



REGULAR MEETING MINUTES

Date: 9/9/2019
Time: 7:00 p.m.
City Council Chambers
701 Laurel St., Menlo Park, CA 94025

A. Call To Order

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

B. Roll Call

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

Staff: Kyle Perata, Principal Planner; Matt Pruter, Associate Planner; Chris Turner, Assistant Planner

C. Reports and Announcements

Principal Planner Kyle Perata reported the City Council at its September 10, 2019 meeting would consider the first reading of the REACH Code Amendment and if adopted, the second reading would occur at the Council's September 24, 2019 meeting. He said also on September 10, the Council would consider a request for a reconsideration of the resolution establishing a process for notifying the City Council of Planning Commission actions on potentially large or potentially impactful projects. He said if the reconsideration was approved, changes might be made to the referenced process. He said Council interviews with Planning Commission candidates would take place on September 24, 2019 with an anticipated appointment in October 2019.

D. Public Comment

- Peter Edmonds, District 3, Menlo Park, thanked Commissioner Chris DeCardy for supporting his request to modify the August 12, 2019 Planning Commission minutes with regard to his (Edmonds) public comment and to acknowledge to staff that the modified wording in the minutes of the Commission's August 26, 2019 meeting was accurate. He said he hoped his following comments would spark action by one or more Commissioners. He said earlier in the day the Planning Commission had received from him excerpts of the current staff report prepared by Sustainability Manager Lucky for the Heritage Tree Task Force that would meet September 12, 2019. He said on the back of the sheet of his handout to the Commission tonight he had summarized how the Planning Commission's wishes expressed for a final motion had largely been ignored, and promises made to the Commission on August 12, 2019 had been broken, nor was ending the moratorium satisfactorily addressed. He said tonight he wanted to address the newly available and incomplete draft of administrative guidelines, which were not provided to the Commission for review, particularly the highlighted clauses. He said those clauses invested total powers to administer the revised Heritage Tree Ordinance in the office of the City Arborist. He said those powers included, noting Clause 5, Permits, part "d,"

that *the City Arborist might expedite dead or invasive tree processes and shall have authority to reasonably waive permit application requirements and fees*. Mr. Edmonds said in his opinion that this guideline invested far too much power in a single City official, operating as a sole expert with no significant oversight (that he was aware of), and that official would be authorized to nullify the work and decisions of the Task Force, Planning Commission, Environmental Quality Commission, and the City Council. He said recalling that absolute power corrupted he thought this clause was a blatant invitation for corruption and urged the Commission to rebel against it. He said another clause in the revised ordinance administration guidelines invested the authority to adopt in the designee of the Public Works Director the City Arborist's reports. He quoted: *Adopt in this context means the designee can also amend*. He said in Part C of that clause, under Decision Making Criteria, it stated: *If requested alternative designs were more than 40% of the appraised value of the tree the request would be perceived as financially infeasible. If the requested alternative designs were less than 10% of the appraised value of the tree the request would be presumed to be financially feasible*. He noted his full set of comments had been provided to the Commission.

E. Consent Calendar

E1. Approval of minutes from the August 26, 2019 Planning Commission meeting. ([Attachment](#))

Commissioner DeCardy suggested modifications on pages 12 and 16 (outlined in the action below). He moved to approve the minutes with the modifications. Commissioner Camille Kennedy seconded the motion.

ACTION: Motion and second (DeCardy/Kennedy) to approve the August 26, 2019 Planning Commission minutes with the following modifications; passes 6-0.

- Page 12, third paragraph change “but the company did not a kitchen for staff” to “but the company did not have a kitchen for staff;” and
- Page 16, second bullet, change “General support for the proposed open space...” to “Most Commissioners generally supported the proposed open space...”

E2. Architectural Control/Deborah and Steven Levine/5 Alexis Court: Request for architectural control to conduct exterior modifications to an existing residence in the R-1-S (X) (Single Family Suburban Residential, Conditional Development) zoning district. ([Staff Report #19-067-PC](#))

Chair Barnes pulled the item from the consent calendar.

Staff Comment: Associate Planner Matt Pruter said staff had no additions to the staff report.

Questions of Staff: Commissioner Henry Riggs said he noticed that the architectural control request although simple in form and concept had 19 architectural sheets, which in his estimate was 20 hours of work per sheet. He asked why a Floor Area Limit analysis was needed for changing windows. Planner Pruter said his understanding of the application was they had a larger set of plans than was necessary but having made some clarifications and iterations over time, they decided to keep the plan set as-is.

Commissioner Riggs said it was not a significant amount of changes that had occurred from the original submittal. He said staff might internally discuss whether some requirements could be pulled back if the request was simple in form and concept and did not change the footprint. He said also an arborist report was required but he did not understand the need for that, and it was a burden in terms of time. He said he thought the four sheets showing the elevations were only needed for this request. He asked what the window material frame was. Planner Pruter said Attachment C12 of the staff report called out the window materials. Commissioner Riggs after looking at the referenced sheet noted that Anderson 100 and 200 windows in his recollection were not vinyl windows, which had been his only concern. He moved to approve as recommended in the staff report. Commissioner Kennedy seconded the motion.

ACTION: Motion and second (Riggs/Kennedy) to approve the item as recommended in the staff report; passes 6-0.

1. Make a finding that the project is categorically exempt under Class 1 (Section 15301, “Existing Facilities”) of the current California Environmental Quality Act (CEQA) Guidelines.
2. Adopt the following findings, as per Section 16.68.020 of the Zoning Ordinance, pertaining to architectural control approval:
 - a. The general appearance of the structure is in keeping with the character of the neighborhood.
 - b. The development will not be detrimental to the harmonious and orderly growth of the City.
 - c. The development will not impair the desirability of investment or occupation in the neighborhood.
 - d. The development provides adequate parking as required in all applicable City Ordinances and has made adequate provisions for access to such parking.
 - e. The property is not within any Specific Plan area, and as such no finding regarding consistency is required to be made.
3. Approve the architectural control subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by Katja Rimmi Interiors, consisting of 19 plan sheets, dated received August 29, 2019, and approved by the Planning Commission on September 9, 2019, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies’ regulations that are directly applicable to the project.

- c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
- d. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
- e. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by A Plus, dated received August 29, 2019.

F. Public Hearing

- F1. Use Permit/Jing Quan/223 Laurel Avenue:
Request for a use permit to demolish an existing two-story single-family residence and detached garage, and construct a new two-story residence on a substandard lot with regard to minimum lot width in the R-1-U (Single Family Urban Residential) district. One heritage size English walnut tree is proposed to be removed as part of the project. ([Staff Report #19-068-PC](#))

Staff Comment: Assistant Planner Chris Turner said a last minute revision to the plans omitted the note for the heritage tree replacement on site plan sheet A2.2. He said that note would be required in the approved final plan set.

Applicant Presentation: Jing Quan, project architect, said the lot was relatively narrow but quite deep with one side running to 240 feet and the other side to 220 feet in length. She said the garage was proposed in the front but turned so the garage door faced the site and was not visible from the street. She said the required front setback was 20 feet and they were proposing a 45-foot front setback. She said the front of the property curved so they pushed the building back, so it aligned with the existing left hand side neighboring two-story residence. She said the proposed second floor front setback was approximately 73 ½ feet. She said the proposed style was Craftsman with typical details including wood siding, composite roof with 4 to 12 pitch and an overhang of 18-inches, and decorative wood columns at the front and rear porches. She said the overall height of the proposed building was 27-feet, four-inches.

Commissioner DeCardy said the proposed replacement for the heritage tree was not on sheet A2.2 but he thought it was shown on sheet A2.1. He confirmed with the applicant that the location of the replacement tree was in the rear left, facing the property from the street.

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

Commission Comment: Commissioner Riggs asked if the replacement Brisbane tree was shown as a five-gallon tree. Ms. Quan said it was a 15-gallon tree.

Commissioner Riggs said the project overall was handsome and he thought the second-floor roof showed deference to neighbors. He moved to approve as recommended in the staff report. Commissioner Kennedy seconded the motion.

ACTION: Motion and second (Riggs/Kennedy) to approve the item as recommended in the staff report; passes 6-0.

1. Make a finding that the project is categorically exempt under Class 3 (Section 15303, “New Construction or Conversion of Small Structures”) of the current California Environmental Quality Act (CEQA) Guidelines.
2. Make findings, as per Section 16.82.030 of the Zoning Ordinance pertaining to the granting of use permits, that the proposed use will not be detrimental to the health, safety, morals, comfort and general welfare of the persons residing or working in the neighborhood of such proposed use, and will not be detrimental to property and improvements in the neighborhood or the general welfare of the City.
3. Approve the use permit subject to the following **standard** conditions:
 - a. Development of the project shall be substantially in conformance with the plans prepared by WEC & Associates, consisting of 13 plan sheets, dated received August 27, 2019, and approved by the Planning Commission on September 9, 2019, except as modified by the conditions contained herein, subject to review and approval of the Planning Division.
 - b. Prior to building permit issuance, the applicants shall comply with all Sanitary District, Menlo Park Fire Protection District, and utility companies’ regulations that are directly applicable to the project.
 - c. Prior to building permit issuance, the applicants shall comply with all requirements of the Building Division, Engineering Division, and Transportation Division that are directly applicable to the project.
 - d. Prior to building permit issuance, the applicant shall submit a plan for any new utility installations or upgrades for review and approval by the Planning, Engineering and Building Divisions. All utility equipment that is installed outside of a building and that cannot be placed underground shall be properly screened by landscaping. The plan shall show exact locations of all meters, back flow prevention devices, transformers, junction boxes, relay boxes, and other equipment boxes.
 - e. Simultaneous with the submittal of a complete building permit application, the applicant shall submit plans indicating that the applicant shall remove and replace any damaged and significantly worn sections of frontage improvements. The plans shall be submitted for review and approval of the Engineering Division.
 - f. Simultaneous with the submittal of a complete building permit application, the applicant shall submit a Grading and Drainage Plan for review and approval of the Engineering Division. The Grading and Drainage Plan shall be approved prior to the issuance of grading, demolition or building permits.
 - g. Heritage trees in the vicinity of the construction project shall be protected pursuant to the Heritage Tree Ordinance and the arborist report prepared by Kielty Arborist Services LLC, dated received August 15, 2019.

G. Regular Business

G1. Review of substantial conformance review process and possible Planning Commission direction on criteria for substantial conformance determinations. ([Staff Report #19-069-PC](#))

Principal Planner Perata referred to the staff report that outlined the three tiers of substantial conformance review related to modifications to a use permit. He said the Commission might provide direction to staff on any updates to the criteria used by staff to determine when changes to a project were considered in conformance with its discretionary action, required a substantial conformance memo to the Planning Commission or required a revision to the approved permit.

At Chair Barnes' request, Planner Perata highlighted what triggered use permits and that the substantial conformance review process might apply to any projects having a use permit. Chair Barnes clarified with staff that the review this evening was potentially to improve that process.

Chair Barnes opened public comment.

Public Comment:

- Nicholas and Jennifer Bott, Menlo Park, expressed their support of a review of the substantial conformance review process and potential revision to it. Mr. Bott said they were currently doing a remodel of their home and wanted to increase the height of their project from the use permit allowed height by 12-inches. He said currently that change would require full Planning Commission review. He said their neighbors were fine with the proposed change and the change was still within the daylight plane requirements. Ms. Bott said also reducing the backlog of projects with some changes that had to go through Planning Commission review was important.

Chair Barnes closed public comment.

Commission Comment: Commissioner DeCardy asked approximately how much staff time and calendar time was associated with each tier of substantial conformance review. Planner Perata said for more recent memos staff had tracked its time and could report that as a future informational item. He said staff's review of proposed changes was similar, if truncated, to a plan set review. He said preparing a memo would take a couple of hours and staff tried to plan those around Planning Commission agendas. He said these change reviews varied depending on the project and could take from one month to a few months.

Replying to Chair Barnes, Planner Perata said he did not know the reason why certain numbers were made the standard in the zoning ordinance for lot sizes. He said a decision was made in the zoning ordinance at some point that lots not meeting the minimum width, depth or area and were building a new, two-story development required review and approval of the Planning Commission. He said the determined substandard lot sizes might mean development could have potentially more impact to neighbors.

Commissioner Riggs thanked staff for the information noting thought had been given over the years to the three tiers of approval process for use permit revisions and findings of substantial conformance. He referred to topic 2 in the staff report under *Commission Considerations* and the

question of whether landscape changes might be found in substantial conformance. He said he agreed as long as the changes did not involve the privacy between buildings. He said if there was a privacy issue, and generally for residential two-story development, that such change should go through staff review and circulated as a memo to the Commission. He said topic 3 asked whether the Commission believed that the construction of accessory buildings should be allowed without a permit revision and/or substantial conformance memo. He said he was a supporter of accessory buildings for both their practical use for the landowner and a potential renter. He said particularly if there were no objections from neighbors that made sense to him. He referred to topic 4 and said he liked the idea that certain modifications might have a sunset. He said the Commission had seen use permit revisions that really had no reason for a public hearing except historically there had been a use permit. He said he would like that considered and discussed. He referred to topic 5 in the staff report: *Does the Planning Commission believe that documentation of adjacent neighbor approval of a change should affect the review tier?* He said it should where neighbor approval did not seem to be significantly out of line with what you would expect to be within the range of a neighbor. He said sometimes a neighbor was not in the best position to make an approval of proposed plan changes.

Commissioner Michael Doran said he thought the existing process worked well overall. He referred to topic 2 and landscaping improvements. He said he thought those should be in substantial conformance and not require Commission review. He said related to topic 5 that he shared Commissioner Riggs' skepticism about neighbor approval of permit change requests as he did not think neighbor approval should be a determining factor in whether a review was required. He said Commissioner Riggs used the example of a person who was shut in and never opened their blinds. He said he could think of other reasons that a neighbor might not object to something that was generally objectionable. He said the neighbor might not use a particular room in the house, was planning on moving in three months, or was friends with their neighbors. He said they were dealing with buildings that were durable and lasted a long time. He said if oversized windows were put in that looked over a neighbor's backyard or into one of their rooms, those windows were likely to be there for 50 years, and a number of people would live next door during those 50 years. He said he did not see any practical way to differentiate between neighbor approvals for revisions that you would expect to get approved and neighbor approvals that were based on some unusual circumstances related to those neighbors. He said he did not think neighbor approval should be a factor.

Chair Barnes referred to his personal experience with the use permit and revision process. He said he found it onerous and costly, and in his view prejudicial unfairly toward smaller lots in the City. He said the staff report alluded to it and he had experienced it that when embarking on a construction project there were a number of unknowns particularly in the current building environment wherein you were lucky to get an architect to take your project and a contractor to make a bid on it. He said once you were in the use permit approval process and had inevitable changes you were in a difficult situation because there was no margin of error. He said a project in his neighborhood because the lot size was designated substandard meant a much greater burden on the applicant in terms of plan check, Planning Division review, and Building Department review, which far exceeded what was required for the same project for other parcels in the City. He said changing the siding on his home from stucco to cedar siding and the roof from asphalt to cedar shingles required him to get a use permit revision that involved significant paperwork, submittals and reviews but a home being developed in West Menlo on a 7000 square foot lot could have done that without any level of discretionary review. He said the City did not have design guidelines. He

said if staff were given the ability to make decisions on changes within a greater framework, he thought that what was natural in this process would be accommodated.

Chair Barnes referred to topic 1 in the staff report: *Are there specific items (e.g., changes to the size, number or placement of window(s), height increases, color changes, etc.) that the Commission does not need to review for substantial conformance determination?* He said he would like a nuanced discussion on this as there were degrees of change. He said now the ordinance was skewed towards the question of whether it was different from what was approved and if it was different it had to come back for review. He said nuances that could be applied was whether the change was within the original spirit of the project approval, what the change was and the degree of the change from the original approval. He said that would trigger either substantial conformance review or returning for a use permit revision. He said the staff report asked if staff should develop a written substantial conformance review policy for adoption by the Planning Commission. He said that was a yes for him to include use permit revision and substantial conformance review. He said all the issues were issues of degree and he thought they should empower staff to make these decisions within a broader framework. He asked about the items listed in topic 2 related to landscaping changes. Planner Perata said this was skewed more towards residential development as those applications often did not have highly developed landscape plans. He said often building permits come in later after use permit approval for new structures such as trellises, arbors, and built in gas barbecues that required Planning staff review for compliance with project approvals. He said absent with the plans identifying such features those typically would need use permit revisions or if smaller a memo to the Commission.

Chair Barnes said landscaping and features would come last in the process for single-family residential development noting budgetary constraints as a project was being constructed. He said that area should have an allowance for substantial conformance review. He said scale mattered and confirmed with staff that there were development standards for such things as trellises and arbors. He said he was fine with those having substantial conformance review as long as they were within the development standards including setbacks and for staff to call for a permit use revision if those features were out of scale with the development standards or out of context with the site and neighborhood.

Chair Barnes confirmed with staff that accessory buildings noted in topic 3 were not secondary dwelling units. Planner Perata said state law required the City to allow secondary dwelling units when all development regulations were met regardless of a use permit approval for the main residence. Replying further to Chair Barnes, Planner Perata said an accessory building could have plumbing and electrical. He said they were differentiating these from the more open structures such as trellises and arbors. He said an accessory building was enclosed noting a shed was an example of an accessory building.

Chair Barnes asked about topic 4: *Currently discretionary actions by the Planning Commission run with the land and staff evaluates all projects, regardless of year approved, for consistency with the plans approved by the Planning Commission. Does the Planning Commission believe that after a defined amount of time any proposed modifications to the completed development should be reviewed for compliance with the Zoning Ordinance instead of for conformance with the approved project and compliance with the Zoning Ordinance? If so, what does the Planning Commission believe would be the appropriate amount of time (e.g. three years, five years, and ten years from completion)?*

Planner Perata said this was asking if the use permit running with the land in perpetuity should be revisited potentially. He said this might require additional review by the community and the Council in terms of direction as it was not strictly a conformance question and might modify the underlying ordinance. He said staff would need to look into that further but wanted to prompt the Commission to consider. He said right now staff was looking at items that could have been approved through a use permit in the 1980s, 1990s, 2000s and the question was whether or not that evaluation of compliance with original plans was still desirable after a certain date.

After comments by Commissioner Riggs on use permit approvals and future modifications, Planner Perata said he believed they mentioned in the report that whether the project was under construction or seven or eight years complete, part of staff's deliberation on requested changes was to see whether the requested change was in the Planning Commission meeting minutes as discussion or an important topic of conversation at the meeting when approval was granted or not discussed at all.

Chair Barnes said he supported a sunset on use permits. He referred to topic 5: *Does the Planning Commission believe that documentation of adjacent neighbor approval of a change should affect the review tier? For example, if upper-floor side windows are proposed to be enlarged and/or added, which would normally be a use permit revision, could written approval of the adjacent neighbor allow it to be processed through a conformance memo or administrative approval?* He said he agreed with this heartily. He said regarding the use permit approval the Planning Commission weighed in on development standards that were met and reviewed for aesthetics. He said when an aesthetic, a material change or color change was sought this was something that affected neighbors and he thought did not need Planning Commission review. He referred to topic 6: *Should staff develop a written substantial conformance review policy for adoption by the Planning Commission? That policy could be updated by the Planning Commission from time to time when priorities or preferences change.* He said that was a yes for him. He referred to topic 7: *Is there any additional information that the Commission would like included in the substantial conformance memos?* He said he had nothing for that topic.

Chair Barnes returned to topic 1: *Are there specific items (e.g., changes to the size, number or placement of window(s), height increases, color changes, etc.) that the Commission does not need to review for substantial conformance determination?* He said his idea on that was having a level of degree, which would come into play, other than just a binary change or no change but a degree that would trigger and be part of the substantial conformance process as to tiering. He asked if that would be manageable for staff to determine degree of change. Planner Perata said staff could look at ways to address the type of changes in that gray area but it would be helpful to have some input and guidance. He said perhaps they should start with the substantial conformance review memo process for those changes rather than strict use permit revisions subject potentially to neighbor input. He said there were mixed opinions about neighbor input, but that could be what staff leaned on in the beginning. He said there was a judgment call that staff would have to make especially without strict direction in those gray areas. He said staff would probably lean on being conservative in its interpretations. He said they could certainly look at ways to move some of those modifications into a memo format by looking at the overall project to make sure it met the intent of the project approval and would not impact neighbors unduly.

Chair Barnes said if the process was fair across the City it was fair on everyone. He said there was an inordinate burden on people whose properties were subject to the use permit process and none of the burdens on others in the City whose properties were not subject to the use permit process. He said that also applied to the use permit revision process and he supported addressing that economic injustice.

Commissioner Doran said the issue with substandard lots was citywide and not restricted to the Willows. He noted his own lot although greater in size than the typical Willows' sized lots was a substandard lot and none of the three properties adjoining his were standard lots. He said he thought the use permit process had value and that the reason Menlo Park did not have the political issue with McMansion building was because of the review process. He said the very detailed review that the Planning Commission conducted of every application had resulted in a political environment where people were able to build two-story houses in one-story neighborhoods without a lot of public outcry.

Commissioner Michele Tate said she would be very interested to see by district what the substandard lot size was and how many properties were considered substandard. (Chair Barnes had asked this question earlier and staff had indicated that it could be researched; however, Chair Barnes indicated it was not necessary.) Commissioner Tate said she believed that the Willows and Belle Haven were the hardest hit with substandard lots. She said many Belle Haven residents felt the use permit process was a very discriminatory process. Planner Perata said staff could get that information and distribute it to the Planning Commissioners. He said regarding timing they would need to look at resources to run the GIS analysis. He said he would update the Commission once he found out how long that might take. Commissioner Tate said that a lot of people in Belle Haven were not able to do anything with their properties because they felt like the process was too laborious and expensive. She said they did not want people to get discouraged before they even tried to improve their homes or for them to do unpermitted additions.

Commissioner Riggs said in 2002 the Council received an analysis of substandard lots in the City. He said approximately 50% of the lots in the City were substandard. He said the majority of the Willows' lots were substandard, virtually all of Belle Haven's lots were substandard, and all of Lorelei Manor's were (he noted they solved that with an overlay). He said substandard lots were throughout the City and the majority of his City projects had been on substandard lots. He said he heartily agreed with Commissioner Tate that this was not helpful for the City as a whole to have these higher hurdles for some to do improvements to their properties. He said those obstacles and California building code drove people to simply avoid applications. He said as a possibly good bottom line that for some changes staff would make a determination and then circulate a memo to the Planning Commission. He said for example paint color, noting that they were not dealing solely with single-family residences. He referenced a commercial building that was painted a different color than what was approved and it had not served the owner or neighborhood well. He said regarding design standards that he did not think the City would have those until some members of the public had the interest and the time to take it on as he did not see Council approving staff time to work on that. He said it was needed. He said other cities on the peninsula had design guidelines and he believed that the City of Redwood City had hired a consultant recently to develop design guidelines for it. He said having design guidelines would solve a number of the issues that the Planning Commission saw. He said staff probably agreed but could not do anything about it nor could he or Chair Barnes, but it was worth noting for the record. He thanked staff for putting the report together.

Commissioner DeCardy referred to topic 6: *Should staff develop a written substantial conformance review policy for adoption by the Planning Commission? That policy could be updated by the Planning Commission from time to time when priorities or preferences change.* He said that was a good idea and the review that made sense to him was to check in every four years to assure everyone serving a full term on the Commission would have the chance to participate in that discussion while they were representing the voice in the community that they were appointed to represent. He said in addition to laying out some of the tactical pieces in the substantial conformance memo he thought getting to the level of some principles would be of value. He said they were trying to balance a lot of things including time and cost for owners and applicants and City staff, fairness across applications on all types of uses, and some sense of community aesthetics that the Commission was supposed to represent absent any design standards with individual freedom for people to do what they wanted to do with a recognition that influences, needs, and demands on the community changed over time. He said the community in which they now lived did not look anything like the community of 10 years earlier. He said to check back in on that made sense, so he was in favor of topic 6 for those reasons. He said he was also in favor of sunsetting use permits for those same reasons. He said generally he thought the process worked and he gave staff a lot of credit. He said sometimes when informal systems worked well you should not mess with them as a formal system created bureaucracy and other things to take care of over time. He said topics 1, 2 and 3 were essentially the same in his thinking. He said the distinction going from Tier 2 to Tier 3 was kind of elegant in that staff wrote the memo, sent it to the Commission and if one of the Commissioners has an issue with it the item could be pulled to come to the Commission. He said he understood staff's conservative position but wondered whether staff might do a checklist for Tier 1 and share that with the Commission as what staff intended to do. He said upon review of the checklist, the Commission might indicate that a memo was needed. He said right now when staff wrote a memo and it was not pulled by the Commission that meant staff had done the right thing. He suggested finding a gating element between Tier 1 and 2 without a lot of work for staff that might push things back from Tier 2 to Tier 1. He said in general he was in favor of going that way and in answering questions on topics 1, 2, and 3, in general, he would err on the side of trusting staff more as opposed to coming back to the Commission.

Chair Barnes said he thought more latitude was needed related to Tier 2 to Tier 3 including neighbors' input as ostensibly they were the ones impacted and he thought their agreement to changes should weigh heavily on whether Tier 2 was to be triggered to Tier 3. He remarked on levels of plan specificity that the Commission saw that he thought lent to greater and lesser review. Planner Perata said that was beyond the agenda topic discussion but he could answer generally. He said staff reviewed every project against the City's application submittal guidelines and they had internal checklists they used to help implement those guidelines even further in terms of what was required in the application submittals as to the types of information and what level of detail the plans need. He said certainly some applications had more detail than others, but they strived for a minimum level of detail. He said they did their best to ensure that minimum level of detail was met prior to bringing the project forward to the Planning Commission so it had a clear understanding of what it was reviewing and acting upon. He said they required for exterior elevations to show door and windows materials on the plans so staff could provide that to the Planning Commission as part of its deliberations on the project. He said later staff would look at the building permit plans for consistency with that approval. He said certainly plans had different levels of detail and different ways of showing those materials whether as a door schedule or a note in the plan. He said staff

strove to provide a minimum level of detail to be fair to applications going through the process as well as to the Planning Commission so there was a standard amount of information provided.

Replying to Chair Barnes, Planner Perata said staff had a number of items to move forward from the discussion this evening. He said they would take the Planning Commission's individual comments and try to work those into future evaluations for substantial conformance reviews in terms of the tiers. He said a few of the items that staff had incorporated as comments might warrant additional review and potentially input and direction from the Council as well as community discussion such as time periods for a use permit in terms of sunseting for revisions. He said potentially a Planning Commission policy on substantial conformance review might also need input from the Council. He said staff would look into those two items further. He said other comments were things staff would consider. He said there were differing opinions but in general similar comments were made in terms of levels of review and how to look at certain changes differently going forward.

Staff Summary of Commission Feedback:

- General support to allow modifications to paint color, height, and windows size/placement at a staff level (through the building permit process) if the modifications were within the spirit of the Planning Commission's discretionary review and approval and would meet all Zoning Ordinance requirements (e.g. daylight plane, height, setbacks, etc.). Continue to review meeting minutes and project components to determine if changes would be out of character with the approved project or potentially result in a greater impact to a neighbor and adjust level of substantial conformance review accordingly.
- General support to allow landscaping and site improvements, including accessory structures and buildings at the staff level or through substantial conformance review, depending on the proposed site layout, building/structure design and location, amount of proposed changes, and provided the proposed improvements would comply with the Zoning Ordinance. General support to allow these modifications without a use permit revision, unless unique aspects of the Planning Commission's review and approval warranted a use permit revision. Staff should continue to evaluate if changes are consistent with the spirit of the Planning Commission's deliberation and approval of the project (i.e. review meeting minutes).
- Most Commissioners expressed support for staff to further evaluate the possibility of establishing a sunset date for an approved use permit, architectural control permit, or other discretionary action to be reviewed against the approved plans and instead review modifications for compliance with the Zoning Ordinance and related requirements.
- Some support to have staff consider neighbor review and approval of proposed changes when determining the appropriate level of conformance review. Some Commissioners also cautioned against using neighbor approval, especially if approval is given for a change that was not consistent with what a neighbor would typically support.
- A number of Commissioners supported a written formal policy and asked staff to further investigate the process to develop a policy for substantial conformance.

- A Commissioner recommended that staff evaluate proposed changes to projects against whether the Commission would vote the same way on the project with the incorporated changes. If staff did not believe the changes would affect the outcome, consider a lower level of review (i.e. building permit or substantial conformance memo).
- General Commission support for current substantial conformance review process but recognition of possible improvements.
- Most Commissioners expressed support for staff to evaluate and potentially approve more modifications through the building permit and substantial conformance review memo process instead of as revisions to allow for more flexibility for changes that were typical of development projects (general discussion around changes to single family residential projects) and to reduce the length of review time and associated cost for changes through the use permit (or similar discretionary permit) review process, provided staff implements the guidance provided by the Planning Commission on this topic.

H. Informational Items

H1. Future Planning Commission Meeting Schedule

- Regular Meeting: September 23, 2019

Planner Perata said the September 23 agenda would have a couple of single-family residential development projects and an extension of the use permit time limit for the Off the Grid food trucks. He said they had a five-year use permit and were requesting to extend it.

- Regular Meeting: October 7, 2019
- Regular Meeting: October 21, 2019

I. Adjournment

Chair Barnes adjourned the meeting at 8:51 p.m.

Staff Liaison: Kyle Perata, Principal Planner

Recording Secretary: Brenda Bennett

Approved by the Planning Commission on September 23, 2019

E1,

Good evening Mr. Chairman and Commissioners,

Sept. 9, 2019

I am Peter Edmonds, a resident of Menlo Park (District 3). First, I wish to thank Commissioner DeCardis for following up from the dais on my request to modify the minutes of your August 12 meeting with regard to my Public Comment and to acknowledge that the modified wording in the minutes of your August 26 meeting is accurate.

I hope that my following comments will also spark action by one or more Commissioners.

Earlier today you received from me excerpts of the current Staff Report (19-007-HT), prepared by Sustainability Manager Ms. Lucky for the Heritage Tree Task Force (HTTF), which will meet on Thursday of this week at 6 pm in the "Downtown" Room.

On the back of this sheet, I summarize how your wishes expressed in your final motion have been largely ignored and promises made to you on August 12 have been broken. Only the moratorium was addressed satisfactorily. I do not have time to read it all.

This evening, I wish to address the newly available and incomplete draft of Administrative Guidelines, which were not provided to you for review, particularly the highlighted clauses. Essentially, these clauses invest total powers to administer the revised Heritage Tree Ordinance in the office of the City Arborist. These powers include:

"V. **Permits** D. *The City Arborist may expedite dead or invasive tree-permit processes and shall have authority to reasonably waive permit-application requirements and fees.*"

In my opinion this 'Guideline' invests far too much power in a single city official, operating as a sole expert with no significant oversight that I'm aware of, who would be authorized to nullify the work and decisions of the HTTF, Planning Commission, EQC, and City Council. Recalling that "Absolute power corrupts!", I think this clause is a blatant INVITATION TO CORRUPTION.

I urge you to rebel against it.

An earlier clause in the revised Ordinance, **13.24.080 Administrative guidelines** invests "the authority to adopt" in the "designee" of the Public Works Director, to whom the City Arborist reports:

"The public works director or designee shall have the authority to adopt administrative guidelines to implement this chapter."

Does this mean the designee can also "amend"? No need to guess who the designee might be!

Furthermore, V. **Permits**. C. Decision-Making Criteria states:

"• *If the cost of alternative design is more than 40% of the appraised value of the tree, the cost will be presumed to be financially unfeasible.*"

"• *If the cost of alternative design is less than 10% of the appraised value of the tree, the cost will be presumed to be financially feasible*

• *If the cost of alternative design is between 10% and 40%, the City will consider a range of factors, including the value of the improvements, the value of the tree, the location of the tree, the viability of replacement mitigation and other site conditions.*"

Where did 40% and 10% come from? Presumably, these numbers reflect the opinion of the City Arborist. I strongly disagree; they are much too small. I recommend instead:

- changing "40%" to "140%" or more to include some of the value of intangible benefits of Heritage Trees listed in **13.24.010 Intent and purpose** of the Ordinance.

- changing "10%" to "100%", because the new Ordinance ensures that the value of replacements trees and/or fees shall not be less than the value of the Heritage Tree being replaced. This criterion should also apply to alternative designs.

If the 10% and 40% of appraised values above truly reflect the City Arborist's opinion of the values of the Heritage Trees he is employed to protect, then I think he is in the wrong job.

[over]

After diligent review on August 12 of the Staff Report (19-061-PC) concerning revision of the Heritage Tree Ordinance, the Planning Commission passed the motion (DeCardy/Barnes) that the Planning Commission supported the Heritage Tree Ordinance Update recommendations, except [it] preferred retaining [a] building moratorium under the section on violations and with additional recommendations of items to consider as listed; passes 4-0-2 with Commissioners Kennedy and Tate absent.

- Retain building moratorium
- Street tree replacement
- Replacing mature trees with mature trees
- Education
- Funding implementation and budget strategies, such as the Landscape Assessment District fee utilization and potential modification as discussed."

I hope you will have noticed with satisfaction that the building moratorium in the event of a violation has now been replaced by a provision for a stop-work order or a property lien. I think this is actually an improvement, since the time limit on a moratorium does not apply to stop-work orders or property liens, I believe.

Unhappily, the sole mention of Street Trees occurs parenthetically in clause VIII of the newly available and incomplete draft of Administrative Guidelines, which were not provided to you for review. Replacement of Mature Trees and Education got no mentions whatsoever. Funding Implementation and Budget Strategies were subsumed in unspecified "ideas".

Broken promises:

On page 17 of the minutes of your meeting on August 12, one can read in paragraph 3, lines 11-16:
"Chair Barnes confirmed that staff could request what a fully funded street[-tree] replacement program would look like and what net new trees would look like over the course of a year. He said he would like that information and to even take it up separately, but he did not know how to get that into the ordinance update. Ms. Lucky said they could bring that comment back to the Task Force to discussP, noting they would meet [on] September 12 and in October."

This implied promise has NOT been fulfilled. Nor has the promise of two further meetings of HTTF. In 19-007-HT, Ms. Lucky states that the September 12 meeting of HTTF will be its last. Whatever the unstated reason – possibly claimed but unverified exhaustion of funds – the opportunity for further public comment has been curtailed without explanation.

Designee:

For good measure **13.24.020 Definitions** specifically identifies the City Arborist as a designee:

3. "Public Works Director" shall mean the Public Works Director or his/her/their designee, including but not limited to the City Arborist."

Whom do we think wrote these draft Guidelines?

Requested corrections to minutes of the Planning Committee's meeting on 9/9/2019

D. Public Comment

Line 11: "... nor was ending the moratorium satisfactorily addressed."
should read: "Only the moratorium was addressed satisfactorily."

Line 24: "... the Public Works Director the City Arborist's reports."
should read: "... the Public Works Director, to whom the City Arborist reports."

Line 25: "He quoted: *Adopt in this context means the designee can also amend.*"
should read: "He asked: Does this mean the designee can also 'amend'?"

Lines 29-30, omitting the conclusion drawn from the prior quotation,
should read: "Having run out of time, he noted his full set of comments, including his strong
disagreement with the percentages, had been provided to the Commission."

(Peter Edmonds, 9/23/2019)