

1 Mr. Abby, Palo Alto: I am not Art Fallon. My name is Abby. Art is somebody who works at
2 the store called We Fix Macs.

3
4 Chair Holman: Excuse me, Mr. Fallon, can you pull the microphone up closer to your mouth,
5 please?

6
7 Mr. Art Fallon, Palo Alto: I work for a company called We Fix Macs. We have a store on El
8 Camino and Portage right near Fry's. There is construction that is going on behind us for a
9 health club called Equinox. That construction is affecting our business in such a way because of
10 the construction and the people that park in our parking lot and outside our entrance. So
11 customers are not able to come into our facility because they think that it is all blocked off. So
12 what we are trying to do is see if we can request the City to perhaps make it no parking on the
13 main El Camino right outside our store because the parking lot for this facility is not yet built but
14 they have opened it anyway. So customers have no place to park so they park in our parking lot.
15 So it gets all filled up during the daytime. Then they also park in the front on El Camino. So if
16 you are driving on El Camino so if you are driving on El Camino there is a very narrow entrance
17 into the building on El Camino and you miss that if you are driving by. Then in our business if
18 you miss that entrance and Portage Road is always blocked by construction and the trucks and
19 things like that. So we are actually having a decrease in business because people aren't able to
20 come to our store.

21
22 The truck route that the trucks use for construction they seem to come on El Camino and there is
23 a road behind this right before Fry's that they could instead come through that would make it a
24 lot easier on us. The construction trucks typically when they are pouring concrete or whatever
25 else they are doing they always seem to block our entrance so the customers that are coming
26 either from Fry's or El Camino can't come in to our store's entrance.

27
28 So I was wondering if there is a way that we could talk to somebody to have them go back out
29 the way they came in from the side alley. I don't know the name of the street because I don't
30 work in that store but Art is here. This construction company that is doing the construction
31 behind our facility they don't seem to have their act together because they have cut telephone
32 lines a couple of times, they have cut power twice, they have had a gas main go off and we have
33 had to close the store down like on five different occasions because of this construction
34 company. So it seems like it is not planned properly. So that is what I wanted to tell you guys.
35 What do I do next?

36
37 Chair Holman: I see Staff taking notes on the matter. So if you would talk with Staff and if I
38 would suppose look into seeing if the conditions of approval are being satisfied and if they are
39 not then rectify those I would presume.

40
41 Abby: If they can just make them reroute their trucks when they bring them in. They seem to
42 have an in-way and an out-way. If they could just simply go back the way they came in they
43 would not disturb Fry's and it wouldn't disturb us or if there is something that the Equinox club
44 people if they could not park in our facility. I guess we could put a sign up saying no parking or
45 we will tow you or something like that. I don't know if we need permission for that and we
46 don't want to be bad citizens or anything like that. We just wish that the people wouldn't park

1 right in front. I don't know what we can do about maybe making it no parking or maybe a
2 loading zone only up in the front on El Camino, is that possible?

3
4 Chair Holman: I think the best thing to do would be to let Staff meet with you and determine
5 what the best solutions are.

6
7 Mr. Curtis Williams, Chief Planning and Transportation Official: I have Mr. Fallon's card and
8 will follow up with him to be sure we got the problems and try to work it out.

9
10 Chair Holman: Okay and just a quick request if Staff could report back to us at our next meeting
11 that would be great.

12
13 Mr. C. Williams: Okay, we will try to do that.

14
15 Mr. Fallon: And I will try to show up at the next meeting also. Thank you very much.

16
17 Chair Holman: Thank you. Our other speaker under Oral Communications is Lynn Chiapella.

18
19 Ms. Lynn Chiapella, Palo Alto: Good evening. I wanted to review a little bit about the C-1
20 District which is the area where I live and which was originally the neighborhood business
21 district regulation area. This is not about item one this is about history. In the development of
22 both the housing and the commercial areas there was a lot of consideration given to how close
23 certain kinds of businesses should be to your house, what kind of signage and lighting, etc. For
24 example restaurants which are now allowed willy-nilly with or without parking they had a
25 seating maximum of 30 because Midtown was not developed to have lots of restaurant parking it
26 was developed to have shared parking. So sometimes the parking exceeds what is available. In
27 the development you had a maximum of 30 parking spaces and it wasn't a restaurant it had to be
28 connected with another business. In those days it would have been a drug store, which had a
29 fountain or a little breakfast nook or whatever. That was how it was developed. They also had
30 500 feet minimum from the uses, within 500 feet of our 1-R duplex had special regulation of
31 duplexes. The uses of the land were very clearly defined of what you could or couldn't do. For
32 example you couldn't put a restaurant right next to a house because the traffic in and out late
33 night and it specifically defined all of that. In your regulations now you will find that it is very
34 hard to find this kind of regulation. It is there but Ed Gawf explained to me it is a meaningless
35 thing stuck onto every single zoning ordinance we have and it is never enforced and it is quite
36 meaningless. It wasn't meaningless when we developed commercial neighborhood. Within 500
37 feet you specifically could not have certain kinds of uses because of fumes, odors, noise, gas,
38 smoke, night illumination and it was very clear. By the time I moved here in 1974 it was in the
39 process of being changed to 300 feet. Then I think they changed it down to 150 feet and I don't
40 know what it is at this point.

41
42 It was required to have landscaping between the house and the commercial and yet when I ask
43 the enforcement officers to reinstate that landscaping they claim that there never was
44 landscaping, it was never required, blah, blah, blah. It is in the regulations and it would have
45 been required. There now is not landscaping between business and residential.

1 My concern is that as you are going through and think about things each time, each iteration, the
2 next iteration all of a sudden very disturbing things happened that neighbors were bothered by
3 such as restaurants right next to your house, lights hanging out on the street blinking or
4 illuminated all night long. I would like to see a lot of thought put into making this literally
5 compatible. It seems to me it has all been on one side, which is not the residential side, but to
6 enhance commercial development to be more lucrative at the expense of the neighborhood and
7 the neighborhood doesn't see it as a neighborhood service anymore so some of us go elsewhere.
8 Thank you.

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

12
13 Chair Holman: Thank you. Seeing no other cards for Oral Communications we will go to item
14 number one this evening which is the Zoning Ordinance Update recommending proposed
15 ordinances relating to Commercial zones in the City of Palo Alto. Would Staff like to make a
16 presentation?

17
18 **NEW BUSINESS**

19 **Public Hearings:**

- 20
21 **1. Zoning Ordinance Update:** Review and Recommendation of an Ordinance Deleting
22 Chapters 18.41 (Neighborhood Commercial), 18.43 (Community Commercial), 18.44
23 (Community Commercial Combining District), 18.45 (Service Commercial), and 18.49
24 (Commercial Downtown), of the Palo Alto Municipal Code (Zoning Ordinance) and
25 Adding Chapters 18.16 (Neighborhood, Service, and Community Commercial) and 18.18
26 (Commercial Downtown) Providing for Allowable Uses and Development Standards in
27 Commercial Zones, including Mixed Use Criteria, and Amending Sections 18.94.070 and
28 16.20.120 to Delete Amortization Requirements and to Allow Additional Signage for
29 3200 Park Boulevard/340 Portage Avenue/Olive Avenue (Fry's Electronics);
30 Environmental Assessment: Comprehensive Plan Environmental Impact Report.

31
32 Mr. C. Williams: Yes, thank you Chair Holman and Commissioners. We are here tonight to
33 present the ordinance changes on the commercial zoning districts which include mixed use
34 provisions, revisions to the mixed use provisions, and thirdly in addition to those two we have
35 two amendments one to the zoning ordinance and one is to sign regulations that relate one
36 directly to the Fry's property and the signage one indirectly to the Fry's property. So I will
37 present all of those.

38
39 The way we would like to conduct this if you are willing tonight is for me to give a presentation
40 on the entire package to you, for you to entertain public hearing on the entire breadth of subject
41 before you tonight, and then Commissioner Tuma will need to step aside from the dais while you
42 discuss the Community Commercial Zone specifically and he can state his conflict with that in a
43 minute. Then once you have arrived on a motion for that zoning then we will bring him back
44 and we can talk about all of the rest of the zoning districts.

1 We have gone through some of this with you before so I won't belabor some of these points.
2 The Comprehensive Plan does discuss looking at zoning requirements for commercial districts to
3 try to encourage revitalization and address land use transitions with adjacent single family
4 residential and to create mixed use zones or incentives to encourage more mixed use in Palo
5 Alto. The ARB and the Planning and Transportation Commission have looked at the issues of
6 mixed use and commercial previously, most recently at your study sessions on August 30 and
7 September 13, 2006. We reported to you at that time as well that on August 7 the City Council
8 provided direction to Staff to make some changes that related to the commercial zones or to
9 commercial uses in residential zones. Those particular items included a desire to limit residential
10 in the commercial zones to mixed use only, secondly, to rezone three sites that are currently
11 zoned multi-family to commercial, and thirdly to work with Fry's to explore zoning changes that
12 might retain Fry's either at its current location or elsewhere in Palo Alto. The latter two of those
13 with the exception – we do have the two issues related to Fry's but that is not a zoning change
14 for the property at all, so those last two items are not really on your agenda tonight. The
15 rezoning of the three sites will come to you at some later point in the fall. Fry's will take some
16 time to work with them to see what seems to be appropriate there.

17
18 We have had several meetings with various groups both business development groups as well as
19 with neighborhood representatives, most recently met with about ten folks from the Ventura and
20 Barron Park areas about the Fry's issue last Thursday. The commercial zones as you can see on
21 the map comprise a fairly small percentage of the overall area of Palo Alto but obviously contain
22 a significant element in that they provide most of the retail sales space for the city. We are
23 looking at all of the commercial zones, the CN, CS, CC, and CC(2) the California Avenue
24 Community Commercial. Those are all part of one chapter, 18.16 and then the Downtown
25 Commercial is the proposed chapter 18.18. The ground floor, the retail, and the pedestrian
26 overlays that we have on some of those properties currently will remain. There are no changes
27 proposed to those and those restrictions will remain in place.

28
29 Just to summarize the key revisions to the commercial zoning as we mentioned consolidating the
30 zones into two chapters. The basic uses and standards are not changed in terms of the basic floor
31 area ratios, heights, and setbacks and such. The parking standards are not proposed to be
32 changed. The overlays still apply as I just mentioned. The Midtown and Charleston Center CN
33 limitations are not changed either.

34
35 The key changes in the commercial districts are that residential uses instead of being allowed
36 outright in those zones would be limited to a mixed use component only and we will talk in a
37 minute about what that mixed use would allow. Secondly, we have proposed that hotels in the
38 zones – actually it should exclude the CN zone because it doesn't allow hotels – the floor area
39 ratio would be allowed up to 2.0 for hotels. We have also provided a maximum of 25 percent of
40 the floor area could be used for residential condominiums, which is something that has assisted
41 hotel operators financially to build hotels. Recently it has become a trend in the hotel business.
42 We are requiring a conditional use permit for late night commercial uses in the CN and CS zones
43 where they are adjacent to residential uses. We have proposed a reduced front setback along El
44 Camino Real to allow buildings that are up to or near the sidewalk and including generally a
45 widened sidewalk for better pedestrian use. The transition zone that we had talked to you at one
46 point about limiting that to 50 feet where right now it is 150 feet. We would maintain the 150-

1 foot transition within which certain setbacks and daylight planes and height limitations apply but
2 only to the extent that it is abutting a residential district that is not separated by another
3 commercial or industrial zoned lot. That essentially summarizes the substantive changes to the
4 commercial zoning districts.

5
6 As far as the mixed use criteria go the primary changer there is that rather than, as we have
7 discussed a couple of times with you before, rather than using the multi-family district overlay to
8 basically sit on top of the commercial use and define what can be done with mixed use
9 development we have proposed tables in each of these chapters that outline the relevant
10 standards. Most of those standards are very similar to some of the criteria in those multi-family
11 zones in terms of the density limitations and the height limitations and those kinds of things,
12 FAR as well. There are in particular as far as setbacks and daylight planes and such we would
13 continue to apply those as we have in the past when immediately adjacent to a residential district.
14 When it is not adjacent to a residential district we would not require those daylight planes. They
15 would be the same as the commercial in any district that frequently does not require those
16 setbacks and daylight planes. Again, reducing the front setback along El Camino Real as part of
17 the New Urbanist approach to development and reflecting a number of recent projects that have
18 been approved by the ARB with Design Enhancement Exceptions. The landscape and open
19 space percentages we have maintained. Right now we have a category of open space and usable
20 space that has a percentage of the site but it doesn't relate specifically to the residential units.
21 We have suggested combining that and retaining a landscape open space percentage for the site
22 which is approximately what the multi-family percentages were but somewhat less in some of
23 the more intense commercial areas and then adding on top of that a usable open space
24 requirement per unit that needs to be demonstrated that it has some proximity and usability by
25 the residential units on the site. One additional change is that on El Camino Real for the
26 neighborhood commercial parcels that currently allow a 0.9 floor area ratio maximum and a 35-
27 foot height limit we have suggested that on El Camino Real only that that be allowed to go to 1.0
28 and 40 feet to match the CS zoning that is El Camino. We believe that relates better to the El
29 Camino streetscape.

30
31 We have also made a few other suggestions related to mixed use in the California Avenue,
32 CC(2), area. We have suggested reducing the maximum floor area ratio from 3.0 to 2.0. The
33 3.0, as we discussed last time with you, is not achievable. It is currently written in a way that
34 you could go above 2.0 if you had more than 60 percent of the site as residential but given the
35 numbers you are allowed for residential you could never get there. So we feel it is more realistic
36 to just put the 2.0 number in there and that would be the maximum in that zone.

37
38 We have also suggested that Site and Design Review, which is now currently required for true all
39 mixed use projects, not be required for less than or equal to four residential units. We have tried
40 to define a minimum amount of commercial space that would be required. This is generally
41 ground floor that we are talking about, that would be required in order to conduct a mixed use so
42 we are assured that we are getting some substantial amount of generally retail space. Though in
43 some instances it could be office, hotel, or other uses where those are permitted on the ground
44 floor, but that we are getting a substantial amount of that when the residential component is
45 added for mixed use so that it is not a token amount that then justifies the mixed use.

1 We have also provided a couple of criterion for mixed use that came out of your study sessions.
2 One is that storage or use of hazardous materials in amounts above the amounts that are
3 exempted, in other words amounts that require the various permits from the Fire Department,
4 would not be allowed as part of the nonresidential part of the mixed use. Secondly, that we not
5 allow mixed use development at this time on the auto dealer overlay sites so that we do retain
6 them and allow them the opportunity to stay as they are. We, I think, previously suggested that
7 we were comfortable with applying mixed use there and I think we generally are but just to be
8 kind of on the safe side we are okay with leaving that mixed use designation off of the AD
9 overlays.

10
11 We have also, as we did in the Pedestrian and Transit Zone, provided a context based design
12 criteria. I won't spend much time on that but many of these are very similar to, in some cases
13 identical to, the criteria that were developed for PTOD. Looking at directing applicants on how
14 to treat street and building façades, massing and setbacks, transitions to lower density residential
15 areas, open space, parking and some suggestions for sustainable and green building design
16 techniques that should be appropriate for these projects. These are criteria that the ARB in
17 particular would be able to use to require this type of design consistent with these criteria.

18
19 I will speak for just a minute about the Fry's related amendments. There are two suggested
20 amendments. One would revise the sign code to allow offsite signage for specific large sites that
21 have retail use and that do not have frontage on arterial roadways. Based on essentially the
22 length of those sites you would then look at the table that we have in the sign ordinance to
23 determine if they were located on that arterial roadway what the signage size would be. In the
24 case of Fry's specifically and the tables that we have currently the graphs would allow a
25 maximum of probably about 65 feet of sign area, which is a little more than probably double the
26 size of what is there now and a maximum height of 25 feet which is the maximum the sign code
27 does allow. The second amendment would be to delete the 2019 amortization date for Fry's
28 which is the date by which Fry's is currently under the code and required to phase out the
29 nonresidential use and become a conforming RM-30 multi-family use on that site. The language
30 of the code still remains identifying that as a nonconforming site and still limiting it to the
31 existing retail amount, the 60,000 square foot maximum and some conditions about truck
32 deliveries on the site, that all remains. What it doesn't do is hold up the 2019 date as sort of the
33 timeframe for this deadline. As you know we are about to embark on a Comprehensive Plan
34 Update and the Fry's area is one of the areas that we are going to look at an area plan for. So we
35 certainly think that through that process as well as the Council's recent direction that there will
36 be some effort to address Fry's well in advance of the 2019 date and that it isn't particularly
37 relevant at this point. At the same time provides a positive gesture to Fry's that we are looking
38 to try to work with them to see if there is something that fits their needs.

39
40 We have provided a few thoughts for alternatives that you brought up at prior meetings that you
41 may want to discuss as well. The first is that there is a provision in the CS zone unlike all of the
42 other zones to allow office space on the ground floor on El Camino unless there was housing
43 existing on that site already. Most all of the other zones essentially do not allow office use on
44 the first floor unless there is already office use there or it is vacant or there are a few other
45 exceptions but the CS zone does have a provision allowing office on the first floor. It is limited
46 to 5,000 square feet so it is still a relative small amount. You can request a conditional use

1 permit however to exceed that amount. Staff believes that it is appropriate to retain that option.
2 We do have particularly a lot doctors and dentists looking for space right now and this would be
3 very helpful for them to be able to locate some possibility for small offices so we believe that
4 flexibility is useful in this one zone and would suggest retaining it. So that is a key issue we
5 want to bring to your attention. Secondly, there was some discussion about having an average or
6 maximum average unit size for the residential portion of a mixed use project and 1,250 square
7 feet is what was thrown out. I think that is what the SOFA area has. We are not recommending
8 that. We believe as we discussed last time that it is important to have the flexibility and you
9 have a couple letters from local architects or builders before you that particularly with the
10 parking regulations that we have right now it is very difficult to get any more units on a site
11 especially these smaller sites and if they are limited in size as well then they don't become
12 feasible and the mixed use is more difficult to obtain and it is more difficult to essentially use the
13 residential to justify the retail portion of it. So we think that it is appropriate. I also had a call
14 today from the Palo Alto Housing Corporation and they have some concerns about that because
15 they would like to see some family housing that might be precluded by having those unit size
16 limitations or having those unit sizes be larger than 1,2500 square feet. Then thirdly, I do want
17 to point out that we have the Fry's items before you as well tonight. We are ready to move
18 forward with those. We impressed upon you before the importance of moving the commercial
19 districts forward we think it is important to get the Fry's going too but they are not necessarily
20 linked. If there is some further issue you feel the need to discuss on Fry's then they could be
21 segregated and could come back later on the Fry's issues to answer further questions.

22
23 Our next steps are to take the ordinance to the City Council on October 16 with the commercial
24 districts and mixed use and the Fry's amendments. We would have tentatively scheduled
25 October 25 to be back to you with the performance standards that we pulled from the package
26 the last time we were before you and we expect to have a couple of meetings with community
27 groups between now and then to discuss particularly noise and hazardous materials issues. Then
28 those commercial rezonings that I mentioned will be coming before you in the fall.

29
30 I did also want to make a couple of suggested changes to the ordinance. One is in the mixed use
31 sections we have talked about having this minimum amount of ground floor commercial. We
32 defined commercial as including generally retail, personal services, and where ground floor
33 office is allowed. It could be ground floor office but otherwise not office. We didn't put hotels
34 in there but we would like to add hotels. It is not necessarily likely but we shouldn't preclude
35 hotels ground floor uses as part of a mixed use either. So we would suggest adding hotels to
36 that. I think that is a footnote to the mixed use table in the 18.16. Secondly, there is a section in
37 the Downtown commercial that deals with transfer development rights and floor area bonuses for
38 seismic and historic rehabilitation. There was a provision that was adopted in 2004 as an
39 amendment to allow those provisions to be used for public properties as well. That amendment
40 is not captured in here but we want to be sure that we do include that. So we will add that
41 language verbatim from existing code into the ordinance and we suggest that as well. I think that
42 is it. So our suggestion at this point is to take public comment and then take up this CC zone
43 specifically while Commissioner Tuma sits that discussion out.

44
45 Chair Holman: Okay. We could either take public comment next or see if there are any
46 clarifying questions for Staff for these general discussion items.

1
2 Mr. C. Williams: I think our attorney would prefer not to do that while Commissioner Tuma is
3 up on the dais.

4
5 Chair Holman: Okay. So we will take public comment next. I have three cards, four cards. Jim
6 Thalmann and you will have five minutes to speak. If you could give me some sense of how
7 many speakers we have that would be really helpful. So if you could turn in your cards that
8 would be great. I am seeing six speakers so why don't we do three minutes per speaker, which is
9 why it is helpful to know how many speakers we have. Mr. Thalmann.

10
11 Mr. Jim Thalmann, Palo Alto: Hi. I think that all the work you folks have been doing on this is
12 really remarkable. I wanted to point out a few business impacts on my local house that really
13 weren't reflected too much in here. I think it would impact a lot of other people as well.

14
15 The business impacts on nearby residences are real important. One of the big ones I've seen is
16 the nearby alleys. If there is an alley that is running between the business and the home, if there
17 is client traffic going down there I would view that alley as actually part of the business. Noise,
18 car stereos, having the car running over sewer gratings and water covers making clank-clank
19 sounds. In my case that is happening 24 hours a day 20 feet from my bedroom window. I will
20 go and talk to the City Attorney about it and even though the wording is very similar to the
21 proposed wording in your document in 18.16.040B they say they can't enforce it because it is too
22 vague. I am wondering really the differences there.

23
24 Anyway, when these are setup I don't see any guidelines in here to give the ARB or anyone else
25 some guidance on how traffic flow is to be considered. Parking is considered and that is an
26 important issue as well but those cars have to go somewhere. If those cars are winding up going
27 by businesses and creating nuisances at eleven o'clock or twelve o'clock at night or even nine or
28 ten at night, which wouldn't require a conditional use permit that remains an issue as well. Like
29 I said, the traffic has been causing car stereo noise, vibration and the sewer water cover clanking.
30 We have a nearby business in the CN zone that is a dry cleaner plant. The dry cleaner is
31 operating pretty early in the morning and I think that is a big issue as well. Anyway, traffic
32 control would be my big preference for the alley if you guys could look into that that would be
33 great. Also, if you could consider amortizing these changes in to businesses that are really
34 severely nonconforming now that would really be great as well. Thank you very much. Bye.

35
36 Chair Holman: Thank you. The next speaker is Lynn Chiapella to be followed by Sheri Furman.

37
38 Ms. Lynn Chiapella, Palo Alto: I have some of the same problems he has in that I live very close
39 as well and those alleys with the truck deliveries at night particularly when they are backing up
40 with the backup alarms at one-thirty or three in the morning. I think Lee was on the ARB when
41 we asked for the Starbuck's to be given specific hours and not have those early morning
42 deliveries. The ARB said just a handshake was fine they said they would never do such a thing.
43 It was only weeks before they were backing up, brought in large trucks that could not get in the
44 driveway or had a hard time navigating the driveway so it required back and forth, and back and
45 forth. A handshake can't be enforced so when you call there is really nothing that can be done
46 about these things even though you can hear this from about 400 feet away.

1
2 So there are three things I would like to find out about. One is I thank Curtis very much for
3 bringing up the late night use and activities because I think that is what most residents are
4 affected by drastically. My question is the enforcement. We have had almost no enforcement of
5 the specific problems such as the noise of trucks at night. I don't know that there is anything in
6 here that is enforceable. I don't see this specifically say that. So my question would be does this
7 cover truck deliveries between ten and six? Does this cover restaurants that allow patrons in at
8 ten and don't finish up until midnight? Does this cover the parking lot cleaning and the sidewalk
9 cleaning that takes place overnight? What about the rug cleaners that come in at midnight?
10 Does this section cover those kinds of activities so that the police can actually come out and I
11 don't have to get up and go around and say excuse me, but it is one in the morning you are really
12 not supposed to be out here. So I would like to know if that could be taken care of.

13
14 The landscaping would be restored along the residential areas even if it is just vines to make
15 those fences and chain links look nicer. The last would be to take a look at dental offices, which
16 have turned into cubbies where a 2,000 square foot office could have as many as 19 people
17 inside working and no parking at all for them. Thank you.

18
19 Chair Holman: Thank you. Sheri Furman to be followed by Gary Graumann.

20
21 Ms. Sheri Furman, Palo Alto: I am speaking tonight just as myself. First of all I would like to
22 commend the Planning Department and Mr. Graumann in particular for the excellent work they
23 have done on this update.

24
25 The August 7 Council direction limiting residential uses to mixed use only in commercial was I
26 think a very important decision to recognize the need to balance commercial and housing needs.
27 It is a real opportunity for a win/win situation in the mixed use. So most of my comments
28 tonight are regarding mixed use in CN zones as that is what I am most familiar with.

29
30 Regarding limiting residential use to mixed use in commercial zones except for sites in the
31 Housing Inventory I find this a bit problematic because these sites were identified nearly a
32 decade ago before we got into this kind of imbalance and two, the sites represent potential not
33 required housing. It is what we have to file for places that we could – well you know all this.
34 Allowing mixed use on these sites I don't believe would invalidate their use for housing but
35 simply change the nature of the housing. So I would kind of like to see that restriction removed
36 from the mixed use direction.

37
38 I would also like to see clarified or maybe it is obvious that single and two-family homes are not
39 permitted in a mixed use development and that mixed use refers to a single property not adjacent
40 ones. We have talked before about mixed use could be on adjacent properties and I don't feel
41 quite comfortable with that so I would like to make sure that we are talking about one single
42 property.

43
44 Then regarding this maximum average unit size I actually would like to see a number here to
45 ensure that the residential component is more in the affordable housing range. I think that would
46 help insure that we don't have one huge penthouse over something.

1
2 Then I have another question regarding the setbacks and coverage for the mixed use standards. I
3 am not sure how these apply if the residential is above retail such as yard setbacks and all. What
4 I think we really want to insure is that in commercial zones commercial is the operative word.
5 Although we need housing it should be trump retail uses in particular.
6

7 Finally, this is a little bit off-topic but it sort of relates to what you are talking to tonight. I would
8 like to see you and the City evaluate rezoning Edgewood and Alma Plaza to Neighborhood
9 Commercial for consistency with the other CN zones so we can apply these same standards to
10 those areas. These sites should be preserved as retail sites and allow mixed use housing not
11 single-family housing. So at some point I would like that to be a consideration. Thank you.
12

13 Chair Holman: I believe there is a question for you Ms. Furman.
14

15 Commissioner Keller: Thank you Ms. Furman. I have a question for you with respect to your
16 comment regarding Alma Plaza and Edgewood Plaza. Are you suggesting that those conform to
17 the regulations for Midtown and Charleston Center or are you suggesting.....?
18

19 Ms. Furman: No, not necessarily. The problem right now is they are PC zoned. So they operate
20 under a whole different set of rules even though the Comp Plan regards them as neighborhood
21 centers. I am saying I would like to see them rezoned from Planned Community to CN so that
22 this kind of mixed use that we are looking at here can be applied to those centers. The ground
23 floor retail and stuff in Charleston and Midtown are kind of unique to those I wouldn't
24 necessarily mind. I think housing could be there but I would like to see it in this mixed use type
25 of thing.
26

27 Chair Holman: Thank you. Gary Graumann to be followed by Peter Lockhart.
28

29 Mr. Gary Graumann, Menlo Park: Good evening. I am here on behalf of Fry's Electronics. I
30 just wanted to express to you that they are very aware of what is going on and very supportive of
31 what is going on with Staff as far as the changes that you are trying to implement here with the
32 signage and the use restriction. I just wanted to say hello and that they are very supportive of
33 what is happening here in Palo Alto and would like to continue that relationship in the future.
34 Thank you.
35

36 Chair Holman: A question for you Mr. Graumann.
37

38 Commissioner Burt: Good evening. I just wondered since you are here and we haven't had the
39 opportunity to hear from Fry's or yourself previously can you share a little bit with us on what
40 Fry's interests are at the their present location and within Palo Alto? Is there anything that you
41 can give us as an indication that might help guide our decision-making?
42

43 Mr. Graumann: I think this location here in Palo Alto was their third store in their chain. I was
44 as involved in the transaction from the get-go. I would say Fry's likes being in Palo Alto. They
45 enjoy the Palo Alto customer, the types of employers in and around the area are important to
46 them, and they want to continue to stay in Palo Alto. These measures here would be helpful to

1 help drive more business for Fry's. The environment has changed over the years. We obviously
2 have competition in East Palo Alto and now in the Mountain View-Palo Alto corridor that they
3 are very concerned with. So you do see them advertising everyday, you do hear them on the
4 radio. So all those things are positive things in trying to create activity there at the site and
5 helping to maintain and grow the business.
6

7 Commissioner Burt: You may be aware but we had previously considered a proposal to allow
8 mixed use development at the current Fry's site and that was pulled back out of concern that it
9 might have an unintended consequence where there might be an incentive for the property owner
10 to redevelop that parcel in a way that we thought might support the long term retention of Fry's
11 and in fact that redevelopment might cause Fry's to leave that site. Did Fry's have any thoughts
12 on the potential impact of that alternative proposal to zone it as a mixed use or include it in our
13 PTOD district?
14

15 Mr. Graumann: Well at the time of those conversations I wasn't part of those conversations so I
16 can't address that in all fairness. If I was I could but I don't have any information with respect to
17 that.
18

19 Commissioner Burt: Thank you.
20

21 Chair Holman: I believe there are two more questions for you, one from Commissioner Garber
22 and then one from Commissioner Sandas.
23

24 Commissioner Garber: I apologize you may have mentioned it when you were first introducing
25 yourself but what is your relationship to Fry's.
26

27 Mr. Graumann: I represent Fry's in the real estate transactions.
28

29 Chair Holman: Commissioner Sandas.
30

31 Commissioner Sandas: My question is has Fry's considered any other alternative places for their
32 business in Palo Alto? It sounds like Fry's does enjoy business here in Palo Alto and would like
33 to stay. I am just curious as to whether or not there has been an investigation on Fry's part of
34 any other site here in town.
35

36 Mr. Graumann: We are always continuing to look at potential sites for the long term. Their
37 vision is very long term so it is indicative of other locations that they have throughout the
38 western states is stay in a location as long term as possible. Now if we are forced to have to look
39 they will look. We have working eyes and ears open as far as what potential opportunities are
40 out there but there are not a lot.
41

42 Commissioner Sandas: I guess my question is prefaced on a notion that I heard from a Fry's
43 employee speaking at our last meeting I believe it was who indicated that the shopping public
44 has difficulty finding Fry's. I know we are trying to address that through better signage but if
45 that is a long term problem it just makes me wonder about the long term potential for Fry's to
46 stay in the site that they are in and not move somewhere else.

1
2 Mr. Graumann: That will all come down to what are the opportunities that present themselves in
3 the future. When we did the deal initially there weren't many sites in Palo Alto to look at it was
4 a very creative opportunity at the time that happened to match Fry's and the landlord at the
5 moment. That was a number of years ago and not much has changed since then as far as
6 availability of property.
7

8 Chair Holman: Thank you. Peter Lockhart is our next speaker to be followed by Denny
9 Petrosian and then currently our last speaker will be Bob Moss.
10

11 Mr. Peter Lockhart, Palo Alto: I started out my first comment but I am very confused and now I
12 am even more confused but it was enlightening to see a person from Fry's. Quite surprising.
13 There hadn't been much dialogue or as much as I would have liked regarding DWJ or El Camino
14 Center at Fry's, etc. I am going to just read my comments and perhaps I could be more
15 enlightened as time goes on. I would like to be and maybe some of these will change but
16 conditionally I will just go ahead and read what I had presented for the City Council.
17

18 Everything is meshed together, the finances, the City, the vision, the Planning Department, the
19 budget, etc. and I am speaking to many subjects but I think they are very intertwined. I am very
20 confused. Many businesses have come and gone on and around Olive Avenue. A few remain
21 though some were forced from the properties through rezoning. Properties have been rezoned
22 M2S, R-1, R-30, GM, etc. now I see a proposal to implement a de facto rezone allowing uses
23 similar to when the new [maxim art] came and pushed out the nursery that was along the creek. I
24 am not sure. I have been here since 1958 basically I have quite a perspective.
25

26 Regarding amendment sections 18.94.070 etc. please answer the following questions. Why is
27 this being proposed? Who are the parties involved? What is the intended purpose? What is the
28 intended outcome? How is this plan to be funded? When is the timetable for this intended
29 results? What will the City do to assure that the intended results are realized? What will the
30 City do if the timetable is not met? What will the City do if the intended results are not realized?
31

32 Having lived in Palo Alto since 1958 it is difficult to find words to express the extent city leaders
33 have squandered resources and opportunities that could have allowed Palo Alto to be far more
34 functional, beautiful, and solvent. Shortsighted policies have been completely devoid of
35 creativity or vision. I see the City Council making decisions based on a perceived budget crisis
36 while failing to realize its budget is the envy of many municipalities. City leaders have so much
37 money at their control they fail to realize the value of long-term fiscally responsible decisions.
38 The recent history of seeking a utopian Palo Alto has had quite the opposite effect and is causing
39 the pillars to fall down around us. Even as our leaders now scramble for spare change bucket
40 loads of money are being wasted. The City Council seems to be oblivious to its morality crisis.
41 There have been 30 years of promises to its citizens to convert the [maxim art]...I believe we
42 have five minutes tonight?
43

44 Chair Holman: We have three tonight, I'm sorry.
45

46 Mr. Lockhart: Someone said five earlier tonight.

1
2 Chair Holman: When we saw how many speakers there were we limited it to three.

3
4 Mr. Lockhart: Okay, well I will just have to turn this in.

5
6 Chair Holman: If you could just take a sentence and wrap up that would work.

7
8 Mr. Lockhart: Well basically what I am saying is everything is pretty interrelated like budgets,
9 etc. in my opening statement and to me the de facto rezoning just increases our being up in
10 limbo. What is going to happen to my street and how is that affecting me? I think it is very
11 significant.

12
13 Chair Holman: I believe Commissioner Burt has a question for you.

14
15 Commissioner Burt: You referred to a plan and how it would be implement, could you clarify
16 what you were referring to?

17
18 Mr. Lockhart: I am not sure which plan I referred to. I had a regional vision here I presented 15
19 years ago on this site. I see short term fixes destroying the long term plans and I am just
20 wondering if this is another short-term fix. When HP was becoming HP rebuilding their units
21 and WSJ was in a state of limbo and the railroad easement was available there were ten plus 20
22 for over 30 acres available to rezone with an area-wide study to make that whole neighborhood
23 really sparkle. It could have been the gem of the city and I have seen one patch after the other
24 after the other. I have seen opportunities squandered.

25
26 Commissioner Burt: I thought I understood you asking what it would cost to implement the plan
27 that the City has, maybe I misunderstood you.

28
29 Mr. R Lockhart: I must have meant that because I can't find it. Is there a way I can meet with
30 Board Members another time when we have more time to talk or is Curtis my main and only
31 link?

32
33 Chair Holman: I think at this point it would be Curtis Williams, as the next step for this will be
34 going to City Council. We need to finish our deliberations this evening.

35
36 Mr. Lockhart: I have lots and lots of questions and I appreciate your time.

37
38 Chair Holman: Thank you. Denny Petrosian to be followed by Bob Moss.

39
40 Ms. Denny Petrosian, Palo Alto: Considering the importance of this issue I think 14 additional
41 minutes of public time would not have been out of order and I think that the Fry's issue is not the
42 same as the Zoning Ordinance Update. It should have been separately agendized and noticed.

43
44 This is really a hardship for us to comment on all this stuff. You know the rule of law was meant
45 to keep us from the whimsy of a monarch in particular King George III of England whose
46 madness lead to our Declaration of Independence in 1776. Now you as our representatives of the

1 law are planning to throw out the Zoning Ordinance and all of the land use law that has
2 accumulated to date. Throwing out the amortization is a little shocking and we do have time to
3 wait for the land use update, the study area plan. This is essentially a rezoning. You are going to
4 take out the 2019 deadline and let something stay there forever if they want to. Let new uses
5 come in and stay forever if they want to. If you decide gee, we want housing on this site if you
6 don't have any amortization or any limitation on these uses how are you going to get housing in
7 there? This was carefully analyzed in 1984. This was not a whimsical decision to rezone this
8 property residential. It was carefully looked at. Now that you are moving farther and farther
9 away from any kind of planning principles it is just getting messier and messier and more a can
10 of worms. There are no guidelines or discussion of the loss of housing. No guidelines on how it
11 should go and you have your Palo Alto Housing Corporation letter of July 17 saying that this
12 conversion of residential land to nonresidential should occur during land use discussions in the
13 Comprehensive Plan Update not by a squiggle of a marker pen that would establish a framework
14 for rezoning of a major residential site without wide community discussion. So Fry's could
15 leave and then what? You don't have any control over that and you are not asking the right
16 question. You are not asking how can we maximize revenue to the city? You are saying how
17 can we keep Fry's? Well, that is not the right question. More residents, more housing will give
18 you a stable economic base and more shopping. I am very frustrated that the yellow light is on
19 right now. You also have to think about what the Human Relations Commission was asking you
20 to do which is to think of how we are connected to the globe in our decisions. The planet is
21 going to be saved one land use decision at a time in addition to other ways. That means housing
22 in Palo Alto, means less paving over of farmland in San Joaquin Valley, less carbon dioxide in
23 those commutes. We have to have more housing in the urban core, you know it, I know it, we all
24 know it, so lets bite the bullet. Please defer getting rid of the amortization period. Please defer
25 that to the area-wide study. That is where it is appropriate. That is professional planning. Now
26 you are opening up the barn door anything that wants to come into that property and essentially
27 precluding housing for as long as any commercial use wants to stay there. The multi-family
28 overlay in an area like the Mayflower, I believe it is on the back of the Mayflower Motel
29 property, is important in some areas to buffer commercial uses and either residential behind or in
30 this case the playground, the open space that was the Ventura School. So defer the multi-family
31 overlay I would urge you until that can be studied a little bit more.

32
33 Chair Holman: Thank you very much. Bob Moss will be our last speaker. Excuse me Ms.
34 Petrosian there is a question for you from Commissioner Sandas.

35
36 Commissioner Sandas: Actually, the question is not for Ms. Petrosian it is actually for Curtis.
37 Curtis, if you wouldn't mind explaining out loud why we are discussing Fry's in the way that we
38 are discussing it I think that would be very helpful for the group here tonight.

39
40 Mr. C. Williams: Yes. First of all there is not a rezoning proposal for the Fry's site before you.
41 What is before you is the deletion of the amortization date. The site remains a nonconforming
42 use, it remains subject to all the limitations of the nonconforming use on the site, and as was
43 mentioned the Comprehensive Plan Update will give us a chance to look at what the longer term
44 most beneficial use is. Maybe it is housing, maybe it is a combination of mixed use or
45 something but we will get a chance to do that through that process. This was initiated from
46 direction from the Council to the Manager to look at ways to at least small ways initially to let

1 Fry's know that we are interested in talking to them about continuing to keep them in Palo Alto
2 which may end up being here or may end up being elsewhere, we don't know at this point. The
3 result of this action tonight is not to rezone the site.
4

5 Commissioner Sandas: Would you mind also just giving a little bit of history because the Fry's
6 site was initially in the PTOD and how did it get removed from the PTOD for the record.
7

8 Mr. C. Williams: Sure. Yes the Planning and Transportation Commission had included it in
9 their recommendations to the Council to include this in the Pedestrian Transit Oriented District
10 Overlay which would have allowed mixed use which could have accommodated some increase
11 in the nonresidential on the site as well housing use. The Council's action then subsequently
12 removed the Fry's area and surrounding parcels from the PTOD boundary and my reading of that
13 as I think Commissioner Burt said earlier in the meeting is that there was concern that
14 particularly because the PTOD allows also for a completely residential project that there was
15 some potential for this to be converted or perhaps some incentive to be converted to a
16 predominantly if not entirely residential project which might expedite somehow the removal of
17 Fry's from this site. So the Council felt it was more appropriate to look specifically at the Fry's
18 site and the things that we could do to try to retain that and take some more time and evaluate the
19 various zoning options.
20

21 Commissioner Sandas: Hence our discussion tonight.
22

23 Mr. C. Williams: Right.
24

25 Commissioner Sandas: Thank you.
26

27 Chair Holman: Our last speaker this evening is Bob Moss.
28

29 Mr. Robert Moss, Palo Alto: Thank you Chairman Holman and Commissioners. First I also
30 want to thank the Staff for a very excellent job revising the zoning and complying with the
31 requests of the City Council and the community about the retention of retail, which is quite
32 important to the fiscal viability of the city. I do have a couple of comments on it. First I would
33 like to thank the Staff for increasing the transition setback to 150 feet adjacent to residential
34 which is one of the requests I made when this came up before. In regard to ground floor office
35 space in the CS zone while I agree that ground floor office space is useful I think it should be
36 limited. We are trying to emphasize especially along El Camino retail and I would like to
37 suggest that we allow no more than 2,500 square feet of office space without a conditional use
38 permit. With a conditional use permit additional space could be used for office but the intent
39 should be to try to keep retail uses primarily and if office use is desired then if they want to build
40 a two story or three story building to have office on the second floor like they have in the
41 building where the Starbuck's is down by El Camino and El Camino Way that would work fine.
42

43 In terms of the average size of the residential unit I don't see anything wrong with 1,250 square
44 feet. The first house we lived in in Palo Alto was an Eichler, three bedrooms, 1,000 square feet.
45 So it is possible to have a three-bedroom unit in 1,250 square feet or less. It is not necessary to
46 have, as was done with one project in Downtown, the penthouse unit of almost 4,000 square feet

1 for a single residential unit. That is a bit ghastly. So I think we can limit the ground floor retail
2 quite nicely.

3
4 I am quite pleased that the people at Fry's are gratified with what we are trying to do to keep
5 them happy and in town. Let me give you a little perspective on the residential zone in Fry's.
6 When that zone was put in there was a comprehensive look at every retail and commercial and
7 industrial zone in the city to see which areas could be rezoned for housing. Conscious decisions
8 were made not to rezone a number of areas, which since have been rezoned and developed for
9 housing. At the time Fry's was assigned housing we thought that was about as much housing as
10 we could get in retail zones and that was a maximum of 330 units. The sites which have already
11 been approved, or are under construction, or are in the pipeline in areas which were explicitly
12 excluded 20 years ago from housing will total close to 1,000 units or three times the amount of
13 housing that we had anticipated for Fry's. Rezoning Fry's from residential to commercial does
14 not lose us net housing.

15
16 Chair Holman: Thank you very much. At this time Commissioner Tuma I think you have a
17 statement to make.

18
19 Commissioner Tuma: As I understand it now we are going to go into a discussion on the CC
20 zone and as a result of my wife being employed at Stanford so I will excuse myself from these
21 discussions.

22
23 Chair Holman: Thank you. We will give you just a moment to leave the room and then Curtis
24 will have more presentation to make.

25
26 Mr. C. Williams: Thank you, again. This is not really new information but it is a little more
27 specific as to the CC zone. What we are focusing on now is the Community Commercial zone,
28 which encompasses essentially two areas of the city – Stanford Shopping Center and the Town &
29 Country Village Center. We are not talking here about the CC(2) combining zone, which is on
30 California Avenue and in which Mr. Tuma will be able to participate in that discussion.

31
32 Again, basic uses and standards are not changed in the CC zone, residential is limited to mixed
33 use only, FAR for hotels is increased to 2.0. When I say increased to 2.0 there is not a specific
34 hotel FAR right now in the ordinances and nonresidential FAR that is .35 for the Town &
35 Country shopping center and it is defined by a total amount of square footage at the Stanford
36 Shopping Center. Frankly, anything that happens at the Stanford Shopping Center is going to be
37 done through a Development Agreement and these regulations are not really going to specifically
38 apply to that. So you will be seeing whatever happens there in terms of any future expansions
39 through another mechanism. Potentially it could apply to the Town & Country Village center
40 and again they have an existing .35 for the total area. So, not specific for a hotel on one site.

41
42 Site and Design Review not required for mixed use that has less than four units. Here again on
43 sites like this you are not likely to have – those are going to be mainly small sites like we have
44 seen on El Camino come up before. We have suggested minimum commercial FAR of 0.25:1
45 before mixed use is allowed. Again, if you see it on Stanford Shopping Center, that will be
46 through another mechanism. Our guess is that the Town & Country probably is close to that .25

1 already so there is a potential that they could come in with a proposal for mixed use. Assuming
2 there were more than four units it would require a Site and Design Review, which means it goes
3 through ARB, Planning and Transportation Commission, and the City Council.

4
5 We had suggested, in fact it is in the ordinance right now, that we have a conditional use permit
6 for mixed use in the CC zone, however, tonight we would like to retract that suggestion because
7 number one, again, Stanford is going to go through a different process, and number two, that the
8 Site and Design Review process already applies in all of the ARB, Commission and Council will
9 see any proposal that comes through as it is which is more than would see the CUP unless it were
10 appealed. Also, we had included under CC reducing the front setback to in fact no just reducing
11 the allowable but requiring it essentially to move up towards the street. That is not necessarily
12 appropriate for Stanford Shopping Center and Town & Country. So right now there is currently
13 in the CC zone no requirement for setbacks but it doesn't require you to be up on the street, it
14 doesn't require you to be 25 feet back either. It is flexible and you come through the ARB and
15 whatever other process you have and it is determined what is appropriate. So we would also
16 suggest deleting that frontage requirement for the CC properties. So that is just summarizing and
17 in many cases reiterating what we presented before as far as what the substantive changes are to
18 the CC zone. So now we would be glad to take any questions.

19
20 Chair Holman: Commissioners, do you have questions for Staff? Commissioner Keller.

21
22 Commissioner Keller: You talked about a minimum commercial FAR of .25:1. Under the
23 hypothetical circumstance that Town & Country Village were raised to the ground and replaced
24 with a mixed use facility in its entirety would the commercial use on that site be potentially less
25 than there is now?

26
27 Mr. C. Williams: If it is a mixed use I don't know that we know exactly what is there now as far
28 as whether it is .2 or .25 or .35, which is the maximum right now. Right now under the
29 regulations we allow a certain portion of that can be office too. So let me find that here. Okay,
30 for CC

31
32 Commissioner Keller: In the absence of an answer to this question let me ask a related question.
33 Would Staff object.....

34
35 Mr. C. Williams: I've got it. So the maximum floor area for Town & Country shopping center
36 shall be .35:1, office uses shall be limited to 15 percent of the floor area of the shopping center
37 existing as of August 1, 1989. So there are some office uses there and then the overall can't
38 exceed .35 but I don't know whether it is or not. My guess is if you are saying the threshold
39 before you even consider mixed use is .25 that is probably very close I think to what is out there
40 now in terms of retail or commercial.

41
42 Commissioner Keller: But we are not sure whether....

43
44 Mr. C. Williams: And the CC zone does require the ground floor be retail.

45
46 Commissioner Keller: Okay. But we are not sure exactly how much retail there is there now.

1
2 Mr. C. Williams: No.
3
4 Commissioner Keller: So would Staff consider it a problem if the specification for this zone
5 were to say that the amount of retail would be a minimum of the amount there as of the date of
6 this ordinance or preexisting the redevelopment or .25 whichever was greater?
7
8 Mr. C. Williams: I think that is fine.
9
10 Chair Holman: Commissioner Garber.
11
12 Commissioner Garber: I am assuming we can ask questions across the board not just
13
14 Chair Holman: Let's focus the questions on CC at this time.
15
16 Commissioner Garber: I will pass for the moment.
17
18 Chair Holman: Commissioner Burt I saw your hand next, I believe.
19
20 Commissioner Burt: Curtis, we have under the CC zone which, as I understand it, for practical
21 purposes we are discussing Town & Country. With the hotel FAR given that that's one large
22 parcel how do you have an FAR that is separate for the hotel?
23
24 Mr. C. Williams: I think that would only come into play if the property were subdivided in a
25 way the CC zoning could stay on there and if the property were subdivided so that there was a
26 separate parcel that the hotel would be on and that parcel could be .20 and with that subdivision
27 we would also have to clarify but that the .35 whether it includes just the parcel that is left or if it
28 encompasses all of it. I think we would have to do that if that came about but that is the only
29 instance where the hotel would really do that. We couldn't really say 2.0 plus the .35.
30
31 Commissioner Burt: I was wondering how in practical terms we had taken this hotel incentive
32 that we had established within the PTOD and had somehow tried to apply it to one of the sites
33 that is considered a potential hotel site at the back of Town & Country. It has been discussed
34 over the years. So if the way it is proposed in the Staff Report would only apply if we
35 subdivided then maybe we need to look at another way to allow for achievement or the
36 opportunity for this potential hotel. While I wouldn't suggest off the top of my head an exact
37 proposal the concept I would think might be appropriate would be to essentially exempt the hotel
38 FAR from the commercial or mixed use FAR on the site up to some maximum allowable
39 amount. So you might want to think about that while we are discussing those issues but
40 conceptually does that seem to you to be along the lines of what we are trying to achieve?
41
42 Mr. C. Williams: Yes, I think it is and it theoretically means potentially the entire site is built to
43 something more than .35 FAR but that is what we are saying is that is okay to the extent we have
44 defined how much more that is and that is for a hotel purpose, yes.
45
46 Chair Holman: Commissioner Lippert.

1
2 Vice-Chair Lippert: When we did the Zoning Ordinance Update for the LM and GM zones we
3 actually had looked at the LM zone that was east of Bayshore and we looked at the LM zones
4 that were west of Bayshore. We actually came up with different standards for the LM zone that
5 was east. In fact it was a little more restrictive because of its adjacency to the Baylands. Do we
6 have the ability to do something very similar to that were we could say that the CC zone that is
7 west of El Camino, which would basically be Stanford Shopping Center and the CC zone that is
8 east of El Camino could have different standards?
9

10 Mr. C. Williams: We could do that. I think that is better done by the way the existing code does
11 it and the way that is proposed here which is essentially we have one section paragraph that says
12 what the allowable floor area and it is only related to floor area but what the allowable floor area
13 is for the Stanford Shopping Center based on a number and what the floor area for the Town &
14 Country is based on an FAR ratio. If there is some tweaking of those that would accomplish that
15 I think that is appropriate or if there are some other standards I think we could write it in a way
16 that we do that. I would discourage trying to develop two different zones per se because you are
17 really talking about one site in one and one site in another. For the LM what you are really
18 talking about was really already established in our Zoning Ordinance and we had the LM3 that
19 existed before and that only applied out there. So that really wasn't a leap to just call it
20 something different in the new ordinance.
21

22 Vice-Chair Lippert: Okay.
23

24 Chair Holman: Yes, you had a question?
25

26 Commissioner Keller: Yes, following up on Commissioner Burt's question would it make sense
27 to allow residential uses in a CC zone only as part of the condo that went along with the hotel as
28 opposed to other kinds of residential?
29

30 Mr. C. Williams: Well, you could do that. I don't think Staff would propose being that
31 restrictive. I don't know that we anticipate that there is necessarily a residential mixed use
32 proposal forthcoming but I can foresee that that might be a desirable thing at some point. And
33 like I said it has to go through ARB, Planning and Transportation Commission and Council
34 through the Site and Design Review process in any event. So I think there is plenty of discretion
35 to look at something like that if it came through. It may be that something like that could occur
36 and could be beneficial from a retail standpoint. We don't know that it is precluding a hotel. For
37 a hotel you could have the incentive like we have talked about before for doing a hotel instead
38 and we are not giving additional FAR for the overall site for the other uses.
39

40 Commissioner Keller: It seems to me that we would like to incentivize hotel use as something
41 that we would like to add to the city. There is a big piece of land in the back of the Town &
42 Country Village. Having the incentive for housing require that it be a percentage of a TOT
43 generating use would incentivize the creation of a hotel at the property in contrast to the idea that
44 just residential housing would be created at that location without the creation of a hotel. So it
45 seems to me that that might be an interesting thing to consider that on a CC zone the additional

1 housing created is based on a percentage of the TOT as opposed to the percentage of the entire
2 site.

3
4 Mr. C. Williams: I understand that point it is just that if a hotel doesn't want to go in there and
5 there is a possibility that mixed use could bring more retail into the site we have then precluded
6 that from happening.

7
8 Chair Holman: Commissioner Garber.

9
10 Commissioner Garber: Given that the CC zone the criteria that we are really talking about is
11 truly applicably only to Town & Country and not to Stanford your deletion of the final bullet
12 point the front setbacks along El Camino is really to preserve the existing project as is in that if it
13 was changed and if the owner at that time afterwards were to look to modify, change, or
14 otherwise re-permit work there would then be required to conform to the new zoning criteria that
15 would have been put in there?

16
17 Mr. C. Williams: Yes. If we leave this language in here and they want to do something there
18 then they are going to need to move.

19
20 Commissioner Garber: Re-plan.

21
22 Mr. C. Williams: Yes, move something up to the front of the site.

23
24 Commissioner Garber: That being the case let me go back to Commissioner Keller's example
25 that in the instance if the site, unlikely as it might be, were to be scraped wouldn't we want the
26 site in that circumstance to then conform to the other criteria that we would have for the other
27 properties that are along El Camino?

28
29 Mr. C. Williams: Kevin, is this part of the El Camino Guidelines or not? I didn't think so. So I
30 think one distinction is that the El Camino Guidelines are sort of pushing buildings towards the
31 front and that and this is just north of where those really are focused. The thing that is done here
32 is we are not requiring a setback either. So there would be an opportunity if the site scraped I
33 think there would be an opportunity at that point to, and again you have Site and Design Review
34 through all three bodies to look at the guidelines, the context based design criteria that leads you
35 in that same direction.

36
37 Commissioner Garber: The process allows for other tools to be used to implement that effect.

38
39 Mr. C. Williams: I think so.

40
41 Commissioner Garber: Thank you.

42
43 Chair Holman: Commissioner Sandas.

44
45 Commissioner Sandas: Curtis, but if Town & Country whoever owns it in some restoration or
46 remodeling phase wanted to build to the sidewalk would they be allowed to do that?

1
2 Mr. C. Williams: Yes, assuming it would pass muster with the ARB, you guys and Council.

3
4 Chair Holman: Is everyone else through with questions? I have a couple then. Having to do
5 with, this is a little bit repetitive, the ground floor protections at Stanford and Town & Country in
6 the Development Standards on page 15 of Attachment F shows the minimum mixed use ground
7 floor commercial FAR as .25:1 and has a footnote six next to that which says, office uses may be
8 included only to the extent they are permitted in ground floor regulations. I think that need a
9 little bit of clarification at least to me.

10
11 Mr. C. Williams: Where are you? In the redline version. So page 15 of the redline version.

12
13 Chair Holman: Yes, page 15, minimum mixed use ground floor commercial FAR in the CC.

14
15 Mr. C. Williams: Right and footnote six then is what you are talking about?

16
17 Chair Holman: Yes. We have ground floor protections that are different. We have ground floor
18 protections that are applied to Charleston and to Midtown and to Downtown so I am trying to get
19 clarity on what the ground floor protections are that are referred to here.

20
21 Mr. C. Williams: So maybe what we should do here is in this say that ground floor commercial
22 uses include these various things to the extent they are allowed by the ground floor protection
23 ordinances or something like that. We are not intending here to allow something that those
24 restrictions don't already allow.

25
26 Chair Holman: I think that is kind of what it says now.

27
28 Mr. C. Williams: It says it for office uses but it doesn't say it specifically for the other ones if
29 that is what. What would you like?

30
31 Chair Holman: Where I was headed is in the CC zone do we want any office on the ground floor
32 at Stanford Shopping Center and Town & Country? That is where I was headed. I am not
33 thinking of an occasion why we would want to allow that and if we allow it we could possibly be
34 encouraging it in certain economic times.

35
36 Mr. C. Williams: Well, it isn't allowed right now other than replacing an existing office use.
37 That is the only time that would be allowed in that location as it is.

38
39 Chair Holman: Okay.

40
41 Mr. C. Williams: That is why I was saying and that is why this says office uses only to the
42 extent they are permitted in the ground floor regulations. Right now the only time the ground
43 floor regulations in the CC allow you to have office is when you are replacing existing office
44 space.

1 Chair Holman: Okay, I was thinking there was a little bit different ground floor rules for
2 Midtown and Charleston than....

3
4 Mr. C. Williams: Midtown and Charleston do have some additional language about further
5 restricting sizes and types of uses. The uses here, office uses, right now I am thinking back to
6 that CS provision, I am not sure it applies here but maybe we should. I think the problem in the
7 CS – in the CS we have it defined so it does not include administrative offices for example. It
8 says specifically general business, professional and medical offices and does not allow
9 essentially headquarters office type uses. Then it has the limitation of 5,000 square feet. The
10 Charleston and Midtown regulations have even a narrower scope than that because they are
11 specifically neighborhood serving. So I don't think those would necessarily apply here but if
12 you want to be more specific about the office type of uses so that we are clear on that that maybe
13 it is not in this section that it is more of the section on 18.16.050 on office use restrictions, which
14 talk about conversion to office uses.

15
16 Chair Holman: In 050 you say? Could you point us to where that is?

17
18 Mr. C. Williams: That is probably page nine of that same redline version. So that defined
19 medical, professional, and business offices. Again, it doesn't allow administrative only where
20 those offices have been in existence since 2001, were not nonconforming at that time, weren't
21 occupied by housing or retail services, eating and drinking services, and then an exception for
22 CS.

23
24 Chair Holman: Let me see if I can shortcut this a little bit. In Stanford Shopping Center and
25 Town & Country I don't know of any existing ground floor office. So could we just not prohibit
26 ground floor office?

27
28 Mr. C. Williams: I guess what I am saying is we already have without being specific to saying
29 CC we are doing it in a broad brush across all the districts with the exceptions listed here. Off
30 the top of my head I am not familiar with anything that would meet these exemptions there but I
31 don't know that there is not a single ground floor office in fact I think there are in Town &
32 Country. There are travel offices and such that I think are considered general business offices.
33 So there may be some that are in that gray area.

34
35 Chair Holman: Okay, thank you for that. I have a similar kind of question with the total mixed
36 use floor area ratio or FAR in the CC zone. We talked previously about Stanford has two floor
37 and three floor retail. So how does that relate to the 1:1 FAR for mixed use? In other words,
38 could this be construed to promote the elimination of some retail square footage?

39
40 Mr. C. Williams: Well, again Stanford any mixed use on Stanford is not going to be through the
41 CC zone regulations. They are already at their cap essentially so it would have to be done
42 through an amendment to the zoning ordinance and a development agreement. So I think there is
43 a mechanism to address Stanford. I am looking at this in the same light as what Commissioner
44 Burt mentioned as far as the hotels and wondering if that is a meaningful number to even have in
45 here, a 1.0 a mixed use what does that mean on Town & Country? I don't think we mean that
46 the whole site then is 1.0 and how does that relate to the .35 of office. It seems to me that maybe

1 what we want to do here is in the CC not specify those numbers but go back to the section that
2 says it is .35 for Town & Country with the following adjustments and have something for hotel
3 up to half the square footage of the hotel is not counted against the FAR or against that number
4 or something like that and some kind of provision that allows some level of mixed use. Again,
5 not looking at it on a FAR basis for the whole site because it is not the same as what we look at
6 in all the other zones where we have clearly individual parcels that we are looking at.

7
8 Chair Holman: I appreciate that because I find this troublesome and I think Commissioner Burt
9 has a follow up.

10
11 Commissioner Burt: Curtis, I was glad to hear you say that because I hadn't dwelled on this
12 table and when I looked at this I said wait a minute now I am really trying to envision what the
13 outcome might be for Town & Country under this table. So I am glad that you agree with that.

14
15 You mentioned under this hotel concept that perhaps only counting x-percent of the hotel against
16 FAR I think my inclination, I don't know about the other Commissioners, would be to not count
17 the hotel FAR against the whole up to some maximum. Either some maximum total FAR or
18 some square footage of hotel or whatever but not penalize them. We don't want them to be
19 placed in a circumstance where if they chose to put in a hotel they would have to get rid of some
20 of the retail to do so provided they could properly park the hotel and those things.

21
22 Then Commissioner Keller had brought up this other issue about where we should fix the retail
23 amount and I don't think you had an exact number of where they are currently on retail FAR. So
24 I think our concept is we don't want to see what is today a retail center reduced in its retail size.
25 My preference would be to fix the minimum FAR at about where they are, maybe give them
26 some minor flexibility, and then allow them certain incentives to revitalize the center or to put in
27 a hotel provided other conditions are met on parking, etc., and all the other approval processes. I
28 don't think we want because we have these formulaic FARs of a round number of .25 that we
29 might create some disincentive for the outcome that we actually want to retain. It works as a
30 retail center. They are in the process of revitalizing it as a retail center and we just want to keep
31 in place a set of parameters that would at least keep the things that we value about it and what
32 they apparently value given the investment that they are currently making in the revitalization
33 and then provide other incentives should they choose to take us up on them.

34
35 Chair Holman: Commissioner Keller.

36
37 Commissioner Keller: Thank you. I am looking at page 14 of the Mixed Use Development
38 Standards for Commercial other than Downtown. It says here that the maximum nonresidential
39 floor area ratio is .4 and the maximum residential floor area ratio is .6. Now I don't quite
40 understand why if Town & Country wanted to put some residential why they would subdivide
41 the property. Why wouldn't they just raise the entire property and put .6 residential on top and
42 .25 commercial on the bottom and why they couldn't just do that?

43
44 Mr. C. Williams: You are just saying basically put retail on the first floor and put residential
45 above all that at 2.6 for the whole site?

1 Commissioner Keller: Up to 1.0 on the whole site assuming they open a hotel. That is possible
2 under this ordinance.

3
4 Mr. C. Williams: No it is not. It is not all residential. Is that what you are saying? It could be
5 residential at 1.0?

6
7 Commissioner Keller: No, I am saying it could be residential at .6 and nonresidential at
8 somewhere between .25 and .4 and I am not sure whether or not that is what we want.

9
10 Mr. C. Williams: That is what we are changing. I think we are suggesting changing it.

11
12 Chair Holman: Commissioner Burt.

13
14 Commissioner Burt: Arthur, I might be able to help on that. If I understood Curtis correctly a
15 few minutes ago he was recognizing that this table is perhaps not appropriate for Town &
16 Country in the CC and that Staff I think is going to come back momentarily with
17 recommendations on addressing that concern that you have raised that it would basically
18 eliminate these other formulas. Is that correct, Curtis? Does that in concept address your
19 concern, Arthur?

20
21 Mr. C. Williams: Yes.

22
23 Commissioner Keller: Yes, in concept it addresses my concern other than I thought I heard
24 something saying something that they expected the property to be subdivided if there is a
25 residential use. I am not sure why it would be the interest of the property owner to do the
26 subdivision.

27
28 Chair Holman: I am not sure – did we hear that?

29
30 Mr. C. Williams: I said that for the hotel possibility that that might be. Yes, theoretically it
31 could happen with a residential also and that may or may not be in their interest. That is the only
32 place where this table would then make more sense if they had a separate parcel to do the
33 residential on. What we are saying is that given the overall broad framework of floor area that is
34 allowed on Town & Country these number, this kind of table, doesn't work for that and we ought
35 to just go back into the allowable square footage for Town & Country and talk about how much
36 that can be increased for a hotel and how much it can be increased for a residential component.

37
38 Chair Holman: Commissioner Garber.

39
40 Commissioner Keller: I just want to ask are we expecting the developer of the property to do a
41 subdivision? Or wouldn't it be in their interest to not subdivide so they could just use the FAR
42 overall however they wished?

43
44 Mr. C. Williams: I don't think we are expecting the developer to do a subdivision. That is not
45 an assumption we are making. The numbers in here apply to the whole thing at this point right
46 now whether they subdivide it or not.

1
2 Commissioner Keller: So then I assume we should have numbers that are assuming no
3 subdivision.

4
5 Mr. C. Williams: That is what we are proposing.

6
7 Commissioner Keller: Thank you.

8
9 Chair Holman: Commissioner Garber.

10
11 Commissioner Garber: Just to follow up on Commissioner Keller's thought here, if the owner of
12 the property were to subdivide or to propose to subdivide the property it would then have to go
13 through a separate evaluation of that subdivision to determine how and depending how it is done
14 it is going to be affected by the zoning in a variety of different ways which would have to be
15 determined upon that proposal being submitted. Is that correct?

16
17 Mr. C. Williams: Yes. Then any plans for it again would have to go through all three bodies.

18
19 Chair Holman: Seeing no other questions are we ready for discussion of the CC zone proposal?

20
21 Mr. C. Williams: Could we maybe take a stab at suggesting a language change?

22
23 Chair Holman: Of course.

24
25 Mr. C. Williams: The first thing would be that in those mixed use standards that we would
26 delete the residential density floor area numbers, the minimum mixed use ground floor
27 commercial numbers, all of that in that column under CC. We would eliminate and just refer
28 there to the Subsection E after the tables which is on page 17 of the redline version. If you are
29 looking at the clean version it is on page 15, Subsection E. So in either of those locations it reads
30 the same there weren't any changes made. So under number one there where it says maximum
31 floor area for the Town & Country Shopping Village shopping center shall be .35:1, office uses
32 shall be limited to 15 percent of the floor area of the shopping center existing at of August 1,
33 1989, I think we would add first except that and one would be that hotels that may be permitted
34 are excluded from that FAR limitation but such that the overall site FAR does not exceed, and I
35 am thinking maybe .45 which is in a quick calculation here on that site probably 50,000 square
36 feet.

37
38 Commissioner Garber: Do you happen to know the footprint of the existing Town & Country?

39
40 Mr. C. Williams: The footprint of it?

41
42 Commissioner Garber: Just a guess.

43
44 Mr. C. Williams: The building coverage? If it is .25 and I think we figured the site was 10 or 11
45 acres so that would be two and a half acres or 100 and something thousand square feet.

1 Chair Holman: So I know you are having to do this on the fly, is that 50,000 a number that the
2 Commission is comfortable with? It seems maybe high. Commissioner Keller.

3
4 Mr. C. Williams: The other alternative is to have us take this back and work with our Economic
5 Development person and try to define a number that more precisely matches what a hotel square
6 footage might be and adjust that if that doesn't seem to accurately reflect it.

7
8 Chair Holman: If I could there is a character to the shopping center and 50,000 square feet for
9 this location seems like it is a lot. Like for instance, what size is the Sheraton?

10
11 Mr. C. Williams: Well, that is what I would want to find out. So maybe we need to estimate
12 what a three story or four story at the most hotel in that area might amount to square footage-
13 wise and sort of plug that into this number and adjust the .45 as necessary.

14
15 Chair Holman: My personal thought would be a three story but I would ask the other
16 Commissioners to pipe in on that and Commissioner Garber you had a comment?

17
18 Commissioner Garber: I have something to say. I certainly don't feel like I am a hotel expert to
19 be able to know one, where the breakpoint is that it becomes a reasonable business proposition as
20 well as having looked at the site and what the constraints are that would limit that equation,
21 therefore, I would suggest that there is probably someone on Staff or in your consultancy group
22 that can probably better advise us as to what the right number is.

23
24 Mr. C. Williams: Whitney thinks 50,000 is not that big but we can check that with the other
25 Staff and with Rick. Rick unfortunately had a conflict and couldn't be here tonight. He would
26 probably have that answer for you in a minute.

27
28 Chair Holman: Commissioner Lippert has a question but if you don't mind Commissioner Burt
29 is jumping out of his chair down there.

30
31 Commissioner Burt: Just because it was a follow up to put closure on this thing. I just don't
32 think we can decide on the fly tonight an appropriate size for that. I think what we ought to do in
33 endorse a concept and then between now and when it goes to Council Staff would refine that
34 concept and make a presentation to Council and they are going to be the ultimate decision-maker
35 anyway. I am hearing conceptual support but I don't think any of us have enough clarity as to
36 attempt to pencil out a particular size tonight on the fly.

37
38 Chair Holman: Commissioner Lippert.

39
40 Vice-Chair Lippert: I am pretty much in agreement with Commissioner Garber and
41 Commissioner Burt. I don't think that we have the ability to sort of put a lid on this tonight in
42 terms of the hotel element there. What I am thinking of and this is just thinking out loud here, is
43 that we have several other hotels along El Camino Real in that area and one of the most
44 important things is that we probably would want a density and compatibility along those lines
45 with the ground floor element and perhaps a residential element. So I think it is a very complex
46 equation that we are looking at here and there is just no shortcut to it.

1
2 Mr. C. Williams: We agree.

3
4 Chair Holman: Commissioner Keller.

5
6 Commissioner Keller: I think that I feel comfortable in leaving the total FAR including the hotel
7 use to be a plug number if you will that is plugged in when you present it to Council. I am still
8 interested in some language along the lines of that the residential use does not exceed the amount
9 of hotel use. I think that would provide additional incentive to providing hotel. I think that we
10 have had a lot of housing built recently in the last few years probably a little faster than we
11 would have expected on more sites than we would have expected. So one of my philosophical
12 items is encouraging housing to pay its own way and housing that comes along with hotels is
13 certainly one way for it to pay its own way.

14
15 Mr. C. Williams: So would we then be able to essentially say because the second exception here
16 was going to be for mixed use that mixed use you could exceed the .35 overall nonresidential cap
17 but the residential should not exceed whatever that same number is that the hotel is? Is that what
18 you are saying? It is sort of apples and oranges when you are talking residential versus hotel.
19 The square footages are not what you measure value by so I am not sure that would work.

20
21 Commissioner Keller: Are you suggesting .45 or something like it including hotel plus
22 residential? I would assume that there would be some overall cap that would include residential
23 and hotel and within that overall cap that the residential should not exceed the amount of hotel is
24 what I would prefer.

25
26 Mr. C. Williams: I was looking more at an either/or situation. We could certainly do it that way
27 as well. Either one could be to a certain level or both of them together could be to a somewhat
28 higher level but I am a little concerned about something that suggests packing residential, hotel
29 and a lot of retail all on that one site.

30
31 Chair Holman: Commissioner Lippert.

32
33 Vice-Chair Lippert: I am not in support of that at all. I think what it does is really manipulates
34 things. In fact until we reach the goals of the general Comprehensive Plan I don't see any reason
35 to restrict housing in any way.

36
37 Chair Holman: Commissioner Burt.

38
39 Commissioner Burt: Curtis, don't we have elsewhere in the report a formula along El Camino
40 and the hotel FAR going up allowing I think it is 25 percent condo units within the hotel?

41
42 Mr. C. Williams: Right that is what we have put basically is that of the 2.0 FAR up to 25 percent
43 of that may be devoted to condo units.

44
45 Commissioner Burt: Well, it just seems to me that that formula might be an appropriate one to
46 have here rather than this. Everywhere that we have allowed the hotel we might have that same

1 formula apply. So that might be a way to have a consistency and to not create a circumstance of
2 having more residential in this center than we would desire but allowing some and having it be
3 an additional incentive for the hotel. It may never get built because the property owner would
4 have to decide it and all we are doing is setting up certain allowable places in the city where it
5 might occur.
6

7 Mr. C. Williams: Are we saying that if a hotel were not built that the residential would be
8 limited to 25 percent of what a hotel could build? Is that what you are saying?
9

10 Commissioner Burt: No. I was envisioning what I think if I understand the balance of the report
11 is that – actually I think I am going to have to wait until we get into that body. Let me ask you
12 this then and you clarify. In the absence of a hotel and given the changes that you are planning
13 on making in this deleting these FARs from the table for the CC zone what amount of residential
14 would be allowed to be built at Town & Country?
15

16 Mr. C. Williams: Well, again I think that we would probably treat it the same way that the
17 residential is above the .35 to a maximum and a .45 again just a quick calculation if it is either
18 residential or hotel and to just do residential is probably 50,000 square feet, which probably
19 means if we use 1,250 or 1,500 square feet a couple of hundred units.
20

21 Commissioner Burt: Well, my concern then would be that the market has been clear for a long
22 while that residential is a considerably higher value than hotel and we create a circumstance
23 where the developer has the alternative of going residential or hotel we are never going to get a
24 hotel there.
25

26 Mr. C. Williams: That was my question to Mr. Keller. Do we want to try to do something that
27 does say sort of either/or in a way that is favorable to the hotel and allows the residential but only
28 on a fairly limited basis?
29

30 Commissioner Burt: My concept would be that 25 percent of the allowable hotel space could go
31 to residential provided that the hotel were there.
32

33 Mr. C. Williams: Okay, I see.
34

35 Chair Holman: If I might it is nine o'clock and we have yet to finish up the CC and we have the
36 other commercial zones to do and out of respect for the public we also have two more items
37 coming up. So I would like to explore with Staff what the options are. You look like you are
38 ready to speak.
39

40 Mr. C. Williams: Yes, we could take this and essentially come up with as we discussed with a
41 number for the hotel, a maximum FAR for this site for that basically that would reflect that
42 increment of having a hotel on the site above the .35 that currently exists and we could do the
43 same thing with the residential basically being .25 or 25 percent of that square footage. So I
44 think we would still suggest that option be there for the residential but it would be a fairly
45 restrictive amount that way. So we would make those changes and then the other change here is
46 that we would have a minimum floor area of the existing as of the effective date of this ordinance

1 basically and would you just want that to apply to the residential component? I would think
2 probably so and not the hotel. Well, we want the retail so we would basically rather than having
3 just the .35:1 we would also include the minimum of what is existing retail now be protected and
4 any rebuilding provide at least that amount of retail.

5
6 Mr. Don Larkin, Senior Deputy City Attorney: If I could just make a suggestion because you
7 have to have a motion and a second and passage before Commissioner Tuma can come back. If
8 you wanted to make a motion that reflected your general direction with the understanding that
9 that is how Curtis is going to take that direction that would be appropriate.

10
11 Chair Holman: I have two Commissioners who have comments but I would like to pose the
12 question would then that go directly to Council or is there some possibility that we could have a
13 special meeting next Wednesday to review and finalize anything? Would that still give Staff
14 enough time to get to Council?

15
16 Mr. C. Williams: Well, my anticipation was it would go straight to Council. Now we have an
17 October 11 meeting with you and we could report back to you what we have done and if you
18 have additional input you wanted us to forward to the Council for next week we could do that. I
19 would prefer -- we need to have the CMR out next week.

20
21 Mr. Larkin: Speaking for my secretary who isn't here who types these things I think that would
22 be extremely difficult.

23
24 Chair Holman: Okay, then if I could offer up one other comment or suggestion here. We also
25 earlier talked about the front setbacks and how that really wasn't applicable to Town & Country
26 and El Camino. So what would Staff's proposal be on that?

27
28 Mr. C. Williams: Our proposal would be to essentially say no requirement on the front setback
29 the way the existing code does for just the nonresidential development.

30
31 Chair Holman: Then one other comment, and I have this throughout you'll hear, is the
32 maximum height is within 150 feet of an abutting residential zone. With Town & Country there
33 is a railroad track that intercedes and so I would suggest that that not be abutting but just within --
34 in other words, delete the word 'abutting.'

35
36 Mr. C. Williams: That is what we had a problem with. If there is a railroad track in between I
37 think it is pretty likely that is going to be more than 150 feet but if it is not our concern is start
38 having those factors kick in at that point. It is very restrictive when it is not immediately next to
39 a residential zone. You have a separation there you have a whole railroad separation. Now the
40 maybe the height part of it works.

41
42 Chair Holman: The height is what I am referring to and even if there is a railroad track that
43 intercedes we have seen when it comes to like the project at 195 Page Mill we have seen how
44 much of the public has come out even with a street and a railroad in between. It is a little bit
45 different situation but I would like to see that 'abutting' word taken out. I think there still could

1 be a significant impacts especially if it was a hotel where there are going to be lights on probably
2 24 hours a day.

3
4 Mr. C. Williams: Well we can do that if we can narrow that concern to the railroad issue I think
5 that is fine. Our main concern was that we have places where we have commercial properties
6 between residential zones and the site and they are less than 150 feet away and that it wasn't
7 appropriate there to restrict the commercial property because there is an intervening property that
8 is transition anyway. If it is a case of the railroad being a specific concern then we can narrow
9 that here to that issue. I think that is fine.

10
11 Chair Holman: I hope other Commissioners will agree with that. Commissioner Burt.

12
13 Commissioner Burt: I have one minor tweak to suggest. Curtis, I appreciate that you adopted in
14 principle this no net loss of retail concept but we might want to include a little bit of latitude for
15 the property developer. I can envision circumstances where they might want a tenant in there
16 that a higher user of parking and they might give up a minor amount of actual built area and the
17 impact being the same amount or greater retail revenue, the same or more traffic but on
18 conceivably slightly less retail space. So we might want whether it is 95 percent or something
19 that gives them just some operational latitude without in principle altering the essential amount
20 of retail that is there.

21
22 Chair Holman: Commissioner Lippert.

23
24 Vice-Chair Lippert: I had a similar thought as Commissioner Burt but coming from a different
25 direction. We had a discussion the last time we looked at this about hotels being able to have
26 either condominiums or office as a certain percentage as well and that would take care of that
27 without sacrificing the commercial.

28
29 Commissioner Burt: Can you explain how it takes care of it?

30
31 Vice-Chair Lippert: Well, we are allowed to have a certain amount of commercial space but
32 then in addition to that if a hotel were to be built there and they were allowed to have a certain
33 percentage of it be either condominium which would be housing or office space within that
34 facility then what it does is it allows them to either go commercial or residential without
35 impacting the commercial, the retail, sorry.

36
37 Commissioner Burt: What if they in their redesign of the center including a hotel or whatever
38 wanted to come and say the way this all works we need five percent less retail area. It is going to
39 be more vibrant retail or whatever. I am not sure your proposal would address that and I think
40 there is a reasonable amount of latitude that we should allow the developer. While I am very
41 pleased that we are going to adopt the principle of not a net loss in retail at the same time I think
42 a little bit of latitude is appropriate to allow them to be creative on how to make best use of that
43 site without altering the essential character and the fundamental amount of retail.

44
45 Vice-Chair Lippert: Well, my point is then if that is the case, take the office space out of the
46 commercial and put it into the hotel and don't impact the retail space.

1
2 Chair Holman: Commissioner Garber.

3
4 Commissioner Garber: If I am understanding the discussion right now we have retail and
5 commercial space currently existent the discussion has been about how to bring hotel plus
6 residential in the form of a condominium into the site. Those have been imagined as two
7 separate types of use. The suggestion, Commissioner Lippert that you have is that the two uses
8 not be segregated retail and commercial but they be retail and then commercial, residential and
9 hotel. Is that what I am hearing?

10
11 Vice-Chair Lippert: I guess the misnomer here is that we are talking about commercial and
12 within commercial you have office space and you have retail space. There is a certain amount of
13 office space that currently exists. All that I am saying is that don't impact the retail, don't take
14 away any of the retail if anything is going to be impacted allow the office space to go into say the
15 hotel space per what we discussed at the last meeting.

16
17 Commissioner Garber: Forgive me, my concern with that is that if we were to make that
18 recommendation and when it is implemented that means that the owner once again if they have
19 to resubmit for permits would end up having whatever space they were looking to renovate or
20 add onto, etc. would have to take out the commercial that is currently there. Would that be true?
21 I'm sorry, office, I keep calling it commercial but I really mean office. Is that what would
22 happen?

23
24 Vice-Chair Lippert: What I am saying is that Commissioner Burt had made a suggestion here
25 which was simply that we wanted to preserve the net amount of what we call commercial space
26 and allowing the developer or property owner some flexibility there. If it feels about right and it
27 is about there allow them to have it. What I am saying is allow them to basically do a, and I hate
28 using this word, TDR, a transfer of development right and say we want to preserve the ground
29 floor retail element that is what is important here to us, let's take what you have in the way of
30 commercial and allow you to transfer that let's say into the hotel element but up to a certain
31 percentage of the hotel.

32
33 Chair Holman: Curtis.

34
35 Mr. C. Williams: I appreciate what you are trying to do. I think we are getting too complicated
36 with it in the transfer thing. We are talking about one site in the city here basically and I think it
37 is just while it may be a good idea I think that we have enough here to provide some incentive
38 for hotel that we can work with and by the same token try to limit the residential component of
39 any potential mixed use and would suggest that we head that way with also the deletion of the
40 front setback requirement and the deletion of the CUP requirement for mixed use and then
41 deleting those items in the mixed use table that have the FARs and densities and such on them.

42
43 Chair Holman: Commissioner Keller.

44
45 MOTION

1 Commissioner Keller: I am going to try to offer a motion. My motion is to accept the Staff
2 recommendation for the CC zone with the following amendments: firstly you mentioned two
3 amendments, could you repeat those please?
4

5 Mr. C. Williams: Yes, deleting the front setback requirement making that read 'no requirement
6 on front setback,' deleting the requirement that mixed use requires a CUP in the CC zone, and
7 then actually there was a third one, which was deleting from the mixed use table the FAR and
8 density percentages.
9

10 Commissioner Keller: Thank you. The other amendments are to be added to this as part of the
11 motion are one, retail use must be a minimum of the greater of .25 FAR or the amount of the
12 most recent use that is retail at the time of the enactment of this ordinance. The second
13 amendment is that residential use be in accordance with the hotel regulations in column D in
14 particular D-2 on page 15 of the non-redline. So it refers to D, A and B but not the FAR. In
15 other words, D-2, A and B in particular are the things that I am bringing in. Does that make
16 sense? So page 15, D-2, A and B are the residential use that is allowed. Number three that the
17 remove 'abutting' from the maximum height as twice suggested by the Chair. Finally, number
18 four, to limit the height of the hotel use or any use at this site to at most three stories.
19

20 Chair Holman: I am looking for a second.
21

22 SECOND
23

24 Commissioner Burt: I will second that. I might have a friendly amendment.
25

26 Chair Holman: Okay. Commissioner Burt seconds the motion. Commissioner Keller would
27 you wish to speak to your motion?
28

29 Commissioner Keller: Yes. I have tried to incorporate the various ideas that people have had. I
30 think one of the things with respect to Commissioner Burt's comments earlier is that the Town &
31 Country Village already allows 15 percent of its floor area to be office use and there are some
32 office uses. For example, the State Senator Joe Simidian's office I think is an office use not a
33 retail use. So there are some uses there and to the extent that additional buildings are built it is
34 possible to put some office use there as long as it doesn't exceed 15 percent of the amount that
35 was available at the time of this August 1, 1989.
36

37 Chair Holman: Commissioner Burt, would you care to speak to your second?
38

39 Commissioner Burt: I have a question I wanted to ask Staff to clarify on the motion. As it was
40 stated it was 100 percent of current retail. We have unoccupied spaces are they still designated
41 as retail based upon their prior use?
42

43 Mr. C. Williams: I think the way it is worded if they have become vacant and it says
44 'continuously in existence' then they can remain as non-retail but if they have not then they have
45 to become retail.
46

1 Commissioner Burt: So my question has to do with out of the unoccupied spaces there are
2 actually some like the travel agency and others, a pharmacy and things, they have been
3 unoccupied for over a year. What would be the impact of this motion on whether the ones that
4 were retail would still have to stay retail going forward?
5

6 Mr. C. Williams: Yes. They would have to do that anyway under the ground floor regulations if
7 they are retail now.
8

9 Commissioner Burt: Well, my memory wasn't that under the ground floor regulation there were
10 circumstances if they were unoccupied for extended periods that they could flip.
11

12 Mr. C. Williams: No, if they were unoccupied they would have to be retail.
13

14 Commissioner Burt: Okay, great.
15

16 Mr. C. Williams: If they were never occupied at the time of 2001 they were vacant and they
17 have stayed vacant then they could be used as offices. Anything else in that interim period that
18 has changed and gone out of office use or some other use other than retail would now have to be
19 retail.
20

21 Commissioner Burt: I will defer that for your evaluation between now and when it goes to
22 Council. I don't recall when the pharmacy closed but it has been awhile.
23

24 Mr. C. Williams: A pharmacy is retail.
25

26 Commissioner Burt: But it has been unoccupied for several years, it might go to 2001, so it
27 could flip.
28

29 Mr. C. Williams: I see what you are saying.
30

31 Commissioner Burt: Okay. So I will defer that to you and if it ends up being a relevant point we
32 will just expect that you will bring that Council to reflect that concern.
33

34 My friendly amendment would be that Staff identify rather than exactly 100 percent of current
35 retail retained that the overwhelming majority of the retail be retained. I don't know if that
36 should be 95 percent or what but I still would like to give the developer or the property
37 owner/developer some minor latitude to deal with circumstances. If we adopt this we have
38 achieved the essence of our objective, which is to keep the retail that is there, but we also want to
39 give them some latitude to create vitality as they see fit within that broad principle.
40

41 Commissioner Keller: I will accept the amendment of 'or 95 percent of the space that was retail
42 in its most recent use.'
43

44 Chair Holman: If I might that might need a little bit of clarity because as I wrote the motion
45 down it was retain the minimum of the greater of the .25 FAR or the amount of retail in place at
46 the enactment of the ordinance. So I am not quite sure.

1
2 Commissioner Keller: I think what I said is or the most recent use at the time of the enactment
3 of the ordinance, therefore, vacant space under my intent is that vacant space is considered retail
4 if its most recent use was retail.

5
6 Chair Holman: Okay, thanks for the clarification then. Commissioner Garber.

7
8 Commissioner Garber: I have two concerns. I am not sure if they need to take the form of a
9 friendly amendment. First Staff had some concerns relative to the issue of abutment and you had
10 made suggestion that perhaps abutment is not the issue here but having the adjacency to a
11 railroad track. Is there some clarification that you might suggest in there?

12
13 Mr. C. Williams: Well, actually I think for this since particularly we are talking about essentially
14 one site I don't think we probably need to make that distinction.

15
16 Commissioner Garber: Okay.

17
18 Mr. C. Williams: If it we are talking about height and we don't have to get into daylight planes
19 and such and we are just talking about height then I think most of this is interior to the property
20 and that that we are talking about is something new that we will have an opportunity to provide
21 that transition.

22
23 Commissioner Garber: So item number two has to do with the specification of three floors. I
24 think it is more precise simply to say the 35 feet that has already been suggested. Can I offer that
25 as a friendly amendment? It is really a modification but if it needs to take the form of an
26 amendment I will submit it as such.

27
28 Mr. C. Williams: Madam Chair, I have a concern about that. First of all that obviates the need
29 to do the 150 feet because that is what it comes down to at 150 feet is a 35-foot height limitation.
30 Secondly, we have a 50-foot height limitation currently in the CC zone. Now that is not likely to
31 happen at Town & Country other than maybe if there was a hotel it would be the one case. So if
32 you want to limit the height I would suggest doing it there but not any implication here that that
33 applies to Stanford Shopping Center.

34
35 Commissioner Garber: I agree.

36
37 Chair Holman: That was my intention.

38
39 Commissioner Garber: Okay, hang on. What I wanted to get to was the suggestion by the author
40 of the motion here was your intent to try and limit height of a hotel that would occur along the
41 railroad tracks?

42
43 Commissioner Keller: Yes.

44
45 Commissioner Garber: That being the case do we need the amendments to accomplish that or is
46 it accomplished as part of the way that it is already written?

1
2 Mr. C. Williams: Yes, if it is within the 150 feet we need to take out the abutting and then as
3 long as the residential zone is within 150 feet of the hotel or wherever it goes then it has to be 35
4 feet, it can't be more than 35 feet.

5
6 Commissioner Garber: So then my friendly amendment would be to take out your last issue,
7 which was the three floors because it is already covered as part of the third suggestion.

8
9 Mr. C. Williams: It is covered if what you are talking about is near a residential zone. If what he
10 is talking about is across the entire site then it is not covered.

11
12 Commissioner Garber: I think his concern was only about one portion of the site not the entire
13 thing.

14
15 Mr. C. Williams: Is that correct?

16
17 Commissioner Keller: This was suggested by Chair Holman. So perhaps you want to comment
18 on that.

19
20 Chair Holman: Yes, my intention was that it would be only at Town & Country and it would be
21 applied to where there would most likely be a hotel and that it be protection for the properties on
22 the other side of the railroad track. So probably taking out the word abutting does cover that.

23
24 Mr. C. Williams: Okay.

25
26 Commissioner Garber: Okay, then my friendly amendment is to take out your last piece of
27 language.

28
29 Commissioner Keller: I agree to that.

30
31 Commissioner Burt: The seconder does as well.

32
33 MOTION PASSED (6-0-0-1, Commissioner Tuma abstained due to conflict)

34
35 Chair Holman: Any more comments or are we ready to vote on the motion? Okay. Does it need
36 to be restated? I think we are all pretty clear on it. All those in favor of the motion say aye.
37 (ayes) Opposed? That passes unanimously with Commissioner Tuma not participating.

38
39 At this time as it is 9:30 I think we should do two things one is a check-in again as I suggested
40 earlier about the next items, items two and three on the agenda, then subsequent to talking about
41 that we will take a short break.

42
43 Mr. Larkin: Staff strongly recommends that the Commission attempt to get all three items done
44 tonight. The issue is we are just a little over a tenth of the way through item number one. So my
45 suggestion would be on the remainder of the items rather than come up with precise language as

1 we did for this one if you can make your general recommendations so that there is something
2 that you can forward on to City Council that would probably be the most helpful.

3
4 Then we do require a clarification of items that may be brought after ten o'clock and that would
5 most likely be both items two and three but that requires a consensus of the Commission to bring
6 new items after ten o'clock.

7
8 Chair Holman: Commissioner Burt.

9
10 Commissioner Burt: Don, I am not sure how you have just really have addressed our dilemma.
11 We can attempt to truncate the remainder of our discussion on the ZOU. It is very important
12 what we are doing here tonight and as much as we can attempt to be more general than precise
13 that is not going to make it a 20-minute discussion. So where do we stand on being able to deal
14 with our reality that we still have a lot on our agenda tonight? What can give?

15
16 Mr. Larkin: Well, the same constraints that apply to this item apply to item two. The suggestion
17 is not that you finish this before ten but that the Commission make a determination that it is
18 willing to raise items two and three after ten o'clock. Staff is willing to stay here as long as it
19 takes.

20
21 Chair Holman: There is a timeliness to addressing item number two?

22
23 Mr. Larkin: There is a timeliness as we have made clear with all of our zoning issues.
24 Essentially if we are going to do any kind of restrictive zoning it has to be done and completed
25 by November 7 because that is the election date in which Prop 90 is on the ballot. If Prop 90 was
26 to pass we could conceivably be precluded from doing any of this. So that is why in order to get
27 things to Council in a timely way it has to be done tonight.

28
29 Chair Holman: Commissioner Burt.

30
31 Commissioner Burt: So what about Chair Holman had mentioned a possibility of an October 4
32 special meeting? Could items two and three be on that date and still meet your timeline?

33
34 Mr. Larkin: It would be difficult but possible.

35
36 Chair Holman: So I would like to take a poll of the Commission to see how you feel. We do
37 have a lot to cover as Commissioner Burt said. This is very important, it is the Zoning
38 Ordinance Update for the commercial properties so obviously it is very important and we need to
39 not hurry through it. We need to be as expedient as we can but not hurry through it. So does
40 anyone have a proposal for how we address items two and three? Commissioner Lippert, I think
41 I saw your hand up.

42
43 Vice-Chair Lippert: I am in agreement with Commissioner Burt it is going to get late and I don't
44 think we are going to make good decisions and we are going to truncate our comments. I would
45 be inclined to continue this item either to a special meeting next week or to the October 4
46 meeting.

1
2 Mr. C. Williams: That is next week. That is what we are talking about. I have been informed
3 that the applicant for item number three is here from New York. At the risk of putting us in a
4 little bind next week I would offer up the possibility of doing items two and three tonight and
5 putting off the rest of the Zoning Ordinance Update until next Wednesday. And the appellant
6 can't make it next week on item number three as well.
7
8 Chair Holman: That helps us make a determination.
9
10 Vice-Chair Lippert: We could call a special meeting for tomorrow if a majority of the
11 Commission were available.
12
13 Mr. C. Williams: I think we can be preparing our CMR and get the ordinances in pretty good
14 shape. It is just a matter of making revisions that the Commission decides on next Wednesday. I
15 understand Don saying we are through 10 percent but I actually think we have discussed a lot of
16 issues there and we did run into this dilemma with the Town & Country that is very different
17 from everywhere else where we have individual sites. So I don't think it is going to be as
18 torturous as Don might think it would be.
19
20 Chair Holman: With the permission of the Commission I am going to suggest that we follow
21 Staff's recommendation here and move items two and three forward after a brief break and that
22 we then continue the commercial zone districts and go as far as we can as long as we are not
23 bleary-eyed and Staff is hanging in there with us tonight and try to finish tonight. That will
24 involve some endurance and some attention and maybe some coffee. If the Commission agrees
25 to that that is what I would suggest doing.
26
27 Commissioner Keller: I would agree with that. Being a night owl myself I can stay here as long
28 as we need to.
29
30 Chair Holman: Is there any objection to that? If not, why don't we take about an eight-minute
31 break and we will come back and address items two and three. Curtis, did you have a comment?
32
33 Mr. C. Williams: And then come back to the ZOU if you have time tonight or put that off to the
34 fourth?
35
36 Chair Holman: Our intention as we just stated is that we would do items two and three right
37 after the break and then we will take up again the commercial zones and see how far we can
38 possibly get.
39
40 Mr. C. Williams: Okay. Great.
41
42 Chair Holman: So we will take an eight-minute break. Curtis, do I need to adjourn item one for
43 the interceding?
44
45 Mr. Larkin: You can table it or continue it to later in the meeting, either way.
46

1 Chair Holman: If I could call the Commission meeting back to order, please. I believe the video
2 facility is up and running again. So I will reconvene the meeting and take up item number two,
3 which is an Urgency Ordinance that would prohibit the division of R-2 or RMD lot into
4 condominium or air space ownership. This item refers to item number three, 610 California
5 Avenue project on our agenda that would be the next item that we will undertake. Does Staff
6 have a report to make?
7

8 **2. Urgency Ordinance**: Review and recommendation of an urgency ordinance amending
9 18.10.070 “Second Dwelling Units” to prohibit individual sale of second units in the
10 RMD and R-2 zoning districts.
11

12 Mr. Larkin: Before I turn it over to Curtis I just want to clarify the intent of the ordinance. It is
13 not to reflect a change in City policy but it is intended to bring the RMD regulations into
14 compliance with the stated purpose of the zone and with the Comprehensive Plan. Under the
15 code the RMD district is intended to allow a second dwelling unit under the same ownership of
16 the initial dwelling unit however this isn’t reflected as clearly it could be in the regulations
17 themselves. The purpose of this ordinance is to add clarity. In addition the ordinance would
18 have the effect of making our RMD zoning requirements consistent with the state law regarding
19 second units.
20

21 I also wanted to add this is being brought as an Urgency Ordinance. The role of the Commission
22 is to make recommendations on policy matters. The Commission can certainly vote on or make
23 recommendations regarding the urgency of this ordinance but it is not required that it be a two-
24 thirds vote of the Commission to forward this on to Council. It goes to Council either way with
25 the recommendation either majority for or majority against. I would add that one area of
26 urgency that we have talked about but it is not reflected in the Urgency findings or the proposed
27 Urgency findings is Proposition 90 and an abundance of caution. We are proceeding as though
28 Proposition 90 will become law on November 8 and the passage of that initiative could preclude
29 the City from adopting a prohibition on the subdivision and sale of second units. However,
30 Proposition 90 doesn’t apply to regulations already in effect, which would be the case if the
31 Council adopts this as an Urgency Ordinance.
32

33 The Staff Report outlines some of the issues and I am going to let Curtis elaborate on those.
34

35 Mr. C. Williams: Thank you, Don. As Don mentioned we believe this is an important step to
36 take because we are concerned that the inconsistency that exists right now in terms of the
37 ordinance language could allow for rental units to be converted to ownership units in the RMD
38 and to a lesser extent probably the R-2, but particularly the RMD. The purpose there is to try to
39 on one property allow the option for a property owner retain a second unit to help make it more
40 viable to keep the existing unit and there a neighborhood preservation overlay that applies on all
41 of the RMD area that is oriented in that direction as well. We have a number of Housing
42 Element policies that relate to preserving rental units in the community and that is part of what
43 this does. We also as Staff have concern about the precedent if this were to happen of having a
44 lot of separate ownerships of two residential units with common areas around them that
45 historically have created headaches for neighbors and Staff in terms of code enforcement and
46 trying to sort of officiate the disputes over who maintains the driveway and who maintains the

1 landscaping and these kind of things. We do not want to get into the business of somehow
2 requiring maintenance agreements and reviewing maintenance agreements for what are
3 essentially two neighbors. We have concerns that you start to get more driveways with more
4 ownership units than if it is a rental where you probably are more likely to have a common
5 driveway that serves both properties, not necessarily but generally that is the case. They would
6 need separate utilities and a lot of things that end up being more disturbance on the site than if
7 we had a unit and a rental and one owner who owns both the units as well as the parcel. So for
8 all for all of those reasons we think the intent was and is for RMD and R-2 to allow these second
9 units as rentals but apparently it is not crystal clear at least in the RMD section that that's what
10 we have now as a requirement despite what the general purpose statement says. So we think this
11 is an order to adopt this regulation on an urgency basis.

12
13 Don didn't explain about what the interim nature is of the ordinance and he can correct me if I
14 misstate this. This is what is called an interim ordinance under state law. It is effective 45 days
15 from when the Council adopts it. We may then extend that 45 days for an additional year and
16 then there is a second extension possible beyond that which we shouldn't even think about but
17 we can extent it basically as a Consent Calendar item for the Council. In the interim we need to
18 come back to you with a permanent ordinance. So the Urgency Ordinance will set essentially the
19 language you see here in place. You will see that it doesn't reference or go into a specific code
20 section. Right now this just says this ordinance has this language which amounts to about two
21 sentences and then we will come back to you with the appropriate amendment like with our
22 commercial zones here that says, 'revise section such-and-such in the code to read,' and we can
23 have more of a discussion at that point of if there are some exceptions to this that you would like
24 to consider for historic properties or for some other purpose. That could be part of that
25 discussion but at this point this essentially puts the breaks on things so that we can study it a bit
26 more and come back to you which I would anticipate us doing as quickly as we can which most
27 likely will be in about six weeks. I'll be glad to answer any questions.

28
29 Chair Holman: Are there any clarifying questions of Staff at this time? Commissioner Tuma.

30
31 Commissioner Tuma: I have a question. If this is an interim ordinance or has an interim
32 duration to it what is the effect, let's say Prop 90 passes and this is for an interim period and then
33 eventually as it was explained we would then come back and extend it. So the first question is
34 can we extend it if Prop 90 passes? Then the second question would be you said you could come
35 back for potentially a permanent revision can that also be done if Prop 90 were to pass?

36
37 Mr. Larkin: It is hard to answer that question confidently because Prop 90 is not the most clearly
38 written initiative however, the language of Prop 90 says it doesn't apply to restrictions on
39 property that are already in effect. Just simply extending restrictions that are in effect are at least
40 we have a pretty good argument that that would not be impacted by Prop 90.

41
42 Commissioner Tuma: So that goes to extending ones that are already in effect but as I
43 understood from Curtis we would then also come back and discuss whether a permanent one
44 would be put into effect. Would that de facto be an extension? Is that the position that you
45 would take legally?

46

1 Mr. Larkin: Exactly, an extension of the restrictions that were in effect on the date of the
2 passage of Prop 90. So making them permanent, or extending them for a year or conceivably
3 extending them permanently would be the same analysis.

4
5 Chair Holman: Commissioner Keller, I believe you had a question.

6
7 Commissioner Keller: It has already been asked.

8
9 Chair Holman: Commissioner Sandas, you have a question?

10
11 Commissioner Sandas: Thank you, yes actually I do. Maybe I am asking this question out of
12 sequence so if I am let me know. In light of the positioning of this ordinance in our packet and
13 that we needed to discuss this prior to discussing item three on the agenda, I am just wondering
14 what the legality is of that. I don't mean to imply illegality but just what is the reasoning for our
15 doing it in this manner.

16
17 Mr. Larkin: I know the applicant's attorney is going to be speaking and you have received his
18 letter. I would only point out that to the extent that he is relying Government Code Section
19 66474.2A that section wouldn't be applicable to this application. First of all this is not a
20 Tentative Map this is a Parcel Map and if the legislature wanted to talk about Parcel Maps they
21 wouldn't have said Tentative Map. Second, even with regard to Tentative Maps I am not aware
22 of any case that interprets that code section the same way as the applicant. The statute basically
23 codifies the vest rights doctrine that we have talked about before. Here the applicant doesn't
24 have a vest right, we are not imposing new conditions, and we are saying that it is a clarification
25 of our existing policy not to subdivide RMD lots. I agree with the applicant that as written it is
26 not as clear as it should be with regard to that policy.

27
28 Mr. C. Williams: If I could also add that item number three is on appeal to you. It is not an
29 approved project until it is through the appeal process and is approved ultimately the Council in
30 this case.

31
32 Commissioner Sandas: Thanks Curtis, that was going to be my next question.

33
34 Chair Holman: Commissioner Garber.

35
36 Commissioner Garber: Could you please review the concept of air rights relative to the concept
37 of condominiums here? Excuse me not air rights, air space.

38
39 Mr. Larkin: I am not sure I understand the question. Maybe you could clarify it or I could take a
40 stab.

41
42 Commissioner Sandas: I will clarify it. What exactly is an air space condominium?

43
44 Mr. Larkin: It is what most of us know as a condominium where you have ownership of the air
45 space within the building. You don't own the property, the ground. You own the air space
46 above the ground.

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Chair Holman: Commissioner Burt.

Commissioner Burt: Don, you clarified that this is not a Tentative Map but rather a Parcel Map but then Curtis alluded to completion of the approval process and I see that the applicant talks about whether the application is complete. Now maybe that is a mute point if that Government Code does not apply but could you comment on the difference between the approval process being complete versus the application being complete.

Mr. C. Williams: Yes. The application being complete simply means that we have all the materials that we need to process the request. It doesn't imply that the project meets our codes or anything it just means that we can proceed to agendize it, do our Staff work, etc. and that we are not asking the applicant for more information. The approval process is when we get through and have in this case Council's stamp over the Parcel Map and can then basically take that to the Recorder's Office and record the map.

Chair Holman: Commissioner Lippert.

Vice-Chair Lippert: I don't understand why this would be a headache for the City. Wouldn't it be similar to say the owner of the property, not the air space, would maintain the property and then have the person who is the owner of the air space have encroachment rights on that property to get to their air space. Would that not be the case?

Mr. C. Williams: Well, we would hope that would generally be the case but if the owner of the other unit is not thinking things are kept up and he complains that owner of the property and then we end up in the middle of that it tells us that something – if he is not able to use the driveway the way he was promised he would be able to use it before. I don't anticipate that would happen on every project, it may not happen on this one, that is before you on number three but it is problematic and it is not where we want to go with all of our R-2 and RMD lots.

Vice-Chair Lippert: Doesn't that occur though with where you have encroachment rights on another property where the owner of the one property they need to encroach over doesn't maintain say the driveway there?

Mr. C. Williams: When we have those kinds of things come through new today we generally have easements and maintenance agreements that specify who does what. So that is where again we are not looking to go there with all of these small parcels and that is usually something of more size than what we are talking about.

Chair Holman: If I could I just want to make sure that we are asking only clarifying questions right now before we go to the public. So if they are clarifying questions I am happy to recognize them but we need to get to the public too. Commissioner Lippert.

Vice-Chair Lippert: Then one last question. What happens in terms of if sometime down the road they want to demolish the building, what happens to that air space right? Does it still exist or does that evaporate with the demolition of the building?

1
2 Mr. Larkin: That would likely be spelled out in the agreement between the various property
3 owners that have rights to the property.

4
5 Chair Holman: Commissioner Keller, did you have a clarifying question?
6

7 Commissioner Keller: Well, I am not sure whether it is but let me ask and if it is not we can
8 defer it until later. Do we have any other RMD or R-2 properties that have been converted to
9 condos? Has this ever been done before?
10

11 Mr. C. Williams: Not that we are aware of and we do know that there are folks out there that are
12 interested in doing that.
13

14 Commissioner Keller: The second question is I am a little confused. My understanding is when
15 you have a condo arrangement that the entire property is owned by a condo association, which is
16 owned by the people who have the condos. I am confused because I think that what might be
17 being proposed under number three is not that but that one entity owns the property and two
18 other entities own the two air rights condominiums. Is that what is going on or am I confused?
19

20 Mr. Steven Turner, Senior Planner: We don't know if that is the case with this particular
21 property owner. They are simply seeking air space rights on the property. They are not required
22 to show the City how they would be owned.
23

24 Chair Holman: Commissioner Burt.
25

26 Commissioner Burt: Because items two and three are so linked I want to ask a clarifying
27 question on how we potentially and not necessarily might deal with these as two separate issues.
28 My understanding is that Staff is concerned that we clarify the City policy and that we are
29 confident that the intent of the policy is as Staff has stated. Given that our overriding concern is
30 that we not have a future trend of these kinds of conversions. Would we necessarily have to do
31 both of these recommended items as Staff has suggested? If we thought that Staff correct in
32 principle and it would clarify this going forward and do so before the potential Prop 90 are we
33 then left with the smaller issue of whether or not to allow this request on this particular property
34 under item number three and might be able to judge it even if we might deem that they are wrong
35 in principle that we would consider it based upon the lack of clarity whether to allow it
36 essentially as an exception and not create the circumstance of a precedent?
37

38 Mr. Larkin: You could do that.
39

40 Chair Holman: Commissioner Sandas.
41

42 Commissioner Sandas: One more clarifying question. So the issue with 610 California Avenue
43 is coming back to us on October 25 come hell or high water?
44

45 Mr. Larkin: Not unless you are ready to make a recommendation tonight.
46

1 Commissioner Sandas: Okay.

2
3 Chair Holman: I have one, maybe two questions. All of the RMD property in Palo Alto is it
4 RMD(NP)?

5
6 Mr. C. Williams: Yes it is.

7
8 Chair Holman: Okay. I will leave it there for now. So if there are no other clarifying questions
9 I have four cards from members of the public. My understanding is from prior conversation that
10 Mr. Hanna who is a representative for the owner of 610 California Avenue would like a little
11 additional time to speak to this item is that accurate or is this only for item three? For this item.
12 Normally you would be allowed five minutes. I think what is fair here and if the Commission
13 would agree to this because this item is so linked to item number three that if we grant Mr.
14 Hanna extra time then we should also grant the appellant additional time as well. So I am going
15 to suggest just kind of arbitrarily seven minutes to both the appellant and the applicant for item
16 number three to speak to item number two. Then the other members of the public will be given
17 their five minutes is that agreeable to the Commission? Okay. Mr. Hanna you have seven
18 minutes.

19
20 Mr. John Hanna, Palo Alto: Mr. Brian Wilson who is the applicant under item number three
21 would like the opportunity to address you on item number two and after his remarks I will have
22 something brief to say if that is all right, Madam Chairman.

23
24 Chair Holman: You can use your seven minutes however you would like.

25
26 Mr. Hanna: Thank you.

27
28 Mr. Brian Wilson, Flagstaff, AZ: I wanted to answer a question from Commissioner Keller
29 about the traditional condominium where the association owns the property and then the two unit
30 owners own a share in that association and that is what we intend to have here. The attorney has
31 been working on the CC&Rs and that is what the CC&Rs will represent.

32
33 What I wanted to talk today about is the Urgency Ordinance tonight. The first point that I
34 wanted to make is that it is clearly appropriate for the City to have the right to amend the code
35 and there is a well-defined process to do that. What we have tonight though is an Urgency
36 Ordinance, which is something that has a substantial requirement to justify its use. The goal is
37 stated to preserve the visual and historic character of single-family neighborhoods but then it also
38 says that converting a condo conversion in the RMD zone would jeopardize those
39 neighborhoods. But if the conversion is for existing units basically there is no visual or historical
40 change in the property.

41
42 Another point I would like to make is that also the RMD already does have condos and it is also
43 zoned areas that are not really near single-family neighborhoods. There are three pockets of
44 RMD. Two that are west of Downtown are almost 100 percent surrounded by commercial and
45 multi-family zones. In the north part of College Terrace the entire east side is solid commercial,
46 the west side is Stanford and the north is commercial and multi-family. Going south it does

1 transition into R-1 around Williams but it is not a clean transition zone. Even on the south side
2 of Williams half of the R-1 lots there have multiple units. Even as you travel further south below
3 Williams there are still many R-1 lots that have multiple units.
4

5 How does this ordinance really protect the visual character of the neighborhood? If you have an
6 RMD lot that is near or next to an R-1 this ordinance still allows you to build a second home but
7 it says it has no impact on the visual character of the neighborhood. I would say though at some
8 point in time the light bulb is going to go off and people in that area are going to notice that there
9 is a new 30-foot tall two story home on the street. But conversely if there is a small two unit
10 complex that has been unchanged for decades and it converts to a condominium, and that is
11 something that some neighbors may not ever even know, this ordinance says that that's a danger.
12

13 I do agree that it says the most significant purpose of this ordinance was to increase the variety of
14 the housing opportunities but condo conversions according to the code actually do achieve that
15 result. If we change the code which means removing that option of ownership, that condo option
16 of ownership, what it does is force people to end up buying two homes which means there is a
17 higher price and there is less variety in the housing opportunities.
18

19 The ordinance also talks about dangerous activities and those are anything that jeopardized
20 health, safety and welfare. Well, the Municipal Code has an entire dedicated section that talks
21 about dangerous activities like possession or discharging firearms or drinking in public, smoking
22 in public. There are 25 activities that are identified and codified and not one of them come even
23 close to talking about condo conversion.
24

25 It says there is a clear and imminent danger the owner may subdivide. I would like to point out
26 that a likely event isn't necessarily dangerous. When I finish here I am going to clearly and
27 imminently go back and sit down and clear and imminent sitting is not dangerous and clear and
28 imminent splitting is not dangerous unless there is some justification and that justification is not
29 in this ordinance.
30

31 I would like to show you some current RMD properties. These are in the three pockets of zones
32 we have here. This ordinance basically rates these properties whether it impacts the visual or
33 historic neighborhood at all. What do you think those ratings are? According to the ordinance
34 there is one safe property and there are two dangerous properties because they are condos in
35 RMD.
36

37 Here is another RMD property. You can see the side there that the backyard is in the back. Here
38 is the façade on the street and something that is designed to basically not alter the visual or
39 historic character of the marketplace. This one is rated safe. It is not clear what the justification
40 is behind that.
41

42 I would like to show you three other properties. Here is one on the northern-most part of the
43 RMD zone in College Terrace. This is a property also with the second unit and you can see the
44 sign down there pointing to the second unit. Here is another property over on the west side of
45 College Terrace. Here is another property on the east side of College Terrace all on Yale.
46

1 How would you rate those basically reading the ordinance? The way that it comes out is that this
2 property is safe, here is another safe property that is viewed to protect the visual and historic
3 character of the single family neighborhood but this property is called an immediate threat to the
4 public health, safety and welfare of Palo Alto.

5
6 Chair Holman: Mr. Wilson you are down to about ten seconds.

7
8 Mr. Wilson: Okay. I think that what we are basically saying is there is no visual change in this
9 ordinance by converting existing units. If you converted existing units there is no historical
10 change and we would like to ask you to find that there is not sufficient justification in this
11 ordinance to consider it. Thank you.

12
13 Mr. Larkin: I just want to jump in because I think there might be some confusion because we
14 kind of deviated by allowing the extra time. Mr. Hanna still has a right to address the
15 Commission for the five minutes because he is a separate individual. Even though the applicant
16 used the seven minutes he still has his remaining time.

17
18 Chair Holman: Just as a matter of order would we not hear from Ms. Graves next?

19
20 Mr. Larkin: You can take the public comment in whichever order you wanted. I just wanted to
21 make it clear that Mr. Hanna still has an opportunity to speak.

22
23 Mr. C. Williams: What is before you on item two is not the appeal in terms of the appellant.

24
25 Chair Holman: I understand. I am just trying to keep some order in terms of the amount of time
26 allowed that's all. I guess it doesn't matter and Ms. Graves says it doesn't matter either. So
27 okay, Mr. Hanna you have five minutes.

28
29 Mr. Hanna: Thank you. I've stated my name and address for the record. Thank you Mr. Larkin
30 for that clarification. Of course we disagree with the earlier comment that Tentative Maps are
31 different from Parcel Maps. Your ordinance defines the Parcel Map using almost exactly the
32 same language as the State Map Act. We contend they are the same. They are governed by the
33 same rules and if you had the time to read our brief you will understand why we take the position
34 that we do that the map has already been deemed approved as a matter of law. We hope not to
35 have to go there. There has been an awful lot of trouble gone to here for the seeming purpose of
36 torpedoing one little tiny two-unit project.

37
38 We have done literally dozens, probably somewhere between 50 and 100, two and three unit
39 condominiums all around Menlo Park, Mountain View, whatever. They are not a problem.
40 There is zero evidence despite what Curtis Williams says that these can be problems. To the
41 contrary they are much less likely to be problematic than rental units. Why? For two reasons,
42 you have pride of ownership. Secondly you have CC&Rs that require people to keep their
43 properties up. The truth of the matter is that they do. Condos are better maintained than rental
44 projects by and large. You go to a lender, there are lenders that won't loan money on projects
45 that have too many non-owner-occupied projects for a very good reason. They understand
46 ownership means better control, better upkeep, you have an additional layer of protection with

1 CC&Rs that would be put on this project. There is really no difference, I defy you to tell me the
2 difference between someone who owns a lot with two dwellings on it versus two people own the
3 lot and each occupies one of the two dwellings. What is the threat, if you will, to the public
4 health, safety and peace and welfare in having somebody sell one of his two units to another
5 owner as a condominium? It just isn't there.
6

7 The problem that you have here is you are dealing with an Urgency Ordinance which you are
8 only permitted to do this, and by the way it is the Council has to do this by the four-fifths vote,
9 but there has to be a showing of a clear, present, imminent threat to and the words are very
10 specific health, safety, in the case of Palo Alto it is peace, in the case of the state it is welfare.
11 There is no showing of that. There are some conclusive statements that there is a threat. Well,
12 the threat here is that you are going to get so caught up in this that we are all going wind up
13 somewhere where we don't want to be. The suggestion was made earlier, which I think is a good
14 one, that if you want to take the time to study this fine, do so but give the public a chance to be
15 here, come back at a later meeting when you can do that or bump it up to the Council. If the
16 Council thinks there is a problem let them by majority vote direct and ordinance be drafted. If
17 they want to vote it by four-fifths vote fine but don't try to hang up this man's little two-unit
18 project on account of that. It doesn't make any sense at all and there isn't any legal justification
19 for the findings that you would have to have to support the adoption or even the recommendation
20 of an Urgency Ordinance. Thank you.
21

22 Chair Holman: Thank you. The next speaker will be Pria Graves and you will have seven
23 minutes to be followed by Bob Moss.
24

25 Ms. Pria Graves, Palo Alto: Good evening Chair Holman and members of the Commission. I
26 have been a resident in the RMD(NP) zone for 21 years. Contrary to what the pervious speaker
27 said there are many single family dwellings still left on Yale Street. Most of the buildings at
28 Wellesley are in fact multiple unit dwellings but Yale Street still a lot of its single family
29 residences including my own.
30

31 I am going to restrict my remarks other than that one to purely the Urgency Ordinance and leave
32 610 California as a specific out of this. This process of turning small parcels into condominiums
33 does pose a really serious threat to our already rather meager stock of rental housing in this
34 community and particularly in College Terrace. College Terrace is one of the areas of Palo Alto
35 that has more rental housing than most of the city and it is largely because of these odd little bits
36 and pieces where we have multiple units on small lots. If they start becoming units for sale it
37 will price out of the community a lot of the people that can only afford rentals. I think that that's
38 counter to the intent of our Comprehensive Plan even if the H-29 provision does not specifically
39 apply to small changes like this. The intent of the Comp Plan is clear that we need to foster
40 rental properties and I think moving in this direction of allowing condominiumization of two and
41 three unit parcels is really counterproductive to that.
42

43 Finally, I would like to speak a little bit to the original intent of the RMD zoning. I spoke with
44 Gail Wooley who was the Council Member who proposed this when it was first brought forth in
45 the 1970s. She was very clear that their intent was that these should be subdivided into
46 condominiums. The intent was that the second dwelling would essentially be a rental unit to

1 compensate the owner for retaining the existing house. That was the intent. I think it is clearly
2 reflected in the language of the code as far as the intent of what that zone means. I think that as
3 Council has pointed out we need to clarify other aspects of the code to make it clear that that is
4 the intent but I don't think a reasonable person reading the intent of the code as it is today would
5 make any mistake about that. So I ask you to support this Urgency Ordinance particularly in
6 light of the threat of Proposition 90 making impossible for this to be enacted in any other way
7 and go ahead and recommend to Council that they pass this Urgency Ordinance. Thank you so
8 much.

9
10 Chair Holman: Thank you. Bob Moss. You have five minutes.

11
12 Mr. Robert Moss, Palo Alto: Thank you Chairman Holman. As you may know I was intimately
13 involved with the creation of the RMD zone more than 25 years ago. What Pria said about the
14 intent of the zone is absolutely correct. City Council explicitly, clearly, [fondly] stated we want
15 one owner of two units the second unit is to be a rental. It is not to be sold or subdivided. End of
16 discussion.

17
18 When the lawyers tell you that there is no reason to worry about this the lawyers are full of it.
19 The City Council has stated repeatedly that they want to encourage rental housing. College
20 Terrace is not the only neighborhood in Palo Alto that has RMD zones and has second units.
21 Barron Park has a number of them and so does South Palo Alto. When a person in Barron Park
22 about 15 or 20 years ago wanted to explicitly to divide a property that had a granny unit on it he
23 was crushed by the Barron Park Association and by the City Council. Crushed. You may recall
24 several years ago the City Council attempted to increase the presence of granny units in the city.
25 Residents basically rioted and the City Council withdrew the attempt to increase the number and
26 the conditions under which granny units could be allowed. The reason is that excessive granny
27 units and especially two owners of one unit create major problems with enforcement of both the
28 codes and what operates on that unit. Not every one of them is out of line but enough of them
29 are that the City can't control them. When you hear about other cities like Menlo Park and other
30 places having condos and granny units the reason that Palo Alto doesn't allow it is because of all
31 the problems we've seen in our neighboring cities with this type of use. The ordinance is
32 explicitly clear to allow a second dwelling unit under the same ownership as the initial dwelling
33 unit. If you create an air right that is wonderful as long as that air right is not a dwelling unit
34 because only one person can own both dwelling units. The ordinance is very clear.

35
36 Now let's talk about why it is an urgency. The City Council has explicitly stated on at least two
37 occasions that because of the possibility of Proposition 90 being passed they want all zoning
38 issues resolved before early November. They want them handled if necessary on an emergency
39 basis. The City Council has stated that explicitly and if the lawyers had bothered reading the
40 City Council minutes they would know that. So that is your justification for taking action
41 tonight and for enacting this emergency ordinance. I will say that when this application was first
42 given to the City the City Staff's proper approach should have been to reject it. The error was in
43 the City even taking its possibility seriously. The ordinance is clear. If it is an RMD and there
44 are two units there is only one owner. Only one property owner. Only one owner of the
45 buildings. Not two. Not subdivided. You want to retain the rental units. So I would suggest
46 without any further delay pass the emergency ordinance since they seem to feel we need more

1 clarification. As far as I am concerned when it says only one owner that means one owner forget
2 anything else. That is all we need.

3
4 Chair Holman: Thank you and I have one more card from Joy Ogawa.

5
6 Ms. Joy Ogawa, Palo Alto: I learned about this about 20 minutes ago when I switched the
7 channel on my TV to see what was happening with Planning Commission. I was really surprised
8 at this. I kind of figured out what is going on. I was listening to Curtis' presentation, which was
9 very clear so I think I understand what is going on here.

10
11 I have to say thank you to Staff for bringing forward this Urgency Ordinance. It is a surprise but
12 thank you.

13
14 I will defer to Pria and Bob as to – to me the way the ordinance reads is pretty clear. I actually
15 think the owner of this property in the next item was aware of the intention of the ordinance as
16 well because I remember when he wanted to build that second unit which is bigger than his
17 original house, the historic house, that two story new unit. He spoke in front of the ARB he
18 represented it as I have every intention of coming back to live in this historic house that I
19 restored and retire here and this new second unit is going to be income for me when I live in that
20 historic house and I can get income from the second unit. So I think the intention of the
21 ordinance is pretty clear and I think that representation was made to encourage that this is what I
22 plan to do with it which is in keeping with the intention of the ordinance. He got a neighborhood
23 preservation exception that was pretty exceptional. There was reduced parking, and well, I'll
24 talk about that in the next item.

25
26 The other thing is I did not receive any notice about the next item and I was really surprised
27 because I spoke at the Director's Hearing and I live within 300 feet. So to have to find out about
28 it by turning the channel was pretty surprising although the traffic is pretty low at this time of
29 night.

30
31 So I guess I am speaking in support of this Urgency Ordinance. I hope you go forward with it.
32 Thank you.

33
34 Chair Holman: Thank you. Thank you to the speakers and we will return to the Commission.
35 Are there any more questions of Staff by the Commissioners? Commissioner Burt.

36
37 Commissioner Burt: Don, could you just clarify something that you alluded to earlier that the
38 potential adoption by the voters of Prop 90 in itself is an adequate basis to justify an emergency
39 ordinance to correct a lack of clarification that we have between intent and existing ordinance
40 verbiage?

41
42 Mr. Larkin: I don't know that that would be in and of itself enough. I would leave that to
43 Council to make that determination and if it justifies the four-fifths vote but it is a factor.

44
45 Just to respond to something that was brought up and I encourage the Commission to look at this
46 on the merits and make a decision on the merits because one of the things that was mentioned

1 was a couple things actually but one there was a lot of talk about health, safety and welfare and
2 how can you find a threat to health safety and welfare? Health, safety and welfare define the
3 police power. The police power is what gives us the authority to do just about everything that
4 the Commission does. So unless there is a threat to health, safety and welfare that is what gives
5 us zoning, that is what gives us all of our police power. So you can make the decision on the
6 merits but when it comes to legal analysis I think that is something that should be left to lawyers.
7

8 Then the other thing I wanted to mention was there was a mention of the Permit Streamlining
9 Act and the application was already deemed approved. In order to invoke the Permit
10 Streamlining Act the applicant must first invoke the Act either in the application in a subsequent
11 filing with the City. Four o'clock this afternoon is not sufficient notice to invoke the Permit
12 Streamlining Act and have the project deemed approved. Likewise notice has to be mailed to the
13 neighbors that the Permit Streamlining Act has been invoked. Typically it is up to the City to
14 provide that notice but if the City fails to do so in order for a project to be deemed approved the
15 applicant would need to notice the neighbors that the applicant intends to use the Permit
16 Streamlining Act if the City fails to do so. As far as I know that notice hasn't been sent out
17 either. So I am not advocating a position on the ordinance I am encouraging you to look at it on
18 its merits and not look at some of the extraneous items that have been brought up.
19

20 Commissioner Burt: Don, I am still not clear on the question that I was attempting to ask. That
21 is, from a legal standpoint would it be permissible to have as one of the reasons for adopting the
22 emergency ordinance the potential imminent passage of Prop 90?
23

24 Mr. Larkin: I think, and we are still looking at this, but my initial impression is that that can
25 certainly be one of the factors that go into the passage of an Urgency Ordinance.
26

27 Chair Holman: Commissioner Lippert.
28

29 Vice-Chair Lippert: In terms of the schedule originally you had mentioned that Council would
30 move on this and then 45 days after that this ordinance would go into effect...I'm sorry, it would
31 go into effect when?
32

33 Mr. C. Williams: The ordinance is in effect immediately upon a Council approval. What we are
34 saying is that it is only effective for 45 days and then it has to either have a permanent ordinance
35 replace it or it could be extended for up to a year. Council can extend it as a Consent item on
36 their agenda which would likely happen because it is unlikely that we would get a permanent
37 ordinance before you and before the Council with all the notice that is required, etc., etc. within
38 45 days. So it is likely that it would be extended as a Consent item. So this ordinance would
39 remain in effect until such time as we brought that.
40

41 Vice-Chair Lippert: The reason I ask that question is I find the idea of smaller ownership of
42 houses very appealing. It actually allows first time homeowners to get into the market relatively
43 easily and then maybe move on. This idea has very intriguing I think implications with regard to
44 that. Right now we limit second dwellings to about 800 square feet. This allows for those
45 second units to be a little bit larger in terms of the air space plus it allows for ownership of those.
46 So what I am looking at as the bigger picture here of well, okay this is an emergency ordinance

1 maybe I can live with it but maybe there is something here that we can look at in the bigger
2 picture but I don't want it to just sit and sort of bubble for two or three years. So how do we get
3 something like that so that we can begin to look at how to resolve some of these issues?
4

5 Mr. C. Williams: Well, I think we have one case sitting there certainly that is dependent on how
6 this all turns out in the permanent ordinance. So there is a lot of pressure on us to move quickly
7 to do that. Also as far as Prop 90 goes and everything you should not be languishing in pursuing
8 any of these remedies. So I can't tell you exactly when it will be but that this will be a high
9 priority for us to come with. It is not a lot of research and it is not a long ordinance. We are
10 looking at something pretty short to come back to you with on a permanent basis. Again,
11 probably six weeks or so.
12

13 Chair Holman: Commissioner Tuma.
14

15 Commissioner Tuma: Don, is there any other mechanism other than the Urgency Ordinance for
16 getting something in place prior to the election that would allow us to continue to examine this
17 issue and get around the issue the potential handcuffs that Prop 90 would put on us other than the
18 Urgency Ordinance? Is there some other way to do this? I have to tell you it fundamentally just
19 doesn't sit well with me. I can't put my finger on it but it seems like there was an issue that was
20 brought up with respect to this particular property we are now trying to find justifications to wrap
21 around this and it just doesn't sit well. That is just a feeling that I have.
22

23 Mr. Larkin: Well, to be honest it was this application that raised the issue. It is not the one
24 property that creates the urgency. So conceivably as Pat asked if the concern is this property
25 owner and how his application is proceeding you can recommend Council not apply this to
26 current applications and take 45 day or conceivably a year but not that long to think about how
27 we want to deal with it long term. But there is no other mechanism to get a restriction on the
28 books prior to November 7.
29

30 Chair Holman: Commissioner Keller.
31

32 Commissioner Keller: I am trying to understand the existing ordinance that this is intended to in
33 some sense fix. My understanding is it says to allow a second dwelling unit under the same
34 ownership as the initial dwelling unit. So what I would like to know is what is the definition of a
35 dwelling unit and how is the definition of a dwelling unit affected in a condo association?
36

37 Mr. Turner: A dwelling unit essentially is a housing unit that has a kitchen. We look at the
38 number of kitchens say in a single family residential home in the R-1 district. That unit would
39 only be allowed to have one kitchen. You couldn't have a kitchen say in the basement and a
40 kitchen on the first level. We would see that as basically two units.
41

42 Commissioner Keller: The reason I am asking is because my parents live in a condo in Palo Alto
43 actually at the corner of Middlefield and Charleston in that complex. I had the impression,
44 correct me if I am wrong, but my parents living in a condo sort own their dwelling unit. Is that
45 sense wrong?
46

1 Mr. Larkin: I think the question is off a tiny little bit because what we are talking about is a
2 second dwelling unit, which is defined differently in our code. Second dwelling unit is defined
3 as a separate and complete dwelling unit other than and subordinate to the main dwelling unit
4 whether part of the same structure or detached on the same residential lot. So it would be a unit
5 on the same lot. The issue with the regard to specifically the RMD is that the inconsistency is
6 that the RMD is not a single-family zone it is a multiple family zone. So it allows up to 17 units
7 per acre so that is where we run into the inconsistency between whether something is a second
8 unit or whether this is truly a second unit at all or whether it is actually something different. That
9 is why we really feel the need to clarify this in order to give fair notice to other applicants that
10 come in.

11
12 Commissioner Keller: I understand that there is some desire to clarify the wording. What I am
13 trying to understand you have a second dwelling unit which can be built on certain properties and
14 you have an original dwelling unit which you will have on that property and what I am trying to
15 understand is does creating air rights or air space condominium which is essentially giving
16 ownership of a dwelling unit to one or possibly two different owners what are they owning? Are
17 they owning a dwelling unit? How does that fit? I am trying to understand. Is there a
18 correspondence between the air space and the dwelling units or not?

19
20 Mr. Larkin: The structures themselves are owned by a single owner that is the association.

21
22 Chair Holman: Commissioner Garber.

23
24 Commissioner Garber: I have several questions. First, germane to the issue of why – has the
25 Council’s intent to drive the various zoning issues forward give us direction? Is that what is
26 giving us the direction here to look at this?

27
28 Mr. Larkin: No and Curtis can elaborate but really this isn’t an issue that shouldn’t be decided
29 by Staff. It really should be decided by Council on the advice of the Commission. So Staff is
30 bringing it forward.

31
32 Commissioner Garber: I see but you are bringing it forward because the Council has raised the
33 larger issue?

34
35 Mr. C. Williams: Well the timing is important because of the larger issue in the pending
36 Proposition.

37
38 Commissioner Garber: And this is just one piece.

39
40 Mr. C. Williams: The timing also is relevant to the item number three on your agenda. This
41 needs to be addressed at the same time as that although there is an option here for you to sort of
42 separate those two issues out and just be sure it doesn’t happen again. That is what drove the
43 timing initially and then creating the Urgency Ordinance is doing it as an Urgency Ordinance as
44 opposed to something else is also related to Prop 90. Council’s direction was on the Prop 90 part
45 of it not on the fact that this has anything to do with this project.

46

1 Commissioner Garber: Understood. So if I am understanding correctly the existing language as
2 Commissioner Keller has just mentioned states in the first sentence that is excerpted here to
3 allow a second dwelling unit under the same ownership as the initial dwelling unit on appropriate
4 sites in areas designed for family use by Palo Alto Comprehensive Plan. Is that not the
5 language?
6

7 Mr. Larkin: Of the existing stated purpose, yes. That is the language as I recall it.
8

9 Mr. C. Williams: That is the language of the purpose statement for RMD.
10

11 Commissioner Garber: And just so I am clear, what is being suggested to be added here is,
12 “Second dwelling units under different ownership from the initial dwelling shall be prohibited.”
13

14 Mr. Larkin: We are going to need to revise this language somewhat. Unfortunately this was
15 written while I was out of town and so we haven’t firmed up the language but I think that the
16 Commission has at least a pretty good sense of the intent of what we are doing.
17

18 Commissioner Garber: Let me leave that for a moment and ask another question. The way that
19 condo agreements work is that, and this is a question, but for a single piece of property the units
20 that are on that property you can’t have one be a condo and the other be owned outright they all
21 have to be come condo-ized. Is that correct?
22

23 Mr. Larkin: That is correct. That is my understanding I am not a condo expert.
24

25 Commissioner Garber: Then the law requires that an association then own the underlying
26 property. Is that correct?
27

28 Mr. Larkin: The association has to own common area. They don’t actually have to own the
29 underlying property but that is the only way that it would work in this case is if the two units
30 were owned by an association and the individuals had air space rights. The Common Interest
31 Development law only requires that there be some common property that is owned by the
32 association. It is our interpretation of our ordinances that the units themselves have to be under
33 the same ownership, not the units but the physical property itself, the dwelling units have to be
34 owned by the same property and that air space rights within those could be divided.
35

36 Commissioner Garber: So in a circumstance where an individual does not own a property but
37 say a trust or a company or some other entity that is not an individual may own the property but
38 then rent or lease or condo-ize or whatever the circumstance may be, how is that different than
39 turning them into condos? Is the difference simply that you literally have somebody owning the
40 air space that is different from owning the air space in the second unit?
41

42 Mr. Larkin: Why do you always ask me these questions at eleven o’clock at night? I don’t know
43 the answer off the top of my head.
44

45 Commissioner Garber: To the fourth piece here what I am hearing is the City’s primary concern
46 is the policing that this is an issue.

1
2 Mr. C. Williams: That is not the case. The primary concern is that we believe that this is
3 contrary to the intent of the RMD and the R-2 to have one owner of the units, one owner that
4 owns both units, and so one unit will be a rental. It is analogous in some ways to in terms of
5 Housing Element policy and such to the fact that we don't allow apartments to be converted to
6 condominiums, that we don't allow these rental units to be converted to condominiums either. I
7 think that is just a fundamental Comprehensive Plan and Housing Element policy. There is a
8 concern about policing I don't want to present that as being our primary concern. Our primary
9 concern is we think it is fundamentally in conflict with the basic intent of the RMD zone and
10 with Housing Element policies to protect rental units.

11
12 Commissioner Garber: Just to ask the question another time what is the impact of making these
13 conversions if it was to be allowed? Or I should say the actual impact.

14
15 Mr. C. Williams: Besides just this, if we didn't pass anything.....

16
17 Commissioner Garber: Aside from the concept of walking by the property, how it is policed,
18 how permits are run, are there impacts?

19
20 Mr. C. Williams: I don't know that there are particularly necessarily visual impacts as such. I
21 would certainly take issue with the argument that the ownership creates a better maintenance
22 situation. These are for the most part very well maintained units right now and they are rented as
23 well. But from a visual standpoint that is not the issue. The issue is that rental provides a variety
24 of housing stock that we don't want to lose and almost all the new housing that we get is
25 ownership housing. So it becomes even more critical in that light.

26
27 Commissioner Garber: Does it change the way the properties would be permitted or changes to
28 the property would be made in any way?

29
30 Mr. C. Williams: I don't think it would. I think you would still have to especially in the RMD
31 there is a design review for the second units so that would still be in place regardless of whether.

32
33 Commissioner Garber: Does it change the amount of parking that is required?

34
35 Mr. C. Williams: Nope.

36
37 Chair Holman: Commissioner Sandas you had one question and then I haven't had a turn yet but
38 Commissioner Burt you think you have a way of moving this forward. So Commissioner Sandas
39 would you ask your question, please?

40
41 Commissioner Sandas: Actually, it is a couple of comments. The first comment is that I am the
42 risk of becoming the most unpopular person in the room right now I have had experience with air
43 space condominium with three separate and distinct units on a single piece of property and we
44 can talk about the policing issues. It is very messy. You are governed by CC&Rs I agree with
45 Mr. Hanna in his presentation. Yes, in fact you are governed by CC&Rs, however, three distinct
46 houses on a single lot as air space condominiums are not the same as a condo complex. I don't

1 want to take all night talking about this but there are issues and I have personally first-hand dealt
2 with them, number one. Number two, I think the other thing that we are talking about here, right
3 here and now, is item number two whether or not to encourage the City Council to adopt this
4 ordinance. We don't have any jurisdiction over adopting ordinances in our town but we are
5 being asked to make a recommendation to Council. So in the interest of that I think I am
6 segueing to Commissioner Burt because he has a way to move us on.

7
8 Chair Holman: Commissioner Burt, and I will retain my right to speak after that.

9
10 MOTION

11
12 Commissioner Burt: Okay. So we all can see that it is almost eleven o'clock and we have item
13 three and returning to item one that we still have to do. There are a lot of nuances to the merits
14 of this issue. I think the Commission under normal circumstances would be wanting to fully
15 explore those merits. Given that this is an Urgency Ordinance, which is basically an interim
16 ordinance, and we will have the opportunity to return to the substantive discussion I think the
17 thing before us tonight is whether it is appropriate to adopt an Urgency Ordinance. So what I
18 would like to do is make a motion and then add some additional comments that I think will help
19 us narrow the focus and move us forward.

20
21 So I move the Staff recommendation for adoption of the Urgency Ordinance at this time.

22
23 SECOND

24
25 Vice-Chair Lippert: I will second that.

26
27 Commissioner Burt: So first I would like to say that I think the intent of the Comprehensive Plan
28 and the original RMD ordinance from 1983 are clear. Staff has acknowledged that our existing
29 language has some ambiguity to it. So we are going to create the opportunity to clarify and make
30 the ordinance language unambiguous and consistent with the Comp Plan and the 1983 ordinance
31 we need to put in place this Urgency Ordinance to give us the time to do so.

32
33 For tonight it is not really very relevant what we think of the merits of whether to do these
34 conversions or not. Let's hold off that whole discussion both because it is complex and because
35 even whether we think it is a good idea or not we need to be bound by the Comprehensive Plan.
36 If we wanted to change something we might need to change the Comp Plan if we didn't think
37 this was a good practice. But that is not what is really before us tonight. Then finally we are
38 going to have the opportunity to take up under item number three the separate issue of whether
39 we think it is appropriate to impose the Urgency Ordinance on the particular project that whether
40 the applicant found a loophole and is getting through one project that is going to be the subject of
41 our next item. That is a separate issue that we can address and I as I have indicated want to
42 address. I am not sure that we necessarily need to link an act on both items in the way that the
43 Staff has recommended. Having said that I think we need to just narrow our decision on whether
44 in order to give the City the opportunity to eliminate the ambiguity and in the long term be
45 assured that we can have consistency with our Comp Plan and with the 1983 ordinance we have

1 to put the Urgency Ordinance in effect under the possibility that Prop 90 will pass otherwise we
2 foreclose that potential. So that is why I have made the motion.

3
4 Chair Holman: I wasn't quite sure whether it was Commissioner Sandas or Commissioner
5 Lippert that made the second. Okay, Commissioner Lippert.

6
7 Vice-Chair Lippert: I think that Pat has summed it up very well. I wouldn't normally be putting
8 something like this in place except for the fact that we do have Prop 90 coming along. I think
9 that we really need to have language set in place so that we have a way of dealing with this in the
10 future. That is really the nut of why we are enacting an Urgency Ordinance. The fact that there
11 is one piece of property that is taking advantage of this is not really relevant. It is the fact that
12 we want to look at the big picture and how this is going to ultimately affect some smaller units,
13 for sale units in this community.

14
15 Commissioner Sandas: Just to share I wanted to reiterate one of the things that Commissioner
16 Burt had mentioned. There was wisdom in the intent of the existing 1983 ordinance and I think
17 that the wisdom still exists.

18
19 Chair Holman: Since I haven't gotten to speak yet I am going to take this opportunity. I won't
20 belabor it but I have just a couple of things. Staff had said that there were a couple of corrections
21 to the ordinance. Could you indicate for me what those are?

22
23 Mr. Larkin: Well, first off all in the prohibition I will need to do a small language tweak to just
24 clarify that were we talk about second dwelling units under different ownership from initial
25 dwelling units that it incorporates air space rights and I haven't done that yet. That will be the
26 language change that we will make to clarify that part of it. Then the second would be under the
27 exemption. We meant to say that it would not apply to any map which has received final
28 approvals as of the effective date not second unit obviously second units are allowed in the
29 RMD. It is the subdivision that the ordinance would be intending to address.

30
31 Chair Holman: That is helpful. Just so it isn't something that isn't carried forward if I might,
32 this ordinance under Section 1-B has some language to which I did not find in the code.
33 Depending on one's perspective is either appropriate or not, under B about midway down it says,
34 the purpose of establishing the zone was to minimize, there were three things, minimize
35 incentives to demolish existing single family dwellings, maintain neighborhood character and
36 three it has been inserted more significantly increase the variety of housing opportunities
37 available within the community. 'More significantly' is not in the original language in the
38 ordinance and I would respectfully request that the maker and seconder of the motion accept that
39 as a friendly amendment just so we don't carry that forward as agreeing with that. It sounds like
40 a nit but depending on one's perspective that may not be the most important.

41
42 Mr. Larkin: I am more than happy to strike it if the maker and seconder want to endorse that
43 concept then that would be fine.

44
45 Commissioner Burt: So I am receptive to both that change and the two intended changes that the
46 City Attorney had referenced under prohibition and exemption.

1
2 Vice-Chair Lippert: I will accept that as well.

3
4 Chair Holman: What I would like to do given what hour it is is since this would be coming back
5 to us within the 45 days unless there are any really burning, burning issues I would like to ask
6 that we vote on this. It is burning?
7

8 Commissioner Keller: Yes. I would just like to know whether or not you would like a finding of
9 the potential passing of Prop 90 to be added to the findings A through E that are already here?
10

11 Mr. Larkin: I suspect that there will be that and additional findings added. The purpose of the
12 Planning Commission review was to comment on the policy and commenting on the urgency is
13 important but not as necessary for the Commission and Staff will probably come back with a
14 couple of additional recommended findings for Council to make.
15

16 MOTION PASSED (7-0-0-0)
17

18 Chair Holman: Okay, any other issues we can address when this comes back to us. So I will call
19 the vote on the motion to approve the Staff recommendation of approval of this ordinance with
20 the changes that the City Attorney has indicated that are forthcoming and are agreeable to them.
21 So could we have a vote on the motion, please? All those in favor? (ayes) Opposed? So that
22 passes unanimously on a seven to zero vote. Thank you all.
23

24 So that finished up item number two. We will go to item number three, which is 610 California
25 Avenue. Appeal of the Director's decision to approve a Parcel Map requested by Brian Lee
26 Wilson for condominium purposes to establish "air space rights" within the two existing
27 buildings on a lot under common ownership. The Environmental Assessment is exempt from
28 CEQA, the zoning district is RMD(NP). Does Staff have a presentation?
29

30 **3. 610 California Avenue [05PLN-00358]***: Appeal of the Director's decision to approve a
31 Parcel Map requested by Brian Lee Wilson for condominium purposes to establish "air
32 space rights" within the two existing buildings on a lot under common ownership.
33 Environmental Assessment: Exempt from the provisions of the California Environmental
34 Quality Act. Zone District: RMD(NP).
35

36 Mr. Turner: Just very briefly. Staff is recommending that the Commission continue the review
37 of this appeal to October 25 to allow Staff to present the City Council with an Urgency
38 Ordinance that would prohibit condominium conversions in the RMD district.
39

40 Just some quick background, the property is at the corner of California and Yale Street. There
41 are two single-family homes, there is an older building, which is a category II historic structure,
42 and there is a second dwelling unit which is a newer building constructed in 2003. That second
43 building went through an Historic Resources Board Review process and different Director's
44 Hearing processes for variances and Architectural Review Board as well for that second
45 building.
46

1 In terms of the application timeline for the current application the applicant had submitted an
2 application to create two air space condominium units, there would be no other changes to the
3 buildings. That application was made on October 3, the Staff Report say October 12 but it
4 should be October 3, it was deemed complete in late November and during that time map
5 corrections were made and requested by the City. Those were reviewed during May and June of
6 2006 and after those corrections had been made the application was deemed complete. The City
7 held a Director's Hearing on July 25 and heard from the project applicant and members of the
8 public regarding the subdivision. The public hearing was closed and a decision was made on
9 August 4, 2006. Then finally the application was appealed on August 14 and the project is
10 considered to be on hold while this appeal is being considered.

11
12 A little bit of the rationale for the August 4 decision. It was our interpretation of the RMD
13 district based on the existing language within the ordinance and the understanding of state law
14 where a common parcel qualifies as a single lot of record for a use or group of uses and in this
15 case the groups of uses being the two homes on the site. The Municipal Code language implied
16 that the creation of the lots with the dwelling units under different ownership would not be
17 allowed but because of state law Staff reasoned that if the lot itself was not being subdivided and
18 would continue to exist under a single common ownership that individual air space
19 condominium units could be created each having individual ownership. Staff is now bringing
20 forward an Urgency Ordinance after careful consideration of the project and the appeal. You
21 have heard from Staff who has prepared that ordinance which you have recently discussed and
22 voted to move up to Council. This would clarify the purpose of the RMD district with regard to
23 subdivisions and residential unit ownership. If the Urgency Ordinance were adopted by the City
24 Council the Director's Decision on this project would not be consistent with the revised purpose
25 of the RMD district. Staff would then return to the Commission with a recommendation to
26 overrule the August 4 Director's Decision. If the Urgency Ordinance is not adopted by the
27 Council or if this project is exempted the Commission would then hear the appeal on its merits.
28 So if the Urgency Ordinance doesn't pass and is dead then the appeal would continue to be heard
29 by the Commission and we would be bringing that back to you. That concludes the Staff Report.
30 The applicant and the appellant are here to make presentations. Thank you.

31
32 Chair Holman: Thank you. Are there any important clarifying questions for Staff at this time?
33 Commissioner Burt.

34
35 Commissioner Burt: I guess two. One Don has clarified that as an alternative to deferring this
36 until October 25 we could actually act on this tonight.

37
38 Mr. Turner: That is correct.

39
40 Commissioner Burt: And I would like to encourage the applicant and the members of the public
41 and the Commission to in the interest of the time tonight not rehash the broader issues of the
42 merits or lack thereof of the existing ordinance and the intention of the broad code to the extent
43 that we already discussed them in item number two. I think we had a pretty good airing of a lot
44 of this. Instead to focus on the narrower issue of what specifically should be done for this
45 proposed project in its appeal so that we have a chance to see whether we want to actually act on
46 this tonight versus defer it to the October 25.

1
2 Chair Holman: Well stated and we will see if there is agreement to that. The applicant has 15
3 minutes as does the appellant. Sorry, Commissioner Lippert.

4
5 Vice-Chair Lippert: What was the rationale or the reasoning for the historic Category II portion
6 of this project to go forward before the Historic Resources Board?

7
8 Mr. Turner: I believe it was a requirement at that time for the neighborhood preservation
9 exception that was also a part of this application to be reviewed by the Historic Resources Board.

10
11 Vice-Chair Lippert: So there were development entitlements that were associated with this
12 property?

13
14 Mr. Turner: Yes, for the second unit, yes.

15
16 Vice-Chair Lippert: Okay.

17
18 Chair Holman: I actually would like a little bit of clarification here. I have cards from both Mr.
19 Hanna and Mr. Wilson. Are you going to speak separately or use your 15 minutes combined?

20
21 Mr. Brian Wilson, Flagstaff, AZ: Whatever would please the Commission.

22
23 Chair Holman: Since we have hashed a lot of the issues if you could all combined use the 15
24 minutes that would be helpful.

25
26 Mr. Wilson: I believe that is what we can do.

27
28 Chair Holman: Okay, so if you would move to the microphone please.

29
30 Mr. Wilson: Just to give you a sense or an overview this is an application for a preliminary
31 parcel map at 610 California Avenue. As a review we are basically looking to enact this
32 preliminary parcel map. There is no change in any of the structures that are on the property. So
33 there is no change in the visual historical character. Everything stays as is. There is no change it
34 is currently rented to two tenants. There is no change in the tenants their leases will be exactly as
35 is. My primary intent was to use this as a vehicle to be able to setup a long-term capital reserve
36 fund that I can fund over time so that basically I can pay for ongoing maintenance, roofing,
37 painting, new fences and whatever to insure that everything remains as is going forward.

38
39 This is what the project looks like. This is the historic property it is about 115 years old is what
40 the best guess is. This is the new property built off of Yale in 2003. This was heard during the
41 Director's Hearing and the application was approved. There were a couple of neighbors that
42 raised some objections that I wanted to address here.

43
44 Number one it is the permitted use. Actually there was a comment about this process by one of
45 the members of the public and a Commissioner. I would like to specifically say that it was not
46 our intent to find a loophole. I actually took this question to the Planning Department over two

1 years ago and asked them if this was a permitted process. After over a six month period they
2 came back and said that the Planning Department, the Planning Staff, the City Attorney had
3 reviewed it and said that it was permitted. I know since that time there have been three
4 additional reviews at least including the Director's approval. So it was something that I reached
5 out to the City and basically said this is what I would like to do can I do it? I was given a go
6 ahead.

7
8 The other point is about increasing the availability of the housing. Two objections that came up
9 in the Director's Hearing dealt with landscaping and I wanted to address that. One was about
10 missing street trees. What I would like to do is show you what the original landscaping plan was
11 approved as. There were some planting areas around the new house. I put in some new trees on
12 the property and then added two new street trees. As this construction was nearing completion I
13 found that I really like the project the way it was coming out and wanted to spend some time
14 investing more in landscaping. So I hired a local landscape architect who came and said you
15 have it all wrong, you can't put the trees there in part because the street parking planting area is
16 too narrow it is only a foot. So she said let's put the five trees here so that we can spread it out.
17 Then what we need to do is put new lawns in then let's refurbish the lawn in front of the old
18 house. Then we can put in your planting areas you had but let's add some planting areas in the
19 back and add trees between the neighbor's house for additional privacy. Let's put something in
20 front of the new picket fence. Let's put something of the old picket fence that matches then we
21 will add more in the backyard of the historic property and then fill out the front. So basically this
22 is what the approved landscaping was, this is what the revised landscaping was. This is actually
23 what it looked like installed. This is in front of the new unit and this is a street view of down the
24 historic property.

25
26 Now about a year after I finished this I received an enforcement letter that there was a neighbor
27 that complained that I did not plant the two new street trees. I felt that I not only did
28 substantially the same but actually substantially more of the same with what my revised plan
29 was. I ended up coming to the City to discuss that with them. They said they are missing you
30 have to put them in. I re-contacted my landscape architect who had talked with the arborist
31 earlier who felt at that point it wasn't the right place to put it. By getting the contractor out there,
32 following Planning instructions that were setup for a five foot versus a one-foot planting area,
33 requesting actual locations. Each time we dealt with the City, they are very busy Staff and it
34 would take a couple of months to basically get an answer or a solution. So this did take time to
35 resolve but we did end up putting in the new trees and that is where they are.

36
37 Now there was another complaint about an apricot tree that was on the original lot. On here you
38 can see in orange where the apricot tree was. When I bought the house 23 years ago the apricot
39 tree was mature. Over the last decade it was basically declining and it lost over 80 percent of its
40 canopy. I was required by the building permit conditions to remove dead or decaying plant and
41 tree material but then I was also asked to protect this tree during construction so it was a bit of a
42 catch-22. I called the City to ask for some guidance and they said the protection order would
43 cease after the certificate of occupancy was issued. It wasn't a protected species so you could
44 remove it if you wanted to and that is what I did.

1 Another one that had come up was some comments dating back to the original permitting on the
2 second unit was a neighbor that had complained that I hadn't maintained the home and actually
3 felt like it was in danger of falling down. This was after I bought it that I had gutted it and
4 completely restored it replacing all the plumbing, electrical, new fixtures, insulation, sheetrock
5 and so forth. I also seismically reinforced the home. The City asked for a building contractor to
6 inspect it who did. He found it in very good shape not only up to current code but surpassing
7 code in a number of ways. I had bolted it to the foundation, had structural panel, there is a
8 concrete entry and porch-way that he was surprised to find there were no cracks in it which is
9 hard for even younger homes rather than 115 years old. This is what the house looked like
10 before the cosmetic improvements in 2003 in winter. I say winter because in this one there are
11 sparse flowers because all of the rosebushes have been pruned back for the winter but this is
12 beforehand and this is what it looked like after. This is three-plus years after the cosmetic
13 improvements.

14
15 Now another comment that has come up and this is a neighboring land use. I would like to point
16 out where this property is located up in the northeast corner. There it is located. My nearest
17 neighbors all the way around are commercial, commercial, commercial. I have lenders who have
18 refused to talk about loaning on this property because they didn't think it was residential let
19 alone single family residential. Then around there there are eight other lots that have 13 units
20 and of that there are basically two condos at this point in time. So 25 percent of the lots
21 representing 31 percent of the units are condo basically within just 200 feet.

22
23 As a summary, the proposed use is allowed. Again, I just rely on a number of conversations I
24 had with everybody involved in the Planning Department over a two year time period. It is
25 consistent with neighboring land use where there are other condos in that zone and other condos
26 very close to my property. I feel the landscaping and maintenance objections just dealt with an
27 incomplete set of facts. I am requesting that the Planning Commission confirm the Director's
28 approval on this and would appreciate your consideration. Thank you for your time and I am
29 going to yield this to John Hanna.

30
31 Mr. John Hanna, Palo Alto: Thank you. I will be very brief because I want to yield the rest of
32 my time to Mr. Garrett. I think the point here is simply this. This project has been through the
33 mill for a year. It has been gone over, and over, and over. It has been approved. It has been
34 approved by Staff. It was approved by the City Attorney, the City Planner, and the Director and
35 the only thing now that has come up is we are saying well, we now have this need for this
36 Urgency Ordinance so maybe we shouldn't let this get through even though it has already been
37 approved. The findings are there in the record. It does comply and it was found to comply and
38 so you can't un-ring that bell. It would be totally unfair to hang this person up who has an
39 approved project because you want to go off and have the Council study this thing for another 45
40 days.

41
42 I would like to yield the rest of my time to Mr. Bill Garrett who has a card I believe on file.
43 Thank you.

44
45 Mr. Bill Garrett, Palo Alto: Thank you, Mr. Hanna. I am a partner of Mr. Hanna and we
46 represent Brian Wilson, as you know. The subject appeal before you tonight is pretty interesting

1 because you have a situation where you have several means of ruling in Mr. Wilson's favor
2 denying the appeal and upholding your Director's Decision. Those grounds range from deemed
3 approval under the Permit Streamlining Act because as Mr. Hanna stated earlier we disagree
4 respectfully with Mr. Larkin that indeed the Permit Streamlining Act does apply here and for that
5 matter so does the Subdivision Map Act provisions both with respect to deemed approval and
6 also deemed completeness of an application. Those are set forth in my letter brief to the
7 Commissioners.

8
9 I urge you to if you have any questions whatsoever about the grounds for finding deemed
10 completeness of the application 30 days after it was filed on October 3. That first deemed
11 complete date would be November 2. The first time that the City notified Mr. Wilson with
12 anything to do with his application status was 20 days too late on November 22. By operation of
13 law the application was deemed complete. Now that is important. The reason that is important
14 is because application deemed completeness triggers the running of the time within which under
15 both the Palo Alto Municipal Code Ordinances cited in our letter brief and also under the
16 Government Code provisions the Subdivision Map Act triggers the running of the time within
17 which the Director has to act. Both the Palo Alto Municipal Code Ordinance and the applicable
18 provisions of the Subdivision Map Act require that the preliminary parcel map be acted upon that
19 is approved, conditionally approved, or disapproved within 50 days. Fifty days after November
20 22 is roughly the middle to third week of December. By that time this preliminary parcel map
21 was deemed approved by operation of law. Now with all due respect to Mr. Larking I think that
22 he is incorrect with respect to saying that the provisions of the Subdivision Map Act relative to
23 Tentative Maps don't apply here to this preliminary parcel map. Why? Because the Palo Alto
24 Municipal Code Ordinance Section 21.04.030B defines preliminary parcel map. The definition
25 of preliminary parcel map is virtually identical to the definition of a tentative map found in
26 Government Code Section 66424.5. Now that is one way to obtain deemed approval of the
27 preliminary parcel map. There is another way it is set forth in my brief. It is under the Permit
28 Streamlining Act. That is a second way to obtain deemed approval of this map. Still unique to
29 this particular matter is we had an actual approval. The map was actually approved, as we know
30 on August 4 of this year. Now I know that Mr. Larkin has urged that the Commissioners take the
31 position that the Municipal Code provisions don't apply but they do. I think that Commissioner
32 Tuma is really on point when he says something about this just doesn't feel right because really
33 is just targeted zoning against this one applicant where he has deemed completeness, he has a
34 couple of deemed approvals and ways to get there, he had many conversations with Staff where
35 it was reported to him as you know that the City Attorney, the Staff in the Planning Department
36 had run through this and it was all permitted. He complied with and does comply with all local
37 ordinances. So I think it is important that you realize that the applicable provisions of the
38 Subdivision Map Act prohibit the retroactive application of an ordinance such as is being
39 recommended to the City Council to an application which has been deemed complete to a project
40 and a map that has been deemed approved. It is not allowed under the Subdivision Map Act and
41 I urge you to help us amicably resolve this because nobody wants to waste time, money, effort
42 on this matter. I think that one of the Commissioner's ideas for an exception was an excellent
43 one. Thank you very much.

44
45 Chair Holman: Thank you Mr. Garrett.

1 Mr. Larkin: I just want to jump in very quickly because I want to keep the discussion on track. I
2 think it is important that the Commission decide this on its merits. If the Commission thinks that
3 it is appropriate to grant an exception and wants to go back and reconsider the prior motion to
4 grant that exception that is perfectly appropriate.

5
6 My concern is on the Permit Streamlining Act a case came out within the last two months
7 reiterating what has been law for a long time that you can't use the Permit Streamlining Act to
8 play gotcha and say that an application was deemed approved because the city failed to act. That
9 deprives the other neighboring properties and the appellant of their right to due process and to
10 make a decision on that basis would be an error. So with respect to Mr. Garrett's analysis of the
11 legislation is correct it is the application of it in this case isn't and I think that you will find
12 yourself in trouble if that forms the basis of your decision. So make the decision on the merits of
13 the application not on the legal analysis.

14
15 Chair Holman: Thank you. The appellant, Ms. Graves, you have 15 minutes.

16
17 Ms. Pria Graves, Palo Alto: Good evening. First I want to thank the City Attorney for
18 reinforcing the fact that as a resident of the city I have the right to appeal this decision that was
19 taken in August. I have already stated both in my appeal letter and in my previous remarks most
20 of the reasons that I think that the RMD zone is a good one with the fact that it supports the
21 existence of rental housing.

22
23 My objection to this subdivision is not based on landscaping. It is not based on anticipated
24 changes to this house. It is based entirely on the fact that the meaning and intent of the ordinance
25 I believe is quite clear to an ordinary person reading it. I have been a resident in this exact zone
26 for over 20 years. I have read this section of the zoning code many, many, many times. I
27 understand now where this ambiguity arises but the purpose of the zone is a second dwelling unit
28 under the same ownership.

29
30 In less creative times this never would have arisen. The second unit would have been a rental
31 unit throughout its entire existence. I think that while I regret the fact that the applicant was
32 misdirected as I see it by City Staff that City Staff did not fully grasp the intent of this code and
33 believed that this proposed parcel map was a legal permitted use under the RMD zoning. I think
34 that was a mistake. I think regardless of the proposed Urgency Ordinance there are valid
35 grounds for overturning the approval of the application. I would like to encourage you to do
36 that. I think that really about sums it up.

37
38 I want you not to be thinking about this Urgency Ordinance as much as about the fact that in just
39 reading the purpose of that zoning. The owner of the property should have understood and
40 clearly did seem to understand when we went through the approval process for the second unit
41 that it was to remain under the same ownership. I supported his building the second unit because
42 of the fact that it increased the housing stock in an appropriate way. I supported his getting the
43 NP exceptions. So it is rather an awkward position for me now to be here in this rather
44 adversarial role appealing the decision. I just feel that it is, to quote one of the Commissioners,
45 "it just feels wrong." It feels wrong to me that something that was so clearly designed to foster

1 rental units as a second building on a property with an existing structure should be so used.
2 Thank you very much.

3
4 Chair Holman: Thank you. At this time are there any questions by the Commission for Staff or
5 the applicant before we hear from the public? Commissioner Keller.

6
7 Commissioner Keller: Thank you. I have a question. It was asserted by the applicant that there
8 are two parcels adjacent or nearby that have condos on them. Could you tell us something about
9 the circumstances of those if that is the case?

10
11 Mr. Turner: I have been here for about eight years and I am not aware of any condo conversion
12 project in the R-2 or RMD district. Perhaps those happened at an earlier time. We can certainly
13 look those up and report back to you.

14
15 Chair Holman: Commissioner Tuma.

16
17 Commissioner Tuma: A clarifying question about the recommendation from Staff on this. If the
18 Urgency Ordinance is not passed or if it is determined that this project would be exempted for
19 whatever reason from that ordinance is it your position or your recommendation that the
20 Director's Decision not be overturned? I will quote from your memo here. It says, "If the
21 Urgency Ordinance is not adopted or if the project is exempted the Commission would then
22 consider appeal on its merits." It seems to be an implication that if it is not adopted it would be
23 considered on its merits. Here is what I was looking for. The project would not be consistent
24 with the zoning ordinance if the proposed Urgency Ordinance is approved by City Council. Is
25 by implication if it is not approved by City Council would it be your position that it is in
26 compliance?
27

28 Mr. C. Williams: I think looking at the Urgency Ordinance and the fact that it is trying to
29 implement the intent of the purpose statement we still would feel like it is not appropriate to
30 approve the project and it would still be appropriate to uphold the appeal but that is a very gray
31 area. So I think that sort of the judgment call that the Commission needs to make is is this intent
32 statement/purpose statement strong enough that it essentially says that we made the wrong call
33 with the other section of the code that we are sort of forced to deal with on the second dwelling
34 units. Not a real clear answer but I think that is where we were left sort with deciding in the first
35 place and we are still stuck on that.

36
37 Chair Holman: Commissioner Garber. Again, these should be clarifying questions, please.

38
39 Commissioner Garber: The wording here, 'second dwelling unit under the same ownership,' I
40 guess I need some clarification again although you had explained it at the beginning as to why
41 the Planning Department made the approvals it did and how that is different. I am excluding
42 entirely the whole issue of urgency.

43
44 Mr. Larkin: Looking at our definition of a dwelling unit, a dwelling unit is a structure, and
45 because it is a multi-family district the only distinction between that and the R-2 is the multi-
46 family aspect of it. But because it is a structure we determined that the structure was under the

1 same ownership which was the association, the air space rights could be subdivided because the
2 state law and absent any other authority in our code the state law allows the subdivision of air
3 space rights.

4
5 Commissioner Garber: Are you saying the air space rights within, there are two houses here, you
6 are saying the subdivision between the two houses or subdivision within each one of the houses?
7

8 Mr. Larkin: If you look at the map that you have been provided it is probably clearer.
9

10 Commissioner Garber: The map talks about each individual house.
11

12 Mr. Larkin: Right, but it is the air space within those structures that would be subdivided, that
13 would be individually owned, private space. So the owners would own separately from wall-to-
14 wall, floor-to-ceiling but they wouldn't own anything outside of that. Everything else would be
15 owned by the association, the two owners combined.
16

17 Commissioner Garber: Tell me again for what reasons it was approved originally, not originally
18 but the last time.
19

20 Mr. Larkin: That was it because our code doesn't apply to the....
21

22 Commissioner Garber: The bricks and mortar.
23

24 Mr. Larkin: Right. It applies to the bricks and mortar not the air space and we don't have any
25 restriction explicit in our code on the air space. Now I agree with the appellant that that was the
26 intent and the advice was that if we didn't want this to be happening we needed to make our code
27 explicit that it applied to air space and not just the dwelling unit.
28

29 Chair Holman: Commissioner Sandas.
30

31 Commissioner Sandas: So a clarifying question. Were you just saying that the state law trumps
32 our ordinance that was written in 1983 or because we have not specific ordinance pertaining to
33 air space condominiums that you had to interpret? This was subject to the interpretation of Staff.
34

35 Mr. Larkin: Yes, it was subject to a lot of people's interpretation and there was a lot of
36 discussion but we came down on the fact that since we didn't specifically address it in our code
37 that we would default to what state law was.
38

39 Commissioner Sandas: So you are asking the Commission tonight for our interpretation. Am I
40 right about that?
41

42 Mr. Larkin: Not necessarily your legal interpretation but we are asking you to look at the
43 application and the appeal on the merits and make a determination. We are asking you to
44 continue it but if the Commission is inclined to make a decision tonight to do it on the merits of
45 the application and appeal.
46

1 Chair Holman: Commissioner Keller.

2
3 Commissioner Keller: Suppose just for discussion sake that an owner of a property like this
4 were to create what is referred to I think as tenants-in-common where there was a property
5 owned by two families in its entirety but rather than a condo association kind of thing the
6 agreement between them was that each one occupied one house how would that be different? I
7 am just trying to understand.

8
9 Mr. Larkin: It wouldn't be and I think it would be permitted.

10
11 Chair Holman: What I would like to do now seeing no other hands is go to the public. We have
12 one card from a member of the public, Joy Ogawa.

13
14 Ms. Joy Ogawa, Palo Alto: Good evening again. One thing I wanted to say I said before that I
15 didn't get noticed and I live really close. So that is a big concern. I really should have gotten
16 notice of this. I spoke at the Director's Hearing so there is no excuse, no excuse. I also turned in
17 a written document at the Director's Hearing and there is no record in the Staff Report of the
18 Director's Hearing. There is no record of the document that I submitted at the Director's
19 Hearing. I am going to have to rehash a lot of what I said at the Director's Hearing because there
20 is no record of it in this Staff Report, which is very inefficient.

21
22 The applicant talked a lot about the street trees and the apricot tree. I want to just point out that
23 they are ARB conditions of approval written down, these are the ARB conditions of approval
24 specifying two street trees. Because in order to build that thing, the second unit, they had to
25 move the driveway and they cut down an existing street tree. So it was part of the conditions of
26 approval that they are supposed to replace that cut down street tree with two street trees. It was a
27 condition of approval. The apricot tree was also – I personally didn't care about the apricot tree
28 but it was a condition of approval that it be kept, maintained and not cut down. So because of
29 the NP overlay in the zoning there was ARB review of this project. With the ARB approval
30 there were specified conditions of approval.

31
32 I lived through the construction and everything and then the house is occupied and there were no
33 street trees. I was like where are the street trees? Why is this occupied and no street trees?

34
35 Do I only have three minutes? I didn't realize I only had three minutes.

36
37 So let me just say there were specified conditions of approval and that the Planner had not even
38 been contacted, did not know that this was being occupied, they didn't go through the right
39 process before issuing the occupancy. Also my understanding was that the arborist that kind of
40 gave the verbal okay on not having to do the street trees was the Public Works Arborist, Dave
41 Savage, and that the Planning Department Arborist had never been contacted. He didn't know
42 about it.

43
44 The neighborhood preservation exceptions were really big. Not enough parking, having only
45 one covered space...

1 Let me just say the Staff's original Director's Approval to me indicates that there was a lack of
2 institutional memory as far as the intent of the ordinance. There was analysis of the code but the
3 intent of the ordinance wasn't taken into account. At this point they have looked at the intent of
4 the ordinance and they kind of realized they should have taken that into account. So I would
5 thank Staff for rethinking that and I would urge you to uphold the appeal. Thank you.
6

7 Chair Holman: Thank you. I have a question for the City Attorney. Our procedures say that on
8 tonight's agenda say that the applicant has three minutes for closing comments. I thought the
9 appellant did too but I don't see it here. Am I remembering incorrectly? I thought I had
10 experience in the past that both the applicant and appellant did.
11

12 Mr. Larkin: Typically the party that speaks first gets three minutes for rebuttal. If the Chair
13 wanted to give three minutes to both parties it wouldn't hurt but I don't have the procedures in
14 front of me so you are looking at them and I am not.
15

16 Chair Holman: I am remembering them differently than what is here. So the applicant has three
17 minutes and I am going to trust my memory that the appellant will have three minutes as well
18 and we will go by that I guess. So who would like to speak for the applicant if you want your
19 three minutes? Do you feel you need your three minutes?
20

21 Mr. Wilson: Yes, I'll take that. Really there are just a couple of different topics and they all
22 seem to come back about this ordinary person, how someone would read this code and how they
23 would interpret it. I have had a lot of people over the years not call me ordinary but in this sense
24 I feel like I looked at with some of the experiences I had. About 30 years ago I bought my first
25 home and that is what I called it and it was a condominium. It was from the developer and I
26 happen to take over as president of the association. So I ran that association. I read all of the
27 documents. I understood the different forms of ownership. So when I read this 'under same
28 ownership' I knew what it meant from a condominium that the condominium association owns
29 the lot, they own the structures and people own what is inside. That way the condominium takes
30 care of long term maintenance, the painting, landscaping, roofing and things like that. So when I
31 saw it it meant something different maybe than other ordinary people would read it. Again, that
32 is why I went and talked to the City. Remember this was two years ago when I went and asked
33 them is this something that works. During that time I went back and back and back and they said
34 they were still looking at it. After over six months they came back and said yes. That is when I
35 started the process. I went back to them again and again and again. So I think from an ordinary
36 person perspective it is reasonable to reach out and say help me with clarification and when you
37 get that clarification to be able to act on it.
38

39 I do understand the items that you are talking about as far as this Urgency Ordinance. I have
40 heard different views of one potential way of handling this and that is basically looking at this
41 and treating it as something that had started prior to the process and basically being exempt from
42 the Urgency Ordinance. I feel like I have owned this property for 23 years. I feel like I have
43 been a strong steward of that property. I feel like I have reached out to the City and to the
44 neighborhood to take good care of it and I feel I did a good job in terms of this application, and I
45 would like to get some recognition and consideration for that if it please the Commission.
46

1 Chair Holman: Thank you. As appellant does Ms. Graves want to speak for three minutes?

2
3 Ms. Graves: Thank you. I will try and keep it very short. I really appreciate you taking the time
4 to listen to this. I really do appreciate Staff's rethinking their decision of August 4. I hope that
5 you will decide either to continue this until after the Urgency Ordinance has gone to Council or
6 will decide to uphold my appeal. Thank you so much.

7
8 Chair Holman: Thank you. Commissioner Lippert.

9
10 Vice-Chair Lippert: Well, the evening is late and I just want to give a couple of points of
11 thought on this. I look at this site and while we just made a recommendation on an Urgency
12 Ordinance I am very much in support of the Director's Decision here. This is a very unique lot.
13 It is a very unique situation. I don't think necessarily that the Urgency Ordinance would apply to
14 this particular lot for a couple of different reasons.

15
16 Number one, we are not talking about air space within one building. We actually have two
17 distinct buildings here that are being defined. Furthermore, these buildings are located on a site
18 where they are both accessed by different streets possibly. You don't need to traverse or go
19 through one person's space in order to get to the other person's space, therefore, they actually
20 can operate almost as distinct units here. So off of Yale Street unit one is accessed very easily.
21 In fact there is a garage there adjacent to it. Then unit two can be accessed from both Yale Street
22 and California Avenue.

23
24 So with regard to maintenance and all sorts of problems that might crop up the biggest one is
25 going to be the landscaping. Now I am going to tell you something, looking at this I realized all
26 of a sudden that I was on the Architectural Review Board that reviewed this project. We gave it
27 very high marks at the time that we reviewed it. The one area though that it did fall a little short
28 is in the area of the landscaping. So as part of my thoughts for this I think that I would uphold
29 the Director's Decision but definitely all of the conditions of approval from the Architectural
30 Review Board need to be met here.

31
32 Chair Holman: I overlooked something too. I think it probably is the hour. This is quasi-
33 judicial and I was wondering if anybody had disclosures to make. I do.

34
35 Vice-Chair Lippert: I just made mine.

36
37 Chair Holman: Some time ago before there was ever any thought or any realization that this
38 might come to the Planning Commission I had conversation with the appellant. I have no
39 information that isn't available in public record and it was innocent but nevertheless it was a
40 conversation. So having disclosed that, Commissioner Tuma.

41
42 Commissioner Tuma: I come to the same conclusion that Commissioner Lippert does but from a
43 completely different path. Most of the Commissioners other than Arthur and myself have spent a
44 considerable amount of time in the past working on Zoning Ordinance Update and we are going
45 to continue to work on that in the coming months. We have a Comprehensive Plan Update
46 coming up and we are going to spend a lot of time with that. We have zoning regulations. We

1 have a whole body of direction out there and it is direction to impart the development community
2 as to what they should or shouldn't be doing, what the allowed or permitted uses are. I think as
3 we set these items in place we are trying to encourage certain types of development and
4 encourage certain types of actions. So fundamentally I have a problem what I consider to be a
5 very late hour, no pun intended, an Urgency Ordinance being put forward to essentially derail a
6 project that a lot of effort and time on a lot of people's part had been put into it. I think from a
7 policy perspective, and I realize the procedural posture is such that there opportunity for appeal,
8 etc. but I think we are sending the wrong message to the development community at large which
9 is you can do all the work, get all the way down to the end, and we don't really like the way
10 something reads so we will change it. I just think that that's wrong. So I think my view is that
11 the Urgency Ordinance should not apply to this project because I just fundamentally think that it
12 is the wrong thing to do, it is the wrong message to send to the development community. So I
13 don't know procedurally whether we are going to vote first on whether we are going to go
14 forward with deciding this on the merits or whether we are going to recommend to Council that
15 they not apply the ordinance to it. I just don't know procedurally how we go about that tonight.
16

17 Chair Holman: We will come to that shortly I am sure. Commissioner Keller.

18
19 Commissioner Keller: First of all I am not a lawyer but I work with lawyers as an expert witness
20 on patent cases on occasion. One of the things that I understand about interpreting patents is that
21 you interpret as one of ordinary skill and you try to interpret it in a way that it is as much as
22 possible is meaningful. So with that as the basis for how I read these things the ordinance in
23 question says that to allow a second dwelling unit under the same ownership as the initial
24 dwelling unit. So what I am trying to understand is when would that not be the case?
25

26 Mr. Larkin: You couldn't further subdivide the property. There are other ways to do common
27 interest developments where a property owner owns the physical structure you couldn't do that
28 on this property. Two different property owners can't own the physical structure. Different
29 property owners, at least under our interpretation of the ordinance, can own air space because we
30 define the unit as the structure. If we defined the unit differently then that would change things.
31 But because of the way we define it is at a minimum ambiguous and the determination that Staff
32 made at the initial level was that it was allowed but certainly not was conceived of in 1983.
33

34 Commissioner Keller: So what you are saying is that you couldn't take the property and
35 subdivide it but on the other hand aren't there other regulations about minimum lot size that
36 prevent the lot from being subdivided?
37

38 Mr. Larkin: You couldn't do a common interest development that resulted in a sale of the
39 physical structure. In a common interest development you just have to have common area so
40 you could have individual owners of the structures, divide the lot right in half and have
41 individual owners of the structures, and then just create common areas to allow access to the two
42 structures. That is not what the applicant is proposing because if the applicant had come forward
43 with that project we would have said no.
44

45 Commissioner Keller: It seems to me that the intent of this ordinance as it was passed in 1983
46 was to require that there be a single ownership of this entire parcel.

1
2 Mr. Larkin: I don't disagree that that was the intent in 1983. It is just not what the regulations
3 say and that's why we came to you with the Urgency Ordinance to clarify that and to fix that
4 going forward.

5
6 Commissioner Keller: One last question. It was stated by the applicant that there are several
7 condos nearby and that Staff was not aware of that circumstance. I would be much more
8 favorably disposed to approve this condo-ization, if that is a word, if in fact the two nearby
9 parcels were condos. So I would be in favor of a continuation at least until we were able to
10 clarify that distinction. That would be in large part [dispositive] from my point of view.

11
12 Chair Holman: Commissioner Burt.

13
14 MOTION

15
16 Commissioner Burt: First I would like to commend the appellant for bringing this issue to the
17 City. As a result of the appeal we have this proposal for an emergency ordinance going to the
18 City Council and this issue will have the opportunity to have a full and complete hearing on the
19 merits of what we should do as a policy going forward. I think that that is a significant
20 accomplishment and I think it was necessary and appropriate.

21
22 So having said that I think in regards to this particular project I would like to place a motion on
23 the table. It doesn't preclude other discussion but perhaps it will help us move forward at this
24 late hour. So I would move that the Commission recommend that the appeal be denied and the
25 project be allowed to proceed consistent with the original recommendation of the Director's
26 Hearing.

27
28 SECOND

29
30 Vice-Chair Lippert: Second.

31
32 Chair Holman: I think I heard Commissioner Lippert first. Would you care to speak to your
33 motion, Commissioner Burt?

34
35 Commissioner Burt: Yes. Ideally we would have had an unambiguous ordinance that would be
36 consistent with the Comp Plan and with the 1983 ordinance but that just doesn't appear to have
37 been the case. Staff went through and they did diligent consideration and it was initially their
38 best interpretation that per our existing ordinance this would be allowed. I think that as has been
39 stated it is ambiguous and gray enough that we don't have clarity. We may have clarity after we
40 get a revision to the ordinance or presumably we will have clarity one way or another after we
41 get a permanent ordinance. So my feeling is that given that the applicant was given this direction
42 over an extended period of time, as Commissioner Tuma had stated, it is really out of fairness it
43 would be appropriate to uphold the original Director's Hearing. That is the primary reason. We
44 don't have something that is clear. We don't have a sound basis to uphold the appeal and that we
45 have the greater good that is going to occur here which is that we will address this and the

1 Council will address this in a comprehensive way that is much more significant than what
2 happens to this particular property.

3
4 The final thought that had escaped me is that I just can't find any overriding harm that would
5 occur from allowing this to go forward. Yes, we have a long-term issues but this going forward
6 is not going to in my mind create any irreparable harm. Those are the reasons that I made the
7 motion that I did.

8
9 Chair Holman: Commissioner Lippert do you care to speak to your second?

10
11 Vice-Chair Lippert: Yes. Actually I spoke to my second as the first comments that I had made.
12 I just want to say that I am in agreement with Commissioner Tuma and Commissioner Burt in
13 terms of their comments as well. I just wanted to ask Commissioner Burt if he would entertain a
14 friendly amendment which is simply that before this is approved by Council, if it is approved by
15 Council, that in fact the all of the Architectural Review Board's findings and conditions are
16 applied to this site before anything goes into effect.

17
18 Commissioner Burt: I appreciate the principle of that. After hearing this explanation of the
19 particular changes that were done to the landscaping I guess I don't feel qualified to make the
20 judgment of whether those final details on the street trees are better or worse for the project as a
21 whole. I would be receptive to deferring to Staff to assure substantial conformance with the
22 ARB.

23
24 Vice-Chair Lippert: That is agreeable or if they can't make that determination then to return it to
25 the ARB.

26
27 Commissioner Burt: Okay.

28
29 Chair Holman: Commissioner Garber.

30
31 Commissioner Garber: To that comment I agree entirely and Commissioner Burt has hit all of
32 my topics so I don't think I need to repeat them but I am in agreement with them and will vote
33 for the motion that is on the table.

34
35 Chair Holman: Commissioner Sandas, do you have comments?

36
37 Commissioner Sandas: Yes. I can't support the motion. As I have inarticulately tried to explain
38 before I am not a fan of the air space condo as individual distinct dwellings on one parcel. I once
39 again would bet that I am the only person in this room who has had actual experience in an air
40 space condominium of three houses on a single parcel of land where each was a very distinct
41 dwelling unit. There are issues, and I can see the lawyers in the audience are chuckling, but this
42 kind of thing is rife with problems. I have lived through problems that have to do with tearing up
43 of driveways, of somebody letting their grass grow too long, somebody not taking care of their
44 house, etc., etc. There have been times when legal involvement has had to take place. So I think
45 that there are problems with this and I am not a fan of them. Having said that, everybody has
46 rights and they can get into whatever they want to get into. However I believe that the intent of

1 the 1983 ordinance was sincerely misinterpreted by our faithful Staff. I would rather that we had
2 kept within the intent.

3
4 Chair Holman: Commissioner Keller.

5
6 Commissioner Keller: I have two questions or requests. One is I assume that regardless of what
7 happens tonight that this will go in front of the City Council, is that correct?

8
9 Mr. C. Williams: Yes, this particular item will be on their Consent Calendar. Isn't that the way
10 it works?

11
12 Mr. Larkin: This is a parcel map and I believe it does on the Consent but I am not entirely
13 certain.

14
15 Mr. C. Williams: It will go before them one way or another it will either be on a Consent
16 Calendar and they can pull it off or it will be a public hearing before them.

17
18 Commissioner Keller: Thank you. The second question or comment or request if I may is when
19 this does go before the City Council either in a Consent or discussed agenda item that
20 definitively a study is done of the units that the applicant has claimed are condos and
21 determination be given to the City Council as part of your report to them that indicates whether
22 or not that is the case.

23
24 Mr. C. Williams: I think within reasonable bounds that is reasonable. You mean the ones
25 immediately adjacent to

26
27 Commissioner Keller: They are not immediately adjacent I believe they are on the same block.
28 They are the ones that the applicant had on his map that was shown on the screen. I believe they
29 are in the next block over, not Yale but the next block, but adjacent to Williams.

30
31 Mr. C. Williams: We will look at that information before it goes to Council for their
32 information.

33
34 Commissioner Keller: Thank you.

35
36 MOTION PASSED (4-3-0-0, Commissioners Burt, Tuma, Lippert, Garber in favor and
37 Commissioners Sandas, Holman and Keller opposed)

38
39 Chair Holman: Okay. Well, I have sympathetic thoughts toward the comments of
40 Commissioner Tuma earlier about the fairness. By way of disclosure there have been two other
41 items that have come to the Commission that I have voted against which were changing the
42 rules, changing our ordinances after the fact because there were lawsuits pending. I have voted
43 against both of those changes to code because I felt like it was unfair to change the rules after the
44 fact in order to try to seek a positive judgment for ruling from a judge.

1 This occasion there are all sides to the fairness issue. There is more than one RMD corner lot I
2 feel pretty confident in saying that. I think one other was even shown to us. So would we then
3 be granting special privilege to this one parcel if we let this project go forward? If the City
4 Council determines that and confirms that the intention was not to allow condominiumization
5 then we will have indeed granted special privilege to this one parcel. So there is a fairness issue.
6 There is a fairness issue about going this far down a process without learning until late in the
7 process that well, perhaps we did misinterpret the intention of the code. I think Staff has to be
8 greatly complimented on their willingness to bring that forward and bring that to the
9 Commission and ultimately to the Council to make a determination.

10
11 To me and I am not an attorney but to me I think the intention of the code is pretty obvious.
12 Now I think Commissioner Burt in his recommendation for the Urgency Ordinance to go
13 forward said do we want to make a Comp Plan change or do we want to make a code change
14 then that is a different subject. To me it seems like the man on the street kind of interpretation of
15 this would be that it would not allow condominiumization. So I think I will not be supporting
16 the motion. I think it is fair that this project, this appeal, go to the Council for their
17 determination along with their determination about the Urgency Ordinance to see what the
18 Council's interpretation is and I do think that is a fair thing to do. I respect very much your
19 comments, Commissioner Tuma, I struggle with the fairness issue all the time but I think that in
20 this case this is the fairest way to deal with this.

21
22 So if there are no other comments I will call the vote for the motion to uphold the Director's
23 determination and deny the appeal. All those in favor? (ayes) That is four Commissioners. All
24 those opposed? (nays) Three opposed. So we have Commissioner Tuma, Commissioner
25 Garber, Commissioner Lippert and Commissioner Burt voting aye. Commissioner Keller,
26 Commissioner Sandas and Commissioner Holman voting nay.

27
28 Thank you to the applicant and the appellant for bringing this matter forward. We will close that
29 matter at this time.

30
31 Mr. Larkin: I hate to bring this up at 12:15 but to make sure there is some clarity when this goes
32 to Council on item number two if either the maker or the seconder of the motion wanted to do a
33 very brief motion for reconsideration to change the motion to create the exemption that you are
34 asking for that would make it more clear when it goes to Council that you are recommending to
35 exempt this project from the previously passed Urgency Ordinance in full. So Pat if you wanted
36 to do a reconsideration to clarify that exemption.

37
38 Chair Holman: I think Commissioner Garber has a question.

39
40 Commissioner Garber: We would only need the exception if the Council were to take action on
41 the Urgency exception first.

42
43 Mr. Larkin: The exception was for applications in the pipeline as of this date and there is only
44 one so it would be saved.

1 Mr. C. Williams: Yes, you are right. If and that is what we anticipate would likely happen is the
2 Council would act on the Urgency Ordinance. They probably will be on the same agenda. So it
3 is possible that they would act on the Urgency Ordinance before acting on the project.

4
5 MOTION

6
7 Vice-Chair Lippert: I will move for reconsideration and that it be exempt from the Urgency
8 Ordinance.

9
10 SECOND

11
12 Commissioner Burt: I will second that.

13
14 Chair Holman: So I have a question.

15
16 Mr. Larkin: I think you want Pat to make that motion because he was the maker of the motion.

17
18 MOTION

19
20 Commissioner Burt: Then I will move that it be exempted.

21
22 SECOND

23
24 Vice-Chair Lippert: I will second that.

25
26 Chair Holman: Do you need to speak to your motion, Pat?

27
28 Commissioner Burt: No.

29
30 Chair Holman: Commissioner Lippert?

31
32 Vice-Chair Lippert: No.

33
34 MOTION PASSED (4-3-0-0, Commissioners Burt, Tuma, Lippert, Garber in favor and
35 Commissioners Sandas, Holman and Keller opposed)

36
37 Chair Holman: Okay. That is a separate motion so we need to vote on that motion. So all those
38 in favor of that motion say aye, please. (ayes) Those opposed? (nays) So passed on a vote of
39 four to three with Commissioners Tuma, Garber, Lippert and Burt in favor. Those opposed were
40 Commissioners Keller, Sandas and Holman.

41
42 So that takes us back to item number one.

43
44 Vice-Chair Lippert: Can I make a motion that we continue that?

1 Chair Holman: I think we have some other matters to deal with like Commissioner Burt would
2 you like to speak to that?

3
4 Commissioner Burt: I need to say I will be out of the state on the 4th and so I won't be able to
5 participate further and if the Commission would allow me I would like to just rattle off a few
6 concerns and do it in two minutes and we can be out of here so I can pass along to the rest of the
7 Commission the aspects that I would hope they would address.

8
9 Chair Holman: Let me do one thing first if I might and that is to check and see if Commissioners
10 are fried or if we are willing to stay for another hour. No? Staff is saying no too.

11
12 Mr. C. Williams: I don't want to put you through that, no.

13
14 Chair Holman: Okay.

15
16 Mr. C. Williams: This is fine to do it this way. I was also going to offer that if you in the next
17 couple of days wanted to get together with me we could just through those and then I could try
18 and convey that back to them and try to address anything before we got back to the Commission.

19
20 Commissioner Burt: That sounds good as well.

21
22 Chair Holman: If you want to just take a couple of minutes though why don't you throw them
23 out and then if you get together with Staff we can get that feedback as well.

24
25 Commissioner Burt: Okay. First was a concern regarding Fry's and its amortization and what
26 would occur if there were a change of occupant or a change of use if we got rid of the
27 amortization? Another issue is in the auto overlays and whether any of the sites, well actually I
28 shouldn't just say auto overlay, I have to really look at the zoning map on this. We had
29 considered some sites as potential auto overlay zones on the west side of 101 along West
30 Bayshore that were not included and they might be hotel sites.

31
32 Mr. C. Williams: They are not in the commercial zones.

33
34 Commissioner Burt: They are not in the commercial zones, okay good. I also had a question
35 because on the PowerPoint presentation I think it was there was a discussion of not allowing any
36 hazardous material I think use or storage. I think there may actually be thresholds that Staff is
37 intending because a literal conformance to that would mean you couldn't have a hardware store
38 with its chlorine and all kinds of things with its chlorine. You can't have cars with their gasoline
39 to be stored there. So hazardous materials we need to make sure we are discussing within proper
40 parameters. I would also like to look at how we might create incentives for rooftop gardens not
41 necessarily as an alternative to other open space but in addition to our traditional open space.
42 Staff has a proposal I think it was in the CN zone on El Camino to have a standardized 1.0 FAR
43 it currently has a .9. I would like to see if the Commission would want to look at incentives to
44 move that up rather than just granting that increase perhaps that that increase goes to retail or
45 who knows what. I can understand the reason for standardizing it but we may want to link it
46 with something that is a desirable outcome. Next, I wanted to see if there were ways that we

1 might be able to address the needs of the small independent doctors. While acknowledging that
2 we have had a problem with some of the medical uses of basically intensification of those
3 allowed uses that didn't have controls on parking and those things. I don't know whether the
4 solution is to allow them on second floor or in SOFA II we I think had a certain amount of
5 ground floor but not on the street face entrance. So maybe there is some solution there but I
6 think we have with the way they are being pushed out of Welch Road we need a way to
7 accommodate them in the community and to some degree they border or a commercial service.
8 We don't technically classify them that way but they have some of the aspects of that. Then
9 finally as we did with the Town & Country center I would like us to rather than have a formulaic
10 of a .15 FAR on the commercial that we look at whether we want something that retains
11 essentially the current amount of commercial retail that we have at a site. Once again maybe not
12 the precise amount but very close to it so that we don't encourage a redevelopment that meets the
13 .15 but has a significant loss in commercial as a result. So you guys are going to have your
14 hands full. These are complicated issues. I think we did a pretty good job on Town & Country
15 but it took awhile to hash it out and I will be thinking of you. Thank you for allowing me to add
16 those.

17
18 Chair Holman: Okay, so what we need to do with this item then is, unless anybody has any
19 pressing matter to raise, we need to continue this item to a Special Meeting of October 4, 2006.

20
21 Mr. C. Williams: Six or seven o'clock?

22
23 Chair Holman: This will be the only item, right?

24
25 Mr. C. Williams: This will be the only item. Do you want to do you minutes tonight or put the
26 minutes on the agenda too?

27
28 Chair Holman: Why don't we do six o'clock because this is our only stab at it? So let's do six
29 o'clock. Is that agreeable to Commissioners? Okay.

30
31 Mr. C. Williams: And we are going to be in the Council Conference Room.

32
33 Chair Holman: Okay, thank you for that.

34
35 Then we have also Approval of Minutes from August 30, 2006.

36
37 **APPROVAL OF MINUTES:** Minutes of Special and Regular Meeting of August 30, 2006.

38
39 MOTION

40
41 Commissioner Garber: I move that we approve them.

42
43 Chair Holman: Can I have a second, please?

44
45 SECOND

46

1 Commissioner Tuma: Second.

2
3 MOTION PASSED (7-0-0-0)

4
5 Chair Holman: Commissioner Tuma seconded. All those in favor? (ayes) Great, thank you
6 very much.

7
8 Any Reports From Officials or Committees?

9
10 ***REPORTS FROM OFFICIALS/COMMITTEES.***

11
12 Commissioner Burt: I should just briefly share that I was the Commission Rep at the Council
13 Meeting Monday. They went over the SAP Labs at I think 3412 Hillview and they approved the
14 project with considerable enthusiasm.

15
16 Chair Holman: Commissioner Garber.

17
18 Commissioner Garber: I will just report that I toured the Opportunity Center, which was very
19 exciting to do and well worth seeing if any of you have a lunchtime. They have standing tours
20 on Tuesdays through October. Then I think it is every other Tuesday thereafter. The
21 Opportunity Center on Encina.

22
23 Mr. C. Williams: Was it convenient to your office?

24
25 Vice-Chair Lippert: That is not fair your office is in the Opportunity Center.

26
27 Commissioner Garber: My office is in the Opportunity Center, in fact I'm taking resumes so just
28 let me know.

29
30 ***COMMISSION MEMBER QUESTIONS, COMMENTS, AND/OR ANNOUNCEMENTS.***

31
32 Chair Holman: If there are no other reports Commissioner Representation is designated at this
33 time. Thank you all for doing that through December.

34
35 ***NEXT MEETING:*** Special Meeting of October 4, 2006 at 6:00 PM in the CCR.

36
37 Chair Holman: Our next now will be October 4, 2006. Commissioner Keller.

38
39 Commissioner Keller: Yes, I am not sure what category this fits in but I met yesterday with the
40 Executive Director of Sustainable Conservation. They are very interested in looking at the issues
41 of how zoning/planning processes can be improved in order to encourage green buildings. I am
42 certainly interested in that topic and some other people might be. We might consider at some
43 future date having some study session about issues involving encouraging green building in Palo
44 Alto.

1 Chair Holman: Actually, we have asked to have a presentation on sustainability come to the
2 Planning Commission and actually have a study session on that very matter. I'm sorry who did
3 you meet with?
4

5 Commissioner Keller: I met with the Executive Director of Sustainable Conservation, Ashley
6 Boron.
7

8 Chair Holman: Great. Thank you. If there are no other comments I will adjourn this meeting.
9 Thank you all.
10

11 ***ADJOURNED: 11:30 PM.***
12