

CITY OF MENLO PARK PLANNING COMMISSION

REPORTER'S TRANSCRIPT OF PROCEEDINGS

MONDAY, MAY 3, 2010

CITY COUNCIL CHAMBERS

MENLO PARK, CALIFORNIA

Reported by: MARK I. BRICKMAN, CSR RPR
License No. 5527

1 ATTENDEES

2 THE PLANNING COMMISSION:
3 Jack O'Malley - Chairman
4 Vincent Bressler - Vice Chair
5 Henry Riggs
6 Katie Ferrick
7 John Kadwany
8 Melody Pagee
9 Kirsten Keith

10 CITY STAFF

11 Deanna Chow, Senior Planner
12 Justin Murphy, Development Services Manager
13 Megan Fisher, Associate Planner
14 William McClure, Esq., City Attorney

15 ---o0o---

16 BE IT REMEMBERED that, pursuant to Notice of
17 the Meeting, and on May 3, 2010, at the City Council
18 Chambers, Menlo Park, California, before me, MARK I.
19 BRICKMAN, CSR No. 5527, State of California, there
20 commenced a Planning Commission meeting under the
21 provisions of the City of Menlo Park.

22 ---o0o---

1 AGENDA

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1 CHAIRPERSON O'MALLEY: Good evening.
2 Welcome. I'm Jack O'Malley, Chair of the Planning
3 Commission and I'm calling this meeting to order. To my
4 right is Katie Ferrick, followed by Kirsten Keith, Henry
5 Riggs.

6 To my left is Vince Bressler and John
7 Kadwany, and I'm expecting Melody Pagee to be here
8 tonight, but she's not here at the moment.

9 With staff, we have Justin Murphy and I
10 think -- is that Megan there? I can't see, Megan Fisher
11 and Deanna Chow is here somewhere roaming around the
12 room.

13 MR. McCLURE: There she is.

14 CHAIRPERSON O'MALLEY: She's there, as
15 well, okay, and Bill McClure, our City Attorney.

16 Welcome. We're at the Public Comments
17 portion of the meeting. Under Public Comments, the
18 public may address the Commission on a Consent Calendar
19 item for any subject not listed on the agenda within the
20 jurisdiction of the Commission.

21 When you do so, please state your name,
22 city or political jurisdiction in which you live for the
23 record.

24 The Commission cannot respond to non-
25 agendized items other than to receive testimony and/or

1 provide general information, and if you want to speak
2 either now or later on, there's a need to complete a
3 speaker request card that you can find back on the
4 tables, and I will try to enforce a time limit of three
5 minutes to each speaker.

6 And when you approach the microphone,
7 please again state your name and address, who you
8 represent and the subject of your remarks.

9 Items on the Consent Calendar are
10 considered routine in nature, require no further
11 discussion by the Planning Commission and may be acted on
12 in one motion unless a member of the Planning Commission
13 or staff requests a separate discussion on an item.

14 We have three items on the Consent
15 Calendar. The first is approval of minutes from the
16 February 22nd, 2010 Planning Commission meeting.

17 COMMISSIONER KEITH: I'd like to call
18 those -- pull those.

19 CHAIRPERSON O'MALLEY: So that's pulled.

20 The second item is approval of minutes
21 from the March 22nd, 2010 Planning Commission meeting,
22 and the third item's approval of transcripts from the
23 April 19th, 2010 Planning Commission meeting.

24 And I see that Melody Pagee is here.

25 The -- I think we can -- can I have

1 consensus on items two and three at this stage?
2 Consensus?

3 All right. And do you want to discuss
4 number one right now?

5 COMMISSIONER KEITH: Certainly. Just --
6 I looked at the change, the proposed change to the
7 minutes, and just in the last part where it says: "Do
8 not object to the use of turf," I'd like to have either
9 did not comment or they did not object or support,
10 because there was no discussion.

11 So it shouldn't be just that they did not
12 object.

13 I propose that we say that they did not
14 comment or they did not object or support.

15 CHAIRPERSON O'MALLEY: Do we have any --
16 any objections to that change?

17 COMMISSIONER RIGGS: I would just like to
18 verify with staff that although we are correcting to
19 verified events at the Commission, there's the issue of
20 what was said or was not said in the document that
21 purports to say what was said.

22 We had a similar issue at another recent
23 meeting where something was misstated, but we
24 acknowledged that the report had to correctly reflect the
25 misstatement.

1 COMMISSIONER KEITH: I appreciate that,
2 as well. If we're going to say, you know, there's a
3 misstatement, then there needs to be something to say
4 what the accuracy is.

5 It's just not accurate. We had this
6 discussion already last time. I don't want to, you know,
7 beat a dead horse.

8 COMMISSIONER RIGGS: Well, through the
9 Chair, I'm willing to suggest wording. I've done meeting
10 minutes for twenty or thirty years, and typically when
11 late information comes in, what I do is in parentheses
12 put the phrase subsequent to the meeting such and such
13 was verified.

14 So the parentheses and the phrase
15 "subsequent to the meeting" would identify that this is
16 clarifying information, not a report of words that were
17 said at that time.

18 I don't know what staff's position would
19 be on that.

20 CHAIRPERSON O'MALLEY: Sounds reasonable
21 to me.

22 COMMISSIONER KEITH: Right. I guess it
23 could say: "Subsequent to the meeting, it was learned
24 that the City's Park and Recreation Commission had not
25 approved its use unanimously."

1 MS. CHOW: If I may just clarify, I did a
2 con -- a follow-up conversation with attorney with media
3 regarding these changes in the minutes, and these words
4 that were provided to you this evening on February 22nd
5 minutes do reflect his -- his conversation or his
6 recollection of the meeting.

7 And so he did specifically say he
8 wanted -- did not object to the use of the turf because
9 they did not necessarily support it in the proactive, but
10 they had the opportunity to object and no one did, and so
11 he felt that accurately reflected the Commission's input.

12 COMMISSIONER KEITH: I guess -- I mean,
13 on that, it's nice if you recollect something, but that's
14 not what was on the tape. So I kind of prefer what Henry
15 just said. "Subsequent to the meeting, it was learned
16 that the City's Park and Rec Commission had not approved
17 its use unanimously."

18 MS. CHOW: And I don't think Mr. Nino
19 would feel comfortable with that statement.

20 COMMISSIONER KEITH: I just don't think
21 that this is not accurate, either.

22 CHAIRPERSON O'MALLEY: Then I -- I'm
23 going to suggest that we go back to basics and table this
24 till the next meeting and have some more discussions on
25 it.

1 Perhaps we can get you together with Mr.
 2 Nina.
 3 COMMISSIONER KEITH: No. I have no
 4 desire to do that.
 5 CHAIRPERSON O'MALLEY: You don't? Okay.
 6 Well, how do we handle this.
 7 COMMISSIONER KEITH: Let's table it to
 8 another meeting because we have more important things to
 9 do here tonight.
 10 CHAIRPERSON O'MALLEY: Let's do so.
 11 Tabled now.
 12 All right. Moving on, there is no Public
 13 Hearing. We're at the Regular Business now, and the item
 14 on the regular business I have -- rather than read
 15 everything on two or three pages -- or two pages --
 16 MS. CHOW: Through the Chair.
 17 CHAIRPERSON O'MALLEY: Yes.
 18 MS. CHOW: If I may clarify, did you take
 19 action on the March 22nd and then the transcript minutes?
 20 CHAIRPERSON O'MALLEY: Yes, we did.
 21 MS. CHOW: That was unanimous support for
 22 both of those two items.
 23 CHAIRPERSON O'MALLEY: That's right.
 24 MS. CHOW: And that was inclusive to
 25 Commissioner Kadvany's changes to the March 22 minutes

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1 that were received this evening?
 2 CHAIRPERSON O'MALLEY: I didn't see them.
 3 I haven't a copy. I was not even aware that there were
 4 some changes to it.
 5 May I see it for a second?
 6 Okay. Everybody have a copy of that?
 7 COMMISSIONER KEITH: Yes.
 8 CHAIRPERSON O'MALLEY: Any problems? I
 9 guess they approved having read it, but I was the only
 10 one who hadn't read it.
 11 All right.
 12 MS. CHOW: Okay. Thank you.
 13 CHAIRPERSON O'MALLEY: The agenda item
 14 D-1 regarding the Menlo Gateway project is continued from
 15 the Planning Commission meeting of April 19th, 2010. A
 16 Development Proposal involves applications for a General
 17 Plan Amendment, Zoning Ordinance Amendment, Rezoning,
 18 Development Agreement with Conditional Development
 19 Permit, Tentative Parcel Maps, Heritage Tree Removal
 20 Permits, Below -- Below Market Rate Agreement and
 21 Environmental Review by Bohannon Development Company for
 22 property -- for property located at 101 to 155
 23 Constitution Drive and 100 to 190 Independence Drive.
 24 The individual applications are described
 25 more particularly on the agenda. The Planning Commission

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1 is scheduled to make a recommendation to the City Council
 2 on all the items listed above at tonight's meeting. The
 3 City Council will be the final decision-making body on
 4 the proposed project.
 5 We are going to change procedure. I don't
 6 know if everybody in the audience has a copy of this.
 7 We're going to start out with introductory remarks from
 8 staff and then have the applicant presentation to provide
 9 updates, and then we'll have the Public Comment after
 10 that limited to -- too new information since the April
 11 19th meeting, and then we'll have Commission's questions
 12 of staff and then Commission questions of the applicant
 13 team, and then Commission discussion and comments
 14 considering all comments provided to date, including
 15 written and speaker comments provided at the April 19th
 16 meeting.
 17 And then we'll go with recommendations or
 18 lack thereof on main policy issues, and if we do
 19 recommend, then we'll go possibly with recommendation to
 20 various applications listed on attachment A with one
 21 motion or multiple motions.
 22 So with that, I turn the meeting over to
 23 staff.
 24 MR. MURPHY: Yes. Thank you. Good
 25 evening, Chair O'Malley and the Planning Commission. I

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1 just would like to provide a few introductory remarks.
 2 Tonight is the second of two meetings on
 3 the Menlo Gateway project. On April 19th, the Planning
 4 Commission held a Public Hearing. The Commission closed
 5 the Public Hearing after receiving comments from
 6 seventeen people.
 7 The staff memorandu -- memorandum prepared
 8 for tonight's meeting supplements the April 19th staff
 9 report with clarifications regarding the construction pro
 10 forma, updates regarding the project architecture and the
 11 Conditional Development Permit.
 12 The Conditional Development Permit is
 13 included as attachment B and C to the memorandum.
 14 Attachment B is a clean copy. Attachment C is a red-line
 15 copy showing the changes.
 16 Since the printing of the memo last
 17 Thursday, staff has received twelve pieces of
 18 correspondence. Hard copies have been provided to the
 19 Commission this evening and additional copies are
 20 available at the back table.
 21 Seven other pieces of correspondence are
 22 related to the proposed tree removals associated with the
 23 project.
 24 If the Commission has questions about any
 25 of the items raised in correspondence, staff would be

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1 happy to field questions at the appropriate time this
2 evening.

3 The purpose of tonight's meeting is for
4 the Planning Commission to formulate its final
5 recommendation for the City Council on the proposed
6 project, the environmental review and the requested
7 applications. The City Council is scheduled to hold a
8 Public Hearing on May 25th, 2010.

9 To assist the Commission in formulating
10 its recommendations, staff in consultation with the Chair
11 prepared recommended meeting procedure as outlined by the
12 Chair just now.

13 As the first step this evening, the
14 Commission should confirm that the recommended
15 proceeding -- meeting procedure is acceptable and make
16 any refinements as necessary before proceeding with the
17 rest of the meeting.

18 The procedure is included in the
19 memorandum and on the additional handout provided
20 tonight.

21 That concludes my introductory remarks,
22 and I'd be happy to address questions regarding the
23 procedure now; otherwise, other questions should come
24 later as outlined in the recommended procedure.

25 Thank you.

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1 CHAIRPERSON O'MALLEY: Hold off for a
2 second.

3 Do we have approval among the Commission
4 to proceed with this -- the meeting procedures just
5 defined? Anybody have a problem with that?

6 I believe the last time we -- we did this,
7 it worked quite well.

8 Now would the applicant come forward,
9 please.

10 MR. BOHANNON: Good evening. I'm David
11 Bohannon. On behalf of Bohannon Development Company, I
12 want to thank the Planning Commissioners for your
13 thoughtful deliberations on this important project for
14 Menlo Park, and thank you for your time and input at your
15 last meeting on April 19th.

16 We hope that this Commission feels we've
17 responded to your concerns in a meaningful way.

18 Tonight, Tom Gilman of DES Architects will
19 make a brief presentation of some studies we've done for
20 the hotel and for the Commission's feedback on those
21 studies.

22 We will continue to refine these designs
23 and -- as we move forward with the project.

24 Also here with us is Andrea Traber from
25 KIMA and Mike Mowry of Kimley Horn. Andrea is our

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1 sustainable and LEED consultant and energy, as well.
2 Mike is our traffic consultant.

3 Also Joanne Breon of Breon Associates, an
4 urban economist with the project team.

5 Thank you again for your time and your
6 effort, and we ask that you recommend approval to the
7 City Council.

8 And with that, I'll bring Tom up.

9 CHAIRPERSON O'MALLEY: Thank you.

10 MR. GILMAN: Thank you, David.

11 After we had been here last time, we had
12 heard some of the comments from the Commission, and
13 particularly with respect to the hotel design and brought
14 up the images here of that hotel, the portico share on
15 the right and the elevation from the freeway, from 101
16 from the left, which is the major -- major exposure
17 that -- that you see from the freeway and essentially the
18 primary -- the primary exposure of the building.

19 What we decided to take a look at was
20 maybe looking at how to maybe adjust the form a bit as
21 opposed to simply changing materials and trying to make
22 it look slicker or fancier or whatever, but more doodads
23 on it.

24 We decided to take a look at the form of
25 the building itself. I think we've got a couple of the

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1 sketches here that we -- we wanted to show you a little
2 bit of the process that we -- okay. Here we go.

3 So we first started looking at -- this is
4 the main little floor plan vignette here, the little --
5 the main bar kind of shape of the tower portion of the
6 building.

7 We looked at well, what if we had kind of
8 a concave surface on that freeway side of the building,
9 maybe a little jog and -- and some adjustments at one end
10 of the building, this idea of trying to maybe get a whole
11 different kind of quality or feel to the building by
12 doing that.

13 As you can see in here, we were starting
14 to look at what if a piece of the building kind of poked
15 out a bit and kind of looked like a separate element.

16 One of the things that I think that we've
17 been struggling with on this building is it's a
18 relatively long building, and being a hotel, it has
19 relative regularity in terms of room after room.

20 And so -- so I think that's one of the
21 things that we're sort of struggling with, and so looking
22 at can we express a portion of those a little bit
23 differently.

24 Then if we go to this next study, we have
25 looked at well, maybe one of the things to do the start

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1 to look at -- what if we start to look at this as maybe
 2 two elements and really break the building in half so
 3 that essentially it's -- visually it might have the
 4 appearance of being about half as long as it is with two
 5 major features in this case that might be sort of pulled
 6 out, and this was still somewhat of a symmetrical kind of
 7 look to the building.

8 Then we -- we decided to take it a little
 9 bit further, and if you look at this plan up above, we
 10 thought well, what if we had a couple of sail-like kind
 11 of elements that had that same concave kind of shape
 12 above that, then we might actually jog the building so
 13 that we're not adding square footage.

14 We're retaining the same size building,
 15 but by jogging the building, we're also -- even from the
 16 north side, we're starting to reduce the apparent length
 17 of the building.

18 And so then on this freeway side, that
 19 perhaps as that concave surface extends along, where it
 20 would appear that the depth is getting longer that it
 21 maybe needs more suites or maybe there's balcony kind of
 22 elements that would occur to provide some perforation and
 23 so on.

24 So we started looking at this idea of
 25 having this kind of duplicate sail-like elements that

1 would be relatively glassy, a little bit more high
 2 performance glass, a little bit more reflective so they
 3 would have -- and maybe in sort of a pale green-bluish
 4 kind of range.

5 So a little -- a little greener than the
 6 character, color of the office buildings, but a very
 7 light kind of quality.

8 And then lightly move it off the ends with
 9 these balcony elements that might expose themselves out the
 10 end of the sail, as well, where these the two elements
 11 break.

12 So then I think the final slide here, we
 13 have this kind of taking that idea a little bit further.
 14 I apologize for the lighting in here.

15 But this idea of having, you know, this
 16 concave reflective kind of surface. We would still have
 17 these dark bands here we're seeing in shade the -- the
 18 passive sun shades that are again helping to cut down
 19 on -- from a passive perspective some heat gain on this
 20 surface, even though this has a little more activity and
 21 a little more slickness to it and high performance
 22 quality, and then again, we see sort of these
 23 perforations that might occur at the ends of these sail-
 24 like elements that would be the balcony pieces that would
 25 come through, and that may be where the suites are

1 occurring inside.

2 The end view, the elevation is important
 3 from the northbound traffic on 101 expressed with the end
 4 suite element having some sun shades again, relatively
 5 glassy and then have a portion of that, we have service
 6 elevators, kind of housekeeping and some of those kind of
 7 utilitarian elements that are able to provide a more
 8 solid kind of balance, then, to that end wall.

9 So again giving us a little bit more
 10 interest and that symmetrical kind of quality to that end
 11 surface, as well, so -- you know, to get an idea of
 12 having the signage up on the building so it's a very
 13 visible kind of element.

14 So -- but we started -- we started getting
 15 help, and then on the ground floor -- so these elements
 16 are really kind of cantilevered.

17 The ground floor itself simply has that
 18 step we saw on the footprint, so we're having really
 19 minimal impact in terms of the -- the pool area, the open
 20 space and so on outside the hotel and restaurant that
 21 occurs on the west -- or on the south side of the
 22 building.

23 So at any rate, just wanted to give you a
 24 sense of some of the design refinements and directions
 25 that we've been studying over the last couple of weeks

1 since we met last time.

2 So be happy to answer any questions.

3 CHAIRPERSON O'MALLEY: We'll ask you some
 4 later on. Thank you.

5 MR. GILMAN: Sure.

6 CHAIRPERSON O'MALLEY: Thank you.

7 Continuing with -- David, are you planning
 8 to have anyone else speak? Is it your intention to have
 9 anyone else make a presentation?

10 MR. BOHANNON: No, just available.

11 CHAIRPERSON O'MALLEY: Now, we'll take
 12 Public Comment, and again, I stress that if you wish to
 13 make public comments on this, it should be on information
 14 that was not been presented at the last meeting.

15 I also would request that you fill out a
 16 comment card and that you try and limit your comments to
 17 about three minutes.

18 At the moment, I have four comment cards.

19 Mr. Bedwell.

20 MR. BEDWELL: Hi. Good evening. I'm
 21 Alan Bedwell. I live at 150 Emma Lane here in Menlo
 22 Park, and I'm also the son of former City Manager, Mike
 23 Bedwell.

24 And one of the main reasons that I
 25 returned to the City here in 2008 was not only because I

1 consider it home, but also because the City that year
2 made a major effort to honor my father's commitment to
3 the City and renamed Bayfront Park to Bedwell-Bayfront
4 Park, and as a result of -- of that, I've been actively
5 involved with Friends of Bedwell-Bayfront Park, a non-
6 profit group whose goal is going towards education and
7 outreach to help people further enjoy the unique open
8 space experience that is represented by the park.

9 With that in mind, and under the Regular
10 Business agenda, we as a group, the Friends of Bedwell-
11 Bayfront Park just wanted to share a couple of thoughts
12 about the Gateway project.

13 First of all, we initially support the
14 term sheet for the project in general, but with one
15 caveat, and that caveat is that we'd like to make an
16 amendment to the public benefit funding element number 4,
17 which proposes a one million dollar funding program for
18 capital projects for the Belle Haven community, Bedwell-
19 Bayfront Park and other -- other Citywide recreational
20 improvements.

21 We respectfully request that at least 35
22 percent of that one million dollars, 350,000 should go to
23 assistance to Bedwell-Bayfront Park, but for the
24 following two reasons:

25 First of all, local impacts require local

1 mitigation, and the park is a large asset to the Gateway
2 development, and it will be offering people both work
3 there and stay there in the facility with great
4 recreational opportunities, an open space that wouldn't
5 otherwise be available to them anywhere else where the
6 Gateway project is located.

7 The increased use of the park will be a
8 good thing. More people out there enjoying the open
9 space is -- is a great experience. At the same time, it
10 will also lead to increased impacts.

11 Secondly, we really urge the City to use
12 that money, especially given the tough economic times
13 that we're all facing, to address the Gateway project's
14 impacts and not use that money to offset any type of
15 operating deficit or impacts that are going on in the
16 City outside the area of the project site, and that that
17 funding really should address impact associated with
18 either Belle Haven community or to the park itself.

19 And finally, just in closing, we urge the
20 City dedicate the funds to improvements at the park that
21 not only enhance the existing user experience, but also
22 the experience of new and future users as a result of
23 this important project.

24 And we thank you for your consideration
25 and appreciate your time.

1 Thank you.

2 CHAIRPERSON O'MALLEY: Thank you.

3 Mr. Tim Campbell.

4 DEPUTY FIRE CHIEF CAMPBELL: Good
5 evening, ladies and gentlemen. My name is Tim Campbell.
6 I'm a Deputy Fire Chief for the Menlo Park Fire
7 Protection District. I'm here on behalf of your Fire
8 Chief Schapelhouman.

9 I'd like to thank the Commission and the
10 City Staff on considering the issues that we brought
11 forward, the safety issues and being able to provide fire
12 protection service for this project.

13 I'd like to thank the City Staff for --
14 for meeting with our staff to continue to try and work
15 on -- on a resolution that is in the best interest of the
16 citizens, the City and the Fire District.

17 One of the things that we wanted to make
18 you aware of is our property tax income from this project
19 is approximately \$550,000.

20 Unfortunately, this will not cover the
21 planned expenses to be able to provide service,
22 particularly a ladder truck -- an additional ladder truck
23 to the Fire District to provide this level of service for
24 the City.

25 There is other single costs that we have

1 to absorb, including four and a half million dollars in
2 retrofitting of our fire stations to take on this
3 additional truck.

4 It will cost approximately \$615,000 a year
5 to staff this vehicle, and the cost of the ladder truck
6 of today's cost is approximately one and a half million
7 dollars.

8 The district's more than happy to use the
9 \$550,000 in tax revenue to continue the year to year
10 services that we would provide with this ladder truck,
11 but unfortunately the one-time costs for this project
12 is -- is quite large.

13 What we're asking of the Commission and
14 the City is to continue negotiations with us so that we
15 can come to a resolution that is in the best interest of
16 both of us.

17 We've pretty much asked to split the cost
18 of this ladder truck as a one-time cost to help offset
19 the total cost to be able to save us.

20 This project if approved will open up the
21 door to other possible high-rise projects, including as
22 stated in your plan for the downtown corridor.

23 We have great concern of being able to
24 provide the same level of fire service protection for
25 high-rise buildings in our fire district.

1 So to help us with that, we're asking the
 2 City to -- to split -- and the Bohannon project help
 3 split the cost for that ladder truck while we absorb the
 4 other costs of being able to provide this service.
 5 Again, we encourage to -- this Commission
 6 to encourage the City to continue negotiations so that we
 7 can find a resolution that would be of benefit to
 8 everybody.
 9 Thank you for your time.
 10 COMMISSIONER KEITH: I just have one
 11 question.
 12 DEPUTY FIRE CHIEF CAMPBELL: Yes.
 13 COMMISSIONER KEITH: I -- I missed what
 14 you said the increase in salary was.
 15 DEPUTY FIRE CHIEF CAMPBELL: The
 16 staffing?
 17 COMMISSIONER KEITH: Yes.
 18 DEPUTY FIRE CHIEF CAMPBELL: We would
 19 have to hire additional personnel for the staffing of
 20 this ladder truck. Those costs would be estimated at
 21 about \$615,000 a year for the three different platoon
 22 shifts that we would have staffing that.
 23 COMMISSIONER KEITH: Thank you.
 24 DEPUTY FIRE CHIEF CAMPBELL: And I'm
 25 available to any other questions.

1 CHAIRPERSON O'MALLEY: Thank you.
 2 DEPUTY FIRE CHIEF CAMPBELL: Thank you
 3 very much.
 4 CHAIRPERSON O'MALLEY: The next speaker
 5 presentation will be by Joanne Goldberg.
 6 MS. GOLDBERG: I'm donating my time to
 7 Patti Fry.
 8 CHAIRPERSON O'MALLEY: The next speaker's
 9 Patti Fry.
 10 MS. FRY: Good evening. Thank you very
 11 much for this opportunity to -- to speak with you.
 12 I want to talk about a few things because
 13 in my opinion, the devil is really in the details, and
 14 what governs this agreement is really about the
 15 Conditional Development Permit and the Development
 16 Agreements.
 17 And as I read them this weekend, finally,
 18 it occurred to me that there are a lot of commitments
 19 that normally are put into a permit, like a Use Permit
 20 that you're used to dealing with that are conditions that
 21 are part of a permit.
 22 In this case, a lot of the conditions,
 23 including the mitigation measures, are actually part of
 24 the Development Agreement, as are some of the benefits
 25 that are promised as part of this.

1 However, the Development Agreement has
 2 written into it a number of ways that it expires, one of
 3 which is once it's done, it expires. Once the project is
 4 built, it expires.
 5 So it appears to me that the benefits and
 6 the mitigation measures expire, as well.
 7 Likewise, if the project is not built, it
 8 also appears that the -- not fully built, the -- it also
 9 appears that the Development Agreement would expire, and
 10 I think that's something that needs to be addressed.
 11 In the Conditional Development Permit,
 12 there is something about TDM measures, and the very last
 13 bullet of this TDP says that any of TDM measures could be
 14 ended at that point.
 15 So I think that there is some work that
 16 needs to be done to ensure that the mitigation measures
 17 such as TDM go on in perpetuity.
 18 It isn't just to address greenhouse gases.
 19 It's to address traffic congestion.
 20 I also would like to highlight a few other
 21 things. It appears that even if the demolitions for the
 22 Constitution buildings don't start until the years 2025
 23 and 2030 or if there are material changes in the project,
 24 there's no opportunity to do another environmental
 25 review, and that -- that just seems problematic to me

1 because the world can change a lot in that many years.
 2 The Zoning Ordinance Amendment for M-3
 3 does not also allow for public hearings or review by
 4 either staff or Planning Commission like Architectural
 5 Control or Use Permits unlike the current M-2 provisions,
 6 and I'm not even sure it's legal.
 7 You know, I'm glad our attorney is here
 8 tonight, but the ZOA that's in the agreement right now
 9 was not well distributed, and with the Draft EIR and
 10 it -- it is not the same or more restrictive than that.
 11 The magnitude of the public benefit
 12 relative to the owner benefit seems to me that there's no
 13 negotiated public benefit related to the office
 14 buildings, which generate 77 percent of the net operating
 15 income for the first fifteen years, according to the to
 16 the pro forma that was provided, but it does provide the
 17 most impacts on local and regional housing, water,
 18 schools, traffic congestion, et cetera.
 19 So if you look at the charts on the next
 20 page, it shows that there's no revenue really needed from
 21 the office buildings, anyway, to meet the guaranteed
 22 payment. It's just a floor. It's not a bene. It's a
 23 floor.
 24 What I did is took ten percent of the
 25 revenue that was in the HBS report just for the rooms,

1 and that exceeded the guarantee every year after the --
2 you know, when it started, which is three years after the
3 hotel opens.

4 So it's pretty meaningless in terms of an
5 incentive to get tax generating uses that is also not
6 going to provide anything extra.

7 The guarantee is also minor relative to
8 the total project net operating income.

9 So I'm hoping that you will make sure that
10 the loose ends are tied up. I hope you take your time
11 and I hope you encourage the Council and the City's
12 negotiators to continue negotiations.

13 I really don't think this is a done deal
14 yet if it's to me not good enough to -- in terms of the
15 benefits to outweigh all of the very, very many impacts
16 that come from the project.

17 The findings that you're required to
18 make -- or you could say you're not making them -- are
19 consistency with the General Plan, and the General Plan
20 Industrial Use, Land Use go -- still remains in the --
21 even though the General Plan was amended, and that is to
22 provide significant revenue to the City in uses that have
23 low environmental and traffic impacts, and neither one of
24 those is true for this project. Just the hotel part.

25 I have says that you need to make a

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1 finding that it will not be detrimental to the general
2 welfare of the City or regions surrounding the City, but
3 the EIR does show that there are significant adverse
4 impacts that cannot be fully mitigated, and some
5 mitigation measures and trip caps expire when the
6 Development Agreement expires.

7 And there's no relief for the additional
8 housing need. The BMR payments are part of the usual fee
9 structure for the city, but there's no additional relief
10 for the 3,000 net new units -- housing units that are
11 required for the City and region from the direct and
12 indirect net new jobs coming from this project, and the
13 last finding is it will not adversely affect the orderly
14 development of property within the City.

15 This isn't part of any broader plan. It
16 removes the po -- the potential for a cohesive plan for
17 M-2 or -- and, as well, for the Bayfront Expressway and
18 the entire industrial zone.

19 So again, I hope you will help provide
20 the -- the way to address -- or -- or suggest that there
21 be addressing of these loose ends and continue
22 negotiations for a much more favorable benefit to the
23 community for this large project.

24 Thank you.

25 CHAIRPERSON O'MALLEY: Thank you.

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1 Any additional public commenters out
2 there?

3 Seeing none, then the Commission will now
4 take over and we'll start by Commission questions of
5 staff.

6 Before I do that -- before we do that,
7 I -- I expect that this meeting will go fairly long, and
8 while we have people here, I'd like to publicly
9 acknowledge two Commissioners that -- one of which will
10 not be here after this meeting, and that's Miss Pagee who
11 has presented many ideas at these meetings and has spent
12 many years on the Planning Commission and we're going to
13 miss her. I wanted to thank her publicly for that.

14 And there's also the possibility that
15 Commissioner Riggs and Commissioner O'Malley will not be
16 reappointed to this Commission, and this may also be our
17 last meeting as -- as Commissioners. May not.

18 We just don't know, but I do know that
19 Henry has again spent many years active in helping the
20 town, and basically I think I expressed the feelings of
21 all Commissioners what a fine job you and Melody have
22 done.

23 So thank you. Thank you.

24 Now, we will question staff about anything
25 relating to this project.

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1 I see Vince, your light is on.

2 COMMISSIONER BRESSLER: Yes. I'm
3 wondering how much the City paid for the environmental
4 consultant report from Cushman & Wakefield.

5 MR. McCLURE: The -- it's fully
6 reimbursed by the developer. No net cost to the City of
7 Menlo Park.

8 COMMISSIONER BRESSLER: What was the cost
9 for it regardless of where it came from?

10 MR. McCLURE: Yeah. My recollection is
11 that the original amount of the contract was in the
12 neighborhood of \$30,000.

13 COMMISSIONER BRESSLER: Okay. An
14 unrelated questions, but I have more questions here.

15 What's the City's policy on disclosing
16 meetings between Planning Commissioners and City Council
17 and development interests and does the City have a
18 policy -- did it at one time have a policy over different
19 things?

20 MR. McCLURE: The City does not have any
21 specific written policy on the disclosure. To the extent
22 that is a quasi-ajudicatory matter, and so things like
23 Use Permit or a Variance application.

24 To the extent that a Commissioner or City
25 Councilmember is considering information that it received

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1 outside of a public meeting, not part of a public hearing
2 process or part of a public meeting, it needs to disclose
3 that information as part of the record.

4 COMMISSIONER BRESSLER: I want to follow
5 up on that. That means that if someone comes here and
6 they don't talk about opinions that were originated in a
7 meeting with the developer, then they have an obligation
8 to disclose the -- the content of that meeting?

9 MR. McCLURE: What it means is if it's a
10 quasi-adjudicatory matter, and this is a legislative
11 matter --- a General Plan Amendment and a Zoning
12 Ordinance is a legislative manner.

13 If it's a quasi-adjudicatory manner and
14 they're relying upon that information or that information
15 is forming the basis for their decision or their opinion,
16 they need to disclose that information.

17 If it's not, you know, forming the basis
18 of their decision and they're relying on the information
19 that they received as part of the Public Hearing, there's
20 no legal obligation to disclose any of that information
21 if it is not, you know, determinative of what their
22 decision is.

23 COMMISSIONER BRESSLER: You used two
24 terms there, legal terms. One of them was quasi-
25 adjudicatory.

1 MR. McCLURE: Correct.

2 COMMISSIONER BRESSLER: Could you explain
3 what those are and maybe give an example?

4 MR. McCLURE: Sure. A quasi-
5 adjudicatory matter is a Use Permit or a Variance where
6 you are applying facts to the law or you're applying the
7 law to a given set of facts.

8 So in the use Permit Setting, it's -- you
9 are -- you know, we have findings, required findings for
10 a Use Permit, and so that's a quasi-adjudicatory matter.

11 You're acting as a judge or a jury where
12 you are making a ruling or a determination.

13 A legislative matter is a Zoning Ordinance
14 Amendment or a General Plan Amendment and there are
15 totally different rules that apply to a legislative
16 matter.

17 Someone can have an opinion, someone can
18 support a -- a legislative change which is different than
19 quasi-adjudicatory.

20 So, for example, you can't in advance of
21 a -- of a Use Permit application or a Variance
22 application take a public position in favor of or in
23 opposition to a Use Permit or a Variance or evidence any
24 kind of predisposition to vote in a certain manner
25 because you'd be violating the due process rights of the

1 individual who is applying for that permit.

2 With respect to a legislative matter, you
3 can, in fact, be in more of an advocacy position, either
4 in favor of or against something that is a legislative
5 matter because by its very nature, legislation is
6 typically supported or opposed by people.

7 And so you can come, you know, with some,
8 but you still have to have, you know, an open mind. You
9 can't be so biased that -- that your decision is made in
10 advance of -- of all of the information.

11 COMMISSIONER BRESSLER: Okay. Thanks for
12 the clarification.

13 CHAIRPERSON O'MALLEY: I don't see any
14 lights and I know people have questions.

15 John.

16 COMMISSIONER KADVANY: Thank you.

17 We -- we've had -- we've heard a bit about
18 and had discussions at various meetings about the public
19 benefit -- the revenue public benefit, and -- and so
20 tonight we heard a comment about it not -- nothing in
21 particular being attached to the office -- office space.

22 Is there a recognized financial instrument
23 that municipalities that can be attached to office space
24 in a natural way or can one be designed in a reasonable
25 way? Was that discussed at all?

1 Because that came up before the
2 negotiation. So I'm just wondering what the status of
3 that is. Any information that's relevant to that.

4 MR. McCLURE: Yeah. I mean, specifically
5 ideas have come up about having -- sharing or imposing a
6 fee for the Development Agreement process on the office
7 building based on gross revenues or, you know, some --
8 per foot basis or some other mechanism, and -- and that
9 was specifically discussed and brought up during the
10 negotiations.

11 I mean, we specifically had a number of
12 meetings because one of the, you know, guiding principles
13 or one of the parameters, direction of the City Council
14 was to seek to achieve, you know, maximum revenue from
15 the overall project; not just from the transit occupancy
16 tax portion of the project.

17 So we had -- I don't know -- two, three
18 different negotiating sessions where we specifically
19 discussed that topic.

20 You know, we had a full discussion about
21 it and ultimately the applicant/developer was unwilling
22 to agree to include that kind of a component as part of
23 the Development Agreement.

24 COMMISSIONER KADVANY: So -- but -- but
25 conceptually that kind of financial instrument is

1 straightforward, then. There's no --
 2 MR. McCLURE: I've never seen it. I
 3 mean, I'm not aware of any cities that have imposed that
 4 kind of an agreement.

5 It was a -- you know, a fairly u -- in my
 6 experience and the experience of other City Attorneys
 7 that I commun -- I -- I'm part of a network of City
 8 Attorneys around the state and we have -- share e-mail
 9 communications and I put out e-mails to other City
 10 Attorneys in terms of whether anybody had done this or
 11 negotiated this or was aware of this kind of a component
 12 in other cities and, you know, there are other different
 13 mechanisms.

14 Increased TOT, you know, certain other
 15 kind of mechanisms, in-lieu sales tax, things of that
 16 nature, but no one communicated back that there was any
 17 similar kind of arrangement that had been used by any
 18 other city.

19 COMMISSIONER KADVANY: Well, how does
 20 that fit in -- I mean, there's one -- part of it is -- is
 21 the instrument. So we have the TOT to work with.

22 MR. McCLURE: Correct.

23 COMMISSIONER KADVANY: But that only
 24 applies to the hotel.

25 MR. McCLURE: Correct.

1 COMMISSIONER KADVANY: At the same time,
 2 there's the magnitude of the project and the expected
 3 fiscalization benefit to the developer.

4 So there's kind of a mis -- mismatch
 5 between instrument and magnitude, at least as perceived
 6 by some people, or at least that's -- you know, perhaps,
 7 I don't know. That's an unknown.

8 If there was retail, then there'd be sales
 9 tax, for example.

10 MR. McCLURE: Correct.

11 COMMISSIONER KADVANY: So that would
 12 happen with Stanford, the shopping center, for example,
 13 is ta -- retail tax goes to Palo Alto.

14 MR. McCLURE: The City of Palo Alto gets
 15 sales tax revenue from the retail portion of the shopping
 16 center. They don't get it from office buildings.
 17 There's no in-lieu payment, you know, for office
 18 buildings.

19 Generally speaking, hotels are desirable
 20 by cities and cities actually give money to developers to
 21 get hotels.

22 The City of East Palo Alto, you know, gave
 23 back to Four Seasons -- substantial TOT back to them.
 24 The City of East Palo Alto is not getting all the TOT
 25 from the project. They're subsidizing the developer in

1 order to get the hotel.

2 COMMISSIONER KADVANY: I -- I understand
 3 that. I agree, and we've heard -- talked about that
 4 before.

5 At the same time, there is this big office
 6 space --

7 MR. McCLURE: Correct.

8 COMMISSIONER KADVANY: -- component.

9 The same -- you know, to me all I can
 10 think of is Stanford working with Palo Alto. They need
 11 to fis -- fiscalize their plan and they basically work --
 12 the analogy of Palo Alto is to Stanford as Menlo Park is
 13 to Bohannon, but we don't know quite what the -- I'm not
 14 sure.

15 MR. McCLURE: Well --

16 COMMISSIONER KADVANY: To me, I think
 17 there's missing components in the equation there or I
 18 want -- I guess -- I guess I feel the responsibility,
 19 our -- since this is one of our last meetings, maybe the
 20 last meeting on this, our responsibility to the City
 21 Council is to know that, you know, either you can't --
 22 you can't do anything or what we're doing is entirely
 23 commensurate with the valuation expect -- expectations.

24 MR. McCLURE: Well, again, generally
 25 speaking, cities don't look at a valuation expectation to

1 derive revenue from the project -- from -- they don't
 2 look at getting a piece of the value of the entitlements
 3 they're giving.

4 That's not part of the -- cities don't
 5 have the right to say, "Okay. I'm selling you these
 6 entitlements for money."

7 The only mechanism to do that is a
 8 Development Agreement.

9 So it's a unique instrument that
 10 government is -- municipalities are given to negotiate
 11 and get some -- something that we couldn't otherwise
 12 exact as part of the approval of a project.

13 So in the absence of a Development
 14 Agreement, there wouldn't even be any discussion about
 15 any of these topics.

16 COMMISSIONER KADVANY: Exactly. I
 17 understand.

18 MR. McCLURE: So -- so the issue is --
 19 and again, I'm not the expert in it, but the hotel report
 20 indicates that you can't build this hotel and generate
 21 this kind of revenue without a substantial office project
 22 to support that.

23 So if you -- the argument is -- and again,
 24 I'm not proposing, I'm not supporting, I'm not advocating
 25 this project. I'm just conveying information.

1 Whether you believe the information is
2 good or it's bad, they're saying -- the experts are
3 saying, Suzanne Mellon, whose expertise is in hotels, is
4 you can't get this project, this hotel product and this
5 expected revenue without this kind of an office project.

6 So what you're getting for this office
7 project is this hotel that is going to generate this kind
8 of revenue.

9 In the absence of having that kind of
10 hotel size, whether it's exactly that, whether it's
11 something less, you know, again, I don't know, and there
12 isn't a -- a sensitivity analysis to -- you know, to do
13 that, to say exactly how much do you need. That's a
14 guess.

15 That's a crystal ball -- other than her
16 expertise -- is you need -- there isn't enough office
17 available there to support this kind of a product, so it
18 could end up with a totally different type of hotel
19 product with a lesser sub -- you know, substantially
20 lesser amount of office space, but it would only generate
21 in the neighborhood of \$400,000 in transit occupancy tax
22 because it would be a smaller hotel.

23 It would not be a full service hotel.
24 Therefore, it wouldn't be generating the sales tax
25 revenue. It wouldn't be generating the room rates that

1 this kind of hotel would generate.

2 So the -- so the issue is, you know,
3 again, if you want this kind of a revenue stream from the
4 hotel, then the argument is you need this size or -- or
5 close to this size of an office product to support it.

6 COMMISSIONER KADVANY: But you mentioned
7 the development. I don't want to go on and on about
8 this, although it is interesting as it is.

9 The Development Agreement, though, in
10 principle would allow you to tailor --

11 MR. McCLURE: Correct. Exactly.

12 COMMISSIONER KADVANY: And so --

13 MR. McCLURE: And that's -- and that's
14 how we were able to have the negotiations to -- so that's
15 what we've gotten.

16 What's included in the Development
17 Agreement, and whether that's enough or not, that's
18 certainly within your purview to make the recommendation
19 to the City Council however you feel about what the City
20 should be getting.

21 I mean, that's part of what you're being
22 asked to give input and a recommendation on.

23 COMMISSIONER KADVANY: Okay. Well, I
24 have other questions, but I'll let somebody else go.

25 Thank you.

1 CHAIRPERSON O'MALLEY: Do you have a
2 question related to this?

3 COMMISSIONER FERRICK: Go ahead.

4 COMMISSIONER BRESSLER: Okay. I just
5 wanted to clarify what you said, because it's very
6 interesting to me.

7 It sounds like the argument is oh, you
8 need this office to build a hotel. Let's say I accept
9 that argument. That still -- there's lot of revenue
10 that's being thrown off by that office. I mean -- so
11 we're not collecting that revenue.

12 We need this office to build that hotel is
13 fine, but guess what? That may justify it, but that is a
14 heck of a lot of revenue that's being produced by that
15 office.

16 So it's -- to me -- I mean, am I -- okay.
17 I'm kind of leaning here, but I'm trying to get a sense
18 of what the basis of this negotiation was, and I think
19 that's what it is, and what I want to bring to light is
20 there's a huge benefit by you looking at it this way and
21 ignoring the -- the revenue stream that's being enabled
22 by the zoning action associated with the office.

23 And yeah, maybe the office is required,
24 but we're not tapping into that, and the argument for not
25 tapping into that is well, nobody does that.

1 I mean, is this an accurate
2 characterization of the negotiating process?

3 MR. McCLURE: No.

4 COMMISSIONER BRESSLER: Okay.

5 MR. McCLURE: Again, we can only
6 negotiate to what the other side agrees to, okay. You
7 can't negotiate in a vacuum and say -- well, we get our
8 negotiating authority and direction from the City
9 Council.

10 COMMISSIONER BRESSLER: Okay.

11 MR. McCLURE: And we go and we ask for
12 things and we put things on the table, and the other side
13 says, you know, yes, they'll agree to it, or no, they
14 won't agree to it, and it's -- in essence, it's
15 irrelevant what the economics are or how much benefit it
16 is to the other side.

17 If they're unwilling to put more on the
18 table to get the deal, we don't have the ability to say,
19 "Well, that's not enough, that" -- because ultimately
20 it's the City Council that says that's either enough or
21 it's not enough.

22 COMMISSIONER BRESSLER: So it's --

23 MR. McCLURE: So, you know, negotiating
24 in the public process is one of the most difficult
25 things, because I'm sitting at the negotiating table

1 without my client or someone that can ultimately make the
2 decision there. That decision is made in public by the
3 City Council as a whole.

4 And so you can only bring back what you
5 can get from the other side to the City Council for their
6 further review and input, which is what we've done.

7 You know, we started the whole process
8 with that. We came back with a check-in on that and
9 asked the Council for direction, and, you know, is this
10 enough? Do you want more? You know, and that's where we
11 are.

12 Again, a negotiator is -- can only do
13 what --

14 COMMISSIONER BRESSLER: Okay. This is
15 not meant to be a criticism of the negotiator. This is
16 simply trying to understand the process, and it --

17 MR. McCLURE: What I'm saying is that the
18 process is -- we went and we got what -- the most that we
19 could get out of the applicant and presented that to the
20 City Council in the term sheet.

21 It's up to the City Council to say that's
22 enough or it's not enough.

23 In this case, the City Council said, "We
24 want you to go back and we want you to have further
25 discussions about the following list of items," and we've

1 gone back and we're continuing to have additional
2 discussions with them on those items.

3 None of those items specifically included
4 a get a percentage of the rental income as part of the
5 Development Agreement, because we've been told that that
6 is a non-starter for them, that that's not going to work.
7 They're not going to agree to that. They're not going to
8 negotiate and pay in perpetuity or even for a period of
9 time a percentage of the gross revenues.

10 So ultimately the Council has to decide --
11 COMMISSIONER BRESSLER: Okay.
12 MR. McCLURE: -- do we want the project
13 in this hotel revenue enough that we give up that item or
14 not.

15 COMMISSIONER BRESSLER: Well, I'm not
16 sure that's really the -- the compromise there. I think
17 there's a whole public process that we've started -- just
18 started now, and these -- it helps to have the public
19 looking over these documents and understanding --

20 MR. McCLURE: Absolutely.

21 COMMISSIONER BRESSLER: -- the revenue
22 part.

23 So I think we're getting started, but I'll
24 have more to say about that later.

25 MR. McCLURE: No. I don't disagree with

1 you at all. All of this is relevant, and -- and that's
2 what the Council is asking for your input.

3 CHAIRPERSON O'MALLEY: Katie.

4 COMMISSIONER FERRICK: These questions
5 are for you, too, Bill. Good evening. Just a couple
6 small Development Agreement questions to get
7 clarification on.

8 One of the public speakers wondered if
9 we're allowed -- I mean, are we allowed to recommend
10 allocation of a particular percentage of a particular
11 benefit to go to a certain thing; i.e. the Bedwell-
12 Bayfront Park 35 percent as an idea? I mean, is that
13 something we're able to --

14 MR. McCLURE: Yes.

15 COMMISSIONER FERRICK: Okay. And then
16 the other one is the expiration of the -- reading in the
17 expiration for Development Agreement, are the
18 conditions in the Development -- how are the conditions
19 in the Development Agreement enforced and do they expire,
20 including the TDM measures?

21 MR. McCLURE: So various different
22 conditions are enforced in different ways, but the TDM
23 measure is one that continues for the life of the
24 project.

25 It's in the EIR. It's in the mitigation

1 measures. It's in the mitigation monitoring, reporting
2 program and specifically in the Development Agreement, if
3 I can find it.

4 Paragraph 5.6 says: "The terms and
5 provisions of this section 5.6 shall survive the
6 expiration of the Development Agreement."

7 So again, there are specific provisions
8 throughout the Development Agreement that specifically
9 say that they survive the termination. The additional
10 one percent TOT survives the expiration or termination of
11 the agreement, you know, and certain other provisions.

12 But you have to look at -- at what the
13 specific condition is and where it's in different
14 documents to understand whether it runs for the life of
15 the project or not.

16 So the -- the EIR specifically calls out
17 various different TDM measures that apply to each
18 component, each building within the project, and those
19 run for as long as that building is there.

20 COMMISSIONER FERRICK: Thanks.

21 COMMISSIONER KEITH: Just to follow up on
22 that, so it sounds like it's sufficient that it be in the
23 EIR and not in the Development Agreement.

24 MR. McCLURE: It's both. It says that it
25 survives the expiration of the Development Agreement in

1 the Development Agreement, that specific paragraph on
 2 TDM.
 3 COMMISSIONER KEITH: Okay. All right.
 4 And I have a couple questions.
 5 I just wanted to ask, probably for staff.
 6 I'm looking at things that were passed out May 3rd.
 7 Modification 6.1, and I know we talked about this last
 8 time, but in looking -- I'm just curious.
 9 I know 6.1.2 says that "major
 10 modifications would be allowed subject to review from the
 11 Planning Commission based on the Planning Commission's
 12 determination," and I'm just wondering on 6.1.1, who
 13 makes the determination?
 14 MR. MURPHY: 6.1.1, the determination
 15 will be made at the staff level by the Community
 16 Development Director designee.
 17 COMMISSIONER KEITH: Okay. And then --
 18 I'm still confused on it, their definition of -- is
 19 that -- do you think the definition of "major
 20 modification" is included within that paragraph or not?
 21 MR. MURPHY: No. That's one item that
 22 was flagged that there's a -- a need to reconcile some
 23 more lines with the -- the language in the Development
 24 Agreement with this Conditional Development Permit, and
 25 that was something that was pending the City Attorney's

1 return.
 2 So that is something that we're trying to
 3 disclose to the Planning Commission that there may be
 4 some refinements to this, but we haven't worked out the
 5 specific language yet.
 6 COMMISSIONER KEITH: Okay.
 7 MR. MURPHY: So it's important for the --
 8 if the Planning Commission has specific comments or
 9 issues related to the concept, that's something that the
 10 Commission can provide a recommendation on tonight and
 11 that can be worked on between the Planning Commission
 12 meeting and the City Council meeting.
 13 COMMISSIONER KEITH: Okay. Thanks --
 14 thank you for that clarification.
 15 Is there -- are -- there are other issues,
 16 I guess, the Conditional Permit that still haven't been
 17 worked out is what you're saying.
 18 MR. MURPHY: The majority of the other
 19 issues have been worked out, and that's kind of reflected
 20 in the -- the red-line changes.
 21 I believe the ones -- this issue about
 22 modifications is the one item that was flagged in the
 23 staff report that we know needs more work.
 24 There -- there's the potential that
 25 something could come up based off the City Council

1 check-in on May 11th regarding the Development Agreement
 2 that could have some potential for ripple effects, and
 3 there's other items that the Commission tonight could
 4 flag that would require some additional refinement if the
 5 Commission provided direction about a concept.
 6 I'll just look and see if anybody recalls
 7 anything else that requires anything else in particular,
 8 but I think it's just that one section.
 9 COMMISSIONER KEITH: Okay. And we've
 10 had -- we've had, you know, several people correspond
 11 with us since our last meeting, and one question that I'd
 12 just like, if you could address this, is some people
 13 wonder why does this have to be -- if it's not totally
 14 worked out, why does it need to be recommended upon at
 15 this time if we're looking at something that has such a
 16 long term? Can you just respond to that?
 17 MR. MURPHY: Yeah. The project was
 18 originally applied for in 2004, then modified in 2007.
 19 Since the spring of 2009, the City Council has played an
 20 active role in being involved in the project's overall
 21 timeline, and there have been multiple if not close to a
 22 dozen check-ins about the overall project schedule of the
 23 City Council, and the City Council has made the review of
 24 this project a priority with the goal of it most recently
 25 going through a series of meetings that would result in a

1 decision by June of this year, and that's part of the
 2 fact that this project has been going through the review
 3 process for a long time, and I think the Council believes
 4 that there's a -- it's good for the community to be able
 5 to focus on this and then be able to move on to some --
 6 some other issues.
 7 COMMISSIONER KEITH: Okay. And -- and I
 8 understand, I mean, in their staff report for -- I got so
 9 many documents up here, it's hard to -- I'm looking for
 10 dates of what I'm referring to.
 11 COMMISSIONER RIGGS: The City Council.
 12 COMMISSIONER KEITH: The City Council
 13 meeting for April 6th, and obviously for term number one,
 14 it's quality hotel, and it's quite clear -- I'm making a
 15 statement, and then I have a question -- that the main
 16 benefit that the Menlo Gateway proposal offers to the
 17 City is the potential revenue and amenities of a hotel.
 18 And that's -- that's true, right? That is the whole
 19 benefit.
 20 So I just need to understand a little bit,
 21 and I may know the answer already, but I want to hear it.
 22 The hotel doesn't have to be start --
 23 started for eight years, and then there is no completion
 24 date; correct?
 25 MR. MCCLURE: That's basically correct.

1 I mean, there's -- sorry. There's certain steps that
2 they have to go through.

3 So they either have to pay a non-
4 refundable non-applicable fee to extend it beyond five
5 years or they have to have submitted a substantially
6 complete application for a building permit which, you
7 know, is going to cost them upwards of a half million to
8 three-quarters of a million dollars to put together the
9 working drawings to submit a substantially complete
10 application.

11 COMMISSIONER KEITH: Okay. And so --
12 MR. MURPHY: And then just to follow up,
13 on -- in terms of the completion, there's a need to make
14 a progress on the hotel as it relates to sheetrock
15 inspections, and that's an indication that they are fully
16 intending to complete a project at that stage.

17 But in discussions, there wasn't something
18 that specifically tied the actual completion compared to
19 occupancy of the office building.

20 But there is something that's a major
21 milestone for the completion of the hotel.

22 COMMISSIONER KEITH: And that's having
23 sheetrock.

24 MR. McCLURE: It's eighty percent of the
25 hotel has to have passed sheetrock inspection before they

1 can get a final inspection for the building shell for the
2 office buil -- for any one office building.

3 COMMISSIONER KEITH: Eighty percent has
4 to be done before they can get a final inspection for the
5 office building.

6 MR. McCLURE: Eighty per -- they have to
7 have obtained a final or a past inspection for eighty
8 percent of the sheetrock in the hotel before they can get
9 a final on the shell and before they can apply for
10 tentative improvements for the first office building.

11 So they -- they are fully committed,
12 because they will have -- will have spent, you know,
13 upwards of, you know, sixty, seventy percent of the cost
14 of constructing the hotel at that point in time. So
15 they're fully committed to complete the hotel.

16 COMMISSIONER KEITH: Okay. So just
17 hypothetically, is it possible -- I understand what
18 you're saying. Financially, I'd love to hear from Dave
19 on this, perhaps, but financially, let's say you get the
20 hotel and you're at eighty percent, but then you don't
21 finish it and you get the office going.

22 I mean, there's nothing that it says that
23 you can't -- or is there? Where is it exactly that says
24 that you can't start using the office if the hotel isn't
25 done?

1 MR. McCLURE: There is nothing in the
2 Development Agreement or the Conditional Development
3 Permit that says they can't occupy the office building
4 ahead of opening the hotel.

5 COMMISSIONER KEITH: Okay. And then --
6 but that's even though in the staff report, April 6th,
7 the main benefit to the City is the potential revenue
8 from the hotel.

9 MR. McCLURE: That's correct, but they
10 can't -- I mean, the problem is -- is that you can't --

11 COMMISSIONER KEITH: I know it's --

12 MR. McCLURE: They can't build the hotel
13 without building at least the first office building if
14 not two or three of the office buildings, and once you
15 sign up a tenant for the office building and you don't --
16 generally you don't start the office building before you
17 have tenant -- a tenant or multiple tenants lined up for
18 the first office building in order to get the financing
19 and the commitment to build the office building.

20 So in order to do that, you have to commit
21 to a delivery date to the tenant and you have to know
22 that you can be able to deliver to the tenant.

23 So they have to get the hotel moving along
24 to get it to eighty percent sheetrock completion before
25 they can pull their building permit for the tenant

1 improvements for that first office building or have the
2 shell signed off.

3 They can't do either one of those without
4 having an eighty percent sheetrock, which means they've
5 got about sixty million dollars invested in that hotel by
6 the time they can pull the building permit for the TIs to
7 get final for just the shell.

8 So, I mean, nobody's going to sit there
9 with a sixty million dollar investment and just let it
10 sit. I mean, it just doesn't make any economic sense.

11 COMMISSIONER KEITH: Okay, right.
12 Presumably that's why you negotiated that in that
13 fashion.

14 MR. McCLURE: Yeah. I mean, they need
15 the flexibility -- again, this is part of the negotiating
16 process, but you have to have some flexibility that if
17 the hotel is lagging behind -- you know, you've really
18 invested a lot of money, and that's our concern to get it
19 up and going, that they're that committed to it, that
20 they've reached that level of, you know, permit sign-off
21 that we know the hotel's going to get completed.

22 It makes absolutely no sense they won't
23 complete it, but we've got the tie, the hold that they
24 can't pull their TI permit and they can't get the shell
25 finalized until they're eighty percent sheetrocked.

1 COMMISSIONER KEITH: Were there -- I --
2 was there any discussion to have that as a greater number
3 than eighty percent?

4 MR. McCLURE: Well, again, we had
5 discussions around having the hotel completed before they
6 could begin to occupy the office building.

7 COMMISSIONER KEITH: Right, but I
8 understand --

9 MR. McCLURE: But we've had -- again, we
10 had discussions, and without going through, you know,
11 seventeen, eighteen, nineteen, twenty negotiating
12 sessions that we had over a few months, we went through
13 these items and tried to come up with realistic
14 conditions that would show that they are going to get
15 something done and finished and completed, because they
16 would they will have had so much money invested in it
17 that they can't afford not to proceed to complete it.

18 Because the only way they get any
19 revenue -- and if they're bank financed, the bank is
20 going to require that they keep going once they do it.

21 I mean --

22 COMMISSIONER KEITH: I understand. I
23 have another question. Thank you.

24 I -- I did want to ask -- and this has
25 been brought up by some speakers -- about the

1 reassessment of the land.

2 Can you respond to that?

3 MR. McCLURE: So the -- the value of the
4 construction will be reassessed. A couple of the parcels
5 have been reassessed within the last ten years,
6 substantially capturing most of the current market value.

7 We did again put on the table the concept
8 of reassessing or having them agree to reassess all of
9 the properties as of the date of completion of
10 construction, and they were unwilling to agree with that
11 term.

12 So they could reassess with buildings, but
13 not necessarily the land.

14 COMMISSIONER KEITH: Okay. And I propose
15 that in your negot -- your discussions, you brought that
16 back to City Council and that's not a concern.

17 MR. McCLURE: No. It was part of the
18 report back to the City some of the terms that we had
19 sought through negotiations and were not successful.

20 COMMISSIONER KEITH: Okay. All right.
21 I'm going to let somebody else ask questions.

22 CHAIRPERSON O'MALLEY: Henry.

23 COMMISSIONER RIGGS: Thank you.

24 First, Bill, if I could ask you a couple
25 of questions regarding the negotiating team just for --

1 for my sake just to get them out of the way.

2 On the negotiating team, do we have at the
3 negotiating table -- as opposed to available by phone or
4 pre-meeting -- someone experienced with -- other than
5 yourself or -- and other than City Staff, someone
6 experienced with this level of real estate negotiation?

7 MR. McCLURE: So the only participants in
8 the negotiating team were the City Manager, myself, Kent
9 Stephans and Justin Murphy, and between the City Manager
10 and myself, we've probably done -- and people in my
11 office, we have probably done fifteen development
12 agreements in the last twenty years. Some much larger
13 than this, some smaller.

14 COMMISSIONER RIGGS: Thank you.

15 And I heard something rather odd this
16 afternoon, so I just wanted to verify.

17 You continue to represent the City of
18 Menlo Park at that negotiating table as -- as our
19 attorney?

20 MR. McCLURE: Yes.

21 COMMISSIONER RIGGS: Thank you.

22 I guess this would be for Justin. I
23 apologize. I have reviewed so many documents which
24 seemed like a good idea prior to the meeting, but they
25 all tend to blend together at some point.

1 The traffic mitigation I believe at one
2 point was not due to be enforced until all the office
3 buildings were complete. In other words, the project is
4 built out.

5 Is that still the case?

6 MR. MURPHY: There are multiple
7 mitigations related to traffic.

8 Are you talking about the trip limit?

9 COMMISSIONER RIGGS: Yes. Thank you.
10 Trip limit.

11 MR. MURPHY: Yes. So I believe that one
12 is tied to full construction, but let me just look. Yes,
13 that's completion of project buildout, so that would --
14 with the Independence space being first, that would mean
15 the Constitution phase second and that would mean the
16 second office building on Constitution.

17 COMMISSIONER RIGGS: Okay. But among the
18 TDM aspects that would be phased in, that would
19 presumably include, for example, bicycle storage within
20 the office building that is built.

21 So essentially the site aspects would be
22 built in. It would be primarily the trip generation
23 penalty that would not engage until published.

24 MR. MURPHY: The trip limit penalty, yes,
25 would definitely not apply. That's a condition of

1 approval 8.68, but there's the separate mitigation and
2 condition related specifically to TDM, and that's one
3 thing that's reflected as a change writing 8.65 just to
4 clarify that the -- clarify what the intent was.

5 The TDM would be implemented in phases
6 based off the construction. So there would be some
7 physical site change -- amenities, but also things like
8 shuttles would need to start up. Maybe not be the full
9 extent, but shuttle service would need be enhanced as
10 individual phases of the project are completed.

11 COMMISSIONER RIGGS: Okay. Thank you.
12 And then shifting gears somewhat, I see
13 Chip is back there. I don't know. You might want to
14 field this, though, Justin.

15 Oh, maybe it's more Public Works, but
16 these sidewalks that would be anticipated location,
17 dimension and type of sidewalks that would necessitate
18 the removal of the mature trees.

19 Has the team considered -- that is, the
20 entire team, staff and developer -- alternative sidewalks
21 that either could be modified as the trees affected them?
22 Whether that meant going around occasionally a tree or
23 having to repair a sidewalk in the future.

24 I have another alternative, but are -- are
25 alternatives being examined?

1 MR. MURPHY: Yes. I mean, the -- are
2 you -- there's a number of components associated with
3 sidewalks for the project.

4 Are you -- are you talking about the
5 connecting offsite sidewalks --

6 COMMISSIONER RIGGS: Yes.

7 MR. MURPHY: -- or are you talking about
8 the sidewalks on the project?

9 COMMISSIONER RIGGS: Within the right-of-
10 way.

11 MR. MURPHY: Right. So those involved a
12 lot of analysis about the quality of the trees, the
13 location of sidewalks, type of sidewalks, including
14 walking -- me personally along with two arborists walking
15 the site to get a understanding for it.

16 The plans submitted we feel are the --
17 including the various alternatives that are shown are the
18 staff's best recommendation for -- for the sidewalks and
19 tree locations.

20 So it's mainly the trees at the corner of
21 Constitution and Chrysler that are the most mature that
22 would we think benefit from an alternative.

23 Unfortunately, that alternative would
24 require the consent of a private property owner that's
25 not involved with the development, but we are as a

1 recommendation encouraging the property owner to make a
2 good -- the developer of this project to make a good
3 faith effort to secure the public access easement that
4 would greatly increase the chances of preserving those
5 three trees.

6 If there's some other specific trees that
7 you're concerned about, when you talk about those
8 specific trees, I'm personally familiar with a lot of the
9 trees. Otherwise, yes, we did look at what the best
10 designs were for retaining trees.

11 COMMISSIONER RIGGS: That is terrific. I
12 will throw out for that intersection, because I believe
13 we have parking on both streets, on both sides,
14 potentially at the intersection bulb-out could take the
15 place of what is currently reserved for parking.

16 Admittedly we don't park on intersections,
17 but that might allow the sidewalk to bump out into what
18 is currently the roadway?

19 MR. MURPHY: Are you talking specifically
20 about the intersection of Constitution and Chrysler?

21 COMMISSIONER RIGGS: Yes.

22 MR. MURPHY: All right. So with that
23 intersection as part of mitigation, traffic mitigation
24 for the project, there's a need for the traffic signal,
25 and then with the traffic signal, the -- the lanes to

1 accommodate it.

2 So that was looked at as a possibility,
3 but we didn't --

4 COMMISSIONER RIGGS: I see what you're
5 saying. All right. Understood.

6 I have a couple more items, but I'd like
7 to hold them for later.

8 CHAIRPERSON O'MALLEY: Katie, I see your
9 light on again.

10 COMMISSIONER FERRICK: Thanks. Just
11 really briefly. This one's for Bill.

12 The below market rate housing agreement
13 has been characterized by some as an amount that is no
14 more than would be required by a normal level of fees for
15 a project of this size.

16 Would you agree with that characterization
17 or is it actually, you know, smaller or larger or what?

18 MR. McCLURE: That's a fair
19 characterization.

20 COMMISSIONER FERRICK: Okay. Thank you.

21 And can a Development Agreement include
22 building plan review by the Planning Commission prior to
23 permits being issued?

24 MR. McCLURE: Say that again.

25 COMMISSIONER FERRICK: Well, if some of

1 the buildings aren't going to be constructed for ten or
2 more years, things change, you know, styles change,
3 materials that are preferred, you know, better, higher
4 performing than what's available today, that sort of
5 thing, like there's some sort of review of the building
6 plans more specific.

7 MR. McCLURE: So like Architectural
8 Control?

9 COMMISSIONER FERRICK: Yeah. I don't
10 know -- I know we don't have Architectural Control in the
11 City, but just something that we're not approving in 2010
12 standards when something's going to be built in
13 potentially 25.

14 MR. McCLURE: So that's part of the
15 reason for the language about substantially consistent
16 and allowing at a staff level or City Manager or designee
17 level, you know, non-significant changes that don't
18 affect the height, square footage, use, you know, various
19 other caveats or limitations on what modifications.

20 But there could be, you know, what are
21 considered minor modifications, which would be
22 architectural type of materials, those kinds of things
23 that could be approved at a staff level. In theory, it
24 could be also be done at the Planning Commission level.

25 The concern as expressed by the applicant

1 is not having a discretionary review process where
2 something could get denied or additional conditions could
3 be imposed that weren't part of the original negotiation.

4 So that's the concern they had and why as
5 long as it is non-material, they requested that it be at
6 a staff level review.

7 COMMISSIONER FERRICK: I see.

8 MR. McCLURE: We have had -- we talked
9 about this internally -- with the Vintage Oaks project,
10 the Seminary Oaks, whatever it's called, that was part of
11 the seminary property, there was a non-discretionary
12 review and comment process where it came back to the
13 Planning Commission for review and comment on the final
14 architectural design of the houses, and -- and so they
15 made a presentation.

16 The Planning Commission had the ability to
17 comment, but it was a non-binding review and approval
18 process.

19 It was simply a way to give the public and
20 Planning Commission the opportunity to give comment on
21 the final design of those houses.

22 COMMISSIONER FERRICK: And if -- I
23 believe I heard from one of the applicant's consultants
24 that the LEED gold standard that is part of the project
25 is going to be LEED gold standard in the time that it's

1 built, not in whatever today's is or --

2 MR. McCLURE: No. The way the -- the
3 language is in the Development Agreement is they've
4 agreed to LEED gold and silver as of the date of the time
5 they registered it with the LEED organization, which is
6 typically the way it applies in the LEED process.

7 COMMISSIONER FERRICK: But they can't
8 register it with the LEED organization until they're
9 closer --

10 MR. McCLURE: They registered it in
11 2009 --

12 COMMISSIONER FERRICK: Oh, they already
13 did.

14 MR. McCLURE: -- as part of the
15 application process for this project.

16 COMMISSIONER FERRICK: And then this
17 might be actually a question for later, so I'll wait on
18 that, my garage question.

19 Thank you.

20 CHAIRPERSON O'MALLEY: And John, do you
21 mind if I ask a question?

22 COMMISSIONER KADVANY: No.

23 CHAIRPERSON O'MALLEY: I usually don't
24 get an opportunity to do so.

25 I -- this again is for Bill. You

1 mentioned that you and our City Manager have had many
2 years of experience along the lines of reviewing this
3 type of Development Agreement and for a number of very
4 large projects.

5 Does this include experience in financing,
6 as well?

7 MR. McCLURE: Yes. I mean, part -- part
8 of my private practice, I do real estate, so purchase,
9 sale, financing of real estate. Not of this magnitude,
10 but, you know, I do -- I am familiar with those issues.

11 CHAIRPERSON O'MALLEY: I'd like to ask
12 you a financial question, if I may.

13 The -- the financial valuation that was
14 presented to us in one of the reports said -- indicated
15 that the return on investment for this particular project
16 was less than fifteen percent, I think 12.6 percent or
17 something close to that, and they made the statement that
18 normal expectations on the part of the people who finance
19 at this level, which is exceedingly high-level finance,
20 normally -- normally expect to have fifteen percent.

21 Is that consistent with your experience
22 over the years?

23 MR. McCLURE: It varies, but that is kind
24 of the general accepted, and that is a return from both a
25 cash on cash return of operations as well as the, you

1 know, assumed sale of the project after some point in
2 time.

3 So it's a combination. There's -- part of
4 the return on investment is from cash flow and part of
5 the return on investment is from the sale of the
6 property, but that's ultimately how they'd look at it.

7 CHAIRPERSON O'MALLEY: So -- so then just
8 so I understand it very clearly, the statement that --
9 that 12.6 -- I'm not sure.

10 MR. McCLURE: It's 12.68, I think.

11 CHAIRPERSON O'MALLEY: Whatever. That
12 that is marginal is a correct statement?

13 MR. McCLURE: I -- I mean, I have clients
14 that wouldn't invest substantial amount of money for even
15 a fifteen percent return when they're going into it, but
16 that -- you know, it all depends on the investor and what
17 their expectation is.

18 But institutional investors expect a
19 larger return for that kind of a financial investment and
20 rents.

21 CHAIRPERSON O'MALLEY: Okay. So one
22 could conclude if the Planning Commission made
23 recommendations that would drastically affect the return
24 on investment, that it might be more difficult to obtain
25 financing of a project of this size.

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1 MR. McCLURE: Again, it's -- ultimately
2 up to the Bohannons and whether the return on investment
3 is adequate for them.

4 CHAIRPERSON O'MALLEY: And I'll ask him
5 that question later. Thank you.

6 John.

7 COMMISSIONER KADVANY: Thank you.

8 I -- I have some questions related to the
9 proposed General -- General Plan Amendment, Zoning, and I
10 may not be clear exactly about what goes where, but for
11 exam -- for example, I'm just looking -- what I have in
12 front of me for my reference is attachment J from the
13 April 19th staff -- staff report's draft -- draft
14 ordinance.

15 It has a section on applicability, which
16 is this -- the area that we're looking at here on the
17 map. So there's applicability of what? What's being
18 limited there besides the --

19 MR. MURPHY: The applicability is related
20 to this zoning district. So this zoning district only
21 applies to that area.

22 So --

23 COMMISSIONER KADVANY: So -- but the M-3
24 designation can apply elsewhere in the future?

25 MR. MURPHY: In the future, it could, but

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1 then that would require a Zoning Ordinance Amendment to
2 addition to a straight rezoning of the property to modify
3 the applicability.

4 COMMISSIONER KADVANY: A Zoning Ordinance
5 Amendment. Okay. So that's an amendment. So that's
6 what -- that's what we have in front of us here is the
7 Zoning Ordinance amendment now? Yes/no?

8 MR. MURPHY: Right, but it would be a
9 more streamlined amendment as opposed to creating a whole
10 new district.

11 The district would be there, but it would
12 require another, you know, conscious step of the -- the
13 Planning Commission recommendations, City Council action
14 to amend the Zoning Ordinance to expand the
15 applicability.

16 COMMISSIONER KADVANY: All right. But in
17 any case, this just refers to this particular realization
18 of -- all right.

19 I -- there's a -- in the purp -- in the
20 purpose statement which tees up this whole section,
21 there's a -- there's this phrase that I found curious for
22 several months now which goes something like "allowing
23 for modern business practices that often lead to shifts
24 in primary business functions over time." It sounds to
25 me like that -- that they change what they do.

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1 Why is that there? What is -- what is
2 that telling us? What does that do that we couldn't do
3 without it?

4 MR. MURPHY: I -- I believe that part of
5 that is a reflection of what's sometimes called this
6 high-tech flex space that oftentimes buildings are -- are
7 built and the exact functions they incur in that space
8 change over time, and this is a topic that has been
9 subject to quite a bit of discussion in -- in the City
10 dating back to 1997 through the dot.com boom and then
11 discussions, as well.

12 So I think this is a reflection of a bit
13 of history of how the certain Use Permit requirements
14 that are currently on the books as it relates to M-2
15 differentiate the types of specific spaces within a
16 building, and this sort of purpose statement provides
17 greater flexibility in how some of those spaces would be
18 used.

19 COMMISSIONER KADVANY: Well, you know,
20 it's there. It seems -- still seems mysterious to me.
21 It's not clear how important it is, but in any case.

22 Here the definite question is basically
23 the dimensions of the lots to which this may apply. So
24 we have a minimum lot ac -- area of three acres, at least
25 200 by 200 feet.

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1 So what -- forgetting about -- or ignoring
2 this -- the project for now, what does this tell us
3 about -- given this, what are possible ways in which this
4 can be applied in the future? Say assuming the project
5 is -- is built to within -- within this area or nearby
6 areas?

7 How should I think about what might -- how
8 this might be used?

9 I -- one issue is -- I know an issue is
10 the aggregation of land, so may -- we can say a little
11 bit of that, but then assuming you can aggregate to
12 the -- these criteria, what do you get for that? What
13 can you expect to see?

14 MR. MURPHY: What you can expect to see
15 in terms of lot area or --

16 COMMISSIONER KADVANY: What the types of
17 buildings that could be built.

18 MR. MURPHY: The types of buildings that
19 could be built on other properties, if somebody went
20 through the process of Zoning Ordinance Amendment,
21 General Plan Amendment, Rezonings, M-3.

22 COMMISSIONER KADVANY: Yeah. That meets
23 these criteria.

24 So what -- what can we possibly do --
25 assuming the aggregation difficulty is overcome, because

1 of ownership, what can we conceivably see in principle in
2 that area -- say in that interior zone given these
3 criteria?

4 MR. MURPHY: Yeah. I mean, part of that
5 would just be complete -- part of it would be
6 speculating, but if you wanted to -- because -- and the
7 aggregation is probably the biggest issue, but I
8 previously referred to a page in the fiscal impact
9 analysis at the last meeting, I referred to that.

10 It lists all the property sizes with the
11 twelve properties that are located between the two
12 project sites. Not a single one is at three acres, but
13 once you start looking at more than one property, then
14 you can start getting properties that are at least three
15 acres.

16 So -- I can -- I can pull up that specific
17 table again and go through that with you if you'd like.

18 COMMISSIONER KADVANY: Well, no. I just
19 mean roughly speaking -- I mean, well, how many -- what's
20 the total acreage of the interior? About sixteen or
21 something?

22 So like four -- there's at least four
23 three acre plots in there or something. Let's take one
24 of those.

25 What could you do? I come here. I -- you

1 know, I'm a developer. I buy it up. I aggregate. What
2 kind of building could I build on a three acre plot
3 meeting these -- meeting these criteria? How many
4 stories is it? How much -- you know, would that leave
5 open for parking and so on? Just what would be these --

6 MR. MURPHY: You'd have to go through,
7 then, the other development regulations. If you want to
8 go back to that page, I can go to that, but from memory,
9 it's the 45 percent FAR. I think it's 45 feet in height,
10 so that's roughly three stories.

11 The parking would be room for 300, so this
12 is -- to meet those requirements, it would be -- if
13 you're familiar with the 180-190-200 Jefferson on
14 Jefferson Drive where there's a jog in the road, it -- it
15 would roughly equate to that.

16 COMMISSIONER KADVANY: I don't know that
17 building --

18 MR. MURPHY: Okay.

19 COMMISSIONER KADVANY: -- by memory.

20 MR. MURPHY: Okay.

21 COMMISSIONER KADVANY: This is a reason
22 why these kinds of criteria for characterizing buildings
23 are so irrational, because people can't interpret what
24 they mean.

25 I don't know -- I don't know what they

1 mean, but I don't want -- I'm not going to belabor the
2 point.

3 So anot -- okay. I have some other questions
4 that I want to ask about the General Plan Amendment, but
5 I'll do those for -- after somebody else goes.

6 Thanks.

7 COMMISSIONER PAGEE: This question is for
8 Bill, and what triggers a reassessment in a normal world?

9 MR. McCLURE: Fifty percent change of
10 ownership.

11 COMMISSIONER PAGEE: So if two adjacent
12 parcels owned by two different people are merged, then
13 that would trigger it?

14 MR. McCLURE: It would likely trigger a
15 reassessment.

16 So if they end up putting these parcels
17 together under a new ownership entity where you don't end
18 up with the identical ownership as it was preexisting, it
19 could -- would likely trigger reassessment because it
20 would be a change of ownership.

21 COMMISSIONER PAGEE: Okay. And then do
22 we have -- currently, do we have any architects on staff
23 to review -- to do architectural review?

24 MR. MURPHY: We don't have any people
25 that are -- we have people are undergraduate degrees in

1 architecture. We don't have anybody that's a licensed
 2 architect.

3 COMMISSIONER PAGEE: For these LEED
 4 standards, realizing that LEED -- LEED is evolving and
 5 improving over the years, what precipitated -- I can
 6 understand registering a project for an imminent project,
 7 but why was a line placed in the sand so early and then
 8 written into this Development Agreement?

9 MR. McCLURE: Again, this was a
 10 negotiated term in terms of the -- we wanted to make sure
 11 that the Development Agreement had -- there was
 12 representations it would be designed to LEED standards.

13 So we then zeroed in on defining that, and
 14 defining it, you know, we would try to get the language
 15 in that it would be LEED standard as of the date that
 16 they submit the building permit application for any
 17 individual building, and their discomfort related
 18 around we don't know what those are going to be at the
 19 time. You know, Development Agreements lock-in laws in
 20 effect generally at the time the Development Agreement is
 21 entered into and the project is approved.

22 So they insisted upon the 2009 as the
 23 date.

24 COMMISSIONER PAGEE: Okay. So I -- I
 25 guess the City realizes that LEED gold today might be a

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1 certificate ten years from now, so --

2 MR. McCLURE: Again, we understand what
 3 the implications are, and that's a term that you can
 4 comment or make recommendation on.

5 COMMISSIONER PAGEE: Okay.

6 MR. McCLURE: Ultimately, again, it's up
 7 to the City Council when it comes to them whether the
 8 terms are acceptable or not.

9 COMMISSIONER PAGEE: Right. Okay.

10 That's all for now. Thank you.

11 COMMISSIONER KEITH: I just have kind of
 12 a follow-up question on that a little bit.

13 You know, she's asking about the
 14 reassessment of land and normally, you're saying it's
 15 fifty percent change of ownership.

16 And on another tetra to the question, what
 17 percentage of property taxes goes to the city versus the
 18 state?

19 MR. McCLURE: Well, the state doesn't --
 20 in theory, the state doesn't get any, but some of the
 21 school tax money goes -- ends up -- the state gets credit
 22 for it when the tax revenue goes up for a school district
 23 that is fully subsidized by the state.

24 So the state gets the credit when the
 25 property tax goes up. It doesn't go to the school

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1 district.

2 So other than that piece, the City of
 3 Menlo Park gets about eleven percent of the property tax
 4 revenue.

5 So the -- the land -- to the extent that
 6 land is reassessed, for every million dollars of
 7 reassessment of land, the City gets one -- you know,
 8 eleven percent of the one percent.

9 So we get about \$1,100 for every million
 10 dollars per year. That's the sum total we get for
 11 reassessment.

12 COMMISSIONER KEITH: 1,100? Is that
 13 right?

14 MR. McCLURE: Yeah, because the -- one
 15 percent is 10,000, and we get eleven percent of the one
 16 percent.

17 COMMISSIONER KEITH: Okay.

18 MR. McCLURE: So if it's a hundred
 19 million dollars, it's only \$110,000 to the City of Menlo
 20 Park.

21 COMMISSIONER KEITH: Okay. Thank you.

22 CHAIRPERSON O'MALLEY: I turned my light
 23 off. I have a -- I think a very simple question for
 24 Justin.

25 I'm looking at 7.1.3, and it reads:

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1 "Prior to recording the final parcel map, all existing
 2 structures that cross proposed property lines for
 3 conflict with proposed easements shall be demolished and
 4 final inspections for the demolition permits shall be
 5 obtained. Any remaining buildings on each side shall be
 6 demolished prior to building permit issuance for each
 7 site."

8 I -- would you just reword that and help
 9 me understand it? What -- what buildings -- if we're
 10 looking at the buildings here, which -- which of the
 11 present buildings would be affected, I guess?

12 MR. MURPHY: Let's see. So 7.1 re --
 13 relates to the Independence site, and -- and then 7.2
 14 relates to the Constitution site, and this whole section
 15 of the Conditional Development Permit is just intended to
 16 get the basic sequencing understood and ultimately a lot
 17 of the specific conditions that are then in 8 would
 18 prevail.

19 So this -- because the project involves
 20 some modifications to some lot lines that's being
 21 accomplished through a tentative parcel map at this
 22 stage, and then later on, there'd be a final parcel map.

23 So there's the need for the final parcel
 24 map to be approved, and then the next step is
 25 recordation, so -- and that's when the lot lines are

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1 actually modified or created, and there's a need to make
2 sure that whatever is going to remain on the new lots
3 complies with those new lots.

4 So the basic thing is the buildings can't
5 cross property lines. Buildings can't conflict with new
6 easements.

7 Some others need to get demolition permits
8 and then to file those demolition permits.

9 So if you wanted me to step you through a
10 site plan, I could -- I could do that.

11 CHAIRPERSON O'MALLEY: I don't think so.
12 I think I understand what you're --

13 MR. MURPHY: Okay.

14 CHAIRPERSON O'MALLEY: -- saying now.

15 Thank you.

16 And Vince, I think you --

17 COMMISSIONER BRESSLER: This question is
18 regarding the M-3 disposition of the properties in the
19 center. We already talked about that a little bit, and
20 one of the things that we come across on the Planning
21 Commission is this concept that you -- by doing some --
22 this is -- this is a condition for permitting a Variance,
23 that you can't give anybody basically an advantage that
24 isn't enjoyed by their neighbors or they shouldn't --
25 that's one of the conditions, and I'm just trying to

1 understand the whole situation here with regard to that.
2 This is really a question for Bill.

3 You know, we just heard that other
4 property owners would probably be subject to a
5 reassessment on their land. Because they're smaller than
6 three acres, they'd have to aggregate.

7 So they would be at a disadvantage to this
8 developer, and I can't really reconcile all this.

9 Is that that -- is that inherent
10 unfairness a legal issue for this project, for this
11 Development Agreement for the way the M-3's structured?

12 MR. McCLURE: No. I mean, again, it's --
13 it's a legislative matter. It is not a Variance issue.

14 It's a legislative decision. You can rezone property --

15 COMMISSIONER BRESSLER: Okay.

16 MR. McCLURE: -- and properties situated
17 in different zoning districts are treated differently.

18 COMMISSIONER BRESSLER: Okay.

19 MR. McCLURE: And we have properties next
20 door to each other, across the street to each other that
21 are in different zoning districts that have different
22 right and regulations that apply to them.

23 COMMISSIONER BRESSLER: That clarifies
24 it. Thanks.

25 CHAIRPERSON O'MALLEY: Again, John, go

1 ahead.

2 COMMISSIONER KADVANY: Thanks.

3 So -- so sticking with the new General
4 Plan Amendment, one area -- issue that interests me and I
5 have some concern about is the way everything we're doing
6 basically leaves aside the future development of the
7 Bayfront Expressway, and it will be de facto by executing
8 this project, it's going to -- it's going to rule out
9 some -- some things maybe make other things possible. I
10 don't know.

11 One thing is undergrounding the power
12 lines; not necessarily in the vicinity of the project,
13 but over a much greater expanse; not necessarily financed
14 by this project, but financed in some other way, but
15 thought about in the context of this project is obviously
16 this -- this is how you would start it here.

17 You couldn't -- probably couldn't do it in
18 the future if you didn't think about it now, so I'm
19 wondering how -- given where we are in the whole progress
20 of everything and given the complexity of the engineering
21 task and the uncertainty even in viability and so on,
22 how -- how might something like that be structured into,
23 I guess -- the Development Agreement or -- and/or the
24 other parts of the entire -- everything that we have
25 before us? Does that include the -- does that include

1 the General Plan Amendment, zoning consideration?
2 How do you address something like that?

3 MR. McCLURE: Sure. We have been having
4 discussions -- again, we were given direction by the City
5 Council to go back and rediscuss some additional items or
6 rediscuss items that we may have discussed previously,
7 and that's one of them.

8 And so we've had discussions with the
9 applicant along the lines of obtaining cooperation if the
10 City pursues the undergrounding of utilities across the
11 property, obtaining cooperation by them considering --
12 having them consider redesign of the buildings or a --
13 you know, relocating the buildings on the site to take
14 advantage of the utility easement as it's relocated off
15 of their property or removed from their property.

16 And so we're going to be reporting back on
17 that to the City Council next Tuesday.

18 COMMISSIONER KADVANY: And does that
19 include some kind of schematic idea of what would -- it
20 sounds like that would require a considerable proactive
21 role for the City, then, to make something like that
22 happen.

23 MR. McCLURE: I mean, if the City wanted
24 to pursue it, it would require a proac -- this is -- this
25 is like maybe twenty percent of the -- of that line

1 affects this property that's within the City of Menlo
 2 Park. About eighty percent of it is off this property.
 3 So it goes all the way down the properties
 4 along Haven between -- you know, the back rear of the
 5 property's along Haven between them and the bay, and then
 6 it goes to the south towards East Palo Alto to the City
 7 boundary.
 8 So it's quite a distance of overhead lines
 9 that would be affected.
 10 COMMISSIONER KADVANY: That's either good
 11 or bad depending on how you --
 12 MR. McCLURE: Yeah. It's -- but it would
 13 require the City to take a very proactive position --
 14 COMMISSIONER KADVANY: Right.
 15 MR. McCLURE: -- because you can't put
 16 that underground line under Bayfront Expressway.
 17 COMMISSIONER KADVANY: Mm-hmm.
 18 MR. McCLURE: So it would have to be
 19 relocated elsewhere. And that -- you know, again --
 20 COMMISSIONER KADVANY: Does that mean so
 21 under -- so where -- where does the expressway start, I
 22 guess?
 23 MR. McCLURE: At the edge of the
 24 property.
 25 COMMISSIONER KADVANY: All right. So

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1 it's not a --
 2 MR. McCLURE: There isn't room between
 3 the property and Bayfront Expressway or Caltrans right-
 4 of-way to put the underground utilities.
 5 COMMISSIONER KADVANY: So it would have
 6 to basically be underground along the easement? Is
 7 that --
 8 MR. McCLURE: Or circumvent -- get moved
 9 over to Independence, run the length of Independence or
 10 something.
 11 Again, it's a -- the City would have to
 12 decide that it was it was going some time and resources
 13 to investigate what the options are and what the
 14 potential financing mechanism might be and work with PG&E
 15 to investigate that.
 16 COMMISSIONER KADVANY: So how would --
 17 where would that be codified and everything?
 18 MR. McCLURE: We're talking about
 19 language to go in the Development Agreement.
 20 COMMISSIONER KADVANY: Okay. Good.
 21 Thanks.
 22 Now another issue -- so, I mean, when I
 23 think about these -- this issue, I rare -- I think it's
 24 stuff -- you can only do it kind of -- you can think
 25 about the kind of 50,000 foot level, so in addition to

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1 that one, what's happening over the Bayfront Expressway
 2 is traffic and parking for this entire area.
 3 So perhaps not just the -- the internal
 4 area that we're looking at right here, but even just a
 5 little bit further south, the number of car trip's an
 6 important issue, vehicle trips.
 7 Where would it -- if the City wanted to
 8 take a firmer stand on like the total number of trips --
 9 once again, making the analogy with Stanford, the way
 10 that I understand Stanford works is that there are pretty
 11 firm limits on vehicle trips that have been vested there
 12 for many years.
 13 They don't build more parking spaces.
 14 They have to live -- they have to live within their
 15 means. That's the way Palo Alto's addressed congestion
 16 for Stan -- Stanford.
 17 If we wanted -- the City wanted to pursue
 18 something like that -- I'm not saying no net trips now,
 19 but we take a number like our 9,200 extra trips or
 20 10,000, whatever it is.
 21 It's some growth boundary for trips,
 22 where -- where would that be codified? Would that be
 23 part of the General Plan, End Zoning and could -- could
 24 that even be done?
 25 How would -- you get the idea of what I'm

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1 talking about.
 2 MR. McCLURE: I got the idea. It is much
 3 easier to do with a single employer. Google does it.
 4 You know, Facebook does it. You know, Hewlett-Packard
 5 does it, Stanford does it.
 6 So when you have a single employer that
 7 has a campus, whether it's a corporate campus or a
 8 physical campus, it is much easier as an employer to
 9 impose requirements on your employees and to be able to
 10 monitor that, require that they report on it, et cetera.
 11 It's much more difficult to apply it to
 12 a -- a landowner that is not an employer and not
 13 occupying those facilities.
 14 So Sun Microsystems run -- has run their
 15 own shuttle and buses, et cetera. Google does it to San
 16 Francisco. They have the Google buses.
 17 But, you know -- so it's easier to do it
 18 in those kind of contexts. It's also easier when you're
 19 located on Caltrain at the edge of the Stanford campus so
 20 that you have the feeder then being on the other side of
 21 the freeway between, you know, an expressway that goes
 22 across the bay and 101.
 23 So part of it is looking at what is
 24 realistic and how -- who you are imposing it upon and how
 25 do you implement it, you know, compared to a different

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1 situation.

2 So there was like rail here. If there
3 were other, you know, mass transit that was available to
4 this location, it would be easier and more likely to be
5 successful to apply it in that kind of setting.

6 And so again, part of it is looking at
7 when you're imposing that kind of requirement through --
8 in the -- in the case of the Stanford campus, it's
9 imposed through a quasi-adjudicatory, you know, process
10 through their land use permits through the County of
11 Santa Clara is how that is imposed.

12 The City of Palo Alto regulates a very --
13 very, very small portion of the campus and they are
14 certain requirements that -- there again, but part of it
15 depends on, you know, is the requirement or regulation or
16 condition that you're imposing, is it something that's
17 realistic, achievable and, you know, potentially
18 successful.

19 And I know in Palo Alto, a lot of people
20 just park off-campus and ride their bikes on to campus.
21 And, you know, it hasn't totally been successful in terms
22 of it working, and -- and there's a lot of, you know,
23 evidence of the south of campus neighborhoods starting to
24 put parking limitations and restrictions in that area
25 because they're getting the brunt of people parking off

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1 campus, and then people get on their bikes and -- and
2 ride into campus.

3 COMMISSIONER KADVANY: Okay, great.

4 Thanks.

5 CHAIRPERSON O'MALLEY: Henry.

6 COMMISSIONER RIGGS: Thank you.

7 I think we're at the point where comments,
8 even motions are on the table.

9 CHAIRPERSON O'MALLEY: I don't think
10 we're --

11 COMMISSIONER RIGGS: Or are you limiting
12 this still to questions?

13 CHAIRPERSON O'MALLEY: Well, we've been
14 asking questions. We're just about finished with staff
15 and ready to ask the applicant questions.

16 COMMISSIONER RIGGS: All right. Well,
17 I'll hold my comments until we're actually ready.

18 CHAIRPERSON O'MALLEY: Melody, do you
19 have a question of staff?

20 COMMISSIONER PAGEE: Yes.

21 In our Draft Agreement, there isn't a time
22 frame, a required tightening of the time between a demo
23 permit and a construction permit, and I realize that the
24 demo permit is tied into the recording of the lot lines,
25 but if we demo a building and we don't have that tax base

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1 improvement, and -- and the City of San Francisco,
2 there's been a lot of tax loss due to buildings just not
3 being built. It has nothing to do with lot line
4 adjustments.

5 Is there any way to tighten that up?

6 MR. McCLURE: Again, I'm not sure what it
7 would be.

8 I mean, I -- I'm -- I don't know how much
9 tax revenue we're getting from the buildings on those
10 properties to know whether it would make any significant
11 financial difference to the City of Menlo Park.

12 I mean, I don't believe that it's
13 significant moneys.

14 COMMISSIONER PAGEE: Well, in my case,
15 how about the City employees?

16 MR. McCLURE: Not likely.

17 Again, you know, if it's a hundred million
18 dollars, it's eleven percent of one percent.

19 COMMISSIONER PAGEE: That's a \$110,000.

20 MR. McCLURE: I doubt it's in that
21 neighborhood. Some of them are LEED. Some of them
22 aren't. They're not all vacant buildings.

23 COMMISSIONER PAGEE: Right, but if you're
24 going to record a map with a lot line adjustment, then
25 it's required in this document that the building be

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1 destroyed.

2 MR. McCLURE: Correct. They're not --
3 they're not likely to go ahead with the mapping until
4 they're ready to go ahead with the project.

5 COMMISSIONER PAGEE: Okay.

6 MR. McCLURE: It wouldn't make a whole
7 lot of sense to make that financial adjustment well ahead
8 of time. It's more likely that the map gets done at the
9 time, but they're going to be proceeding with the
10 building permit application, because that's about a
11 six-month process, anyway.

12 COMMISSIONER PAGEE: Thank you.

13 CHAIRPERSON O'MALLEY: It appears that we
14 have finished questions of staff, and I had a request
15 from a couple of the Commissioners that we take a five-
16 minute break.

17 So we'll take a five-minute break and then
18 restart.

19 (Recess taken).

20 CHAIRPERSON O'MALLEY: The meeting is
21 back in session. The meeting is back in session.

22 Mr. Bohannon? Is he here? We're at the
23 point of the meeting where the Commission would -- would
24 like to question you and your applicant team, so
25 Commissioners, who's first?

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1 All right. I'll go first. I had one
2 question that I -- that I asked of Mr. McClure and told
3 him that I would ask you the same question, and that
4 pertained to obtaining financing for a project of this
5 size.

6 As I understand the project, its total
7 investments are going to exceed 450 million dollars, and
8 for that, you have to find, I would guess, variable
9 sources of financing, and in the -- one of the financial
10 appraisals by our consultants, they -- they mentioned
11 that fifteen percent was the normal rate of return to
12 people who invest at this size level would require and
13 that this project here was going to provide a 12.68
14 percent return on investment.

15 I don't know how people get to be that
16 exact, but that's basically what they've said, and so as
17 a consequence, it was judged to be somewhat minimal in
18 terms of being able to obtain financing.

19 And my questioning to you is: How much
20 leeway do you have in a return of investment before you
21 reach a point where you don't think you'd be able to
22 raise that 450 million dollars for this project if we go
23 ahead with it?

24 MR. BOHANNON: Okay. Internal rate of
25 return is a -- is a -- you know, a financial metric that

1 we don't actually, you know, use at Bohannon particularly
2 because we -- we are developers and owners.

3 We develop to own, and internal rate of
4 return depends on an artificial sale at a certain point
5 in time in order to generate the return.

6 Having said that, bankers do and financiers
7 do want to see what an internal rate of return is, and
8 fifteen percent is on the low end of the range. So they
9 would prefer to see twenty.

10 It's my -- my belief that before the
11 project will be financeable, we'll need to see some
12 improvement in rent in the office market.

13 So the rents that are representative in
14 the pro forma are -- are some point off in time from
15 being achievable, and in order -- and in order for us to
16 get 12.6 -- in order to get into the fifteen to twenty
17 percent range that I think would finance the project, you
18 know, we'll need to see a little bit more rent growth.

19 So I'm not sure at what point it, you
20 know, we'll be there, but I'm fairly confident that the
21 office market will ultimately reach a level that would
22 support financing this project.

23 CHAIRPERSON O'MALLEY: All right. I
24 think I understand your question -- your answer to my
25 question. Thank you.

1 John.

2 COMMISSIONER KADVANY: I have a question
3 for Andrea about the -- about LEED and this project.

4 MS. TRABER: Good evening.

5 COMMISSIONER KADVANY: Could you give me
6 a ballpark estimate of what LEED -- well, tell us a
7 little bit about what -- what will LEED be -- what occurs
8 with LEED basically after a project -- you know, after
9 the buildings are basically built and running, what role
10 LEED has.

11 And I guess that's basically assessing
12 energy efficiency, and about -- and about how much that
13 costs per building.

14 MS. TRABER: Okay. So LEED is a
15 comprehensive system that can be used for design and
16 construction and existing building and operation.

17 But the distinction is that the system,
18 when you're using design and construction, is obviously
19 for -- for that process.

20 Right now, it is optional as to whether a
21 building owner then also transitions into the existing
22 building system, and that -- that system is very
23 different and has to do with operational standards for
24 managing building and all kinds of things beyond energy
25 and water and that purchasing, like that.

1 So it is optional for that. I -- there is
2 no requirement now to get into the existing building
3 program.

4 There is encouragement just because it
5 starts to -- you know, if the life -- looking at the
6 lifecycle of a project. We're seeing more buildings
7 start to use the existing building system in this market.

8 So LEED is also updated every -- now going
9 on a three-year cycle. The next -- 2009 was the entire
10 cycle. 2012 will be the next cycle, and every time it
11 goes through this cycle, basically the credit categories
12 will stay the same.

13 The general goal of improved energy
14 performance and leadership standards for all of the areas
15 naturally kind of rise.

16 So they choose, you know, the best
17 standard and place at the time when they do the upgrade.
18 So it's kind of like it all -- the floor rises.

19 COMMISSIONER KADVANY: Okay. For this
20 project, it's the design and construction.

21 MS. TRABER: Yes.

22 COMMISSIONER KADVANY: And that's where
23 we're seeing --

24 MS. TRABER: Yes.

25 COMMISSIONER KADVANY: -- certification.

1 MS. TRABER: Yes. There's no requirement
2 to do the other system.

3 COMMISSIONER KADVANY: All right. Here's
4 a question: As a City, we -- you know, this is a -- this
5 is a big issue for us, especially when we have this
6 Downtown Specific Plan coming up, standards coming up
7 then.

8 An alternative to LEED -- I don't want to
9 bring up Stanford again. Stanford decided to kind of
10 come up with their own criteria, their own standards.

11 What's your sense to which developers and
12 builders can realize LEED goals somewhat independently of
13 the official LEED process at this point?

14 For these office buildings and hotels, not
15 something as radically different as a parking garage.

16 MS. TRABER: That's an easy question.
17 Thank you.

18 Basically the system where organizations
19 develop themselves have usually an internal verification
20 process. So they check themselves. They don't have a
21 third party rating.

22 What's important about LEED -- and why it
23 is actually valuable in the market and in terms of
24 validating performance -- is that it's third party rated.
25 You have to go through a pretty intensive scrutiny of

1 three-party documentation and performance and building
2 models and so on to get your rating, and that -- that's
3 distinctly different than, say, a Stanford developed
4 system where they develop it, monitor it, internally
5 measure their own performance.

6 I mean, you can get to it. You know, it's
7 a much more custom system, and you can get to -- you can
8 certainly stand that much similar goal and metrics, but
9 there's no outside validation.

10 So I think that's one really important
11 thing about LEED is that it is validated by others that
12 has nothing to do with the project and doesn't self-
13 generate the system.

14 COMMISSIONER KADVANY: All right. Well,
15 I think what's unique -- what's the difference and kind
16 of what's the difference in energy efficiency you get by
17 that outside validation as opposed to homegrown, but I --

18 MS. TRABER: It really has nothing to do
19 with it, actually. The difference you get with energy
20 efficiency is how well you design and project the
21 project.

22 You can set very high standards, but in
23 any system, you set your standards.

24 COMMISSIONER KADVANY: All right. I
25 don't want to take this too far afield. Thank you very

1 much. I mainly wanted to get clarified the design and
2 operation.

3 COMMISSIONER PAGEE: Since you're up
4 here, I understand that you went and you got this project
5 pre-certified or not pre-certified, but on track for
6 LEED.

7 MS. TRABER: It's registered.

8 COMMISSIONER PAGEE: Registered so that
9 it -- you can see where you were as far as points.
10 Knowing that LEED improves -- gets -- gets harder every
11 time it evolves. Every three-year cycle, it gets harder.

12 Would that be -- I mean, it's not up to
13 you, I would imagine. You can redo it, but why would we
14 not consider re -- redoing the LEED and bringing it up to
15 the current standard at the time it's applied for a
16 permit?

17 MS. TRABER: Well, I think you could do
18 that. I think we had the -- we wanted to show a
19 commitment that we were actually going to do LEED, not
20 just say we were going to do LEED. That's the main
21 reason we registered it.

22 But it was designed by staff that it looks
23 better, that the project was actually going to follow
24 through.

25 So That's the reason we pre-registered in

1 2009.

2 I think you can consider -- you know,
3 looking at the current standards, I think -- I think, you
4 know, as I was mentioning, the market can change. A
5 lot's going to change in ten, fifteen years. I think
6 it's going to going to get overall.

7 At the same time the standards are
8 raising, I think it's also going to be easier to do some
9 of the technologies that are going to come into play.

10 There's going to be more equipment
11 available, more energy efficient, things like this.
12 There's a lot of technology that's going to be changing,
13 too.

14 So I think you could consider looking at
15 the current -- I would also say that from Dave's
16 perspective, that having a building built in more years,
17 having a LEED 2.2 rating is not going to do very good in
18 the market.

19 You would probably want to just for market
20 value change to the new system, and I don't -- it's not
21 going to get -- it's not going too make it any more
22 difficult.

23 So it was hard to get a bead on the -- you
24 know, what system to use, because we don't know what it's
25 going to look like in ten years.

1 COMMISSIONER PAGEE: Okay. Thank you.
 2 MS. TRABER: Mm-hmm.
 3 CHAIRPERSON O'MALLEY: Katie.
 4 COMMISSIONER FERRICK: Let's see. Who
 5 should I start with first? Oh, probably the architect
 6 for this one.
 7 I'm wondering about the garage plan and
 8 whether it's changed more definitively in the last couple
 9 of weeks to the smaller footprint, slightly higher story
 10 with more landscape space on the ground.
 11 MR. GILMAN: It has not changed
 12 significantly from where we were, but, you know, as we've
 13 looked at numbers, recalculating site areas of open space
 14 and those kinds of things, we've locked in the square
 15 footages to confirm that sizes of footprints and heights
 16 of buildings, you know, were all in -- in keeping with
 17 the direction we were headed.
 18 So in terms of the architectural
 19 character, we're still pursuing the directions that we
 20 talked about last time.
 21 So I think if anything, simply -- we've
 22 kind of firmed up that direction from our perspective.
 23 COMMISSIONER FERRICK: So firmed up the
 24 direction of -- of bringing it in smaller footprint on
 25 the parcel or --

1 MR. GILMAN: Yes, a smaller footprint.
 2 I think if we -- we've got the slide here if we reel
 3 through a few here. I'll show you.
 4 MR. BOHANNON: If I can clarify, I think
 5 this might answer your question, Katie.
 6 The smaller footprint and the higher --
 7 you know, they're higher as a result of -- of the smaller
 8 footprint.
 9 That's an option that's been offered to
 10 the City, and as a recommending body, as part of your
 11 recommendation good he think, you can -- you can
 12 recommend for that option if you so choose.
 13 COMMISSIONER FERRICK: Great. Thank you
 14 for clarifying.
 15 MR. GILMAN: And just to clarify what
 16 that option was, in the case of the Constitution garages,
 17 garage A was set back I think an initial twenty, 25 feet
 18 from Marsh Road. The dimensions set back from Bayfront
 19 is the same.
 20 In the case of garage B, it was set back
 21 an additional I think sixty feet from Bayfront from what
 22 it had previously been, and if we go back one slide,
 23 you'll see the Independence situation.
 24 In that case, the garage is set back about
 25 75 feet from Independence. So those were the major

1 changes that came along with that.
 2 COMMISSIONER FERRICK: Great. Thank
 3 you. I really like those changes.
 4 And then back to the other slide on the
 5 Independence site. Some of the trees that there was some
 6 people concerned about are near garage B, and I know at
 7 least some series of them on Chrysler Drive is probably
 8 doomed because of the traffic mitigations, but is there
 9 others that are now potentially uncovered by garage that
 10 could be retained? Or maybe is this a Justin question.
 11 MR. MURPHY: Let's see. You're talking
 12 about onsite trees?
 13 COMMISSIONER FERRICK: Well, yeah. There
 14 was the redwood trees that are --
 15 MR. MURPHY: The redwood trees are
 16 offsite and they're on the south side of Constitution.
 17 So in terms of the garage footprint placement to the
 18 north of the garage, there's the potential that there's
 19 some trees that may not be in the exact footprint of the
 20 garage, but the most important thing in terms of tree
 21 removals for the site have to do with the overall grading
 22 that's occurring to comply with the FEMA flood
 23 requirements.
 24 So there's going to be a grade change that
 25 occurs that -- as staff looked at it, there weren't any

1 trees onsite that could -- that would be worth designing
 2 around as it relates to the overall scale of the project
 3 and the amount of earth moving that would occur.
 4 COMMISSIONER FERRICK: Okay.
 5 MR. MURPHY: One kind of -- one notable
 6 exception, though, is on the Independence site that
 7 doesn't have anything to do with garages.
 8 There's some olive trees that are
 9 currently up in a berm and they're not impacting the rest
 10 of the site. That was something -- because the trees
 11 were actually up -- up high, there were trees that could
 12 be pre -- preserved in the current berm.
 13 We've looked at the trees quite
 14 extensively given the overall grading plans and the
 15 proposed construction.
 16 COMMISSIONER FERRICK: Okay. Thanks.
 17 On the plan, though, there is a
 18 significant increase in the planting of trees.
 19 Isn't there something like a two or three
 20 to one ratio? The number you're removing, you're adding
 21 in two or three times more?
 22 MR. GILMAN: Yes.
 23 COMMISSIONER FERRICK: Thank you. I just
 24 wanted to clarify that.
 25 And then I think the other questions I

1 have are -- thank you -- are probably for Mr. Bohannon or
2 maybe even another staff one.

3 Could you comment on your thoughts about
4 the proposal by the Fire Protection district and what --
5 what's going on with that?

6 MR. BOHANNON: I'm not sure how to
7 comment. We've had discussions with the City and the
8 negotiations with the City negotiating team.

9 We don't agree with the Fire District's
10 characterization of the situation. There is -- there are
11 discussions going on between the City and the Fire
12 District and we're -- we're involved.

13 I -- I'm not sure how I handle this
14 question exactly.

15 COMMISSIONER FERRICK: Is it an ongoing
16 negotiating issue?

17 MR. BOHANNON: Yes.

18 MR. McCLURE: It is. It is on ongoing
19 discussion with the three parties.

20 COMMISSIONER FERRICK: So that kind of
21 actually leads me to a question for you, Bill, for our
22 procedural thing here tonight.

23 Since there's ongoing issues, we're going
24 to either be making the specific recommendations on to
25 Council with the thought that, you know, like -- so, you

1 know, there is really no like approval, per se, for us.
2 We're going to forward it with specific recommendations
3 or not.

4 Would that be -- how would you
5 characterize it?

6 MR. McCLURE: For example, there may be
7 some things you want to give general recommendations on
8 or guidance or recommendations, but again, it's what
9 you're comfortable with.

10 So if you think or feel that we need to
11 continue working with the Bohannon organization and the
12 Fire District to come up with a mutually acceptable
13 resolution, that's something you can include in your
14 recommendation.

15 COMMISSIONER FERRICK: I see. And this
16 one I think may be a question for Justin.

17 It was stated by one of the community
18 members in Public Comment that there's over 3,000 housing
19 units that need to -- that need to be created to offset
20 the jobs in this project, and that seemed awfully high
21 considering --

22 MR. MURPHY: Yes.

23 COMMISSIONER FERRICK: -- that it was my
24 understanding that there was potentially 2,300 jobs total
25 once the num -- once the buildings are built out.

1 And I didn't know if that was part of the
2 whole current jobs to housing ratio imbalance we have now
3 or what the correct information is on that.

4 MR. MURPHY: Yes. I do recall reading
5 that today, and that number did jump out at me as a large
6 number myself, and that's something that I would need to
7 look up specifically, but I had the same sort of thought
8 process in terms of the -- the number of employees
9 associated with this and the -- the number of housing
10 units.

11 So I go up, start looking that up while
12 you ask some other questions if you'd like.

13 COMMISSIONER FERRICK: Well, I guess, the
14 more -- I just want to make sure that the -- the
15 estimated number of jobs when it is built out is 2,300.

16 So the 3,000, wherever that might have
17 come from, isn't necessarily rooted in this project. It
18 can't really be if it --

19 MR. MURPHY: Yeah. It's nothing that
20 resonates with me, but -- so I don't know exactly where
21 that number came from.

22 COMMISSIONER FERRICK: Okay. Thank you.

23 Let's see. I think that's it for now.

24 Thanks.

25 CHAIRPERSON O'MALLEY: Any additional

1 questions?

2 COMMISSIONER KEITH: I just have a
3 question for Mr. Gilman, the architect.

4 I was just curious. Regarding the pool at
5 the hotel, I noticed you put it on Bayshore Freeway and I
6 was curious what the choice was putting it there.

7 MR. GILMAN: Actually, early on, we
8 looked at a number of site plan alternatives. One of the
9 major aspects is that location gives us the best solar
10 angles during the day.

11 And so for the idea of being able to be
12 out lounging around the pool and so on, it gave us the
13 best solar relationship because it's essentially on the
14 southwest side of the building.

15 The -- another major aspect of that is
16 that we do have a sound wall element that is one of the
17 aspects that sort of helps contain that whole outdoor
18 pool deck area.

19 COMMISSIONER KEITH: Okay. Thank you. I
20 was curious about that.

21 CHAIRPERSON O'MALLEY: John.

22 COMMISSIONER KADVANY: Well, just to
23 continue that with Tom, I mean, I just -- it was one of
24 the first things I also noticed about the design when I
25 first saw it, and somebody else mentioned just the noise

1 from the freeway. A sound wall will mitigate that
2 somewhat.

3 I mean, so my concern is just simply it
4 diminishes the quality of the hotel having this -- having
5 this beautiful outdoor pool so close to the freeway. I
6 mean, I guess it's as much comment as question, I guess.

7 I mean, I realize you all have decided to
8 make that tradeoff simply. I don't know what -- what --
9 where are your thoughts on it are.

10 MR. GILMAN: Just that we should be able
11 to do a good job in terms of a sound wall being able to
12 contain the freeway noise and be able to create, you
13 know, a more passive kind of environment there.

14 COMMISSIONER KADVANY: Okay. Good luck,
15 assuming it gets built.

16 CHAIRPERSON O'MALLEY: Henry.

17 COMMISSIONER RIGGS: Yeah. Thank you.

18 I guess I'm going to make Tom stand up
19 again.

20 There continue to be questions circulating
21 in town about the value of the site after the General
22 Plan Amendment as opposed to before, and so to try to
23 bring this a little bit into focus -- whether or not we
24 can actually work with it or not is another question.

25 I heard a -- the proposition, for example,

1 that if you can build three times as high, then the land
2 is worth three times as much, which brings me to ask you
3 if -- I think you're budgeting somewhere around \$400 a
4 square foot for the office buildings here.

5 MR. GILMAN: In that range.

6 COMMISSIONER RIGGS: If you were building
7 three-story office buildings, would you be budgeting that
8 much?

9 MR. GILMAN: Well, I think that the issue
10 that happens with -- with the higher densities,
11 regardless of size of the parcel itself, is that you
12 quickly become -- you quickly get put into a box of
13 requiring structured parking, and I think that that's
14 really the difference.

15 When you start increasing density, you go
16 from surface parking to requiring either underground
17 parking or parking structures, and I think that's --
18 there's not a significant difference in cost per square
19 foot of a two-story versus a three-story building, but --

20 COMMISSIONER RIGGS: Well, actually, I
21 was comparing a three-story building with an eleven-
22 story building.

23 MR. GILMAN: Yeah, so absolutely.

24 There's going to be more things associated with an
25 eleven -- eight- or eleven-story building in terms of

1 life safety issues that come into play. Once you're
2 above 75 feet.

3 So, yes, those things do impact the cost
4 of the building itself, as well as the other kind of site
5 costs that are associated with higher densities.

6 COMMISSIONER RIGGS: So there's life
7 safety, there's seismic, there's --

8 MR. GILMAN: Typically deeper
9 foundations. There are additional elevator requirements.
10 There's a whole series of things that go along with life
11 safety, as well, various refuge for safety, things of
12 that nature, smoke evacuation systems.

13 COMMISSIONER RIGGS: So if it went down
14 to three stories, we can trust it would not be 400 -- the
15 same \$400 per square foot.

16 MR. GILMAN: Typically less.

17 COMMISSIONER RIGGS: Notably less?

18 MR. GILMAN: Again, it would depend on
19 what you include in level of quality, what you include in
20 there.

21 COMMISSIONER RIGGS: Well, try a similar
22 A office space, just not so high in the air, much of it,
23 and I think you pointed out that you don't need to
24 include the price of parking structure.

25 So by the way, the \$400 a square foot

1 includes the element of the structured parking?

2 MR. GILMAN: I'm not sure what --

3 MR. BOHANNON: I'm not sure if I'm
4 understanding the question properly, but let me try.

5 The -- the cost per square foot of the
6 three-story buildings would be lower by virtue of the
7 absence of parking structures, but the buildings
8 themselves might be similar cost-wise.

9 I think -- I think there's more cost on a
10 per square foot basis as soon as you get to the life
11 safety threshold, and -- I mean, I think that's after
12 four, five, and probably the most expensive that the
13 building is going to be at right five stories because,
14 you know, there's an economy of scale.

15 If you get a little more height and skin
16 area as it relates to those elements, then you get -- you
17 get an economy that's happening.

18 So there's -- you know, there's -- there's
19 a point where you -- you look at parking structures with
20 density and you say, "boy that doesn't make sense. It
21 would be better to go back to three stories."

22 There's a point where if you get to enough
23 density where the parking structures start to make sense,
24 and as you add more height and density, the project goes
25 in more -- more economies of scale.

1 So I think that's really the way -- in
 2 either case, whether it was a three-story or an eleven-
 3 story, these are going to be very high quality and
 4 expensive buildings.

5 COMMISSIONER RIGGS: All right. I think
 6 I should have clarified. What I'm trying to establish is
 7 that it's not necessarily fair to -- for the public to
 8 conclude that the availability to build at three times
 9 the FAR makes it equivalent to have three times as much
 10 land, because the cost of building under those conditions
 11 is higher.

12 MR. BOHANNON: Well, it's significantly
 13 higher. We're essentially constructing land in the form
 14 of parking structures, so --

15 COMMISSIONER RIGGS: And foundations.
 16 MR. BOHANNON: And foundation.

17 So that's really the way I look at it.
 18 We're not -- there is -- there's a limit as to how much
 19 land is there, but we can create land area in the
 20 structures or the equivalent of land area so that we can
 21 get more density.

22 COMMISSIONER RIGGS: Right, and I know
 23 you're not going to have actual comparative figures, so
 24 I'm not going to press you further on that, but that --
 25 that does help clarify what I think sometimes is a

1 misunderstanding about land value.

2 Thank you.

3 And actually, David, as long as you're up,
 4 I believe at this time the term sheet does not include
 5 anything like a sales tax in-lieu fee.

6 Although variety of fees and so forth, and
 7 there's a good variety of them, but I believe that's
 8 correct, right? That would apply to the office building?

9 MR. BOHANNON: I think that's correct.

10 COMMISSIONER RIGGS: Okay. I'll leave it
 11 at that.

12 Thank you.

13 CHAIRPERSON O'MALLEY: Kirsten, did I see
 14 your light on earlier? John, you're okay?

15 COMMISSIONER KADVANY: David, I had a
 16 question following up on Henry's topic of the in-lieu
 17 fee.

18 So maybe you've heard discussion tonight
 19 about public -- public benefit and how it relates to
 20 fiscalization of the property it's on.

21 Is your -- I mean, is it your sense that
 22 the amounts for right now the way they're structured or
 23 do you have something in principle against other ways of
 24 defining public benefit or in-lieu fee or what --
 25 whatever it is in sort of 25 words or less?

1 I don't want to get into debate about it,
 2 but are there principle reasons about why you don't want
 3 to get into certain things with respect to the office --
 4 office buildings in terms of public benefit or the
 5 revenue for -- for the City, or is it you think the
 6 package is adequate now? Don't need anything else? Sort
 7 of where are you at on that?

8 MR. BOHANNON: I think there is an
 9 extraordinary deal for the City of Menlo Park as it is.
 10 We're not asking for any public subsidies, which would be
 11 more typical in -- in a development of this nature.

12 The office buildings will be a significant
 13 endeavor -- endeavor. To burden them with participation
 14 would likely put off the point in time that we could
 15 actually build them, make them riskier if we could get
 16 the finance.

17 It's not in the City's interest in my
 18 opinion to try to burden the office component given that
 19 that's what's going to make this project happen.

20 Without the office buildings, we can't do
 21 the hotel.

22 You know, we're working on a project in
 23 Belmont right now where, you know, discussions there are
 24 how much subsidy is the City going to provide us in order
 25 to get a hotel. That also has an office building

1 attached to it.

2 COMMISSIONER KADVANY: Thank you.

3 CHAIRPERSON O'MALLEY: Melody?

4 COMMISSIONER PAGEE: I have a question
 5 for staff.

6 Justin, this is -- each of these parcels,
 7 Independence and Constitution, were going to be broken up
 8 into one or two long parcels; is that correct.

9 MR. MURPHY: Yes. So --

10 COMMISSIONER KEITH: Melody, I didn't
 11 hear your question.

12 COMMISSIONER PAGEE: I'm just clarifying
 13 that each of the parcels on Independence and Constitution
 14 were going to be broken up into one or two parcels.

15 MR. MURPHY: So, I mean, I believe
 16 there's five parcels on Independence, four on
 17 Constitution. So those five on Independence would be
 18 merged and resubdivided potentially into two lots, and
 19 those proposed lot lines are shown and then on
 20 Constitution the same thing, merged into four lots and
 21 then divided again into two.

22 COMMISSIONER PAGEE: Can you explain the
 23 three proposed lot lines on the Constitution site?

24 MR. MURPHY: Let's see. I believe that
 25 there may be a note on the plans that may create a little

1 bit of Constitution --

2 COMMISSIONER PAGEE: Mm-hmm.

3 MR. MURPHY: -- but the -- so there's

4 some internal property lines that aren't really supposed

5 to be there, so let me turn to CA2.1, maybe. Oh, CA1.1.

6 CA-1 is circle page B-51. The April 19th

7 staff report, and yes. So the -- moving from Marsh Road

8 to Chrysler along Constitution Drive, these plans

9 erroneously show proposed lot lines between the parking

10 structure, garage A and office building one. That lot

11 line shouldn't be there.

12 Then there is a proposed lot line between

13 the two office buildings, so that one is accurate, and

14 then between office building two and garage B again,

15 there's another proposed lot line that shouldn't be

16 there.

17 I think for building code purposes,

18 there's the need to kind of show the imaginary property

19 line and I think that may be a -- a remnant of that.

20 COMMISSIONER PAGEE: Okay. So -- so the

21 M-3 zoning, the summary is that the lot areas will have

22 three acre minimums, a lot width of 200 feet, a lot depth

23 of 200 feet, setbacks front, rear and sides of twenty

24 feet and a height of 45 max.

25 The bonus would be based on the floor area

1 ratio. So the bottom line on M-3 would be 45 percent

2 office. The bonus would be a hundred percent with the

3 ho -- I imagine with the hotel is the bonus which allows

4 you to go over.

5 For this particular property, this bonus

6 is going to be provided because one of four parcels will

7 have a hotel on it? Is that correct?

8 MR. MURPHY: Yes. The floor area ratio

9 will be calculated across all properties in the -- in the

10 project. So there's two sites, and then each site would

11 have essentially two parcels. So yes.

12 COMMISSIONER PAGEE: So --

13 MR. MURPHY: Calculations across those

14 four proposed parcels.

15 COMMISSIONER PAGEE: Right. Now, why

16 don't we have two levels of setbacks? Because clearly

17 this development already has -- does not have setbacks to

18 20/20/20.

19 MR. MURPHY: I mean, that's something in

20 concept that could be done. It's a matter of -- that's

21 something that the Planning Commission could consider,

22 but this is set up with establishing a base to this M-3,

23 and then there's the Development Agreement that's needed

24 to exceed the floor area ratio and then the Conditional

25 Development Permit and the different tools for allowing

1 specific development standards.

2 So what is occurring here is those are

3 reflected on the project plans, and then there's a

4 condition of approval that says that the setbacks need to

5 be generally consistent with the project plans, and then

6 there's another condition of approval that says the

7 overall project needs to be in substantial compliance

8 with the project plans.

9 So conceptually, the City could come up

10 with a two tiered, but just whether that's necessary

11 given the fact that the City has used the Conditional

12 Development Permit and comparable Planned Development

13 Permits to establish specific requirements for a number

14 of properties. So this is then consistent with that

15 practice.

16 COMMISSIONER PAGEE: So subsequent

17 applicants using this same process on their property

18 would not necessarily -- adjacent property owners would

19 know that, although the three properties on their right-

20 hand side are going to combine and they're going to form

21 this -- this kind of Development Agreement amongst those

22 properties and they're going to go in for the M-3-X

23 that -- although they might think that they have -- that

24 property is going to have twenty foot clear, it might

25 not, and that's going to be a staff decision?

1 MR. MURPHY: In terms of setbacks?

2 COMMISSIONER PAGEE: Yes.

3 MR. MURPHY: It will be a City Council

4 decision. If they -- we are talking about something

5 that's less than twenty feet?

6 COMMISSIONER PAGEE: Yes.

7 MR. MURPHY: That will be a City Council

8 decision with a Planning Commission recommendation to the

9 standard development permit process.

10 COMMISSIONER PAGEE: It's just this one

11 that's an exception to that? I thought that anyone that

12 applied through the M-3 would not need to come through

13 the Planning Commission.

14 MR. MURPHY: No. That's kind of a

15 misunderstanding of things.

16 If someone else in the future were to

17 apply for the M-3, right off the bat they would be going

18 to the City Council, because anybody applying for M-3

19 would need a Zoning Ordinance Amendment, General Plan

20 Amendment, Rezoning.

21 All those actions require City Council

22 review which then involves Planning Commission

23 recommendation, review by staff.

24 So let's just say for discussion purposes

25 that someone wanted to pursue the base M-2 requirements,

1 which is the 45 percent FAR, 45 percent -- 45 foot height
2 limit.

3 COMMISSIONER PAGEE: M-3?

4 MR. MURPHY: Sorry. M-3 requirements, the
5 buildings associated with that would require
6 Architectural Control.

7 So there's -- in concept, there's the
8 potential that someone would not need a Conditional
9 Development Permit, would not need a Development
10 Agreement, but they would need to -- a General Plan
11 Amendment to -- Map Amendment, Zoning Ordinance
12 Amendment, Rezoning and then at a minimum Architectural
13 Control.

14 COMMISSIONER PAGEE: Okay.

15 MR. MURPHY: So actually construction --

16 COMMISSIONER RIGGS: Through the Chair, I
17 think an item of clarity is needed here.

18 Justin, am I correct that the M-3 zoning
19 proposed happens to be the two sites identified with this
20 project and only those two sites?

21 MR. MURPHY: Right. And that's why I
22 said that there'd be a zoning ordinance.

23 COMMISSIONER RIGGS: Because the question
24 from Miss Pagee implied that somebody else might be in
25 the M-3 and wanted to take use of it. So I just wanted

1 to clarify that for anyone who's not --

2 MR. MURPHY: Sure.

3 COMMISSIONER PAGEE: My intent was to say
4 here we have a new zoning, M-3. Someone else can apply
5 for M-3. They aren't automatically in M-3, only these
6 properties.

7 They can apply to also have an M-3
8 inspired zone rather than come up with M-4, M-5 or M-6.

9 COMMISSIONER RIGGS: Right, and they,
10 too, will also have to go through somewhere around twelve
11 hearings to get it, I suspect.

12 COMMISSIONER PAGEE: Okay. That's it.

13 COMMISSIONER KADVANY: I do have just a
14 clarification, Justin. What -- why is the General Plan
15 Amendment -- I understand the other condition, but why
16 the General Plan Amendment? Why would they go through
17 that? Why isn't that already -- what has to be --

18 MR. MURPHY: I believe it's a General
19 Plan Map Amendment that corresponds with the M-3. I
20 don't believe it would necessarily be a General Plan Text
21 Amendment.

22 MR. McCLURE: It's page I-2. So the
23 General Plan map that is part of the General Plan
24 Amendment only shows these properties.

25 COMMISSIONER KADVANY: So it's basically

1 the map?

2 MR. McCLURE: Correct.

3 COMMISSIONER KADVANY: And that sounds as
4 amendment.

5 MR. McCLURE: Yes.

6 COMMISSIONER KADVANY: Got it. Thank
7 you.

8 CHAIRPERSON O'MALLEY: Are there any
9 additional questions of the applicant?

10 COMMISSIONER KEITH: I -- I just had one
11 actually for staff. Sorry.

12 CHAIRPERSON O'MALLEY: All right. Go
13 ahead.

14 COMMISSIONER KEITH: In just looking at
15 attachment D, the questions that you were going to report
16 back to the City Council on, and I wanted to ask about
17 number 9, the hundred dollar per trip penalty.

18 It -- the hundred dollar per trip should
19 have the word "annual" in front of it, right, just to
20 clarify? Because it's not --

21 MR. MURPHY: Yes. That's an annual.

22 COMMISSIONER KEITH: Okay. I mean, it
23 just makes a difference.

24 MR. MURPHY: This is just kind of
25 shorthand. The actual important language does -- that

1 has been clarified to insert annual. I think at one
2 point it didn't, and that wasn't clear, so I think now
3 we've inserted that word.

4 COMMISSIONER KEITH: Okay. I know you're
5 not reporting back on this until May 11th, but do you
6 have any information on it now?

7 All right. Okay. I see you shaking your
8 head.

9 MR. McCLURE: Sorry. No, we don't have
10 anything to report back to you tonight.

11 COMMISSIONER KEITH: I thought I'd ask.
12 That's fine.

13 CHAIRPERSON O'MALLEY: Okay. Again, on
14 additional actions that are expected to be taken on
15 number 17, how does Council initiate steps to change
16 school boundaries?

17 MR. McCLURE: There is a process through
18 the County Office or Board of Education to change the
19 boundaries of school districts.

20 So I don't know whether the City would be
21 working with the Ravenswood City School District to
22 implement that change or what -- how that might take
23 place.

24 CHAIRPERSON O'MALLEY: But there is a
25 mechanism by which they can do that, then?

1 MR. McCLURE: Right. Correct.
 2 CHAIRPERSON O'MALLEY: Thank you.
 3 COMMISSIONER KEITH: I just have one more
 4 while we're finishing up on this.
 5 On the transit occupancy tax, it's sort of
 6 capped at eleven percent; is that right?
 7 MR. McCLURE: Yeah. That -- the proposal
 8 is an additional one percent provided if we increase the
 9 TOT, then the additional one percent -- up to eleven
 10 percent or higher, then the additional one percent would
 11 go away.
 12 COMMISSIONER KEITH: And --
 13 MR. McCLURE: But there's no cap. If the
 14 City raises the TOT to twelve percent, twelve percent
 15 would be applicable to this project, as well.
 16 COMMISSIONER KEITH: Can you just tell me
 17 what, if you know, the TOT for -- I don't know --
 18 Rosewood?
 19 MR. McCLURE: How much we're receiving?
 20 COMMISSIONER KEITH: Yes.
 21 MR. McCLURE: I mean, it's estimated to
 22 generate like a million-six or a million-five a year. A
 23 million-three a year, maybe.
 24 COMMISSIONER KEITH: But is it ten
 25 percent or --

1 MR. McCLURE: Oh, it's ten percent. The
 2 citywide TOT is ten percent. Palo Alto's like twelve
 3 percent. I think Redwood City's twelve percent, but
 4 Menlo Park is ten percent.
 5 COMMISSIONER KEITH: Okay. That was my
 6 next question. I just wanted to know what was
 7 comparable.
 8 Thank you.
 9 CHAIRPERSON O'MALLEY: Then I think we'll
 10 move on to Commission discussion.
 11 Thank you, Mr. Bohannon.
 12 Henry.
 13 COMMISSIONER RIGGS: Well, it's almost
 14 ten o'clock, so I'm just going to jump right in here.
 15 There are five points on my mind remaining about this
 16 project, and one or two I probably can't do anything
 17 about, but there's -- still there, so I'll mention.
 18 One is the traffic impact we'll call it on
 19 Marsh Road, although it affects everything from Bayfront
 20 Park to Middlefield Road and the roads there -- thereto.
 21 And from the hearing four weeks ago, it
 22 was evident -- or three weeks, whatever it was, it was
 23 evident that we don't currently have a backup plan for
 24 that and we've already determined what the project
 25 responsibilities will be.

1 I hope that the City continues to look at
 2 Marsh Road as this project develops, because I believe
 3 there will need to be more. So that's just a comment.
 4 The second item has to do with the
 5 penalty, for wont of a better word, for the traffic
 6 reduction.
 7 This Commission felt that traffic
 8 reduction was something that we should address
 9 aggressively, and we certainly made an aggressive --
 10 aggressive recommendation, I think fifty percent, and it
 11 looked like seventeen percent has been thoroughly
 12 discussed and resolved that that is something achievable.
 13 But I agree with one or two other
 14 Commissioners that have commented or at least, I think,
 15 raised the issue that the hundred dollars per year for
 16 additional trips, if we're estimating somewhere around --
 17 well, we're estimating about 2,000 employees and
 18 presumably additional hotel guests.
 19 If we -- if this project falls behind,
 20 say, by five percent, that's a whole lot of extra car
 21 trips, but put a number on it.
 22 Say there are an extra hundred cars coming
 23 to and fro, that comes up to ten, maybe 20,000 if they're
 24 going both to and fro and counted that way.
 25 Well, \$20,000 doesn't buy one parking

1 space in construction. So in essence, the City might as
 2 well know that all they're going to get out of this
 3 condition is some money in the bank.
 4 It seems very unlikely that this will be
 5 seen as an impetus to revise or work harder on trip
 6 reduction. I'll just point that out for City Council's
 7 consideration, and maybe that's okay.
 8 Item three, the largest disappointment for
 9 me about the priorities set for the term sheet and now
 10 the -- the agreement is the absence of an aggressive
 11 response to our -- our housing impact.
 12 Creating housing in Menlo Park really
 13 comes down to the land on which to put it. We've been
 14 building up a fund for BMRs and we're finding it very
 15 difficult to actually build them.
 16 We don't have sites to put them on, and
 17 from this project and potentially in the future, if this
 18 specific plan goes forward, we'll have other projects
 19 again providing money, but again, we'll have no land.
 20 And I would only ask that given the
 21 significant step of an additional 2,100 jobs that this
 22 project represents, that it's not inappropriate to ask
 23 for more help than usual in identifying a parcel of land.
 24 That might take -- take the form of
 25 identifying the land, and something like an eight million

1 dollar contribution is made to the -- the housing issue.
 2 If that eight million dollars were applied
 3 to a land purchase, for example, just the ability to
 4 designate land I think would be huge.

5 Frankly, I can tell you as an ex-board
 6 member of Habitat, if you want something built on that
 7 land, it doesn't actually have to cost anything if you're
 8 talking about affordable housing. Habitat will do it.

9 The one thing habitat can't find is
 10 land -- well, has difficulty finding.

11 So I would propose that we urge Council to
 12 take a more proactive stance and ask if Mr. Bohannon and
 13 his organization might be able to assist in identifying
 14 land.

15 I realize that we haven't zoned any. I
 16 think we have to think outside the box, and it may be
 17 that this would help us do so.

18 My fourth point is in trying to wrestle
 19 with the recurring issue that I hear about town, which is
 20 that there has -- is as a result of the General Plan
 21 Amendment rezoning, a significant change in the value of
 22 these two properties.

23 Without saying for myself that I think
 24 that this is an open issue, I will report that publicly
 25 in this town, it's an open issue.

1 It may be enough of an open issue to cause
 2 complications in the approval process of this project,
 3 which I don't think benefits anyone.

4 I will spill the beans since by midnight
 5 I'm sure I will have said something similar, anyway. I
 6 see a great deal of advantage to the City to this
 7 project, and I would like to see it realized.

8 And so in addressing the up value issue,
 9 I've tried to do some research and come up with a
 10 suggestion for those who want to address this issue.

11 There was a point made to Council, for
 12 example, that it's likely that the new value of this land
 13 is perhaps a hundred million dollars, starting with the
 14 assumption of 27 million.

15 One of the reasons that I asked about
 16 development costs is to share something that I know as an
 17 architect, which is if you have land that you can build
 18 three times as much square footage on, that does not make
 19 the land worth three times as much. Not by any means.

20 The overhead costs of the parking
 21 structures alone, which I think Mr. Collacchi and Mr.
 22 Spear went to trouble in past months to point out that
 23 they were nearly the square footage of the office
 24 buildings, they don't build themselves, and that alone is
 25 a significant impact on the cost of construction.

1 So without going into too much further,
 2 I'll just say that a good rule of thumb from my point of
 3 view in having talked to -- too developers other than --
 4 outside of this project might be that -- and I'll just
 5 throw this out.

6 Say it doubles the land, the value of this
 7 land. In other words, say it adds another 27 million
 8 dollars worth of value to the land.

9 Mr. Bressler has suggested more than once
 10 that -- and I have concurred, and I think this Commission
 11 concurred back in November -- that it would make sense
 12 for the City to tie some of the public benefit to that
 13 valuation of the land.

14 That to me means that we recognize that
 15 that value is not achieved until it's built upon. Up
 16 until then, it's simply theoretical.

17 Even if the land is sold, it still does
 18 not realize its value until it's built upon and becomes
 19 a -- an income generator.

20 Interestingly enough, if the City asked
 21 for a sales tax in-lieu on the office space, which we
 22 have been known to do, of -- I'll throw out a number. If
 23 we use \$1.40 a square foot, that would bring in about a
 24 million dollars a year to this City.

25 I'll leave it up to the negotiating team

1 whether that's a new million or whether that is an
 2 exchange for something else, but the point is that it
 3 would be annual, and as I recall, our sales tax in-lieu
 4 fee is tied to inflation.

5 So for those who would like to address or
 6 tie the value of the land, I'm throwing that out as a
 7 mechanism, and no doubt to inspire discussion up here.

8 And then finally, my fifth point I can
 9 make fairly quickly, and I made it initially a few weeks
 10 ago.

11 This evening essentially concludes our
 12 architectural control on this project, and what is built
 13 eight years from now, fifteen years from now, nineteen
 14 years from now does not need to come back to this group
 15 for further review.

16 On the other hand, this team has presented
 17 us with a pretty solid amount of documentation. I have
 18 to say a lot more documentation than as I recall 1,300 El
 19 Camino or 1,500 El Camino -- sorry. Fifteen -- the
 20 Beltramo site gave us, and very positive images.

21 As I said a few weeks ago, this
 22 Commission -- and I believe the public at large -- has
 23 reacted specifically to those renderings that we have
 24 seen.

25 So it's my suggestion to staff that the

1 concept of what modifications to the design might trigger
2 this Commission's review should be a -- a relatively low
3 bar, because we are putting much faith and this project
4 is being judged I think quite positively based on those
5 renderings.

6 That's it.

7 CHAIRPERSON O'MALLEY: Any other
8 comments? Vince.

9 COMMISSIONER BRESSLER: Okay. What might
10 be an issue has been the value that's created by the
11 zoning actions, and I don't think that's had a proper
12 airing out.

13 I -- I think that there is extraordinary
14 upside depending on what rents do. I'm grateful for
15 Mr. Bohannon's candor and the way he looks at the
16 project, and I don't really think we should do something
17 that would slow down the building of this if we do see
18 fit to approve it.

19 On the other hand, I don't think that we
20 should grant this incredible zoning -- up-zoning without
21 having some ability to share in the tremendous upside.

22 Frankly, the financial report that we have
23 in front of us is woefully inadequate in addressing that.
24 It really will depend on how the local economy develops,
25 and we're talking about a long period of time, but I

1 think Menlo Park deserves to have a significant upside
2 here if there's a significant upside to this project.

3 I think the current benefits are not going
4 to make a big difference, not going to make a material
5 difference in the budget of a City, and I think if this
6 is successful, there's money being left on the table here
7 that could make a huge difference for the City, and I --
8 I frankly think I would be derelict if I didn't bring
9 this up.

10 I think we need a process to address this,
11 flesh it out, understand it and negotiate it, and we
12 don't have that.

13 So I can't -- I can't recommend that we
14 move forward until that happens, and the input I got from
15 Mr. McClure tonight indicates that there was kind of a
16 deficient process to bring these sort of issues out, and
17 frankly, I don't care what other cities are doing.

18 I think when you go into a negotiating
19 process, you have to consider the perspective of the
20 person you're negotiating with, and we have a pretty
21 clear indication of that.

22 I've had the pleasure of speaking Mr.
23 Bohannon several years ago about development projects. I
24 think he takes a cash flow view of things. He's
25 expressed that tonight, and I take a cash flow view of

1 this project.

2 What I've written so far is quite
3 incomplete in terms of how I think this should be
4 negotiated. I'm not sure I want to disclose that, but I
5 think we need a process that we haven't had so far in
6 order to make sure that the City realizes the benefit
7 that's there, that -- that can be shared from this and it
8 does not need to jeopardize the building of this.

9 So that's what I have to say.

10 CHAIRPERSON O'MALLEY: For clarification,
11 Vince, to make sure I heard what you said correctly, I
12 think you said that you feel that this project should
13 move ahead, but you cannot in good conscience vote for it
14 unless we do something about getting more of the public
15 benefits from the developer.

16 Is that correct?

17 COMMISSIONER BRESSLER: Well, I wouldn't
18 characterize me by saying that I necessarily think this
19 project should move ahead.

20 I guess what happened is I've seen enough
21 public support for this project from what's been
22 presented here that I sort of give up fighting that.

23 I mean, I have very serious concerns about
24 the housing, as Henry indicated, and I think that if we
25 do go back into the negotiating this, we ought to

1 identify housing and build it proximate to this project.

2 So yeah, I have other concerns. They've
3 been expressed by other people, but the -- the real
4 problem here is I think too much money potentially is
5 being left on the table, and we have had a deficient
6 process in terms of negotiating that, and I think the
7 City owes it to itself to take their time on this
8 project.

9 I mean, we've spent eighteen months or
10 something like that doing this. I'm not recommending the
11 process we through this, but this is a huge project
12 extending out various numbers, it's been given a lot of
13 years, and I don't -- I don't see what the rush is when
14 we're talking about something that make be a material
15 difference in the finances of the City going forward if
16 it's properly constructed.

17 CHAIRPERSON O'MALLEY: I have another
18 question for you because I want to thoroughly understand
19 your position.

20 I -- I don't know what you would suggest
21 in order to share in what you call that tremendous upside
22 and I don't know what the tremendous upside truly is, so
23 perhaps you might comment a little bit on that.

24 COMMISSIONER BRESSLER: I can contact --
25 comment -- comment on that in general terms.

1 Rents can go up a lot around here, and
2 the -- the leverage of this project's cash flow to rent
3 is huge. So depending on how economic development
4 proceeds here -- I mean, we saw this in 2000. There is
5 tremendous run-ups in -- in rents.

6 The City's granting a huge concession
7 here. If there's tremendous upside to that that doesn't
8 jeopardize this thing being built or financed, I mean, I
9 think that we owe it to ourselves to understand that and
10 to make an appropriate deal. I don't think this is an
11 appropriate deal.

12 Okay. This actually addresses the
13 concerns that have been expressed tonight in regard to
14 the financials on this project by the applicant himself.

15 So I have reason to believe it's fair.

16 CHAIRPERSON O'MALLEY: I'm still confused
17 because I don't know how you -- how you propose to do
18 this. I don't see any -- any mechanism for -- for what
19 you're suggesting.

20 I did see some ideas on the part of Henry
21 which might enable us to share in that, but your -- your
22 suggestion is -- is basically we want more, but I can't
23 get a handle on how much more you think and what you
24 might think would be profitable -- what you might think
25 would be fair.

1 And I -- I don't like the idea of sharing
2 profits. I personally -- I think we're getting into a
3 different stage of government to talk about sharing in
4 profits with commercial buildings, and I don't see the --
5 and -- and if we did move along that way, if I were
6 the -- the applicant, I would want some share in the
7 risk, as well, and I don't think the town's prepared to
8 do that.

9 Those are my comments.

10 COMMISSIONER BRESSLER: Can I comment on
11 that?

12 I think the City is creating a lot of
13 potential opportunity here, and I think that there are
14 mechanisms by which if the developer realizes a
15 tremendous benefit from this, the City can, as well.

16 Now, there is a philosophical issue that
17 you're bringing up regarding risk, and it's -- it's all a
18 matter of perspective.

19 You can look at this and say we're taking
20 a risk -- I mean, we're going to get the hotel TOT.
21 That's actually a real risk, okay, but that's -- that's
22 pretty standard for these kinds of developments.

23 But I don't think that we're adding any
24 risk to the project or I think these benefits can be
25 negotiated in a way that we're not adding risk to the

1 project.

2 Now, that's separate from the issue of how
3 if we share risk with the developer. Right? We're
4 sharing risk with the developer in a way already because
5 we're extending this over a long period of time.

6 There are risks that Melody talked about
7 where we may have things getting torn down and not built.
8 Nobody knows what the economy is going to do, okay.

9 I take a fairly pragmatic view on this.
10 We don't have to approve this. We don't have to create
11 this value. So the fact that we have a choice there I
12 think gives us a right to negotiate this and -- and get
13 what we can.

14 And I don't think there's anything wrong
15 with that. That's the legal issue that's been -- been
16 here. We do have a right to do this in the Development
17 Agreement.

18 If you look -- he's asking for a new
19 zoning district. He's asking for extraordinary things
20 for this project in particular.

21 If he was asking to build out to the
22 extent that it's currently zoned, that would be one
23 thing, but that's not what's happening here.

24 So we're conferring value the minute that
25 that zoning decision is set to paper and approved, and I

1 think we're derelict in our duties if we don't make a
2 good effort to get something reasonable for the City for
3 what we're giving, and -- I mean, if I'm going to
4 negotiate this, I'm going to look at what's the potential
5 upside here.

6 And we haven't done that. We haven't
7 really aired it out what the potential upside is. I
8 guarantee you the developer has.

9 We need to start thinking like the
10 developer if we're not going to negotiate this project.
11 There's a mechanism to do that.

12 CHAIRPERSON O'MALLEY: It would be my
13 fear that going along the lines that you propose would --
14 would in essence kill the project, which -- and I happen
15 to think that this project is good for the town, for the
16 City, and I have a little knowledge about investments and
17 how they get money to -- to build things, companies and
18 buildings and what have you.

19 Nothing of the order of 450 million
20 dollars, but I do know getting financing is very, very
21 difficult, and the -- the return on investments, whether
22 one likes it or not, have to be pretty high before you
23 can get people to invest in any project, particularly
24 now.

25 But prior to the downturn in business, you

1 needed at least that fifteen percent in order to get any
2 interest on the part of people to invest, and this is a
3 huge project, and I think it's a wonderful project. It
4 does a number of things that I will list later on that I
5 think are good for the town.

6 So I'm concerned that your concept
7 could -- could cause this project to leave the town and
8 we wouldn't have it.

9 COMMISSIONER BRESSLER: Can I go on?

10 I think that's false reasoning. This
11 project's not going to leave the town. The land's in the
12 town. We have a multi-generational landowner.

13 That's all part of the perspective when
14 you negotiate this, and I -- we either -- I think the
15 internal rate of return viewing this, as well.

16 Mr. Bohannon said so himself. That's not the way he
17 looks at it.

18 That's taking a sort of transient owner
19 that comes in, buys it. They bought the land. Now they
20 have to put something on it. They've got to get a rate
21 of return.

22 That's not the situation here. I view
23 this as I believe the applicant does, as a cash flow
24 situation with tremendous potential upside.

25 And I don't -- I think, you know, in terms

1 of the financing, if it's subordinate to what we have and
2 if it's conditional based on certain financial events
3 that are properly structured, we're not adding risk.

4 We're not -- we are taking away some of
5 what the developer could enjoy to the upside, but I think
6 we deserve that for what we're giving him.

7 CHAIRPERSON O'MALLEY: Any other
8 comments? Yes. Katie.

9 COMMISSIONER FERRICK: I know you're
10 waiting for your big thing, but I'm going to go ahead and
11 do mine.

12 Well, to the extent -- I agree with Vince
13 certainly to the extent that the -- the town, the City
14 should be negotiating for, you know, reasonable benefit
15 to -- to have -- give -- you know, give over the sort of
16 rezoning and all that, but today I'm really -- I have
17 a -- I kind of wrote it out so that I would actually be
18 able to remember and not speak incoherently.

19 So I really wanted to talk to our main
20 policy issue, and that is that -- you know, the question
21 here on our sheet tonight is given all the benefits and
22 impacts of the proposed project, is it in the City's best
23 interest to approve the project? And then I know that
24 later, we may get into the very specific pieces of that
25 Environmental, General Plan, et cetera.

1 So, you know, in general, we all know
2 there's going to be impacts, and we know that some of
3 them are significant and unavoidable.

4 We all know that there are also
5 significant benefits. Increased annual income for the
6 City and the vital services that they provide, community
7 benefits of jobs, physical improvements around Bayfront
8 Park and/or the Belle Haven neighborhood and possibly
9 most significantly is the leadership in terms of healthy
10 building practices and carbon footprint reduction.

11 We use the term "sustainability" to ask
12 ourselves whether this project fits that term and if it
13 could be part of the case for overriding considerations
14 needed to proceed.

15 Sustainability is defined by Sustainable
16 San Mateo County as viewing the relationship between our
17 actions today and their effect on the future.

18 We have to meet today's needs without
19 compromising the ability of future generations to meet
20 the needs -- to meet their needs. Sustainable planning
21 recognizes the interconnections between the environment,
22 the economy and society. A disruption in any one area
23 affects the health of the other two.

24 According to demographer estimates as
25 reported in Sustainable San Mateo County's 2009 report,

1 San Mateo County can anticipate an additional 80,000
2 residents by 2050. That's not that long after the build-
3 out of this project.

4 We will all be feeling the significant and
5 unavoidable impacts of growth in our county whether we
6 allow this project to proceed or not, but with this
7 proposal, we are in a position to mitigate some of those
8 impacts while planning sustainably for future generations
9 in and around Menlo Park.

10 I believe this project helps in the
11 three -- in all three aspects of sustainability. It
12 helps the economy by providing a place in our community
13 where businesses and non-profits can innovate and thrive.
14 It helps the environment by providing a development
15 that's far more environmentally sensitive than it might
16 be if it had been developed in a neighboring community,
17 and it provides healthy work space to thousands while
18 creating more green space than with its current paved
19 use.

20 Social justice is the one aspect where we
21 might need to refer to the term sheet to discover the
22 agreement with Job Train for local hiring, hopefully more
23 than eight and a half million dollars for affordable
24 housing and the million dollars for park and neighborhood
25 improvements help society.

1 Another aspect to the social justice is
2 the ability to provide all residents with good schools
3 and basic services, both of which will be enhanced by
4 this project because of the tax revenue it will generate.

5 No, this project doesn't solve all the
6 social issues nor does it completely mitigate all the
7 negative impacts on the environment.

8 However, if we are to plan for 80,000 more
9 residents in this area, we need jobs and housing in this
10 county and locally so that our residents can get to them
11 without causing further traffic impacts up the road or
12 down.

13 Developments will inevitably happen, and I
14 believe this particular development typifies the type of
15 things that we want to see in this area.

16 It's clear to me that we still need to
17 provide more affordable housing right here in Menlo Park
18 to absorb this growth. I completely agree with
19 Commissioner Riggs and Bressler in this regard, and I
20 appreciate this project will make a dent in this issue
21 with eight and a half million dollars dedicated to
22 affordable housing, but it is my hope that the Bohannon
23 family can actively help with the development of housing
24 in a more tangible way and in a more significant way by
25 finding a location, overseeing design and help -- even

1 helping with community outreach, which he has clearly
2 shown himself to be very adept at.

3 In short, it would be a great community
4 op -- it would be a great opportunity to make sure this
5 money is well spent and does become actual housing, not
6 just a number and a bank account.

7 I live less than a half a mile from this
8 project site as the crow flies and about a mile by road.
9 The traffic impacts will affect me and all of my
10 neighbors, so the steps taken to mitigate these impacts
11 were critical.

12 A seventeen percent trip reduction
13 strategy helps a lot. I wish it had -- could have been
14 more such as safer and wider Marsh Road overpass with
15 dedicated bike lanes or even a dedicated exit spur on the
16 site from northbound 101, but I have to acknowledge the
17 significant impact -- improvements and commitment to
18 traffic reduction that are in this plan and will remain
19 in this plan for the lifespan of the project.

20 This is a car-centric location and it will
21 take the most aggressive trip reduction strategy
22 possible, and these strategies need to be implemented,
23 maintained and even improved upon as the life of the
24 project goes on.

25 We've heard testimony about how much this

1 project will mean to the 1,900 plus construction
2 employees and future 2,300 employees, and when I weigh
3 those needs of the workers to people who currently live
4 in Menlo Park are in need of work in our own City against
5 the additional seconds I will spend waiting at the five
6 intersections I cross on my way to 101, it's obvious to
7 me that the benefits to society and the economy outweigh
8 much of the negative traffic impacts in -- with that
9 consideration alone.

10 Regarding open space, this development
11 actually increases the amount of non-paved surface than
12 could be there now. The green space for the amphitheater
13 and the sports uses will go a long way in attracting
14 excellent employers to be tenants in these buildings --
15 in these buildings, and I appreciate that the parking
16 garages could cover a smaller area and be slightly taller
17 to add more attractiveness to this project and make it
18 feel less massive.

19 I encourage my fellow Commissioners to
20 weigh in on this issue so that there's a little bit more
21 clear direction when it -- when -- if considered after
22 this tonight.

23 And I believe the applicant has proven
24 himself to be a caring member of this community, willing
25 to engage the community more than any project we've

1 wit -- witnessed, and I've also found Mr. Bohannon
2 engaged in the community in many other ways, including
3 the Green Ribbon Committee, supporting downtown block
4 parties, creating community engagement groups, and he's
5 never afraid to pick up the phone and talk about
6 something that might -- that you might have said that
7 intrigued him.

8 Of course his willingness to engage in the
9 community cannot be the main reason to support a
10 development, but it does go a long way in building the
11 trust that he will be there for this development from
12 start to finish and deeply cares about how it would
13 affect the community he also calls home.

14 So in closing, there's many reasons to
15 support this project, and I certainly -- some aspects
16 that give me pause.

17 After much reading, studying and talking
18 with members of the community, I have come to the
19 conclusion that there are many substantial benefits that
20 do outweigh the significant and unavoidable impacts,
21 particularly if the contribution and participation in
22 affordable housing can be increased beyond the minimum,
23 maybe doubling and being the -- actively part of its
24 creation, and if the Bohannons and the City and the Fire
25 Protection District can come to a -- an agreement about

1 reasonable fire protection standards for the occupants of
2 this property.

3 I applaud the efforts of all the -- the
4 applicant, consultants, staff, Councilmembers and many
5 community members who have given countless hours to
6 improving this project in one way or another.

7 And that's all I have to say.

8 CHAIRPERSON O'MALLEY: Thank you.

9 MR. McCLURE: Pardon the interruption,
10 but it may be appropriate if you think you're going to go
11 past 11:30 to take a vote to extend the meeting time or
12 consider doing so.

13 CHAIRPERSON O'MALLEY: I think probably
14 we may -- I don't know how much time we're going to need,
15 but I think we should extend it as has been suggested to
16 11:30. If the Commission agrees.

17 COMMISSIONER RIGGS: I think the question
18 was whether we'll go past 11:30. I -- I wouldn't
19 hesitate to work till 11:30.

20 CHAIRPERSON O'MALLEY: Kirsten.

21 COMMISSIONER KEITH: So moved.

22 CHAIRPERSON O'MALLEY: 11:30.

23 COMMISSIONER KADVANY: Until 11:30.

24 CHAIRPERSON O'MALLEY: Until 11:30. We
25 will continue till 11:30. We'll strive to complete

1 business before then. If not, then we'll have to have
2 another meeting.

3 MR. MURPHY: I just want to be clear
4 about the -- another meeting in terms of the City
5 Council's schedule. The Council is expecting to receive
6 this on May 25th. So the noticing time frame for that is
7 that the Planning Commission should complete its
8 recommendation by this Thursday.

9 So there's a Council meeting tomorrow
10 night. There's the potential for a special meeting maybe
11 on -- on Wednesday night.

12 CHAIRPERSON O'MALLEY: We can only do
13 what we can do. We'll find out that as -- as we
14 progress.

15 Any other Commissioner want to speak their
16 piece at this time? John.

17 COMMISSIONER KADVANY: Well, I hope I'm
18 speaking the peace.

19 Let's see. Collect my thoughts here. Oh,
20 on -- just a word on valuation. My personal feeling is I
21 don't have the answers, you know, on what -- how to value
22 this project. It's an enormously complex question.

23 I think what we have on paper strikes me
24 as being -- it's probably a little bit too generic,
25 assumptions are not flexible enough, robust enough for

1 the City -- you know, for the City Council's --
2 ultimately what we have to do here is provide the
3 direction to City Council, and my message to them would
4 be it -- it may very well be that what we've heard from
5 Mr. Bo -- Mr. Bohannon, others, what we see on paper that
6 ultimately it comes down to that, that is correct.

7 Maybe things -- the value judgments that
8 Jack has talked about, they may be correct.

9 I think what's important as a message to
10 City Council at this stage is simply that these are
11 reasonable questions to raise about valuation.

12 It's not all here on paper. They need to
13 talk about it themselves and think about what the reality
14 of the situation is and think about the issue, as -- we
15 have, and churn it over and, you know, maybe they'll end
16 up at -- where we are, where everything's on paper, but
17 maybe they'll end up somewhere else.

18 So I think they need to push the
19 boundaries of the box there.

20 In terms of, you know, my view of the
21 project which I think -- you know, I hope has become
22 clear is is that I'm really -- I'm really dismayed at the
23 lack of urban planning that's going on here.

24 This may be -- I don't really -- the way
25 the findings are phrased that we're supposed to vote on,

1 there's various language here -- you know, the project --
2 here's one that "no project alternative is rejected
3 because it would not achieve any project objectives --
4 objectives maximizing utility -- utilization of the
5 project site, achieve project benefits or create
6 substantial new tax revenue."

7 Well, my goodness, this -- this project is
8 all about the bottom line. This is designed by
9 spreadsheet, and that's -- you know, I -- we're looking
10 at a twenty-year time frame, a huge project, area that's
11 on the San Francisco Bay.

12 You know, as I've said before, this -- if
13 you look at Baltimore, Long Beach, Oakland, other places
14 that are on water that look good now, that look great
15 now, they looked terrible before, and we're not doing
16 anything like that here. We're not even rejecting that
17 here.

18 I mean, it's just -- it blows my mind. I
19 mean, I just -- it's just -- if we don't think about that
20 somehow now and think about are there some choices we
21 might make now like these power lines, like how this
22 relates to the future development of this area in some
23 way.

24 If Council doesn't talk about this -- I
25 mean, I -- you know, it's just -- I just don't get it. I

1 just -- you know, I'm sorry to not -- still not be a
2 little bit more articulate about it, but I'm just at a
3 little bit of loss of words.

4 Former Mayor Slocum said in her -- you
5 know, her -- her well spoken discussion to us at the last
6 meeting in Public Comment, it was something to the effect
7 that to help Council realize -- take a leadership in the
8 understanding of what's going on here for this project is
9 the maximize project revenues while minimizing impacts.

10 Well, how about also planning -- planning
11 this -- this large major neighbor -- neighborhood? I
12 mean, I think that has to be -- I think that has to be
13 added on here.

14 So I just -- that -- that's what I'm
15 looking for. I am gratified that the negotiation team
16 and Mr. -- and Mr. Bohannon have taken up this power line
17 issue, at least to discuss it and figure out how that may
18 continue. That's a great start.

19 One consequence of that, though, is
20 that -- well, suppose -- suppose there isn't traction to
21 that. It could be financed in some way by a bond or
22 something, whatever. Maybe it's twenty million dollars,
23 but for a bond measure, that would be -- that would be --
24 that would be doable.

25 Well, then what -- how might that or even

1 other long-term considerations that can be thought about
2 today for either the sub area or the contiguous area in
3 the current -- current M-2, how that might feed back on
4 what's being talked about today? How might that feed
5 back on the plan for the -- for the Constitution site?

6 Probably not much for the Independence
7 site, and possibly something for the Constitution side to
8 how it interacts.

9 What's essentially being designed as a
10 very private space might inters -- interact with the
11 greater public space.

12 I guess, you know, as a -- someone as a
13 Planning Commissioner, when I -- if I -- looking myself
14 in the mirror, that to me is really a fundamental issue
15 is how public and private spaces interact.

16 Forgetting about all the finances,
17 forgetting about all these office spaces.

18 What I -- you know, I understand, you
19 know, this is -- it's an office -- it's an office park,
20 basically, but I was really surprised at our last meeting
21 when I -- when I -- I asked a question about well, what
22 was -- it was sort of -- it was a leading question about
23 what was meant by community space or neighborhood space
24 or something like that, and basically we were led -- if I
25 understand the response right -- to hear -- hear that

1 basically there's not going to be much going on on the
2 outdoor first level potential retail space at all.

3 I think Mr. Bohannon said well, for
4 example for -- for meals, as they do on Sand Hill Road,
5 where they're getting rid of the caf -- the little cafe
6 there, you know, we'll bring it in, we'll cater in.

7 You know, people -- a lot of the high-tech
8 companies, we have high-tech chefs and so on. You eat
9 it. It is more efficient to eat in when there is no
10 approximate dining. It takes a while to get out.

11 Well, yeah, but -- yeah, but why was it
12 designed like that, and was that a good idea?

13 And maybe you'd rather have urban space
14 which doesn't create that, and again, it gets back to
15 it's 9:00 to -- it's 9:00 to 5:00, mostly five days a
16 week, not much to be going on here on the weekend.

17 I disagree with the appl -- the
18 characterization of this as a long-term, you know, major
19 size sustainable product.

20 It isn't because of the -- it's
21 autocratic, okay. Let's get beyond that, but then also
22 the way it's using space. The kind of urban space it's
23 creating.

24 I don't know anybody who would
25 characterize this outside of Menlo Park saying this is a

1 great sustainable design.

2 You say well, it's using 101. Well, yeah.
3 101 is a freeway. We assume that. That's a bad -- you
4 know, we're trying to get away from that kind of
5 dependency.

6 Now, I'm not saying start over from
7 scratch, but at a certain -- you know, at a certain
8 point, I have too many disappointments in terms of the
9 urban planning aspects of this project.

10 And yeah, it has a lot of great benefits,
11 but it's -- you know, I've got a book at home and the
12 title of the book is Everything for Sale, and I think,
13 you know, that's a -- you know, that's a problem with the
14 way we think -- you know, think about a lot of our major
15 public and private citizens, and I think that's all I
16 have to say, and I hope I kept my peace.

17 CHAIRPERSON O'MALLEY: You made your
18 peace.

19 Katie wants to respond to that.

20 COMMISSIONER FERRICK: Yeah. I mean, I
21 totally agree that this project would look completely
22 different and I would look at it in a different way if it
23 were near a transit corridor, if it was near El Camino,
24 if it was near Caltrain, something like that.

25 It's next to a freeway and we can't
26 magically

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1 make this developer own that land on a railroad corridor
2 that exists in its current -- you know, it is where it
3 is, and so what could be good there that could be
4 sustainable, this -- you know, that's -- yeah, of course,
5 I'd rather not have more cars running up and down
6 freeways and what not, but there is the freeway, there is
7 the bridge, there is the land and he owns it there.

8 And so what could be there that would
9 benefit the City and future generations most? Thank you.

10 But I'm also glad you brought up the power
11 lines. I do hope -- I'm glad that got traction, too, and
12 I agree it would be far more beneficial longer term if it
13 were -- if they were underground.

14 COMMISSIONER KADVANY: And I agree with
15 what -- you know, and to a certain extent, you know, 101
16 is going to be there. That's the reality of it, and it
17 may be that most of these -- many of these car trips are
18 just transferred from some -- somewhere else and so
19 forth.

20 But -- so I think, you know, to me -- to
21 me, there could be an improvement by something, you know,
22 in between.

23 I don't mean to stake out an extreme. I
24 think that wouldn't make sense to me, either, so -- but I
25 think there are improvements that are possible here and
26 it sounds like even people -- you know, people on the

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1 negotiation team and the City are seeing that that's a
2 possibility, and I'm heartened by that and I think we can
3 make -- I think we can make some great improvements for
4 the City in the project by thinking about these issues.

5 But not necessarily going --

6 COMMISSIONER FERRICK: And I have a
7 question for you, too, John.

8 Have you had the chance to review --
9 because they did a -- quite a large presentation -- maybe
10 it was the one you missed -- last November.

11 They had a whole series of how this space
12 inter-connects and relationship of the pedestrian
13 experience and this whole -- there was like a whole bunch
14 of views.

15 COMMISSIONER KADVANY: Internally, yeah.

16 COMMISSIONER FERRICK: No. Externally,
17 too.

18 COMMISSIONER KADVANY: Well, maybe I did
19 not.

20 COMMISSIONER FERRICK: There is that --
21 we focused most of our discussion and questioning on
22 spreadsheet issues, but there was quite a bit of
23 presentation on -- you know, you noticed even today we go
24 straight to the spreadsheet when really the only
25 presentation was about the building design and planning,
26

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1 and, you know, we're the ones that have guided it that
2 direction and less from the -- the experience in urban
3 planning.

4 You know, maybe it's just -- it's in there
5 and we felt good about it enough that that's one of our
6 main critical concerns. I don't know, but --

7 COMMISSIONER KADVANY: Well --

8 COMMISSIONER FERRICK: -- I think like
9 that was critical action.

10 COMMISSIONER KADVANY: You know, assume
11 just for, you know, a thought process we can get rid of
12 the power lines.

13 How does that change your conception?
14 Just the space along bayfront and so on and relationship
15 to the project, and also, you know, what could possibly
16 also be there on the first floor level. Then that can
17 possibly change given the conditions that are already
18 codified in here. So that might not be an issue.

19 But, you know, I mean -- to a certain
20 extent, I'm being polemical just to make a point about
21 the way -- so much about the way -- so much about what
22 we're worrying about here. So enough said.

23 Thanks.

24 CHAIRPERSON O'MALLEY: Melody, do you

25
26 have anything you'd like to say?

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1 COMMISSIONER PAGEE: I'm too tired.

2 CHAIRPERSON O'MALLEY: You're too tired?

3 Okay.

4 Well, excuse me. Go ahead.

5 COMMISSIONER PAGEE: You go ahead.

6 CHAIRPERSON O'MALLEY: What Vince said,
7 it's pretty clear that I feel that this project would be
8 beneficial to the town, and I'm not going to read
9 something, but I -- I am going to look at my notes here.

10 I -- I had major concerns because it's the
11 largest project ever in Menlo Park and those concerns
12 that -- have been alleviated because I'm convinced that
13 the construction will be high quality construction.

14 I'm convinced it's in the right place and
15 I'm also convinced that it will be seen as a true
16 gateway. I think that's a good name to choose for it.
17 It's a true gateway on Route 101 to -- to Menlo Park.

18 And then I was concerned -- and I still
19 have some of this concern, but I don't know how they
20 respond to -- to it.

21 I certainly am -- not strongly as Vince,
22 but I had fear that we'd be given undue financial
23 advantage to the developer, but it's very risky,
24 especially in today's economic climate, lower than usual
25 return on investment, which I've looked at over the years
26

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1 in the number of things that I've done.

2 There's a long time frame before recovery
3 of investment, but there have been many financial and
4 other concessions to the City; perhaps not enough, but
5 we'll get into that a little later on, I think.

6 But I think it's admirable that a
7 developer is considering such a huge investment in the
8 City in this economic climate.

9 The -- I was worried about the time frame
10 of construction, but I -- I know that I've had
11 discussions with Mr. Bohannon and I'm convinced that it's
12 in the best interest of him to move as fast as possible,
13 and I believe that he can obtain financing as the project
14 has been described.

15 The extra time is a safety factor. I --
16 primarily because there's no guarantee that the economic
17 situation will get positive as rapidly as we would like
18 it to.

19 I think he's dealt well with the
20 aesthetics, especially the garage because I was concerned
21 about the garages. The new footprint, the new designs,
22 the landscaping, the larger setback, they're all positive
23 things.

24 The traffic, I voted against that fifty
25 percent recommendation that was passed on to Council
26

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1 sometime ago because I didn't feel it was realistic, and
2 now with negotiations, there's an attempt to reduce the
3 trips by seventeen percent.

4 I'm not sure that that couldn't be a
5 little bit better, but I -- but it certainly is better
6 than zero, and I think it's attainable.

7 And the traffic development plan to go
8 along with that I think is excellent.

9 I had a concern about the -- about the
10 hundred dollars a trip. If none of the reductions took
11 place, the developer would have to pay roughly \$187,000 a
12 year, and so what he saves by reducing the trips from
13 11,000 and change to 9,000 and change is that \$187,000
14 per year.

15 The greenhouse gases, this was -- it's
16 carbon neutral now, and the developer was advised by
17 major consulting experts and then he went out of his way
18 to get learned people to -- to look at this.

19 I was particularly impressed by the
20 support of our past mayor, and this does embody Menlo
21 Park's plan of action plan, and we also have a major
22 Commissioner associated with that that also supports the
23 plan.

24 And very importantly, it's accepted by --
25
26 by the City residents.

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1 Belle Haven is extremely supportive of
2 this, and the commercial neighbors around them. Some of
3 them have come to the meetings and they've been very,
4 very supportive.

5 Not one has expressed a lack of support as
6 far as commercial people are concerned, and that -- and
7 there have been a number of other residents supporting
8 this.

9 I was surprised at our last meeting where
10 everybody spoke in support where our previous meetings we
11 had negative comments, but I think on balance, we --
12 we've had people who get it from every side.

13 The Environmental Quality Commissioner,
14 Mitch Slomiak, I don't know him, but apparently he also
15 feels very good about the environmental aspects of this
16 project.

17 And some disappointments. Transmission
18 lines, I felt it would be great if they were put
19 underground, but it doesn't appear that that will happen
20 in the short run. But it's possible that will happen.

21 And then again, we may regret something
22 that we've done if it is done, because it might have been
23 a different structure. I grant you that.

24 I -- I'm not sure about this ladder truck.
25
26 I -- I think somebody has to look into that very, very

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1 carefully and -- and really conclude one way or the other
2 the need for that.

3 If there is a legitimate need, and of
4 course the Fire Department feels there is, but I think we
5 need some other objective evaluation of that, then I
6 think we should figure out some way to get -- get that
7 done.

8 I am not sure what we should do in the
9 commercial buildings, whether we should limit wet labs,
10 questions about water conservation.

11 I do believe that we should have reports
12 on achieving all these goals this have been set forth
13 in -- in the Development Agreement.

14 I -- I think basically I'll go through
15 this quite rapidly now. I'm going to -- I support the
16 Gateway project because it's quality development, it's in
17 the right place, a true gateway. He's a local developer,
18 he's trustworthy. He's supportive of the City. He's
19 honest, and he's engaged with all.

20 He's got the strong support of Belle Haven
21 residents, strong support of commercial residents,
22 support of other residents, and -- and I think it's
23 exceedingly important that we have a past mayor and an
24 Environmental Quality Commissioner to support that.

25
26 I expect upgrades to the district beside

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1 it or in between it. I -- you know, when something is
2 improved, the tendency is for things around it to get
3 improved, and I expect that will happen.

4 But very importantly, it's not mentioned
5 very often, but it creates thousands of jobs, and I -- I,
6 you know, that to me is -- is an exceedingly important
7 aspect of this, and priority hiring of Menlo Park
8 residents. I think that's extremely important, as well.

9 And it's synergistic, because once it
10 looks good, gets good tenants, it's going to help the
11 other commercial businesses attract and retain their
12 employees.

13 The revenues exceed expenses by a
14 significant amount. There's guaranteed revenues. I
15 grant you that that's probably based just on what the
16 hotel will do, but it's -- at least it's a guarantee that
17 you don't see much of that.

18 The eight and a half million to the below
19 market rate homes I think is -- is a sizable sum, and I
20 agree with the comments made here that -- that we should
21 use Mr. Bohannon's expertise in a way to figure out how
22 to use those dollars plus what we have to encourage
23 building in this town for -- for potential new residents.

24 And I'm pleased about the capital
25 improvements and I do feel it's a good idea by one of the
26

1 presents - presentations -- present -- I can't pronounce
2 the word. One of the gentlemen who made comments this
3 morning felt that it designated the Bayfront Park and
4 suggested I think 35 percent of that. I think that makes
5 sense.

6 It's carbon neutral. It's LEED silver and
7 gold certifications, and I mean, there is just so much
8 that speaks for this project as being good for the town.

9 I -- I do have a problem with the sharing
10 profits. I don't have a problem of trying to get more
11 benefits for the town, but the sharing profits really
12 bothers me. It just -- it goes against everything that
13 I -- I just don't think it's appropriate.

14 This project does provide out of the
15 profits which incidentally were not -- taxes -- federal
16 and state taxes were not in the pro forma, at least I
17 don't think so, and one way or the other, we get a little
18 bit back from the state, also back from the Federal
19 Government in grants and what have you.

20 So there are extra does that come that
21 have not been talked about.

22 And as I said, although there's
23 disagreement at this Commission, I think if we go to the
24 point where we try and have a profit-sharing business on
25 the possibility of people making a lot of money many
26

1 years out, that it would be very difficult to get
2 financing for this project, so I'm -- I'm really not for
3 that -- that process, but I could agree with Henry and
4 his concept which I think makes a lot of sense about
5 bringing additional dollars into the -- into the City.

6 That's -- that's where I am, and I'll turn
7 the mic over to Kirsten.

8 COMMISSIONER KEITH: Thank you.

9 I -- I, too, had many reservations when I
10 first saw this project as to the height and it took a
11 while to get used to that, because we haven't seen
12 anything like that here before. So it's a challenge.

13 You know, we've looked at this many times
14 now and I do see many benefits, but I do see minuses.
15 I'm going to go through briefly my list here.

16 The traffic reduction penalty is
17 insufficient and I hope that -- that the negotiations
18 will continue to address that, because I think that that
19 was something that was pretty important for us when we
20 asked for a fifty percent trip reduction, and it was
21 great when you came back with seventeen. The hundred
22 dollar annually is not enough.

23 The ladder truck for the Fire Department,
24 that is a big issue. I don't see why the City should
25 have to pay for it or the Fire District through our
26

1 prop -- our taxes if it's something that needs to be
2 purchased for this building particularly, for these
3 buildings because of the height of the building.

4 So I know that negotiations are ongoing on
5 that issue, but that's my feeling on that, but I think
6 that that should be something that is borne by the
7 developer.

8 I'm not sure about the numbers. I know
9 that the fire -- Stephanie Kamen said that it would also
10 cost an additional four and a half million to retrofit
11 one of the stations.

12 That seems awfully high, that retrofit,
13 but I think that's something else that Bill McClure and
14 the other negotiating team will look at, but again, I
15 don't feel that the City should have to pay for that
16 cost.

17 I think that there needs to be better
18 wording in -- on the minor and major modifications for
19 architectural review. This project is something that may
20 not be started for eight, possibly longer years, and I
21 think that -- I don't know -- you know, what changes will
22 be occurring.

23 I know tonight, Mr. Gilman, your architect
24 brought up additional changes, and it seems like, you
25 know, every time you look at this and you make changes to
26

1 it, something better comes out.
 2 So I don't know what it's going to be like
 3 in eight years or when you start to build this, and I
 4 think that architectural review by the Planning
 5 Commission is important. So I will -- I think that
 6 should be tightened.

7 And yes, there is an increase in revenue
 8 for the City. When you look at the total revenues that
 9 we've been presented with in this -- the Bay Area
 10 economic report, total revenues 2.151, subtract the
 11 expenditures and you get a net surplus of 1.6 is sort of
 12 what it's calculated at right now.

13 I see that number and I also see the
 14 other, but we have to retrofit a fire station, we have to
 15 buy a fire truck, all these other things. So I've
 16 already said my piece on that.

17 Also the issue about the housing. You
 18 know, originally when this project came forward, there
 19 were questions about asking well, is it possible to put
 20 housing on this site, and I understand, you know, that
 21 you're saying well, no, we need the office space to
 22 support a hotel and you need a hotel to generate revenue
 23 for the City. So that went away.

24 I do think it would be great if -- if Mr.
 25 Bohannon would help the City in maybe figuring out spaces
 26

1 on where to purchase land to build the BMR units,
 2 because -- or housing in general because that's the
 3 biggest concern, and I know that the reports had said
 4 that maybe only ten percent of these employees will
 5 actually live in Menlo Park.

6 I really question that number. I know the
 7 experts have decided that that's the number, but I just
 8 think it might be higher.

9 Other concerns obviously are about the
 10 school issue, and I'm glad to see that -- I don't know
 11 attachment D, but that is something that is still being
 12 looked at here.

13 I can't imagine how difficult it is to
 14 change elementary school boundaries or how much time that
 15 will take, but it's great that City Council asked the
 16 negotiating team to look into that, and I -- I think
 17 that's very important because I think that we would end
 18 up with more students, and as we all know, we're building
 19 new schools now. The schools are overcrowded, and that's
 20 a big issue.

21 In looking at the building, it is -- you
 22 know, I can see that Mr. Gilman has put a ton of work
 23 into this, all of you have, and I trust that, you know,
 24 it will be a very high class building. You talked about
 25 using natural stone and the insulated windows and the
 26

1 outdoor amphitheater and using the open space and all
 2 these wonderful things that you want to do with the site.

3 It is a huge upgrade to the site. I mean,
 4 it -- there's no doubt about that, and I understand, you
 5 know, Vince's concern about the -- and all of our
 6 concerns, actually. Not just Vince's. All of our
 7 concerns as residents of Menlo Park that this project
 8 provide residents with the greatest benefit while being
 9 fair to the developer, that the City also get the
 10 greatest benefit that it deserves, because it is a major
 11 upside.

12 And I did like what Henry had mentioned in
 13 looking at, you know, possibly \$1.40 a square foot or
 14 something like that that would be revenue that came
 15 directly to the City.]

16 So I would encourage also that the
 17 negotiators maybe take a second look at that idea, if
 18 that idea was even looked at previously and rejected.

19 I appreciate, also, that LEED
 20 certification is -- is here. I would ask that the
 21 buildings accommodate solar panels and put them on the
 22 roofs of the garages, as well, so that you have shade on
 23 the top floor.

24 I like the benefits for -- for the park,
 25 Bayfront Park. I have concerns that there wouldn't be
 26

1 any benefit potentially for up to fifteen years, and I
 2 know we saw some numbers.

3 The money is running out to continue the
 4 upkeep of that park, and I -- I would ask that maybe
 5 that -- when that money is supposed to be transferred to
 6 the City, if that could be looked at again.

7 I appreciate Mr. Bohannon. He's a -- he's
 8 a resident of Menlo Park. He cares about his legacy
 9 here. His family's from here. It's unusual that we have
 10 somebody who wants to develop this land and will retain
 11 ownership of the land -- of the property.

12 And I also, you know, applaud you on the
 13 carbon neutrality of the project. I think that was
 14 really important, as well. It sets a great precedent,
 15 and a LEED building sets a great precedent.

16 So those are all very important, and I
 17 also found it interesting at our last meeting when we had
 18 the Public Hearing, the final Public Hearing for this
 19 project that everybody spoke in favor of it.

20 I mean, clearly the community seems to
 21 really want this project, as well. Obviously, you know,
 22 with the job creation and things like that.

23 So those are my comments on it.

24 CHAIRPERSON O'MALLEY: Thank you. Henry?

25
 26 Excuse me. Do you want to wait? Okay. Henry.

1 COMMISSIONER RIGGS: All right. It's --
2 I'll make three or four quick comments and then I'll make
3 a motion.

4 First I want to -- I think I said before,
5 but at I have not put enough emphasis on it. I think is
6 in many ways, including aesthetically, a very attractive
7 project.

8 It's clearly an impressive effort, and I
9 think if this project goes forward, we would be proud of
10 it. This whole town will be proud of it.

11 I have to echo our chair's comment,
12 because it's kind of odd that it doesn't get said, but
13 jobs are a very good. Creating jobs, even if it weren't
14 2010, is a good thing.

15 It does have repercussions, but it's a
16 good thing, and David put this project together with a
17 great deal of care, concern for the City's issues, so I
18 also have to echo the chair's comments in appreciation
19 with the process, the intent and where we've gotten to.

20 I have to say, having given a fair amount
21 of thought to this and being interested in the subject
22 for many years, that I think there may be other options
23 to provide fire truck ladder service to this building,
24 that they need to be looked in to, and I don't think they
25
26 will be looked in to unless the City says to the district

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1 you shall look into working with Redwood City, working
2 with Palo Alto; not necessarily just for the equipment,
3 but for the staffing of the equipment.

4 But in any case, I don't see that as a
5 Planning Commission issue for direction or otherwise.

6 So I'd like to make a motion to
7 recommend -- to recommend -- well, I believe we would be
8 making the findings and recommending approval for staff
9 report with about a half a dozen items.

10 One is to modify the parking structures
11 per the alternative that the architects have presented.
12 Another is assuming that David and the architects are
13 behind it at this point, the revised renderings for the
14 hotel should be accepted.

15 If they're not being accepted, that goes
16 back to my previous comment about the reliance that this
17 group and the public would have on the renderings.

18 The third stipulation would be to ask the
19 negotiating team to re-examine the hundred dollars per
20 year per car.

21 The fourth would be to ask staff to
22 tighten the architectural modifications trigger or for
23 the definition of what needs to come back to Planning
24 Commission.

25

26 Fifth item would be to -- again, to urge

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1 the Bohannon group to help identify land, and I'll put a
2 number on it, just a target. Say for 400 dwelling units.

3 That's identify land, not go out and have
4 to buy land and gift it, but to help in the -- through
5 the development world to identify what could be traded,
6 what could be identified.

7 And then are we at six? I didn't -- right
8 now. To consider a sales tax in-lieu fee on the office
9 space that would be applied on leased space as opposed to
10 incomplete or vacant space -- no. Let me rephrase that.

11 As completed -- on office square footage
12 as completed in the range of \$1.40 a square foot.

13 And I'd like to point out that if we were
14 to receive that kind of in-lieu payment on about 700,000
15 square feet, we're talking about receiving a bit over a
16 million dollars a year.

17 That's the equivalent of giving the City a
18 trust fund of twenty million dollars, and just as --
19 as a -- as a talking point -- excuse me for this aside --
20 in my motion, that I think is a very significant
21 addressing of what the increase in value of the land
22 would be, especially considering the fact that there is
23 again really no increase in value unless someone puts
24 cash up-front and takes very significant risk involved in
25
26 developing this property.

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1 So that's my motion with its six
2 conditions.

3 COMMISSIONER FERRICK: What's number two?

4 COMMISSIONER RIGGS: Number two was to
5 modify the hotel per the renderings or to accept the
6 hotel renderings that were offered today, assuming that
7 they are what the team is settled on at this point.

8 CHAIRPERSON O'MALLEY: We have a motion
9 on the floor.

10 Do we have a second? Can I second on the
11 motion? I second the motion.

12 Kirsten?

13 COMMISSIONER FERRICK: I have a question.
14 So I like all those six items, Henry. The identification
15 of land, I agree with, but for a 400 unit -- there hasn't
16 been affordable housing development in San Mateo County
17 over about 121 units in decades.

18 I'm not sure there is any in the 400 unit
19 range. I'm just thinking that might be a little bit of
20 a --

21 COMMISSIONER RIGGS: Well, I said
22 identify land --

23 COMMISSIONER FERRICK: Uh-huh.

24 COMMISSIONER RIGGS: -- and I just threw
25
26 out this number because I think the EIR said the impact

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1 was 75 households, which we had trouble taking seriously,
2 but on the other hand, if there are 2,000 new employees,
3 it's very hard for me to believe that's 2,000 new
4 households, whether they're in Menlo Park, Redwood City
5 or Mountain View.

6 Typically in this area, it takes two
7 incomes to support a household, and so at the most, that
8 will be a thousand, and then there'll be some
9 instances -- actually, they kind of went through this in
10 the EIR. There are some other reasons why those people
11 would be double counted.

12 So there could be up to 800 or a thousand
13 new houses -- new residence he is needed. It could also
14 be that thirty percent of the employees live with their
15 parents. I mean, this is 2010.

16 So on the other hand, 75 is low, so I just
17 threw out 400. I mean, largely because I'm not -- I
18 didn't do enough research to suggest any other.

19 COMMISSIONER FERRICK: I guess I'd rather
20 see it on -- on acreage, because other low market rent
21 units are in normally quote unquote market rate
22 developments with certain numbers of units dedicated.

23 COMMISSIONER RIGGS: We can see acres. A
24 hundred units per acre is pretty dense.

25

26 COMMISSIONER FERRICK: Very dense.

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1 COMMISSIONER RIGGS: Very dense. But we
2 could say four acres, four to eight acres, five to ten
3 acres. I'd -- I'd certainly be willing to modify that
4 from a unit to an acreage.

5 What do you think as the seconder?

6 CHAIRPERSON O'MALLEY: That's okay. Did
7 we end up with four or five acres on that?

8 COMMISSIONER RIGGS: Let's say five to
9 ten acres -- a range from five to ten acres.

10 CHAIRPERSON O'MALLEY: Any discussion?
11 Let Melody have hers and then --

12 COMMISSIONER PAGEE: No discussion. Just
13 items to consider. And that would be to -- when the
14 building is built, the LEED standards at that time,
15 that's important to me.

16 Considering the benefits of having a fire
17 truck as far as insurance rates for the developer of the
18 property, and I'm not sure what the insurance company
19 would require as far as proximity to a firehouse.

20 It might be -- they may have already
21 looked at that as far as helping them pay or the offset.
22 The fire truck isn't going to benefit anybody but this
23 building -- these buildings.

24 So it might be for the City of Menlo Park
25 or the Fire Department to pay for it just for those
26

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1 buildings, but again the service, I don't know what the
2 payback is as far as how long it would take them with the
3 taxes on this building to pay back the fire truck in
4 order to get it there.

5 There might be an initial cost for the
6 developer to buy a fire truck, share with the Fire
7 Department. I don't know if they'd pay cash, but that
8 should be considered as a fire truck.

9 Tighten -- to tighten the requirements for
10 transportation. There's discussion of shuttles to the
11 train stations. So to model a plan similar to Genentech
12 in South City or some -- somewhere else where the
13 shuttles are working and that they meet each train or
14 each bullet or whatever it is so that people can rely on
15 them, if that's going to be a trip reduction.

16 I like the idea of some type of sales tax
17 in-lieu. I certainly concur with Vince that there's a
18 lot of money to be had here, and without going into
19 details, you don't develop a building not to make money.
20 It's just how much, and I'm not going to say that Mr.
21 Bohannon isn't entitled to a profit, but -- and I'm not
22 sure if we weren't part of the negotiations as to how
23 much give and take there was and was this the final
24 bullet where you pull it and say, "No, that's it. I'm
25 walking away from the table" as happened in San Francisco
26

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1 recently.

2 Just a few simple things. I like what
3 Katie said tonight. It was nice that you prepared your
4 comments ahead of time unlike the rest of us. Very good.
5 Very good. It was a -- it's a good thing.

6 I'm not necessarily -- if this project
7 goes away and we started out with a four-story project
8 many years ago that was voted down for the Bohannon
9 project, so if you don't vote it now or if you don't
10 encourage this development now, it might be twice as
11 high.

12 So just a suggestion, but there should be
13 some mitigations and certainly provide for it.

14 I'd love to see this project done just on
15 the far east side of the project that doesn't impact the
16 traffic on 280 and most of the residents.

17 It most impacts the people closest by, and
18 I don't think they realize it until the building is built
19 how it's going to impact them, and I don't know what
20 other mitigations other than hopefully encouraging people
21 to take public transportation are going to help.

22 That's it.

23 CHAIRPERSON O'MALLEY: Thank you.

24 COMMISSIONER KEITH: I -- oh, sorry. Go
25 ahead.
26

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1 CHAIRPERSON O'MALLEY: Vince and then you
2 and John.
3 We have fifteen minutes.
4 COMMISSIONER BRESSLER: I'll be brief.
5 I think a million dollars a year is a
6 pretty small fraction of the incremental increase in cash
7 flow potential that exists here, and I think that we need
8 a process to really air this out, and I definitely can't
9 support this unless the -- that's part of what we're
10 talking about here.
11 I think there's no teeth in the housing
12 provision here. That -- that needs to be part of the
13 approval. So that probably needs more investigation, as
14 well.
15 I'll leave it at that.
16 CHAIRPERSON O'MALLEY: Thank you, Vince.
17 Kirsten.
18 COMMISSIONER KEITH: Oh, John.
19 CHAIRPERSON O'MALLEY: I'm going to go
20 back to you.
21 COMMISSIONER KEITH: I just wanted to say
22 that I appreciate your comments, Melody. I agree that I
23 think the LEED standard should be set at the time that
24 the permits are pulled, not in 2009, because it could be
25
26 drastically different between now and then. I just

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1 don't -- I don't know.
2 And, you know, I do think that there are,
3 like I said, benefits and minuses to this, but on Henry's
4 sales tax in-lieu, I mean, I just think that when you
5 talk about it, that there's all this potential money to
6 be made, I think that's the key word, is that there's
7 potential.
8 And it doesn't mean it's guaranteed, but
9 if we did something along the lines of \$1.40 a square
10 foot for the rented space, there's something more that
11 the City gets.
12 CHAIRPERSON O'MALLEY: Thank you.
13 John.
14 COMMISSIONER KADVANY: I -- just in terms
15 of the -- the motion, I'm concerned a bit here about kind
16 of false precision at this, trying to craft this, and now
17 we've got twelve minutes left in the evening.
18 I think it's important. We want to
19 stimulate Council to think about everything we've talked
20 about tonight.
21 I think this kind of detail is -- is
22 pretty irrelevant, really. You know, they'll get the
23 message. They'll get it and then they'll run with it.
24 I think it's important that we go
25
26 through -- I think we should go through another cycle

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1 where they try something, and something comes back to us
2 and then it goes back to them.
3 That's the process that Vince is talking
4 about. They need to grapple the valuation, but not by
5 themselves. I don't think we should leave them on their
6 own. They should try something, we should give them
7 feedback, and then let them decide.
8 For example, we haven't had a
9 discussion -- this false precision also extends to topics
10 we've covered tonight.
11 We haven't -- talked a little bit about
12 traffic and mitigations, barely anything. We haven't
13 said -- talked about the EIR.
14 I think it's quite an excellent EIR, but
15 we really haven't said anything -- haven't talked about
16 these issues.
17 Water is -- is still -- is out there.
18 It's coming up okay. If we don't -- we should think
19 about that a little bit. So that's false precision.
20 I'd like to add something about the power
21 lines and planning the area as a whole. I'm not sure I
22 can come up with a friendly amendment which codifies that
23 in a way which will get some traction with the Council so
24 that they actually do something about it as opposed to
25
26 giving lip service and really nothing end -- ending up

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1 happening.
2 That's another reason I would like to
3 come -- to see what they do with it. Okay. They've
4 heard it, they understand the problem, they know what
5 it's about.
6 I'd like to see what they do with it, you
7 know, give me a reality -- you know, get a reality check
8 on it, what's possible as a negotiator -- the negotiating
9 team. See also what the project team has to say and
10 cycle it through.
11 We are making a lot of progress here, the
12 City is, I think. I think we are, and I think there's a
13 lot of politics that's been driving the approval of this
14 project, which is not a good -- not a good way to plan,
15 and not only that, it's -- I think it's based on a false
16 assumption of past conceptions in this City of, you know,
17 incredibly intransigent -- intransigent factions not able
18 to debate rationally about complex topics.
19 I think we've proven that we can do that,
20 but it takes time, you know. It doesn't take forever.
21 It doesn't take another year. It takes a little time.
22 So that's where I'm at.
23 So I -- you know, my answer to given all
24 the benefits and impacts on the proposed project is in
25
26 the best interest to approve a project, probably, but

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1 we're not quite sure exactly how right now is my answer
 2 to that question.
 3 It's not a yes or no question. It's much
 4 more nuanced than that.
 5 Thanks.
 6 CHAIRPERSON O'MALLEY: Henry.
 7 COMMISSIONER RIGGS: Well, I know I
 8 should as the maker of the motion respond to the comments
 9 that I guess were mainly from Melody and a couple echoed
 10 by John and -- and by Kirsten.
 11 First of all, I'll just say again that I
 12 don't think it's appropriate for us to address the fire
 13 truck.
 14 We have heard from Mr. McClure that this
 15 is still being looked at. There's -- the parties are
 16 still working on this.
 17 I personally think there is another
 18 solution to buying a dedicated forty foot ladder truck
 19 for Menlo Park so that it can make no other trips than
 20 the practice runs of which it has enough of them to wear
 21 it out in twelve to fifteen years, as we've been told.
 22 And it's the only vehicle that they want
 23 to take out on the freeway because it's the one that has
 24 the jaws of life in it.
 25
 26 I mean, we -- the Navy doesn't take the

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1 aircraft carrier to -- every time a buoy looks like it
 2 needs to be repainted, so -- I just don't think the
 3 Planning Commission should get involved in that.
 4 As for LEED, let me just speak to
 5 something practically. In order to design to a criteria,
 6 not to mention price it and fund it, you need to know
 7 what the rules are.
 8 To commit yourself to rules that have not
 9 been written yet, particularly as described -- because
 10 technology hasn't necessarily gotten there -- is really
 11 too much to ask of a project.
 12 This is further along in design than just
 13 a schematic design. A great deal of work went in before
 14 those renderings could be done or if they didn't make any
 15 sense, plus they couldn't risk showing them to us, having
 16 us decide to marry them and then find that they did the
 17 detailed drawings that they can't quite build it that
 18 way.
 19 So just practically speaking, as an
 20 architect, I wouldn't want to touch that commitment with
 21 a ten foot pole.
 22 So I don't know how to quite work in the
 23 tightening up of the TDM, although I do recall that the
 24 applicant has committed to fairly specific runs of the
 25 van.
 26

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1 They're already operating a van for the
 2 existing low-rise buildings, and I thought that was --
 3 maybe I should defer that to Justin, but I think there's
 4 a fairly good program.
 5 MR. MURPHY: Yes. I believe that the TDM
 6 plan calls that out pretty well. So I think what was
 7 described by Commissioner Pagee is what the intent is and
 8 what I believe the commitment is in terms of meeting
 9 the -- the trains.
 10 COMMISSIONER RIGGS: Fantastic. I was
 11 hoping that was so.
 12 All right. I think we got that one.
 13 CHAIRPERSON O'MALLEY: Time for a vote?
 14 COMMISSIONER FERRICK: Time for a vote.
 15 MR. McCLURE: Can I just clarify the
 16 motion? I want to make sure that the motion includes
 17 attachment A to tonight's staff report which outlines,
 18 you know, what you're recommending, and then it is with
 19 six additional items that were added by Commissioner
 20 Riggs, one being to accept the alternate design --
 21 parking structure design.
 22 And item two was to modify the hotel
 23 consistent with the renderings that were shown tonight if
 24 approved by the applicant/developer, if that's acceptable
 25
 26 to them.

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1 COMMISSIONER RIGGS: Right.
 2 MR. McCLURE: Item three is to re-examine
 3 or reconsider the amount of the proposed penalty for non-
 4 compliance with the trip limitation.
 5 Item four is to tighten the definition of
 6 minor/major modifications and what would come back to the
 7 Planning Commission for approval.
 8 COMMISSIONER RIGGS: Right. And that was
 9 specifically to recognize that Commission and I feel the
 10 public has been very supportive of the aesthetics that
 11 they have seen, and therefore that is a significant
 12 element in the support from the Commission and the
 13 public.
 14 MR. McCLURE: And item five is that --
 15 requesting that the developer help the City identify land
 16 of approximately five to ten acres for housing within the
 17 City.
 18 COMMISSIONER RIGGS: Right.
 19 MR. McCLURE: And item six is to consider
 20 a -- in the negotiations consider sales tax in-lieu fee
 21 to be applied to office square footage as completed at
 22 the range of approximately \$1.40 per square foot per
 23 year.
 24 COMMISSIONER RIGGS: Right, and let me
 25
 26 back up to number five.

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1 I actually didn't indicate that housing
 2 had to be in the City, and given that it's an ABAG issue,
 3 I think if property were identified in a neighboring town
 4 that was clearly not otherwise destined for housing, I
 5 think that would suit our intent up here. I'm looking
 6 for nods. It's too sleepy for nods, but --
 7 COMMISSIONER FERRICK: I -- I mean, I
 8 know it achieves the main goal of getting more housing,
 9 but it wouldn't help Menlo Park's jobs to housing ratio,
 10 per se if it were not in Menlo Park.
 11 CHAIRPERSON O'MALLEY: I'd like it in
 12 Menlo Park.
 13 COMMISSIONER RIGGS: All right. We have
 14 a couple of nods for Menlo Park, as you -- as you've
 15 spoken.
 16 MR. McCLURE: Okay. So that would be the
 17 motion.
 18 CHAIRPERSON O'MALLEY: That's correct.
 19 All in favor?
 20 COMMISSIONER RIGGS: Aye.
 21 COMMISSIONER KEITH: Aye.
 22 COMMISSIONER FERRICK: Aye.
 23 CHAIRPERSON O'MALLEY: Aye.
 24 All opposed?
 25
 26 COMMISSIONER BRESSLER: No.

1 COMMISSIONER KADVANY: No.
 2 CHAIRPERSON O'MALLEY: Abstain? You
 3 abstain?
 4 COMMISSIONER PAGEE: Opposed.
 5 CHAIRPERSON O'MALLEY: Three opposed,
 6 four in support.
 7 MR. McCLURE: For the record, those
 8 voting in favor in favor are Commissioners Riggs, Keith,
 9 Ferrick and O'Malley and those voting against the motion
 10 are Commissioners Bressler, Kadvany and Pagee.
 11 CHAIRPERSON O'MALLEY: That's correct.
 12 COMMISSIONER KADVANY: Just for the
 13 record, a comment on the record, I wanted to offer a --
 14 with my light on, I wanted to offer a friendly amendment
 15 which would provide language to ask the City Council to
 16 resolve to -- you know, identify a process vis-a-vis the
 17 power lines and, you know, planning of the area in
 18 general, because we didn't have time to do that.
 19 CHAIRPERSON O'MALLEY: I do believe
 20 they're looking at that right now.
 21 COMMISSIONER KADVANY: They're looking at
 22 it.
 23 CHAIRPERSON O'MALLEY: Okay. We have
 24 update on pending planning items.
 25
 26 Do you have anything for us, Justin?

1 MR. MURPHY: Yes. I believe I have a few
 2 updates. One, tomorrow night's Council meeting. We had
 3 sent out an e-mail just to make sure that the Planning
 4 Commission has aware of the Planning Commission
 5 appointments which Commissioner O'Malley already talked
 6 about, but also there's a separate item regarding
 7 Commission recruitment in general.
 8 So we just want to make sure that the
 9 Planning Commission was aware of that.
 10 Let's see. Then there are a few updates
 11 related to El Camino Real Specific Plan. I believe
 12 there's an e-mail bulletin sent out on April 30th
 13 regarding the availability of the Specific Plan, the
 14 schedule related to the EIR and the need to prepare the
 15 water supply assessment.
 16 There's going to be events related to
 17 block parties this summer. So that's kind of a quick
 18 update on El Camino Real Downtown, and the last update is
 19 related to the annual Commission surveys.
 20 And just a friendly reminder, I believe
 21 four Commissioners have submitted results by -- surveys
 22 by this morning. I think we're just looking for
 23 everybody else to submit those as -- as they're able to.
 24 I think that's it for updates.
 25
 26 COMMISSIONER FERRICK: Sorry. Before you

1 adjourn, I have a couple questions for you, Justin --
 2 well, one question and one comment.
 3 I vaguely remember an e-mail -- it might
 4 be one of the Planning Commissioners that didn't submit
 5 the survey.
 6 Is this something that we would have
 7 gotten from --
 8 MR. MURPHY: It may have come from
 9 Margaret Roberts, and we can definitely resend it.
 10 COMMISSIONER FERRICK: I can look it up.
 11 I just wanted to know what I'd be looking for.
 12 Okay. And then the block parties are
 13 going to coincide with the first and last summer concert
 14 series. I can't recall the dates in my head right now,
 15 but --
 16 MR. MURPHY: I believe they are June 23rd
 17 and August 11th.
 18 COMMISSIONER FERRICK: Any other
 19 Commissioner?
 20 Meeting's adjourned.
 21 (The meeting concluded at 11:31 PM).
 22 ---o0o---
 23
 24
 25
 26 STATE OF CALIFORNIA)

1 COUNTY OF SAN FRANCISCO)

2

3 I, the undersigned, hereby certify that the

4

5 discussion in the foregoing meeting was taken at the time

6 and place therein stated; that the foregoing is a full,

7

8 true and complete record of said matter.

9

10 I further certify that I am not of counsel or

11

12 attorney for either or any of the parties in the

13

14 foregoing meeting and caption named, or in any way

15

16 interested in the outcome of the cause named in said

17

18 action.

19

20 IN WITNESS WHEREOF, I have

21 hereunto set my hand this

22 _____day of _____,

23

24 2010.

25

26 MARK I. BRICKMAN CSR 5527

27

28

29

30

31

32