other way I think our concern about a conditional use permit is
42 what would the basis of the review be from a planning standpoint? There are technical
43 requirements for containment that supposedly make it safe and that is the Fire Department's
44 bailiwick and so we wouldn't know what our role would be in reviewing a use permit under that
45 scenario.
46

1 Vice-Chair Lippert: Let me just follow up on that really quick. In the last go around where we
2 reviewed the Zoning Ordinance for the LM and GM districts we put a conditional use on the LM
3 district for housing. Potentially you would have housing going into a district that might be
4 nearby the GM or LM zone in which case you would have residences moving adjacent to where
5 there might be hazardous materials. So why not the reverse of that which is that you have an
6 increase of hazardous material why not have a conditional use permit for that?
7

8 Mr. C. Williams: Because that is part of that district. That is part of the use of that district.
9 Hazardous materials go hand-in-hand with an industrial zone. Whereas the residential is
10 introducing – the primary purpose of that zone is not residential although it may be permitted.
11 So that is introducing a potential conflict and there is a need to look at that.
12

13 Vice-Chair Lippert: But my point is that here we allow for housing to go into a zone with a
14 conditional use permit but then there might be an increase of hazardous material adjacent to
15 where we have already provided for a conditional use permit.
16

17 Mr. C. Williams: I understand.
18

19 Chair Holman: I think we are getting beyond clarifying questions. I know two other
20 Commissioners have questions so if they are clarifying then go ahead, Commissioner Tuma.
21

22 Commissioner Tuma: I have a question for the Fire Marshall. Just so I am clear on this if you
23 have a situation where you have a Title 19 threshold that is already been exceeded but that same
24 facility wants to bring additional quantities of the same materials that are already onsite does that
25 also trigger the RMP requirement?
26

27 Mr. Firth: It would trigger a revision to the RMP because part of the Risk Management Plan is
28 to not only tell you what they have but also to tell you what their contingency plan is, what their
29 containment is, all the things associated with if there were a release what is the worst case
30 scenario. So if they had a significant increase in that particular material they would have to
31 revise that RMP to alert the community as to the additional risks that were being presented by
32 increasing the quantity.
33

34 Commissioner Tuma: And there would be again the 45-day cycle for a revised RMP?
35

36 Mr. Firth: That is my understanding. I don't implement that program so I don't know it as well
37 as mine but my understanding is yes if you were amending the Risk Management Plan then it
38 would go back out for public comment.
39

40 Commissioner Tuma: Okay, and one other thing to clarify what you just said about if there was
41 a significant increase, is that significant increase again the statutorily defined 100 percent or is
42 there some other threshold for the increase that triggers a revised RMP?
43

44 Mr. Firth: I can't recall the exact requirement in the Cal ARP regulations. So I can't give you an
45 answer if it is 100 percent or not.
46

1 Commissioner Tuma: Does anybody on Staff happen to know? Okay.

2
3 Chair Holman: Commissioner Keller, clarifying questions.

4
5 Commissioner Keller: I will leave it to the Staff to determine when is the best time to answer the
6 written questions I have submitted. The question that I would like to ask is to what extent do the
7 regulations in your office or the SCCDEH have to deal with storage versus use? Are both of
8 them regulated, to what extent does your purview refer to each of them?
9

10 Mr. Firth: The Hazardous Material Storage Ordinance, which is what the county has, is a storage
11 ordinance. Title 17 primarily deals with storage. The California Fire Code deals with all three
12 storage, handling, and use. So there are specific provisions in the Fire Code for example how
13 you can dispense flammable liquids. A similar requirement doesn't exist in the storage
14 ordinance it only controls how and where you store the materials and how you ensure they don't
15 get released.
16

17 Commissioner Keller: So do you inspect both the storage and handling and use or only the
18 storage?
19

20 Mr. Firth: Because we administer the Fire Code we inspect both.
21

22 Chair Holman: Commissioner Burt.
23

24 Commissioner Burt: Dan, the community has grown in its awareness of hazardous materials
25 issues. I wondered if you might share with us your sense of the trend that has occurred in
26 facilities that would today qualify under Cal ARP, I appreciate that you can't go back in time
27 because Cal ARP didn't exist ten or 20 years ago, but my understanding is we had many more
28 hazardous materials facilities in the Research Park one or two decades ago than we do today.
29 We have this trend of declining hazardous materials facilities. Is that correct?
30

31 Mr. Firth: I don't know the numbers of facilities in Palo Alto in the 1980's or even the early
32 1990's. I know since I have been here the number of permitted facilities has remained relatively
33 flat between 480 and 510 over the last eight years or so. I have been involved in this business in
34 Sunnyvale, San Jose, and Palo Alto since the early 1980's and I know that this valley has
35 transitioned from semiconductor manufacturing which were heavy users of toxic gases and toxic
36 materials and we are evolving much more into R&D where the quantities of materials are much
37 smaller. Also I was just talking earlier that the people who are responsible for hazardous
38 materials control at the facilities when we started this whole thing back in the 1980's were often
39 times facility managers who obviously had competing interests internally within their company.
40 We find now most companies of any size have dedicated environmental specialists that have
41 degrees and often time way more experience and knowledge than I have. So that is a very
42 distinct trend.
43

44 Commissioner Burt: I think in the Research Park 20 to 25 years ago I believe there were six
45 plating facilities and I think we have one now.
46

1 Another question is in our proposed regulations the threshold for notification, the distance
2 threshold for notification, is 150 feet from the property line. As I was thinking about it it seems
3 that what matters, whether it is 150 feet or some other distance, is the distance from the area
4 where the hazardous materials are either stored or used. Have you had any thought about that
5 and would it be more appropriate to regulate the distance from the H-occupancy portion of the
6 facility and maybe it has be more than the 150 feet but either way to focus on where the
7 hazardous materials are stored and used rather than the property line itself? Curtis, did you want
8 to add something to that?
9

10 Mr. C. Williams: Yes, I wanted to take a first shot at that. Actually, that is what we are doing
11 but it is confusing and may need some rewording. Under item B for the requirements, item sub-
12 3 it says, “where a building or area used for storage, use, and handling is located within 150 feet
13 of a residential zoning district the business owner shall provide.” So the first hurdle you cross
14 here is that you have a building or area, not the site, a building or area that is within 150 feet of a
15 residential zoning district. If you have that then we issue notice under item four on the next page
16 to all properties that are 150 feet from that property line. So we go a little broader than that on
17 the notice.
18

19 Commissioner Burt: Great. That addresses exactly what I thought was appropriate and I didn’t
20 appreciate that clarification. I think that covers my questions for now. Thanks.
21

22 Chair Holman: I have but one at this moment, which is, if a facility is going to use hazardous
23 materials to whatever level they do, I presume it is part of the conditions of approval that the Fire
24 Department approves?
25

26 Mr. Firth: Yes, they have to have approval from us to use hazardous materials. They need a
27 permit to store hazardous materials.
28

29 Chair Holman: So my question is what is the monitoring of that? In other words, if a facility
30 can significantly increase the amount of materials that they have on site what is the monitoring of
31 that condition of approval?
32

33 Mr. Firth: We conduct routine compliance inspections. I have a staff of three inspectors
34 dedicated to doing hazardous materials inspections plus we have our Hazardous Materials
35 Response Unit. They are responsible for inspecting an additional 135 or so of the smaller
36 businesses.
37

38 Chair Holman: Thank you very much and if you will stick around we might have more
39 questions that come up. At this time I would like to go to the public and currently we have, I’m
40 sorry, Commissioner Tuma.
41

42 Commissioner Tuma: Sorry, before we do that if I may, in the Staff Report Curtis had indicated
43 that Staff was going to report on a meeting that they had on October 18 with the residents. I
44 think it would be interesting to hear a report as to what happened at that meeting as well as the
45 October 17 meeting, which took place with businesses in the same area. I think it would be
46 constructive to hear that before we go to public comment if I could be indulged.

1
2 Chair Holman: That is very good, thank you.
3

4 Mr. C. Williams: Thank you for reminding me of that. I don't have my notes from those
5 meetings but I think I can pretty succinctly summarize. At the meeting with the residents there
6 were I think ten people there. The bulk of the conversation is what you are hearing tonight and
7 have seen in letters regarding hazardous materials issues. Whether to entertain some kind of
8 potential for some kind of public review process, when residents are notified, whether there
9 should be a hearing process associated with particularly these higher more hazardous materials in
10 particular.
11

12 There was also a fairly extensive discussion of noise in terms of to some extent the insufficiency
13 of the existing Noise Ordinance. Some of our language that we presented to the folks talked
14 about or actually lifted some of the wording from the Noise Ordinance and some wording from
15 the Comprehensive Plan and those two didn't exactly dovetail. It was confusing. We made a
16 change in what you see tonight. It just says compliance shall demonstrate through this testing
17 and studies and such, compliance with the Noise Ordinance. So we have taken that and sort of
18 jumbled the wording out of there.
19

20 I think you will hear some about the etiological agent from one of the speakers and it is in one of
21 your letters too about the biological materials.
22

23 Also on the noise I think there were issues as far as monitoring that and the difficulty of
24 monitoring noise levels and that is one of the reasons why we have suggested this pre-study and
25 testing before final permit approval.
26

27 The other couple of comments were more towards the applicability of the regulations. There
28 were issues about it says that it applies within 150 feet of a residentially zoned property. Well,
29 there are some properties that are residentially used but they are not on residentially zoned
30 properties. They are residences that might be on a commercially zoned property. We have also
31 have mixed use projects which are on commercially zoned properties. We have added language
32 in here, although as Mr. Keller has aptly pointed out, not always consistently that adds that and
33 makes it apply within 150 feet of any site with residential use as well as any residentially zoned
34 property.
35

36 I think there was one other sort of applicability issue. I am not sure I remember what that was.
37 At any rate, I think it might have had to do with the 150 feet and whether that is an appropriate
38 distance or not that some of these issues extend beyond 150 feet, noise in particular and
39 hazardous materials potentially as well.
40

41 The meeting that we had was with five or six Research Park businesses represented. Their
42 concern was some of the vagueness of language like related to air quality. We have used the
43 word contaminants instead of air pollution, which we had in there when we met with them. They
44 had obviously, as you might expect, concerns about the potential to politicize through hearings or
45 such the hazardous materials issue. While it wasn't proposed to have a hearing they were vocal
46 about making sure that we understood that that was something they would have concerns with.

1 Otherwise I think they generally felt like this was reasonable, that the right-to-know issues were
2 probably appropriate to incorporate into an ordinance like this. Did you have anything else?
3

4 They also identified the sort of conflict in our noise language that we had then which we have
5 tried to just refer to the Noise Ordinance and not get into the specific numbers in the paragraphs
6 here.
7

8 Chair Holman: Thank you Commissioner Tuma, you are two for two. I would like to go to the
9 public now. I have four cards and you will have five minutes and if you can make it briefer that
10 is appreciated, not to curtail your comments at all just as a matter of efficiency. Art Liberman is
11 the first speaker to be followed by Mark Georgia.
12

13 Mr. Art Liberman, Palo Alto: Thank you. I want to speak to you about the hazardous materials
14 section. I am one of several residents who have been leading an effort in our neighborhood in
15 conjunction with the Barron Park Association to promote hazardous material zoning protection
16 for residents who live near sites using hazardous materials. I want to thank the Staff or listening
17 to us, for adding a hazardous materials section to the Zoning Ordinance Update. We appreciate
18 their including a notification to nearby residents when projects that would significantly increase
19 the amounts of Class H hazardous materials. But we are very unhappy with the Staff proposal
20 regarding projects using or storing Title 19 quantities of hazardous materials, the last section of
21 the proposal.
22

23 Title 19 quantities as Fire Marshall Firth has mentioned are materials which are so dangerous
24 that there are only two sites in Palo Alto currently subject to these regulations the Palo Alto
25 Waste Water Treatment Facility down on the Embarcadero and CPI on Hanson Way. There are
26 none in Mountain View and there are only about 20 in the county.
27

28 These sites submit the Risk Management Plan and what is very important about that is that they
29 specify the offsite consequences of an accident at their site. So first let's look at what the Staff
30 proposes because we think it is both inadequate and impractical. First it says nothing about
31 issuing building permits to projects using Title 19 quantities of hazardous materials near
32 residential zones. It continues the current policy of completely disregarding the risks to nearby
33 residents. The City Staff will agree with my comments and the Fire Marshall I am sure also that
34 they feel they have a ministerial responsibility to issue permits, if something happens in that zone
35 regardless of the consequences to nearby people, nearby residences, regardless of the hazards. In
36 fact the very first Section A of the hazardous materials part that you see before you says
37 'Purpose,' "Minimize the potential hazards of any use on a development site." In other words,
38 forget about the potential hazards for those living next door. That is why it is inadequate.
39

40 Now here is why it is impractical and I think Commissioner Tuma raised this issue, which is that
41 the Staff proposes that the City notify affected residents if a new project application would
42 involve Title 19 quantities of hazardous materials and if a new RMP is required. In fact a
43 company can already have a RMP enforce, as did CPI when they proposed their modifications to
44 existing buildings and then issue a new RMP after construction is completed as CPI did in 2006.
45 This is completely in accordance with Title 19 filing and reporting requirements. So if the Staff

1 proposal had been in effect there would have been no notification to affected residents by the
2 City before, during or after the project had been completed.

3
4 So we feel strongly that you need to add some real protection for residents from projects nearby
5 residences using Title 19 quantities of hazardous materials. At the study session I suggested and
6 I also mentioned at our meeting on the 18th that a preliminary design review be held by this
7 Commission before issuing building permits. What would you consider? I think first you would
8 consider first the risks to the community by the project judged by the number of residents who
9 would be affected offsite by the accident as described in the applicant's Risk Management Plan.
10 I think you would also look at the past performance of the applicant that is to say their history of
11 accidents and releases of toxic materials.

12
13 Let me suggest an alternate proposal. It may actually be a better one for you to consider. This
14 would be a new rule that would only allow Title 19 levels of extremely hazardous materials to be
15 stored or used in new or modified buildings far from the property line of a residential zone. The
16 same should hold for Class 4 biological agents as Mr. Balin is going to talk to you about.
17 Otherwise the risk from the effects of an accident on these sites is too great to too many
18 residents. How far away is far? Well, that would depend upon the offsite risk posed by the
19 hazardous materials. In some cases 150 feet, in some cases 500 feet, and in some cases more. It
20 should be related to the size of the affected region that is in the applicant's Risk Management
21 Plan.

22
23 In summary, if you approve the Staff proposal then you are telling applicants it is okay to submit
24 projects that disregard any risks to nearby residents of an accident with Title 19 quantities of
25 hazardous materials. Their projects will be approved anyway. If they fill out the right
26 paperwork, demonstrate that they are handling the material safely, they can forget about the
27 residents. On the other hand if you require a preliminary design review applicants knowing what
28 you will consider beforehand will present project plans that will already have mitigated the risks
29 or they will eliminate the design review all together. Best of all if you have projects at a safe
30 distance from residential zones then you will ensure the risk will always be low. Just remember
31 that the first part of the zoning code, purposes of the zoning code, the purposes of this Title I
32 don't think I have to remind you, the purposes of this Title 18.01.02, the purposes of this title
33 shall be to promote and protect the public health. Thank you.

34
35 Chair Holman: Thank you, Mr. Liberman. The next speaker is Mark Georgia to be followed by
36 Fred Balin.

37
38 Mr. Mark Georgia, Palo Alto: I am here as a neighbor, someone who kind of literally lives under
39 the clouds created by CPI and before Varian. It just strikes me that under this new Risk
40 Management Plan if we only have the ability to find out what has been allowed it leaves us
41 completely vulnerable. I walk outside my home after hearing some loud noises across the street
42 to see clouds of hydrogen going off. The whole summer has been like that. We had clouds of
43 hydrogen going off every 20 minutes on some days. Other days it was every hour and other days
44 maybe only once or twice we saw these beautiful white clouds and they are hydrogen.

1 When we first moved in in the 1980's there was an emergency plan that was being executed with
2 neighborhood involvement because there were a couple of releases back then. One of them was
3 acid from the plating plants that damaged neighborhood cars. I feel completely vulnerable. I am
4 right across the street but I think of the recent problem on the East Coast I think it was in South
5 Carolina where a whole city was asked to leave the city because of one plant. That could happen
6 here. So if our role is only be informed after all the decisions have been made to me there is
7 something very, very wrong that the citizens who pay the City Staff for their responsibility to
8 protect the citizens it just strikes me as being very wrong. Thank you.

9
10 Chair Holman: Thank you. Our next speaker is Fred Balin to be followed by Lynn Chiapella
11 who is our last speaker.

12
13 Mr. Fred Balin, Palo Alto: Good evening. I refer to three emails that I submitted on noise,
14 hazardous materials and biohazards. In recent years two Research Park sites abutting residential
15 neighborhoods received permits for major modifications. In each case there was no public notice
16 or public hearing. In each case environmental impacts proved to be significant.

17
18 At 1501 California Avenue, Alza Pharmaceuticals installed a clean room in 1996. The next year
19 or so seated rooftop air conditioning and ever since the facility has been out of compliance with
20 the Noise Ordinance 24 hours a day, seven days a week.

21
22 The new noise and vibration section can help prevent future problems. A key area to confirm is
23 that verification of the applicant's acoustical analysis be handled in the same manner as all other
24 aspects of a building project filing from a qualified person, technical analysis by the City before
25 work begins, inspection at proper intervals before work is completed. Chief Official Williams
26 noted that although it is referenced the Noise Ordinance itself is not before us tonight although
27 its high minimum ambient of 40 decibels is highly prejudicial to quiet areas that suddenly meet
28 un-attenuated 24/7 noise generating equipment.

29
30 The second site, CPI on Hanson Way, recently upgraded its plating facility. Noise level also
31 increased dramatically. It is only now that residents are learning other important facts thanks to
32 work of Art Liberman. CPI is a special extended threshold hazardous materials site under a
33 Santa Clara County supervised program known as Title 19 which applies to only about 20
34 companies in the county. CPI recently requested and received permission to increase the
35 quantities of their two Title 19 toxics by amounts of 22 and 36 percent. The county is required to
36 publish notification of such requests but it is doubtful anyone in Palo Alto saw them when they
37 appeared in the *Mercury News*. If someone did they could have gone down to the county offices
38 and responded during the 45-day comment period.

39
40 Staff's proposal is to notify residents of the Final Risk Management Plan but they feel no need to
41 go further. They reason that the Council has already approved the use of toxics above more than
42 usual quantities in certain areas. So the City's job now is the matters of notification and the
43 technical issues of inspection by the Fire Department. What has now become clear is that this is
44 not sufficient. It may not happen here tonight and won't happen here tonight but as part of the
45 solution to the potential risks from hazardous materials in our city the City Council must
46 mandate that there are no more Title 19 threshold facilities near residential areas and for any

1 facility that wants to reach that threshold in other parts of city the applicant must show sufficient
2 justification for the Council to approve it. That was the three-minute.

3
4 Let me quickly make a comment here. Before the Research Office and Manufacturing District
5 zoning reached the Council it came before this committee twice. There were revised definitions
6 in terms of exempt quantities of hazardous materials and also definitions with regard to bio-
7 safety level agents going up to Level 4. It was never brought up by Staff, it was never discussed
8 by the Commission, it was tucked away in a separate section on definitions, and has now been
9 incorporated into the code. I noticed it just before it went to the Council. Had we discussed it
10 we might have been able to get into some issues like Title 19 and other issues at an earlier time.
11 I want to mention biohazards. You and the Council have allowed there to be several Level 4
12 facilities, the highest that there are, there are only about six in the whole United States, none in
13 the western states, separate containers within containers, full body suits, Ebola, other high level
14 viruses, that can be allowed without Council approval if the applicant asks for it and the Fire
15 Marshall, City Manager and Police Chief says it is okay. I think it is an abdication by the
16 Council, I am speaking past you to them at this point, I think we also need much more
17 information about bio-safety levels one to three materials. I refer to my email on that. Thank
18 you very much.

19
20 Chair Holman: Thank you. The last card we have is from Lynn Chiapella.

21
22 Ms. Lynn Chiapella, Palo Alto: I am glad I don't live over there. I have some questions on page
23 two of the report mentions the guidelines and the requirements. I have a question on the
24 guidelines. What will ensure that both Staff and the ARB apply those guidelines to any given
25 project? Is it going to be just at the whim, as it seems to be now, of the applicant to apply those
26 or is there going to be something required so that he has to state why he doesn't want to follow
27 the guidelines? An example I will give you is the lights that we see from the green building, the
28 green glow. The ARB has approved that and at least three or four projects in Midtown the last
29 couple of years, Long's, Walgreen's, the video store where bare-bulb light bulbs just hang and
30 you can see them for miles just driving down the street. You can see them from your house.
31 Those were all approved and then they said oh, we didn't know that wouldn't be covered. Well,
32 when they are 20 feet high and the houses are ten feet high or you are looking out your living
33 room window or whatever all of these things have an impact. So the guidelines would have said
34 you couldn't really do these things. So what will make sure that the guidelines are actually
35 followed and they are just not niceties on a piece of paper that don't really apply to anybody
36 unless they just happen to be a nice guy and do it? So that would be my first question on the
37 guidelines.

38
39 This report and this section is actually a really big step forward I think and I wanted to commend
40 Curtis and his Staff. It was a very big step forward to put these together. My next area would be
41 on the lighting, the lighting could be 15 or 20 feet high next to your house. Is a shield required
42 that cuts in so that light can't go as it does now, though it said it would be shielded if you go to
43 Safeway you will see that the house in back is completely unusable it is bathed in light 24 hours
44 a day. Right behind the Safeway if you go down there at night you just simply can't miss the
45 situation. Those were required to be shielded but its shield was just a box with no drop down,
46 with no cut in. That doesn't prevent light from going to the little house in back when you have a

1 20-foot light. So these are things that need to be looked at in reality and what does this mean?
2 So that would be number three.

3
4 The next one would be on late night activities which is 23.040 and that is that no late night
5 activities between ten and six in the morning. I don't know what neighborhood operations
6 actually are working from six to ten at night except maybe a restaurant. My concern with those
7 hours, I do think it should have been seven because that seems more reasonable and friendly to
8 the people next door. Usually in the Midtown area the properties, the parking lots, the deliveries,
9 all of that occurs next to the residential property and if this specifically allows truck deliveries
10 what prevents the backups? Almost all of them have beepers, backups, refrigerated trucks
11 particularly restaurants. So my feeling is that this actually is going to worsen the situation,
12 which we have been working very deciduously to stop those overnight trucks that come in really
13 early in the morning. I don't see how this is going to work. I also don't see whether that means
14 the restaurant will serve someone who comes in at 9:30 and therefore they could possibly be
15 cleaned up until 11:00 or 12:00 at night dumping garbage. So I am unclear on how that is going
16 to work.

17
18 Then the noise section is 23.060 and I have two areas. One is that the DB on page six says noise
19 levels at or within 5DB. This 5DB is a 50 percent increase in the noise level. So if you are
20 going to allow 5DB more than whatever that noise level is this may not be a problem during the
21 day but your guys probably aren't going to come out and measure it at two in the morning. That
22 noise level at two in the morning is where you are going to hear that 5DB or be bothered by the
23 noises. So I don't know how that is going to work unless you have defined noise levels of some
24 kind. The second thing is the discouragement of open-air loud speakers. I didn't know that you
25 could just use them randomly as you chose. I thought you had to have a permit currently to have
26 an open-air loud speaker. In fact in Midtown when they have used them we have called the
27 police when they have used them all day long and you can hear them from at least 500 feet away.
28 They said they would stop it because they had no permits. This seems to be going around the
29 permit process. Thank you.

30
31 Chair Holman: Thank you. Ms. Chiapella there is a question for you.

32
33 Commissioner Burt: Lynn, when you mention the 5DB noise level threshold did you say 50
34 percent?

35
36 Ms. Chiapella: I believe every 10 decibels is perceived as a doubling of the noise. I could be
37 wrong on that my physics is really shaky but when I did read the material that was what I
38 understood it to say. So a 5DB increase at two in the morning and an air conditioner is a perfect
39 example which the gentleman before me said, you can hear that three buildings away I can hear
40 the air conditioning on the building in the early morning hours because it would penetrate
41 whereas I didn't hear it during the day and it was measured during the day. This is really a
42 problem.

43
44 Commissioner Burt: Are you looking at this is Section B-3 that you are referring to?

45
46 Ms. Chiapella: Yes, page six.

1
2 Commissioner Burt: Well, we can have Staff clarify.

3
4 Ms. Chiapella: Right, when it is going to be measured.

5
6 Commissioner Burt: Okay, great.

7
8 Chair Holman: Okay, I think what would probably be wise to do would be to approach each one
9 of these sections separately I think would be an efficient way to get through this. If I could I
10 would like to put a couple of questions out there for Staff to maybe have considered ahead of
11 time and also maybe to get Commissioners to comment as they are raising their questions or
12 making their comments.

13
14 When I went through this I was wondering why these performance criteria are being applied to
15 sites that are within 150 feet basically of residential or residential PCs. So one thought I had was
16 why wouldn't we apply these to maybe not every site because there are some commercial zones
17 where maybe we wouldn't but why wouldn't we apply these performance criteria to all. Just a
18 quick groundwork for that is for instance with noise if you are working in a building and your
19 neighboring building is having impacts that would affect a residential, multiple family
20 residential, building why wouldn't it also affect your work quality? Staff mentioned earlier also
21 mixed use projects, which are really specifically mentioned here.

22
23 Then the other is many of the guidelines, not all but many of the guidelines, I found in going
24 through this I was wondering why they actually weren't requirements. There are some that seem
25 like guidelines would be fine but there are some things also that seem like if that is our intention
26 it seems like it would be just as easy to make them requirements. So with those kind of laid out
27 there we will go to questions. Who would like to go first unless Staff would like to respond to
28 that beforehand?

29
30 Mr. C. Williams: I would and I also had indicated I would respond to Commissioner Keller's
31 questions.

32
33 Chair Holman: Yes, thank you.

34
35 Mr. C. Williams: Many of these are language suggestions and many of those language
36 suggestions I agree with but maybe if you have your list there I can just sort of tell you those and
37 we don't need to read through them. Well, let just go through them quickly. First one is that we
38 talk about the application being within 150 feet of residential zones or residential uses in those
39 zones and the word 'those' is such that it is ambiguous and it is intended to be within commercial
40 or industrial zones. So it is residential zones plus and this gets to the issue of mixed use too that
41 if it is a mixed use project it would be covered as well because it is a residential use in a
42 commercial or industrial zone or it could even say residential uses. We should say a site with
43 residential uses on it.

44
45 Chair Holman: So going forward you would say that throughout Staff would be agreeing to
46 make that change?

1
2 Mr. C. Williams: Right.

3
4 Chair Holman: So we don't need to discuss that one anymore.

5
6 Mr. C. Williams: Correct.

7
8 Chair Holman: Okay, thank you.

9
10 Mr. C. Williams: Then on the top of page two, 150 feet of residential – this is referring to the
11 redline version. So it says again the applicability that the criteria and this gets to another one of
12 Chair Holman's issues I think. This says the criteria may also be considered for sites abutting
13 nonresidential zones where determined to be appropriate by the Architectural Review Board. So
14 that language was specifically put in there. Sometimes it is appropriate and sometimes it is not
15 appropriate with nonresidential uses. That would allow for that provision and I think
16 Commissioner Keller's question was was that intended to be residential but no it isn't it is
17 intended to be nonresidential and allow for that where the use where appropriate adjacent to
18 other commercial or industrial properties.

19
20 Should the references to residentially zoned properties be...this is the same thing with properties
21 with existing residential uses located within commercial or industrial zones. Yes, we do that.

22
23 We have labeled two paragraphs 'paragraph 1' in a section and we will correct that. I have been
24 having a heck of a time getting that to format right. It keeps looking right on the screen and
25 doesn't print out that way.

26
27 The second paragraph one, read properties with existing residential uses located within
28 commercial or industrial zones? Yes, same thing.

29
30 This also has to do with the abutting or within 50 feet of – language that we used previously
31 under the noise section B-2. Okay, so it says noise-producing equipment shall be located out of
32 setbacks abutting residentially zoned properties or existing residential use sites. And again,
33 abutting or within 50 feet is fine to use there to be consistent with what we did before.

34
35 Then a question on these noise analyses and should there be a requirement for a before analysis
36 prior to issuance of building permit, a prediction of the after readings and then after readings
37 submitted following the completion of construction during test operation of the equipment prior
38 to final inspection? That is exactly what we have in here. It requires that prior to a building
39 permit being issued that that analysis be conducted, the before analysis and predict as part of that
40 the after readings and then upon completion of the construction but before final inspection to
41 require the demonstration that in fact those readings are met and that the ordinance is complied
42 with.

43
44 Commissioner Keller: So that is what 'three certification' is referring to?

45
46 Mr. C. Williams: Yes.

1
2 Commissioner Keller: Thank you.

3
4 Mr. C. Williams: Then should there be different rules for testing or daytime weekday, weekend
5 daytime? I think that is an issue that is a Noise Ordinance issue and I suggest that that be
6 addressed there. I don't think we can do that here.

7
8 On 23.080 which is the vehicular access there is a question about a requirement for documenting
9 delivery routes for trucks dropping off or picking up items from the properties as part of plan
10 submittal or PTC or ARB review. We are asking them to show where they are locating these
11 facilities and I think that would be part of it. I don't know if we need to necessarily say that or
12 not. If you are more comfortable adding something like that we probably could do that.

13
14 Under the hazardous materials section the same language about properties with existing
15 residential uses locating within commercial or industrial zones.

16
17 Then should finalization of the building permit and/or certificate of occupancy be conditioned on
18 the acceptance of the RMP by the Health Department? What we have suggested and what we
19 think is adequate because the Health Department is not doing our approval per se is that we have
20 suggested that we would notify when the RMP is available we will notify residents that we
21 would not issue any building permit, and this goes a little bit to Mr. Liberman's point because I
22 am not sure that he understood this part. The Fire Department would not issue a building permit
23 until the review period for the comments has run on that RMP and the Fire Department would
24 then have in hand resident comments on the RMP before they would make a decision on a
25 project.

26
27 Commissioner Garber: Just a moment of clarification there. You are saying the City would not
28 issue the building permit until it receives the permit from the county.

29
30 Mr. C. Williams: No, not receives the permit receives the RMP and it has run its course as far as
31 the review process.

32
33 Commissioner Garber: So if the county ends up appeal or re-hearing, etc. the City would wait
34 until that comes to its conclusion one way or the other.

35
36 Mr. C. Williams: Right.

37
38 Commissioner Keller: Could you show me where that is because I had trouble understanding
39 that in the code?

40
41 Mr. C. Williams: This is subsection five the second paragraph of that. The first paragraph talks
42 about the comments being submitted during the 45-day review period. The second paragraph,
43 the second sentence of it. The first sentence says any user or operator above Title 19 threshold
44 limits shall submit a copy in addition to the county to the Palo Alto Fire Department of the RMP.
45 Then it says that no building or Fire Department permit shall be issued prior to the submittal of
46 the RMP to the Health Department and the Fire Department. It doesn't say in there what I

1 thought it should say which should be prior to the submittal and subsequent to the public review
2 of the RMP. So I would add that language.

3
4 Commissioner Keller: Do you want to say prior to approval?

5
6 Mr. C. Williams: I don't want to say prior to approval. That is a separate process with the
7 county and I think Fire Marshall Firth can respond to how those can be different processes.
8 Their permit process may or may not track the county's approval but they are not going to get to
9 operate until the county has accepted their RMP. So I would prefer to refer that to him when we
10 get through these other questions.

11
12 Chair Holman: Curtis, if you could I think Commissioner Tuma and Commissioner Garber both
13 have clarifying questions for you at that point.

14
15 Commissioner Tuma: I am trying to understand how 100B-4 sits with 100-B-5. Four meaning
16 under certain circumstances when they have applied for a building permit. Are there
17 circumstances where it doesn't meet the Title 19 threshold?

18
19 Mr. C. Williams: Yes.

20
21 Commissioner Tuma: So just to be clear, where it meets or exceeds the Title 19 threshold an
22 RMP is triggered and there is the notice, you are proposing a ten day notice that within ten days
23 the City would give notice and then people would have an opportunity within the next 35 days to
24 comment to the county on the RMP.

25
26 Mr. C. Williams: Right.

27
28 Commissioner Tuma: But under subparagraph four where it doesn't necessarily trigger the Title
29 19 limits what you are proposing is that residents only be notified after the permit has been
30 issued.

31
32 Mr. C. Williams: Right.

33
34 Chair Holman: Commissioner Garber, did you have a question about that too?

35
36 Commissioner Garber: I think it has been clarified in the previous question. Thanks.

37
38 Chair Holman: Commissioner Lippert, did you have question about that or has it been
39 answered? Commissioner Burt.

40
41 Commissioner Burt: I have a question related to the Title 19 Cal ARP permitting. If we should
42 have a new facility that is sought to be permitted that has materials above the Cal ARP
43 thresholds what mechanisms do we have to try to have that H occupancy zone as far away from
44 residential areas as possible or practicable? Do we have things that can really try to minimize
45 the risk to residential areas?

1 Mr. C. Williams: I will let Fire Marshall Firth answer what they look at and how they respond. I
2 know there are building code requirements for hazardous materials and setbacks which are
3 considerably more than for instance CPI is right now. If they came today it could not be built
4 that close under building code requirements. So there are setbacks and they are greater
5 depending on the materials and the quantities of materials. So there are some under the building
6 code it is not in our zoning requirements. Otherwise I think we would have the authority if we
7 wanted to in the zoning code to say you can't locate such a facility within such and such a
8 distance of a residential use or zone or however you wanted to phrase that. That doesn't exist
9 right now. Right now it is the building code and then whatever review the Fire Department does
10 and determines that it is adequate and safe in that location or it doesn't need to be moved.

11
12 Commissioner Burt: So I guess another way of putting my question to Dan is that if you were to
13 have a request for an H-occupancy siting that requires Cal ARP Risk Management Plan do you
14 have tools at your disposal to require that that room or that occupancy area to be pushed away
15 from residents as far as is feasible on that site?

16
17 Mr. Firth: There are specific setback requirements from the property line for an H-occupancy. I
18 believe it is 60 feet as opposed to an ordinary building, which would have a shorter distance.
19 Not that I know of there isn't any specific requirement at my disposal to require the positioning
20 with respect to residences or any other property use.

21
22 What we do have are controls. We can require controls to improve the safety or reduce the risk
23 of a release. For example if someone wanted to bring in a toxic gas some of the requirements
24 that would apply they have to have a treatment system that treats any release to one-half the
25 immediately dangerous to life and health threshold at the point of discharge. So when it leaves
26 the stack it would have to be at half IDLH so it couldn't pose a risk to someone on the other side
27 of the property line no matter how far away it was. There are a number of other controls that we
28 can apply and we can also take advantage of a provision in the Fire Code where we require the
29 applicant to provide further technical expertise to hire someone, a qualified expert, to propose
30 additional safeguards or to justify the proposal that they have is in fact the most practical thing
31 that can be done to reduce the safety and best available technology.

32
33 Commissioner Burt: Those are very important controls and I appreciate that those are tools at
34 your disposal that do help address this. A lot of the sites in the Research Park are large acreages
35 and we are going to have very few sites that will be past the Title 19 threshold. Would it be
36 beneficial to you if you had greater discretionary authority or if the Planning Department had
37 discretionary authority that would be acting under the Fire Department's recommendations to
38 push the location of that use as far away from residential as is practically feasible? It doesn't
39 mean they could practically put it at the far edge of their property but also there are mistakes that
40 are made because including these manufacturers don't necessarily recognize that by putting a
41 facility right perhaps up to the allowable distance that they are increasing their long term
42 liabilities as well as from the standpoint of the residents. It just is a better practical thing to do to
43 move it away as far as is feasible. I am struggling with how the language would be written
44 because it has to be discretionary. You would be looking at it with the Planning Department and
45 saying okay, on this site we can't move it up to the front of the street as far away from the
46 residents as possible but it is far better that it be in the front half of the parcel rather than the rear

1 half that might be abutting residences. Would that kind of discretionary authority be welcomed
2 by both the Fire and the Planning Department?

3
4 Mr. Firth: I wouldn't object to that. My role is to provide as much protection to the community
5 as possible within the guidelines that I have to work with. So when there are zones within the
6 city that allow the placement of the business that uses hazardous materials I apply the controls on
7 that facility to make it as safe as possible. If there were a concern and a desire to put further
8 controls on that property I wouldn't object to it. I think that is the decision that is before you
9 tonight and before the Council.

10
11 Commissioner Burt: Thank you. Curtis, any thoughts on that concept?

12
13 Ms. McNair: I think it is easier to include something like that in new construction because then
14 you can take that into account when designing the facility.

15
16 Commissioner Burt: It is new construction that I am referring to. If someone came in and does
17 not currently have this H-occupancy requirement and wanted to be permitted for a Title 19
18 facility that is the occasion that I am wanting to know whether that sort of discretionary control,
19 not necessarily to prohibit them but to have them located in a more desirable portion of their
20 facility than butted up as close to the residential as they might legally be allowed. That is the
21 time that you can look at a design standpoint.

22
23 Right now it sounds to me like Fire and Planning Departments really don't have a tool to say to
24 an applicant you are technically outside of the distance that is the minimum distance. You are
25 compliant in the technical basis but this is a better half of your facility to locate this in. It will
26 reduce the liability to you, it will reduce the risk to the neighbors because you have a big facility
27 and you can put this thing further away from the residents and the design phase is the right time
28 to think that through and impose that. So that is what I am asking and why.

29
30 Chair Holman: I think Commissioner Lippert has a follow on to that and then I would like for
31 Curtis to be able to answer the rest of the questions and then I think we need to do some
32 evaluating.

33
34 Vice-Chair Lippert: Coming back to my previous question earlier about the conditional use
35 permit. Could something like that be handled in a conditional use permit process and fit within
36 the 45-day period that the county has to act on a Title 19?

37
38 Mr. C. Williams: It would be very difficult for it to fit within the 45-day period the county has to
39 act on Title 19 or not to act on it but to receive comments for it. I think our main problem still is
40 what do we review under a conditional use permit? We can review that distance but the
41 conditional use permit findings are very broad, they allow appeal, it becomes a politicized
42 process potentially and I wouldn't blame any resident that says I don't want it there. That is not
43 where we want to be with these types of technical issues. So I think that really the concern is a
44 process that is not tied to – we would much prefer to have language that allows some discretion
45 that says such facilities be located as far from the residential uses as the Fire Department deems
46 to be feasible or something like that and allow them to look at it on a case-by-case basis.

1
2 Chair Holman: Curtis, do you want to answer the rest of the questions?
3

4 Mr. C. Williams: Actually, Commissioner Keller's last question was about whether we could
5 prohibit the location of Title 19 facilities within 150 feet of the residential uses. So I think that
6 was just covered in some length.
7

8 Then if I could briefly respond to Lynn Chiapella's points then yours. One point was guidelines
9 and what would require these to be used. Again, for the most part we are probably talking about
10 ARB review but in some cases we are talking about Staff review as well. We do have language
11 in here that indicates that the requirements shall be included in the design of the project. The
12 guidelines should be included and at the submittal point if one of those is not met then there
13 needs to be a justification from the applicant to demonstrate how the project meets those design
14 objectives without using that guideline.
15

16 Now, to your point also if there are some of those guidelines that seem that they should be
17 requirements we are certainly willing to discuss that and see if there are some. No doubt that
18 there may be some that can move from one category to another. I think that is probably likely
19 that there are some like that.
20

21 The lighting I think we have several criteria in the lighting section that talk about needing to
22 direct light away from the residential properties and to shield lighting. So I do think we have
23 language in here to cover that. That is really the number one goal of this lighting section to keep
24 the lighting on the site and not go offsite onto other properties residential or otherwise.
25

26 The late night issue, we think six in the morning and ten at night are adequate. This is intended
27 to include activities that are under the auspices of the property owner so if their activities include
28 deliveries and their activities include cleaning up afterwards and those kinds of things and it is
29 after ten o'clock it goes to 10:30 it is not saying they can't do it it is just saying we have to use
30 permit process. That gives us an opportunity to let the neighbors have input to that particular
31 business requirement and for us to structure a set of conditions that define how late are you going
32 to be there to cleanup, what measures are you going to take to be quiet, etc., etc. So it is an
33 additional enforcement mechanism for us at that point to have a use permit requirement in place.
34

35 As far as the 5DB issue goes, and maybe this isn't written clearly enough, it was one of the
36 questions I think Mr. Balin might have brought this up as well in his letter. The intent here is
37 that we have someone who goes out and does a study and says the existing ambient noise level is
38 50 and the Noise Ordinance says therefore you can't exceed 56 at the property line. What we are
39 saying here is if their predictions are that they are going to be either at 56 or anywhere between
40 51 and 56 if they are within five decibels of that limit then we are going to require this additional
41 step of demonstrating, turn the equipment on, measure, and check it out. It is not implying that
42 we are going to allow them an extra 5DB above what the Noise Ordinance otherwise allows. So
43 that is the intent of that.
44

45 The open-air loud speakers are drawn from the existing regulations. The Noise Ordinance
46 covers if you are using a loud speaker and it is creating noise above certain levels at the property

1 line then you can try to address that through code enforcement and police. There is language in
2 here as far as when those can be used and such as well. That refers back to the Noise Ordinance
3 and there are specifications about the use of loud speakers.
4

5 Mr. Larkin: I would just add on the loudspeaker issue we regulate the time in which loud
6 speakers can be used outside of our standard Noise Ordinance but we are limited in our ability to
7 regulate the use of loud speakers for constitutionally protected speech. So discouraging use of
8 loud speakers is something we can do. Prohibiting the use of loud speakers is something we
9 can't do except between certain hours, which is what we do in our ordinance.
10

11 Mr. C. Williams: Then I think the one I haven't covered is your question about 150 feet and I
12 assume the question is why 150 feet as opposed to just no limit or whatever. I think these
13 impacts generally while yes, maybe noise you can hear 150 feet away, there are noise
14 requirements that limit the noise level at the property line. If it is limiting it at the property line
15 then we are making some assumption that 150 feet away from there that it is going to be less
16 than that at that point. It also draws from the existing ordinances. That is what all our code uses
17 and we are trying to be consistent. Those are the provisions we have for performance criteria
18 right now. Those are also the provisions we have for height limitations and daylight planes and
19 such in some of our other code sections. We have sort of defined 150 feet as being the
20 immediate area of needing to provide for some additional transition criteria so that is why we
21 have used 150 feet. It is not necessarily magic but we would like to be consistent.
22

23 Chair Holman: Okay. I would say two things here. On the calendar we have been getting
24 through items very quickly on the clock we have been running meetings very late. So there is an
25 upside and a downside to both ways of doing this. It is 9:30 and we have essentially ten sections
26 to go through if we look at the purpose section as well. So I guess I would like a sense of the
27 Commission about how late, if we want to set a time tonight and then our next meeting on
28 November 1 starts at six o'clock with a study session and then we have no other item that night.
29 So it might be most efficient for us and we might get a better product if we set a time to go to
30 tonight and then continue this. So I would like a comment back from Staff and then a sense of
31 the Commission.
32

33 Mr. C. Williams: I think that is fine with us to do that. We do have what we consider to be not a
34 heavy agenda next week. It is one study session item on the wireless communications and some
35 of the creek setback and those kinds of things. Julie, does that sound okay? I know you have
36 been overseeing that.
37

38 Ms. Caporgno: I think we could probably even plan the study session to end about 7:30 or 8:00
39 and then you could go back into this.
40

41 Chair Holman: Okay, Commissioner Burt.
42

43 Commissioner Burt: I have a question for the City Attorney. Would the passage of Prop 90
44 potentially affect our ability to implement these performance standards?
45

1 Mr. Larkin: It is could. It is hard to predict but it certainly could. I think we are recommending
2 proceeding anyway because it is obvious we are not going to have these adopted and
3 implemented prior to November 7 and we would have to address that if and when Prop 90 passes
4 and look at how that plays out in terms of it is ultimately going to be decided in the courts.

5
6 Commissioner Burt: So it flat out isn't feasible for these to get adopted before then. Okay.

7
8 Chair Holman: Thank you for the question and the response. So one question when we go to the
9 purpose section. If you all want to be recognized or if you want to go down the line we can
10 address first the Purpose and Applicability section of the ordinance. Commissioner Tuma you
11 look like you are ready to go.

12
13 Commissioner Tuma: It doesn't have anything to do with that section but it is something that I
14 failed to talk about at the beginning of the discussion on item number three. Before we go any
15 further I just wanted to do that. I think most of the Commissioners are aware and I want to make
16 it a matter of public record that I currently reside at 827 [Chimals] Drive. Some people had
17 raised a question as to whether that presented a conflict for me in the discussions tonight
18 particularly related to the hazardous materials section. I did have the discussion with the City
19 Attorney who apparently also already discussed that internally and together we determined that
20 there was not a conflict that in some way prohibited me from participating in these discussions. I
21 just wanted to make sure that it was a matter of public record and that people understood. I
22 apologize for not bringing it up earlier but before we went any further I just did want to mention
23 that.

24
25 Chair Holman: Thank you Commissioner Tuma. So should we try to stop around 10:30 or a
26 quarter to 11:00 tonight? Commissioner Burt.

27
28 Commissioner Burt: Two things. If we are going to roll this over and we think we are going to
29 have plenty of time maybe we don't even need to go that long but the other question is if we are
30 potentially going to roll it over should we proceed sequentially through here or should we try to
31 get out on the table all of our biggest concerns so that Staff has an opportunity to respond to
32 them prior to our next meeting?

33
34 Chair Holman: That's fine if Commissioners don't feel like all of their concerns have been put
35 out there. Are there other issues? It looks like Vice-Chair Lippert does. Are there other
36 concerns that need to be put out on the table? It looks like so. We will go there then.
37 Commissioner Lippert.

38
39 Vice-Chair Lippert: I was going to say the same thing. I think it would be great to get all of our
40 issues and concerns out on the table and then that way next time we meet we can just go through
41 these sequentially and hit them.

42
43 Chair Holman: I would absolutely agree I just wasn't aware that there were issues still
44 remaining.

1 Vice-Chair Lippert: I have a question. With regard to noise and light issues especially abutting
2 residential properties is it possible to do something very similar to what we do with regard to
3 setbacks and actually create what we would call a noise setback? For delivery zones for instance
4 where you have trucks backing up and you have HID light that those are only allowed to operate
5 within 50 feet of a residential property line during daylight hours.
6

7 Mr. C. Williams: I guess my sense is that would be very difficult to do for a couple of reasons.
8 One is every site is going to be different and there very well may be sites that that's just not
9 possible to do that on. I think the other thing is just trying to enforce that. You would start
10 getting into a whole different set of issues and we have definitions of noise, we have some
11 criteria here to try to do the best we can with each of these sites. That is why I think it works
12 better being a set of requirements and guidelines and not trying to be so fixed on something like
13 that. While I appreciate that that is simple in terms of saying that I think there are a lot of times
14 that is not going to work. We are going to have to look at doing the best we can on the site that
15 we are dealing with and that's why this is in some areas so flexible and then for nighttime uses it
16 requires a use permit.
17

18 Vice-Chair Lippert: Just as a follow up on that with regard to interior lighting of buildings it is
19 very hard for us to get our hands around that from a planning point of view but could that be
20 handled through current regulations in the state Energy Code of Title 24 which now require that
21 any new lighting be on motion sensors so that at night when there is nobody in the office the
22 lights actually have to go off and it could be enforced by Building Inspection?
23

24 Mr. C. Williams: Building Inspection enforces it up to the point generally that it is occupied and
25 after that it is pretty much up to us to enforce things like that but I think we have language in
26 here that does suggest using motion sensors and other type mechanisms to dim lighting or turn
27 off lighting other than what is absolutely necessary for safety purposes when it is not in use. So
28 we have some criteria here and I don't think it would help to do it through Building because
29 again I don't think Building is going to be the one enforcing those requirements.
30

31 Chair Holman: So are there any other questions for Staff or comments that might help inform
32 them for when we take this up again? Commissioner Tuma.
33

34 Commissioner Tuma: Yes. Going back to a point was raised I think by one of the speakers
35 relating to notice and you have alluded to this a little bit and perhaps this is better for the Fire
36 Marshall to address. It seems you are pretty clear that you don't think that it is appropriate to
37 provide notice prior to an application under non-Title 19 thresholds being exceeded. I think it
38 would probably be good certainly for me to understand and for the public to understand why that
39 is the City's position and maybe just flesh that out a little bit. It does seem a little strange on its
40 face without more explanation why we would have that situation. So I think maybe an
41 explanation of that would be helpful.
42

43 Mr. C. Williams: Sure. A couple of things come to mind immediately. One is again getting into
44 more of a politicization of that review process if notice is provided ahead of time and a neighbor
45 doesn't like a particular site and it might not even be for the reason of the hazardous materials
46 that are being used on it but they come and talk to the Fire Department and try to hold up the

1 process for some reason. It opens it up to that for what is really a highly technical review
2 process by the Fire Department. The other part of it is that we try to within reason accommodate
3 business and there is already some time associated with the Fire Department and Building
4 reviewing these types of plans for hazardous materials. To open it up to any kind of public input
5 and review prior to a decision being made is lengthening that process and we don't feel like that
6 is appropriate because again the issues that they are reviewing under are not the visual, traffic,
7 those kind of things that the Zoning Ordinance regulates. So we just feel those issues are outside
8 of the Zoning purview and belong with the specialists that the Fire Department and Building
9 Department have.

10
11 Mr. Larkin: Just to add to what Curtis said this permitting is not a discretionary process. It is
12 likely that we would be preempted under state law from making it a discretionary process so the
13 additional comment or the additional notice would not be particularly meaningful because there
14 wouldn't be any impact on the permitting process.

15
16 Commissioner Tuma: So is that different under a situation where Title 19 thresholds are
17 exceeded? Is there then some discretion there because there is an opportunity to comment to the
18 county on the plans? Is that different?

19
20 Mr. Larkin: There is actually a Risk Management Plan to comment on whereas the Hazardous
21 Materials Business Plan that would otherwise be required and something that exceeds a certain
22 threshold but not the Title 19 threshold there is a public access but not a public review and
23 comment. Dan can correct me if needed.

24
25 Mr. Turner: I can tell you that for Title 19 there is a state law that requires a public comment.
26 So if you exceed the Title 19 threshold and are required to file a Risk Management Plan the
27 county is required by state law to make that available for public comment for 45 days. One other
28 comment to add to Curtis' about the review process for a permit is we get applications all the
29 time and they will go through iterations. A lot of times they will be discontinued or dropped but
30 certainly it is very, very common that the application and what they want to do in the beginning
31 is not what they wind up with at the end. So to involve the community before we have actually
32 issued a permit we would be informing them of something we really don't know what the
33 outcome is. I don't know if that makes any sense or not.

34
35 Commissioner Tuma: I hear what you are saying but we do that all the time. We involve the
36 community. If I want to put a second story on my house the immediate surrounding community
37 has an opportunity well before any kind of decision has been made.

38
39 Mr. Turner: In our case someone would come in and want to install a new tool that used
40 hazardous materials inside their building. We have about a 28-day turnaround time on a plan
41 review for that. I don't know what input the community would have that could benefit us in
42 reviewing that type of permit application. The controls are very specific in the Fire Code, the
43 Building Code, the Electrical Code, and the Plumbing Code. If the business meets those
44 requirements, they are in a facility that is already permitted for those hazardous materials, they
45 are in a zone that is already permitted for those hazardous materials, they have been permitted
46 for those hazardous materials, they are simply saying they want to do something different, they

1 want to make a nominal change, it is something that triggers a permit because we want to make
2 sure that what they are putting in is the proper material, is consistent with the materials they are
3 using, maybe we want to make sure it is listed, but I am not seeing any benefit to having the
4 community involved in that kind of process. Where I can see a value in having the community
5 involved and providing comment on a Risk Management Plan because there are significant
6 offsite consequences that the business is specifically trying to tell the public we are addressing.
7

8 Mr. Larkin: When I say it is not discretionary if it meets code they get a permit if it doesn't meet
9 code they don't get a permit. So it is not like the community getting notice and be able to say no,
10 we don't want that in our neighborhood. If it meets code they get it.
11

12 Chair Holman: Is it follow up?
13

14 Commissioner Burt: Don, correct me if this is not the right way to characterize it. Provided that
15 they meet all of the appropriate requirements it is in essence an entitlement and that I think is the
16 difference.
17

18 Mr. Larkin: That is even more succinct than I was.
19

20 Chair Holman: Commissioner Garber then Commissioner Keller and then Commissioner Burt.
21

22 Commissioner Garber: Small one but a big one. I have seen in other codes where the language
23 has been fairly explicit about having exposed sources of light being seen from offsite where
24 those codes have talked specifically about blocking the filament or blocking the illuminated
25 matter itself. Is that something that has ever been considered as part of the code here? Is that
26 considered too restrictive? Or has that language ever been imagined? You talk about having a
27 lower light level obviously.
28

29 Mr. C. Williams: Let's see if we get anywhere close. The actual seeing the source of the light.
30 It is possible to do that. I guess I can tell you from experience having been Planning Director in
31 a town that had a regulation that said that it is pretty darn hard to enforce. It is not too bad when
32 it is so bright that it is bothering somebody offsite but to be able to see the bulb in there when it
33 is not bothering anyone but somebody complains just because you can see the light bulb.
34

35 Commissioner Garber: As I am recalling it it is occurring to me that that regulation was actually
36 in an area that is less urban than Palo Alto at the moment. So it probably doesn't apply.
37

38 My second discussion concern is relative to conversation that will occur next week comes back
39 to the hazardous materials question. I have to tell you I don't think there is anything more of
40 interest or concern to me than this particular topic and the impact that it potentially has on the
41 people of Palo Alto. Not only that but both Commissioner Lippert and I actually have
42 professional licenses that make us responsible, not in this context but in other context, where that
43 is pretty much the basis of a lot of our decision-making ultimately. That is only by way of telling
44 you how important I think this issue is to be addressed.
45

1 That said, relative to the potential impacts to the community these have it seems to me that the
2 Zoning Ordinance is a relatively blunt instrument to try and tackle all of the issues that need to
3 be addressed here. As I think both you began to address and Commissioner Burt was alluding to
4 as well the opportunities that the Zoning Ordinance has to affect some of these issues really
5 revolve around some long term advance planning which clearly is a problem for this community
6 because we have ended up with these dissimilar uses adjacent to each other which frankly should
7 not have happened but here we are, we have them. The other ways that the zoning is going to
8 impact these things is through the planning of new facilities where the changes of use on those
9 that the new facilities will have. The reality is that hazardous materials are going to be there
10 every day, they are going to be used, etc. and even in the performance criteria that might be setup
11 again are not going to get to the issues that the other agencies have day-to-day responsibilities to
12 have and have a much more active use. So my concern relative to the writing of this is obviously
13 the obvious stuff, not that we reproduce what the other agencies either county, state or federal are
14 trying to do which I don't think you have done here. But I do think the language has to be really
15 careful because we don't want to have to burden inappropriately the City with additional
16 policing, additional expertise that is not inside the zoning staff. The Fire Department has that the
17 Planning Staff does not unless it is really the right thing to do at which point I think we should be
18 doing it. That really needs to be understood. I agree with you entirely that it is highly technical.
19 There is a tremendous amount of regulation around this. I think it is really to the credit of Mr.
20 Liberman and Mr. Balin that there are probably some gaps in the process here, which should be
21 solved. The degree that the City can facilitate closing some of those things we should do it. If it
22 is bringing the public in, if it is essentially facilitating a county process that they should be doing
23 but is a gap in our community and we need to fill it we should be doing that. So I am not talking
24 specifically about your language but these are just the general issues that are going through my
25 head as I am thinking about these topics. Thanks.

26
27 Chair Holman: I think you just basically pointed to something that I have as one of my notes on
28 this report which is that the community would be much enriched if we had an environmental
29 commission where some of these matters could be fleshed out in a different environment and
30 then brought to us a package. Commissioner Keller.

31
32 Commissioner Keller: I will first mention a follow up to Chair Holman's comment. My father-
33 in-law in Berkeley was on the Environmental Commission and I hope that whoever is on it in
34 Palo Alto will be dealing with much more reasonable residents than he has dealt with in Berkeley
35 where there was screaming and yelling. On the other hand they have to deal with Lawrence
36 Berkeley Laboratory which is a much more serious issue than we have in Palo Alto. I appreciate
37 the reasonableness of and thoughtfulness of the comments from the citizenry here.

38
39 With respect to some comments made by among others Commissioner Lippert. I am wondering
40 that since residential within a ROLM zone is a conditional use permit rather as part of the
41 package that brings forward the conditional use permit approval includes information about the
42 existence of H-uses within 150 feet of the proposed housing. I think that is in some sense the
43 housing is sort of the sore thumb that is trying to be put into or hone in a commercial zone. So
44 that should be part of what the Council and Planning Commission consider in terms of the
45 conditional use permit is whether they are nearby hazardous uses.

46

1 The next thing is in term of Title 19 HazMat it seems to me that this is a fairly rare thing. I think
2 everybody has talked about that as being a fairly rare thing. Therefore, in an ideal world it seems
3 to me that the zone an RMP affects, that zone of coverage, should in fact not include any
4 residential area but we are not in an ideal world. So the question is how we deal with that
5 interface. My preference is in fact any new uses that are Title 19 would be outside of residential
6 areas and if the zone includes residential areas that we have some distance or CUP or something
7 like that so that we have some control over where these new Title 19s go into.
8

9 It was mentioned about bio-safety level 4 and I didn't hear any follow up to that discussion so I
10 am sort of wondering, it was mentioned among other things by the letters received, I am
11 wondering what we should with that and whether that similarly should have some distance
12 requirement or a CUP or something like that. I would like to hear what Staff has to say about
13 these items.
14

15 Chair Holman: Would Staff like to do that now or next week?
16

17 Mr. C. Williams: That is what I was going to ask you. Do you want to get through these
18 comments and then call it a night?
19

20 Chair Holman: Yes, yes I would.
21

22 Mr. C. Williams: So we will take that down and respond. We will give you responses to some
23 of these questions next week.
24

25 Chair Holman: Good. Commissioner Burt.
26

27 Commissioner Burt: The biohazard 4 was one of my questions as well and it basically comes
28 down to why is it that, and I am not looking for an answer tonight, the Staff would like to have a
29 very stringent ministerial approval process that it requires the City Manager, Fire Chief and
30 Police Chief? Is Staff envisioning occasions where they would actually think that we would
31 want biohazard 4 to be allowed in certain circumstances? It sounds to me that it is the highest-
32 level ministerial review.
33

34 Then really in response to Commissioner Garber's concerns, I think that one of the things that
35 maybe we all need to realize is that in addition to what we are discussing tonight we have had
36 some good movements in these directions. I think that the one that still remains is this question
37 of whether we should have an additional ministerial discretionary process for Title 19 segments
38 of a facility and whether the Fire Department and the Planning Department think that would be
39 an appropriate thing to do. I agree with Staff's comments that the CUP just is problematic for
40 going through that process. It is a very technical one but perhaps we can provide something that
41 would give greater discretionary power to do the right thing.
42

43 Just so other Commissioners know because four of the Commissioners including Commissioner
44 Sandas weren't on the Commission when we did this two years ago but to show how far we have
45 come when we were doing GM zones we had a big discussion and we had a majority of the
46 Commission who did not support restrictions of housing and schools in GM zones, not LM

1 zones. These were permitted uses next to hazardous materials facilities, plating shops and
2 whatever. I about went nuts when I couldn't carry a majority of the Commission on that issue at
3 the time. We now have conditional use permit for schools and my understanding is despite
4 having had one nursery school/day care center having been installed yards away from a plating
5 facility in the GM zone we now have had another that because of the CUP didn't go in. Then the
6 Council for other reasons, for really looking at restricting the housing growth rather than because
7 of incompatible uses we now have conditional uses on this zone and elimination of housing in
8 GM. So we have moved away from a number of those incompatible uses in the last couple of
9 years. Staff now also has this additional notification requirement that goes beyond the Cooper
10 Requirements and any state regulation that is already in here. Then maybe we are going to have
11 one more restriction that comes or discretionary power I should say that might come before us if
12 Staff thinks that's a good one. So as a group of movements in this direction I think we are
13 getting pretty close to achieving the right balance. It is hard to correct those things where a
14 facility has been there for 50 years but at least going forward we can move in the right direction.

15
16 Then we do have an evolution as Dan had mentioned. We have more software and less
17 manufacturing in this community. I don't expect that to change. The biohazard issue is one that
18 is an issue going forward because that is likely to be a use that we could see more of. So those
19 are just my comments for consideration on kind of the general aspects of it.

20
21 Chair Holman: Commissioner Lippert.

22
23 Vice-Chair Lippert: I just wanted to make a comment with regard to Section 18.23.030 Lighting,
24 under B, lower case Roman numeral two. The use of high-pressure sodium and metal halide are
25 permitted light sources and then low-pressure sodium is not allowed. One of the issues that I
26 think is an issue of concern is lighting that stays on all night particularly in the Research Park
27 where a facility might be used actually 24 hours a day. Somebody might be working late at night
28 there. Is it really necessary to have all the lighting on in a parking lot? Is it appropriate to say
29 that 50 to 100 feet from a residential zone that maybe those lights go off and people can move
30 their cars closer to the building if they are working all night there. That is just something to look
31 at.

32
33 Also, there is an incompatibility with lighting being on at night and the health and welfare of
34 trees. If we are trying to get our trees actually develop better canopies there are lighting studies
35 in which those kinds of lights that are left on at night actually stunt the growth or development of
36 those trees. So that is just something to look at.

37
38 Then one other item under the same chapter and section, C, Guidelines, Roman numeral three,
39 maybe this is the time to begin to look at internally illuminated signs. I know that the ARB has
40 their standard. We don't really allow them. Very, very rarely does ARB ever approve an
41 internally illuminated sign. Why not just completely eliminate that except for those that already
42 exist as internally illuminated signs? Any new signage really needs to either be externally
43 illuminated or halo lit. Only because it is in the guidelines now that would be an appropriate
44 time to now address that and deal with it.

1 Chair Holman: Okay, I will follow up on one comment that Commissioner Lippert just made
2 about trees. It also is true with wildlife. The exterior lighting also disturbs wildlife when it is
3 kept on.

4
5 Curtis you sort of answered my question and sort of didn't earlier when I posed the question that
6 in most instances why would we not apply these criteria to all development. I do have
7 highlighted on my ordinance the bottom of page one where it says that criteria may also be
8 considered for sites abutting nonresidential zones where determined appropriate by the ARB. I
9 can think of instances where it might not be necessarily the most appropriate to do that and leave
10 that to the discretion of the ARB but if you look at the purpose section it also talks about the
11 purpose is the criteria are intended to make new developments and major architectural review
12 projects compatible with nearby residential areas and to enhance the desirability of the proposed
13 developments for the site residents and users and for the abutting neighbors and businesses. So it
14 would seem to me that application of these standards more broadly would actually make for a
15 better community and better commercial districts as well. So if Staff would take that and
16 consider that it would be great.

17
18 Lighting, I have some of the same issues that have already been mentioned. Certainly with the
19 hazardous materials and noise. I don't know how best we can address this but I think there are
20 some Commissioners at least who think that Noise Ordinance does need to be addressed. Maybe
21 we can talk about this at the Retreat, how best to forward that desire if it happens to be a
22 unanimous desire of the Commission to the Council.

23
24 A couple of questions and maybe suggestions if I could. There are a number of clarifications or
25 consistency issues Curtis that you went through. I am wondering for clarity's sake because the
26 ordinance is only five pages so it is not much paper, by email would be fine but I think by paper
27 it might be easier if Staff would make those corrections so that we can make sure that we are all
28 on the same page, if you will. So those clarifications then if Staff wanted to take a crack at or
29 leave it to us, either way, those guidelines that you said should be actually requirements. So I
30 don't know if you want to leave that to us that's fine but with the clarifications I think if we all
31 have that that way when we make our motions we will all know we are talking about the same
32 thing and know that those changes have been made just for clarity purposes.

33
34 One that nobody else has hit on is trash disposal and recycling. We have encountered this at the
35 Commission before, it doesn't mention about enclosures being covered or locked where feasible.

36
37 There also is some language that I can email you about having to do with blank walls and walls
38 that abut or face residential properties. I think some landscaping language might help that to
39 have clarity as opposed to having it just be reliant on the ARB not that they don't do their job
40 with that but I think it might provide some clarity up front.

41
42 I think I can leave it there for now. So would Staff be agreeable to providing a fresh ordinance
43 so that we all make sure we are all on the same page with what Staff is agreeable to changing?

44
45 Mr. C. Williams: It is not going to go out with your packet this week. It will be to you at the
46 latest the day before the meeting if that is okay.

1
2 Chair Holman: That's fine. Even if Staff wanted to email it I just think it is just a clarifying
3 mechanism.

4
5 Mr. C. Williams: We'll be sure you have at least a day to look at it.

6
7 Chair Holman: That would be great. Vice-Chair Lippert just asked do we need a motion to
8 continue this to the date certain, November 1?

9
10 Mr. Larkin: Yes.

11
12 Chair Holman: Could I have a motion?

13
14 MOTION

15
16 Vice-Chair Lippert: I will move that this be continued to November 1.

17
18 SECOND

19
20 Commissioner Garber: Second.

21
22 Chair Holman: Motion made by Commissioner Lippert and seconded by Commissioner Garber.

23
24 Mr. C. Williams: We should clarify that. Julie was just asking we want to be sure that our study
25 session isn't cut short at seven because we have something else. Do we need to do anything to
26 make sure that happens? Okay. Don is saying that since it is not continued to a specific time
27 then we can go however long we need for the study session and then move into this item.

28
29 Chair Holman: That was part of my note here if we just have two items on the agenda and we
30 are starting the meeting at six is essentially how it will function.

31
32 Okay, the question about should we close public comment or leave it open. I did not close it. Is
33 there a recommendation? We could go either way.

34
35 Mr. C. Williams: Close it but that is up to you guys. There are not going to be substantive
36 changes brought back to you just organizational changes.

37
38 MOTION PASSED (6-0-1-0, Commissioner Sandas absent)

39
40 Chair Holman: Okay, we will close the public hearing then. I believe that's it. We have a
41 motion on the floor to continue this item as the second agenda item on November 1. All those in
42 favor? (ayes) Opposed? That passes on a six to zero vote with Commissioner Sandas absent.

43
44 So that completes our items for this evening. So we have approval of minutes for September 27.

45
46 **APPROVAL OF MINUTES**: September 27, 2006

1
2 Chair Holman: I am going to ask Commission's indulgence if we could continue that also to
3 next week because to tell you the truth I didn't get to them. So if there are no problems with
4 that. There is nothing on those minutes that hasn't either already been to Council or that is going
5 to cause any problem with that.
6

7 ***REPORTS FROM OFFICIALS/COMMITTEES.***
8

9 Chair Holman: Then there is one Report from Official that Curtis you might want to address.
10

11 Mr. C. Williams: Yes. I provided you with a memorandum today, I think we emailed it to you
12 yesterday, first of all summarizing that the City Council on October 16 did approve the
13 commercial zoning districts amendments and made a few changes mostly on the Fry's
14 amortization, deleted the amortization, they did accept the Commission's recommendation on the
15 50 square feet for the sign. Most importantly the reason why I wrote this was because we did not
16 properly interpret the Commission's motion on the CC zone, the Town & Country Village
17 specifically relative to the housing issue. So the recommendation that was made by the
18 Commission that is in the minutes essentially is that the residential on that site should be limited
19 only to being within a hotel, the portion that is allowable within a hotel which is up to 25 percent
20 of the hotel square footage. Our notes indicated that the hotel should be favored over residential
21 uses so we reduced the FAR for residential down to about a quarter of what it is today and then
22 left the hotel regulations as we discussed. So the Council approved it with the language that we
23 had written. We have discussed this with the City Attorney and our approach to try to rectify
24 that is that we are going and this is a little different than what it says in here, we are going back
25 to the Council on first reading with the ordinance with the language that the Commission,
26 essentially striking the language about the residential use and just leaving the hotel part there.
27 Going back to them with a first reading. They would have discretion if somebody was objecting
28 to that or they wanted to discuss it some more to have a public hearing, set a public hearing for it,
29 and discuss it. If they are all comfortable with that change then they will adopt it on first reading
30 and it will come back in a couple of weeks after that with second reading. I wanted to let you
31 know that I am sorry we got that wrong and we are trying to correct that and will send that on to
32 the Council.
33

34 Vice-Chair Lippert: When is that being read?
35

36 Mr. C. Williams: November 6, 2006.
37

38 Vice-Chair Lippert: So it is Dan.
39

40 Chair Holman: I was going to ask the Prop 90 implications.
41

42 Mr. Larkin: Same answer I gave earlier.
43

44 Chair Holman: Part of that was answered with the date that it was going to Council.
45

1 Mr. C. Williams: We should also be clear that relative to Prop 90 regardless of how it would
2 otherwise have played out the bulk of what you discussed was in the other ordinance. What I
3 should clarify is that unlike you the Council insists on breaking this into two ordinances, two
4 separate ordinances, and they dealt with a separate ordinance on the CC zone. Then at the end
5 we put them back together again. So we essentially take the overall ordinance and we block out
6 everything that doesn't have to do with CC and that is one ordinance and then we take the other
7 one and block out everything that does have to do with CC and that is an ordinance. The one
8 that is everything but CC was adopted and it will be on second reading on November 6. So all
9 we are talking about really is the Town & Country Village Shopping Center property so if we
10 have exposure from Prop 90 it is limited to that. Our understanding is that the property owner
11 doesn't want to do residential anyway.

12
13 Chair Holman: Commissioner Keller you had a comment or question?

14
15 Commissioner Keller: Yes, I would like in particular to thank Curtis Williams for being
16 forthright in correcting this and doing so in a proactive and professional manner. I know that in
17 many other situations it is hard for Staff to say they made a mistake so I think that it takes
18 courage to do this in the right way.

19
20 Chair Holman: Ditto.

21
22 Commissioner Burt: Also, just out of fairness, because of the rush of this thing because of the
23 rush of this thing it is my understanding that Staff didn't have the luxury that they normally
24 would have to have reviewed our minutes in advance and that is what contributed to the issue.

25
26 Chair Holman: It is true and that doesn't take away from the fact that I think Staff has handled
27 this in a very professional, responsible manner and hats off and thank you to Staff.

28
29 Given that unless there are any other reports that are critical tonight we will adjourn the meeting.
30 See you all next week.

31
32 ***NEXT MEETING:*** Special Meeting of November 1, 2006 at 6:00 PM.

33
34 ***ADJOURNED: 10:20 PM***

35