



## REGULAR MEETING MINUTES

**Date:** 3/9/2020  
**Time:** 7:00 p.m.  
**City Council Chambers**  
**701 Laurel St., Menlo Park, CA 94025**

### A. Call To Order

Chair Andrew Barnes called the meeting to order at 7:00 p.m.

### B. Roll Call

Present: Andrew Barnes (Chair), Chris DeCardy, Michael Doran, Camille Kennedy, Henry Riggs (Vice Chair), Michele Tate

Absent: Larry Kahle

Staff: Rhonda Coffman, Deputy Community Development Director; Kaitie Meador, Senior Planner; Mike Noce, Management Analyst II (Housing Division); Matt Pruter, Associate Planner; Corinna Sandmeier, Senior Planner; Tom Smith, Senior Planner

### C. Reports and Announcements

Senior Planner Corinna Sandmeier said the City Council at its March 10, 2020 meeting would receive a report on Menlo Park's Tenant Relocation Assistance Program administered by the Samaritan House and would provide direction on next steps.

### D. Public Comment

There was none.

### E. Consent Calendar

#### E1. Approval of minutes from the February 10, 2020, Planning Commission meeting. ([Attachment](#))

Commissioner Henry Riggs moved approval of the February 10, 2020 Planning Commission meeting minutes.

Commissioner Michael Doran said he had corrections to the minutes. He said on page 14, the first paragraph, six lines up from the end of the paragraph in the sentence: *He said for new construction if the property was near transit there was a waiver of the City's existing parking requirements and no impact fees on ADUs less than 700 square feet* that 700 should be replaced with 750. He said on page 15, about 12 lines up from the bottom of the 1<sup>st</sup> paragraph that two words would help the clarity of the sentence to read: *He suggested it might be a good time **to think** about some two-story ADUs on some lots that could accommodate those and what the setbacks and daylight plane should be.* He said on page 16, first full paragraph, first line to add **to** in the sentence:

*Commissioner Tate said regarding an amnesty program she agreed that it had **to** be well defined on what things would be able to be passed through and not. He said on page 17, the last full paragraph, last line, in the sentence, insert **and**: He said there were things that were clearly in the Planning Commission's purview **and** that were not and he thought the same could be said for the Housing Commission.*

Commissioner Riggs said as the maker of the motion he accepted the proposed revisions.

**ACTION:** Motion and second (Riggs/Chris DeCardy) to approve the minutes with the following modifications; passes 5-0-1-1 with Commissioner Camille Kennedy abstaining and Commissioner Larry Kahle absent.

- Page 14, the first paragraph, six lines up from the end of the paragraph, modify sentence to read: *He said for new construction if the property was near transit there was a waiver of the City's existing parking requirements and no impact fees on ADUs less than ~~700~~ 750 square feet.*
- Page 15, about 12 lines up from the bottom of the 1<sup>st</sup> paragraph, modify sentence to read: *He suggested it might be a good time **to think** about some two-story ADUs on some lots that could accommodate those and what the setbacks and daylight plane should be.*
- Page 16, first full paragraph, first line, modify sentence to read: *Commissioner Tate said regarding an amnesty program she agreed that it had **to** be well defined as to what things would be able to be passed through and not.*
- Page 17, last full paragraph, last line, modify sentence to read: *He said there were things that were clearly in the Planning Commission's purview **and** that were not and he thought the same could be said for the Housing Commission.*

## **F. Public Hearing**

- F1. Use Permit/Lisa Wellman/130 Baywood Avenue:  
Request for a use permit to demolish an existing one-story, single-family residence and construct a new two-story residence on a substandard lot with regard to minimum lot width and area in the R-1-U (Single Family Urban Residential) district. As part of the project, one heritage Japanese maple tree in the front yard is proposed for removal. ([Staff Report #20-013-PC](#))

Staff Comment: Senior Planner Kaitie Meador said she had no additions to the written staff report.

Applicant Presentation: Lisa Wellman, Plan A Design Group, San Carlos, said the proposed new two-story residence would have four bedrooms and four bathrooms along with a new in-ground swimming pool. She noted as the property was located in a FEMA-designated flood plain that it would have to be built at a higher elevation than surrounding homes. She said covered porches with horizontal siding and a garage at the ground level with lower wall heights were designed to break up the larger massing that resulted from the higher floor level requirement. She said the modern farmhouse style would have white board and batten siding with dark divided windows and matching fascia and gutters and a dark colored composite shingle roof.

Chair Barnes opened the public hearing and closed it as there were no speakers.

Commission Comment: Chair Barnes said he was a social acquaintance of the property owner Mr. Murugan but that would not influence his decision making on this particular application. He said he

thought the proposed project was well done and would integrate well with the neighborhood aesthetically. He said the second floor was set back to modulate the design. He said the garage while front facing was well integrated into the house. He said the project was perfectly approvable. Commissioner DeCardy said he was a social acquaintance of the property owner as well. He said the applicant indicated the pool was designed toward the left regarding privacy but it appeared equidistant from both adjoining side property lines.

Ms. Wellman said the comment about privacy was regarding the adjacent neighbor on the left as the pool was not next to that house but next to a detached garage. She indicated the property on the right also had an accessory dwelling unit in a similar location.

**ACTION:** Motion and second (Barnes/Kennedy) to approve the item as recommended in the staff report; passes 6-0-1 with Commissioner Kahle absent.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, “New Construction or Conversion of Small Structures”) of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
  - a. The applicant shall be required to apply for a building permit within one year from the date of approval (by March 9, 2021) for the use permit to remain in effect.
  - b. Development of the project shall be substantially in conformance with the plans prepared by Plan A Design Group, consisting of 17 plan sheets, dated received February 18, 2020, and approved by the Planning Commission on March 9, 2020, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
  - c. Prior to building permit issuance, the applicant shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies’ regulations that are directly applicable to the project.
  - d. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
  - e. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.

- f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove existing driveway and replace with a new curb, gutter, sidewalk and landscape. Additionally, the applicant shall replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
- g. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
- h. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by Kielty Arborist Services LLC, dated February 7, 2020.

F2. Use Permit/Cynthia Thiebaut/106 Baywood Avenue:

Request for a use permit to demolish an existing two-story, single-family residence and construct a new two-story residence on a substandard lot with regard to minimum lot width and area in the R-1-U (Single Family Urban Residential) zoning district. ([Staff Report #20-014-PC](#))

Staff Comment: Associate Planner Matt Pruter said the applicant had prepared a perspective drawing facing the street frontage. He said copies of that were provided at the dais for the Commission and on the table in the back of the room for the public. He said the applicant also revised the landscape plan and planting plan, sheets L1 and L2, copies of which were provided at the dais and back table, to reflect the addition of three proposed Western redbud trees that would be located in the rear of the adjacent property.

Questions of Staff: Commissioner DeCardy referred to the street view perspective and said that a segment on the left first floor appeared to have an angle but from the plans seemed to possibly be related to the site topography.

Planner Pruter said the property was in the FEMA flood zone and appeared to have this particular sloping feature because of the raising of the floor plate and general building features. Commissioner DeCardy confirmed that it should be interpreted as a right angle.

Applicant Presentation: Cynthia Thiebaut, Director of Development for Thomas James Homes, said the proposed home was a modern style home with four bedrooms, three bathrooms and a two-car garage on a 6,038 square foot lot. She noted that several properties in the area were rebuilding and they thought this home would be a good addition to the neighborhood. She noted there were no neighbor comments. She said the site was in a flood zone but they had the reduced plate height and the total height was 26 ½ feet. She said the second-floor setbacks were increased on the sides to reduce massing.

Chair Barnes said at the Commission's last meeting they had considered two other Thomas James Homes projects and had discussed the faultiness of neighbor outreach associated with those. He said the project description letter indicated notices being mailed but no other outreach. He asked the applicant to address what they considered was their responsibility regarding neighbor outreach.

Ms. Thiebaut said upon obtaining property ownership that they then had someone go door to door

in the vicinity to provide information on who they were, they installed fencing on the subject property, and placed their contact information on that fence. She said they then sent the plans to the neighbors. She said thus far no one had contacted them about this proposed project. Chair Barnes asked about recordation of neighbor outreach. Ms. Thiebaut said they kept a record if neighbors expressed concerns as to who made those comments and what they did to accommodate the concerns.

Replying to Chair Barnes, Planner Pruter said they advised applicants to provide details on their outreach efforts. He said they did not give exact direction on that but did recommend trying to contact neighbors door to door, with mailings and other forms of outreach if necessary.

Commissioner Riggs said he did not see any perimeter trees on the landscape plan. He said the survey on the left side showed a couple of three-inch caliper trees adjacent to the house and on the right showed shrubbery. Ms. Thiebaut referred to page L-2 and said they were proposing adding trees. She said they were preserving one existing tree and would plant a new tree in the front and one in the rear.

Chair Barnes opened the public hearing and closed it as there were no speakers.

Commission Comment: Commissioner Riggs said he admired modern architecture but thought it had a higher hurdle than so called traditional forms partly because of the dominance of the parapets as opposed to the attic height and partly because of the relatively austere finishes. He said the Willows neighborhood was built in the 1940s and was by far dominated by traditional styles. He said he was uncomfortable with the large shed roofs, left and right, which was why he requested the front perspective to get a sense of how dominant those were. He said it was difficult to make the conclusion that this design was harmonious with Baywood Avenue. He noted the elevated stairwell window, which caused privacy concerns. He referred to the landscape plan and said it did not appear that any attention was given to the neighbor's privacy. He said in general the rather high white stucco walls called for perimeter planting. He queried whether the applicant would be amenable to plantings along the side property lines.

Ms. Thiebaut said they were agreeable to privacy plantings on the sides. Commissioner Riggs confirmed with her that their landscape architect would look at doing that.

Commissioner Riggs moved to approve as recommended in the staff report with an additional condition for property line planting on either side of the structure when in the vicinity of neighboring structures. He said the plantings would be designed for the purpose of privacy screening with particular emphasis on privacy of the left side on either side of the stairwell for review and approval by staff. He said trees were preferred at an appropriate height.

Planner Pruter said it might be difficult to put trees in that specific space of the distance between the building footprint and the fence but they would pursue that option and work in collaboration with the City Arborist and applicant. Commissioner Riggs said plantings were very important to the present and/or future neighbors and a way needed to be found to fit them. He said if the setbacks were insufficient for planting then they should perhaps reconsider the site plan.

Replying to Chair Barnes, Planner Pruter said they could look at plantings with the City Arborist and applicant. He suggested that the stairwell window might be part of the condition to require treatment for privacy if plantings were not sufficient.

Commissioner Riggs said that would work for the stairwell window but it was a different question for bedroom #2 window as that was needed egress. He agreed with Chair Barnes that bedroom #2's windows could be translucent. He said if trees could not be fit into the plan that the stairwell window and bedroom #2's windows should be treated to solve privacy. He said he did not know if that solved the high white stucco walls next to traditional homes.

Chair Barnes asked why the applicant had not merged the two lots. Ms. Thiebaut said they were only going to do plantings and not build anything on the back lot and saw no need to merge the lots. Chair Barnes asked staff about development potential on the rear unmerged lot. Planner Pruter said it was virtually impossible to build on the lot due to setback requirements and required access on its own and would need to be connected with some other lot and merged to be developed.

Chair Barnes said Commissioner Riggs' motion was to do planting screening or window treatment measures for privacy for staff review and approval. Planner Pruter asked if that was for both sides or just the left side of the house. Commissioner Riggs said for both sides noting the stairwell window on the left side and bedroom #2's windows on the right side. Commissioner Kennedy seconded the motion.

**ACTION:** Motion and second (Riggs/Kennedy) to approve the item with the following modifications; passes 6-0-1 with Commissioner Kahle absent.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, "New Construction or Conversion of Small Structures") of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
  - a. The applicant shall be required to apply for a building permit within one year from the date of approval (by March 9, 2021) for the use permit to remain in effect.
  - b. Development of the project shall be substantially in conformance with the plans prepared by KTG Y Group, Inc., consisting of 18 plan sheets, dated received March 3, 2020, and approved by the Planning Commission on March 9, 2020, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
  - c. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies' regulations that are directly applicable to the project.

- d. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- e. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
- f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
- g. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
- h. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by Sierra Nevada Arborists, dated October 14, 2019.

4. **Approve the use permit subject to the following project-specific condition:**

- a. **Simultaneous with the submittal of a complete building permit application, the applicant shall submit revised plans for the purpose of providing privacy screening between the window at the stairs along the left elevation and the windows at bedroom #2 along the right elevation and the neighboring residences. The revised plans shall show one of the following revisions, subject to review and approval of the Planning Division:**
  - i. **The addition of trees along both sides of the proposed residence that are tall enough to provide privacy screening between the window at the stairs and the windows at bedroom #2 and the neighboring residences, or**
  - ii. **The use of obscured or tempered glass for the window at the stairs and for the lower portions or the entire windows at bedroom #2.**

- F3. Use Permit/Yujuan Wang/1800 El Camino Real: Request for a use permit to operate a massage therapy business in an existing multi-tenant commercial building in the SP-ECR/D (El Camino Real/Downtown Specific Plan) zoning district. The proposed use is a conditional use in the El Camino Real Mixed Use land use designation. The proposal also includes a request for a use permit for a change of use on a lot that is substandard with regard to parking. ([Staff Report #20-015-PC](#))

Staff Comment: Planner Pruter said a public comment on the application had been received over

the weekend, forwarded by email to the Commissioners, and copies were distributed at the dais and table in the back of the room for the public.

Questions of Staff: Commissioner DeCardy referred to the staff report, page 3: *The Transportation Division has also reviewed the project and determined that the proposed project would generate one additional peak-hour trip.* He asked how that was determined and if it was based on vacant units or full occupancy. Planner Pruter said the previous suite use was nonmedical office and its proposed conversion to the particular use of massage therapy was what resulted in the proposed one additional peak hour trip.

Commissioner DeCardy said the proposed way to address the additional trip was a Transportation Demand Management plan (TDM), which was an offer of \$20 per month with \$240 for the year to an employee to encourage alternative transit but was not linked to the use's lease on the site. Planner Pruter said the TDM measure came from discussion with Transportation Division staff about what the City's TDM guidelines could require for the project. He said this guideline was from the City and County Association of Governments' (C-CAG) recommendations and it was for one year.

Applicant Presentation: Tom Olsen said he was representing himself and Yujuan Wang. He said she was unable to attend as she was working. He said their business was currently located at 708 Willow Road and had been operating for a year and a half. He said they wanted to extend the business to the subject property.

Chair Barnes asked about their parking plan for the site. Mr. Olsen said they would incentivize their employees to Uber or be driven to work or use other transportation so they would not use the parking spaces allotted to the site. He said neighbors' concerns had some discrepancies in that their business would never be normally at full capacity. He said their customers tended to come at off-hours, usually starting around 6:30 p.m. with the earliest at 4:30 p.m. to 8 p.m. He said they have space for four people to receive treatment at one time and parking would be adequate for that. He said staff would not park onsite or on the street.

Chair Barnes noted 13 parking spaces including one handicapped space for the site and asked what the applicant's portion of those were. Olsen said ideally that they would use only three spaces or four spaces at maximum for their customers. He said another part of the building was empty and it was not known what tenant or business would be there or the amount of parking it would use. He said if the other business had normal working hours that his parking needs would not compete.

Chair Barnes said the proposed use required a use permit in the El Camino Real mixed use zoning and asked the applicant to address why he thought the massage therapy business was the right use for that zoning district. Mr. Olsen said their business served the community. He said they had multiple current clientele that used their spa on Willow Road including families, parents, and couples. He said their business was an extension of wellness to their community where there were high levels of stress, frustration, and fatigue. He said massage therapy alleviated those conditions and also led to therapeutic recovery.

Chair Barnes asked about the size of their existing site and the proposed site, the number of parking spaces at the existing site, and use of those. Mr. Olsen said their existing site was about 1700 square feet and the proposed site was close to 1200 square feet. He said they had seven parking spaces at the current site and those typically were at the most used 50% at any one given

time.

Commissioner Riggs confirmed with Planner Pruter that personal services were allowed at the subject site. Planner Pruter said typical personal services included beauty parlors, barber shops, and laundromats.

Commissioner Riggs said they received a letter about overflow parking not only on a public street but into a private residential area. He said apparently that was an ongoing problem when the subject building was fully occupied. He asked if that required the residential property owner to call the police every time there was an issue. Planner Pruter said it could also include the property owner working with the building tenant to bring the issue to their attention for resolution.

Commissioner Kennedy said a personal trainer gym was located the corner of Stone Pine Lane and El Camino Real that significantly lacked parking. She said adjacent to 1180 El Camino Real was a fine wine store that seemed to not have enough parking for it. She said she was a client of the spa on Willow Road and typically biked to it from her home in Allied Arts. She said she thought it was an appropriate use and the applicants had created a successful business that was well managed. She said supporting the expansion of small businesses rather than chain businesses was preferable and what the Planning Commission should be doing. She said she would support approval.

Commissioner DeCardy asked how they would incentivize employees to use alternate transportation not requiring parking. Mr. Olsen said they would inform their employees about preferred transportation alternatives for getting to and from work and incentivize financially. He said hopefully within five years a parking structure might be built to alleviate the parking situation.

Commissioner DeCardy said currently the TDM included \$240 per year or \$20 per month to incentivize. He asked if the applicant was open to offering a stipend for a longer period of time. He said also dependent on where their employees lived that the cost of an Uber ride could be great. He asked what the hardship would be for the applicant if the TDM was more prescriptive in terms of duration and an incentive that was more reasonable so that at least one of their employees would not use their own car to zero out the one added peak trip.

Mr. Olsen said they were committed to the one-year plan to at least minimize the one added peak hour trip. He said they felt their business was small enough that it would not greatly impact nearby streets as they would only have four customers at any one time. He said their parking would most likely commence after 5 p.m. so he presumed most of the spaces would be available then. He said in addition to alternate transit incentives they were willing to buy one City parking permit.

Commissioner Riggs said the staff report indicated five therapy rooms and five massage therapists. Mr. Olsen said that was an error by the architect. He said the fifth room was a rest area for staff and where towels and supplies would be. He said three rooms were for individual use and one room was for couple use. Commissioner Riggs said that explained the fifth massage therapist.

Commissioner Riggs asked staff about the incentive. He said the \$20 per month was for someone who took alternate transportation. He asked what would happen if no one opted into the TDM incentive. Planner Pruter said the measure was an option and was expected to be used for someone. He said if someone was not available to use the TDM incentive that potentially in that case the measure would not be applicable.

Commissioner Kennedy asked about feasibility of the applicant's staff using parking at the Willow Road location if there was not enough parking at the El Camino Real location and to carpool or Uber from there. Mr. Olsen said it was.

Chair Barnes said the applicant would be a lessee at the El Camino Real location and would have the right to a certain amount of spaces. He asked whether the applicant could request that the landlord allocate a certain amount of spaces out of the 13 available spaces for his business' use. Mr. Olsen said he had not. He said based on his current business model that he was operating with optimism that parking would not be an issue due to the hours they normally operated.

Chair Barnes opened the public hearing and closed it as there were no speakers.

Commission Comment: Commissioner DeCardy said he thought the use was fine and he appreciated understanding more about the applicant's commitment to the community and the current use on Willow Road. He said the broader concerns about parking were not the applicant's problem at one level as the building was under parked for its potential use, which happened at some point historically. He said he did not have a problem with sites under parked as that in itself was an incentive for people to take alternative transportation. He said the problem was when parking overflowed into other places disrupting neighborhoods. He said he appreciated that the net delta looked like one additional trip during peak hours and that the use might not operate during peak hours. He said however that the TDM plan proposed was inadequate.

Commissioner Riggs said the building and its historic use was under parked. He said he thought it was fair the City was asking the applicant to address on extra car trip. He said he did not think \$20 a month was enough incentive for a person to change habit and that an alternative proposal was necessary for the TDM. He said the proposed TDM plan might be an acceptable formula to address the extra trip for a year so that an employee used it but questioned what happened after the year. He said a solution for one year was not sufficient for a neighborhood that hoped to be inviolable much longer than one year. He said the use was easily approvable.

Mr. Olsen said he was open to alternative TDM solutions. He said he was operating out of limited experience in that area. He said with limited parking in the area the only thing he could do was incentivize staff to take public transit, park where there was ample public parking, permitted use parking, and have them come either by foot or park at their Willow Road location and then get dropped off at the El Camino Real location.

Commissioner Riggs said permit parking was something the City was holding back on until there was additional parking. He asked how they would work with an employee to embrace alternative work transit solutions. Mr. Olsen said given their Willow Road location having that employee park there and driven over in one car would resolve the parking for a period of time as they worked collaboratively with the City to find alternatives that were more meaningful for not just staff but all. Replying to Commissioner Riggs, Mr. Olsen said there was no parking issue at the Willow Road site as they had their own parking spaces.

Planner Pruter said the project location was within the Downtown Specific Plan so a TDM was required. He said regarding mitigating one additional peak hour trip that they had discussed various measures with the applicant such as bicycle racks and providing showers for those bicycling to work. He said that was not practical with the physical constraint of the smaller suite on

the site. He said the City's TDM guidelines was the source of the measure to offer \$20 per month to an employee to use alternative transit.

Replying to Commissioner Riggs, Mr. Olsen said he felt limited in his options. He said he had proposed incentivizing staff by paying them to come to work and there were 13 parking spaces he was entitled to have as a potential tenant. He said they had parking spaces at 718 Willow Road where staff for the El Camino Real site could park and literally be driven over by another staff person and dropped off at work. He said there was public transportation and Uber. He said he was trying his best to minimize any negative impact to an area in which he wished to do work and increase the overall effectiveness of community wellness. He said he was open to learning what more he could do as a small business owner to not increase traffic or congestion.

Commissioner Kennedy said she thought the burden being placed on a small business owner who was following the guidelines given to him by the City to reduce one car trip did the applicant a disservice. She said she was considering making a motion to approve with a condition the applicant work with staff to potentially subsidize one employee all the time or the manager who runs the space so that person was the one car trip not added. She said \$20 per person a month for a year would not get anyone anywhere. She moved to approve the project and as part of that ask the applicant to work with staff to identify a solid TDM plan that subsidized one fulltime employee's trip.

Commissioner DeCardy said the present TDM plan proposed was \$20 per month and that might not be used by of the employees. He said there was no enforcement anyway unless a complaint was made to the City. He said he would approve the application if the \$20 was done per month for the duration of the lease as opposed to one year and that they would utilize the parking at both sites to mitigate the impact of parking on the El Camino Real site. He said that was his motion.

Replying to Chair Barnes, Commissioner Kennedy said she had made a motion but she would defer to Commissioner DeCardy.

Chair Barnes said that Commissioner DeCardy's motion to approve had a condition that the \$20 per month would be for the duration of the lease and an agreement to share parking at another site. He said cross parking arrangements would be impacted should the business owner lose the lease on the other site. Planner Pruter agreed that there were unknowns. He said staff would need to research the specifics of the other site and know what the conditions were there to have a firmer understanding of the relationship between the two sites.

Chair Barnes said that the cross parking of two sites could be very problematic based on lease and ownership. He said the other site had to be encumbered with a parking agreement, which made it hard to do. He asked whether Commissioner DeCardy was willing to drop that condition should the Commission want to move the project forward. Commissioner DeCardy said he would rather lose on the vote.

Chair Barnes said the motion by Commissioner DeCardy was to approve with a condition of \$20 per month for the duration of the lease and a condition that would require further research with staff making a determination on the feasibility of a cross parking agreement. He asked staff if that was the mechanics of what was being conditioned. Planner Pruter said generally that sounded correct. He asked to confirm if Chair Barnes was speaking of a potential continuance. Chair Barnes said he was.

Commissioner Kennedy noted projects for which they had allowed tandem parking and bundled parking in the Life Sciences district with significant amounts of parking. She said that for one additional trip because they could not figure out what the TDM plan was they were going to continue this project. She said if that was the case that the process was broken.

Commissioner Riggs asked staff if the approval had a condition that the applicant provide carpooling from a legal space offsite whether that would alleviate the need to encumber a specific property. Planner Sandmeier said staff would need more information on where the space was and what the requirements were. She said one option was to take a vote on Commissioner DeCardy's motion that would include a continuance. She said if seconded and the motion failed then another Commissioner could make a motion to approve the project without the second condition.

Commissioner Riggs said he would second the motion with the friendly suggestion that they decouple the location of the alternative parking space. He said they could say that at least one of the employees would be carpooling without saying where that employee parked. He said also a friendly suggestion was that the \$20 be paid to someone involved in the carpooling solution.

Commissioner DeCardy said his intent was not to continue the project and if the implication of his motion was continuance then he would not support his own motion. He said he appreciated Commissioner Riggs' efforts to put together something that met the spirit of what they were trying to do and get the project approved but it felt like a fool's errand to have the Commission try to design things and then have staff say what would be continued and what would not be continued. He said if nothing could be done in the spirit of what he and Commissioner Riggs were attempting then it should be dropped.

Planner Sandmeier said a TDM plan was required by the Mitigation Monitoring and Reporting Program (MMRP) for the Downtown Specific Plan EIR. She said it did not look like paying \$20 to carpool was a measure because that money was meant to be used for transit. She said she understood the frustration that it was difficult to condition the project. She said if they were looking for staff feedback that the easiest condition was to require payment of \$20 per month for employee transit for the life of the project as well as encouraging the applicant to use carpooling. She said it was difficult for staff as they had not researched the other site and did not have specifics about its parking and how that might work. She said the two options she saw was making the TDM plan more robust for the timeframe of the project or continuing the project to allow staff to do more research. She said for the larger projects with bundled parking that was something brought forth by applicants so staff had time to research before bringing to the Commission.

Chair Barnes noted for the record that Commissioner DeCardy had withdrawn his motion. Chair Barnes asked how they knew whether the additional car trip was made by an employee or a customer. He said they also did not know if people would be riding their bicycles to the business. He said they did not know how things were going to work for this particular business at this particular location. He said it was not known if the TDM issue would be solved by an employee.

Commissioner Doran said to that point all the car trips were fungible and it did not really matter whether it was an employee or a customer. He said to get past the impasse he moved that they approve the application with the condition the \$20 per month run the length of the lease and be used for traffic reduction as permitted under the TDM regulations and recommend that the applicant encourage his employees to carpool where possible. Commissioner Kennedy seconded

the motion.

**ACTION:** Motion and second (Doran/Kennedy) to approve the item with the following modifications; passes 5-0-1-1 with Commissioner DeCardy abstaining and Commissioner Kahle absent.

1. Make findings with regard to the California Environmental Quality Act (CEQA) that the proposal is within the scope of the project covered by the El Camino Real/Downtown Specific Plan Program EIR, which was certified on June 5, 2012. Specifically, make findings that:
  - a. The project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current CEQA Guidelines.
  - b. Relevant mitigation measures have been incorporated into the project through the Mitigation Monitoring and Reporting Program (Attachment F), which is approved as part of this finding.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
  - a. The applicant shall be required to apply for a building permit within one year from the date of approval (by March 9, 2021) for the use permit to remain in effect.
  - b. Development of the project shall be substantially in conformance with the plans provided by Sigma Design, consisting of seven plan sheets, dated received March 3, 2020, and the project description letter from Tom Olsen, dated received February 28, 2020, and approved by the Planning Commission on March 9, 2020 except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
  - c. Prior to commencing any work within the right-of-way or public easements, the applicant shall obtain an encroachment permit from the appropriate reviewing jurisdiction.
  - d. Prior to building permit issuance, the applicant shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
4. Approve the use permit subject to the following **project-specific** conditions:
  - a. The applicant shall address all Mitigation Monitoring and Reporting Program (MMRP) requirements as specified in the MMRP (Attachment F). Failure to meet these requirements may result in delays to the building permit issuance, stop work orders during construction, and/or fines.
  - b. The building on site shall be limited to the following days and times of operation:
    - i. Monday – Saturday: 10:00 am – 9:00 pm

ii. Sunday: 10:00 am – 8:00 pm

- c. The project is subject to a Transportation Impact Fee (TIF). The fee is calculated at \$15,308.32. Please note this fee is updated annually on July 1<sup>st</sup> based on the Engineering News Record Bay Area Construction Cost Index. Fees are due before a building permit is issued.
- d. The applicant shall offer a subsidy of \$20 per month for a transit pass for one employee, for as long as the use permit remains in effect. The Transportation Demand Management (TDM) plan for the project shall reflect this requirement.**

- F4. Use Permit/Aparna Saha/710 Willow Road: Request for a use permit to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption every day from 6:00 a.m. to 2:00 a.m. the following day, and to operate the existing service station and associated convenience store 24 hours a day, in the C-4 (General Commercial) district. As part of the review, the Planning Commission will need to determine whether the sale of alcohol at this location serves a public convenience or necessity, in accordance with the requirements of the State Department of Alcoholic Beverage Control (ABC). ([Staff Report #20-016-PC](#))

Staff Comment: Senior Planner Tom Smith said a couple of emails about the application had been received over the past couple of days. He said both expressed opposition to the project. He referred to one of the emails received yesterday. He said for background that on December 17, 2019 the City Council adopted an ordinance restricting the sale of flavored tobacco and electronic cigarettes in Menlo Park. He said that ordinance went into effect on January 15, 2020. He said the email received outlined concerns about the sale of flavored tobacco at the subject property. He said an individual who was a resident of the area and was trained by San Mateo County to volunteer with outreach to tobacco retailers about the new ordinance went to the subject store on March 4, 2020 and observed that there were flavored tobacco products on the shelves. He said the ordinance specified that if those items were even visible on shelves that was considered available for sale. He said because of concerns about potential violations of that ordinance staff had concerns with how that might translate to the ability to regulate alcohol sales at the site. He said staff's recommendation was to deny the use permit for alcohol sales and had prepared findings to do that. He said the Commission's options were to deny the use permit according to the new findings, to continue the use permit to gather more information and determine if compliance was being made in regard to the sale of tobacco, to approve the use permit with a condition that would place an expiration date on the use permit for sale of alcohol to gauge whether it was being done in the appropriate manner over time, or to approve the use permit with the conditions outlined in the original staff report.

Questions of Staff: Replying to Chair Barnes, Planner Smith said the new findings would be to deny the use permit to allow the sale of beer and wine at an existing service station convenience store for off-premises consumption and make findings that the proposed use would be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use in particular because the business had not demonstrated strict compliance with regulations related to the sale of tobacco such that the health and safety of persons residing or working in the neighborhood could not be ensured if the business was granted a use permit for the sale of beer and wine for off-premise consumption. He said a second option

would be to continue if there was a need to get more information and determine if the retailer had come into compliance with the sale of tobacco. He said this would involve staff going out to the site to see if it had been brought into compliance, and if so, return to the Commission for consideration of the reasons for the noncompliance and potentially to approve a use permit for the sale of alcohol based on bringing the site into compliance. Chair Barnes confirmed that potentially staff might return with a recommendation for denial.

Replying to Chair Barnes, Planner Smith said the third option would be to approve the use permit with an added condition placing an expiration date on the use permit so that after a period of a certain number of years or whatever timeframe the Commission determined the use permit would expire and the applicant would need to return to the Commission to request a new use permit to allow for continued sale of alcohol. He said there were two use permit requests. He said the first was for alcohol sales and the second was for 24-hour operations specifically between the hours of midnight and 6 a.m. He said staff had recommended denial of the 24-hour operation and the options he was listing only catered to the use permit for alcohol sales. He said the fourth option would be to approve the use permit for alcohol sales as originally recommended and deny the use permit for 24-hour operations.

Applicant Presentation: Aparna Saha said she had operated a business at this location since 1985. She said the reason for the incident mentioned by staff was that they received a letter from the City on January 2, 2020. She said she was about to leave on her trip outside the country that had been planned for a long time. She said on January 6 she called her supplier about the letter and that they would have to take all the material back. She said she called the City of Menlo Park, the City Manager's Office, and left a message and requested if they could get at least a four week extension as that was what the supplier was requesting. She said her message included that she would be out of the country and would return the last week of February. She said she also communicated with Cara Silver, who said she would work with her and asked her to send her a list of how much stock she had. She said she made a spreadsheet and sent it to her. She said she received a letter from Ms. Silver on January 22 that the City would not give any extra time. She said she was out of the country and informed her business manager to please stop all the sales of the flavored tobacco. She said she did not know that the items had to be physically removed from the site. She said she relayed to Ms. Silver she would be back the last week of February and would take care of it. She said when she returned, she fell ill and the first time she went to the site was March 4. She said she was taking inventory to give the suppliers when a person stopped by and was trying to take pictures from outside the kiosk as she was trying to do the inventory. She said she asked the person what she was doing and who she was with and the person did not answer and just came into the room and started taking pictures. She asked her if she was with the City of Menlo Park and the woman said yes. Ms. Saha said she asked for her business card but she did not. She said she again asked her if she was from Menlo Park. She said in her 30 plus years of operating a business in the City that whoever came from the City to the site for official business would introduce themselves and give a business card. She said the woman then indicated she was a volunteer working with the City of Menlo Park. She said she explained that they were not selling anything and she had just come in that day to deal with it, and was not aware they could not keep things on the premises. She said the woman told her then she could not store those on the premises. She said if it was not stored on the premises the cigarette companies would not take back those materials. She said since Ms. Silver's email on January 22 they had not sold any of the prohibited products. She said her business had never violated any rules and they had beautified the location. She said they accommodated neighbors by putting up no smoking signs on the property. She said they also have surveillance cameras all over the property. She said most

customers came into the site by car and did not park for a long time and walk around in the neighborhood.

Commissioner Riggs asked if any of the flavored tobacco was currently visible in the store. Ms. Saha said it was packed in a box and would be picked up by the supplier the following week.

Chair Barnes asked if the letter from the City arrived on January 2 and Ms. Saha responded to it on January 22. Ms. Saha said she responded the week after the letter came. She said Ms. Silver responded to her on January 22 in response to her request for an extension until the end of January informing her an extension would not be granted. Chair Barnes asked from January 22 to March when the photos were taken what was happening and why were the prohibited products behind glass and visible to people. Ms. Saha said she knew that they could not sell the products but she did not know it had to be removed or she would have had staff remove it and store it in a box until she returned from her trip. Chair Barnes asked whether the letter from the City on January 2 and Ms. Silver's response on January 22 said anything about removing the products from the shelf. Ms. Saha said no and that they talked about the extension.

Chair Barnes asked if staff knew whether the two correspondences indicated removing inventory from shelves. Planner Smith said they did not have copies of those letters. He said the ordinance specifically stated that an offering for sale is if tobacco products were sold and/or displayed in a retail establishment but he did not know if that was included in the letter or not.

Commissioner Kennedy said that the applicant received the letter and asked for more time, which was denied, and she was out of the town. She asked whether there was a way the applicant could have authorized the person on staff left in charge to follow up and remove the products from the display. Ms. Saha said she knew that they could not sell it but she did not know it could not be stored on the premises. Commissioner Kennedy said that was not her question. She said her question was the products were still on display until the applicant returned from her trip. Ms. Saha said that most of it was removed. She said one of the suppliers had taken all of the cartons but would not take the loose packs. She said for those she had to call the manufacturer Philip Morris. She said they could not be contacted unless she was here. Commissioner Kennedy asked if once the applicant received the letter if she took all the products out of display but they were still in the store. Ms. Saha said some of them were there. Commissioner Kennedy asked the applicant why she did not remove all of the products and put them away in a box. Ms. Saha said that the only storage area was one room where they kept all cigarettes so they could not be accessed. She said the day the photos were taken she was inventorying the loose packs to tell the manufacturer that those were what they had. She said the cartons were taken by the supplier in January. She said she was a very responsible citizen and knew what was good and bad and she knew once there was an ordinance you had to follow it. She said if they checked her 35 years of experience in business that they would see she had never violated any regulation.

Chair Barnes asked if the applicant wanted to talk about her use permit request for alcohol sales. Ms. Saha said prior to their remodel they had never thought about selling alcohol. She said after the remodel they asked customers for suggestions on what they could provide for better service. She said lots of requests came for 24-hour operation and for beer and wine. She said they thought about those and then went to City Planning to talk about it. She said the first thing they had to do was go to ABC which they did as well as the use permit application. She said ABC inspected the site and had no problem and were waiting for the approval from the Planning Commission. She said regarding the request for 24-hours service that they had customers who wanted them to be open after midnight as other places were closed. She said being open 24 hours would not boost

her business a lot but was for the convenience of the neighborhood people who had asked them to stay open. She said if the Planning Commission could not support that request that they would let their customers know they tried but it did not fly. She said they had no intention of selling alcohol after midnight or 2 a.m. She said the ABC stated alcohol sales were allowed from 6 a.m. to 2 a.m. the next day. She said they were open to conditions.

Chair Barnes opened the public hearing.

Public Comment:

- Michele Garff, Menlo Park, said she lived right around the corner from the subject property. She said her concern was for the safety, quiet, and cleanliness of what was happening on the street where her children played and commute to school. She said she appreciated that the store's appearance was improved. She said they had noticed unwanted behaviors in the increasing number of customers. She said as products could not be consumed on site people were gathering in the back corner or walking through the streets consuming products they purchased and smoking. She said there was trash on the ground. She said along the street were two stretches of fence and those were common places where people stopped as they were not directly in front of a house. She said they had had to clean up human feces twice from there and hypodermic needles. She said they were very unhappy with the extra traffic and the parking there. She said the staff report indicated it had to serve a public convenience or necessity and she felt with all the other places around including El Rancho Market that was only one block away selling alcohol it was not a convenience or necessity for people living in the Willows and the requests for these added services was not coming from her neighborhood.
- Karina Steib, Menlo Park, said she lived about a block away from the subject property and that it was a family neighborhood. She commented on the unsavory history of the area before it was cleaned up. She requested the Planning Commission help keep the neighborhood safe, and not just for the children, but for all the residents who lived there.
- Rocky Garff, Menlo Park, said he was a neighbor. He said he thought the data was misrepresented and referred to the letters and addresses in the packet. He said he thought only one address was actually within any proximity to the subject property. He said there was an address across the street, addresses in Fremont and in East Palo Alto. He said the applicants did not come to his neighborhood seeking input. He said he did not think the demand they indicated existed. He said there were plenty of other options for responsible adults to buy beer and wine in the area. He said he was not necessarily opposed to beer and wine sales but allowing it at those hours of the night was not needed as a person could drive to Safeway to buy beer and wine. He said the VA served veterans suffering from PTSD or addiction and did not allow smoking or alcohol there. He said some of individuals in those programs already walked around the neighborhood. He said giving them access to buy alcohol at midnight they would not have anywhere to consume it except on the neighborhood streets.
- Dev Datta, Menlo Park, said his home was about 400 yards away from the business. He said previous speakers had covered much of what he was going to say. He said nearly daily he was picking up litter from his driveway noting cigarette boxes and candy packets were thrown there. He said the observation that people consumed what they bought after they left in their cars from the business was not true. He said for the list of proponents of this proposal two people

were listed as living at 500 O’Keefe Street but there was no 500 O’Keefe Street. His address was 504 O’Keefe Street.

- Daniel Prodan said his home was directly adjacent to the rear of the gas station. He said he shared very much the concerns expressed by speakers. He said because of his home’s proximity the issues were amplified. He said for instance that a bedroom window was a couple of feet away from the air pump at the gas station. He said the project expansion created a rest area and restroom area for the patrons where they smoked and consumed. He said that they had to clean up a lot of stuff from that. He said a homeless person was allowed to live at the site and had been very loud. He said it took a great deal of effort to get that person removed from the site. He said he was concerned with extra traffic from alcohol sales, changed traffic patterns, and local children bicycling in that area.
- Brian Gilmer, Menlo Park, said some of the applicant’s comments this evening did not make sense. He said she commented she received the letter on January 2 and asked for a four week extension, yet on March 4, she was still not in compliance and that was much longer than four weeks. He said she also said she had never had a problem or violated any laws regarding tobacco sales. He said this site was cited for selling tobacco to minors in the past. He said there was a letter in the agenda packet with a link to that report. He said the applicant indicated she had addressed all the neighbors’ concerns. He said when they applied to become a convenience store in 2019 that he had several concerns including trash which the neighborhood gets daily (cigarette wrappers, candy wrappers) and delivery trucks blocking O’Keefe Street. He said he was told both concerns would be addressed by putting additional trash cans out and signs that no delivery trucks would park on O’Keefe Street. He said the trash cans did not exist and he had not seen any signs. He said he had pictures of two delivery trucks blocking O’Keefe Street and his neighbor’s driveway last week. He said he had lived in the Willows when there were a lot of problems with veterans with mental health issues. He said they used to have to roust people off of their lawn who had passed out from drinking. He said then they were not able to go to the park because people were drunk and abusive and he did not want the Willows to go back to those conditions. He said selling alcohol after 10 p.m. was a good introduction to going back to that kind of neighborhood. He asked the Commission to vote against alcohol sales and noted the ABC found there were three other locations in the neighborhood that sold off premise alcohol consumption and two with on premise alcohol consumption.
- Brian Gilmer said he was now speaking for Tricia Barr at her request. Replying to Chair Barnes, Mr. Gilmer said Ms. Barr was part of the organization trained by the County and Menlo Park to address flavored tobacco sales after January 17, 2020 and she lived on Willow Road. He said her letter was in the Commission’s packet so he would not read it in its entirety. He quoted that she was opposed to the subject property expanding its business to sell alcohol as it was detrimental to the health, safety, morals, comfort and general welfare of their neighborhood. She said the business had shown disregard for compliance with the laws governing the sale of regulated products. She said the business had been cited for selling tobacco to minors in the past and as of Monday, March 4, they were still displaying or selling flavored tobacco. She said there were other retailers nearby, one less than a block away, that sold alcohol, and this site was located within 400 feet of public and private schools, Willow School and the Alto School in addition to public parks. She said it was also located across from the Veterans Health Administration facility that had substance and smoking cessation services. She indicated she had met with all of the 21 businesses that sold flavored tobacco when the

ordinance went into effect. She revisited several times after that and every one except for this subject business was in compliance with the ordinance.

- Shawn Vanderhoven said his home was just around the corner from the subject property. He said his primary concern was for the kids and residents in the neighborhood. He said he was concerned about the risk of increase of motor vehicle accidents in the area and in studies they learned that fatal accidents had a four time increase after 10 p.m. He said his other concern was an increase in violent crimes noting the U.S. Department of Justice found that 40% of violent crimes occurred when people were under the influence or intoxicated. He said the data also showed between 10 p.m. and 2 a.m. the vast majority of crimes were committed. He said this was also disrespectful to veterans receiving services at the health facility across the street. He said he was opposed to the alcohol sales and 24-hour operations.
- Michael Palmer said he had submitted a long letter opposing the longer hours and sale of alcohol. He said from the foot traffic at the subject property neighbors on a weekly basis were dealing with trash. He said in the last two years he had to call the police about three different transients living in the bushes across from the convenience store. He said people gathered at the convenience store and hung out at the property. He said it was a small concentrated property without shelter from the neighboring community. He said he was opposed to the use permit.

Chair Barnes closed the public hearing.

Commission Comment: Commissioner Doran said for the record that the City Council lagged precipitously on this ordinance regarding flavored tobacco. He said 30 days notice over a holiday was not sufficient so he had some sympathy with the applicant on it. He said that did not really change his view of the application. He said he was very persuaded by the neighbors and their concerns. He said the presence of a Veterans Administration Hospital and its rules about drinking and smoking and its proximity to the subject property were further persuasive and he was inclined to vote against both use permits.

Commissioner Kennedy said the Commission had considered a couple of months prior an application for a use permit for a gas station to have alcohol sales for off premise. She said they debated for some time the merits of that request and with similar concerns. She said however that gas station was on El Camino Real adjacent to the train station and half a block away from a 7-11 that also sold alcohol. She said she agreed with Commissioner Doran and also, she looked at people acting in good faith. She said that she did not see good decision making or neighborliness on the part of the applicant. She moved to deny both use permit requests. Commissioner Riggs seconded the motion. He said he did not think a 24-hour operation right on the edge of a neighborhood was a good idea. He said regarding alcohol sales at first, he thought that was maybe okay and would help the business but there was no persuasive need or convenience.

Commissioner DeCardy said for the record that Ms. Barr was a friend of the family but he could fairly take into consideration all of the points that had been raised tonight.

Chair Barnes said it was certainly persuasive that something should have been done about the flavored tobacco sales but it was unclear what that all entailed. He said setting that aside he asked what made this business any different from Willow Market that was very close to his home and sold alcohol until 10 p.m. or what was different in this location from El Rancho Market, which sold

alcohol until he believed 9 p.m. He said Willow Market was open from 6 a.m. to 10 p.m. and El Rancho Market open from 7 a.m. to 9 p.m. He said that customer service and interface with the customers at Willow Market was fundamentally different from how the gas station convenience store was laid out. He said he had great confidence in how they monitored alcohol sales at Willow Market and he had seen how they did it at El Rancho Market. He said what was different about this facility was that he did not know if it would have the same ability to monitor the sale of alcohol. He said he decided that the sale of alcohol at this location was not appropriate. He said he did not make that decision lightly in terms of the applicant's ability to monetize their business.

Commissioner DeCardy asked what a denial meant. Planner Sandmeier said with a denial the applicant could appeal the decision to the City Council. She said if they did not appeal then after one year if things changed, they could apply again. She said for the motion it should clarify if the revised findings were part of the motion that referenced the tobacco sales or if other findings were being made.

Commissioner DeCardy said he was compelled primarily by the findings presented in the revised staff report. He said it was incumbent to show good faith and the fact of adhering to existing regulations regarding the sale of tobacco and alcohol. He said given the unique location of the business he thought it was a pretty high bar to have an expectation that there would be no instances of noncompliance. He said he would support denial.

Chair Barnes said there was a lack of specificity, documentation and investigatory process to state that the applicants were not in strict compliance with regulations related to the sale of flavored tobacco. He said he was a bit uncomfortable in making the findings for denial of beer and wine sales that included flavored tobacco due to the lack of documentation for them to review.

Commissioner Kennedy said if the applicant had a spotless record and if at least one other of the other 21 businesses that sold flavored tobacco in Menlo Park had the same obstacle regarding leaving products on the shelves then she would give the applicant the benefit of the doubt. She said they had a link to a document reporting the business was in violation of selling tobacco to a minor. She said the applicant said she was the only one authorized to remove those tobacco products from the space. She said how was the Commission to know in good faith that 24 hours a day when they were selling alcohol that there was a person of sufficient responsibility to make the decisions around selling alcohol to anyone who came into the business and whether it was someone who already had been drinking whether they drove or came from across the street, whether they were buying for someone else and where they were going after the purchase. She said this business was not the place for alcohol sales and 24-hour operation on the edge of a residential neighborhood was not appropriate. She said she understood the need to make a living but she thought it curious that the request to sell alcohol came after the loss of the ability to sell flavored tobacco. She said her motion to deny stood with the revised findings presented by staff.

Chair Barnes asked if they knew other than hearsay if 21 other locations complied. Commissioner Kennedy asked how many purveyors of flavored tobacco were in Menlo Park. Planner Smith said they did not have that information at this time.

Commissioner Michele Tate confirmed with staff that the hours of operation currently were until midnight.

Commissioner DeCardy said on page 4 of the attachment from Ms. Barr was a letter from Behavioral Health and Recovery Services. He said he used his phone to magnify to read it and it looked like it stated very clearly (and was posted by the owner on the window of the establishment) that as of January 17, 2020 you had to be in compliance and between December 26 and January 17 make that happen, that a copy of the ordinance was at this location, and please call if you have any concerns.

Chair Barnes confirmed they were looking at a Cease and Desist letter and asked Planner Smith to read it. Planner Smith read: dated December 26, 2019; Dear Storeowner, On December 17, 2019, the Menlo Park City Council adopted an ordinance restricting the sale of all tobacco products in pharmacies and flavored tobacco products and electronic cigarettes, vaping products in tobacco retailers in the City of Menlo Park. Free samples, coupons, out of package samples and self service displays of tobacco products are also restricted. The ordinance will go into effect on January 17, 2020. We hope that the time between the adoption of the ordinance and the effective enforcement date provides you with enough time to reduce your inventory and comply with the ordinance. A copy of the adopted ordinance can be found here ([link](#)). Please contact us at [TobaccoPrevention@smcgov.org](mailto:TobaccoPrevention@smcgov.org) or our phone number if you have any questions about the ordinance. Thank you for your compliance. He said the letter was from the Tobacco Prevention Program Director for San Mateo County Health, Francesca Lomotan.

Chair Barnes said it was somewhat academic and he was agreeing with it but the letter to him did not say take it off the shelves right away nor did he know if the letter from the City had said that.

Recognized by the Chair, Ms. Saha said it was false that homeless people slept at their site as they kept the gates locked. She said referring to littering that their property was always neat and clean. She said their restrooms were very clean. She said one of the speakers met with her the middle of last year because of complaints to the City about litter. She said when asked what kind of litter, he indicated beer cans. She said that had to come from somewhere else. She said people living on Regal Court or Arnold Way were too far inside from the gas station and people coming to the gas station did not walk around those streets. She said regarding compliance they had software that scanned a person's id and if the person was not 21 years old the cash register would be blocked from making a sale. She said that someone indicated they had sold cigarettes to a minor. She said she wanted to know when that was. She said in the last 10 years and the time she could recall that she had never seen such a citation. She said the franchisee Philips 76 used mystery shoppers and they always scored 95% and above as their site was the neatest and cleanest site. She said it was a false allegation that they had sold flavored tobacco after the ordinance was effective. She said she had high respect and regard for the VA. She said El Rancho Market was closer to that facility. She said most of her customers came into the site from Willow Road. She said she would like to see the picture of the delivery truck on O'Keefe Street as she did not think it was for her business as she had designated locations for deliveries. She said she suspected litter came from the other market. She said gas station customers did not park and then walk for two blocks and waste their time. She said she was the one who had to deal with \$10,000 worth of material with the supplier not that staff had no authority to make important decisions.

Commissioner Riggs said in making his second he did not want to bring in the tobacco issue. He said he wanted to be clear he would deny the sale of alcohol during the current store hours regardless of any tobacco issue as it would override the ABC's basic concentration and he did not see the benefit it would serve. He said for him he would add there was no overriding need or benefit to increase the concentration per ABC's formula.

Commissioner Kennedy asked staff to confirm that her motion to deny would not preclude the applicants from coming back in a year and applying for a use permit. Planner Sandmeier said that was correct.

Commissioner Riggs asked if Commissioner Kennedy would consider adding after consumption the phrase *and does not demonstrate an overriding need or benefit for beer and wine sales*. Commissioner Kennedy accepted the addition to the motion.

**ACTION:** Motion and second (Kennedy/Riggs) to make the findings to deny the use permit requests as follows; passes 6-0-1 with Commissioner Kahle absent.

1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines.
2. ***Deny the use permit to allow the sale of beer and wine for off-premises consumption, and make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will be detrimental to property and improvements in the neighborhood and the general welfare of the City because the business has not demonstrated strict compliance with regulations related to the sale of tobacco, and the health and safety of persons residing or working in the neighborhood cannot be ensured if the business is granted a use permit for the sale of beer and wine for off-premises consumption, and no overriding need or benefit for beer and wine sales is demonstrated.***
3. Deny the use permit for business operations after midnight based on the following criteria set forth in Section 8.12.010 of the Municipal Code:
  - a. Residents have submitted correspondence indicating concerns and existing issues, such as noise, light, litter, and loitering, related to operations at the service station and convenience store, as well as other commercial properties in the vicinity. The permit would allow activity which interferes with the peace and quiet of persons of ordinary sensibility while enjoying property in use as residential property.
  - b. Thirty-four residential parcels are located within 300 feet of the subject property. The number of residents affected by business operations after midnight at the site would be significant.
  - c. The extent of interference would be significant, given that the subject parcel is surrounded by a number of residential properties and located at one of the few entrances into the Willows neighborhood from Willow Road.
  - d. The existing business is not currently operating between the hours of midnight and 6:00 a.m.
  - e. Hardship to the business from loss of income or other factors would be minimal since the business is not operating during these hours at present.

Chair Barnes recessed the meeting for a short break at 10:18 p.m.

Chair Barnes called the meeting back to order at 10:24 p.m.

## **G. Regular Business**

- G1. Housing Element Annual Report/City of Menlo Park:  
Opportunity to consider and provide comments and/or a recommendation to the City Council on the 2019 Annual Report on the status and implementation of the City's Housing Element (2015-2023). ([Staff Report #20-017-PC](#))

Staff Comment: Mike Noce, Housing Division, introduced Rhonda Coffman, Deputy Community Development Director. He presented an overview of the City's Housing Element Annual Report. He said the current Regional Housing Needs Allocation from the State for the 2015 to 2023 cycle was 655 dwelling units. He said in the next Housing Element they expected that number would be higher. He said the Annual Progress Report (APR) was due on April 1 each year. He said the City Council would receive the report on March 24. He said the APR tracked the life cycle of project applications and if a development had no action items, did not receive approval or construction permits, it would not be reflected in the APR. He said that there could be gaps in when a development was reflected in an APR. He said staff however tracked those numbers.

Mr. Noce said for 2019 their current number was 196 dwelling units and had received building permits. He said 183 of those units were attributed to 1300 El Camino Real, the Station 1300 project, which included 20 below market rate units (BMR) with 14 units at low income and six units at moderate income. He said the City was one of 28 jurisdictions in California that were still under the SB 35 exemption, which could change in the future. He said currently they were maintaining their Regional Housing Needs Assessment/Allocation (RHNA) numbers. He said they had four Accessory Dwelling Units (ADU) submitted in 2019. He said that number decreased from 2018 but was expected to increase with the changes in State law. He said the PowerPoint would be part of the minutes going out to the public. He said for very low income they were 63.5% complete; for low income 43%, and for moderate income 7% complete. He said they had far exceeded the above moderate income level. He said their allocation was 150 units and they had 947 such units to date permitted and most completed.

Mr. Noce said regarding units he mentioned that might not appear on the 2019 APR under construction or approved that they had 439 market rate units, 6 moderate, 32 low and 58 very low or extremely low. He said in addition they had about 3200 units in the application pipeline. He said four developments to date had been submitted under the SB 30 streamlining that would move through the process of review quite a bit faster.

Mr. Noce referred to milestones and said the City Council approved a Tenant Relocation Assistance Ordinance that reduced the disruption of tenants facing relocation for households at 80% average median income or lower and only on parcels with five or more units. He said meeting requirements a renter could qualify for three months of rent reimbursement or four months for special circumstances. He said the Council also in 2019 approved ahead of AB 1482 taking effect the Rent Limits and Just Cause Urgency Ordinance, which went into effect in November 2019. He said they also had two Funding Agreements, one for 1300 Willow Road, which would result in 58 net new units at the extremely low and very low range. He said the development would have a total of 140 units and \$6.7 million was approved by the Council. He said they also had a preservation project for \$635,000 that was also approved for Willow Court at 1105 and 1141 Willow Road for six existing BMR units. He said they also created a Homeless Outreach team that focused on some of the vulnerable populations in the community. He said the team had members from the Housing Division, the Police Department, and a nonprofit called LifeMoves that coordinated outreach, provided resources and a path for anyone needing that assistance. He said they worked with individuals on a case by case basis. He said the City was assisting MidPen on their 1300 Willow

Road project with a component of the funding going to the production and a smaller component was reserved for bicycle and pedestrian improvements needing coordination from the City, Caltrans and the applicant. He said they offered a First Time Homebuyers Workshop in March 2019 with HEART (Housing Endowment and Regional Trust) of San Mateo County. He outlined other efforts made.

Questions of Staff: Commissioner DeCardy asked about the purpose or intent of the APR. Mr. Noce said the State required the City to report annually on how it was doing with its housing production. He said it was really a progress report on the City's housing production every year. He said the RHNA numbers were the City's requirement for the number of housing units that needed to be produced.

Chair Barnes asked about the general zoning amendments that were proposed on the last slide. Deputy Community Development Rhonda Coffman said those related to the planning grant application under SB 2 that the City submitted for \$160,000. She said they had to identify programs or activities that had the capacity to accelerate housing production. She said they identified two specific projects with one related to ADUs and that was to amend the zoning, not only to comply with the State law, but do a more comprehensive zoning update around ADUs. She said in addition they had proposed developing some user navigation tools to make it easier for residents to navigate the process of getting an ADU permitted. She said the other was looking at potential zoning amendments in the El Camino Real / Downtown Specific Plan area that might increase housing production. Replying to Chair Barnes, Ms. Coffman said this was not yet formulated but was in context with what the next, the sixth, RHNA cycle as that was anticipated to be the most difficult to comply with of all the cycles to date. She said all communities were anticipating a significant increase in their RHNA allocations and every city would have to identify where those housing units would be built. She said that would require all cities to look at their zoning.

Chair Barnes opened the public comment period.

Public Comment:

- Karen Grove, Housing Commission, said she was speaking on behalf of the Housing Commission and providing highlights of their discussion of the APR at its meeting the previous week. She said the City was building many more market rate housing units than required by the RHNA numbers which was a positive. She said where those homes were built and for whom mattered as well. She said most of the housing the City was producing was built on the Bayside where there was not great access to transit and no services. She said where the City could improve was to build housing more equally for everyone. She said they were not meeting the goals for very low income, low income and especially for moderate income where they were missing 132 out of the 142 required. She said very low income included the extremely low income category. She said at a recent roundtable on homelessness it was noted that even when cities were doing a fantastic job of housing the homeless that more people were entering homelessness than were being housed. She said the people most at risk at becoming homeless were generally earning but earning extremely low incomes. She said the RHNA numbers did not specifically call out extremely low income but it was very important and the City had nothing except the numbers in the pipeline. She said the Housing Commission noted that the City was overachieving in market rate housing but that only served the top 10 to 20% of earners and were underachieving in the other areas. She said they wanted to focus on the latter and would love to partner with the Planning Commission in terms of zoning when there

was an opportunity to up zone downtown near transit and services for the very low and extremely low, low and moderate income earners. She said that could be done through deed restriction or working with an affordable housing builder. She said it could be deed restricted ADUs or non-deed restricted ADUs considered in one of the low income categories. She said they also discussed the idea of having the Notice of Funds Available (NOFA) have an over the counter process such that any time someone could submit a proposal in addition to the bi-annual consideration of a pooled set of applications. She said they also hoped the City would be aggressive and proactive in pursuing the development of housing at the USGS site.

Chair Barnes closed the public comment period.

Commission Comment: Commissioner Tate thanked the Housing Commission and staff for their hard work. She said she totally agreed with everything Commissioner Grove said and hoped the Planning Commission would be able to support in moving forward. She said she also hoped in some way they would be able to make housing a priority for Council as she felt like it was sliding further and further down as a priority. She asked for the slide with the numbers to be shown. She said right now she thought the low and the very low income housing numbers related to MidPen projects. Mr. Noce said the very low was a combination of extremely low and very low and most of that portion was related to MidPen projects. Commissioner Tate said hopefully they could find space with the parking lots or elsewhere on City-owned property to increase those numbers.

Commissioner Kennedy said she wanted to echo Commissioner Tate's appreciation to the Housing Commission and staff. She said she recently started looking for a new place to live and unsurprisingly found it was nearly impossible to find an affordable three-bedroom home of any size anywhere in the City. She said significant housing stock was being built that was beautiful, two-bedroom and tiny but unaffordable. She said she did not know how they could fix the situation as building construction costs were rising and building was being done for the jobs being created and those job holders were getting younger and younger and the housing stock was getting older. She said there was no incentive to protect the housing stock that could house a small family.

Commissioner DeCardy thanked Commissioner Grove and the Housing Commission. He said density was clearly a piece of the solution and he believed they needed to look at density where no one wanted to look at it and that was where single-family residences were zoned now. He said they were doing it exactly in the opposite direction with projects demolishing duplexes and replacing with single-family residences. He said density in all its forms, in all places, including looking at all the most uncomfortable places had to be on the agenda. He said transportation needed to be on the agenda. He said the incentives for transportation to get people in and out as there were way too many jobs for any total amount of housing long term and they were failing at that. He said they were failing at that in the micro and failing at that deeply in the macro. He said he was not surprised that they were overproducing housing at over moderate income. He said every time they discussed BMR applicants would say the only thing possible was above moderate as it penciled out. He said they needed to change that penciling out so extremely low, very low, low and moderate income units were incentivized to meet the housing needs. He said this was beautifully illustrated in the report and City Council should be able to recognize the same thing in the report.

Chair Barnes asked how much money was currently in the BMR fund. Mr. Noce said the last report would have been part of the rehabilitation approval in November 2019 and that was just over \$9 million and with anticipated funds he believed that would be closer to \$15 million. Chair Barnes

asked how they saw that money being used and whether there were sites in the City for use. Ms. Coffman said NOFA included several activities the funds could be used for and those were preservation of existing affordable housing and usually included rehabilitation to keep the housing in good condition; new construction of affordable housing and site acquisition and sometimes site acquisition and rehabilitation. She said \$15 million did not go far in Menlo Park and was not enough to buy a site. She said the strategies that worked was when cities actually acquired a site or had land. She said land was so much more vital for nonprofit developers to attract them to come and to develop. She said what the Housing Commission subcommittees had been discussing was looking at other strategies of identifying some sites for sale as the BMR funds grow. She said they put NOFA funds out every two years. She said they had two applications for the last cycle and one withdrew. She said land was a successful strategy for getting affordable development.

Replying to Chair Barnes, Ms. Coffman said when a site comes up for sale that they were looking for opportunities in having partners, nonprofit partners that were agile and ready to move on those sites. She said it was hard for a city to be agile and use funds to acquire a site. She said she was trying to build relationships with those partners and bring those nonprofit affordable housing developers to Menlo Park to look at what was available. She said they certainly had sites identified in the Housing Element as opportunity sites but those had to be on the market.

Chair Barnes said he saw a lot of potential for density in the Downtown Specific Plan area but thought it would take tremendous political will to be able to strike village character from the Plan. He asked if there were other ideas for where density might go. Ms. Coffman said as mentioned the expectation was the sixth cycle of RHNA was going to be the most difficult that any city ever encountered. She said the current cycle was 655 units and 10,000 units was being tossed around as what the City of Menlo Park might get as allocation need in the next cycle. She said that meant the City would have to look very strategically at where they could site that housing. She said in the new Housing Element there were two new requirements. She said there was the affirmatively furthering fair housing requirement, which required a city to look at where affordable housing was sited within its city so it could not be concentrated in one area. She said if it was then they had to look at how to deconcentrate it and make sure it goes into areas where it was not currently. She said also there was an environmental justice requirement. She said they were getting affordable housing on the east side of Menlo Park and not the west side due to where the development opportunities were. She said the new state law around housing element now had some enforcement mechanisms so cities were going to have to comply with some of these new requirements. She said they were going to have to look very strategically citywide at where higher density could be located. She said a lot of that was directed to be near transit and transit corridors which naturally made the downtown and El Camino Real areas of interest.

Commissioner Tate asked in the quest for land and nonprofit partners whether the public parking lots had been considered as land as it was owned by the City. Ms. Coffman said last year when she started with the City the City Council was going through their prioritization and the downtown parking lot was lowered in priority but was still on the list. She said there had been some discussion through this year's Council priority setting so she hoped that would continue to be considered. She said with the new Housing Element cycle it would have to be considered as they would need to look at all the City-owned land inventory and evaluate where housing could be developed. Replying further to Commissioner Tate, Ms. Coffman said staff was now having to commence work on the new cycle that would start in 2023. She said it would take the next two years to develop all the plans to prepare a Housing Element. She said a Housing Element typically required zoning amendments. Commissioner Tate said 2023 was too far to start considering the

City-owned land. She asked what Ms. Coffman's recommendation was for getting that fast tracked. Ms. Coffman said the City Council had to make it a priority. Commissioner Tate asked if the Housing Division and Housing Commission had done any studies on it to present to City Council as a good thing to look at before the close of the Housing Element in 2023. Ms. Coffman said the Housing Division staff was Mr. Noce and herself. She said that they had priority work items they had been working on and took direction from City Council based on what it wanted the Division to work on. She said the past year they had been working on short-term rental regulations along with the Housing Commission and other studies. Commissioner Tate said she recalled when she was on the Housing Commission that Commissioner Merriman had indicated there were resources out there that would not cost a lot to evaluate and do scoping. She said maybe it was the Housing Leadership Council. She asked if that was something the Housing Commission might work on with another resource outside to at least get scoping done to see what was possible and present it. She said that way it was not affecting staff time necessarily but putting something in motion. She said it was a question as she did not know if that was possible or not. Ms. Coffman said scoping was possible and that was a great idea to get the City some information to be able to make decisions. She said she would just caution though that any kind of study needed staff time as the City had procurement requirements staff had to oversee. Commissioner Tate said as she recalled the cost was very low and if she remembered correctly that the Housing Leadership Council might have already done some work around this area once before so there were pieces of this work already done.

Commissioner Doran asked what the timeline was for getting the money for the SB 2 grant. Ms. Coffman said the application had basically been approved but the applications had to go to the Loan Committee for final approval after which letters were generated. She said probably within 30 to 60 days they would receive the letter and grant agreement.

Commissioner Riggs said the parking lots were studied for housing in 2015. He said with the replacement parking and parking for the units it was found that the buildings were expected to be six or seven stories at which point he recalled interest dwindled. He said there was land on El Camino Real that could be repurposed and pointed out the Charles Schwab building and 700 El Camino Real. He said the Charles Schwab building might be on City owned land. He said 700 El Camino Real would have to be purchased. He said the bottom line and irony was the housing need was driven primarily by the office buildings. He said cities expressed the need for housing and continued to approve large office projects. He said he had not seen much office space approved lately in Menlo Park. He said they could address this directly by buying some old office buildings and demolishing them.

Commissioner Kennedy said along El Camino Real up to Belmont that parking lots were gone along the train tracks and housing built. She said she did not think it should be just along the rail side of El Camino Real in Menlo Park and there had to be a counterpoint on the other side. She said bringing this into deeper west Menlo was the only way to get people to see that it was possible to do density housing in a way that was attractive and helpful. She said the City's parking lot was not optimal but the Safeway shopping center was for such redevelopment.

Chair Barnes said there was a focus on rentals in the housing production numbers but he did not want for sale units forgotten. He said staying a renter in perpetuity was great for the development companies but not so great for people trying to build wealth including buying into units. He said in the downtown area he would like to see incentives to build for sale units and he would like to see how they could increase development of for sale units.

Commissioner Tate said she liked that idea and at all income levels.

Replying to Chair Barnes, Mr. Noce said they would provide a summary of Commission comments when they took the item to the City Council.

**ACTION:** Motion and second (Barnes/Kennedy) to recommend the City Council accept and approve the 2019 Annual Housing Element Progress Report; passes 6-0 with Commissioner Kahle absent.

## H. Informational Items

### H1. Future Planning Commission Meeting Schedule

- Regular Meeting: March 23, 2020

Planner Sandmeier said the next Planning Commission meeting would be at the Menlo Park Senior Center at 100 Terminal Avenue. She said the agenda would have one single-family residential development at 11 Greenwood Place, a use permit request and architectural control for West Bay Sanitary District for their 700 Marsh Road facility, a study session for 100 to 110 Terminal Avenue for future architectural control to demolish the existing Onetta Harris Community Center, Menlo Park Senior Center, Belle Haven Youth Center and Belle Haven Pool and construct a new multi-generational community center and library. She said a study session would be held for 165 Jefferson Drive, which was a proposal for 158 multi-family dwellings and 14,422 square feet of commercial space.

- Regular Meeting: April 6, 2020
- Regular Meeting: April 20, 2020

## I. Adjournment

Chair Barnes adjourned the meeting at 11:24 p.m.

Staff Liaison: Corinna Sandmeier, Senior Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on April 6, 2020