

**Zoning Adjustment Board
Meeting, 12/11/2014**

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>> S. Hahn: I am present, and I received numerous communications, one from Judy Shelton asking about process around community benefits. I responded letting her know this the first time we've seen this so there is no precedent in terms of process. I had a couple of communications with Donald Globeknocker about scheduling, whether this meeting was going forward tonight or not. I received a communication from Enid Kampfs who is a parent at Berkeley High, asking whether it was too late to comment on the EIR. And asking whether Berkeley High issues had been considered. And also wanted to know opportunities for input. And I also had a conversation with Diana Virgil and Peter HANTZ from the Bancroft library who asked me if I was aware of the project and I explained to them the opportunities for input. So I did not have substantive conversations, they were all process.

>> I. Tregub: Present, and I have no ex partes on 2211 Harold Way, Councilmember Arreguin, I spoke with him on his views on the community benefits package. And Marion who sent me an e-mail saying the housing project should be evaluated by a consultant.

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>> D. Pinkston: I spoke with Mayor Bates regarding community benefits and design on Harold Way.

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>> P. Pinto: 2211 Harold Way. For review and comment on the community benefits package. Aaron, you want to give us a brief staff report?

>> A. Sage: Yes. Good evening, again. So, first of all just want to state what the purpose of the agenda item is. We are basically, this is a similar to what we would call a preview that we held on other projects where the Board hasn't taken action, it's just to present information to the Board, to hear public comment on this particular issue. And to get feedback from the Board on the issue as well. Staff views this as basically starting the discussion on this requirement that the City has imposed for build things the downtown that are taller than 75 feet. I want to briefly give the policy framework, describe what benefits the applicant is proposing to meet this requirement, describe some of the other options that staff has listed that in theory could be available to the ZAB. And in terms of the policy framework, basically comes from section 23E.68.090E, one of the required findings, for C-DMU, this applies to buildings over 75 feet from height. And the Board must find for such projects that the project will provide significant community benefits, either directly or by providing funding for such benefits to the satisfaction of the city beyond what would be required by the City. These may include but are not limited to affordable housing, supportive social services, green features,

open space, transportation demand management features, job training, and/or employment opportunities. The applicable public benefit requirements of this chapter shall be included answers of approval and the owner shall enter into a written agreement combining on all successors and interest. We've tried to flush this out for you and break it down. To provide some kind of guidance on what is intended with this finding. Ultimately, it comes down to this language significant, whether there is a significant community benefit, what is the range here or scope of the community that's benefitting. And these are questions that we unfortunately don't have clearly defined answers to. And in a we are here to help you wrestle with those questions. And what we have tried to do, we've taken the applicant's proposed benefits and let me outline those briefly. Basically four categories. First is project agreement, the applicant has represented that they have an agreement with the Alameda County construction and building trades Council which represents unions that work in those trades within Alameda County to construct all aspects of the project using union labor. What the applicant describes as retention and modernization, proposing to include in the new project a six-screen cinema complex that they intend to serve as a replacement for the existing ten-screen cinema complex on the site. I want to point out that the applicant, with that particular benefit, that the applicant is proposing to actually build out the theater space, not to simply provide a shell with nothing inside but to actually build all of the seats and all of the other items that would be needed to begin operating. The third type of benefit is transportation demand management features. There's a long list of features that the applicant is including in this, under this heading. So I won't go over that list. Happy to answer further questions. And then finally, public plaza located at the corner of Harold Way and Kittridge street. This plaza would, a small portion of the plaza would satisfy the requirement for privately owned public open space or POPOs but the remainder of that would be above and beyond the minimum POPOs requirement so the applicant is claiming that as a significant community benefit. Then the next to that plaza, the applicant is proposing a package of improvements to Harold Way that include things like retention basins to capture storm water runoff if the right-of-way, street trees and pedestrian area on both sides of the street. Typically new projects are required to rebuild or upgrade the frontage that abuts their site but not frontages that do not abut. And further surfacing of the roadway. These items, particularly in this section, are still being discussed with the public works department to get Clarity on exactly what is sort of a standard requirement that would apply to this project regardless and what is not a standard requirement that the applicant might legitimately be able to claim as a significant community benefit. I'll just point out that simply offering something that is above and beyond what is otherwise required doesn't mean that the City's decision makers, you and ultimately the City Council, have to accept that as a significant community benefit I think there is a conversation that happens between the City and the project sponsor over what the City believes -- what is the package of benefits the City

would like to receive from this project. So in that spirit, and again based on the language in the finding which is somewhat imprecise, staff did prepare a list of other potential benefits and this is really, again, just to kind of brainstorm essentially and just add to the conversation and illustrate that there is a wide range of benefits that could be considered. And what we have done is started with the types of benefits that are called out in that finding. There is a list of seven different items starting with affordable housing and we basically tried to flush those out a little bit with actual ideas of types of benefits that could be requested in those categories. I'm not going to go into further detail on those for the sake of time. I want to point out that just make one clarification, there was a supplemental staff report that we e-mailed out, I believe yesterday afternoon, where we provided actual text of various policies from the general plan, the downtown area plan, and other policy documents like the climate action plan, to actually give that you language rather than in the only report we cited the policy numbers without actually getting the text and realized that it would probably be difficult for you to look all of those up. We have that in the supplemental report if you'd like to refer to that. We also, and we did that both for the applicant's proposed benefits and for the additional benefits staff listed. With regard to one of the items proposed by the applicant, I want to make a clarification, there's a statement that the applicant did not elect to pursue the green pathway option. There would be a requirement that all state workers be paid state prevailing wage in addition to apprenticeship requirements. The green pathway is not an option, it's not available for this project, because there's an historic resource on the site. And that is one of the exclusions that's listed in the green pathway provisions. Also, I want to just mention that with regard to correspondence for this project that was part of your packet tonight, there's a large volume of it. Much of that is comments that what we received on the draft EIR, the comment period for that closed on December 1, I believe. And staff realized that there were some of those comments that were addressed to the Zoning Board but we weren't clear whether they intended that to come to you tonight. There were some draft EIR comments where the applicant said -- the commenter specifically said please send this to the Board for next week's hearing. Rather than try and interpret and pick and choose we thought it would be better to send all of the comments to you. And just in the spirit of having that provided to you. One other important point, in the applicant's written benefits proposal there are a lot of cost figures and a lot of financial information which we did not discuss at all in the staff report. One thing that we do want you to be aware of, is that we are going to be using a peer reviewer and economic firm, haven't made the final selection at this point, it will not be AE CRUM. But there will be a peer review done of the financial information provided by the applicant so that you have some sense before making a final decision that these numbers have been checked and verified by an independent consultant. Thank you very much.

>> P. Pinto: Thank you. I think there's a question. Or two.

>> S. Hahn: I want to thank you for a very comprehensive first bite shall we say at something that I think is quite complex. We appreciate how you are trying to find your mechanisms for laying it out and systemtizing things and going back through existing policy documents and trying to mine them for relevant information in the records so that we're not making things up. I wanted to really commend you and tell that you I appreciate the direction that this is taking.

>> P. Pinto: Do you have a question?

>> S. Hahn: Yes, I do. You said that we're going to start a discussion and that's a very important question to me. What are your plans for continuing this discussion? Because I think it's a lot to digest for us, as a ZAB, and for the community. It's a very amorphous process, we're being asked to make policy that requires probably more discussion than the ZAB even discuss as lot likes to do. Some of your materials which I thought were very material were late coming. I'm not sure the public has had a chance to look at them. My question to you is I'm very interested in knowing how many more opportunities we are going to have to discuss this at ZAB. And when they will be. And would I put it out that I think we should be looking at this two, possibly three times, just this discussion. So I'm interested in what you mean by starting a discussion and what you see going forward. As well, first of all I'd say that we would love to get input from you as you've just learned on how you see that discussion moving forward. But the basic answer is that we haven't really thought it through, to what level of detail, how many hearings are going to be necessary. I think there's a general understanding by staff that we're probably not expecting that we'll get enough input and get everything resolved and be able to come back at the final hearing and expect that this issue has been resolved. That's pretty clear. But how many hearings with the exact schedule, we just haven't mapped that out at this point.

>> S. Hahn: So maybe that would be something that we would also comment on. If you haven't sketched it yet.

>> A. Sage: Absolutely. As you did with your statement, if other board members have thoughts on how much discussion, how many hearings they'd like to have on this topic. We're hoping that that might become clearer sort of after tonight to some extent.

>> P. Pinto: Why don't we move on to the public hearing. I think personally I want to hear what the public has to say first. They're very attuned to it.

>> S. O'Keefe: Can we clarify what the plan is for tonight and I know there was some question whether we're going to finish.

>> P. Pinto: I think, I have, I just want to -- I have almost 30 cards here. 20 minutes apiece that's an hour and we're pushing midnight. I think when what we do want to hear, you have all been very patient and you've participated in other of the projects, too. I think it's been wonderful to hear your thoughts. I think we'd like to hear from the applicant, get a general review of the proposal, and hear from the public. Then see at that time, I think, probably look at continuing the hearing to January 8, which I

understand from staff is an open -- fairly open meeting. There's not a lot of agenda items.

>> G. Powell: Correct.

>> P. Pinto: At this late hour it's very difficult for everybody to think clearly about what this is. But I think we need to hear from the public at this point and start that discussion as you said. And I think that would be the plan as I'd like to see it move forward. But I would be interested in hearing from the Board.

>> D. Pinkston: I didn't receive any of the staff materials that were e-mailed today, my power and my server were down in my office. I would like this hearing and this item to be continued so I have the full benefit of the comments this evening and the comments that were sent in writing. We need almost a whole meeting to discuss this issue.

>> The planning staff should have postponed this meeting precisely.

>> P. Pinto: I hear what you have to say. Excuse me, excuse me.

>> You represent us.

>> D. Pinkston: I would like to have this continued and make that clear up front. That's my intention what the Board decides to vote, is up to the Board. But would I like to have this item continued, I didn't even receive all of the materials. Whether we continue it as hearing or we just continue as a ZAB discussion, I'm not prepared to discuss this item this evening.

>> P. Pinto: I am, too. That's why my decision. Also because I didn't have power today, I didn't get any of the attachments that were sent out at all.

>> S. Hahn: Clarify for the public that we are going to hear from them.

>> P. Pinto: We are going to hear from you. Please, sir. We're very respectful when you speak so let us speak. We cannot have this hearing if you're shouting at us. That's not the way we conduct meetings in Berkeley, I think. I know it's late and I appreciate your patience, I know everybody is tired. But, really, let's just get this through together. Go ahead, Sophie.

>> S. Hahn: I just really, I wasn't sure with a that the audience understood that the continuance is that we'll take all of your testimony tonight but we would also most likely provide an opportunity for additional testimony assuming that perhaps there are some people who weren't able to make it tonight. And that we would then take into account all of the testimony from tonight and from January 11, we would comment.

>> P. Pinto: I think that's pretty clear. What I'd like to do is hear the testimony. We're moving up on after we take this to midnight. We also have an issue with the captioner. We have a certain time that we have to break for the captioner. I want to make sure that we get all this in. At least to start the discussion. I think it's really important to start the discussion. Basically, what I'd like to do is hear from the applicant and the proposal. Mark, you want to come up? I appreciate your patience.

>> M. Rhoades: Thank you, appreciate your time, appreciate everybody's time we anticipate this is going to be a long discussion with lots of opportunity. And this finding

doesn't have to be made until an action is considered for the project. That won't be for at least a good couple of months. Four or five years ago when the downtown area plan advisory committee was framing the policies for how to consider the taller build things the downtown, the question was, how do we -- how does the community get more value out of the land use intensity that it's providing. With the new downtown plan. Out of those discussions, and through the ballot measures, what came up was this idea of significant additional community benefits. I'm going to share with you, the project team's proposal, of those significant additional benefits. And a little bit of the process for how we've derived them and identified them. If I can figure out -- there we go. I want to set the framework a little bit. We also have to remember that in addition to these significant additional community benefits the downtown area plan hard wires lots of other benefits that came out of the downtown area plan process. The base line benefits in the zoning ordinance, there's also direct economic benefits to the City and the downtown. Lastly we'll get to the significant additional. There projects contributes half a million in SOSIP fees. L.E.D.E. gold or affordable housing. And the unbundled parking. There are many others, these are the bigger ones from the standpoint of cost and community impact. Revenue to the downtown for project such as this. And, again, there's lots of benefit to the project itself and how it remakes the street and how it contributes to the downtown pedestrian environment, residential density on top of BART other people will talk about those things. Very conservative estimate of the direct cash contributions to the City is about \$1 million. We think it's about \$1.5 million to \$2 million when you think about the others. But we're not going into those weeds. This is a big number. The finding that the Zoning Adjustments Board is going to need to make is right here. I'm not going to read through it. From our perspective there's two threshold questions in the finding for tall buildings that have to be made by the ZAB in order to approve the project. Are they additional? The second is are they significant. And we believe the proposed community benefit package is both. As analyzed in the staff report, all four of the proposed categories of benefit are additional to the standards or amenities required in the zoning ordinance, building code or other Berkeley municipal codes. Additionally we believe they're all significant. We differ with staff on the significance of the plaza. We believe it's a significant community benefit. But as they've pointed out for the other three categories of benefit the significance of those is supported both by policy and by community participation. We believe that the plaza is a great benefit to the downtown. And has been included in the project proposal subsequent to very significant community feedback on this issue. And also, from various positive observations by the Board and commission trips that we've made so far. The plaza will create an important pedestrian space to unify this corner with some of the surrounding uses like the library plaza, et cetera. Our additional benefits proposal represents more than 12% of the project total development cost. When looked at without the actual continue of building the benefits. We believe that exceeds the expectation for the downtown area plan and sets a very,

very high bar for future projects. As this discussion proceeds we're looking forward to the ZAB's comment on the proposal and the consideration of the benefits. The list is long. There's a lot of other things that people would like to see out of this project but this is our proposal. At this point. These are some of the meetings, the community group meetings that we have had in order to derive these benefits. It's extensive. We have met with BAHA, downtown Berkeley association, many, others. Not the least of which has been here at the Zoning Adjustments Board. The Landmarks Commission and the Design Review Committee as well. So what you are going to see in the next four benefits is our culmination of what we've heard from the community based on what some of our initial proposals were. Four major categories of significant additional community benefit. We have signed an agreement with the Alameda County building and trades Council on 100% union labor.

>> P. Pinto: Go ahead. This is important.

>> M. Rhoades: Thank you. We're proposing to rebuild the cinema complex. If you have had an opportunity to look at the proposal for the community benefits, landmark cinema told us they don't intend to stay in the theaters in their current configuration. We'll hit on that. Extensive transportation demand management. Transform has told us that if we continue with the proposal that we have for the transportation demand management measures we may become their first green trip platinum certified project. Privately owned open space, streetscape enhancements and public plaza. 100% union labor. You'll hear from some of the trades Council tonight. There are no trade carveouts. All of the trades represent 28, I believe, 28 trades, 27 or 28 represented by the trades Council, will be included in this project. There's no project carveouts. They start with us at the beginning they continue with us through the tenant improvements for the first round of commercial tenants. And there are other requirements that we're agreeing to. You will hear more about that as this conversation proceeds next month and the months after. By the way, on the Green pathway, not only would we be precluded from doing it because we have historic resource is a round us, but it also is not a process that exists yet. There are policy issues that have to be resolved and ordinance changes to be made in order for that process to work. It doesn't exist for anybody. We are proposing after significant community pushback, to rebuild the theater. That was not included in the original project. And after hearing from the community extensively, you'll hear from downtown Berkeley association, we sat down with landmarks theaters and have come to some arrangements. Their architects have sat down with our architects and the theater boxes that you see in the floor plans today have been designed by them for this project. Transportation demand management. This is a very extensive list from our perspective. Electric bike share, car share that go beyond the City's requirements. Numerous electric vehicle charging station. We're working on finding more stations for bike racks. This great smart walk that you see on the sidewalk in that top picture that takes realtime transit information that's programmed for that location, and projects it out

on the sidewalk for everybody to see. There's a BART station that way and the next train to Fremont is coming in three minutes. Et cetera.

There's car share, A.C. transit stops, et cetera. We'll put a bike carrel in the public right-of-way similar to the library, et cetera. Finally, the public open space plaza, again we believe that this is a significant community benefit because of what it does in this location. If the staff doesn't -- if the staff doesn't agree with that -- I'm sorry if the stab doesn't agree with that, agree with staff it's not a significant benefit we can redesign that corner, pull the walls out to the street edge and do something different with that programming. We believe it is significant. We have heard from a lot of the community that it is a big deal. It comes at a lot of Los lost revenue for the project were it not there. Let me hand it over to Matt to talk a little bit about the street scrape improvements and I'll come back here to the plaza and let him walk through that too.

>> In the interest of time I will be very brief.

>> P. Pinto: How long is your presentation? We have a lot of people here.

>> I think we can probably go over this part. The gist is that the adjacent frontage improvements would be normally required, including the bumpouts, bio-retention basins, are encouraged but are not typical requirements. And the bio-retention basins that we're proposing would serve all the way up to Shattuck Avenue in terms of watershed. Also we've been working closely with DARMA college. We had four meetings with them to come to some agreement in terms of what they would like to see in the way of public plaza and amenities. So that reflects that. And so there's the potential of creating this active community open space that's both sides of the street and right across from the library gardens open space as well as the forecourt to the library.

>> M. Rhoades: I think that's it. Questions and discussion, we're happy to answer questions. And look forward to seeing you again next month.

>> P. Pinto: Okay. I any what we'd like -- thanks, mark. We'll open up the public comment and we have 30 cards. Going to give everybody two minutes. I would ask that you've heard somebody else say it, maybe not say it or -- I think less is more. And we hear more when there's less said, actually. If that makes sense. We're going to start F you can queue up, that will keep it moving quickly. Andreas then Judy Shelton and then Eric after that. Thank you for your patience and being here. I think we're all appreciative, this is part of the process. And we really do appreciate your input. Thank you very much.

>> Good evening, board members, I think we're almost at good morning. I'm secretary treasurer with the Alameda County building construction trades Council. As was said previously, we do have a project labor agreement on this project. But before I kind of go into that and why that should be seen as significant community benefit I want to talk about the relationship that we have had with the City of Berkeley specifically with the project labor agreement we have with the City. And really working very hard to recruit and bring Berkeley residents into the trades. In fact, couple of weeks ago we had a job

fair with over 250 high school student and adult Ed students in terms of recruiting these people into the trades. We have gotten a lot of new Berkeley residents in the trades as an example. We had 4 or 5 tonight here. We have one left. A lot of them have to work in the morning. Just real briefly, though, we have a project labor agreement, wall-to-wall and I think the benefits of the project labor agreement really are one that you will ensure that the workers working on this project are getting sustainable middle class wages. These are not going to be folks that are going to be brought in from outside the area. Getting wages really below area standards. Staying in local motels and so forth with the happy meal. We're talking good sustainable wages. There's going to be significant contributions going into our in a labor management apprenticeship programs from the wages. There's a contribution from the worker and from the employer that goes into training new workers. Many of these are going to be Berkeley residents. And I think the final real advantage is also our commitment to make sure that these Berkeley residents that we're bringing into the trades are going to be the first ones out in this project. We're committed in working with the contractors when they start coming onboard to make sure the workers are on the project. It's a real significant benefit and I know this going to be a long process F there's any questions or concerns please do follow up.

>> P. Pinto: Thank you. Judy. And then Eric.

>> Hi. I am really wondering where a landmark would want to go if the developer didn't own the Pratt. Property. If that's when landmarks decided that's when it needed to go. That question is really important. I think that there is, the word that jumps into my mind is contempt. Contempt for the people because I'm just going to stick to the theater right now, that's what drew me into this. The people do not want a new theater, they like the theater the way it is. The people who stand to profit from this theater are the developers. And the politicians who need the developers to like them. That's who is driving this. This is not for us. We don't want this. So there's a level of contempt for us. There's a level of contempt for the language. We're talking about benefits like they're breaking something that's not broken, it's fine, then they're saying we're going to build another one that's a benefit. This contempt for -- they're calling it modernizing, retaining and modernizing the Cinemas. You don't destroy something and retain and modernize it. This is turning language inside out. This is Orwell, or this is Lewis Carroll or something. This is taken like it's normal to use language that way. Retaining and modernizing the Cinemas. You're going to destroy them, that's retaining them? I would call this a significant detriment not a significant benefit. I don't know what else to say. Thank you.

>> P. Pinto: Thank you. Eric, and then Cynthia.

>> Hello, I'm Eric Panzer, speaking on behalf of Livable Berkeley. In both 2010 and 2014 Berkeley voters sent a clear message that they want to see dense high quality housing near downtown Berkeley BART. And that they reject efforts to block implementation of the downtown plan through a tax on project feasibility. And we feel this project reflects the will of Berkeley voters. ZAB has to consider three questions with

regard to the 2211 Harold Way project proposed community benefits. Are they significant, do they benefit the community and are they beyond what would be required by the City. The answer to all three questions is clearly yes as demonstrated by the analysis in table one of the staff report. This benefits package propose reflects Berkeley values and city policy and goes above and beyond in doing so. Livable Berkeley also thanks city staff for offering additional and alternative community benefits that could be considered by the ZAB. As the ZAB evaluates the Harold Way project and supplementary list of projects, Livable Berkeley encourages ZAB to develop a thoughtful approach to project feasibility and efficiency moving the project through the approvals process. 2211 Harold Way is a model project that fulfills the aspirations of the downtown plan. Livable Berkeley strongly encourages the ZAB to issue constructive comments that will help move the project forward so that it can expeditiously bring to fruition a livable downtown.

>> P. Pinto: Thank you. Cynthia. And then Don.

>> I'll be brief but I clearly don't think that this is a benefit. Very much to our community. And I don't think 27 affordable units out of 16, 18 stories is very much. Among other places, Berkeley Unitarian universalists, I don't think they quite realize, I didn't realize myself until I was standing in front of the theater how much it is part of our cultural and arts district. How appropriately scaled it is for our community. Obviously I have to study the proposal some more. But I cannot see how in any deep way we would sell our souls for just minor things.

>> P. Pinto: Thank you.

>> This whole project and the entire downtown plan are based on two questionable assumptions. First, that the U.S. economy will grow forever. And secondly that California will always be blessed with abundant rainfall from the heavens above. As we have recently found out on and are still experiencing neither assumption can be counted on to be realistic N that is so the project is a disaster waiting to happen and should be entitled the free market gentrification project for downtown Berkeley. The last time I appeared before you, I pointed out that the current square footage rental cost for landmark Shattuck Cinemas is \$2 a square foot and that buried in the package in the community benefits package is the fact that the rental price would be at a minimum \$3.75 a square foot. So I seriously challenge Mr. Rhoades' comments that he's deep in discussions with landmark theaters about how to design these unless landmark is willing to double the price of tickets. The other key prospect of managing this building where landmark currently sets and build new one, you have a three to five year window in which there will be no Shattuck Cinemas, ten screens. Which means you lose all of that traffic which definitely significantly is a detrimental impact upon businesses in the downtown area. For which this developer will not make up the difference. So I beg to differ about the economic benefits. By the way, speaking of economic benefits, nowhere do I see a deep economic analysis of what this project does to the current downtown

and what it will do going forward. I know two minutes is a very short minute of time. But I'll just point out that the language that governs your board says the Board must find that the project will provide significant community benefits blah, blah, blah. And one of those is the issue of affordable housing. And we don't know yet but from the language of this project, of this package, it clearly states this is going to be a condo building. Not rental units.

>> P. Pinto: Thank you. Louis, and Sharon.

>> In 50 years in Berkeley, I have rarely or perhaps -- sorry -- in 50 years in Berkeley I have rarely or perhaps never opposed development in Berkeley. We need reasonable development. I will skip all this, because we've already talked about landmark. I can understand why they would accept 6 screens if you tell them you were throwing them out. Six is better than zero. I heard the views of the bay will be blocked from the Campanile or maybe there will be some place where you can see them. My first thought when I saw the notice for hearing about an 18-story building was this is a joke by one of those extreme anti-development people. I was terribly wrong. But there must be some reason to construct such a monstrosity. Some one or some ones will make lot of money, not just a few million dollars. Can I have some, please? Better still, please say no to this project. I want to end on a positive note. I have no objection to this building being built in Los Angeles where the owners live. [APPLAUSE]

>> P. Pinto: Thank you. Sharon and then James Mcfadden.

>> Hello, I was given a sign when I came in and it represents something that is very important to me. The fact that when our small businesses that we say we heartily support when they're thrown out, due to these projects, and they look for another place to locate, the rent tends to be twice as much. They cannot find something affordable. And it doesn't seem like anyone is trying to help them do it. Obviously, many city agencies have to be involved in that. I know that the Berkeley bathroom store which isn't in this project but in the Acheson Commons, they had the same problem. Rent was twice as much. You know that our downtown rents in Berkeley, commercial rents are already very high. One of the major reasons that businesses go out. Of business. People ask me, colleagues and friends and associates, is there really a plan in Berkeley to build huge buildings on every available space? Well every empty space and every kind of moderately sized building become a high-rise? I know, I understand that we have to do our part here in Berkeley to deal with climate warming. And I understand that means some sacrifice in terms of affordable housing this is something I care passionately about, and we have a horrible housing crisis in our city and the whole Bay Area. But the point is it doesn't have to be this extreme. I think we can work together to make something that can work for all of us. But it just seems like there are these steamroll projects, the community is not understanding, what an 18 story building is.

They came to Berkeley as a college town, not Walnut Creek I know it has to change but I don't think it has to be totally transformed in this way.

>> P. Pinto: Thank you. James Mcfadden then Ian Griffith.

>> I'm from U.C. Berkeley and Berkeley residents. I'd like to say something about the labor. There's a comment about sustainable jobs. Unless this building goes on forever there's no sustainable jobs in this building. Keep that in mind. Let's be clear about what this development is really about, it's an 18 story monster and it's going to burn turn Berkeley into a suburb of San Francisco for high priced jobs. This is a choice between profits and people. This is a choice about new liberal economic growth and sustainable livable diverse housing. It's not -- we want housing for people that can afford it. We don't want a bunch of high priced condos. It's about profits for developers, profits for realtors who are going to sell the condos and short term bonuses. But not long term. Long term costs are going to be shouldered by the people of Berkeley who are going to have to look at this monster every single day. It's going to obscure our views.

But first way tonight say it's going to lose really our beautiful cultural icon, the Shattuck theater. That's a work of art, my favorite theater. We need a theater that shows films, documentaries, not another theater like you get on bay street where you get blockbuster movies. That's what we're going to lose. We're going to lose small businesses to increased rents and the jobs that go with those which are probably union jobs. Or at least well paid jobs that a lot of people that live in Berkeley. We're going to lose our skyline, Habitat, vistas from campus and get in return a bunch of big box scores. We lose all this for developer profits, and the people of Berkeley will lose everything. All of this stuff if it's approved. We want a small town feel for Berkeley. We want to keep our small businesses. We want to keep the Shattuck theater. And we don't want to become a suburb of San Francisco. Thank you.

>> P. Pinto: Thank you. Ian Griffith. Is that right?

>> Ann.

>> P. Pinto: I'm sorry. Then Merilee.

>> Part of increasing density, housing density near public transport, involves having a vibrant attractive place to bring in visitors, residents, businesses and tax dollars. I'm mystified by this plan not only to destroy the Shattuck cinema but to damage the Shattuck hotel which as it stands is an historic building which is the center for residents, business people, it's a gathering place. It's going to take a long time to destroy it and get it going again. I do understand that developers can make larger profits from larger buildings. But they won't if Berkeley eventually, if Berkeley is so overbuilt that we're left with only huge block buildings that people no longer want to live in and the downtown that people no longer want so much to come to. And we all have to live with the consequences.

>> P. Pinto: Thank you. Merilee, then Fran.

>> Taking over Harold Way for a plaza is like a taking. It's not a benefit. It's my favorite little beautiful quiet street with the lovely trees. They're really graceful and they're real trees and they help the air. People feel better around real trees. It's -- I walk it all the time to the library. And the library is going to be dust and noise, right there at the entrance. It's going to be five years, I heard Berkeley design advocates, they said it would take Matt and mark five or more years of development. What is going to happen to the Shattuck hotel, the yogurt place, the bike place where I park my bike. I don't have a car. That's one of the good ones, I'm bad. It's not green because it's to serve tech workers in San Francisco. A lot of people have figured it out. It costs three times as much to get apartments in San Francisco. So they're planning, I went to ABAG recently and learned all of this. That's not for the people of Berkeley. But they also said that BART is at capacity. They can tweak it a little, but there isn't room for this. This isn't sustainable. All of these words you use, I don't think people know that haven't taken any college or anything, don't get it. It'll ruin the Shattuck hotel. I asked how they were doing and what would happen when the 18 story building came N I meant the other one, I didn't know this one was coming so fast. They're doing okay. They're doing okay. But their light is going to be blocked. Mark Rhoades was involved with projects that blocked my sunlight and I freeze all winter. I'll never be the same with what they did to my house blocking the sunlight. Sunlight is 25% efficient. It's not solar cells, only 1%. We don't block people's sunlight. You don't know what that's like. You're starting to do it in Berkeley.

>>> Thanks, Merilee. Fran, then Joseph.

>> Hi, Fran, with DBA, also the President of the YMCA. I think this is a great project. I know density is a big change in downtown Berkeley. Density along the transit corridor is the future, critical, and I think we have to have it. We need as much as we can get on this site. I think the project clearly benefits beyond what has been listed. The developer has been inclusive. The theaters are a big add. Those are dated theaters and they need to be rebuilt. They're a benefit to the arts district. We appreciate the partnership with the "Y." And I think what is going to happen, contrary to what I heard before, its density on the project, the number of tenants that will live there, enliven the streetscapes and support the local businesses. Berkeley has this whole thing upside down. We need density along the transit corridor to be a greener community. We also need to it support more local businesses. About ten years ago I was in this very chamber. And we were talking about the ice skating arena. The fact of the matter is we didn't have enough people living in Berkeley and close enough to support the local activities like those kinds of things. We're in support of it. We think will be a lot of members at the "Y." More membership base at the "Y" supports a stronger teen center and head start program and expanded impact on youth in the community. We like it, from an urban studies perspective and urban institute these are projects that folks love. This is a block away, hop and a jump to the BART station. That's what we need. Thank you.

>> P. Pinto: I think there's a question for you. Do you mind?

>> S. O'Keefe: You mentioned a partnership with the "Y," can you talk about that?

>> We'll be in partnership with the developer, promoting membership to every new resident, that's one thing. And I think there will be other things. I know everyone in the project is not a winner. But we also are appreciative of having, our neighbors are important. We've come out against different projects, promoting alcohol close to high school, things like that. We want to make sure that the landscape in downtown is appropriate for our members, the library, the high school. This project does the trick. I think there's a lot we can ask. We can ask for the moon. But I think the benefits in this are substantial. And I hope it's on a fast track.

>> P. Pinto: Thank you. Joseph and then Tim Frank.

>> Joseph is the project on proponent, he doesn't need to speak right now.

>> P. Pinto: Okay. Tim, you want to come up? Then John Kaner after there.

>> Yes, thank you. I just wanted to reiterate some of the comments that we heard from the previous speaker about the benefits this project brings to the downtown. If you look at the revitalization that benefitted the downtown in the last ten years or so, a lot is attributed to the new residents that new development brought. Every new project that comes online brings more people to the downtown. That means more customers, that means not just people who get to enjoy the downtown businesses but also take advantage of the extraordinary setting. You actually have some of the densest transit in the entire east bay there. Some 4,000 daily because is, 300 BART trains much it's hard to replicate that. It's -- we have the full suite of Daly needs in the area. People can live a car-free life there. The new homes is the key to providing people the opportunity to live a sustainable lifestyle. So the homes themselves are substantial benefit. I would note that the package includes also the suite of additional benefits. The extraordinary benefits to make sure people can best take advantage of that. And the PDM measures are key to that. But just a little bit of time, I would note that the ratio of bike parking to units in the project, about 1 to 3, is a ratio that I think should be elevated. This is one of the best places to live a car-free lifestyle. And one of the keys to making that practical is to have places to store your bikes. And the project could be slightly improved if you would add. That and it would make something that really is a model for the entire region. Something very impressive and worthy of fast tracking.

>> P. Pinto: Thank you. John and then Rob.

>> Good evening, I'm John Kaner, CEO downtown Berkeley association. If we want to save these theaters we need this project. These landmark theaters are obsolete, they're dated. Please.

>> P. Pinto: Limit the speaker speak. Everybody gets their turn.

>> The prior landlord had to do major concession on rents to keep them here. But with current entertainment at home and et cetera, if we don't improve these theaters they're going to close. And if the Shattuck Cinemas close the California Cinemas will close,

they have told us that. And the U.A. theaters are at risk, people go for clusters in market choice. As you also read in the letter from the managing director of Berkeley rep, he she says entertainment movie theaters are critical to the success of the arts district. People need and want choices. We also know that this will activate Harold Way and Kittredge which are dead zones. It's dreary, almost no activity. This is a effort to activate the core of your downtown. Perfect for small tree festivals. The coffee and tea festival we looked to move to outside, we couldn't do it because of power. We talked to the developers about putting power out there. The plaza is a great idea. Go to look at all of the people, create a space, create an anchor for festival. We're having a book festival with 100,000 people in may coming to downtown Berkeley. Create these special public spaces where we can gather. 302 units probably close to 1,000 new residents, that are going to be using our restaurants, going to cultural venues, sharing public spaces, et cetera. Then also think of these two wonderful cultural icons, the YMCA, library, linking them up together with this beautiful Harold Way, and this plaza, and creating what we call outdoor living room. Let's do this, this is a wonderful opportunity for the City, in the heart of our downtown and heart of our city.

>> P. Pinto: John, a question.

>> S. O'Keefe: I'm going to ask this question of Mr. Rhoades, too, but you might be a good third party. Is there a lease agreement that's already been negotiated with landmark theaters that is sustainable? Do you know?

>> I haven't had discussions with them.

>> S. O'Keefe: Okay.

>> P. Pinto: Rob and then Rick.

>> Good evening. I'm rob stoker, business representative with sheet metal workers local 104. I represent a small but thankfully and I'm proud to say growing number of Berkeley resident members. It's due in part no small part to the project labor agreement with the City of Berkeley, just Andreas spoke about. In-lieu of time I won't go through all of that. But I will say this, this project, not only defines and clearly defines what a substantial community benefit is through this project labor agreement but sets a bar for future projects which hopefully we'll see. Because I can tell you, time and time again, we've seen developers come in to this town and other towns and do their projects with sub standard wages, sub standard construction practices, and then take that and just leave town. Here we're seeing responsible development and I'm proud to stand behind this project. And look forward to get something of our members out there to build it. I will say one other thing about the sustainable jobs. No, this project is not going to go on forever. But what will happen with this, will be some Berkeley youth and residents will have a clear pathway and have a sustainable career, a real middle class career will be started through an apprenticeship when we build this projects. It'll carry on from project to project. It's a true sustainable career in construction.

>> P. Pinto: Thank you.

>> D. Pinkston: A quick question of this union rep and the other one. You don't have to answer it tonight. But both union reps who spoke commented about your willingness to work with Berkeley youth, create apprenticeship programs, help them get into the unions. That's a huge part of getting young people to take these construction jobs. The fact that you are both willing to extend your hand that way is significant to me. But I'd like to see you guys work with Mark to explain that to us in writing. It's been said to us tonight that you're doing it. One of the staff suggested additional, different community benefits is first source hiring or working with local residents to bring them into the unions. If you can develop that thought into a proposal that we can include as a part of the project should we move through the project approval, I would like to see that more fully developed.

>> We will have that discussion.

>> P. Pinto: Thank you. Kelly, then Aaron.

>> I was beginning to think my time would never come.

>> P. Pinto: It's here. Make the most of it.

>> We're all tired. As I read the benefits documents I expected justification for approving the building higher than this to be innovative with plans to reduce the impact on the Berkeley city infrastructure. And the design standard with mutual carbon emissions in the order of the living building challenge which is what I would challenge all of you to read about. Because we could be doing much more with our buildings. Than what appears to be happening right now. I looked for the inclusion of affordable housing, realistic street planning and expected impact on locally owned businesses be addressed. I also read the documents submitted for the EIR and I was most concerned about the letter from Bob Sarnov calling into question the conflict of interest presented by the Rhoades planning group, former city planning director Mark Rhoades as its leader, is going to consultant in Berkeley and Washington.

>> D. Koon: This causes -- this causes concern that Berkeley will be lulled by a former colleague into approving a development plan that should be rejected as sloppy and detriment to the health and security, cultural heritage and integrity of the City. These statements might be interpreted as rejection of all developments. We recognized values for the diversity of the community, planning for the future and respecting all residents and visitors including the homeless. Integrated living space needs to be added to the transportation hubs in our community. This is not to ignore or dismiss the parts of 2211 Harold Way complex for renovation.

>> P. Pinto: Thank you. Aaron? And then Gina.

>> Erin Dane, I live down the block. We bought a house and moved in a year and a half ago. We live living in Berkeley I'm very concerned about what is happening rights now. I have three points I want to make. The first I'd like to call into question the \$19 million benefit that the developer is claiming for the theater. And I had to educate myself where they came up with \$19 million. That's when I learned about how they're Jacking up the

price of the lease, currently the Shattuck pays \$2 a square foot, they could get \$6.50, but they're going to back it off to \$3.50 or \$3.75, that's where they claim the \$19 million benefit, they say they're going to gift the movie theater this additional rents for 20 years. Here's where the light went off, 20 years that is correct's a long time in the future. Is that in writing? What happens if the theater goes bust in three years? This is going to be in the basement. Who's going to want to go in the basements? What kind of guarantee do we have that we get that \$19 million? I think they should to have pay it up front. If They're going to make that claim but the money where their mouth is. They're saying they're going to reduce 10 screens down to six. Right there is 50%. But I want to read what they say. This is going to be, we aren't going to have six art screens, we will have two. Here's what it says. The underground promenade will house six new theaters are 665 seats. Four of the theaters will include Stadium seating, AKA Hollywood stuff, while the remaining two theaters will be smaller venues for more artistic and independent films. I'm worried that we have ten fantastic movie screens and this really cool theater that was renovated by two of our local artisans. And that we're going to end up with two theaters in the basement.

>> P. Pinto: All right, thank you. Very succinct. Kelly, wait. Is there a question for Kelly? Okay, never mind, go ahead. Thank you. Erin --

>> I'm Erin.

>> P. Pinto: I'm sorry. Gina, they're all written in the same hand writing. Can I tell what's going on. Gina then Ellie.

>> Gina from Habitot. I would like to thank the members of the Zoning Board for previous recognition that Habitot. Is a significant community benefit to the Berkeley community and appreciating that us being forced to close our doors by the proposed project will be a significant loss of amenity for the City of Berkeley and for the tens of thousands of children and families who use us. Zoning Adjustments Board have gone on record stating that there should be mitigation for Habitot in this project is approved as the tenant most directly impacted by the project. The \$250,000 we have asked for towards relocation is a small amount for all we do for the community. We also appreciate that the City planning staff which has suggested inadequacies in the developer proposed benefit package has also indicated that supporting tenant relocation is a viable benefit that can be included in the developer's package. This is the moment for the City of Berkeley to insist on a real and viable community benefit from a large scale development. To help a 17-year-old Berkeley institution with a track record and proven audience to help us prove into a new home and keep us in Berkeley. By doing so the City will gain ongoing and significant community benefit in compensation for the extraordinary allowances the developers I asking for. We believe Habitot is most reserving place for the developer to place their community benefit and asked Zoning Board to strongly recommend they include us in their package.

>> P. Pinto: Thank you. Igor?

>> I. Tregub: Yes. Are you any closer to being at the table and negotiating relocation package?

>> No. We have not been approached nor are we included in the original EIR in the list on the screen. Some one who is going to be impacted, we were never consulted.

>> I. Tregub: Thank you

>> P. Pinto: Thank you. Are you Ellie?

>> Yes.

>> P. Pinto: Then Lynette.

>> I'm Ellie, I'm a mom and treasurer in Habitot's board of directors. I live in Berkeley with my his band and two small children. Habitot is an essential resource for our family as is for a lot of other families. I'm proud to be a part of this organization. I'm also worried for our future. There's no guarantee we will succeed in relocating and keeping the doors open. Unless we have the resources to do so. Through our hard work and diligence we have persuaded a long-time friend and investor to buy a building in Berkeley and allow us to buy is that building over time. We will have to raise every penny to do this. There are no grants or cash donations associated with that deal. We will need to raise this money from the community. While we're optimistic we will be able to do so it is more money than we've ever raised. We ask the developer for \$250,000 as Gina mentioned towards relocation which represents a fraction of Habitot's estimated moving and buildout costs. This \$250,000 represents our actual sunk costs in our current space in walls and floors, restrooms and kitchen. Nothing that we can take with us but that we will have to rebuild in the new space. We're seeking reimbursement for what we're losing. We're not asking for the sky but what we believe is fair and reasonable. If the developer would like to give us more that would be great. We could certainly use it. So we are strongly asking that the Zoning Board strongly recommend that we be compensated \$250,000 as part of the community benefits package. To help us with our relocation to another location in Berkeley so that Berkeley will not lose this community resource that's been here for 17 years.

>> P. Pinto: I think you have a question.

>> S. Hahn: Did you estimate the cost of the actual -- the actual cost of relocating, what is that?

>> Yeah, so in order to, for apples to apples comparison, in order to kind of build a similar location to what we have now we estimate \$1.2 million I think what we will ultimately spend will be a lot more than that. But to rebuild what we currently have.

>> S. Hahn: That would be things above and beyond what you already have.

>> No. The \$1.2 million is just to rebuild what we currently have.

>> S. Hahn: But you might do more.

>> Yes, we hope to.

>> P. Pinto: Thank you very much. Lynette then Paul.

>> I'm Lynette Wong and I work for UCSF children's hospital in Oakland. And I want to be clear that I'm not representing the views of the hospital, I'm representing myself. With respect to what I know about Habitot. It's a Berkeley based resource that serves a wide audience. These partner with many, many Berkeley agencies such as bosses homeless shelters, Casey center, through the looking glass, center for education of infant death and the wise programs for children with special needs to ensure that Berkeley's most vulnerable children benefit from their exhibits and programs. At children's, I work as infant specialist, also a speech pathologist in the early intervention services program. I work with families who have experienced trauma, families involved with chimeric welfare systems in the process of reunifying with their children or have recently reunified with their children I also in our program we work with children definitely mental delays. -- developmental delays. I consult with other programs here in Berkeley. In my work I talk endlessly about Habitot and what a great resource it is for children and families. Just to give you a sense, where can you go and it's okay to paint on the walls, and draw on the walls, and no one yells at you. Where can you go and play with water and spill it everywhere and no one yells at you and the water magically disappears into the floor. How many of you have a wind tunnel in your home where you can explore the properties of wind. Or have a vehicle like an ambulance or fire engine or spaceship where can you sit in it and pretend that you are going off into space. You're learning language or using your imagination. Do you have that in your home, no. How many of you have a climbing wall that's a maze. If you get stuck somebody magically appears and helps you with it. I know I've used my time but I really feel like Habitot is an oasis for families. Our children don't play enough. They're on their electronic gadgets. You don't have that at Habitot. You have to use your imagination. My experience is when you go in there it's an experience from the time you walk in. People greet you, they treat you with respect, and I call their people the ambassadors of fun and discovery. Thank you.

>> P. Pinto: Thank you. Paul, then mark you have a card in here, too. Do you want to at the end, I'll have you come back up.

>> We've heard tonight from the developers and the supporters of this project, an exercise in gross exaggeration.

>> Can you use the Mike.

>> Gross exaggeration.

>> P. Pinto: You have to use it all the time. The captioner needs to hear you.

>> I will use it all the time but I don't want to use my time up explaining that. I represent the committee to save the landmarks Shattuck theater. And we started this because we wanted to find out what the people of Berkeley thought and what the people who come to visit Berkeley think. And we collected from Berkeley residents including the most active members of the Berkeley community plus people who came from all around out of town, over 1600 signatures at this point and rising. Now that seems to make it a

significant public comment that our developers tell us that they got. Most of those people, 59% to 100% said they had not heard of this project, not had a chance to comment on this project and when we made this testimony to the Zoning Adjustments Board and to the Landmarks Commission they Granted us an extension because they believed us. Based on what we've done. Now I want to say something. We have also heard that the theaters are dated. I any what they're trying to say is all of Berkeley is dated. We're going to lose important business for five years here, we're going to lose the cultural resource of nationally and internationally recognized assistance, we have Arab-American film festival, all of them, will they come to a theater stuck in the basement? It's a very important vibrancy of the multi ethnic groups of people who are here with the community who comes to that theater and the people who come from outside of Berkeley from all directions to spend their money that we're going to lose. Now the only letter inside of that packet there that talks about the landmark Shattuck theater is dated April 2013. I'd like to know what the current negotiation is with the landmark theater, I'd like them to come here and testify and tell us why they're leaving. Because their theaters are outdated or because the developer has told them that their lease is up or this there's no hope or whatever. I want that information to come out. I think there are gross exaggerations everywhere within this community benefits. I just see community detriment.

>> P. Pinto: Thank you. Duly noted. We have Donald and then Steve. You've already spoken, okay. Steve, then Alex.

>> Good evening again. So a lot of the proposed community benefits in this package are actually developer benefits. One simple example, transit passes for the residents. The developer will market those and raise the rents to pay for the transit passes. It makes his housing more valuable U should pencil all of those out and start over. Mark Rhoades said that this, the benefits will provide -- represent 12% of the project costs. That's not relevant. What you need to calculate is what percentage they are of the project value. So if you take what Mr. Penner will end up owning at the end of this project, is probably my guess is something building that's words \$250 million, \$300 million. What percentage of the -- of that money, the profit he makes goes in to the community benefits is what you should be discussing. I want to mention the Shattuck Hotel. Historic renovation of the facade, landmarks has been looking for for years. They rejected that. Wouldn't it be pathetic if we -- if this project gets built and the Shattuck hotel stands there looking shabby along the front of it. There are things like balconies that should go back on the building. These are not major costs. They should be part of the package. And finally, very first meeting of this projects their community meeting, Matt tacker was standing there forlornly in the corner, heed a board and supposed to be the streetscape person. The Board should a curb bulbout. And I said facetiously to him, that's all you're offering for an 18 story building? You saw him up here tonight, the first thing he says is we're offering a curb bulbout. What he said to me, was significant, he

said we're not offering the City has to ask. That's your role, you need to forcefully ask them and tell them what the community needs for this project. You don't need on wait for them to offer these little dribbles of money and fake benefits.

>> P. Pinto: Thank you, Steve. Alex. Last two cards are Alex and Dennis. No Alex, no Dennis?

>> Hello Councilmen, I'm Dennis Caputo, member of local 68L. And I have lived in Berkeley for the past 16 years. In the past I have stood in front of the City Council in support of the projects labor agreement with the city and also with the project labor agreement with the Unified School District. I've also been working with the alternative press over in Oakland to help support organizations in publications of literature that they couldn't afford. Today I'm here to tell you that I love this town, that is why I'm here to ask you to vote in favor of this project. I truly believe it will have a substantial positive effect for the good of the community. After looking at the documents I shared with my daughter today, she's 30 years old and she's been, you know, graduated Berkeley High. She was really happy that they're building this building so close to BART where people can use public transportation and be close to the stores. She does not have a car. She never wants to drive. She thinks it's really a good move for Berkeley I just wanted to share that with you. This project will revitalize our city and make it a more desirable place to live and to shop. Not only will it benefit the downtown with jobs but it will -- this project labor agreement, not only will this benefit the downtown with jobs but with the project labor agreement it will ensure that Berkeley residents have the ability to work on the construction site giving them the ability to get in to further their career at the prevailing wage with good benefits. As we know, it is Berkeley's dream to have the people live, work, and spend their money in Berkeley and to support the people that make it happy. Thank you.

>> P. Pinto: Thank you. Anybody else who would like to speak on this issue? Okay, seeing none. Mark, do you have anything you want to comment on? Okay, thanks.

>> S. Donaldson: Can I make a move to continue the discussion, is it January 8, is that the next meeting? Okay, I'd like to make that motion.

>> Point of order.

>> R. Allen: Second.

>> Will that discussion include more public comment.

>> P. Pinto: I am not closing the public hearing, so yes it will have public comment I want this to be clear to everybody. We want to continue the hearing, one, it's past midnight. And it's not a time to talk about these kinds of issues, these are very important issues that we take seriously. This is also one of very important project, major project in the City and quite frankly as Denise mentioned, myself, I've been inundated with perp. I have not read through everything. I'm not prepared to speak on this tonight. I feel the other ZAB members, my fellow board members, some of them probably feel this way, too. I think I see Steve's motion, anybody have any discussion about that?

>> D. Pinkston: I'll second that if it hasn't been seconded.

>> S. Hahn: I would like to specify that it be first on the agenda.

>> P. Pinto: I would love it to be date certain, January 8, first on the agenda. But I believe it's a light agenda, too, on the 8th. We can devote some time to that.

>> G. Powell: Correct.

>> S. O'Keefe: I'm glad we're not closing the public hearing. Because I know there's also some people who couldn't make it here tonight and I'd love to hear from them as well. Thanks for everyone who spoke tonight.

>> P. Pinto: Igor, then --

>> I. Tregub: Okay. I would like to make a request for the next meeting, that the applicant come prepared to answer questions about two issues that we've heard a lot about today and at the last meeting as well. Specifically about what is going on, if there is a lease agreement being proposed with landmark or some successor, probably landmark, though. Secondly, what is going on with the Habitot relocation package. Thank you. Look forward to hearing that.

>> P. Pinto: Yes.

>> N. Dominguez: I support moving the public hearing to the 8th. I have a request that may be time sensitive for staff. On the economic report that you referenced concerning all of the benefits and true economic value, if you can either talk with the unions or developers and find out, have it broke-in down by what union labor is being recruited from the City of Berkeley. Because that being a community benefit I consider the City of Berkeley the community not the greater Alameda County.

>> P. Pinto: Sophie?

>> S. Hahn: My question for staff, request, is similar to Igor's. But I actually would like staff to give us a report on what's going on with landmark and with Habitot. I think it's hard for the community to rely on the representations of the other party. And I'd like staff to please reach out. And report to us directly what they have learned from those other parties or perhaps encourage them to come so that we can hear from them.

>> P. Pinto: Okay. Any other comments? I want to thank everybody for coming. I think we're going to kind of continue the hearing. I appreciate the time and everybody's comments. I would suggest to the applicant that there are a couple of key areas for investigation, I think you're pretty clear oh that. I think there is some details that need to be sussed out. There were many comments. For me personally, I think how this idea of benefit beyond the City's requirements. As you are going for gold, L.E.D.E. gold, there are a number of requirements that already are L.E.D.E. gold but you claim them as credits to get your L.E.D.E. gold rating. There are things like that embedded in your discussion of community benefits that I think we need a little bit more flushing out. I think the report that Aaron you punt out today is going to be very helpful, it's very detailed for us to have a robust discussion.

>> D. Pinkston: I would like the economic report perhaps to be done after the discussion on the 8th. I think I'm hoping the Board on the 8th will win out down what we think are community benefits versus what were offered as community benefits. The Board will say we think these are community benefits. And not spend city money or developer money on an economic analysis of things that we don't think are community benefits. It might be helpful to get through one conversation before we scope their work in detail.

>> P. Pinto: Excellent idea. My question was, what's their scope, what exactly are they being scoped to look at. That discussion could actually be the basis of their scope of work. To look at more precise pinpoint areas. They don't have to do full blown analysis of areas. That may not be necessary.

>> S. Hahn: I wanted to clarify, I appreciate your comments. I do want to say I came prepared with a lot of comments which I'm obviously not going to make tonight. And they will generate work. For staff and for the applicant. I want to be clear that I'm not putting out today -- I'm respecting that this is just the beginning of the conversation. And I just wanted to be clear that we may make a few little requests today but as Denise kind of echos, it may be significant additional requests coming.

>> P. Pinto: Okay. George?

>> G. Williams: I also would like to make it clear that we aren't going to finalize this community benefits package until we have the full project in front of us for approval. We ought to be continuing the discussion at the same time Design Review is continuing the review and other processes going on.

>> P. Pinto: Good point. Okay. We need to take a vote on continuing.

>> R. Allen: Voice vote?

>> P. Pinto: Yes.

>> G. Powell: Yes or no or aye to continue to January 8.

>> P. Pinto: Date certain.

>> G. Powell:

>> G. Powell: Jan 8, 2015, noted.

>> Aye.

>> G. Powell: Anybody opposed? Thank you.

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>> Briefly, to answer the question, I spoke with all three parties about the pending projects that they are relevant to. The Telegraph Avenue project and Berkeley plaza. Regarding Telegraph Avenue the conversation had to do with design and the fact that we want to see more about the urban design in the building.

And my concern is that the design needs work, particularly at the back side of the building and regarding step-backs and creating an inviting atmosphere on the street level on both sides. So I expressed those concerns. We'll see what comes back.

And on Berkeley plaza, I expressed concerns about the community benefits package. And in particular, conversation about the longevity of any potential movie theater space given the current economy and disruptive technology in that industry.

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So to the 2211 Harold Way item, as you indicated it's a continued discussion from December 11th of the community benefits package that's been proposed by the applicant for a proposed 18-story mixed-use building in downtown Berkeley.

And I won't go into the details of the package, but could certainly answer any questions anyone may have.

I don't really have much of an update other than what's in the staff report.

I'll briefly summarize that report.

Basically we were listing the comments and request that the ZAB had given us, even though you didn't really go into a full ZAB discussion at the last meeting, there were some comments that we got from you and some requests.

So we wanted to list those and just kind of give you a status on those.

So the first of those was that the applicant should come prepared to discuss in further detail the agreements or discussions that have been made or that have occurred with Landmark Theatres and with Habitot Children's Museum, and also that staff should reach out directly to those two organizations and give the ZAB an update.

The applicant is here and they're prepared to address that, and staff did speak with both landmark and with Habitot.

As to landmark, basically they confirmed what the applicant has been telling us, that they have been in discussion with the developer for some time.

The person I spoke to said the discussions had gone well, that the developer has been amenable to the requests that landmark has made, but that there are still details being worked out; that the agreement has not been signed yet, although he said that he anticipates that that will happen fairly soon.

As far as Habitot, at the time the staff report was written, the status of that was that really there had been no discussions with the developer regarding potential compensation or benefits to Habitot.

I was told that a meeting would be happening today.

My understanding is that the meeting did happen, but I don't know what was discussed, and I'm pretty sure that you'll get an update on that from both the Habitot director and the applicant.

The next request we got from the ZAB was just to get further information on how many construction workers would be Berkeley residents.

We haven't received those details yet, but I believe the applicant will have more for you on that when he speaks.

There was concern about overlap between the green building requirements and what's being offered as community benefits, specifically on the Harold Way streetscape, and there's details on that in the staff report, but basically, it needs a little bit more research and there maybe a couple of small areas of overlap, in which case those items would have to either not be considered community benefits or they would have to show that they have a surplus of green building points such that, you know, those items would not be needed to meet the minimum green building score.

And then finally, a couple of you made comments about the economic peer review that we're having done.

Mainly the request was that that really shouldn't be started until after tonight so we can factor in your comments.

It has not been started, so we can say that we've complied with that request.

We did attach the scope of work.

Just to give you an idea of what the general direction of the report is, and we're certainly open to considering, you know, input that you guys have on the scope of that after tonight.

I think the main thing that we heard from you on this piece was the ZAB feels that, you know, there are other community benefits that it would like to see included, then we shouldn't get out ahead of ourselves in doing an analysis on a package that doesn't incorporate the benefits that you guys would like to see.

So I think that's basically where we're at.

So that's all I have.

And as I said, there's going to be a lot more information from the applicant and other speakers tonight.

Happy to take any questions.

>> P. Pinto: Any questions for Aaron?

For staff?

Okay.

Thank you very much, Aaron.

So we'll have the applicant come up.

Mark, if you want to come up and just give us an update or what's been happening, it would be helpful.

>> Mark Rhoades: Thank you, Mr. Chair, members of the board.

First of all, happy new year.

>> P. Pinto: Happy new year.

>> Mark Rhoades: Thank you.

We've been able to make, I think, quite a bit of progress.

I handed out a memorandum tonight that provides some additional information on the points that Aaron just went over.

I will not belabor the ones that he had answers to for the staff report, but I'll give you some updates on the ones that we weren't able to provide him with answers to a couple of weeks ago.

First off, Habitot Children's Museum.

We had a very, very productive meeting with Gina Moreland today.

We have had, again, just a really good conversation with her.

I think we're probably very close to doing something that is along the lines of what they've requested.

And I'm sure once she gets up to talk, she'll hopefully corroborate that.

But there's not an agreement in place at this point.

The status of the project labor agreement, we're working on a form to submit that to the City for the purposes of the economic analysis.

The union has told us it is not going to be possible to tell you how many Berkeley residents might be working on this project.

We don't know who the contractor is going to be right now.

But what we can tell you is of the -- out of the Alameda County building and construction trades council, there are about 350 Berkeley residents who are union members in the council.

And we also know that the trades council labor agreement rules require that the labor source come from Alameda County first.

So that's another piece of it.

We've also attached for you the information that the trades council gave us relevant to apprenticeship programs.

Some of the -- Most of the wages and salaries of the member union groups and information of that nature, that's attached to the memorandum I gave you.

And then lastly, on the green building requirements, we've reviewed the items that might have cross-over between the community benefits and the green building requirements for LEED gold or equivalent, and we far surpass the GreenPoint rating and the gold equivalent.

So when we pull those items out, because we'll keep them in as community benefits, we still exceed the GreenPoint rating and LEED point standards.

So with that, if you have any questions, I am happy to try to answer them.

>> P. Pinto: Yeah, Bob.

>> R. Allen: Could you add a little more clarity to what kind of agreement with the Habitot group that you're talking?

Is it financial?

Is it -- Give us a hint.

>> Mark Rhoades: We are talking about a financial agreement.

>> R. Allen: Thanks.

>> P. Pinto: Yes.

>> Hi.

Do you have a list of what businesses are going to be disrupted by this?

I know -- I mean, obviously we have the folks who have come here about the cinemas and we have Habitot which is a not-for-profit, but I know there are a number of other businesses.

And I guess I'm a little concerned that the squeaky wheels will get the grease, but that doesn't necessarily mean they're the only impacted ones we should keep in mind.

So I don't need to run through it all tonight but I would like a better sort of accounting of who is being impacted, are they locally owned, are they chains, did they have leases that were expiring anyway?

Are they going to be able to relocate in Berkeley?

I'm concerned about more than just the businesses that have -- and organizations that have come to us.

So I guess maybe that could just be a comment --

>> Mark Rhoades: Okay.

>> S. Hahn: -- for another time unless there's a succinct answer.

>> Mark Rhoades: No, there's no succinct answer to that.

>> S. Hahn: So my second question is on the labor -- project labor agreement, basically, you know, the project labor agreement requires you to pay a living wage, and a lot of other things.

Safety, train people, apprenticeships, et cetera.

What would have been your plan for building this building if you hadn't entered in that project labor agreement?

What kind of labor and pay would have been acceptable to you as a builder?

>> Mark Rhoades: You know, that's really a question for the contractor, because there's -- you know, when you look around the Bay Area at the projects that are being built, some of them are being -- not many of them but some projects are being built under full project labor agreements.

Some projects are being built under partial labor agreements.

Some projects are using union labor without any labor agreement, and some projects are not using any union labor at all.

So it really does run the spectrum from none to full.

>> S. Hahn: I appreciate no he go -- appreciate knowing that's what's out in the market but what I'm going to here is you're presenting the fact that you have entered into an agreement that requires you to pay fair wages as a community benefit, and I'm asking what would that have been compared to?

Would you have been, you know -- would you have accepted minimum wage, out-of-town?

You know.

It's hard to assess whether that is a community benefit without knowing what you're comparing it to.

>> Mark Rhoades: I think that question is going to get answered in the economic analysis.

I think the economist that's going to work on this is going to have to look at what does it mean if we weren't using full union labor under this agreement.

And, you know, I think that you -- well, I'm not sure what you start with at this point, but I want to say that the wages that are in your package, that the union gave us and if you go to the third or fourth to the last page -- fourth to the last page, the wage packages, these are not just, you know, fair living wages.

These are good middle class wages.

Very strong wages.

So....

>> S. Hahn: Okay.

I guess I was really trying to ask about you, your client, this project, a project in Berkeley, a project downtown Berkeley.

You know, what another developer might have done in another location where the community expectations might be different.

We're being asked to assess, and you're putting a dollar amount on some of these benefits, and I'm really questioning what the baseline is for your client.

>> Mark Rhoades: I don't think we can answer that because until you put a bid package out and start seeing what the contractors come back with, you're not really going to know.

I can tell you that this is the only project, privately developed project in Berkeley that I'm aware of anytime in the last 20 to 40 years that's come in with a full project labor agreement.

>> P. Pinto: Steve.

>> S. Donaldson: You didn't really comment on the discussions of the Landmark Theatres.

I just had a couple of questions about those.

It sounds like, from what you have here, they are planning or looking at, if nothing changes, this project didn't go through, they would be moving out in 2018, because they do not consider the theaters up-to-date.

>> Mark Rhoades: They have said that this theater configuration is obsolete.

>> S. Donaldson: Right.

Okay.

>> Mark Rhoades: Yes.

>> S. Donaldson: Okay.

And you're -- And there have been -- Had the City verified your discussions with them?

>> Mark Rhoades: Staff has talked to Landmark Theatres.

>> S. Donaldson: Okay.

Thank you.

>> P. Pinto: Igor.

>> I. Tregub: Thank you.

Two questions.

Happy new year to you as well, by the way.

One just clarification.

You mentioned at one point discussions with the union.

Did you mean union singular or the building trades --

>> Mark Rhoades: Trades council.

>> I. Tregub: Thank you.

>> Mark Rhoades: 28 unions.

>> I. Tregub: Follow-up on Steve's question about Landmark Theatre.

This narrative certainly makes it sound as though landmarks was going to vacate the space, perhaps based on limitations of the space.

And there's a line that says on (inaudible) intervention by the city council in a land subsidy and direct loan by the property owner at the time Landmarks agree to the current lease.

My question is have the financials been worked out on the new lease?

If so, can you share those with us?

Would Landmarks be able to come in without the rent subsidy and direct loan into the new space or would they require it?

>> Mark Rhoades: It's still subject to negotiation.

I can tell you that the substance of those deal points, though, when a lease is signed will probably not be public.

>> I. Tregub: Thank you.

>> P. Pinto: Okay.

Any other questions for the applicant?

Oh, yes.

Shoshana.

>> S. O'Keefe: Just along the same lines as Igor's question, I think we all have a little discomfort with the landmark issue because it's not really a thing yet.

It's an idea but it's not definite.

And I was wondering if you could just give us an idea of when this will be finalized. Is it possible we could have a final agreement before we're asked to vote up or down on this project?

>> Mark Rhoades: It's certainly lie hope.

We're over two years into the process at this point.

They have redesigned the theaters again because of the changing nature of movie theaters.

So we are not on six theaters anymore.

We have a different internal design that isn't ready to be released yet because we're still working it out with them but their architects are still at our table.

And, yeah, we very much hope to have some kind of agreement in place that you all can rely on for your conditions of approval and the regulatory agreement.

>> P. Pinto: George and then Denise.

>> Are you saying we won't know the terms of the lease with Landmarks?

We won't know --

>> Mark Rhoades: I think that's ultimately going to be up to Landmark Theatres and Mr. Penner, but I'm not sure -- yeah, at this point, I would say that the terms of the lease are not going to be made public information.

>> G. Williams: I can understand for some terms but to not know the duration of the lease and the --

>> Mark Rhoades: I think the duration is a different question that will get addressed in the regulatory agreement because it's being made as an offer of the community benefit. So, yeah.

>> D. Pinkston: I'm not question is given that the theater business is changing rapidly, I was mentioning I saw the interview, one of the first showings of it in the country and was shocked to hear a few days later that it made more money on the Internet than anyone thought it was possible through YouTube viewings in people's living rooms. They made \$15 million. They expected to make 18 million by showing it on movie screens nationwide.

And I think we're in an economic disruption of the movie business that will cause bankruptcy and theaters to close.

How confident are you as the landlord in landmark as a tenant having longevity?

>> Mark Rhoades: I think that's part of the question of the day for us.

What we can try to do is build them a space that they believe can be successful.

But then I think the agreement on the community benefit side is going to have to be back stopped somehow with what if they close out?

Now, that said, they're not the only group that's interested in these spaces.

We have a couple of other groups that have expressed very strong interest, slightly different formats, in the movie theater spaces.

So, you know, we're confident that there will be a theater presence there for some period of time.

But getting back to the regulatory agreement, we'll want to make sure that that space is available somehow for some use should the theater shut down.

>> D. Pinkston: So let's pursue that a little bit with something we got into today.

What happens if the theater can't make it or the theater business changes?

Those theaters in five years become functionally obsolete.

The latest, greatest thing now is stadium seating in I-Max with they have in Emeryville and UA didn't have and UA is now closed. They couldn't afford to pay 24 triple net rents and they closed and I know that because my company was the landlord for UA just before they closed.

So the business is changing in the way many businesses are changing.

The cab industry is being completely up ended by Uber.

The hotel industry is being up ended by airbnb.

Are you open to creating that theater space as a long term community benefit that may or may not be a movie theater but where the space would be compatible with other performance-oriented entertainment activities that could have a long-term community benefit beyond the shelf life of Landmark Theaters?

>> Mark Rhoades: Oh, you bet. That's exactly where our discussions have gone internally is, okay, if the theater shuts down, this needs to be a cultural arts space, it needs to be some kind of space that allows that kind of activity.

You know, maybe it's a flash mob movie theater.

I don't know.

But we do have to think about that, we know that, and we don't have an answer for it right now.

Denise Pinkston "Daily Planet" okay.

Thank you.

>> P. Pinto: Thanks.

And thanks.

I do think it has to remain some kind of mixed use because they're claiming it for LEED and that has to be some kind of public mixed-use for you to claim those credits.

But I think it's a valid question for you to ask.

I think what this also does bring up, and we're going to debate this, is the certainty of these benefits moving forward, enough for us to provide findings for the community benefits.

And I think that's something we're going to have to talk about a little bit more.

>> Mark Rhoades: You bet.

>> P. Pinto: Mark, thank you very much.

Is there anything else you want to add?

>> Mark Rhoades: No.

Thank you.

And we're here to answer questions.

>> P. Pinto: Wait.

You have one more question, Mark.

>> Sorry, I was thinking after your responses to my previous question that your packet that you gave us last time it, quantifies the value of -- in dollars I think it's ten million, and it repeats that over and over, the value of the project labor agreement.

But then you're telling me that there's no baseline that you can -- no defensible baseline.

So how did you derive that number and should we not rely on it if there isn't a baseline that you're willing to share with us?

>> Mark Rhoades: Well, again, I think that that is some study that's going to have to come out of the economic report.

What I can tell you is that our baseline is measuring that against the project that doesn't have any union labor.

And we know from a Market perspective what the -- you know, different projects have different sort of union markups with respect to the labor dollars.

And for this type of a project, it can be anywhere from 10 to 20% markup over a nonlabor project.

>> S. Hahn: Okay.

I'm not going to take your figure.

I'm going to wait for the other ones.

Thank you.

>> P. Pinto: Let's ask him questions, because we can have you come back and do some further explanation.

I don't want to keep you up too long because I do want to get to the public comments.

Do you mind, Igor?

>> I. Tregub: Not at all.

>> P. Pinto: Appreciate it.

With that, we kept the public hearing open and I have a number of cards to speak to.

And there's over 50 cards here.

So we're going to get through this as efficiently as we can.

I think we'll give everybody two minutes tonight because we do want to have significant discussion about it, and we'll start with -- very organized.

Thank you very much.

We'll start with James McFadden and then Paul M. and Susan.

If you want to come up and continue the queue, that would be very helpful.

So James, go ahead.

Welcome.

>> Hi, I'm Dr. James Mick fad den, a physicist and researcher at U.C. Berkeley and also a Berkeley resident.

We're here to discuss significant community benefits that this monster development will bring to Berkeley.

This is not a term that the developer gets to define.

This is a term that you must define based on our input.

So let's make clear whether this is important.

This monster building will dominate the Berkeley Skyline for the next hundred years.

Think about that for a second A hundred years, we're all going to be dead.

That building will stick out like a sore thumb on our Skyline and send a message to the world and what will that message be?

It will be condos.

Condos.

That's the legacy of the -- the zoning board, Tom Bates and the city council will leave.

So you want to make sure the benefits balance Berkeley's reputation from a top university and a cultural center to a condo suburb of San Francisco.

So let's examine significant community benefits. What is significant?

First it, can't be an Orwellian concept like public U/private space especially when the space is no bigger than moderate sized room, nor perceived loss of profits for the developer.

It can't mean short-term job when other long-term jobs are loss.

It can't be less cultural cinema than we already have.

Significant must be long-lasting.

It must impact a large fraction of our community.

And how do we fine community?

It can't mean the wider Bay Area.

It must be defined as the people of Berkeley who will have to provide the public services and maintain this white elephant.

So when we talk community, let's be clear this means the citizens of Berkeley, not businesses in the south bay.

If we talk about community housing, it should be affordable housing for the people of Berkeley, especially the people that work in Berkeley.

And how about benefit?

Benefit should be defined as what is possible, not what is expedient. What is desirable, not by the crumbs the developer throws our way.

Benefits must be weighed both by what is lost and gained.

Short-term gain in the city coffers in terms of a long-term exchange of community reputation is not a community benefit.

The following speakers will demonstrate that the speaker's proposed community benefits are not significant nor community benefits to the community.

>> P. Pinto: Thank you, James.

Paul.

>> I've heard just a short time ago that the Landmark Shattuck theater has already decided that it's going to close.

Now, I want to say that that assumption and that whole negotiation went on with a discussion to us that there had been a widespread discussion with people in Berkeley about what they wanted.

And our petition signatures show that that was not the case.

That that had been a very, very limited discussion.

What we need to be looking at here are not the benefits -- are the benefits that exist now to people and the detriments that exist now in this moment.

We can't just be looking at, well, everything else has gone down the road and those benefits are gone.

Let me list some of those.

The loss of important business during the four years minimum estimated for the completion of the project.

Many of these businesses, especially on Center Street depend on movie goers.

The loss of national and international existence.

Even if it goes we have to talk about what it means to Berkeley.

The loss of an appropriately scaled building, ie the theater.

The loss of a multiethnic and multinational vibrancy that it brings to our internationally recognized City of Berkeley and the loss of important extension to our theater that by location and intent should be considered part of that theater district.

A loss of a community resource that serves our residents particularly, especially senior citizens with inexpensive movie tickets at lower prices, our disabled community who use the theater extensively as the only completely accessible theater in Berkeley.

And the loss of the excellence and the recognized diversity of the films that are shown that really speak to our community.

And again, something special.

The loss of the integrity of the downtown.

The Shattuck hotel block.

The cultural centers all around that.

The new museum that's going to be going up there, the theaters.

And instead what will we get is a hole in the ground that will last a minimum of four years.

There is nothing that a large condominium development which will destroy our beautiful theater can do to replace all of these Detriments.

>> P. Pinto: Thank you, Paul.

Susan, you're up next and then Judy.

>> I'm not used to speaking but I came out because of this.

It's like who is going to stop this juggernaut of development in Berkeley?
And tonight I want to speak on the 18-foot apartment condo highrise in downtown Berkeley.

I live in South Berkeley.

It's like six blocks from where I live, you know?

I walk down there to the Y and to the library and to the high school.

This is going to cast a shadow over the high school and all of Berkeley.

So I just totally support those first two speakers and I hope you listen to them because they speak for everyone in Berkeley.

Shoot, I really -- I can't believe -- anyhow.

In my neighborhood, the mood is outrage and disbelief.

There was (inaudible) voter turnout during this election.

The ballot measures were confusing.

People had no idea there was so much at stake.

Some comments from my neighbors: I was overwhelmed by the size.

I didn't even know it was on the ballot.

Berkeley is a small town.

I don't think this is a good idea.

You're sort of just isolated up here.

There are hubs of us who do not want this.

And you act like it's a fait accompli, and it's in the works, you know?

It just can't happen to Berkeley.

It's going to destroy this town.

Okay.

I just want to say something else.

My (inaudible) we care and we must do better.

We have two wildly successful public theaters: Freight and salvage and Berkeley Rep built with thousands of citizens' input and money.

I propose a facelift along the same lines for Landmark Shattuck theater.

Let's make it another jewel in the arts district, a plan along with a three-story art museum in Berkeley we love theater, we love music, we love art and we especially love the movies.

I spent a lot of time at freight and salvage.

A sought after site in Berkeley.

Why not the same plan?

Let's not destroy this community resource but make it better and even beautiful.

I know there's willingness to do this in our community.

See you at the movies.

>> P. Pinto: Thank you, Susan, for that passion.

We have Judy and then Don.

>> Hi.

>> P. Pinto: Hi, Judy.

>> A good building reflects the soul of the city it inhabits.

That means developers and planners need to understand who its people are and listen to what they want.

This requires a dialectic, not the imposition of a top-down decision.

The struggle over the Landmark cinemas is a struggle for Berkeley's soul.

It's a struggle between citizens and the few who decide for the citizens.

Some of these few say that the defeat of Measure R means the people are okay with tearing down the Landmark cinemas.

Yet if you were to put this plan to a vote it would be soundly defeated.

The fact is, most Berkeley people don't even know that the City wants to destroy the Landmark.

So voting for Measure R can't possibly mean that they're ratifying its destruction.

Rhoades wants to demolish the Landmark Shattuck cinemas and build a smaller cinema complex that's inferior in every way.

He wants to crush a diamond and replace it with a piece of quartz.

And with a straight face he insists that that's a significant community benefit.

But consider this.

In addition to its cultural significance, the Shattuck Landmark cinemas are one of downtown Berkeley's economic engines.

I'll wait, and I'll have more time after he's finished.

>> P. Pinto: I think you should just keep going.

He's just handing us documents that we're receiving currently.

>> I think that should be done in between speakers.

>> P. Pinto: I think we're getting them as they come in.

Why don't you continue because this is your time.

>> The Shattuck Landmark cinemas are one of Berkeley's doubt economic engines.

They make money for the city and they're doing that right now.

As we have sit here they're making money for the City.

Right now.

Not in four or five years.

So leave the Shattuck cinemas alone.

Then we won't have to worry whether they can come back when the Harold Way project is finally completed.

Thank you.

>> P. Pinto: Okay.

Thank you, Judy.

Don.

And then Kate.

>> Good evening, and happy new year.

I believe it is imperative that the Zoning Board commissioners ask the following questions of the developer and their own planning staff.

Isn't it true that the Landmark Theatres has an option for extending its current lease?

Isn't it true that Landmark would prefer to keep its current ten theaters in place and not have them demolished?

Isn't it true that the statement in the community benefits package regarding replacement of the current (inaudible) greens with six greens with the very impact for Landmark to be able to offer the films necessary to turn a profit.

Isn't it true the developer does not have a signed agreement with Landmark that ensures the theater will be able to stand stay in the city of Berkeley at a reasonable rental?

Why don't they show the impact of this on doubt businesses and the economy of the doubt?

The developer's package states the will house six new theaters, blah, blah, blah.

The very language of the developer's package reveals how naive they are over the current mix of films that screen at the Shattuck as well as the realities that govern film exhibition.

It dictates losing eight of ten screens from what is currently the Shattuck cinemas to be replaced by two small screens to show intelligent films.

This loss is a substantial detriment to the cultural and economic life of the city.

The smart conservative thing to do, I emphasize conservative, would be to retain the current cinemas, yes all ten screens, and build affordable rental apartments on the remaining land that this developer has.

Additionally the current lease should be continued at \$2 per square foot with cost of living increases allowable at the city sanctioned rate.

Is the Zoning Board aware that over 60% of the audiences at the Shattuck cinemas come from other cities outside of Berkeley?

Did you know that?

You didn't, because -- no, you didn't because we did the survey and you haven't.

If you follow developer's wishes what will happen to these visitors and the money they bring to downtown Berkeley?

I'll ebbed -- end there.

You've got my statement in front of you.

I welcome questions.

>> P. Pinto: Thank you, Don.

Kate and then Fitzpatrick.

>> My name is Kate Harrison.

I'm a Berkeley downtown resident and business owner.

I was formerly on the SOSIP street and open space improvement project for the City of Berkeley and I favor development in the downtown but not this project.

This project provides far too few benefits given its size.

The term of the benefits set by this project will set the stage for future large projects in Berkeley.

We know that the work to be done in setting these benefits, as somebody has already stated should be done by you, not by the developer.

City officials have a unique opportunity to proceed with a site specific, thoughtful approach that will set a future pattern for our city.

This is one of future projects that will be coming to you so this is a critical moment in our history.

I'd like to address issues involving affordable housing. We all know there are competing needs for housing at all levels below market rate from very low-income all the way to moderate income.

The current proposal does not provide sufficient funds for any of those needs.

Again, particularly given its size.

As of yet, we have not been told whether the units in the building will be owner occupied or rental housing.

This makes it extremely difficult to assess what an appropriate mitigation would be, how much money the city will receive as it differs between owner and rental housing and whether, indeed the housing to be provided off-site will be owner occupied or rental.

Currently in this project there is no provision for inclusionary affordable housing.

People making up to 80% of the average family income of \$88,000 in the Bay Area are considered moderate income.

These are not just people who need essential housing these are people for whom we need to provide workforce housing.

We know that currently the ABAG housing element calls for an additional 2900 units to be built in Berkeley, 2500 of which are to be at low and moderate income.

In the last period the City only accomplished 4% of its goal in the moderate housing arena.

I ask you to look at this and consider how we might do better this time.

Thank you.

>> P. Pinto: Thank you, Kate.

Tree and then Edith, Edith hallberg.

>> My name is tree Fitzpatrick.

I am a downtown resident, and I do not support this project, and I don't think it provides anywhere near enough significant community amenities as planned.

The Bay Area sustainable community strategy calls for Berkeley to build an additional 2,959 units of affordable housing between -- just of housing between 2014 and 2022.

Berkeley has only met 4% of that goal, and this project does nothing to really help that goal.

A meaningful, significant community benefit would be to require integrated affordable housing right in the building up to 20%, using the proportion for owner occupied buildings rather than the minimum mandated 10%.

Would this would support the goal of a mixed use in the downtown and provide a significant community amenity.

Under the current proposal the developer is only offering the minimum funding required in city statute in lieu of the affordable housing fund.

The fee that is currently set here in Berkeley of \$20,000, it just blows my mind that we have a fee that's lower than Oakland, lower than Hayward.

Significantly.

Hayward requires \$34,000 into their affordable housing fund and we require 20?

What can you build with \$20,000?

An updated nexus study is in the process with the in-lieu fee to be reset in April.

At a minimum the amount to be provided by the developer should be set at the amount determined by the new revised nexus study.

In the meantime it would also be possible that the City could simply establish \$34,000 unit per figure now, and give the community significant significant community amenities with real affordable housing opportunities.

As a comparison, the San Francisco Board of Supervisors required the eight Washington project in San Francisco to provide \$8 million in affordable housing.

>> P. Pinto: Okay.

Thank you.

>> Above the requested amount.

>> P. Pinto: Thank you, tree.

Very good information.

Edith and then Sharon.

>> Hi.

I'm Edith hallberg.

I am coconvener of the Berkeley East Bay Gray Panthers.

I'm also on the Commission On Aging, and I am a Section 8 tenant in a private four-plex in West Berkeley.

We had on the -- on the aging commission we had a hearing on November 9th about community needs in Berkeley, and the thing that was most raised was the need for affordable housing.

Because we have homeless seniors.

We have couch surfers.

We have seniors paying more than half of their income for a studio.

We have people who are in the Section 8 projects.

We have people who are on the waiting lists.

We have people who are on the waiting lists to get on the waiting lists, and I'm on three of them.

And it's ridiculous.

And we look at this project and the fact that there's 302 units proposed right in the smack dab in the middle of Shattuck Avenue, and we're wondering are any of these for us?

Because we would like to have 60 or 75 of those units.

That's 20 to 25% of the overall.

The \$20,000 for the trust fund per unit is like \$640,000, this doesn't get you anything.

So we're asking the developers, think of us.

And most of the seniors are living on incomes between 12 and \$25,000 a year.

I don't even make it that far.

But if you could build some housing for us, do the right thing.

Thank you.

>> P. Pinto: All right.

Thank you, Edith.

Sharon M., and then Rick Spade is up next.

Hi, Sharon.

>> Good evening.

Thank you go again for giving me an opportunity to speak with you.

I hope that all of you do well economically.

I don't know how long it's been since you've had to worry about whether you could make your rent payment or a mortgage payment.

Hopefully it's been a long time.

But for many Berkeley residents, that's not the case.

When I look at the housing, the developments that are coming before you and the housing that's being suggested, whether condos or apartments, I'm pretty horrified at the prices that I see.

And when I think of the average -- kind of average Berkeley person, workforce person, I would think of a teacher.

I was a teacher.

A social worker, a musician.

You know, the people who live in Berkeley.

And then we might even think of people who just work in the shops, and we know their incomes are very low, similar to what Edith was just talking about.

So I'm wondering, do you guys -- are you aware of what you will be doing to Berkeley when you approve these projects?

If we're talking about rents, our landlords are going to want to start charging \$2300 a month for a studio, \$3200 a month for a one-bedroom apartment.

They're going to say gosh, those are pretty little.

My unit is on a nice street and we can charge those rents.

People in Berkeley will not be able to pay that.

If you do not include 40% of affordable housing in these projects, people who work regular jobs, who are not, like, highly paid, they're not going to be able to live there.

It's not going to be something for all of Berkeley.

And yet in 2010, when Measure R was passed, we were told this was housing for seniors, workforce housing, et cetera.

Thank you very much for the time.

>> P. Pinto: Okay.

Thanks, Sharon.

Oh, wait.

Sharon?

I think there's a question for you, so why don't you come back.

>> I. Tregub: Thank you.

You mentioned 40% inclusionary affordable housing.

And I was just curious where you derived that figure from?

>> Because I think that's how much is needed.

>> I. Tregub: Okay.

>> I think that in these developments, we shouldn't just be talking about profitability for developers.

We should be talking about what our cities need, what the citizens of the cities need.

That was my point.

>> I. Tregub: Thank you.

That's really helpful.

>> P. Pinto: Thank you, Sharon.

Rick and then Aaron.

>> My name is Rick spade.

I've been a resident since 1973 but I hail from western Pennsylvania and we're very serious about unionism back there.

So first of all, I'd like to say kudos to the enlightened person or persons who got this full project union agreement into the current draft because I don't think it was in the original.

But nonetheless, I resent union jobs being spun into something they're not and used as a smoke screen to cover a diversion from all the detriments that are entailed in 2211 Harold project.

And I believe full project union agreement should be the standard for everything that goes newspaper Berkeley.

And I personally consider full wages a right, not a benefit.

And if it comes from anybody it, comes from the forward looking view of the city council who put it in place, not the the developer.

Further, they've made references to -- of course I applaud as many more union jobs as we can get but they further made noise about somehow they're going to help with some kind of apprenticeship with the unions which I'll believe when I see a full educational prospective and MOU with the unions because let me tell you, the developers in this town have a record of more broken promises than the bureau of Indian affairs.

Also for people who don't know, this isn't just going to be union people.

There will be plenty of nonunion people coming in through the second gate, which other people can later on tell you more about.

But I definitely think that now that Obama has given them room to come out from the shadows, I intend to be there to organize them.

Also, we're also concerned with the nonunion jobs and union jobs will be lost in the Shattuck cinema and all the small vendors and shops in that place which are too small to be union jobs.

It's going to put a hole in the thing in the middle of the city for at least four years and we know how the estimates go on everything from the Bay Bridge on up.

And to say one thing about the 40%.

I think Berkeley should not just be adhering to minimum.

That's not what Berkeley does.

We should really be saying something people can live with and keep this town the place that it is.

Thank you.

>> P. Pinto: Thank you, Rick.

Aaron, and then Keith, Keith Johnson.

Hi, Erin.

>> Hi, my name is Erin, and I'm a Berkeley resident, I live at Jefferson and Bancroft, bought our house about a year ago and I want to make comments on the transit package that they have.

I'll try to get through three things.

The first one is around the transit passes that they're claiming is a benefit.

And right now, that's actually the biggest.

That's almost half of the 1.2 million total dollars they're claiming.

And the Inc. this that stands out to me and I think some of the board members have commented on is these passes are for A.C. Transit.

I think when we think about it and think about who is going to be renting in this highrise building, it's probably not going to be people who are taking the bus.

They're probably going to be riding BART.

So at a bare minimum we need to require that the developer provides passes for BART, two passes per household.

That's a bare minimum.

If we want to think really green and making Berkeley a model city we need to think bigger than that.

And how about a shuttle system through Berkeley where we are really trying to get people out of their cars and where they can get to a grocery store?

And the bicycle part, I'm actually a former competitive cyclist.

I'm all for bicycling but I think there's only a certain population that will ride a bike.

How high can we get it?

So we can't rely on people to ride bikes to get up to Andronico's or whole foods.

We need to have a shuttle system there.

As I was thinking about this, what would be really cool?

What would I be proud of in Berkeley and it would be what if we start requiring all the developers now to contribute to a shuttle system that's free for all members of the Berkeley community?

You know, they're going to put the grocery outlet, that's going to be killed and I think there's a whole bunch of parking spaces there.

What if we required all these developers to contribute to this fund?

And I don't know if they could then go into A.C. Transit.

Could we have A.C. Transit then expand their service and then are those union bus drivers, too?

So then we're having long-term union benefits.

Thank you.

>> P. Pinto: Thank you, Erin.

Thank you very much.

Okay.

Keith and then Kelly.

>> My name is Keith Johnson.

I teach at Cal.

I've never spoken at a meeting like this before, but I want to say something that's kind of off topic a little bit, but I hope to bring it back on topic.

This is about the view from the campanile to the Golden Gate bridge.

The view of the bridge is kind of iconic.

It's part of the Bay Area identity.

And I think that planners need to be really careful about this.

When I found out about the little obstruction that the building was going to cause I was angry.

And I think that this is a sort of an example of a tendency to privatize public goods.

In this case, a view from a public place being privatized and sold in the marketing materials for the building.

So why is this a public benefit issue?

I think privatizing the view is kind of a political hot button issue.

I'm not alone in having a reaction of feeling angry when I see something that's kind of iconic and part of the identity of the Bay Area obstructed, lost.

And so I'm in favor of developing more housing in Berkeley, and for our students, for our faculty, for all our residents of Berkeley in favor of greater density in Berkeley but I think the danger is there will be political backlash against future development because of a bad decision here.

I think we need to be really careful about this.

That this is part of people's identity and when you tread on that, it kind of has ramifications that go beyond this project.

So that's where I would see kind of public benefit.

I see the development as a public benefit.

You know, maybe not of this particular project in the way you guys do the accounting of that sort of thing, but the idea of providing housing for people is something that I think is likely to get hurt by this project and by what people see coming out of it.

Thank you.

>> P. Pinto: Thank you, Keith.

Kelly and then Karl.

>> Okay.

I'm going to fill in on a couple of things here.

One is that we have talked about the Shattuck cinemas, and I'm one of the people who collected petition signatures and did analysis of where those people come from for the Shattuck cinemas.

And looking at the \$3 million revenue that is posted in the benefit package, calculating on the average people only spend about \$12 on the Shattuck cinemas, that gives us about 250,000 people coming or visitors, 250,000 visits.

60% of those are coming from outside of area.

So those Shattuck cinemas be have been about 150,000 people.

Some of them are coming over and over again but that's over 150,000 visits.

That's a rough estimate from the data that we've collected and analyzed thus far.

And as I've watched people coming out of the Shattuck cinemas and going in, these people are going in and out of our businesses along Shattuck.

This is a big deal.

This is a big loss and to estimate that loss that could be somewhere between 12 and \$18 million we lose in our community by tearing down those theaters and not having them for a four-year period.

I'd also like to address the privately owned public space.

When I attended the design review committee on December 18th, Charles McAuliffe found this claim of over 1872 square feet at a value of 7,389,560 dollars is actually only 500 square feet.

And he found it so poorly designed that he handed Mark Rhoades several alternate designs for that space.

And that is just really shameful.

The other thing that I'd like to bring up is that much has been made of this being a green -- gold -- the gold LEED.

And what we really need at the end of this project, when this is built, we will be at net zero energy standard.

And there's nothing in here that is really making this an energy building.

And I know, Prakash, that you know what that is.

>> P. Pinto: You're the second person to talk about theater visits.

Where is this information coming from?

How are you defining that?

>> How are we defining that?

>> P. Pinto: How are you achieving that?

>> Because we stand out in front of the theaters and we ask for signatures, petition -- sign the petition.

We point to the building.

And then we ask people where they come from, what is their city of residence.

And by going through that and finding that 60% of the people who sign petitions are actually not from Berkeley.

And that was quite a surprise for us, to find out that people are coming from as far away as Vallejo to come to our theaters, which means that we really have a culture and a situation here in Berkeley of a city where people want to come because they are driving by many other venues to come here.

They are coming here for the theaters we offer, they're coming here for the atmosphere that we have in Berkeley.

And I think that, you know, you're sitting (inaudible) and culture is important but we also need to try to put that into dollars because dollars is what's going to drive decisions here.

And that is is a huge -- that's a huge loss.

My background, I'm an MBA person, what can I say?

I look at numbers.

>> P. Pinto: Okay.

Thanks.

There's no earth question for you, though.

Steve.

>> S. Donaldson: You said 175,000 --

>> We're looking at --

>> S. Donaldson: Period of time?

>> In the benefit package itself, there's a statement in there that the revenue to the cinemas is \$3 million.

You know, I could spend, like, a whole evening taking apart the benefit package and every piece of paper that I've read on city plans.

We could spend a week of evenings talking about this.

But it is in their own data.

If you look at their own data and start pulling that apart, it's really quite interesting.

And it's in the package, that revenue.

So looking at what people are paying, making an estimate of how much of that actually goes into sort of like paying for the theater ticket versus how much people buy when they're in the theaters and going to the theaters.

People aren't doing a lot of shopping in the theaters.

We're not buying a lot of snacks.

So that's where those numbers come from.

That's the estimate.

And, you know, you could do your own study and then that would be an important thing to do, is to really validate or find our data isn't correct.

But that's the best that we can do with the numbers that were available and the signatures that we've gained and just observation.

>> P. Pinto: Okay.

Thank you, Kelly.

Thank you very much.

We have Karl and then James, James madsen.

>> Is this okay the way it is?

>> P. Pinto: Yeah.

>> Happy birthday, happy new year.

My name is Karl N., I'm a psychologist and I practice in Berkeley and live in Berkeley.

There are two major important questions that we've been talking about tonight.

One is what is significant benefit package, what does that look like, and the other is the definition of a community.

So I want to take a moment and just talk about community.

The definition of a community is a community is a specific locale where people share some sense of common goals and values.

Now, the members of this commission are really the guardians of this community.

And you're here to discharge your responsibilities in ways that meet the needs of the community.

And you really need to control the agenda of how this discussion takes place.

It should not be controlled or created by the -- by the developers, but by you because you're really here, in that sense, as our representatives.

As a health-care provider, there are four ethical guidelines that I have to follow, and I'm suggesting in essence these are the same for you.

In community psychology, you might say that the first one is that you really need to know the interest and needs of the community.

What people need to grow as individuals and how to connect with each other.

The second one is to do no harm.

That is the concerns about maleficence.

The third is to do good.

Beneficence.

And the fourth is to be good and fair.

The people here, including me and the ones who have spoken before me, are quite concerned about a number of different issues, about what our community is.

One thing that's truly important is the intellectual and cultural community, and people have been talking about that -- wow -- in terms of the theaters.

But as well, we've also been talking about the need for housing for everybody, which is truly a need that we all need.

My time has run out, so thank you.

>> P. Pinto: Thank you.

Thank you very much, Karl.

James, and then we have Harvey Smith after that.

>> Hi.

My name is James, and my dad was killed for his union right to wash his hands in an iron mine in Minnesota, so I'm somewhat disturbed by the smoke and mirrors of union jobs here.

I want to mention how many of these units will be vacant, like 40 to 50% will be absentee tenants.

In New York, between 66th east and 59th east, 50%, 285 out of 436 are vacant.

The assessor's office there says between 39% of 5,212 are vacant.

Some are listed on air bed and breakfast for \$6,000 a night.

Is that going to happen here?

San Francisco Saint Regis, 42 stories, 63% belong to people who own other homes.

One of them is owned by Napa Valley winery.

One Rincon Hill, south tower, San Francisco, one third of 376 are vacant.

Infinity towers, 40% of 650 are vacant, people who don't live there.

Ones listed on air bed and breakfast for \$6,005 a night.

Walt Disney's grandson owns one of these.

I've asked Marian Wolfe a -- I've asked mayor baits a couple times what what's to stop them for paying what they want?

Nothing.

You have to change the state constitution.

We need to do that.

The downtown plan provides U.C. Berkeley regents an occasion to divert millions of dollars from students and invest them in a dicey real estate venture.

These students finance the downtown skyscraper while their tuition fees skyrocket.

Okay.

>> P. Pinto: Thank you.

Thank you, James.

Harvey, and then Mary Ann.

>> Good evening, my name is Harvey Smith. I'll identify myself as the author of a new book called Berkeley and the new deal.

So just to let you know that I do know about the architectural heritage of Berkeley.

So I think your assigned task is really to look at the individual trees, but what I like to do is to share my personal Berkeley forest.

This is not about just 2211 Harold Way.

When I first came to Berkeley to live in 1966, people could forward.

Young people, students, the low income could forward to live here.

There was low-income housing.

When I was here in the '60s, (inaudible) theaters were still up there on Telegraph Avenue and I took a course from Ernest C. in film. So Berkeley is a home to films and film making and we have a Pacific film archive here.

It goes very deep in Berkeley.

I've also worked as a union carpenter.

I've renovated my own home.

I can't tell you how many times I've been to Ace Hardware.

I also, to this day, work for nonprofit organizations.

So to see just one other nonprofit kicked to the curb, so to speak, is very unsettling.

So that's my Berkeley.

You know, but I also share this Berkeley or have shared this Berkeley with people like Charles Henry Cheney, pioneer, taught at Cal 1961, the architects, Maybeck, Morgan, plaidcheck.

That's, I think, the Berkeley that most of us live in.

We're not looking for the Berkeley of Uber and airbnb, one that's based on stock options. So I really urge you to do the right thing.

And this is, you know, much bigger than just 2211 Harold Way.

>> P. Pinto: Thank you, Harvey.

Mary Ann and then Suzie B. after that.

>> My name is Mary Ann and I feel bad going after such passion.

I'm going to talk about dry zoning right now because that's what I love.

And thank you very much to my wonderful community members for their comment.

Last year the Palo Alto city council placed a moratorium on their planned community zoning which is almost exactly what we're going through now.

They had it in place since the early '60s and since 1978, they required significant community benefits.

It sounds almost exactly what we're going through right now.

Some of the criticisms that led to this being abolished temporarily, they're trying to fix it, and I'll just read this to you real quick.

Critics have alleged well connected developers get a windfall via approved exceptions from the zoning code.

Questionable or even spurious public benefits are cited to justify approval in the absence of objective criteria or quantitative metrics.

And I'm not saying this to cast any aspersions against the developer but this is a long-term issue that they had to deal with, and I think we might learn from having conversations with Palo Alto's city council and their Planning Commission who actually that quote is from their Planning Commission.

I'm also curious about the state density bonus waiver on this.

The in-lieu fee, it's being called an in-lieu fee.

That's not an in-lieu fee.

That's a mitigation fee and the state does not see those two things as equal.

My worry is that we're violating the state density bonus in allowing them to buy their way out, and we don't know if they will or not.

But just having that option is unacceptable to me.

And I think we should really look into that.

The density bonus, I'll cite you the code.

65917.

You guys get 65915 a lot but this is a couple further down.

I recommend you look at it.

And also the housing element about the feasibility of high density housing.

Like this is 378 units an acre.

I have a lot to say about this and I will say a lot more in writing later.

>> P. Pinto: Hold it.

You have a question.

>> I would like to clarify since you read a quote.

Was that a quote from one Commissioner at a meeting or --

>> Yeah, you can look -- I can send -- I don't know if I can do this with you guys.

I'm happy to --

>> Send it to staff.

>> I'm happy to do that.

It was a report by the head of the Planning Commission and two other planning commissioners.

>> So they're city documents.

>> It's their internal memo.

>> Okay.

Thank you.

>> P. Pinto: Thank you very much.

Suzie and then Gina Moreland is up next.

Hi, Suzie.

>> Hi.

I'm Suzie bluestone.

I've lived half my life in New York and half my life here.

And I don't know if this is an appropriate project for Manhattan, but it's definitely not an appropriate project for Berkeley.

You have a lot of very eloquent speakers here who feel very passionate.

You've heard a lot of facts.

I'm not up on all these.

You'll hear more from others.

I just have one question and it's really not for you.

It's for everybody back here.

Is there anyone in this room who is not on payroll for this abysmal development who has taken their time to be here this evening to speak?

Is there anyone in favor of this development who is on their own time and is not being paid by wealthy development money?

Okay.

That was my question.

Then you can do the right thing.

>> P. Pinto: All right.

>> It's common sense.

And it's what's needed.

Thank you.

>> P. Pinto: Suzie, you still have a minute.

Do you have anything else you want to say?

You still had some time.

You're done?

>> I'm done.

>> P. Pinto: All right.

Thanks.

>> I hope you'll be done soon, too.

>> P. Pinto: Okay.

Gina Moreland, and then Julie Cato.

>> Gina Moreland: Thank you, members. Zoning Board.

>> P. Pinto: Gina, could you put the mic -- yeah, so we can hear you.

>> Gina Moreland: Thank you members of the Zoning Board for your consistent attention to the issue of Habitot Children's Museum and how we'll be impacted by this project.

Just today, as Mark said earlier, I met with Joseph Penner and Mark Rhoades and we discussed ways they might alleviate the huge burden this project would place on Habitot, forcing us to close and relocate.

This was an important first step and a welcome step on their part and I'm pleased to report that the developers have established a willingness to accommodate Habitot in some meaningful way yet to be finalized.

Nothing is in writing.

This was just the first meeting, but I'm tentatively optimistic that our conversations will tin and the developers will do right by Habitot.

I promise to keep the Zoning Board informed when the details are worked out.

I'd like to acknowledge that if it were not more the attention that this Zoning Board has made to Habitot Children's Museum -- which by the way, is very different from other tenants in the building which are offices and can easily relocate -- I don't think the developers would have come forward and approached us.

So I thank you for taking us under your wing and bringing us to their attention.

Please continue your vigilance with all the community benefits.

I know I am speaking like other people who have spoken tonight about the community benefits and how important it is for you as a body to represent Berkeley.

And thank you again for your attention to Habitot.

>> P. Pinto: We have a few questions but I had a question for you, Gina.

Has there been another meeting scheduled?

>> Gina Moreland: No, there has been no other meeting scheduled.

We are still in conversations.

>> P. Pinto: Igor and then Sophie.

>> I. Tregub: Thank you.

Since it's been a month since the last time we discussed this, help remind me, the total cost that you're estimating -- not the 250,000 you're asking, but the total cost of relocation, how much does that come out to?

>> Gina Moreland: Well, it depends on the situation but we're estimating two and a half million.

The 250,000 we asked for is just barrel going to -- barely give us the funds we need to qualify for public assembly improvements.

Virtually any building we look at will require certain kinds of upgrades for a Children's Museum or other public assembly use could occupy.

They include things like sprinkler systems and ADA upgrades and many things.

So the money we asked the developers for will just barely get us approved to be there.

After that we'll obviously have to raise funds for exhibits and funds for other kinds of infrastructure as well.

>> I. Tregub: And have there been discussions of figures beyond the 250,000 or is that

--

>> Gina Moreland: No.

And, in fact, they have not reached the level of our request at this point.

>> P. Pinto: Sophie.

>> S. Hahn: So Igor's questions kind of parallel mine.

I think it's important for you and also for the developer to understand that we can, as a Zoning Board, we can impose whatever we want as a mitigation.

So you might agree to \$250,000, but we might decide you need 2 million.

And that is in our power.

You need to know that, and so does the developer.

It would be a good idea, I think, for you to produce very detailed written documentation that you present to us and to the developer.

What you are basically saying is that you're a community amenity that stands to be hurt or perhaps destroyed, and that you will seek a small amount from the developer, but you're going to go to the community, your community, citizens, local people, private citizens, maybe some foundations, to make up the rest.

And you're not necessarily required to.

I just think it's important for you to know that we could exceed or go under what you agree with him, the developer.

And I think it would be useful for you to give us the numbers.

>> Gina Moreland: We'll be happy to do that.

>> P. Pinto: I'd like to make sure that we just keep it to questions for the -- so Denise.

>> S. Hahn: Could you please provide with us the numbers.

>> Gina Moreland: Yes, we'd be happy to do that.

>> D. Pinkston: My question is whether or not you could find a way to allow the securing of whatever funds are provided to Habitot to be done through the City, through some sort of escrow, more in the fashion of a community benefit fee or fund rather than a side agreement between the developer and Habitot.

In my mind, that secures the funds.

It becomes a condition of project approval.

It's done as a generic fund that we can use as a model for other projects that we look at.

So it's not just a Habitot benefit.

It's the notion that some sort of community benefit fund is an important part of a community benefits package that might then be repeated in other projects that are in this same zoning district.

Are you amenable to that?

>> Gina Moreland: Absolutely.

We take our direction from the Zoning Board.

I think you have the best interests of Berkeley at heart.

>> D. Pinkston: Thanks.

>> P. Pinto: I want to thank you for that comment because I think that's a more --

>> D. Pinkston: It's a question.

>> P. Pinto: Comment, question.

It's a viable way and there are models other cities use that are very effective.

So I'm glad you're amenable to that, too.

Shoshana has one more question.

>> S. O'Keefe: I have two questions, actually.

First is do you have a new location picked out?

>> Gina Moreland: We have -- somebody wants to see us succeed and has bought a building and is holding it in hopes we can raise the funds to move into that building.

There's no funds being given to us.

Obviously we're going to have to raise all the funds to do that.

And there are other tenants and other potential people in line.

So we have to raise that money relatively fast.

We do have plan.

We're trying to make that happen.

But obviously we need the momentum to make that happen.

>> S. O'Keefe: Is that location in Berkeley?

>> Gina Moreland: It is in Berkeley.

>> S. O'Keefe: That was not my second question.

My second question is similar to Sophie's question.

I was willing if you had, if you would be willing to produce some documentation or evidence regarding the effect -- the secondary effects of the business -- the effect of people coming to Habitot and then spending money in downtown Berkeley as a result. Because I feel like a lot of people come from out of town and I feel like it's a big economic engine downtown.

I see it everywhere.

>> Gina Moreland: In our original letter we submitted to the city council we did identify some studies we had done about that.

From our analysis, 70%, 70 to 80% of the families that visit Habitot buy something in the neighborhood, make some kind of purchase.

So I think you're on the right track that there is an economic benefit of having -- we get about 65,000 people a year through the museum.

And most of them are spending money in the neighborhood.

>> S. O'Keefe: Right.

Great.

Thank you.

>> P. Pinto: Okay.

Thank you very much, Gina.

Julia, and then Charlene.

>> Good evening, and thank you for hearing from me.

My name is Julia Cato.

I'm with the Berkeley tenants union and the Gray Panthers.

And I guess I want to speak about community, too.

I've been -- I'm new to this particular venue, but I've heard about this, the Harold Way.

I've heard about what's happening with the hardware store and with the grocery outlet and all of the viable businesses being replaced by large buildings to attract residents.

And my question really is where are these residents coming from?

Because they don't seem to be coming from Berkeley, particularly if the rents are going to be as astounding as I have heard.

And the first thought that came into my head when I heard these things is, my God, we're going to be turning into a bedroom city. Now I've lived in a bedroom city from time to time and I don't really like them.

What I like is what Berkeley is like now and, even better, what it was several years ago.

And people who live in bedroom cities are not engaged.

They don't do community.

They are not active citizens.

And if we create huge buildings close to transit centers, these people are going to -- a lot of people who would want to live in this Harold Way building are probably people who can't afford to live in San Francisco.

And it's right by BART.

If they want to spend their money, they'll spend -- they're probably working in San Francisco.

If they want to spend their money, they'll probably spend it in San Francisco and bring their goodies home on BART or enjoy them there.

So I really question whether building a lot of buildings for people who are from other places and are kind of transient is a useful thing for Berkeley.

>> P. Pinto: Okay.

Thank you.

Charlene, and then Becky.

>> Hi, I'm Charlene woodcock.

I have lived in Berkeley since 1967 and have loved living here and I'm extremely dismayed by this wave of many of them out-of-town developers who seem to be given preference by at least some in city government over existing local independence businesses, and those of them mentioned.

I love the Shattuck cinemas.

I go almost every week.

I quite believe -- I think it's quite clear and has been demonstrated that they are a magnet for people to come to Berkeley to see independent films, foreign films, things that united artists or the other big chains do not show.

If we lose those theaters, we won't have those films to see.

And it will be certainly a detriment.

I think the detriments to this monstrous building far outweigh the laughably inflated community benefits.

It will tower over the historic buildings that surround it.

Our public library, our post office, the Shattuck hotel.

And it clearly is intended to make money, so it will not provide housing for the people who desperately need housing.

I went around to some of the large buildings today just to get a sense of vacancies, and each one had some vacancies, but they rent one and two bedroom apartments rent from 3,000 to more than \$5,000 a month.

So obviously that doesn't serve the need.

Berkeley needs affordable housing.

I keep talking to people whose children can't afford to live here.

The other thing I want to mention is the traffic effect.

We already have bad traffic downtown.

If that's a building site going for four years, it's going to keep people away from downtown Berkeley.

>> P. Pinto: Thank you very much.

Becky and then Shirley.

>> I'm here speaking on behalf of my friend Robb Wrenn who knows more about the downtown plan and anything that followed the downtown plan than anybody I think in this room.

Couldn't be here because of family obligations.

He has written a detailed analysis of some of the problems, which I'm going to pass out to you.

Six-page analysis.

Many of the points that he makes have already been made.

He fleshes them out with numbers, as he's wont to do being an economist.

The thing that struck me tonight is what we're seeing is -- I saw Elizabeth Warren giving a speech to the AFL/CIO on minimum wage making fun that rising tied makes all boats float because there will be trickle down.

What we have seen tonight is what Elizabeth called magical accounting.

Magical accounting exposed because all of these claimed benefits which have funny numbers attached to them, as Sophie pointed out, are not actually benefits.

One very important point that we have in this report that I'm going to give you is that when completed, 2211 Harold Way could be worth \$300 million. If they opt to rent the

housing rather than selling it as condos, the annual income from the apartments, commercial space, and parking could exceed \$10 million.

With parking like that, we don't really contemplate such large numbers but it's ridiculous they're haggling with Habitot over whether or not they could give them \$2.5 million.

And Rob has many other good points which I will not read to you but I will pass it out.

>> P. Pinto: Thank you very much.

Shirley, and then Mike O'Malley.

>> Happy new year.

>> P. Pinto: Happy new year.

>> I'm kind of at a loss for words so I'm going to be hopefully a little bit out of character and just tell you it's too damn big.

And that's the underlying concept.

The question of affordable housing is on everybody's mind.

When studio apartments in San Francisco at tenth and mission are renting for over \$3,000 a month, why should Berkeley follow that model?

Right now the developer is given the choice of either providing affordable housing within the project or paying their way out of it.

I suggest that a real community benefit would be to eliminate the choice of paying your way out of the -- You know, building affordable housing somewhere else does not mean we retain our diversity in our downtown area, the very area that needs it.

Secondly, as mayor, I created the arts and theater district and I can testify that the movies, the Shattuck cinema, were always a part of that arts and theater district.

It must be strengthened, not weakened.

The cultural and arts screens must be preserved if that district is to thrive in the way that it should.

It's been the really only successful project in downtown economically speaking, and we must keep its strength.

I would also say that the -- And I think that the developer and the City should work together on that.

We were able to save the Elmwood.

We certainly ought to be able to save the Shattuck cinema.

The -- I agree with the person about construction, a unionized job is great.

It should be.

But it's not a community benefit.

It's something the city council should require of all construction projects over a certain amount in the City of Berkeley.

And there's no question about that.

And secondly, this business of putting on the sidewalk the times of arrival of the next A.C. Transit bus, you know, you could do an app for that.

A high school kid could do an app for that and put it on everybody's telephone, so it's not much of a community benefit.

>> P. Pinto: Okay.

There's a question for you, Shirley.

>> Mayor dean, you may not know the answer to this but I'm thinking you probably do because of your tenure as mayor.

If affordable housing is not included in a project like this, are there other sites in the downtown area where significant -- for example, an (inaudible) affordable housing project could be built, or are you saying paying into an in-lieu fund means necessarily that affordable housing could not be in the downtown?

>> I think it could be at certain sites but what's the problem with distributing it across all projects in the area?

On December 11th of this -- of 2014, Mayor Bates indicated that of the options given to developers, that developers were overwhelmingly choosing the option to pay out of putting affordable housing within a project, their own project.

Why would that be?

Obviously it's economics.

The developer can pay -- what is it?

\$20,000 out?

And that's cheaper than putting in the affordable housing within the project.

But the benefit to the City is the mixed income uses within those -- residents within those projects, not pushing them off into one place where they might all live or one area where they might all live but across the city and that's the strength of Berkeley.

>> P. Pinto: Okay.

Thank you.

Thank you.

Microo'Malley, and then dean, Dean Metzger.

.

>> What little I have to say has been said, so --

>> P. Pinto:Mike, could you put it --

>> Has been said so well.

I want to bring one or two points, remind you again what you have seen many times so far.

We're talking about a five-year hole in the middle of Berkeley's economy.

Five years building these things, when hundreds of thousands of visits to downtown will not be there because there's no reason to come.

All the restaurants who think they're going to be selling something or other, food and so on, will have no customers.

So there's a five-year hole and that's the deficit, not the benefit.

And just again in terms of the amount of -- very simple thing from Robb Wrenn's, this thing is worth \$300 million when you're done.

That's quite a bit of money.

Probably a pretty good -- it's not going to cost \$300 million to build it.

And so you have really a lot of area to try to get community benefits so somebody can do this.

There are only going to be a small number of these buildings and they should have a significant benefit to the community, not just 500 feet of lobby, you know, for millions of dollars.

So I think that the thinking needs to be changed.

This is a lot of money.

It's not going to happen again very often.

Two or three times.

And you'd like something which is there for a hundred years.

Thank you.

>> P. Pinto: Okay.

Thank you, Mike.

Okay.

Dean and then marl.

Marl law.

>> Good evening, and happy new year to all of you.

I'm very confused about a couple of things here as to what the definition of a community benefit is.

What I've heard from this project is that the community benefits are all benefiting the developer.

Why aren't we thinking out of the box?

What is a community benefit if we're talking about a Habitat?

Why shouldn't they be given all the money that's required for the move and to move back into the space with no rent at all?

That would be a community benefit.

The cinema is the same way.

If they tear down this thing and build cinemas, what is wrong with them giving the cinemas basically free rent so we as citizens can go to movies for \$6 a person instead of 12?

Why is it they can't provide a benefit?

We have a city park across from this building that has a fountain that's been talked about for years, to renovate it and make it working again that would be a community benefit that would last forever.

If we would think out of the box and find community benefits that would actually benefit the community.

Instead, we hear that a community benefit is the fact that this is a green building.

But Berkeley requires it be a green building.

All these kind of issues we've heard from the developer are things that are required by the City, not the a benefit.

>> P. Pinto: Thank you, Dean.

Mari and then Merrilie.

>> I think you mean Moni Law.

>> P. Pinto: I'm sorry.

I apologize for that.

>> No worries.

I'm trying --

>> P. Pinto: Did I get the last name right, at least?

>> Law.

Hi.

I don't know if you received my letter in your packet.

I sent it within the deadline by one minute at 3:59 on the deadline due at 4:00.

So with limited time I just wanted to summarize my concerns.

I'm a downtown resident of Berkeley, Cal graduate, class of 1982.

And I returned here four years ago to age in place.

And as I age in place, one of my regular spots is the Landmark Theatre.

I was there just this last weekend and while standing there looking at the project design in the window with the proposal, I ran into one of those out-of-town couples that they were coming into the theater.

And it ends up he's a planner from London and I said you should come to the ZAB meeting and talk to them about your concerns because he thought it was a bad project and he thought it was a bad idea for a beautiful city like ours.

I also just purchased ten tickets and I'm taking ten students from Cal Berkeley to see Selma this Saturday.

It's a great film and I'm also the mother of a filmmaker and so film making is not a dying industry and I do believe the theater will thrive into the future.

The other point I want to make, the Web site does show the revenue for the theater is 1.5 to \$2 million.

The statistics are online.

I talked to the management there.

They don't want to move.

So if you get the perspective from them, if they're allowed to speak, they might feel a little bit uncomfortable in talking about their perspective.

Similar to the Ace Hardware store.

The owner and the management there, they did not want to move, and I spoke with them before the development that's going to displace them.

The issue with regard to housing, my day job is a housing counselor. I spoke to a landlord today. They were shocked at the cost in Berkeley. This particular building when it goes up will not be rent controlled so you all know that and understand that a unit will run from \$3,000 to \$6,000 a month and not subject to rent control.

Where are the tenants coming from?

From San Francisco, I talk to them everybody, from Google, Twitter, and other places. So the high cost of living and housing, we have to look after the people of Berkeley and provide more affordable housing.

Thank you.

>> P. Pinto: Thank you.

All right.

Merrilie.

>> Hi, I'm Merrilie.

I'm wearing these funny clothes because my sunshine was blocked by a development and that's what this is going to do.

It's going to block sunshine all around the hotel and it's going to block the windows, the sunshine for the people who will be in those rooms and it's going to cost a lot of money. If you're talking about green buildings, that's not very green.

The green has gases.

I'm telling you, that's why I wear three pairs of pants in the winter.

The other day it was 30 degrees.

ABAG, I went and I go to these ABAG meetings and I learned that they want to build 50,000 of this sort of affordable housing units for -- well, 60,000, but they want to do some in Berkeley, too.

And it's for those lower level tech workers that can't afford.

\$3,000 in Berkeley is affordable housing for them.

So they're going to be commuting again.

That's not green building because the greenhouse gases when you're commuting, I'm afraid not.

It's a real estate thing so if you can put ten times as much on the land.

But like for many of us who live in the community, there's only 41% of us homeowners now because they're building all these big boxes.

So we pay the taxes.

The university moves down, takes over the land, you know.

But you can put ten times as much on that land, then what does it do to our homes?

So it's just a matter of time.

So people can say all the things they want, but we're going to get nothing.

This is the beginning of a terrible, terrible project.

And the benefits aren't there.

We've got the benefits.

They're going to wreck them.

And look at people like Patrick Kennedy.

Patrick Kennedy took out how many movie theaters?

Four at least and he only bought one back because somebody sued them.

And the library, we were supposed to have parking and some came every day to that DAPAC that Kelly was talking about, every day.

When are we going to get the parking?

We never got the parking.

But we're going to have this blocked and a plaza where you can't even walk down the street?

And I have a lot to say but I guess I can't say.

>> P. Pinto: Thank you, Merrilie.

The last card I have is for Steve.

I see in you the back there.

Is there anybody else who would like to talk after Steve?

>> Good evening, commission members. I was here late because I was at another commission meeting.

Too many commissions.

Not too many commissions.

Too many meetings at the same time.

But I'm sure most of the points I would make have been made already so I want to note a few things that may not have been touched on.

First, I have a handout for you that I gave staff that have some detail in it.

But I want to thank you for bringing up the campanile way view issues in your comments because last month the developer finally grudgingly put forward a possible design that would partially, at least, ameliorate the campanile way view impact but they said they're not proposing this because they would need to get a variance from the ZAB to do the building in this form.

So I hope if they put forward a design like that and they come to you, you treat them kindly on that issue.

They won't be able to blame the loss of the view on the ZAB.

So benefits, community benefits.

This building is going to be here for a long, long time.

Benefits should be here for a similar length of time.

50 years from now when we're all gone, people are going to see that building.

They should be able to see the benefits that that building paid for.

And if those benefits are simply things like paying a higher wage to a plumber from Castro Valley for a year or two working on the building, that's not going to matter 50 years from now.

The Shattuck Hotel issue.

The Shattuck Hotel facade needs some work to bring it back to its original glory, and the building needs some seismic work.

That was rejected by the developer in the community benefits package because they said that's not a community benefit.

This is absurd.

Preserving the Shattuck hotel, the Shattuck hotel is an economic engine.

It's a visual center piece of the downtown, it's an important Landmark.

This project can make a good financial contribution to fixing the Shattuck hotel and making sure it's here after the next earthquake.

And then -- so the last comment comment I think I'll say the question was raised of who will live in this building.

The developer answered that in the very first meeting he made a presentation on this building before the design review committee February of 2013.

And he said -- that was asked by the chair, and he said the residents -- the intended residents would be empty nesters and people who want to live in San Francisco and can't afford to.

So directly from his mouth.

>> P. Pinto: Okay.

Thank you, Steve.

Steve, there's a question for you.

>> S. Donaldson: I have several.

I'll make it quick.

Isn't the Shattuck hotel property a completely separately owned piece of property?

>> Yes, yes.

That's what I believe.

The Shattuck hotel itself.

But this developer owns the commercial floor of the block.

And the commercial floor is the soft story which supports the hotel.

>> S. Donaldson: Got it.

>> So they are apparently proposing to do seismic work in the area where the theaters are, at the southern end of the building.

But I don't think they've addressed doing seismic work on the hotel overall that would help bring it up to a level where it would completely survive.

>> S. Donaldson: But they don't own that.

>> They don't own that.

But it's like Habitat.

It's like benefiting another --

>> S. Donaldson: Thank you.

>> P. Pinto: I think that's a question we can also ask the applicant more specifically.

Okay.

Igor and then Sophie.

>> I. Tregub: Yes.

Just curious, your recollection from discussions with the developer, what about the proposed floor plan required them to ask for variance?

>> I'm not a zoning expert.

Maybe the staff can speak to that.

I think it has to do with the distance between exit levels on upper floors.

And so if they reconfigured the building to remove units that are right in the midst of the view corridor and put them elsewhere where in the building, then the floors would get a little wider and I think they said they'd need a variance for that.

But staff can probably speak to that much better.

>> Yeah, I would rather have staff and also we have Bob and George from design review who can probably answer that more.

If there's any for the applicant -- I mean for the person speaking, would be -- thank you very much, Steve.

Appreciate it.

Okay.

Last card is James.

Thank you.

Are you James??

>> Mic.

>> (Off mic.)

>> P. Pinto: You need to fill out a card.

Go ahead, James.

>> I wanted to follow up on something Shirley Dean said earlier about the need-for-affordable housing to be built alongside the other housing.

I have a chart from San Francisco, and I'll leave this with the clerk but what it shows is that when you allow developers to pay a fee and build housing elsewhere, that housing does tend to be concentrated in certain neighborhoods.

In San Francisco, for example, the bulk of housing gets put into the civic center, western addition, south of market and you end up with no affordable housing in places such as Russian hill, west of twin peaks.

So the in-lieu fee for infill development does not achieve that goal.

I'd like to address the question of community benefits proposed by the labor agreement.

And the argument seems to be that the entire package of increased costs due to being a union labor project is a community benefit.

And I think this is not really supported by the statements that the developers themselves have made.

If you look at Berkeley side in their October 31st issue, one of the consultants to the project describes the benefits of having a union package putting in a much better building, much better streetscape and a system that works together because of the union putting it together.

It will increase project cost by 10% but that is worth it for the community, the overall stability on the job site throughout construction and a better quality project created by skilled trade, trained craftsman.

So when you look at the community benefit, it's not all community benefit for the public. It's also the developer who benefits as well.

These include the benefit of a better quality project, the project may be built better, on time and these could be reflected in higher rents for the project, and reduce maintenance down the road.

So when you pencil it out, the benefits of this may actually be minimal or not that large. Finally on the issue of the parks and the public space, it's noted that when you kind of net out what's required and what's different it comes out I believe estimates like 600 to a thousand square feet.

That comes out to the equivalent of two park woods.

Basically about four parking spaces which we now have in various neighborhoods throughout the city.

That hardly qualifies as an extraordinary benefit.

>> P. Pinto: Thank you very much.

John.

>> I'm John McBride, the president of Berkeley architectural heritage.

I too was at the meeting up at the Landmarks commission where they are now trying to sort out, as well as the other commissions in the city, the new standards that are being proposed for energy efficiency.

It's one of these complicated city things that didn't get sorted out right before it went to council and it almost didn't get any public scrutiny.

However on the 20th of January, I believe the city council is going to defer the matter for further study and community input.

I think something similar has gone on with this project.

I think you folks are doing your best to sort the issues out.

I don't want to speak to any specific detail of this benefits package and I'm not talking about the building itself because I believe the topic tonight is the benefits.

But several speakers, Mike O'Malley, and a computer engineer of extraordinary intelligence, the man who spoke before me, James, have said we really need to keep clear what is a benefit.

Is it fulfilling the requirements that already exist in doing the due diligence and in building a building correctly and using union labor if that results in better work for the developer as well as public commonwealth?

Those are not benefits.

Those are requirements.

Are we now to the point where the community benefit will be in the developer following the requirements of the code?

Do they have to be given a reward for doing what they're supposed to do?

No.

It's about some benefit.

Dean Metzger suggested a benefit.

Get the fountain built.

Get the fountain in civic center park rebuilt.

There are a number of things like that that can be done.

There is the special case of Habitot.

When I was on the human welfare commission years ago, they came to us for support.

We did our best to support them given the limited funds we had for a children's project in downtown Berkeley.

So the benefits are the extras.

They are the things given back to the community for the imposition.

How can anybody take care of the inconvenience that's going to go on in the city?

That's the thing that this benefit would be and it isn't about them doing the job the way they're supposed to do it.

Thank you.

>> P. Pinto: Thank you, John.

All right.

Thanks very much for all the comments.

I don't have any more speaker cards.

I don't think there's any more coming.

I think we're going to close the public hearing and bring it back here.

I have been informed -- please, sir -- I have been informed that the captioner needs a break because it's nine o'clock, so we're -- nine o'clock, so we're going to take a break and continue with the discussion with the board up here.

Ten minute break.

[Break]

>> P. Pinto: Okay, can everybody take their seats?

We're going to....

Okay, everybody.

Can everybody take their seats, please?

We need to call the meeting to order again.

If everybody can take their seats, that would be great.

Thank you.

Okay.

Thanks very much, everybody.

Okay.

So we're back and we're going to bring it back for discussion to the Board.

I'm going to actually do what we normally do for the long EIR and give everybody five minutes, and then we'll come back if you have other things to say after that and we'll make sure everybody has time to say, but I think you can actually say a lot in five minutes.

And we'll start down from right to left, my right to left with Denise and work down.

You don't have to use your whole five minutes, about you it's there.

You get more at the end if you need it.

>> D. Pinkston: Okay.

>> P. Pinto: So go ahead, Denise.

>> D. Pinkston: All right.

First of all, I would like to thank the extremely thoughtful, detailed nice well organized comments that were presented tonight.

Though some people might chide me for what I wound up doing as a profession, my family was union, I went to college on full scholarship and I lived in Berkeley ever since I went to high school.

I was also chair of the downtown Planning Commission in the first generation when Shirley was mayor and some of the other speakers in the audience were part of that process and the most important driving force of the downtown plan was to bring back vitality to an area of the city that then was languishing.

Retail stores were shuttered. There hadn't been any buildings built in downtown since the golden bear had been built on university Avenue.

And the goal of it was to create a cultural arts mixed-use hub.

That was the goal of the downtown plan a long time ago, I hate to admit, but at least 20 years ago, maybe more.

I can't believe I'm that old. I went to the grand opening of the Shattuck theaters and those things are not as old as some of us think they are.

They were built during my adult lifetime.

They were built sensibly and in the way of respecting an old movie house but they aren't old theaters.

It was an adoptive reuse of what was then a functionally obsolescence department store.

Hinks.

And I think we reached a 58 when that Hinks building may not be the best use for that site in an active mixed-use doubt but I think the goal of creating community in the downtown through our land use planning is still the right idea.

And the new downtown plan is a different vision of how to get there.

But with that as the overarching goal, I have to agree that the whole purpose of community benefits and the discussion tonight is when we're all gone, when all the paper that we're pushing tonight is no longer around, people are going to walk by a really big building and they're going to say that's a really big building.

And then I want the next thought to be but look what we got in return.

So that means 50 years from now, whatever we get, if we approve the building, needs to be there.

It needs to have longevity.

It needs to have certainty.

We have to understand the mechanism for delivering the benefits so they're not just single generation or first year of operation.

The space should be whatever we create multifunctional so that it's adaptive over time.

As the economy changes and technologies come and go and Imax comes and goes and is replaced whatever the latest technology is for screening in public places.

So with those overarching goals, a community benefit should meet those goals.

It's here after we're gone and it's something everybody can see, feel, and touch for our kids, my kids.

When I'm long gone, and my story 20 years from now will be just as poorly remembered as my story 20 years ago when I was on the downtown Planning Commission.

With that as a goal, I think that this package is a perfectly fine first step, but I feel like many of the speakers, disagree fundamentally with a lot of the economics in it.

And I don't want to spend my time tonight going through it because I also agree with the speakers that the purpose for tonight is for us to start to take leadership of this issue not to be reactive and nit-picking what the developer did.

So with those overarching comments, here are my thoughts about the subject of community benefits for this project and other projects.

It's a huge fundamental principle of the downtown plan with mix of uses, affordable housing and creating a cultural hub for the city.

Those should be the driving forces behind what we think of as benefits to the community.

So if the theaters are the expression of cultural hub in this particular project, that space needs to be multifunctional.

If movie theaters go the way of the dinosaur which perhaps they are currently, we need to make sure that that space still allows community members to gather, for them to exchange the kinds of activities that go on when we view together, whether that's viewing a live theater, going to Berkeley opera, going to the symphony, viewing art movies.

And it's possible to create a multifunctional cultural space that can work today and can work in perpetuity.

So I would like to have us look at whether the design of those spaces can have longevity and perhaps allow a multicultural activity.

Speaking of perpetuity whatever we do in terms of community space in the building it has got to be locked down so that it can't be a side agreement between the developer and a private party.

That is not sufficient.

So it could be leased long term to a nonprofit entity to own and manage the space, not dissimilar to the structure of the Elmwood theater which was mentioned previously.

There could be another mechanism.

But the control of it needs to be residing in the community that it's benefiting so that we don't have to get into an enforcement problem every time the tenant changes over.

And there will be changes.

There will be changes in who is in that building over the course of what remains of my lifetime and the generation of the building.

Next for my remaining 19 seconds we need to do a cultural fund --

>> P. Pinto: We cut you -- yield --

>> G. Powell: He did include one minute to that.

>> D. Pinkston: Rather than getting into paying specific community users that we love, like Habitot, I would like to see the notion of a community benefits fund on this project and in other projects in the downtown.

And the fund should be established with some mechanism that is standardized to some fashion across all these projects, and then the allocation of the fund could be to say a Habitot or to a seismic upgrade of an adjacent historic structure but it needs to be -- it needs to be something that is adaptive from this project to the next one.

And in this case, the fund could primarily go to Habitot and would certainly have to be of an order of magnitude enough to do what the ZAB and the city council want it to do.

Lastly, lots of people brought up the topic of affordable housing.

I didn't personally know we were doing a nexus study so I would like to hear more about that.

I don't know if that is a thing about that we're doing but I would like to hear more about it.

As one of the speakers pointed out obviously if you can pay a \$20,000 fee as opposed to spending \$40,000 to underwrite a YouTube and make it affordable you're going to pay the \$20,000 fee.

In the case of community benefits, I think the economic report should consider what is the true replacement cost of the unit.

I'm not saying we should set the fee there but I think we need to understand that in this context.

And then on that notion of whether to require it in this building or elsewhere, the most expensive way to build housing is to put it in a highrise tower.

Those units cost -- I don't know, six, \$800,000 apiece to build.

That's why they're being rented at such high cost.

Maybe a million dollars.

I don't know, I'm not familiar with this person's project but they are not inexpensive housing.

They are not by definition affordable because the cost of building a highrise with full union labor is the most expensive way to building anything which is why mostly it happens in very few cities in the world.

And if we want to build more affordable units, then collecting a fee and spending that fee to build units in a building where the per-unit cost is less, where it costs \$500,000 a door to build a unit, that's a better way to get more units and I think that's just something the ZAB should discuss, whether we want units in the buildings where we will get fewer of them and they will be more expensive but they will be distributed or whether we want to get a fee where we'll get more units and but they'll also be more concentrated in projects for profit rather than nonprofit developers.

Those are my thoughts.

>> P. Pinto: Thank you, Denise.

I had one question, though, because that last statement about affordable housing, I do question the land cost associated with off-site of those affordable units.

Also the nexus between providing affordable with market rate as a social objective is also something that's embedded in our housing policy.

So I think that's an interesting idea, but I think there's other things we should also consider as we're moving forward.

But thank you very much.

I'm keeping a list of things down in terms of how we're going to actually kind of summarize all of this at the end.

So, George, why don't you go ahead.

>> G. Williams: Thank you.

I don't have a whole lot to add to what Denise said.

I quite agree with her concept of multifunctional cultural space that is managed by a public or quasi public entity so that space does get utilized for the benefit of the community.

Done that way it, clearly is a major community benefit provided by the project.

And I will accept the reality that the replacement is somehow achieved.

We won't have the theaters.

It's not a matter of we want to keep the existing theaters.

That's not our decision to make.

That's more the marketplace.

I am a little distressed that so much of the public commentary tonight was not what ought to be provided that would be a community benefit or, rather, I should say your definition of a community benefit was no project.

Because there were very few suggestions of additional things that might be done.

The fountain in civic center plaza is one.

If you look at the SOSIP plan of priority projects, the center city, day daylighting of the stream.

It says plant 500 street trees in downtown.

That would be a major community benefit.

Not very expensive.

And I would like to see something like that considered.

I think the plaza and what's proposed for Harold Way would be lovely if it's achieved.

And that's going to take some involvement of city agencies.

I think doing what you would like to do to make that a slow street will be difficult to achieve and if you don't achieve that then I don't think that does much more than what I would expect a base project in the downtown to do.

I think we're all saddled with the uncertainty that plagued the City Council when they were finally putting together the downtown plan.

They did economic studies.

They couldn't figure out how much a new project could bear in terms of additional benefits to go above 75 feet, so they said, well, we'll leave it up to the subsequent decision-makers to decide what is a community benefit without any clue as to what that is.

The labor agreement I think is a wonderful thing to have.

I don't know that that's -- that alone would be sufficient but that is certainly a useful additional thing, as are a lot of the smaller transit proposals.

I do think that the one thing that should be done and we need to do various studies to figure out how to do it, just 10% affordable housing in this day and age, in this region when other communities are imposing a much higher percentage is just doing it on the cheap.

And I think the minimum should be 15%, and then the arguments of should it be on-site or in-lieu is always troublesome.

There are arguments on having it both ways.

Certainly if it's to become a condominium, if you have the unit, the affordable unit in the project, that unit has to bear its fair share of homeowners dues, and that can be far beyond the ability of an affordable income family to bear.

So I'm not quite sure what the consultant is supposed to do with the information.

Could I ask?

Would it be useful for us to suggest things for the consultant to look at?

Not that we necessarily are proposing them, but just get a sense of the feasibility of it.

>> I think what we would like to do is probably get some suggestions about, one is first of all understand are the benefits significant?

We're asking some key questions tonight.

One is do we find the benefits significant.

If not, then what benefits do we think are significant, and make some suggestions that staff can then start to look at in more depth.

I think that's what we want to try to do have some consensus about areas that we would like to see those benefits occur if they're not currently being proposed.

>> G. Williams: Okay.

So we'll have a discussion at the end of what those are and make suggestions as to what specifically the economist should look at.

>> P. Pinto: Yes.

Bob.

>> R. Allen: First I want to thank you all for coming because without you here, it would be ungodly cold in this room.

I have comments about the in-lieu fee issue and others, but I want to kind of back up and tell you how I view we got here and what we could maybe do better to work as a team on this.

You know, at some point the City -- actually, over decades the City has developed its zoning code and very recently did the downtown plan in what was the most exhaustive or I might say excruciating series of public input that I've everybody seen in the decades I've lived here.

And I don't like all the plan, but we're here to make it work.

And I don't think it does any good to act as if we don't have a zoning code that says you can build this high, you can build this dense and that's the goal for downtown.

I think what we need to do is work as a team to figure out the best way and the best results that we can get for downtown.

Also, part of that, I get -- I'm a retired architect.

I practiced for 50 years all over the West Coast, and I worked with developers, and I worked with city agencies and contractors and all groups that could go do this at any time.

And the successful projects for everybody were where it worked as a team.

I'm really disturbed at the use of -- at scapegoating the developer.

You know, the City -- they didn't come in and say, hey, that's a great spot.

We want to build a 25 story building here.

It started with the City zoning this and saying we want increased housing and high density development downtown.

And if we're going to get anywhere successfully, we've got to stop the scapegoating and work as a team on this.

I guarantee you from my experience we're going to get a lot better project and result for the city than we will with constant conflict.

I want to thank Denise for her comments because I thought that really set a good tone for where we're going with this so I'm not going to get into more of the community benefit issue, but I just want to comment on other things that have been brought up.

The in-lieu fee happened here within my recent lifetime.

It was instituted by the council.

And I'm going to say it was ten years ago, but, you know, it could have been 20, and it could have been five.

But up until that time we did not have an in-lieu fee.

And one of the proponents is our City Council person sitting in the rear of the room and you might ask him what the goals were with that.

But I'm not sure -- I'm not sure it's working for us.

I think that it needs -- it's not our role to re-look at that.

That's a council issue.

And some of you here could direct those questions to the -- your council person and see if we could get that rolling.

You know, we should stop using the term "affordable housing." There is no such thing.

I was sitting here trying to think the multiple times that the cost of construction has doubled in the last 15 to 20 years and it's enormous.

It's not the developer who's trying to reap all this money that's done it.

It's our own prices, inflation, construction requirements that have done this to this heavy type of construction.

And I, frankly, don't know how we build affordable housing -- oops, I wasn't going to use that word -- supported housing in these conditions with the incredible price escalation that's going on.

Again, there's nobody out there to blame.

It's just the facts and we've got to look at that and figure out how we can make the best of it.

I think that's pretty much it.

I just would implore all you in the room and everybody at this table, let's get rid of this us versus the developers or us versus the downtown plan or whoever you want to kick around.

Let's work it as a team on this.

>> P. Pinto: Thanks, Bob.

Bob, I know you have to leave at 10:00.

Those are your comments, pretty much?

All right.

If you have some -- We might have some time after.

Shoshana, go ahead.

>> S. O'Keefe: Thanks.

Thanks to the three who have gone already.

With all respect to Denise, I think I am going to nit-pick because nobody has done it yet.

Somebody has got to, just a little bit.

Mostly I have a lot of -- I'm not really impressed with any of the major areas of community benefits here.

I have a lot of issues with the Transportation Demand Management package.

I've made two lists here of all the various items.

They mostly fit into two categories.

One is they are amenities to the residents, not to the community.

Extra transit pass, E.V. charging stations, cargo bikes.

If you're going to put it in your marketing materials, then it's not a community benefit.

It's just an amenity.

So those are great, and I understand that they reduce trips overall and that helps everybody, but that's not very convincing for me.

And then there's a bunch more that I think are all already provided by the bike station which is going to move to Center Street garage.

So I'm just very much not impressed by that whole package.

Oh, and the screen -- I don't know, I guess I'm the only person who noticed we already have a screen that says when the bus is coming in front of the B of A.

It would be nice to have another one, I guess, but I'm not impressed.

The union labor would I like to see but I'm going to definitely wait to see the economic analysis of that before I can have an opinion.

The cinema, the same thing.

I need something definite before I could consider that as anything substantive.

And I actually really like the idea, Mr. Metzger's idea of just giving them free rent in perpetuity because then they probably will stay in business and it might be expensive but we're talking about expensive things.

And also accounting for the possibility that it could become something else and always remain for the benefit of the community and probably an arts related function would be appropriate.

And lastly, I want to talk about Habitot.

It's very important to me to talk about it because I think -- I actually don't know you, Nick, very well but I think I'm the only person with young kids.

>> N. Dominguez: No.

>> S. O'Keefe: Mine are younger.

>> You are younger than me.

>> S. O'Keefe: I was a member of Habitot for a long time and I don't know if people who don't have little kids see the world that Habitot is the center of.

There is little kids everywhere in Berkeley and they go to Habitot and they go to the Y and they go to the park.

And if you're in that world, you know.

And it's very important and there's lots of people and our kids are important.

And until we have universal preschool, which we don't have and we should, places like Habitot are so essential for our children's development. It's a wonderful, wonderful place.

And it's not just the kids who come and pay.

They throw birthday parties for homeless kids; okay?

This is a wonderful, wonderful, organization.

And if this project is going to force it to move, possibly close, this project is already starting in the red as far as I'm concerned.

So, yes, giving Habitot enough money to ensure that they relocate and perhaps become better is a community benefit, but it's one that you have to do just to get even with the City as far as I'm concerned.

So I want to see a big payout to Habitot, that's what I would like and much more than I think what Gina is asking for, and then on top of that more significant community benefits.

And I'm not that impressed with what I see here so I would like to see more things brought to the table.

And that's all.

>> P. Pinto: Good.

Thank you, Shoshana.

Sophie.

>> S. Hahn: Okay.

So I have a couple of different points, and bear with me.

I scribbled them so I may misspeak.

But I'm going to try to be succinct.

So first I want to thank staff.

I'm going back.

I went back and re-read everything that you prepared for us.

I had read it last time and I went through it again and I just really appreciate, you guys are grappling with an amorphous thing and I like the approach you have taken to create some framework.

And I think that these discussions will help you make that better.

I do also want to say to the developer that I think this was a really hard territory for them to have a requirement that is not only vague, very vague, completely vague, but to be the first one to have to come into it.

And essentially this project triggers ZAB and community and discussion about frameworks, about what we value, et cetera, that's way beyond just what they might be asked to provide.

And I think that is burdensome, and it may be that the cart was put before the horse by asking them to come up with something when they don't really have, you know, a framework to work within.

So the other thing is they're a for-profit developer and I don't really have a problem with that.

That's who they are.

It's not their -- Their job is to maximize their return on this.

So, again, for us to ask them what do you think the community ought to get, I think it's misplaced.

And so I also -- I would say I agree with Bob.

I think they're in a hard position as well.

And I think the work really needs to be done by ZAB, with staff's excellent support, by the community, by the city council.

And, you know, then let's evaluate what we are asking of the developer and what they can come forward with.

So then some framework things.

Second topic here.

A community benefit for me is not the same as, quote, "Anything that arguably benefits the community." So, you know, you could say that -- some people would say that putting up this new building in itself benefits the community.

I think other people clearly disagree.

But one might say that.

And you could say that it generates jobs, and you could say that there's going to be some housing.

But those are not community benefits.

A community benefit is a term of art.

And so I really agree, I think, with where Shoshana was going.

I call them mutual benefits.

Mutual benefits are not community benefits.

So, yeah, bike parking.

That's really awesome.

It has a benefit for the community at large.

It's likely to reduce how many cars are on the street, but really, that's like a great amenity for the residents.

And I know that's going to be in your marketing materials.

And, quite frankly, the amenities that this offers to its other residents are going to be reflected in the rental prices they can get.

They actually monetize this stuff.

So the fact that it also incidentally benefits the community is really not significant for me. Another example I'd like to call out in particular is sidewalk and street improvements around the development.

The development itself is going to tear up the existing streets and sidewalks.

Certainly all the way around the development but actually with all the trucks with the concrete and whatever, they tear up the roads for miles coming into Berkeley and exiting.

So the fact that they're going to replace and improve.

Come on why not improve it a little bit?

Fixing what you ruin is not a community benefit and, quite frankly, you're not going to build these luxury apartments and then leave the torn up sidewalks and streets.

Its directly beneficial to your development to do these things.

So it's a mind set that I think our staff needs to adopt and that we need to communicate to all developers that these -- what I call these mutual benefits are incidental, where the majority of the benefit is captured by -- or even half is captured by the project and it happens to also be good for the community, I just would take those things off the list. So straight out, to me, those things just get pulled out.

Okay.

Another point.

Also a framing issue for me.

2010's Measure R and the downtown plan bestowed extraordinary gifts on this parcel. I think we need to get clear, and I'm going to ask for that to be one of the things that is quantified by the study.

By the stroke of a pen or the vote of a council or a vote of the people, the development potentially -- potential of that parcel -- I don't know exactly what it was allowed previously, seven, eight stories, I don't know, was more than doubled overnight.

Whoever owned that land and whoever was going to develop that parcel was given the huge windfall.

And, you know, sure it cost more to build a bigger building, of course, but the marginal cost of building the additional units is not the same as the first few units; right?

I don't know how big that delta is, but I know that a project on the same parcel with more units is more lucrative.

So the community gave a lot to this parcel and this development opportunity, and it got it for nothing.

So we're not beggars here.

The community is not a beggar.

These are not little gifts that this project bestows on us.

This is us retaining some portion of what we gave.

Now, maybe other people disagree with that.

That's my frame on this.

>> P. Pinto: Excuse me, Sophie.

You're well over your time.

Do you want to come back?

Do you want to have us come back because I think there are some other people who would like to also --

>> S. Hahn: Why don't I finish this point, okay?

So on the same note, Berkeley is an attractive place to build because of its culture, amenities, its cool reputation.

BART is there.

We paid for BART.

A.C. Transit there.

It's publicly subsidized.

All the things that make the downtown a desirable place to build are also our gifts to a developer.

So again, the mind set that -- I think our mind set around this whole community benefits idea really needs to change.

I have a couple more points and I'm happy to rest for now.

>> P. Pinto: Okay.

Thanks, Sophie.

Steve.

>> S. Donaldson: Hi.

I'll try to keep mine fairly succinct.

I just want to comment around what Denise said initially.

The fact that the city is allowing this kind of project to be built and is encouraging this density is a benefit to the downtown.

People will be coming downtown.

Nobody talks about people will be doing things, buying things there in the downtown and that's really important.

The other issue I think is important, we do need to do what Bob said.

We need to work as a group, and with your input about how to shape the probably, not to say no to it.

Because I think this is something that should happen.

The vote, no on R, kind of said what people are looking for.

Some density.

And there is a benefit to that in the community.

The key about the benefits, though, I feel it's so vague and so challenging to look at, we need to look at them in categories, and I'm not going to define exactly what they should all be exactly but like cultural, historic, environmental, social.

We may want to put things in buckets eventually just so we can look at it.

They could benefit the developer but they could also benefit the community.
We have to look at what is important for the developer to do and for the community to get a benefit out of it.

And there were some things that were never brought up as benefits that I think are admirable to the downtown.

You mentioned, George, planting trees.

You know, doing landscaping.

Adding to the vibrancy of the physical environment in the downtown.

Some other items that could be brought up around that.

And the issue about relocating Habitat, however that's negotiated out, that is a social benefit.

That adds to the vibrancy of that part of the community.

But where do we say it's an obligation versus a benefit?

I think we've got to be clear about that.

The other thing is the -- removing the theaters and relocating new theaters in there, we could have a debate forever whether the movie industry will be here in five years or eight years.

I do know I read Landmarks -- I did a lot of reach research on them.

They're moving towards a higher end market.

They're going for people who want to have cultural, you know, international films and independent films.

And the theater renovations they've been doing around the country reflect that.

So this sort of fits that model for them.

Now, will they be able to carry through on this?

I don't know.

I do think it's important to keep in mind -- and I don't know how you write an agreement about this, that whatever happens when this is built, they are used as part of a theatrical movie production or presentation maybe there's some additional agreements with Pacific film archive.

I don't know.

I just am saying we don't want to have it be built and not used.

And I don't think the developers do either but they can't control every tiny moving part.

I'm kind of jumping around here buildup I wanted to reflect having these buckets to look at for benefits and come back to them, and maybe we can move forward with that.

>> P. Pinto: Thanks, Steve.

Igor.

>> I. Tregub: Thank you.

I think the temperature in this room is a (inaudible) to get us be more succinct.

So with that in mind, just a few points.

One, I really appreciated hearing all the public comments, and I think what that reminded me, if there was one general strain of thought there, for me it was that our downtown should be an expression of our values, our joint community values. Berkeley's values.

And along with that, it raises the question a downtown for whom?

And I think in a place as socially progressive and as vibrant as Berkeley is, it really should continue to be a downtown for everyone and the types of community benefits that we are looking at should facilitate that.

Should somehow open the downtown up.

So with that in mind, just a few points.

Some of my colleagues have already mentioned community benefits, what is public, what is really for the renters and how does that get reflected in the rent.

And so looking at the December staff report, on page 4, Transportation Demand Management features, is just one illustrative example.

Smart mark transit screens.

That seemed to be the only one actually that was public.

A.C. Transit passes, the fact that it's two per unit, that's wonderful.

I love A.C. Transit passes, but this is for renters.

Or if it's going to be a condo, it's for occupants.

Residential bicycle parking, pedestrian carts, bikes at bike stations.

That one maybe public/private but we should really look at that and quantify it out.

And I hope that when we see the peer review study be done that it is costed out and that there is a different value placed on private versus public.

The nexus study, some have mentioned that.

And I'm going to -- I guess I'm in a unique situation here where I wear two hats and I'm also the vice-chair of the Housing Advisory Commission.

And we have been grappling with this issue of, first of all, the Housing Trust Fund, which essentially has next to nothing in it that could be of any significance.

We have a tremendous opportunity to build Berkeley Way just a couple blocks away from this project which would provide a state of the art multi-services opportunity and low-income housing.

I'm going to have to take Bob's advice and not use affordable.

Low-income housing.

And how that money gets leveraged is through the Housing Trust Fund.

And I know I've had this discussion with a number of members of City Council.

The question of whether it's about earth to have units on-site or paying the fee that's not going to be a question that's answerable tonight and ultimately it's not up to us to answer.

However, I will say there is an ongoing nexus study going on, and I think what it will find after it's done, the previous one had a ceiling of, I think, \$33,000, \$34,000 per unit,

which was seen as the maximum feasible level that the developer could pay to still make a viable project.

That use, 2009, 2010 numbers.

The economy is different now.

I think the numbers are going to be higher.

I would actually love for the City Council to increase from 20,000 per unit to some amount that's proportionate to that.

I would also love proportionally to increase the allocation of affordable housing on-site, if that's the option that a developer would like to do.

And if these are condos, admittedly, that's the part that I know the least about.

I have not -- in this environment, it would be very interesting to see what the in-lieu level would be for a condo.

But for a significant community benefit, it would have to be far and above beyond what is the minimum requirement, which I hope the City will actually increase.

And I reserve the rest of my comments for later or in writing.

>> P. Pinto: Thanks, Igor.

Nick.

>> N. Dominguez: All right.

First off, I see like to thank the public for coming tonight.

Your being comments were very intelligent and welcomed.

So thank you.

I'm a young guy.

I've been in Berkeley for about five years now, and that may mean to you that I don't share the same values necessarily as some of you who have lived here for 30, 40 years but you should know that I like to make a family, I'd like to live here in Berkeley maybe for the rest of my life.

So that being said, part of tonight's discussion is about how to make Berkeley the place that I want to live in in the coming future.

And I agree with the downtown plan.

The downtown plan was an expression of the Berkeley voters and it's an expression of my views.

I think this project does provide significant benefit in itself in terms of density and it being transit oriented.

So I'd like to see something like this go forward for the downtown.

However, our job tonight is to look at the community benefits and establish the process and the mechanism that this group uses to determine whether those community benefits are significant.

And I think while this being a first step, and it's a decent first step, I do have some concerns.

First off, these benefits from what I can tell are almost entirely towards the occupants of the building.

I do have some concerns over the valuation of these different benefits.

One is should we allow the opportunity cost of the theaters being rented out as something else be included as part of the community benefits value?

I personally don't think so.

And then of course Sophie brought up the construction of the streetscape.

You're going to have to reconstruct that anyway, so the value is really only the cost of your constructing beyond what was already previously there.

The union labor it's admirable.

I love you had a union labor agreement 100 percent.

However, the benefit to the people of the Berkeley is limited.

It does work and I logic that.

Berkeley is playing a regional role in providing work for greater Alameda County.

That's wonderful.

But we need to center on Berkeley.

Let's see.

I think I want to echo what Shoshana said that Habitot -- the destruction of Habitot is -- it's a detriment to the community at this point.

You are starting off on a lower footing than zero; all right?

You're taking the community benefit away and hoping to make up for it and it's our job that, well, you do.

So I think -- I hope you come to an agreement by yourselves.

I do. I think that if anything more is done for Habitot, that possibly we, in the spirit of teamwork, discuss with the developer or have them present what's practical in an extended period of time.

Maybe not a lump sum.

Let's see.

This is just an incredibly difficult decision to make for something so vague.

We have to declare what is community, what's benefit, what's significant and all those are vague.

So things we can look at, duration of benefits, the entire scope of what can be a benefit in terms of geography.

We could fund things from the fountain to street tease.

I'd love to see permeable paving be included in this project and all those are dependent on a bunch of different factors.

As far as affordable housing, I guess I'll go on record to say I just prefer housing be distributed, affordable housing being distributed among the community.

I think it has wider social benefits that can't even be quantified as compared to lumping affordable housing together.

And lastly, the reoccurring fund idea that Denise first brought up I think is the fundamental idea that should be latched onto for our discussion.

We have to find a method to make this process less stressful in the future and I think some type of fund for business relocation or other benefits that makes it simpler for the developer to participate in is the direction we should go in.

That's it.

>> P. Pinto: Thanks, Nick.

Okay, I just have a few comments and then I know a few other board members have some other comments and I think we'll summarize, Aaron, for you.

I think there's two questions before us.

One is are the benefits significant, and that is going beyond the requirements.

And I think the general sense is these benefits as their written or constructed or being presented are certainly not at that level yet.

That's not to say that there hasn't been some effort to provide them, and I think we can use that as a starting platform.

I think the other question that we have to ask ourselves, and it's really for the findings, actually, of this benefit is are the proposed benefits significant to the community?

And what that is, significant, I think that's a key question here.

So as I've looked at the -- one of my major issues, and I brought it up at the last meeting, was the requirements to satisfy the green checklist and the LEED versus what benefits are being proposed, I went through the checklist and I'd like to really see a more -- that more detailed because that is a real critical piece to this.

Because many of the credits that they're getting for LEED and the green building checklist are those benefits, such as TDM measures, all of those things.

And I think there needs to be a little bit more nuanced approach with that.

And certainly one of my other concerns is that Berkeley needs to achieve its climate action goals for the future.

And the only way we start meeting those goals is by looking at them today.

And so this is a major issue that we don't seem to pay enough attention to.

But before we know it, we're going to have to achieve those.

So one question I would suggest is maybe we do go to a higher LEED rating here.

That's one way to start looking at how these projects are going to start meeting our climate action, and certainly reduction of greenhouse gases.

I think there is -- I do agree that many of the benefits as they're listed do benefit the residents and not so much the community.

And the way the finding has to be a significant benefit to the community so I think we have to make that distinction here.

I think we have to look at the fund a little bit more carefully.

I do agree it's a better way.

It's what other cities do than simply look at trading between tenants.

I think that's a very confusing process for the developer, and also for future projects that are going to come before us.

I think this might be a good process, and many other cities do do this, which is very successful for them.

So I would support something like that.

I am questioning the theater because any benefit that we have -- one of the things I'm grappling with here is the certainty of these benefits, because if it's so uncertain as to whether it's going to be a theater and how long its longevity is going to be, we have to have some kind of idea of what's a mix of use in perpetuity.

And so whether this theater becomes a conference center or other things or how easily it could be converted I think those are valuable benefits to the downtown.

I think we have to consider those.

One other area, I think, is the streetscape.

I was thinking hard.

I applaud the development team for their attitude towards the streetscape.

I appreciate the bio-swales and the -- although I was looking through the downtown plan, and one of the areas that we're really looking at, I think the downtown is very successful in focusing storm water retention and bio-swales towards Shattuck and really making that more of our kind of processing and natural, and now we're starting to look at Harold Way which is not really in the plan.

And because the project area is defined by Shattuck, maybe there is more intervention that could happen on Shattuck to actually support the downtown plan.

Although I think doing something with Harold Way is good and I could support that.

So those are the areas.

So, really, the areas that I'm looking at are the community benefit fund that could support tablet; the mix of uses and how we establish those in perpetuity.

I think the affordable housing and whether it's an increase in percentage, as George mentioned.

And some kind of idea about the green aspect of the building, the sustainability. It's not clear to me and so I think that's another area we should look at as part of these benefits.

Sophie, you had some more things to say.

Oh, Denise, go ahead.

>> D. Pinkston: I think this way of moving down and come back around is really helpful because it lets us listen to each other and mull it over just as we listened to the public and we had that chance to mull it over.

So here are some of my thoughts about how to organize what we've said and what we've heard and think about next steps.

One, I thought some commissioners said about trying to work as a team to define a very amorphous topic is a good idea, and we should sort of have that as a goal.

Whether we accomplish all of that tonight, I don't know.

I think the notion of buckets is helpful.

So here's -- and I want to talk quickly about the economics today.

So let me talk about the economic study.

I think we aren't ready to release the economic study because we don't know what the scope is.

And I think maybe quickly we can get to that but my concern is we spend a lot of money having someone analyze this when I think most people think of what's in this isn't worth analyzing.

So I don't want to do that.

I don't know how other people feel but I wouldn't mind waiting a little longer to make sure -- and again, I don't think it's fair.

I think we need to own this.

I think the community made it very clear.

We need to act in our capacity as public leaders and we need to stop going on a grand fishing expedition to see what else the developer can throw in our boat.

We need to drive the boat now and we need to have that process work.

So my thought about how we might drive the boat is to just hold the economic study until we can get a little more organized, and then to the extent we -- if people want to release it now, I would have it focus on what is a realistic dollar amount, just like they do when we do a density bonus study.

What's the real amount of subsidy that's available to fit into the community benefit pie.

And then we can decide how many slices of the pie there are and what are the size of the slices because we'll know what the total pie is.

Right now we have no idea what he is a realistic assessment.

So if an economist went away and just came up with that, then at least we have a framework for organizing what otherwise could be a laundry list that could kill any project, which I don't think is the intent here.

I think the intent here is to arrive at something that works, that can be duplicated on the five development sites in the downtown, that can allow high building in exchange for community benefits.

So I think that's kind of a gate question.

How much can we get reasonably under market functions.

That's a useful thing for us to figure out while we discuss what is a community benefit.

And then maybe there's a follow-on scope that says, okay, we would like the following ten things.

What do those cost?

Or what's the value of those?

And I think we need to drive that rather than being reactive to what the developers put out.

So back to the question of buckets.

My final thought is that I think, Steven, you're right.

We've been talking about these things in categories that are cultural.

The theater, people coming together to share cultural life which is important to Berkeley.

So that's sort of one thought.

And another is physical.

I think we Raul -- all agree that your own sidewalk doesn't count as a community benefit.

But there are places where it becomes a community benefit like the community fountain and SOSIP, over and above usual SOSIP fees, you're contributing to something that's off-site.

So there's a bunch of social things and then finally there's the social question which I would put affordable housing in.

Do we do a fee or on-site?

So I think if we have those kind of big topics, the mechanism for achieving those community benefits I think as we began talking about it tonight are twofold.

One, it's a fund, which is sort of like paying for an off-site improvement.

Many so if it's a cultural fund, that fund could be paid to Habitat.

If it's a physical fund, that fund could be paid for a fountain or address or into the SOSIP.

If it's a social fund, that would be money into the affordable housing trust fund.

The other idea is -- and also I think we need to have very clear on-site community benefits to go back to the point I made initially tonight which is I want to take microprocessor kids by the building and say this is a really cool building and look at how cool this thing that we use everyday is.

So I think there needs to be something on-site in all these big buildings that are are a tangible community benefit in perpetuity.

I think we need to have something physically in the building that people can get.

You know, you walk in, participate in what are.

So if we have those three categories, physical, social, and then money to do things in the downtown and on-site things that need to happen like on-site affordable housing or on-site physical improvements that are more community or on-site cultural activities and facilities.

We've been trying to get performing art space for years.

Now maybe we can get a model based on previous experience that does provide a good cultural space for the long-term part of the community.

So anyway, those are my thoughts.

I don't think we're going to resolve this tonight either, so I think we're going to have to talk about it again.

And I think this is okay because this is the first time.

And the goal of tonight is to begin defining what it is we're going to do every other time we do this over the next many years.

So I think taking some time to really think it through is a good idea.

So that would be my suggestion is that we set another meeting.

And in this meeting, be a ZAB meeting, working session of the ZAB.

We're welcome to have the public there and developer come and listen but I think we need to get ourselves organized and talk in a public meeting about what we think.

There you go.

>> P. Pinto: I'll go down this way.

Sophie.

>> S. Hahn: No one else?

>> P. Pinto: We're going around again.

>> S. Hahn: So first of all, I want to thank you, Denise.

Actually the (inaudible) we had dovetails more with what you brought forward, and of course a started by Steve of talking sort of about categories.

And I absolutely agree that we have to do this in stages.

We have to identify some categories and then we have to do some quantifying and then we have to generate some priorities within those categories and so I fully support an organized, categorized and what scientific process. Data driven, let's say.

But I have some concerns that how we generate those categories.

I spent some time looking at general community benefits literature.

I didn't go to academic library.

It was on my research.

But it seemed to me that the hallmark of community benefits packages when they are not clearly defined by law, when people were not being told you've just got to do this, this, and this.

But let's call them negotiated community benefit packages where every single example and every piece of literature I scanned waylaid the need to have a broad coalition of community stakeholders to be involved.

And what we have here is we have the developer, we have some staff members, we have some self-designated savvy individuals and groups who have learned about this and then they're at the front of the line with their interesting concerns.

Who do I see missing?

I don't see homeless advocates.

I don't see the affordable housing advocates.

I don't see the mental health services folks.

I don't see see child welfare folks other than us talking about Habitat.

I don't think see a lot of people from our organizations, any of our people haven't even come.

So what we have is labor, and they are staff and resources.

We have theater goers.

We have transform and some of the other, call "the usual suspects." But there hasn't been a systematic outreach to a broad coalition of community stakeholders. I think what we're doing here is first come, first served and who speaks the loudest and I don't think that's a good way for us to communicate community benefits.

I am very concerned that once again the least empowered in our community, the least connected are not here.

And I think that staff, the City, we need to systematically invite a broad coalition of community stakeholders.

Into the general discussion about community benefits.

Not with each saying on this project I want this or I want that.

But as we are deferring these categories or these buttons or baskets, I don't trust just the ZAB members, just the folks who showed up here and the developer.

I just think there's a lot of people missing from this conversation and I would be very uncomfortable making allocations and decisions based on that.

And I will say that I think for me the affordable housing -- I want to hear from affordable housing folks.

I know that the City of Berkeley did a survey, I believe it was a year or year and a half ago, asking residents what their number one, two, three issues of concern were in the city.

And affordable housing if I remember correctly was number one.

It could have been number two.

It was number one by 70-something percent.

So we have materials we can go back to.

We have the downtown plan.

We have the purposes of the downtown plan.

There's a recital in the family room, under E.

I forget the exact code section but that section actually lists a few categories that we might consider.

We need to look back at the work that's been done and we need to bring the stakeholders in orb I don't think it's going to be fair.

So that's a really, really big concern of mine.

I did have some really specific requests for the scope of work for the consultants.

I do agree with Denise that I think it's premature for us to sink any money into evaluating the specific benefits that were put forward by this developer.

And honestly not just because some of us think they have value or don't have a value but it seems premature to ask them to come up with things when we don't even have a framework and we don't have any basic numbers.

So I think what I will do is I will just give those to you privately.

And if they're useful to you, great; if they're not....

And finally, I wanted to address the specific questions that you, staff, asked us in your staff report for tonight.

You asked us to answer specific questions.

So I'd like to address them.

Staff analysis.

What we want from staff.

Well, I guess some of those related to the study.

Let me see.

What we want from staff.

I'd like to know the value of the added development rights that were bestowed on this parcel when it was (inaudible).

So what were they allowed to do before and what are they allowed to do now.

And what is the long-term added value.

And that has to take into account the fact that previously, not very many apartments would be able to have views and now there are 70 that have views.

We look not just at your numbers, they could have 200 units and now they could do 400 or something, but really a fine-grained look at what did they get when -- And I don't know if it's the developer or the property owner, but somebody got something and I want to know what that is.

There's some value here.

Second, I really want to see equity in our outreach to community benefit stakeholders.

It's very important to me.

I'd like to see us continue to sort of eliminate these kind of double benefit benefits, things that are mutual benefits, things that they monetize through higher rent, all that.

On the question of helping displaced tenants, I also think that's a bigger -- that's a way bigger issue than Habitot, although Habitot I think is a particularly sort of difficult instance.

And if the City really endorses development, and they do, this is City policy, you have the City who feels that they're benefiting.

This is what the City wants.

You have the developer who is benefiting because they're going to make money.

And then you have, like, a few losers.

The few losers are the little businesses and the people, maybe the chains, I don't know.

But there's losers in this picture.

Who's going to support or help those losers?

Some of them may be long time local businesses.

This would be in relation to Acheson Commons where we knew for a fact that there are a lot of locally owned, I think some of them are cooperative, the bike shop I think may be a cooperative, you have Berkeley vacuum that's family owned for a long time, you have Ace Hardware.

I don't know the business that are being displaced by the Shattuck -- by the Harold Way project but this is a problem that maybe the developer should bear the cost.

Maybe the City should bear the cost.

Or maybe the cost should be shared.

But what we have right now is that the shop owners are bearing the cost and I don't think that's fair.

So I would like that question to be looked at in a holistic way.

If the City feels that this is better shouldered by the city more fairly, I'm fine with that.

What I don't like is the way it is now.

We forgot about them in this picture.

And I want to bring them back.

I want to know what we can do comprehensively.

Not just the ones who show up.

Everyone.

You asked for feedback.

We can nit-pick and we were asked to nit-pick so we came back with that.

It's hard to say at this point.

They need better information, we need better information but I agree whole heartedly with Denise and with my other colleagues the burden of inventing this stuff is not on the developer.

It's not their job.

It's on the City.

It's on the community, and it's on us.

Of this is the biggest development in Berkeley's history, I believe, or certainly in recent history.

It's a huge windfall for the developer for the parcel owner from the beginning.

The benefits have to be significant.

I know they're not there yet, but that's not really a criticism of the developer.

Last but not least, this is too much for us, and for the community to swallow all at once.

We need to move to a systematic and phased review of community benefits.

My suggestion echoes Denise's and Steve's.

I think we should start with a framework.

Then we need to move to identifying and engaging all the stakeholders in an equitable manner.

And we also need to look at the work done before that's reflected in many, many City documents.

With this context, we need to come up with categories.

As Steve suggested.

And then we need to come up with a package that's significant, reflects the democratic or participateORILy needs and we need to submit that for review so I think that parallels what Denise was saying and I think we have a long way to go.

So that's it.

>> I have some thoughts about that.

I just want to make sure my intent was clear.

>> P. Pinto: Go ahead, Ken -- Denise.

I did want to go down the line but go ahead.

>> D. Pinkston: I wanted to say I do believe that the long-term planning process and the adoption of a plan is the definition of the stakeholder input that you're seeking.

I think that's been completed.

Our job is to take the planning documents that have been adopted -- this is always the job of the ZAB, and to use the references in those documents and then to make decisions.

So I do not decisions.

So I do not want to open this up to a whole new process and start from square one.

I think we're going from an amorphous to move to approval for projects within this zoning category.

So I think our charge is much more focused.

So I think we need a framework and we need to rely on the work that's been done before but I don't recommend starting a whole new planning process.

We are not the Planning Commission.

We are the ZAB.

We are the Zoning Adjustments Board.

We take the zoning and the planning and we interpret it and we enforce it.

So I think that's where we're starting from.

The other thing that I was trying to be clear about, and I'm sorry because it's late and my head hurts.

A long day.

My notion about the idea of funds versus agreements with specific tenants or agreements with specific impacted parties is I also don't think it's the job of the ZAB to hand out money to everybody who shows up and asks for money and then to make sure that we get all the people who might want money into the room so we know we're handing it out to the right group of people.

I don't think that's our job at all.

I think our job is to come up with a fair and reasonable way of approaching the notion that community benefits are physical improvements to the property and the area where the property is located, and off-site impacts to community cultural activities that may require a payment.

And we don't necessarily decide who gets the money.

We just set the standard.

And then so, for example, in a cultural payment fee, it could go to Habitat.

It could go to some other arts group that the City Council thinks needs help that it didn't show up to the hearing, but the money could be useful beyond a particular tenant in the sense of the other project with Berkeley vacuum, that payment, a portion can go to Berkeley vacuum, it can go to an arts group it, can create a mural.

Let the council decide how to spend the money.

That's their job.

Our job is to figure out how to have a condition of approval that's reasonable and solves the problem which is how does the whole community benefit from development.

And the notion, the physical, if the -- there are physical improvements but I don't think we should be itemizing them and picking them.

I don't want to be voting whether it's the fountain or the sidewalk or Harold Way.

I think if we need more money for physical improvements and we know what the bucket is, that we have a physical improvement fee and we can tell the council these are the three things that we heard from the community, and then the council, you decide how to spend the money because that's what they're better at than going through that -- and they may have to have a process with stakeholders to decide to spend the money but I believe that's where that process rightfully resides.

Not with us.

So in my attempt to create this framework of funds and on-sites, what I was really saying is let's not be in the business of deciding who gets the money because I don't think that's our job.

We're in the business of saying, hey, money is needed for impacts that go off-site, and then setting up how we are to get that and giving them examples of how to do it.

But I think if we become the broker of every side agreement with every tenant and community group, we're really beyond the scope of the ZAB.

>> P. Pinto: Okay.

Shoshana had a question.

A quick question.

>> S. O'Keefe: I like what you're suggesting but I'm a little worried you're going into a territory that requires a nexus study if it looks like a fee we're charging for specific things.

Can you comment on that?

>> D. Pinkston: In my understanding of this topic of community benefits, you have based zoning, 75 feet.

Anything you require under the base zoning, the city attorney can provide additional input.

Anything above that has to have a nexus.

We said we will double your zoning if you give you as community benefit and the nexus rule no longer applies. The nexus applies to the zoning that is more or less by right and because they're getting the sky is the limit, we're not longer getting a nexus.

Now I'm sure that there are ways of fine tuning it, but in my experience with this kind of requirement, nexus is out the window. That's why people like this zoning because you no longer have to prove what the impact of the project is, and then all you can extract from the developer is exactly the amount of money that their project is contributing to the impact.

The down side is that the sky is the limit and you have to have an understanding of what a project can reasonably do and can't do so you don't load up the Christmas tree so hard with benefits that the project never gets done.

And I think that's the danger of inviting people to come and ask for money, we can't possibly do all that.

We have to narrow it rather than broaden is.

>> P. Pinto: There are some other comments but I'm going to interject here for one moment because I think this is all very interesting.

We are confuseing a couple things here.

One is we're confusing what the benefits are.

We're confusing the criteria on which we measure them.

That's the measure of the hierarchy of what we think is important which I think people have in their own heads but it's not explicit and the third thing is the mechanism of how these community benefits are distributed.

And as I'm listening to my fellow board members, we are transposing those at will and I think it's because we're searching for some answers.

And I think as we -- I think we're going to have to kind of -- after our comment, is figure out how to move in a more systematic way to kind of evaluate this.

But I'll go on to Steve.

>> S. Donaldson: You were saying some of the very things I was thinking about.

It's a framework we have to build.

And I want to clarify something.

I totally understand where you're coming from about trying to create a fund but I think it just creates a more unending -- never ending process that's not specifically tied to this project.

I think we need to define categories.

Be clear about those, come to a consensus.

And then bring those benefits to those categories.

So a given developer can go, okay, I've negotiated these.

I've worked these out.

Habitot is getting this much.

Because it's -- and we've said these are benefits, and they've made decisions around that.

Putting money into a fund, the City having more hearings, deciding who, that is one of these things that just goes into a black hole in my opinion.

That's my opinion.

I'll leave it at that.

>> I. Tregub: Well, I agree on one thing that we probably all agree on is that this certainly merits more discussion.

So this is not going to be solved tonight.

And I would value another opportunity.

I agree with Denise that we should start to try to narrow these down and come up with some quantifiable criteria, but I also -- I want to sort of put on to the point that Sophie made as well about the stakeholder input.

But I think staff is pretty overwhelmed as it is.

And I think that is really up to us, if we want to continue these robust discussions.

Members of the public do need to continue to show up and bring different experts in different disciplines, too, so that will help us better inform our decisions as well, and do better analysis.

So just to answer for number two, provide direction to staff on any further analysis it would like on the benefits package, I just wanted to mention a couple of things.

I think it's a framework I started to develop after the -- we dealt with the grocery outlet situation.

And thinking about the new revenue and the new business and the new vitality that a project will bring, but also thinking about who or what gets displaced, and then trying to quantify that into dollars.

Because if there is a net that's close to zero or negative, then that for sure is not a community benefit and we start with a point that I think was made much more eloquently than me, by one of my colleagues.

So in this particular case, I would love to see Habitot find a good landing place and be fully funded with respect to its relocation.

Or at minimum, whatever Habitot is asking.

But I would like to see an analysis of what else is going to be displaced besides Habitot so that we can -- the theaters is another example.

We can argue whether it's a net zero or whether there's actually a net detriment or whether it's a benefit of the new theaters, but we need to have a basis to be able to argue that.

And that would be very helpful for next time.

And too I believably, I would like to see a little bit more discussion about not just the zoning code but the different plans.

And I think Prakash already made a similar point.

We have a very aggressive Climate Action Plan, which aspires to reduce greenhouse gas emissions by 80% by 2030.

And how this all fits into is this just doing a baseline amount of work to get us there or does it significantly help us achieve those types of aggressive reductions?

That is something that I would like to see, because then it's easier for me to argue something is a community -- a significant community benefit or it is not a significant community benefit.

So thank you.

>> P. Pinto: Okay.

Yeah, Denise.

>> D. Pinkston: I have a question for the commissioners.

I think we need another session to have this conversation.

And before we tell staff to do any more work on anything, I think we should have the conversation.

Because I'm not sure I agree with you, but we'd have to talk about it some more.

I don't think quantifying the effect of evicting tenants whose leases have expired is something we should get into.

If the tenants leases expire and the landlord has the right to evict them, I don't think we want to go down that path.

And I don't want to get into having to relocate every commercial tenant in every building that is built in downtown Berkeley.

I don't want to go down that path.

So I don't really want them to spend their time analyzing something I don't think we should be getting into as the ZAB.

So rather than debate each of these points tonight, I think we should set another meeting, understand we have some additional conversations to do.

And if staff has some suggested information you think would be helpful, great.

Like maybe we should have a copy of the downtown plan here or relevant -- we should all just take it upon -- maybe you should send us links to the documents that are the most relevant so we can read them and have those policies fresh in our mind when we come back and look at this again.

You actually have a copy of the downtown plan which Aaron was kind enough to give to me and I think it's interesting, your point.

I want to try to wrap this up in the sense that we can tonight because the public has been very patient in listening to us.

And you can tell this is a very difficult kind of subject to talk about and you can see we're struggling with it a little bit.

Because there's little guidance in terms of the criteria that we're supposed to use here and we're just using the idea of significant benefit.

And so what that means and how is it implemented are significant questions.

I did want to get staff to kind of reflect a little bit and give us a little bit of input, because I have a high degree of faith in the city staff to actually help adjudicate some of these issues for us.

I will say just one point.

Having heard all the public comment, at least the public comment that was about community benefit, there weren't that many different issues that people brought up.

Okay.

So it's not like we're talking about hundreds of different ideas about community benefits. I think I could actually outline them.

One is about the community benefit fund and Habitot.

So existing tenants.

And that includes the theater.

I think that's an issue and that's ongoing.

And I applaud the developer for working with these groups.

And I think there's something that's going to evolve out of that.

And I would like to let that process go work a little bit more, personally, because I think from where we were in December to where we are now, I think there's a lot of good will that's being generated and I don't want to inhibit that, necessarily.

So I think that's one thing.

I think this idea of affordable housing has come up, both in the public and here and what that means.

And it would -- that's the second area I see.

I think the physical, I think, aspects of the plaza and what that means, I think we're of the belief that that's not significant enough.

So what is significant as a benefit?

And I think the streetscape and the questions -- I think the staff report was still looking at that in terms of what is actually being considered significant in terms of the streetscape and adding more trees and the landscape and all of that.

I think that's the third area.

I think the other -- the fourth area is about sustainability.

And I want to bring this up because in the downtown plan, after the introduction, the first chapter is sustainability; all right?

And actually in the reports I write for other cities, sustainability is the first chapter out of the box.

And I think that we tend to forget that and I think it's important and I think that's kind of the fifth kind of tranche area.

I think there are other areas we talked about but I think they all kind of fall within these general categories.

I've kind of been keeping a record here of where people have been commenting and I think that's kind of our framework.

I think the Transportation Demand Management is -- I applaud it because it's great for the tenants but I don't think we're feeling like it's enough of a benefit.

So maybe that's why it's gotten less discussion here.

And I think these other areas have.

But I would be curious, if it's okay, to just hear from staff a little bit in terms of how you might see this process moving forward.

Because I am of a mind, having done fiscal analysis before with economic consultants, unless we give them clear direction, they're simply going to analyze what has been already given to us and I don't know that's necessarily beneficial and that was one of my concerns before we started this meeting today.

But I would be curious to hear from staff about your thoughts.

>> First of all, I just want to commend you on the thought that you've put into your comments and I think staff feels validated by the way that you're wrestling with these issues because we have been doing the same thing in our internal discussions over the last several months.

One comment that I heard from several of you was that we need to keep talking about this.

I think staff agrees with that.

And in just very broad brush strokes, I think a basic approach would be for us to digest all of the comments we've gotten from you and the public, come back with some kind of matrix where we sort of distill those into kind of the most common things we heard.

And then do some analysis of those.

You know, what are -- for example, this idea of a community benefits fund, a tenant assistance fund.

Are there examples of that type of thing where that's happening in other jurisdictions, other parts of the country, you know.

Let's not reinvent the wheel if someone is already doing it.

At the same time if someone is already doing it and it's not working, we want to know that.

So we can come back with that kind of information.

So that would be my main thing to say.

On the piece about the -- what we tell the consultant, what we have them look at, I want to stress that the way staff has looked at the peer review has been mainly driven by the fact that the developer made a lot of claims and gave a lot of information about how much the benefits they're claiming as community benefits was costing them.

And so it was really almost in reaction to that, knowing that the public and you would want to know, okay, they're throwing out these numbers.

Are those true; that we wanted off some independent consultant verify those numbers.

We haven't -- the question of lets have someone determine exactly how much additional profit accrued to this developer, this property owner when the rezoning happened and

beyond that, you know, what is the sort of margin beyond a typical real estate of return on this project that is available to fund community benefits, those questions are tricky questions for staff because the community benefits finding doesn't -- as you know, it doesn't give us much guidance at all.

It doesn't say that, you know, benefits to the extent of making the project infeasible shall be provided, you know.

And there's this language of a benefit needs to be significant.

So we would want to take that back for internal discussion with staff before we directed the consultant to go that route, but we do hear from those of you who spoke to that that that is something that you see as valuable information.

So we will certainly be considering that.

But I would agree that there's no the a whole lot of point in getting the consultant started on anything else in terms of looking at the developers' benefits, doing an analysis of how much those cost when we're hearing very clearly that you have fundamental concerns about the scope of the benefits package and whether what they're calling benefits are truly significant benefits.

So we need to discuss as staff and with the applicant of, you know, whether -- and we also hear that you're wanting to take the lead in defining what the benefits for this project are.

So I don't know if that's helpful.

>> P. Pinto: Yeah, George.

>> G. Williams: In December you gave us a copy of the consultant's report that was done when the downtown plan was being put together, a more generic study of what are land costs and what are the various development costs and what is the value of an upzoning.

It seems to me we could benefit from a more closer look at this one project using that same methodology.

>> A. Sage: We will certainly discuss that.

>> G. Williams: Thank you.

>> P. Pinto:.

>> S. Hahn: I just have one or two comments but now that so much has been said, I have a couple.

I want to go back to your comments a couple comments ago.

I agree with you that we are being charged with something that is not really appropriate for us.

But we have been charged with it.

I personally feel it's an abdication by city council to write something into the code like that and ask us to interpret it.

I like your scheme in that basically you're saying let's just put some money together and kick it back to council where it belongs.

That -- I think it kind of boils down to that.

But I do have the concern that Steve expressed which -- or I think it was Steve or maybe Igor, that, you know, when the heck is the community going to see those benefits if we kick it to another body.

I agree with you that's where it belongs but they put it here.

So given that, I then worry that we are being charged to be really fair and equitable.

And the job has been given to us.

I do accept whole hearted wholeheartedly your critique that what I suggested in terms of bringing in stakeholders could sound something huge and unwieldy and impossible, but I do think that if we could get a foundation from staff for our next conversation, where you guys really look back rather than give us a pile of excerpts, which I do appreciate, or send us links to whole plans, I'd like to see you guys distill, like, what categories have been mentioned.

I know it's in there because I'm the one who asked you to include some of this stuff the first time around.

What are the buckets that the community process already generated?

And it's going to be similar to what we've heard today but there may be some things we missed.

It's going to be affordable housing and -- but homeless services, I know that's one of the buckets.

But no one here mentioned it.

So I feel like maybe if you guys could pull that together in a one or two page synopsis and say five documents that were approved by the council and voted on by the people of Berkeley mentioned affordable housing, four mentioned homeless services.

We just somehow distill for us the work that's already been done.

Because I agree with Denise that that's the primary source.

But then I still would like you to specifically invite at a minimum to the public comment and put on your outreach list key agencies that address those buckets.

So the Sierra Club, (inaudible) concerns is going to be one bucket.

Transportation stuff.

There's some well-known organizations.

I still think it's incumbent on us since this has been put in our lap to make sure that those people at a minimum know that there's an opportunity to come and speak here.

So I think for me that Denise -- I hope that might make it may seem more manageable where we can have something where we draw primarily on the work that's already been done.

We take into account what people have brought here, but we also make sure that we hear today from other likely stakeholders.

>> D. Pinkston: I would feel more comfortable if we had a timeline, because what you're saying to me, I'm a planner, I went to Cal, I almost got a Ph.D. in planning and I can tell you what you're laying out could take four years.

That's how long it took to do the downtown plan 20 years ago.

That's how long it took to do this plan.

I don't want to get into that.

If that's not what you're thinking, great.

I'm open to working on that.

But I'm thinking we have an application in process, and we're not just going to put it on pause for a year.

We need to have a timeline of meetings and decisions so that I understand what you have in mind because right now --

>> S. Hahn: I'm pulling it way back.

And we can -- I don't feel like we need to settle this tonight.

One of the things we've learned is there's many differences of opinion, or maybe variations, I would say, up here on the dais.

But I did want to pull that back and agree that looking at the work that's already been done and the process and the things that have already been generated, I agree that should form the major basis for what we come up with.

And I would -- rather than being thrown a lot of big things, I would like staff to distill that for us.

And secondly, I still do feel that at a minimum, we need to inform stakeholders that this process is going on and that there are normal opportunities for them to come and speak.

>> D. Pinkston: I think that's fine.

Have some conversations and maybe another hearing.

I think that's reasonable and that we do more outreach rather than generic posting on the board downstairs that says come to the hearing.

That we make an effort not to just reach out to the organizations that you mentioned but to the arts community.

I'm on the boards of an arts organization.

I spent a year finding out there are 15 performing arts groups in Berkeley that have to leave downtown because they don't have a police to perform in Berkeley and they don't come to hearings because they don't have time.

They do shows every night and they work really hard.

But they have a -- we all go to those shows.

We like to go to the opera and we go to west edge opera and Berkeley symphony if we can and kids performances and all those groups are being chucked out.

So if we are going to do a broad outreach we should think maybe at the next meeting we get your framework back and your kind of policy look about things we might have forgotten and what the buckets are that you've already started.

Here's what we think is legit and here is what we think is a stretch on the story line.

Have that as a framework for us to help define what the community benefits are based on the conversation.

And then talk about these are the kinds of groups that have been involved in the process or that were intended to be the beneficiaries of the downtown plan.

If this is our cultural hub then we need to talk to the cultural groups, too, and we do in the context of the hearing, and I think that's all off-line.

>> P. Pinto: Any other comments?

George, go ahead.

>> G. Williams: Aaron, do you have an understanding of what you might produce?

Because I listen to this and I think how would I implement --

>> P. Pinto: George, I was going to try to summarize this.

I did want to just say one thing before Aaron, because I have worked on these kinds of projects, and, you know, the downtown plan is a new plan, and I think we should respect it as a plan.

It was done over four years, and it actually provides some guidance for the benefits.

It's not totally clear but I think it does provide some guidance and it does require some leadership on behalf of this Board, I think.

We have to make some decisions.

I think it's good to have stakeholders come in.

I think that the public hearing is the forum in which to do it.

And this is the second meeting we've had on this so I'm a little wary of why, if there are all these issues out here they haven't come to speak because this has been well noticed.

And I've seen it on lots of Web sites.

And we'll have another meeting I'm sure, and I'm sure we'll hear more about it.

I did want to say one thing.

I think this issue about criteria is really important.

Whether you're calling it a framework -- I don't think it's quite what you mean because I think I'm actually trying to get to something that's a little bit more concrete because what I am worried about and I've seen this before is we list all these great community benefits that we think are wonderful.

The economist does a study and then realizes that we can't afford half of them and we're back to square one.

So I think that's not us being very responsible in terms of this decision-making process.

So that's one concern I have.

I believe in our staff, and I think because the staff is so involved in all the various commissions, you are aware of the general plan, the policies, the goals, both of the general plan and the downtown plan.

I have a feeling it would be better if you at least took our initial comments and see it as a matrix and flesh it out because I actually think, now hearing from the public, there are a number of ideas about community benefit but it's not so wide ranging that it's impossible to manage.

And I think then we can sort it out in another meeting about where things fall.

And then we'll also give the developer some time.

They're in discussions with Habitot and so forth.

We can actually give that a little bit of time to work itself out.

I think that's really important here.

And I think they recognize that Habitot is important.

I think we all recognize that's important to this process.

So I would prefer maybe ask if we want to direct staff in that manner in terms of all these great comments we've given.

The public's given fantastic comments. And then hold a follow-up meeting to kind of discuss this in a little bit more detail.

And I will try to, in between now and then, have us start thinking about a criteria or maybe a hierarchy of what we need to achieve and that will also give the economist guidance for their study because then they can start to actually phase it and I find those are the best studies in the world where they can make a kind of educated -- and I would give guidance to the developer as well.

And I want to give them a little more certainty in this process so that's kind of where I would suggest that we as a board maybe decide to go if we're in agreement with that.

>> Sounds good.

Could I ask one other question, too?

I thought of it earlier and I just forgot.

Someone tonight mentioned the notion of some ongoing payment stream for an ongoing community benefit.

They mentioned a bus service.

I participated in two nonprofits that run buses that are funded by developer fees.

One is the Emery-go-round where it's payment per square foot.

Initially started as a two-developer shuttle.

Now there's a public improvement district and everybody pays into it.

>> And it's a great system actually.

>> D. Pinkston: Great system.

Carries a lot of passengers I was chair of that board for five years and I just created one in Mountain View that are conditioned fob required as part of their land use approval.

So there's two different ways to get funds; right?

A single payment, building permit or occupancy permit or whatever that time is. Another one is an ongoing income stream if there's a particular service that needs an ongoing income stream like rent subsidy for a theater or cultural. I just want to ask staff to put that in the intellectual hopper as you're thinking about this topic.

>> I did have one question for the board.

I think it would be helpful to get the sense of the board on this but one or two of you, perhaps more, made the comment that a so-called or claimed community benefit which also benefits project residents or project customers, perhaps, should just be kind of discarded out of hand as a significant community benefit.

It might be helpful, both for the applicant, for staff just to get a sense, is that the sense of everyone on the board and we don't have to vote or anything, but maybe if anyone --

>> My comment is it's not mine.

I think it depends on what the benefit is.

It's not black or white at all.

>> D. Pinkston: I agree with Stephen.

I like the idea that if it benefits you, it doesn't benefit everybody else.

But as a practical matter, lots of things that primarily benefit the community also benefit the building.

They should be able to put in this in their marketing material.

For me what's typical for highrise buildings in the Bay Area?

Are all highrise buildings in the Bay Area doing TDM plans?

Pretty much.

Are they all doing some kind of transit passes?

No, not all of them but a lot of them.

That's the standard.

Is it above and beyond the course of business as usual which is incredibly hard to find because you have to know what business as usual is and I don't expect staff to be able to get to that but in dialogue with the developer and with staff, which you have already done, I think you started to get to what is the notion of business as usual.

You've Dong reports to us on that what's business as usual in Berkeley.

And you said sidewalks in front of the building, not so much.

They make a whole new plaza across the street, yeah that's something we wouldn't typically get.

So I think for me the standard you already created is the right direction rather than does it benefit the tenants because I think that's not the right standard.

>> P. Pinto: Yeah.

And many projects, we've included bike parking.

A number of projects come forward with bike rooms and much smaller projects.

In fact, car share, transit passes. These are -- I find them more normative than significant benefit.

They truly are.

And we can -- just in the past year, we've approved a lot of projects and required that as a condition of approval, as just a fact of getting things built in the City of Berkeley, I think.

And they're good.

They're good to have.

So I think we're kind of sensing like a lot of the -- for instance, a lot of the TDM suggestions or benefits that are put forward as benefits we really see them as kind of more benefiting the residents, more normative for building a project of this scale and size.

I think we're looking at these other kind of areas that we mentioned.

>> I want to follow-up on that if I may.

We did go through each of the TDM measures very carefully and we ale really did go through this filter of what's business as usual and what's not.

And I think we need to be clear on the record that there are a number of things in the package which probably wouldn't be considered individually to be big-ticket significant items but which are very unique.

You know, for example, providing cargo bikes.

Another one is they're talking about partnering with city car share on a pilot electronic -- or electric bike share program.

And bike fix-it stations.

So these types of items, you know, if the board feels that, no, even though that is not business as usual in Berkeley, those are just normative for a project of this size, it would be helpful to know that.

>> D. Pinkston: Why don't you resend the matrix for the next meeting, too, or incorporate it somehow into what you're doing and when you have an outstanding question that we have not answered, it will be easier to walk through.

I think the issue for tonight is we had a lot of material and it's hard to keep it all in your brain as a volunteer and then read it and come back and try to figure out what to do with it so if you can help us in that way we can respond.

>> P. Pinto: And I think you're raiseing a good question.

We're asked not just to define benefit but significant benefit and I think we're finding that's maybe not falling in that specific category of significant.

It's not to say it's not a benefit.

I think we're looking at what's significant here.

>> And the world community has to be added to that.

>> P. Pinto: Yeah, yeah.

I think that's where we're having -- we're seeing it's really more of a benefit tilting towards the residents and it's a value add for the residents and marketing the project which is great.

The community -- what really benefit did they say from that, I think that's kind of a key criteria that we're all using.

Although we haven't said it explicitly.

But is that safe to say?

Igor and then Sophie.

>> I. Tregub: Yeah, just to add to that.

I relooked at the matrix and by the way, I thought it was really helpful the column you had where "is it otherwise required" would it be required in a baseline business usual project.

So that was good.

What would really help me out is under community members benefited, so something like the second A.C. Transit pass per unit where it says the general public will reduce traffic and emissions, well, that's kind of "DUH" for me.

Of course there's going to be some benefit there.

But that's not really what I'm looking for personally when I'm looking at significant benefits.

So then it would help me if you were to grate -- aggregate them.

Maybe the cumulus of all of these benefits, even though they're primarily targeted to residents, maybe somehow it is aimed at reducing greenhouse gas emissions, so good at meeting climate plan goals staff is suggesting is could potentially be considered a significant benefit.

But as it is right now looking at them in and of themselves, I'm not seeing that.

So that's what makes it easier for me.

>> P. Pinto: Sophie and Shoshana.

>> S. Hahn: I think when Aaron and you guys evaluate what's typical, I think it's very important to look beyond Berkeley as (inaudible) that perspective which is something that I just love about having her on this board with us.

But we haven't had a lot of projects like this in Berkeley.

And I think maybe we are maybe a little behind the curve on all this stuff just because it hasn't been in front of us. So I would be really leery of what we've done in the past as the only check point.

I'm much more interested in, you know, what's Palo Alto doing and Mountain View and San Rafael and maybe not San Francisco.

Maybe that's a different league.

But the other thing -- what's the other thing?

I forgot it.

Isn't that good?

I forgot.

>> P. Pinto: We have to go to a captioner break or we're going to have to -- pretty quickly, but go ahead, Shoshana.

>> S. O'Keefe: I feel like we're giving you a lot of work, and I'm pretty good at that. You're all good at your job, but to make it easier, to answer your question succinctly, I don't know if everyone agrees with this, but I would say all the Transportation Demand Management stuff, it's not significant and as far as I'm concerned you can leave it off of your analysis.

It's just not significant.

>> A. Sage: Both cumulatively and individually.

>> The only comment I have for that if we make them buy a clipper card for everybody in the building, that's a lot of money and it's not business as usual.

>> S. O'Keefe: It's not your place to come up with that.

I definitely want to see more sustainability but this is not the standard.

>> The other thing I would like to add and then I think maybe we can move on, one of the requirements is the LEED gold.

And there's a number of these issues required to meet that.

And I know that the applicant has done a preliminary study and said that they surpassed it.

But really what we're looking at is that margin that they've surpassed it as significant benefit.

And I need to know and I think this board needs to know more clearly what is that benefit that goes beyond what the LEED gold or the LEED check list has required.

And a lot of the -- the applicant is looking at a lot of credits for the TDM measures that are getting them to that point.

But those shouldn't be considered benefits.

So that's the other thing to consider.

And I think that was part of the matrix, wasn't totally clear to me on that.

And I think it's a work in progress.

I agree, I think the applicant is working on that.

But they succeeded by certain points but it's not -- we have to understand what points are they going beyond and what are the benefits there.

Because then everything else is just a part of the requirement.

So I think that's another piece to this that we need to define.

>> A. Sage: So if we break it down in more detail and really document there is a TDM credit in the green building checklist.

It's worth two points and they need 60 points to get to LEED gold and they're at 75 points.

So clearly we'd be, in that scenario, they'd be able to use that TDM credit as a benefit, if you agree that it was a benefit.

>> P. Pinto: We'd have to agree a significant benefit.

>> A. Sage: Correct.

>> P. Pinto: We might or might not.

It's hard.

Cargo bikes, you know.

>> A. Sage: That takes us into the whole other discussion but I want to isolate do you agree with the methodology I just laid out?

>> P. Pinto: I think it's a good way to start this discussion and this approach.

I think it's a good way for you to move on.

I think we want to move on so do you have enough comments?

>> A. Sage: Yes, more than enough.

>> P. Pinto: I appreciate the public for staying so long and the applicant as well.

We have one more item, so --

>> We're going to need to you decide is it something that will be continued or go off calendar which we can do another notice which we're fine with or we can take a break --

>> We have to give the captioneer a break.

>> We have to take a break.

>> Let them decide.

>> I. Tregub: I was just going to make a motion to continue this off calendar.

>> I second the motion.

>> P. Pinto: All right.

Do we have a -- Let's take a roll call on that.

>> One option we're looking at is having this come up again at a regular meeting which there's actually one on the 22nd of this month but only one meeting in February.

It's the last meeting, the 26th.

>> S. Hahn: Can we add one?

>> G. Powell: One of the things we're looking at is maybe we can have a special meeting if the ZAB is interested in doing that.

One of the vagaries of the calendar is the only Thursday that's really open would be the 29th which is not that far off from today so it's not a lot of time for us to prepare anything.

>> I think that's too soon, actually, Greg.

>> S. Hahn: First week of march or something.

>> G. Powell: That's an option, too.

I don't know if there's really a repercussion if you continue it or not. It may be something we should do another notice for anyway.

So just some options.

>> Tell me, what is it your recommendation?

Are you making a recommendation to us?

>> G. Powell: You have an option to continue it off calendar where you don't know when it's coming back or you pick a date.

And my recommendation would be to say it's off calendar not to limit your options.

Or decide is there some sort of --

>> S. Hahn: Isn't that what was moved?

Let's vote.

>> G. Powell: So we're going to do a vote.

Board Member Dominguez.

>> P. Pinto: Sophie, I think we're trying to figure out what we're voting on.

It wasn't clear to everybody so I think it's useful to let everybody know what we're voting on.

Greg, go ahead.

>> G. Powell: So the motion is to continue off calendar.

Board Member Dominguez.

>> Yes.

>> Board Member Tregub.

>> Yes.

>> Board Member Donaldson.

>> Yes.

>> Board Member Hahn.

>> Yes.

>> Board Member O'Keefe.

>> Yes.

>> Board Member Williams.

>> Yes.

>> Board Member Pinkston.

>> Yes.

>> And chair Pinto.

>> P. Pinto: Yes.

So we are continued for 2211 Harold Way.

We are continued off calendar.

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>> VICE CHAIR PINKSTON: I had a conversation with Mark Rhoades and his client with concerns that they were not long standing, not sufficiently secured, and inquired their willingness to do something that would be of longer term benefit to the city.

**Zoning Adjustment Board
Meeting, 1/26/15**

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>> D. PINKSTON: None. The next item on the agenda is preliminary matters, agenda changes and public comments. What I would like to do if it is okay with the ZAB is to do the public comment and the consent calendar and then take up the 2129 Shattuck Avenue presentation so we get the consent calendar taken care of so folks who are here for that can go home before we launch into our presentation.

We see nodding heads. There are a few public comment cards on items not on the agenda. For Judy Shelton. And we have you for two cards including the Shattuck avenue presentation, which technically is not a public hearing. So when you come before us, on your open comments, please address those matters and we will give you three minutes. Okay. Because it is not a hearing on the Shattuck project.

All right. So Judy Shelton.

>> Okay. This is an e-mail that you guys just probably received a minute ago that I sent to the customer service people at landmark Shattuck cinemas in LA, their headquarters. And I said, as you know, the City of Berkeley wants to destroy the landmark Shattuck cinemas to make way for a development project, people from all over the Bay Area are very upset when they learn about the project. This successful petition campaign we have been conducting clearly illustrates their dismay. We have been fighting very hard to save the landmark. But do you want to be saved? If so you need to tell us, ZAB and planning that you want to stay at your present location just as you are, that you don't want the complex to get demolished and ostensibly rebuilt in a corner of the building.

California representative Mark Rhodes has assured the planning department that you have had conversations about the project and that you are fine with the complex being fine and demolished and rebuilt since you feel the theaters are outmoded. Since you are planning to vacate the location anyway. They also contend that movie theaters are passe, we don't believe what rose et al. Are saying with their conversations about you nor do we believe that movie theaters, especially those that feature independent films, are passé. We think the Berkeley landmark Shattuck is quite successful economically and we know it is highly valued by movie goers for nuanced intelligent film making, are we correct? We got an answer from them the very day from someone I wasn't expecting to connect with. The only parts that are really important for me, he apparently is not happy with the city as a whole but the parts that are pertinent to this discussion are we have no plans to leave the City of Berkeley in 2018 or earlier.

Now, Mark Rhodes has been saying there's no doubt they want to leave. They're not having a good time. We have other information that somebody else was supposed to present here that is not here today that the president of real estate, this is a highly successful operation. They don't want to go. And as a matter of fact they extended their lease to 2023, not 2018. So I don't know what is going on here, but I think we

need to get landmark over here and talk to them. They know that we are talking to you tonight. They gave us permission to do this. So this is not a secret discussion. This should be out in the public. We need to know why what Mark Rhodes is saying is so discrepant from what we are hearing from landmarks.

Commissioner Hahn.

>> S. HAHN: I just wanted to say that I think your statements at the board is really a misrepresentation. I think that you certainly have had some questions from some commissioners or board members. I haven't been with the planning commission but certainly there has been a lot of support expressed and it is legitimate for board members to ask questions, but for you to state that the zoning board and planning agree that movie theaters are passe is I think a misunderstanding of what has been going on up here. And personally I feel -- I don't like that my own comments which are generally supported but are misrepresented in that letter to landmark. I think there has been a misperception of what is going on up here.

>> Thank you, Commissioner Hahn. This is not a discussion. This is open mic. Thank you for your participation.

The next speaker is Kelly H.

>> My name is Kelly Hamergran. It's okay. Spelled it wrong and say it wrong too. It doesn't make any difference to me. So I'm here also. I have an African gray parrot that keeps a saying Hammergrin. And I'm here to talk about Harold way after we all chuckle a bit.

If you had asked me a year ago how I felt about this building, that is if I had known about it I would have said I hate the height but it is what we need to do to be better citizens to the climate. That was before speaking to people about the proposed Harold Way high rise, both landmark patrons -- -- and Berkeley cities reports the developers documents are at a now conclusion -- -- Harold Way building is a building in the wrong place with the wrong design at the wrong time. It is a major economic driver to downtown Berkeley. On weekends we have sold out movies. The patrons frequent our businesses. And 60 percent of the Shattuck attendants come from across the bay, they come specifically to the complex because of our intelligent documentaries at the site. -- -- will shatter the businesses whether they realize it or not. Construction was initially projected to last four years and now projected to 36 months. We don't want the city to be without this critical economic driver. Even with the developers who built the Shattuck cinemas are offering a significant community benefit is to subsidize -- -- for 20 years -- so the new building is only double the current lease rate -- which means the theater -- this is not a community benefit. The citizens of Berkeley would be living in a reality of Harold Way. That reality looks pretty ugly. We ask the zoning adjustment board deny 2211 Harold Way -- -- for the present and foreseeable future. -- -- ask the citizens to keep a watchful eye.

>> This is actually from staff. I won't this take out of your time but you can speak separately on the 2129 Shattuck. Since it wasn't noticed as a hearing you are welcome to talk to it.

>> Thank you very much. And our other speaker is here.

>> D. PINKSTON: Great. Would you mind reading your name into the record so I don't butcher it like I did Kelly's? Thank you.

>> It's Don -- for the record. I would like to speak about the misrepresentations about the landmark Shattuck cinemas and what they want or do not want. I'm not an official spokesman for landmark but I have spoken with their management three times now over the last six weeks. They very much desire to stay in Berkeley. They are happy with the current arrangement. They are a very profitable enterprise here in Berkeley. If you bothered to watch the academy awards last week, you would see that all the things at the academy awards were screened at the Shattuck cinemas. So before you decide you don't need the cinemas, that you could have a -- space instead, as was alluded to the developers in more recent iterations of significant community benefits that commissioner Pinkston opened the door for at the last hearing, consider what you would be depriving the citizens not only of Berkeley but of the East Bay.

During the great economic recession that began in 2008, landmark cinemas did not lose money. They made money. While other theaters were losing money. Precisely because the quality of the films they show are attracting the audiences they do. And they are profitable here in Berkeley and also across the country where they have other similar complexes. The demographics that come to the Shattuck cinemas here in Berkeley have a \$50,000 average income. Not exactly your high end consumer here in Berkeley, considering all the gentrification that is taken place thanks to the powers that be. They are educated. If you specifically name the developer's lobbyist, Mark Rhodes, who said we really don't need the cinemas. We can have a community performance space, you would be doing a great disservice culturally, economically and environmentally. Thank you for your time.

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>> I. TREGUB: And final question may be for staff but it is based on the report. I understand that you would like to see the city council weigh in on what significant community benefits might entail. I understand that in parallel with that you would like the ZAB to form a subcommittee to look at the community benefits for this project. Is staff aware of what the larger scheme is in terms of how these community benefits might be dealt with and who might deal with that? Whether it be the council, us, or a combination of that?

>> STAFF: Certainly it hasn't been discussed for this particular project at this time. There is work that staff is doing related to the 2211 Harold Street project, but the timing for moving that work forward, presenting that work has not yet been established.

>> I. TREGUB: Thank you.

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>> N. DOMINGUEZ: My last comments are for the ZAB. We have a developer here looking for advice with a community benefits package. You have to get on the ball in terms of guiding them. This is our job.

>> D. PINKSTON: Commissioner Ross.

>> S. ROSS: Thanks, nick. I have similar comments related to the B of A and parking side as well. I would love to see more active uses. If you look at page 13 of the packet it show it is corner of the building there and there are a lot of big office windows and doors that go into the corner.

>> We had the same discussion at the CRC.

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>> S. ROSS: I know the costs of building a structure like this are astronomical. And there is going to be a lot of interest in extracting as much as far as economic benefits to the city as possible. I know the hotel tax itself is a great benefit. Just cash is always a great thing. But yeah there is opportunity expressed in the downtown plan for plazas on Center Street and Shattuck right in front of this space so maybe that is a way to integrate it somehow with the projects because you will be destroying the street trying to build the thing anyway so maybe there is a way to clean it up and put in nice paving.

>> Make it a great street.

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>> D. PINKSTON: We look forward to seeing that. And then the last question I want you to respond to that is the community benefit question. We grappled with that some time ago. We have been anxiously awaiting somebody to report back to us on it. But I think it would be a very helpful thing that you suggested to ask the city council to weigh in on this. I think that a lot of the things embedded in the community benefits discussion are the appropriate purview of a land use commission. Many of them are not. We are not economists. Staff don't do project economics most of the time. And I think that the city council should be asked to weigh in on this. If the ZAB needs to formally ask the

city council for some direction I'm happy to do that tonight. But I also encourage you to go to them yourselves. You obviously have. And ask them to please step forward and express their intent and then at least you know we are operating within the boundaries the council expects to see so you don't have to go through the whole process twice where the ZAB hashes it out and we get to where we think it is supposed to go and then it gets to council and you have to start back at the going.

I concur with you on that. And if we need to say yes, I will put forward that as a suggestion, I'm happy to.

>> I know that is an important piece to the city and for us to understand as part, and we are in conversation with that with the city as well. We do it with every project. We are in the process of preparing an economic benefit for the city in terms of jobs, TOT tax, in terms of retail. Pyramid has an interesting story about a hotelier that paid his workers in silver dollars. That is what the study will show. It is important to understand that and we will work with the city on the economic benefit design.

>> D. PINKSTON: And I think you should do a wind study. The sidewalk where the wind would hit is right where people want to hang out. Some tall buildings don't have it but I think you do. So you need to study that.

>> Before we close, yeah, about the shadow study, I saw the shadows on the crescent there. I don't have a problem with that. Pretty minimal in winter even, not a concern about that. Just wondering about the parking, the UCB parking that is north of the site. What is the story with that? Is that garage going to be demolished? Do you know at all? What is the future?

>> It is a parking lot.

>> S. ROSS: It is surface parking. What's the plan?

>> I think UC's say.

>> S. ROSS: Just wondering if that can be a loading garage with an easement.

>> It is well beyond what we can control and move in a reasonable fashion.

>> L. DROSTE: .

>> S. ROSS: It would be worth asking.

>> D. PINKSTON: Are there any other questions?

>> I. TREGUB: Process question. Is there also public comment?

>> D. PINKSTON: Yes, thank you for reminding me. Are there members of the public who are here to talk about the issue? Come on up.

>> Thank you very much.

>> D. PINKSTON: Thank you.

>> Thank you. Thank you for asking that we have comment for the public. Several concerns I had about the buildings. First off I would love for the location, Bank of America, I think this is a good spot to be building. We do need a hotel. I do have concerns just looking at the quick calculation for how the occupancy of this hotel. I was in talks the other day that they have Airbnb in Los Angeles for hotel rooms. This is

something that we have a rapidly changing field here in terms of hotel rooms. And I would ask you to really put into the picture -- I appreciate that you come on a sustainability. We can really do buildings to about nine stories -- -- and we really think this building -- that should be a target, to make this -- -- part of the downtown plan, we would love to have -- -- with the hills. -- -- there is a study from 2004 for this lot location and in that plan it was recommended -- you know in 2004, 11 years ago, they were looking at solar energy and the placement of a building in this space to take advantage of solar energy. And this building doesn't comply with that. So I would hope that you would ask them to to take a look at this building that can take advantage of solar energy. This is a transportation hub at this corner and we hear the other night there is a plan to -- -- we do have a lot of downtown workers for this corner. Very important. And when you are talking about the importance of that corner and how that corner is put together, I think we should really be working -- -- people who ride buses still have an important transportation hub that is easy for them and convenient for them to use. So I would ask that you put that in place. And I see that's about all I can cover for tonight. I appreciate that I have a few seconds left, but I really ask for an open forum. And the community benefits package, the meeting is going on tonight. And as a community member, we would really like the opportunity to have significant community benefits so that we can have input as a community. Because all of us are going to be looking at these buildings. Thank you.

>> D. PINKSTON: Mr. Tregub.

>> I. TREGUB: This is in need for the response for the public to weigh in. And I'm not sure if you mentioned this. But in the report it says there will be an open house Monday. Is that still correct?

>> Absolutely. Sorry I neglected to say that. There is an open house at the marsh theater. 5 o'clock to 7 o'clock. Come in at any time. There will be some people there to answer questions and we will also have a short and simple questionnaire for you to fill out.

>> D. PINKSTON: Any other comments on this? Would anyone like the formally ask the city council to please take up community benefits and give us direction in a fairly short time frame?

>> S. DONALDON: I would be happy to. I think we need to ask the city council and the mayor to come up with a structure for community benefits and define those categories for us.

>> D. PINKSTON: Okay. Is that a motion?

>> That's a motion.

>> D. PINKSTON: Second?

>> I'll second.

>> D. PINKSTON: We can discuss the motion.

>> I would like to offer a friendly amendment to the motion, which is that the discussion include community input.

>> And include community organizations.

>> S. DONALDSON: I agree with that. Second.

>> How would that happen?

>> S. HAHN: Staff has listed community organizations that are normally notified. For example, if there is a project in the area. So if there is a project in Thousand Oaks they usually notify. Is that not correct? So they actually have identified a lot of neighborhood organizations. And there are some categories, for example, in the zoning code that talk about homeless services. There actually are -- I'm finding there is a list that they can ask the major agencies to deal with the homeless and affordable housing, to notify them of the opportunity. So there is a set of community members who can be notified. I'm asking for outreach, not just public notice on a board or on a website.

>> D. PINKSTON: Okay. There is a motion and seconded and a friendly amendment's been accepted. We don't need a roll call vote on this I don't think. All in favor say aye. Opposed? Motion carries.

And thank you very much for coming and bringing this to us in a timely way. We look forward to seeing the next iteration.

I also want to thank members of the audience who had to sit with the item. Especially the younger folks. You have been great. Thank you. Model citizenry for the rest of us.

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There are comments on item four, which is related to significant community benefits. That is really a motion, but I wanted to give people an opportunity. There are some cards that speak about Harold Way and density and if these are issues that are not on the agenda or have a number next to them, can you raise your hand if there is something that you want to talk about that is not on the agenda? Okay. Sure. Why don't you come on up. I think we are limiting it to two because of the number of people.

>> I hate to -- because I'm here because -- which I feel causes into question the entire commission system in Berkeley. The outrageously un-Democratic -- -- the dictators who run our city system. While we may -- -- for their expertise, we expect that the council will abide by the expertise or -- doctor their decisions. To remove a commissioner from making an -- -- decision before other commissioners, which was actually the right thing to do because it gets in the way of the personal views of a board member is not -- -- an abuse of power. -- -- that they serve the citizens of the City of Berkeley and not Tom Bates and his development firm. -- -- which they expect us to do. -- -- we expect you to uphold these rules and regulations. Otherwise if you don't -- -- what value are they? I'm going to -- -- all the decisions you have made that keep getting thrown back to you because Tom doesn't want it, like 2211 Harold Way. -- -- to protect the board members. -- -- not serve the whims of the person that put them on -- -- not because of some council member's needs. Two, I think we need to have a policy that no one that ever works for the City of Berkeley can come back as a developer for a project on Berkeley. And three, I think no city staff member should be on any board like ZAB which also -- -- for themselves. Thank you.

>> CHAIR PINTO: Thank you very much for those comments.

For reference to everybody, I think you are much better picked up by the mic if you stand back a little bit. It is very sensitive today and we want to make sure your comments are all recorded. So just mental note.

So I'm assuming there's nobody else that wants to speak on any non-agenda items so I will go to the agenda changes. I'm going to propose a change to the board. Just because we have three projects but the fourth item, which is significant community benefits referral to the city council, I believe from staff this is just an action that we already took a few weeks ago and we need to redo it for the Brown Act, but maybe you can explain it to us and the people in the chamber. I would like to propose to move that to the beginning so we can have comment on it ask then move into the actual action calendar.

>> STAFF: Yes, Chair, you can, correct. At the last ZAB meeting there was a conversation that came somewhat organically out of the presentation for the B of A site in downtown where that project would be subject to the same Berkeley Municipal Code

section 23E68090E that would require them to provide significant community benefits. And out of that conversation the ZAB passed the motion to request a referral to the city council for their consideration of the definition or concept of significant community benefit. Because the item was not on the agenda, it was potentially in violation of the Brown Act. So we have put it on the agenda this evening so that the agenda would be circulated to the public. But essentially we are asking ZAB to make the same motion and pass the same motion that was done at the last meeting.

>> CHAIR PINTO: Thank you, Shannon.

Does anybody have any questions for staff on that?

>> I would just like to make a motion again that I made last time.

>> CHAIR PINTO: What I would like to do then is -- hold that thought. I would like to move this agenda item to the top of the action calendar, first up. And open the public comment because we do have a significant number of comment cards on it since it was on the agenda, we want to hear that. And then close the public hearing and then make the motion to vote.

So first up I would like to make a motion to move the agenda, to move this item up.

>> Second.

>> CHAIR PINTO: Okay. Any opposed? All right. So we will move it to first up. And I'm going to open the public hearing on it on item four, which is significant community benefits referral to the city council. And I have about 12 comment cards here. Some of them mention significant benefits, some people have put number four, some people put density and development. So if you put any of those topics I'm assuming that you are speaking to item four. So if you would like to come up and speak, you will have two minutes each. So please come up and speak if you like. Don't be shy.

>> Hi. So you guys have a handout that -- okay. So I would really -- we are really counting on you that when you send this over to the council you will recommend that the council convene a series of public forums so that the public can work out what the benefits should be since we are the ones who really have to live with this. And we need to be partners in this. So that's my plea to you tonight, that we are really counting on you to do this. I know you guys are very -- this is a really important project and process to you. I heard you go back and forth a lot. It is really not clear what we should be doing. And that's why the public needs to weigh in, all the stakeholders need to be at a series of public meetings. It can't just be something that the council, you know, says and it can't just be one meeting. The people have to become widely aware of this and have input into it. And so that's it. Thank you.

>> Thank you very much for those comments.

>> CHAIR PINTO: Can you please state your name for the record?

>> My name is Judy Shelton.

>> CHAIR PINTO: Thanks, Judy.

>> Hi. I'm Edith Hallberg of great big -- and I'm against all the density and development that is going on. First, the developers ate up West Berkeley with tall ugly buildings. Then they are eating up Shattuck Avenue and they are going for Telegraph Avenue. And for some reason density is supposed to be a great thing, almost like an amenity. Well, back when I came to Berkeley 45 years ago, density was not good. If you were poor, you were living in projects and slums and so they started doing scattered site housing. Density is supposed to be for the rich and well-to do. Well, we don't mind a few yuppies in our buildings. We do have to have diversity in Berkeley. But it is not an amenity, especially when you think about what is happening with the downtown and all of this traffic and we can't find parking spots now even with the blue placard. And they are trying to tear down the Shattuck theater, the hardware store and all of these other things. So we need at least 50 percent if not more of this housing that is built for seniors and low income housing to keep it diverse. And then stop the darn development, please. Thank you.

>> CHAIR PINTO: Okay. Thank you, Edith.

>> Good evening. I'm Sharon Maldonado. Thank you for giving me a chance to talk with you. I agree with the first speaker that it is important that the community get a chance to weigh in. When I talk to people they are really pretty surprised there is an 18-tower building proposed to go in and that the Shattuck center will be gone forever, at least four to five years during the development. And it is my sense that the other small cities -- -- villages, they are near transit, obviously, trains or BART, but they are much smaller scale, the ones that I'm familiar with. I would hope that we can think about that for Berkeley.

Also it is my understanding that it is hard to do -- when you have a high tower because you don't have much of a roof up there. Obviously these buildings need to fit the 2020 California standards and if they are not going to have the solar panels, then they are not going to be able to do that.

Again, as I mentioned before, I'm very concerned about the issue of affordable housing. I understand that the city reduced the fund -- the funds that he might pay into the affordable housing fund from 28,000 to 20,000. To me I just can't imagine that with rising prices that council would do that. I don't know what their reasoning was. Other cities say, well, 35,000 per unit. So for Berkeley to have 20 just seems not in accordance with Berkeley values. There are of course many other things one could say but I think the main issue is that you guys have seen the need for the community to participate in this discussion to have a chance to speak their minds and I hope tonight you can vote to do that.

>> CHAIR PINTO: Okay. Thank you, Sharon.

>> Good evening. I'm Julia Taylor. I'm with the gray panthers and the Berkeley tenants union. I know that you will probably vote to ask the city council to consider

these benefits and what I would like you to urge is to send this list that you got tonight of significant benefits. It would really help if you sent those along with your --

>> CHAIR PINTO: Is this the one that you --

>> Yes, the one that we handed out.

>> CHAIR PINTO: We did get that.

>> I would like you if you could possibly indulge me and send my endorsement along to the city council. Another thing I would like to mention is that while density is considered green in some way -- and I can understand that -- it is not green if people are crowded into a non-green building. And this building, this supposed building does not appear to be very green. And the other thing I want you to consider for your recommendations is that this could very easily be -- a lot of other developments that would work. So it would be very good if you could spend some time making sure that some of the newer communities -- -- thank you.

>> CHAIR PINTO: Thank you, Julia.

>> Good evening. My name is Julie Dickey. I'm here as a concerned citizen and also a member of Wellstone Democratic Club. And the club sent the secretary on March 4th a letter and the focus of it was significant community benefits. And the letter states, basically, that they should be beyond what is required by a standard and under statute and should not be considered a benefit if it primarily benefits the developer or its tenants. And then it speaks to several proffered benefits that the developer came up with that do benefit the developer, not the community, Wellstone. And I feel that retaining the Shattuck Landmark Theaters in their present location is a definite community benefit.

I understand the developers have different ideas of benefits. So I really want to appreciate you all for your February 26th, meeting resolution. I hope you pass the same motion tonight to send this to the council for community participation. The developers already have their benefits. They are going to build those big buildings and make big bucks, and that's the bottom line and they are going to protect it. So it is your job as a board representing a city and its citizens to protect us. Understandably, Mayor Bates is interested in bringing development into the City of Berkeley as part of his legacy, but we need to make sure the legacy is truly worthy both of him and the city. Thank you.

>> CHAIR PINTO: Thank you very much, Julie.

>> Hello. My name is Kelly Hangrin and I'm with the Shattuck Cinema Group. And we worked very hard on significant community benefit, which you have in your hands. The thing that we wanted to emphasize the most was sending the significant community benefits to the city council is that it is part of community forums, that the community has the opportunity to participate in defining whether significant community benefits are.

-- -- all of us participate -- to get the best results for our community. -- -- so we any terms of threatening situations, and this is not life-threatening, we have plenty of time to

make this decision. We have time to go through the process. There is no crisis that is going to fall apart if our city takes the time to make the right decision. And I think about what happened in small towns after I left for college, the city officials were very concerned about what might happen to the town and how they might lose business to other areas. And someone made a decision on building a -- and instead of saving businesses in the community, we are actually destroying them. And living here 45 years, they still have not been able to recover. The downtown is sort of a ghost town. And so I urge you to really take your time. Everyone needs to take their time to make the best decision. So that is my message.

>> CHAIR PINTO: Thank you, Kelly.

>> I'm a little bit confused procedurally. -- the Brown Act doesn't allow you to ask my name but I will say it anyway -- perhaps you are the authority of asking about people's names. I'm confused because as I get the agendas from outside the room it says to ensure compliance with the Brown Act staff has placed the significant community benefits referral to the city council on this agenda. While that's true, I don't see the motion itself memorialized on the agenda. What is the motion? What are you proposing to do? When the chair spoke I think she said something about the bank of America site. Are you proposing now to have now and forever more what encompasses significant community benefits to be looked at by city council or are you deciding for a particular site? And if so, which site and what is the way the responsibility is going to be handled? Because your responsibility is not to grant as many variances as the product demands, especially height, unless it provides significant community benefits. So where are you going to look for proof of the significant community benefits? To the council or to your own judgment, number one. You should know which one you are doing. And number two, how are you going to guarantee that those benefits actually materialize? Because some of the people involved in this project and some of the people around similar projects have a history of actually not following through on the promises. So please make sure that you get -- -- but also significant community benefits. You have a large responsibility here. You all are on the Zoning Adjustments Board. You are all part of the organization. You can make your decisions based on your best information.

>> CHAIR PINTO: Thank you very much. I have more cards.

>> Sharlene W. I'm a little confused. As Becky thought, it was your responsibility to assess the community benefits. If it goes back to the council, I hope that is only so the council will call community meetings because I think we all want a vibrant downtown, but I think there are some very different ideas about how to achieve and maintain a vibrant downtown. What I see happening is, if we allow it to happen, the destruction of our currently vibrant downtown, certainly the Shattuck cinemas with their ten screens are an economic and a cultural magnet. We draw people from within Berkeley and we discovered they draw a lot of people from other places who come here and spend their

money, see the movies they want to see and can't see where they live. And that's going to be wiped out. And even if the -- did promise to replace the ten screens with the ten screens years down the road. And I see this is as a loss as the arts center was lost to us by developer's broken promises. So I think it needs to be very serious public discussion around the issues here. And other concerns of the disruption will affect the economy of downtown, the vibrancy. The traffic will be disrupted. People won't be able to get to the continuing businesses easily because of the construction on this monstrous planned building. I think net zero energy, we need. We need to keep our local businesses, we don't want to destroy cultural and economic resources and we need inclusionary housing.

>> CHAIR PINTO: Okay. Thank you, Charlene.

Is there any more? Come on up.

>> Although it is a violation of the law, I'll tell you my name. Theresa Patrick. I have a card up there. I want to emphasize that I think that any new building that gets a zoning permit in Berkeley should apply with the 2020 standards of being 0 net energy. And the retail buildings don't even come close to that and we will be stuck with them forever. It is not just us, but our kids and grandchildren and our grandchildren's grandchildren. And I agree with people that have suggested that along with asking the council to take a look at what significant benefits means, I think you are shirking your own duty when you are doing that. But you should accompany that request -- I would say a demand -- that there be public hearings about it. This is something that affect it is whole City of Berkeley and will for a long time.

Another suggestion that I have is you adopt an oath of honesty when people testify before you here because it has shown that Mark Rhoades will tell you a lie here without batting an eye and some other people. And you people make decisions that are going to affect the City of Berkeley for generations to come and you don't even require them to take an oath to tell the truth. Thank you.

>> CHAIR PINTO: Okay. Thank you.

>> Rick S. First of all I would like to praise your work so far. I think you have really taken your mission seriously. I would like to emphasize that we need open forums and I think this process should be viewed as --

>> CHAIR PINTO: Stand a little bit back from the mic. We want to hear everything that you are saying. Just stand a little bit back from you. It will pick you up.

>> I don't hear anything. Okay. Anyways, I think that this process should start as soon as the permit appeal is on the horizon. I believe that, like San Francisco has -- -- defined as a place for big buildings, we should have a part defined as a cultural core and not have big buildings. I don't want to -- any of the significant work that you have done so far -- just doing the right thing like having proper labor standards does not constitute a significant benefit. You also determined that certain detriments were so bad they had to be made up before you can start talking about significant benefits. That

needs to be included going forward. Affordable housing, the only way you will have it, these need to be brought under -- we don't know how it can be done, but we need to do it. It has to be affordable for working class and not just the Ayn Rand types that want to move into luxury condos who have their own elevators and never mix. And condo dwellers who have experience with New York or other cities that do not build with the neighborhoods. We need to have the 2020 net 0 standards, as Rob Burn pointed out. The -- -- building will be obsolete by those standards. I think you need to look at the city of -- -- which has converted the entire city green on to -- it is not net 0 -- -- but to make money on it. And one more thing. As we all know, in the Shattuck area -- -- the fine arts building, any promises we get from the developers must be accompanied with an ironclad MOU, memo of understanding, so they can't treat us again like they have done. Broken new promises -- --

>> CHAIR PINTO: Rick, I have a question for you. You mentioned one of the cities as net 0. What was the name?

>> Manheim.

>> CHAIR PINTO: I still have a few more cards. That's it. Anybody else want to speak on the topic before I close the public hearing? Okay. Seeing none, I'm going to close the public comment and bring it back to the board for some discussion, I think, for the motion.

Do we have any discussion? Sophie.

>> S. HAHN: I will not put it as a motion, but I think this is a more fine grained worded version of what we heard at the last meeting. And I echo some of the sentiments that we have heard in the comments.

-- -- pursuant to whatever the code section is. The framework should not include benefit and is featured which are currently required by statute or customarily required by staff in the zoning board and the other zoning boards such as traffic controls, parking, car share, and other transit features that have become customary. Payment of fair wages, and lead gold, and that is something that we can discuss. But the idea being that we don't want them to include these things in the discussion of significant community benefits. It should focus on extraordinary community benefit categories. The ZAB suggests that the council consider including -- consider but not limit their consideration to affordable and senior housing and family-size housing, services for homeless youth, disabled, elderly, and other vulnerable populations, arts and culture, publicly accessible and enjoyable infrastructure or landscape such as parks, public spaces, sidewalks, elements of the plan, beyond the perimeter of such projects. Historic preservation, support for small businesses, environmental measures beyond lead gold such as 0 net energy or lead platinum.

The ZAB will ask the city council that the process undertaken include significant and targeted outreach to potentially interested community organizations including neighborhood organizations, social services agencies, arts organizations, historical

societies, etc., and numerous opportunities for public input via public hearings and or community forums --

>> -- -- and for them to define the scope and measurability of it because that's the scope we are dealing with. And when I say the appropriate public input, I want them to develop what they think the appropriate public input is and define the framework for measurability and targeted benefits per project that is submitted. So I would like to leave that debate up to them because whatever we discuss up here will be reconsidered with some of the same people who had input here at that meeting and I think they either need to kick it back to us or accept the responsibility.

>> CHAIR PINTO: Shoshana.

>> S. O'KEEFE: I think Sophie's motion is great. And I think what is great about it is it is an excellent summary of the very lengthy discussions we have had about this. And some of that is reflected in the downtown plan but it is much more detailed and we have had a ton of discussions here and the public as well about what kind of community benefits we would like to see and I think she did a great job and I would like to support that as a motion if it became one.

>> CHAIR PINTO: Denise.

>> D. PINKSTON: I thought what we were doing at the last meeting was saying that the community benefits rules should be set by the council with the public process, it is as simple as that. We are not talking specifically about Harold Way. It came up on the context and agenda item of the hotel. And rather than enumerate exactly what that could mean, including but not limited to, I think we would just make the request simple. Because otherwise I would like to have a lengthy debate about what community benefits should mean, and that's not the agendized topic for the evening. The topic is to ask the city council to take up creating the community benefits standards that then the Zoning Adjustments Board will enforce. And I don't think this is shirking our duty. In fact, I think it is clarifying our duty. The name of the commission is the Zoning Adjustments Board. That implies that there is zoning, that we are attempting or adjusting to fit particular cases and patterns and projects. The standards, the zoning, the legislation belongs with the legislative body, which is the city council. So rather than try to enumerate what we think all the things are, which I think is a very lengthy discussion. If we are really going to do that, we should schedule it for a real meeting and a real hearing. Rather than get into the context tonight, we are saying, city council, we think you need to establish -- like Steven said -- and set the standards by which we will approve the projects and make sure that those standards are measurable, quantifiable, enforceable so we have something to guide our work on case-by-case projects. That's what I thought we were trying to head to. Otherwise if we start making lists of exactly what we think they should talk about and which groups they should invite, we are having a conversation without having a conversation, which I don't think is what we agendized for this evening.

>> I'm sort of agnostic on whether we send this now or at some point in the future. From the public comments and just what I understand about the context for this discussion is that the city council has not traditionally interpreted community benefits in a very specific way at all, and I think giving some sort of framework to the city council as an impetus for really understanding the depth of discussion and the depth of community input that is needed here would be helpful if we are going to go forward with this level of specificity, which I personally would be in favor of. I think that one thing that should be included is something that reflects the comments about whether the community benefits are enforceable. So if people are making agreements or entities are making agreements and they are not being followed through with, there should be some mechanism for enforcement of the community benefits but I think there should be community recourse if the city council chooses not to act. So both an enforceability mechanism that comes from city council and a community enforcement mechanism for the city council that can be initiated by the people.

>> And I just wanted to reiterate that this motion is about asking for guidance and a framework, not for asking the city council to do our job for us, we just need to understand how to do our job. And I think the way that we are going to address the city council with the content of what we want to see in the benefits package is by attending the meeting and seeing it represented and doing it that way. We should not include it in the motion itself.

>> CHAIR PINTO: Shoshana and then George.

>> S. O'KEEFE: We have all spent a long time talking about this and the public has given a lot of input as well on this subject. And we generated a lot of content, and I think that content is valuable. And if we don't transmit that to the city council, I think it is wasted. I think it is an incredibly important part of the discussion. This is a great way to memorialize it and they can do what they want with it. And we should put it in with the bush, and I disagree. Based on what I read in the agenda, I think this is an completely appropriate discussion.

>> CHAIR PINTO: Thanks, Shoshana.
George.

>> G. WILLIAMS: I would like to hear the motion again. We had a simple motion before us and now we have a very complicated one that we have read once. I think it is far too specific. We could certainly write a paper saying this is what with your discussion has considered so far, but for us to be directing the council of what they should do I think is inappropriate. We are asking for their guidance. They haven't asked us for guidance as to how they should respond. And I think it is inappropriate to be this specific. I'm also troubled, the thing I think we need to most is a sense of how much is there in a project that could be devoted to significant community benefits. I think what we need is an economist doing an analysis of the project and telling us how

much the up zoning is worth. And that becomes a lot of money that we have to distribute.

>> CHAIR PINTO: Yes, Steven.

>> S. DONALDSON: I think I would approve either motion. I think they are both great. I like Sophie's specificity, Steve's reiterate what had we agreed to last week. And we go to the city council to make these decisions about how to frame their meetings and who to outreach to. As we all know, there is a lot of outreach about the Downtown Area Plan and I'm sure a lot of the discussion was about community benefits so I think they are familiar with the topic. It is really a matter of just providing more direction to us and that's what we are asking for. I'm happy to ask for either motion as long as we can get to this motion quickly and get to the items on the agenda.

>> CHAIR PINTO: Thanks, Steven.

Sophie and Denise and Shoshana.

>> S. HAHN: The code is clear. This falls to us. One can have the opinion that the city council should have retained the power for itself and that it was more appropriately in their domain, but they actually put it in the code that this is for us to decide. So I am not comfortable. I think asking for some guidance given that perhaps it is arguably more of a legislative function, is a good thing, but I am very, very reluctant for us to throw our arms up and say even though you gave us the power, these things were discussed and voted on, we are not going to tell you anything and we are just going to kick it back to you. I think we have heard a lot of testimony. We have some agendized fair discussions on this topic. And I think we are abrogating our responsibility by not at least providing some specificity -- they'll share on the dais -- for these public forums. The people have come and spoken to us many times on the topic to the extent that we might agree with some of the input they put forward, it is absolutely true that the council can do whatever they want with it. They can set it aside or pay no attention whatsoever. But I would be open to changing a little bit the wording to indicate that the categories that we are asking them to consider but not limit themselves to reflect discussion at zoning board in publicly noticed meetings and encourage council to consider that but not limit themselves to it, but I would actually like to go ahead and make a motion to the motion that I read previously. I'm happy to read it again.

>> CHAIR PINTO: Before you do that, there are other comments.

Denise.

>> D. PINKSTON: I would like to make a friendly amendment to Steven's original motion, which is that along with our recommendation that we ask the council to create standards and quantifiable measures to those standards in the topic of community benefits, that we also shift them the record of all of our conversations, all the correspondence that we received, written, so that they have the full record in front of them, which I think addresses the concerns that somehow we have failed to transmit the information that we have received to date.

>> I accept that friendly amendment. And I'm concerned about being too specific because then if it goes to council it will become about whether they are doing what we said or what we didn't say as opposed to them having all the information and being able to then work with staff and come up with what they think is the standards.

>> I want to interject a little bit. I am friendly to the amendment and friendly to the council working with staff but I want to point out that a lot of the feedback we get from the community is we are not throwing this to the council so the council can create the standards with staff. The idea is that the process needs to be participatory and that council needs to do it with input from the community. And so whatever resolution we put forward needs to emphasize that, because I think the insular word of creating policy with staff has not necessarily played out well, at least for some of the community members who have spoken here, and I think we need to emphasize that to council. This is not just we are kicking this to you to create it. This is we are recommending your engage the process with the community and write a new set of standards, and those are totally different things.

[Applause.]

>> CHAIR PINTO: Shoshana.

>> S. O'KEEFE: Thank you. Yes, I agree. And I think that part of the community input is memorialized into the community input that has already been made. That is very important and I wanted to reiterate that. And I wanted to say, there are a ton of commissions in Berkeley.

>> 43.

>> CHAIR PINTO: 45, I think.

>> S. O'KEEFE: This one is different than almost all of them in that we are quasi judicial and we vote yes or no or individual projects. But most of them the point of it is to have a panel of experts spend a lot of time on one issue and make recommendations to council. That's exactly what we are doing now. We know a lot about community benefits we know a lot about the planning process and development and that is what I hoe sieve the motion as. It is an appropriate use of the commission. And it is what all 45 commissions do all the time. And I think we are not doing our job if we just give them a blank motion and say can you write it for us. That we should say please write it for us and these are the issues that we have identified. Please consider them. I think that is exactly what we should be doing.

>> CHAIR PINTO: George.

>> G. WILLIAMS: I would like to add to the discussion the things --

>> CHAIR PINTO: Go ahead, George.

>> G. WILLIAMS: The absence of. We don't know how much money we can exact out of a development. We don't have any sense of how much give there is in a project. If we ask for too much we kill the project. If we ask for too little we have clearly not done justice to the community. Whatever we send to the council, I think it ought to include a

request that funds be provided to enable whoever is making the decision the ability to do a serious economic analysis of what the project needs to pay.

>> I would just like to say, George, I agree. I'm willing to add if it is found in the right place. That we also ask the council to help us with the framework for determining the economics of what community benefits we can ask for. I would be happy to add that. I think you are right that that is missing and that goes to my desire for us to provide some specificity in terms of what they give to us.

>> CHAIR PINTO: I want to kind of -- I want to kind of summarize where we are because I think we are starting to go in circles. I think that's an interesting idea, Sophie. I see two different motions on the table and I'm not sure. I think they will split us. I have a suggestion but it is something to think about. That we could make a more simple motion, including the community participation, because I think that is very important. And we have heard you. We have been through the meetings the last few times and I think that is important. We do have a lot of information. And I think we can craft a more simplified motion with perhaps designating an official -- either chair or vice chair, somebody from the ZAB -- to be officially representative of the ZAB to then at the council meeting present the more details of what our intent was behind the motion to fully explain all the things we talked about. I think that is important so the council gets a broader picture of what we are doing. We could all go, but we can officially designate it as part of this commission to go before the council and explain to them clearly what our intent is. I think it saves us from a burdensome motion that I'm not sure everything is going to actually be treated and it makes it seem everything is treated with equal ways and I think we want to get some direction. I think this issue will come back to us and we will have time to talk about it, but we do need a little direction.

>> D. PINKSTON: Can I suggest a friendly amendment to the motion I wasn't going to support and see if we can get there and we can have a big happy friendly motion?

>> CHAIR PINTO: Please do.

>> D. PINKSTON: The first point Sophie made is we are asking city council to make a framework to use regarding community benefits which is essentially what Steven's amendment contained solid framework and quantifiable and measurable.

>> Including statutorily.

>> D. PINKSTON: Hang on. Almost there. Let's do one thing at a time. Framework, quantifiable, measurable and enforceable. That is item one. I think we all agree on that. So then item two would be does not include customary items that we have access to using our traditional land use authority. I think we can all agree on that. The third item would be that we suggest they consider issues raised at the ZAB and then provide in the record whether enumerating those issues, which essentially highlights them and frankly we brought up things that have never been raised to the ZAB. That is the issue. So let's not list the issues, we can say here is the issue, we think the issues we have seen are herein.

>> CHAIR PINTO: And I agree with that. Public participation, there are issues that we haven't heard from. We have only heard from the people in the room at the few meetings and there could be a few others we haven't discovered which I would be very interested in knowing what our community benefits are. There is some innovative thinking in the city and we don't want to foreclose that. I think that is an interesting idea.

>> D. PINKSTON: I'll keep thing. Trying to make it simple. We encourage them to do outreach without telling them how to do it and that we -- what was the last one -- recommend that they do an economic analysis of each development project if it goes through the process so that we have some sense of what our envelope is battle-wise, at least council does, when they refer these back to us. Otherwise we are putting ornaments on a Christmas tree and we won't know what that point is without input.

>> CHAIR PINTO: Would that be -- that's an amendment to Steve's.

>> D. PINKSTON: To somebody's motion.

>> CHAIR PINTO: We were just talking.

>> I would second that motion.

>> D. PINKSTON: Whatever we want to call it.

>> CHAIR PINTO: Whatever we want to call it. Working draft.

>> D. PINKSTON: Working draft.

>> CHAIR PINTO: Yeah, working draft.

>> I think it is really important off the top not to invite the city council to produce the new standards and everything else. I think what we should ask the city council to do is initiative community hearings in order to inform a new set of standard.

[Applause.]

I just think the assumption that we are having here and the premises that all of these are resting on, there is a lot that we haven't heard from the community that is not reflected here that needs to be heard. I don't think it communicates that to the council if we say, hey, we recommend maybe participation. I think what would be more helpful is we would like you to initiate a series of well publicized community meetings with the goal of. I think that language should be first, not last.

>> D. PINKSTON: My only concern about that is there are four well publicized meetings of what community benefits should be that resulted in a very expensive planning document that was put on the ballot. And they want to go back to the beginning. We have a lot of information in the documents. The council clearly needs to hold hearings on this. So they are going to have to hold hearings but I think holding hearings needs to happen -- we are not starting from scratch. They are starting from a policy document. So I don't think we should tell them they have to start a brand new process with a lot of hearings. I think they have some guidance and they need to put some numbers around it and create some standards around what is just a policy document.

>> CHAIR PINTO: Sophie. I'm hoping we are moving towards a motion.

>> S. HAHN: I could go with it except the same point that was just brought up. First of all, things change really quickly in the world, things that we are not even asking for five years ago we now consider standard. So the work that was done, maybe not that many years ago actually -- and I have actually looked at this stuff very carefully. I have read it all in the last year. And I do think that times have changed very quickly for example there is a big emphasis on -- -- and they are now pretty standard. I do think that the community, it is time for community input. I solicit input at the time the -- was developed, was about development standards. -- -- creating a footnote about significant community benefits. They didn't actually do that work very thoroughly as compared to the work around of the statute. So I can support it except I will not support it if we do not give the council very clear direction on outreach because often the city's idea of outreach is they publicly noticed a meeting, and I think that is inadequate. And secondly I do think the public needs the opportunity to weigh in. -- -- public hearings, but I personally think it is very important that we specify that the public has significant opportunities and well publicized opportunities for input. So I'll go ahead if you take that.

[Applause.]

>> CHAIR PINTO: Is this adding to the time?

>> G. WILLIAMS: The board often has discussion sessions and well advertised. Do you anticipate the council going out into the community and holding meetings throughout the community? I don't understand what is different than the standard board procedure on issues like this.

>> S. HAHN: It was actually approved at the last meeting, that they specifically reach out to interested organizations including community and social services organizations, and they have been those lists already, this is not complicated. Staff has lists of those organizations already.

>> G. WILLIAMS: This isn't a workshop at the council?

>> S. HAHN: Yes, it is, because it was publicly noticed and maybe a homeless youth agency doesn't know that a discussion of community benefits on the council agenda is something they should come to.

>> D. PINKSTON: I can agree that they add the hearings that will have this topic be widely noticed so the maximum public input be solicited. I'm okay with that without enumerating who they have to write a letter to. I think the idea is there are many more people in town who are interested in the issue than we know have been discussing it and the idea is to how we decide on the structure that provides people the opportunity to know they are talking about.

>> S. HAHN: I would second the motion if that was included.

>> CHAIR PINTO: I have a motion and second. I want to be sure we are voting on the motion. I think you had it captured, Shannon.

>> Great that you have such faith.

>> I'll talk really fast. The council will create a framework to use guidance for community benefits that is quantifiable, measurable, and enforceable. Second is that the community benefits should not include customary items that we are able to secure with our traditional land use authority. The third item is that we ask that they conduct a well-publicized public process for this discussion so that the opportunities for community groups that may be interested who don't even know that this is a topic to participate.

>> CHAIR PINTO: I would refer to the city-wide outreach -- about other people getting involved in the process. It is a city issue.

>> S. HAHN: And we ask that a community process be considered so we have a sense of the quantity of community benefits that we should be targeting.

>> CHAIR PINTO: Sophie, are you okay with that amendment?

>> S. HAHN: That restatement, yes, and I think it captured it.

>> CHAIR PINTO: I would like to take a vote on it.

>> One quick question. Did you want to consider issues raised at the ZAB?

>> D. PINKSTON: I'm sorry. And the whole record.

>> CHAIR PINTO: And the whole record submitted as part of the packet.

>> Do we also want to designate an official representative from the ZAB, as Prakash suggested?

>> D. PINKSTON: Let's make one motion at a time.

>> CHAIR PINTO: Wish for the record to be submitted.

>> I call the question on the motion.

>> CHAIR PINTO: Why don't we take a vote on the motion, Greg.

>> STAFF: Sure. Board Member Donaldson.

>> Aye.

>> Board Member Williams.

>> Yes.

>> Board Member O'Keefe.

>> Yes.

>> Board Member Hahn.

>> Yes.

>> Thank you. Board member Pack.

>> With comment. I have a comment after.

>> Board Member Dominguez.

>> Yes.

>> Board Member Ross.

>> Yes.

>> Vice Chair Pinkston.

>> Yes.

>> Chair Pinto.

>> CHAIR PINTO: Yes. Motion passes. You have a comment.

>> N PACK: As someone new in the space --

>> CHAIR PINTO: I would appreciate it be brief because we have a room full of people with many projects.

>> N. PACK: I take it implied that council will understand the importance of the public hearing process and to do that first and give lots of time for community members to give input prior to writing anything or making any formal decisions, and we will take that that it is understood.

>> CHAIR PINTO: Thank you.

>> G. WILLIAMS: Did you vote?

>> CHAIR PINTO: We did. Okay. You want to call the question?

Let's move on. Thank you, everybody, for your comments.

>> Thank you for coming.

There is a motion to retain.

>> I don't know -- do we want to force somebody to attend? I don't see the need for it.

>> We need to add it as an agenda item at a different meeting.

>> CHAIR PINTO: It is on the agenda. I personally think it is enough. And then if each board member wants to go personally without an individual, that is perfectly fine. We would like to remind everybody that in order to go to a council meeting they need to represent themselves as members of the community and not members of the zoning board.

>> I would like to ask staff we be added to the list of people that receive notice. We don't customarily get notices for the city council meetings but I think folks may want to go to them. So I would appreciate us being able to get notice.

>> CHAIR PINTO: Thank you very much. Okay. And thank you, everybody, for commenting and I appreciate your comments. Really do.

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>> All right. Since there's only two of us, thanks. Great. I was getting ready to go to a brunch party with a bunch of artists and I heard a funny noise in my kitchen as I was loading up on caffeine and I turned around and water started pouring out from underneath the sink. So I pulled everything out and tried to shut off the water, it wasn't going very well. Went outside and flipped the switch and shut off my water. And then it hit me. This is what our future is going to be like. We only have so much water left. So there I was, smelling, my hair looked like I put my hand in a light socket, and I needed to be at this event in an hour. So there's no shower, there's no water to brush my teeth. There was no water to flush the toilet. No water. And that's really what we are facing. Today we had 80 degrees at my house. I don't know if we broke a record. According to NASA, we won't have water left. Climate change is here, in your face, and the temperature increases predicted for 2100 have been moved up to 2050. And I wouldn't be surprised if it happened again. Here's what we need to do. Everyone, we need to be up to date saving energy. It is absolute nonsense that we can't do it. We are in a hot market, there's a lot of money floating around, we can bring that challenge. We should be demanding our city council set codes for 0 net energy buildings. We need to ensure that new products going to our buildings from the list. Our future is perpetual drought. We need to reassure that we capture water for reuse but we should be ensuring water conservation. It is a sad day when -- -- information about 0 net energy living building challenge -- -- so I ask you, I urge you, we need to be climate-conscious and we need to do it now. We need to have no more -- -- like I found today. We really need to pay attention. Thank you.

>> CHAIR PINTO: Thank you, Kelly. Thank you very much.

[Applause.]

Susan.

>> Thank you. Here I am back again. I have been listening to a few of my friends.

>> CHAIR PINTO: Can you speak into the mic?

>> The consensus is that we are in crisis in Berkeley. And this is a city that is broken in a lot of ways. We need housing, we need affordable housing. That should be our number one priority in this city, to find a way to build housing for low income people, to find a way to house the homeless. I was reading the New York Times, in Seattle they have camps. We need to do something, we need to look at this level of people in the population. We are at maximum density for quality of life in the city. There is no more room for a lot of people and building up. And I think we need to think of the people who are here now first because we desperately want this to be a livable city. And we have got so many great things going for it. And the decisions at the zoning department that you make are going to do a lot. Are we going to have a livable city or a traffic density nightmare? That's what I wanted to say, and thank you and hopefully -- the reason I'm

here is because of the Shattuck theater. That's when I started to get a little bit educated about what was going on in Berkeley. And a lot of people are just -- of Berkeley, not because they want to, because they are working full-time. They don't know what's going on but as soon as they know about it, they are appalled and alarmed. So while at UC Berkeley, they have an advocate for the neighbors. So hopefully we can do something and move forward in creating an exciting -- that saves us all. And I went into Target the other day -- -- it is terrible to go into that. And also staples. They have one little stationery store. So to keep the little small businesses is so important. Places like ACE Hardware and Shattuck Theater. So thank you so much.

>> CHAIR PINTO: Thank you, Susan. Thank you very much.

[Applause.]

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>> CHAIR PINTO: Okay. And then last item is staff update. The ZAB referral of significant community benefits to the city council. Shannon.

>> STAFF: Great. Thank you. There is an item on the city council action calendar for April 7th at the beginning of the meeting I handed you the report for that. It has been put on the action calendar from Mayor Bates and three council members. The subject is public comment and council discussion on significant community benefits for new tall buildings in the downtown. This is up on the city council's website and is available to all.

As one of the points that the ZAB made during the referral oh related to why they are noticing, I did check with the noticing requirements for city council meetings which are done by the clerk's office. Agendas and related reports are made public 12 days before the council meeting which means they are posted electronically on the city council's web page, posted electronically on the online records page of the city's website, posted physically on the board outside of old city hall. The council packet is available for review at the clerk's office and downtown public library and in addition agendas are e-mailed to the clerk's made mead yeah list. Additional noticing may be done by the mayor or council members.

In terms of forwarding the ZAB's record on this, they are in charge of forwarding the record to the clerk's office at the beginning of next week so it can be published as the supplemental materials for the April 7th council meeting.

>> CHAIR PINTO: Thanks very much for the update. Any questions for staff at this time?

George, you look like you have a question. No question. All right. Igor.

>> I. TREGUB: I have two questions. Well, a statement -- I appreciate that the council will have an opportunity to discuss this. I'm a little bit concerned about what might potentially turn out to be like many council meetings where the public has to wait for a

long time before they get an opportunity to speak and then when they get a chance to speak they can only do so for one or two minutes depending on how many speakers there are. I imagine there will be a lot for this item. So I hope that the April 7th discussion is only the beginning of the process and that there might be some opportunities for wider community engagement, such as the workshops that have happened for Measure M implementation which happened at the North Berkeley Senior Center, South Berkeley Senior Center, and I believe another public location which was open to the public over the course of a weekend -- I think a Saturday and then a Sunday -- and the public could engage in a deeper way than simply a two-minute comment.

That's my comment. And then I know, Shannon, you encouraged me to ask this and make it a part of the public record. So I'm putting this question on record. It has been brought to our attention on the ZAB that there seems to be a lack of clarity as to whether landmarks management actually has a desire to leave its existing location at 2211 Harold Way. So I would hope that perhaps there might be an opportunity to answer that question if not tonight as part of the April 7th meeting.

>> CHAIR PINTO: Okay. Thank you, Igor.
