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CITY OF BERKELEY  
ZONING ADJUSTMENTS BOARD MEETING  
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>> G. Powell: Excuse me.

If I can have everyone's attention, we will start the Zoning Adjustments Board meeting tonight.

And unusual for these meetings is staff is starting it, and that is because we do not have a chair or vice chair.

So I'm going to start the meeting with roll call and kind of act as the chair for a moment.

And then we are going to turn it over to the Zoning Adjustments Board, once they choose a chair and vice chair, to continue running the meeting.

The first thing we need to do is roll call and ex parte.

So I'm just going to go down the line from right to left and start with Board Member Clark.

>> Present and none.

>> New to the board tonight, Board Member Erickson, welcome.

Do you have any ex parte?

>> No.

>> I don't need to do that.

Now we will go to Board Member Teresa Clarke.

>> No ex parte.

>> Thank you.

Board Member Kahn.

>> And I'm here.

>> Yes.

Board Member Kahn.

>> I'm here and no ex parte.

>> Board Member Tregub.

>> Present, and one ex parte to report on 1900 Fourth Street from Alyssa Rose STIEBLITZ, who spoke to me about her impression of the draft EIR.

>> Thank you.

And by the way, anybody that has ex parte, there is a worksheet we would like you to fill out.

If you don't have one, I'll get you one.

Do you have one or have you already turned it in?

>> Already turned it in.

>> Thank you very much.

Board Member O'Keefe.

>> Oh.

I am here, and I have an ex parte.

Also for 1900 Fourth Street.

I met with Malcolm MARGOLIN and Richard Schwartz, both experts in the history of the Ohlone people, and I wanted to get Tom background information.

They were kind enough to meet with me and fill me in on the history of the Ohlone people in the Bay Area.

>> Thank you.

>> We didn't talk about the project very much, just specifically the site.

>> Thank you for doing that.

Board Member Pinkston.

>> Present.

I spoke to Mark Rhoades and a number of West Berkeley property owners for putting them together to create a BART shuttle that would get cars off the road and get people on the bus instead.

And move ahead with that independent of the city compelling them to do so, but indicated we might try to compel the 1900 project to move on with a shuttle.

>> Board Member Selawsky.

>> Good evening, Greg.

Present, no ex parte.

>> Excellent.

And everyone that is new has filled out and everyone has been sworn in and done the oath of office.

So we are ready to go.

Now what I would like to do is open up to say anybody want to nominate a chair?

Board Member O'Keefe.

>> S. O'Keefe: I would like to nominate my friend Igor for chair.

I think he will make an excellent one.

>> G. Powell: Anybody else have a nomination?

This can be a discussion, by the way.

Not just nominations.

>> C. Kahn: I think Igor has done a great job as vice chair.

I also feel Denise has done a great job as chair.

And I would like to move we continue.

They are new members, technically, but they are very experienced and they have both done a great job in their respective roles.

So I would like to ask that we do that, unless you have an objection to that.

>> S. O'Keefe: I certainly have no objection.

Denise has done a great job, but I think change is good and I think we could have Igor in for a little bit and see how it goes.

That's my reason.

What do other people think?

>> C. Kahn: I'm very happy with the courtesy Denise has shown me and Igor as well.

And I do think the direction of these meetings is critically important for our community and for everybody.

I would just like to reward her, essentially, for doing a great job.

And see that she continue.

Igor has stood in as well when needed.

And I present to a lot of commissions and I have to tell you that the leadership of this commission over the time that I have served has been exemplary.

I would just like to recognize that by asking that Igor and Denise continue in their roles.

I don't know what others feel.

>> We don't need a second for nominations.

>> Not that I can find in the guidelines.

>> J. Selawsky: I have never seen that happen.

Just making sure.

>> T. Clarke: So the alternate would be Denise's chair, right?

>> I support Igor as chair.

>> Is there any other discussion?

And by the way, you guys can discuss this and decide what you want to do.

You can do it in the public forum

>> B. Clark: If I am clear, the two options are for Igor and Denise.

Will we be discussing the following vice chairs before we vote or stick with the chair nominations and go into the vice chair nominations?

>> Just as you said at the end was chair and vice chair, unless the board is unanimous saying this is what it is and deciding to vote.

>> C. Kahn: My motion is for Igor to continue as vice chair.

>> J. Selawsky: Right.

That is Charles' suggestion.

Normally what you would do is vote for the chair and after the chair is chosen you vote for the vice chair, normally.

>> B. Clark: Thank you.

>> J. Selawsky: We can always break with precedent.

>> G. Powell: And whoever is nominated can talk about their desires to do it or not.

And they can even nominate themselves.

So if someone else is interested in doing it, you can nominate yourself for it.

>> B. Clark: Igor, could you please speak on your nomination?

>> I. Tregub: Certainly.

Well, I am in an extremely -- I'm flattered by the nomination and I have to say that I also feel very awkward because Denise and I have worked very collaboratively.

And if I had the honor of being elected as chair I would be the first to tell you that I'm stepping into some incredibly big shoes that would be somewhat irreplaceable.

However, if I am nominated as chair, I will continue upon what I have learned from Denise and a number of past chairs that I have served under.

I have been on the ZAB since late 2012.

I have seen a lot of incredibly smart and dedicated commissioners and colleagues of mine.

I want to make sure that the voices of the community are taken into account, that everyone feels that they were heard on and off the dais.

And that would be my priority if I was chair.

>> G. Powell: Go ahead.

>> S. O'Keefe: I would just like to add that I certainly have absolutely nothing negative to say about Denise and I won't say anything negative.

I want to say some complimentary things about Igor.

I don't mean to set up an opposition between the two.

Igor has continued to impress me as one of the hardest working people I have ever met in the Berkeley political sphere.

His attention to detail and his commitment to holding everyone who comes before us including the public and staff accountable and also giving respect to every single person who comes before us has been great.

I have always been really impressed with Igor's performance as a leader in the community, and that is why I am nominating him.

Like I said, I think about that with Denise as well.

I just wanted to speak on behalf of Igor.

>> C. Kahn: I want to say I totally agree with Shoshana.

Everything that Igor said.

You are incredibly respectful to the public and your attitude of collaboration with your fellow board members is exemplary.

I have really enjoyed serving because of the character of the board and that is why I would like you to continue as vice chair.

I just --

>> T. Clarke: We will be electing and re-electing chair in February.

This is just to finish out the term?

>> G. Powell: Yes.

>> T. Clarke: And then we will have a new member then.

>> G. Powell: Actually, we won't.

We think the special election will be in March.

>> T. Clarke: We won't even have that yet.

Okay.

>> B. Clark: We will be eight members until March?

>> G. Powell: Just to put a point to it, there will be another election in February.

We plan on putting it on the agenda for the first meeting of the month.

So whoever is chosen tonight there will be another process doing this again not long from now.

Is there any other discussion?

>> T. Clarke: I have been very impressed with Denise's leadership on the board.

In terms of getting the developers, for instance, for bringing something to the table to mitigate any negative effects that the project might have.

So I have been really impressed with that, Denise, and your knowledge of the legislative process and just the technical issues, very strong.

And that is why I would like to have you continue as chair for a little bit longer, because I haven't been on here that long, and I have really enjoyed that.

And I think we will have another opportunity to reshuffle, but I think it would be nice to just continue the way we were for a little bit longer, maybe, and maybe we consider that.

Because things have just shuffled so much already, I think it would be good to have some consistency.

That is kind of why I feel it would be nice to keep Denise and Igor in the same roles they had prior to the election.

That is why I feel it would be really important just to keep some consistency for a little bit.

>> G. Powell: Board Member Tregub.

>> I. Tregub: I think no matter what the outcome is of this I am deeply -- I'm very happy to have Denise back on the ZAB, and I know I told you that.

And whatever role any of us play, I know that I will be -- whatever capacity I or where I might be, I will continue to gain from Denise's expertise and insight.

>> G. Powell: Anybody else have anything they would like to say?

If not, I'm going to recommend -- as the board, there aren't any guidelines to say a motion.

When there is a motion, there are rules on how to proceed.

So my recommendation to the board, Shoshana was the first maker.

We can pull it up and do a vote on that, or you can decide to do something different.

So I would look to you for what you would like to do with this.

This is what we would be doing if I wasn't here and you would be trying to decide if there are two nominations

>> D. Pinkston: I haven't said anything yet, but when I became chair I made Igor my vice chair because I know he is extremely fair-minded and we have worked closely and collaborated together.

And I'm thrilled to be back and I like everybody on this board very much.

When I served as chair my goal was to create space for people to say what they needed to say in a respectful way between the community, staff and ZAB members, regardless of folks' opinion to make sure that everyone was treated equally and fairly.

That's how I approached whatever service I provide.

Now given how long the agenda -- and the other thing is I'm kind of a border collie by nature.

So I move things along.

My temperament, I don't sit still very long very willingly.

As you notice, my chair style is to keep it moving.

That's what I will do if I am chair.

If I'm not chair, I'll encourage the chair to keep it moving.

That's the advantage of having me as chair.

That said, we are all colleagues, Berkeleyans, we all care about the city.

I'm good however the ZAB goes.

I think we need to move the agenda.

Greg, call for a vote.

>> I think a voice vote either for Denise or Igor

>> B. Clark: I have one comment before that.

I see some members would like change and some would like to stay the same.

As we only have three meetings before we have to do the vote again, my thought is to give compromise to either, why don't we switch the positions and see how it goes for three meetings and we can see how it goes from there if Igor is chair and Denise is the vice chair.

We still had the same leadership as we had before.

Igor, we see how he leads.

And we will be forced to come to a decision again in three meetings.

And we will have an extra member, and from there we will have a more permanent view of how the meetings will be.

>> We won't have the extra member yet.

>> B. Clark: Oh, well, we will have to wait another meeting.

>> D. Pinkston: My suggestion is we vote on Shoshana's motion as the first motion rather than voting on the substitute motion and see where we stand.

>> G. Powell: And I heard from the board you would like to use a voice vote.

Or do you want me to actually do roll call?

What's the preference?

Roll call?

We will start with Board Member Clark for the nomination of Igor to be chair.

>> Yes.

>> Board Member Erickson.

>> Yes.

>> Board Member Teresa Clarke.

>> Well, it looks like we have it, then.

We need five, right?

You are going to vote for yourself?

No.

>> Board Member Kahn.

>> I love Igor, but no.

>> Board Member Tregub.

>> Yes.

>> Board Member O'Keefe.

>> Yes.

>> Board Member Pinkston.

>> Yes.

>> Board Member Selawsky.

>> Yes.

>> So the motion passes, if I am not mistaken.

Thank you.

And now I could turn it over to the chair, and then we could move on to the agenda, which is vice chair elections

>> D. Pinkston: Let me just say I'm honored by the testimony of my colleagues, and I will do my best to continue to be a good contributor and keep meetings moving smoothly.

>> G. Powell: Before I turn over the mic, thank you for working with me tonight.

It is unusual circumstances.

Once we do the vice chair election, if we can just take a moment, maybe shuffle things around.

We have all the speaker cards we would like to bring up to the chair.

So after we do the vice chair, just a few moments of break and we can move on with the rest of the agenda and I turn it over to Chair Tregub.

Thank you.

>> Chair Tregub: Okay.

Technically right now I would call for nominations for vice chair, but I would like to take a point of personal privilege and nominate Denise as vice chair

>> B. Clark: Can I second?

>> T. Clarke: Yeah, everyone's fine.

Let's vote it.

Everybody in favor?

Aye.

Anyone opposed?

Cool.

>> Chair Tregub: And with that, we are going to take a little break to give staff an opportunity to...

If you wish to make a comment, come up to the table and fill out a green card.

Right now I have three requests.

And we will start with Elisa Cooper.

You get two minutes.

>> -- -- I have to say looking at your discussion a few minutes ago, and I will not name names, but I feel like this past election was in part a referendum of ZAB.

And certain members up there should resign.

Thank you.

>> Chair Tregub: Thank you.

Next is Juliet Flores.

You have three minutes.

>> Juliet Flores.

A business owner, not a resident of Berkeley but that doesn't mean I wasn't or don't have a relationship with the community.

I have a personal experience when it comes to living out here in Berkeley.

And it has been very hard for me to come back to school here because of it.

I was evicted from my home.

I had a landlord that wouldn't work with me.

And for the sake of the other parties -- their discretion, I'm not going to name names because I want them to be safe when it comes to what happened.

But it went on up until a whole year and it went to court.

And although I was given a settlement, it was a band-aid.

I was still without housing.

I have been in a situation trying to get housing in the bay ever since because I'm really trying to finish up my education.

I understand that tenant housing is always a very touchy subject.

But coming from a single-parent household, it is really important for me to have access to housing.

I think if more people like me were to be less afraid and speak up, there would be a lot more opportunity for some people.

That being said, I support the Ohlone tonight and their rights to protect sacred sites and indigenous lands.

And as a relative from Sacramento, we ask the city of Berkeley to stand in support of supporting the west mound Shellmound and the water and the sacred sites.

We ask the City of Berkeley to call upon the U.S. Army Corps of Engineers to be granted informed consent -- --

We also ask the City of Berkeley to proclaim a day with the consultation of our oh hone spiritual leaders out here that there be an indigenous people day within the City of Berkeley while commemorating and supporting the Standing Rock Sioux tribe's opposition to DAPL.

These are the three items that I ask.

My name is Juliet Flores and I thank you for your time.

>> Chair Tregub: Thank you.

300, you are up next.

If you would still like to make a public comment, this is your time.

Those were all the comments we had for comments not on the agenda.

Before we move on to the next item, I was requested to -- I'm going to be really learning from the best of what Denise offered as previous chair, and what I remember or said at the beginning of each meeting is we are all Berkeleyans.

So in order to ensure that there is an environment where everyone can speak freely, I would respectfully ask that you withhold your applause when someone is speaking.

If you would like, you can make other motions of support -- waving or some other non-verbal signals of affirmation.

Does that sound good?

Thank you very much.

We will now move forward to the consent calendar.

And I will just tell you that -- so the consent calendar for the benefit of members of the public for whom this might be the first time at ZAB, items where previous no comments of opposition were received I since have received one item, one comment on item one's matter.

So I would suggest that we pull that

>> G. Powell: Just to clarify, is that from the applicant or from someone that is in opposition?

>> Chair Tregub: It is Kelly Hammargren and it doesn't actually state whether in support or opposition.

Number two, 1149 Euclid.

It was marked as item one, but it is actually number two.

Kelly, if you are here, could you just answer whether this is support, opposition, or something else?

>> Looking at these plans --

>> Chair Tregub: Just if it is support, opposition, or something else.

>> I'll say opposition.

>> Chair Tregub: Okay.

Thank you.

I have also received several comment cards on 2127 Russell, which is item four.

And at least one of them is marked as opposition.

So I would suggest that we move that to the action calendar.

Are there any other changes to the consent calendar that colleagues would like to propose?

Or any motions?

>> S. O'Keefe: I move that we do as Chair Tregub says, remove those from the consent calendar.

>> Chair Tregub: They are automatically removed.

Would you like to make a motion?

>> S. O'Keefe: Are they?

>> Chair Tregub: Greg, if I could get your wise counsel.

I get that precedent has it that as soon as at least one comment of opposition was filed they go to action and then we take a separate vote on the remainder of the consent calendar.

>> G. Powell: That's what I would recommend that you do.

I don't know if we have to do anything formal about it.

>> Chair Tregub: I will entertain at this time any motions.

Move the remainder of the consent calendar

>> D. Pinkston: So moved.

>> Board Member Clark.

>> Did I say roll call?

>> Chair Tregub: Sorry.

A voice vote.

>> Let me not make this confusing.

This would be to approve the consent calendar, meeting minutes for two meetings and approve two use permits.

Board Member Clark.

>> Yes.

>> Thank you.

Erickson.

>> Yes.

>> Thank you.

Board Member Clarke.

>> I have to recuse myself because I am working for satellite affordable housing on the project request, and also I will need to recuse myself on 1822 Woolsey.

>> G. Powell: You can still have your vote registered on the meeting minutes, if you like.

>> And I am fine with the meeting minutes.

>> Thank you.

Board Member Kahn.

>> Yes.

>> Board Member Pinkston

>> Yes.

>> O'Keefe.

>> Yes, but recuse myself for the meeting minutes for the 15th because I wasn't there.

>> Board Member Selawsky.

>> I want to pull number five from consent.

>> Chair Tregub: You would like to pull item five.

We are in the middle of a vote.

>> I understand I should have done it earlier.

>> D. Pinkston: That's acceptable to me as the seconder.

>> Chair Tregub: That's a question as to why you might like to remove it, John, if you could elaborate.

>> J. Selawsky: I want to tinker with the Sunday hours, which I find unacceptable.

If I were the neighbor, I wouldn't want Sunday hours of whatever they are proposing.

>> Chair Tregub: Okay.

>> G. Powell: My recommendation is now that we have changed things is to redo the motion and second and vote just so we are clear on what happened.

The consent calendar would be from approving meeting minutes for two meetings plus 1822 Woolsey, period.

We will start over again with the vote.

Board Member Clark.

Brazile Clark.

>> Yes.

>> Erickson.

>> Yes.

>> Teresa Clarke.

>> I'll recuse myself on 1822 Woolsey and I will approve the minutes.

>> Thank you.

Board Member Kahn.

>> Yes.

>> Board Member O'Keefe.

>> Yes, but I abstain on the October 13th minutes.

>> Thank you.

Skip over to Board Member Selawsky.

>> Yes.

>> Vice Chair Pinkston.

>> Yes.

>> And Chair Tregub.

>> Chair Tregub: Yes.

To the applicant of 1822 Woolsey Street, congratulations.

You have your use permit.

It is appealable to the city council.

We will now move directly to item number two, 1149 Euclid  
Avenue.

-- --

>> Chair Tregub: Seeing none, is the applicant available to make  
a presentation?

Step right up.

Just to confirm, does the applicant have five minutes?

Perfect.

You are encouraged to not necessarily have to use all of that  
time.

>> I will not use all of that time.

It was a project that was applied for in September of 2015.

We are excavating underneath the house, expanding the front  
entry vault.

Very small amount of floor area being referred to on the main  
floor of the house is the expansion of the entry hall.

And then the balance of the work is underneath the house, and then there is a sun room solarium adjacent to the lower level.

That's the project, as Greg said.

The only thing that triggered an administrative use permit was the sixth bedroom.

The house has two normal bedrooms, meaning two bedrooms of a normal size with 8-foot 4-inch high ceiling.

And on the upper floor there are three bedrooms with 1933 that have knee walls that go up and angle across and the ceiling height is less than 7 feet in the bedrooms.

But because the finance card identifies those as three bedrooms, the house starts out as existing five bedrooms.

The three bedrooms don't have closet, they are all used as bedrooms.

And this is a hillside house with lots of stairs.

So developing some space underneath the house with a bedroom and a bathroom and laundry space and a nice big family room is a project that people come to me for.

So if you have any questions, I'm happy to answer them.

>> Any questions for the applicant?

Seeing none, thank you so much for your presentation.

We will now hear public comments.

The only card I received on this project is from Kelly Hammargren.

Kelly, please come up.

You have two minutes.

>> I don't need two minutes.

In order to bring it up I said I opposed it.

But looking at the project, it was unusual that we were going from five bedrooms to six bedrooms and I was wondering if the final intent of the addition was to make it into a duplex instead of a single-family dwelling.

So I was hoping ZAB would have a little more evaluation regarding the plans.

>> Chair Tregub: Thank you, Kelly.

Maybe we can call the applicant back up.

Traditionally this would be the time that they would provide, an applicant would provide rebuttal to public comments in opposition, but since there was a specific question, could you speak to this?

>> This is a single-family dwelling.

>> -- --

>> T. Clarke: In this future this would this could be converted into an accessory dwelling unit under state law.

But they would be allowed to do that if they wanted a junior in-law unit or whatever.

It may very well be converted later.

It sounds like the intent right now is not to do that.

>> Roll call vote.

Board Member Clark.

>> Approve.

>> Board Member Erickson.

>> Approve.

>> Board Member Teresa Clarke.

>> Approve.

>> Board Member Kahn.

>> Approve.

>> Board Member O'Keefe.

>> Yes.

>> Board Member Selawsky.

>> Yes.

>> Vice Chair Pinkston.

>> Yes.

>> Chair Tregub.

>> Chair Tregub: Yes.

Thank you very much.

Your project is approved.

It is appealable to the city council.

Our next project is four on Russell.

I have received three public comments to date.

If anyone else wishes to speak on the project, be sure to come up here and pick up a green card from staff

>> G. Powell: If you can give us a moment, if we can bring the staff person up who will be leading the presentation.

>> Chair Tregub: We will hold just a moment.

-- --

>> Chair Tregub: And we are very happy to have you both new staff members here

>> G. Powell: Thank you.

We will move along to the presentation.

>> Thank you.

Good evening, board members.

2127 Russell Street, use permit.

This is a modification to an approved use permit number 2013-0034.

And this modification is to add a rooftop stair enclosure to the approved single-family home, which will exceed the average height limit for the R-two district.

The ZAB approved the use permit 2013-0034 on December 12th in 2013.

Approving the construction of two detached single family dwelling units on the lot at 2127 Russell.

The rear dwelling -- --

So in fact the reduction, the height of the greater mass of the building will reduce the massing of the building from that which was approved with the use permit in 2013.

Therefore, staff is recommending that the board approve both the rooftop stair and the greater building height reduction modifications.

Thank you.

>> Chair Tregub: Thank you very much.

Are there any questions for staff?

Yes.

>> Tell me your name again?

>> Sharon.

>> Sharon.

If the roof was sloped up to a peak, the average height would be basically the halfway point, right?

>> Correct.

>> T. Clarke: And this stair enclosure, if it was peaked like this, as high as that?

>> Yes.

So the average height here with the addition of the rooftop stair enclosure is to the top of the rooftop enclosure.

>> T. Clarke: Similar to if you had a sloped roof there.

>> Yes, as if you had a shed roof.

>> We are not taking the average height of that stair.

>> No.

>> T. Clarke: How come?

>> It is sloped, like a shed roof.

If we have a shed roof we measure to the top of the shed.

>> T. Clarke: Okay.

>> Chair Tregub: Other questions?

>> T. Clarke: So if it was a roof like this, it would be average, but if it is like this, you are doing it to the top.

>> Correct.

That's how we do it.

>> T. Clarke: And that is just because that's the way your policy, internal policy you are doing at the staff level?

>> G. Powell: It is by definition.

>> T. Clarke: Oh, really.

I thought it was an average.

Why would the shed roof be different?

>> G. Powell: If you are on the taller part of the shed roof that is what you are feeling.

So for flat roof, shed roof, we do it to the ridge.

>> T. Clarke: Oh.

Because that is in the middle, the tall part is in the middle on the building

>> G. Powell: I hear it is.

But generally the zoning ordinance will err on the side of which is more restrictive.

In this case this future that I'm pointing out here, if it was over at this edge, a traditional shed roof, you can imagine if you were looking at it from the side, that is what you are seeing.

You don't get the benefit of what you are averaging because you just are seeing the flat wall.

This is a conservative approach we took to regulate this.

>> T. Clarke: Okay.

>> Chair Tregub: Any other questions for staff?

All right.

One of the speaker cards actually is from the applicant.

So I'm going to call her up now.

If you could just state your name for the record.

>> My name is Slava.

>> Chair Tregub: Thank you.

>> And I'm the applicant.

Members of the board, I want to make sure we are only talking on the small addition on the roof.

The building itself was approved before, including the stairs.

The stairs were also approved before.

Unfortunately, as Sharon mentioned, the idea of a moving skylight did not pass the building and safety code because it intersected with the handrail.

And according to the code, the handrail has to be continuous to the whole flight of stairs.

So I had no other way of designing the edge of the roof, except with the enclosure that would encompass the whole stair with the handrail.

So we opted for the very much traditional design that is reflected. To minimize the impact on the neighbors, we managed -- because the roof is slanted -- and the whole enclosure is positioned with a part towards the middle of the roof.

We do actually get the benefit of everything, even though it doesn't quite align with the definition.

And I would also note that compared to the whole area of the roof, the area of the enclosure is very small.

I think Sharon calculated it to be about 6% of the whole roof.

Specifically, upon the request of my neighbors, I have done the shadow study.

And actually, due to the reduction of the height of the building, the shadow became smaller than the originally approved value.

Also, I have done the sight line study to find out whether you can actually see the top of the enclosure from the ground level.

And to actually see the enclosure, you have to be at least 50 feet -- I'm sorry, not 50 -- at least 25 feet away from the property line to actually start noticing that there is something on the roof.

So judging by the shadow study and the sight line study, the impact on the neighborhood is actually reduced mostly due to the reduction of the height of the building itself.

I have no other reasonable way of getting the roof except to have the staircase enclosure.

So I humbly ask you to help me out and approve this small addition.

Thank you.

>> Chair Tregub: Thank you.

Any questions for the applicant?

>> C. Kahn: I do have one question.

I just want to be clear.

The project was originally approved with the roof deck.

>> Yes.

>> C. Kahn: As one of its components?

>> Chair Tregub: Thank you.

I actually have one question for you.

>> Sure.

>> Chair Tregub: At the time of the original approval -- and I remember seeing you a few years ago.

>> Same here.

>> Chair Tregub: Were these potential life safety code implications of what was proposed at the time discussed that could be an issue?

>> Unfortunately, no.

To me and to I guess everybody else it seemed like a plausible idea to have a flat skylight and just exiting on the stairs to the roof.

When it got down to the small details it turned out there was a code issue, that the handrail cannot be broken.

So there is no space on the handrail where the skylight would close.

>> Chair Tregub: Thank you.

>> Thank you.

>> Chair Tregub: So now we are going to call up the two speakers who filled out cards.

Susie Bluestone.

>> Hi.

I'm Susie Bluestone.

I have lived next door at 2125 Russell Street for 27 years.

The property has a peculiar history.

That is in the past.

So we were in my home very happy that new owners had come in, that they would be owner-occupied.

We in fact supported three years ago, Igor, not two years ago, meeting.

But I have a different opinion now and this is the reason.

I don't think we are hearing the story from kind of a true place.

We haven't been thrilled with some of the things, but to be neighborly we went along with it because we want to be neighborly.

These would be our next-door neighbors.

But it is kind of like putting a modern heliport in the middle of a Berkeley neighborhood with houses built in 1913 and so forth.

But okay, we have to be open.

A lot of years went by.

But what I'm really having trouble with is that what the applicant is saying is he has changed this and that to what was.

But what was just a concept.

It wasn't actually in place.

And for environmental reasons I find a flat roof, which is to be a deck, living next to kind of a heliport with people perhaps looking down, and then this idea that this modern version of a widow's lookout -- I'm from the East Coast -- and then that he wanted it and it was approved a few years ago to have this internal staircase up, but then there was this glitch because it didn't really work.

Maybe this whole thing has to be reviewed because the concession of coming down a foot, it is all conceptual.

It is not real.

So maybe you bet on the wrong horse if you saw it in this neighborhood with roofs that typically are pitched to some extent that are very different.

Maybe it is just not a match, was the concept.

>> Chair Tregub: Thank you.

And Christopher Fire.

>> Thank you very much.

I was also here three years ago until 1:30 in the morning and we dealt with this last time.

>> Chair Tregub: I remember that meeting with fondness.

>> It was a very long meeting.

I have been a homeowner in Berkeley for 22 years.

I live in the property behind SLAVA's.

And as you know, three years ago I was against the roof deck.

But that passed.

And that is sort of what it is.

But it passed with a portal to the roof beyond what was passed three years ago.

So I am still at odds with having a higher property, even if it is only a portion of the roof, now up against my own property.

It has been a struggle deal with this for three years and not seeing any construction go on and then to two months ago have yet another change through a very, very long process.

I was really, really disappointed.

And so I am against raising the overall height.

I'm against raising or offering them -- I forgot the exact words Sharon used.

Here we go.

I am against exceeding the maximum average height limit on this property.

And that's all.

>> Chair Tregub: Thank you.

And I have got you in a second.

Could you remind us where you live with respect to the property?

>> 2132 Oregon Street.

>> Chair Tregub: Thank you.

Shoshana and then Denise.

>> S. O'Keefe: 2132 Oregon.

In relation to this property where are you?

>> North.

SLAVA's property, the back unit will block sun.

Any addition of the roof line will block more sun.

>> S. O'Keefe: The applicant made a comment about how far away you have to be to see it.

I'm wondering if you can make a statement on whether or not you believe you will be able to see it and if you have looked into it.

>> I absolutely will be able to see it.

My house is like many of the single-level houses just one level.

We are maybe four and a half, five feet off the ground.

The house is almost one and a half stories.

At our back deck, for example, we are both higher off the ground and we are more than 25 feet.

We are probably -- and this is just a guess -- I didn't come with any numbers -- we are probably 40 to 50 feet off our property line.

And so there's no question that I will see this addition.

>> Chair Tregub: Thank you.

>> D. Pinkston: Can staff pull up the drawing of the building plus the parapet, the red line at the top?

My question for you is, according to what the staff said, the whole building has been dropped a foot.

So in terms of what -- so when you are sitting in your house and your yard, you'll see less building except for the parapet.

>> The north part.

>> D. Pinkston: You'll see significantly less building because the whole building is down.

So you are saying you prefer to see more overall building less than the parapet?

>> I apologize for interrupting you.

>> D. Pinkston: It's fine.

>> The shadow study shows it is about the same, but that is for shadows.

What I'm talking about is being able to see the sky, a view that I have had to my backyard for 22 years.

It is changing.

It is raising the height of that roof beyond what was approved three years ago.

It is asking for an exception.

>> D. Pinkston: I get that.

And I have no problem with that.

You'll either see -- can you give me the red hatched line drawing?

What I meant to say is what you will see is a small -- instead of seeing the red line around the whole box of the building, you'll see the lower black line.

And in a distance you'll see the parapet for a portion.

You are saying that because the parapet's there that blocks your view.

I just want to make sure that I'm clear.

>> We can all agree it is higher so it will block some of the view.

>> D. Pinkston: Thank you.

>> But also the parapet is at the old height of the building. It starts at that height.

That doesn't reduce that at all.

It starts at that height on that drawing.

>> C. Kahn: As a neighbor would you prefer this go back up the one foot and the stair not get built?

Is that what you are saying?

>> Yes.

>> D. Pinkston: Thank you.

>> Chair Tregub: Any other questions?

All right.

Thank you so much for your time.

>> Thank you.

>> G. Powell: If you don't mind it might be a good opportunity for staff to clarify something about how we measured the height.

I think I need to clarify something I said earlier.

We can do it now or at the close of the public hearing.

>> Chair Tregub: That would be helpful.

And as part of that if you can explain the notion of the maximum average

>> G. Powell: So we have -- here it is.

So this is in your plan set that you have.

You should have a 11-17 version of it.

And this is what the applicant wants you to approve tonight.

The reason I'm pulling up the drawings is to illustrate two things.

The first is when we measure height with a district height limit of 28 feet we measure to this line here that I'm tracing.

So the top of the roof is the maximum, subject to the maximum height limit.

This is the top of the parapet?

The top of the parapet.

Can you see what I'm trying to point out here?

This is subject to the 28-foot height limit.

This railing and this enclosed stair is actually an allowed projection that the zoning board has discretion over in that a use permit's required and there's a restriction on how big those projections above the height limit can be.

So when we called out that this was 30-foot 1-inches, that was just the height.

The building complies with the height limit.

What they are asking for is an exception, which is allowed under the zoning ordinance, for projections over the building roof and district height limit.

If we can pause for a second, what is the height of the ridge?

If I say ridge, just translate everything.

So the railing is 27 feet.

That's fine.

So what we are talking about here is that really even though this enclosure is this large shape that I'm highlighting, the only part that we have discretion over really is from the top of this railing projected over into this area here.

Do you follow what I'm saying?

That is what is above the district height limit and that is what is subject to the use permit.

>> S. O'Keefe: Only the two feet above?

>> Whatever the delta is between the top of the railing.

So three-foot exception.

>> T. Clarke: And what they are proposing is 30-feet 11-inches.

They are asking for two-feet 11-inches.

>> G. Powell: And can you scroll to the right?

So it is for a feature that is, I don't know, I'm going to guess eight feet wide, six feet wide.

So it is an exception that is three feet above the height limit and roughly whatever this width is.

This is the north elevation -- no, this is the south elevation we are looking at here.

I just wanted to clarify when I talked about earlier about average height because it is a flat roof, measured to the top of the parapet.

And if we wanted to call out high, high is this projection above the roof but also not average it, we just go to the tiptop.

Does that help?

I hope it does.

It is not too zoner-speak?

>> T. Clarke: That is why I brought up the question before.

If the applicant had tone a two-floor building with a sloped roof at a 4-12 and 6-12, if it was a 6-12 roof, the building would be basically much higher.

It will be 12 feet at the peak, about.

So the building would have a more massive look to it, but you would be looking at a roof.

It would be more traditional looking.

And you could cut out a little roof deck area if you wanted.

So that would be allowed, right?

They can go past 28 feet at the peak.

>> G. Powell: For a sloped roof that is true, like a traditional gable.

>> T. Clarke: Right.

>> G. Powell: So you can have a 30-foot ridge and not be subject to the height limit.

>> T. Clarke: I just wanted it to be clear this is a modern design where you have -- it can go up to 28 feet with the flat roof all the way up, right?

>> G. Powell: Yeah.

>> T. Clarke: If you go past that, you take the average.

>> G. Powell: If it is a gabled roof.

My point of bringing up what we are talking about here, not to say I'm advocating for it.

But this is what is subject to discretion.

It is about three feet down from the top of the stair enclosure and how wide it is, period.

>> Chair Tregub: Thank you.

Shoshana.

>> S. O'Keefe: I just noticed in my packet we don't have findings and conditions, and that is kind of a problem because that is what we are going to vote on.

>> G. Powell: They should be immediately attached to the staff report.

>> S. O'Keefe: I could not find it

>> G. Powell: Staff report's about eight pages long.

>> S. O'Keefe: It says attachments and then one, findings and conditions, and then it goes straight to correspondence.

Oh yours has it.

Okay.

Good.

I can look at Igor's.

>> G. Powell: I'll give you mine.

>> S. O'Keefe: Thanks.

I'm pretty sure I don't have it.

But in any case, it is fine.

I have access to it.

Oh, I found it.

Oh, okay.

So that was issue one.

That has been solved.

Thank you.

Issue two is I wanted to know what specific finding you were supposed to make to allow the excess height.

Because that is what this always comes down to.

I'm hearing some objections, what finding am I supposed to make?

I can't decide until I know that.

It is A, I guess?

A, B, and C?

Let's have our discussion framed with that

>> G. Powell: And I am zoom out.

In order to consider such a permit like this, we have to find -- not find but confirm -- it is not more than 15% more than the average floor area of all floors.

There is not a specific finding, just reverts back to the non-detriment finding, which is framed similar to views and privacy.

>> S. O'Keefe: Thank you for clarifying.

>> Chair Tregub: I have a question for staff.

I'm just trying to put some of this in perspective.

And a qualitative answer is fine.

This is in the R-2 district.

How many times have you had to deal with an application where it is a rooftop projection that exceeds the maximum average in that district?

>> G. Powell: I would say it is rare, but the R-two district allows three-story buildings.

>> Chair Tregub: Thank you.

>> G. Powell: One thing I wanted to point out, there was a new speaker card and there is still public comment.

Thank you for hearing my clarification.

>> Chair Tregub: Thank you.

So Kelly Hammargren, would you come up, since you filled out a speaker card.

You have two minutes.

>> This initially started three years ago.

I am really not sure why we are so enamored with rooftop decks.

Now it is 2017.

We are getting closer to the standard of 0 net energy buildings.

We should be doing more for our response to climate change and getting our city closer to the commitment of being 50% renewable energy.

We have that goal in front of us.

And I think this is an opportunity to reconsider rooftop deck.

And as Teresa mentioned, if we had the sloped roof, yes, it would add more height but we would also have a place for solar to make this building more energy-efficient.

So I would ask you to just really think about what we can be doing in our city to be a leader on renewable energy with our new construction.

And I have heard from Charles Kahn at other meetings that we really should not be putting rooftop decks.

That's my comment.

Thank you.

>> Chair Tregub: Thank you.

All right.

I'm going to call the applicant -- oh, did you have another public comment?

I would ask if anyone else has one, if you could just please come up and fill out a speaker card now.

Go ahead, Elisa.

>> I apologize for turning that in so late.

It is just astounding to me.

I'm going to make the same point I did a few minutes ago.

That just weeks ago you were saying that in South Berkeley there is no difference between four and six stories, which is a comment you would never make in north Berkeley.

And here's a couple neighbors a couple blocks away from a six-story building who are so concerned about the shadow of this little

bitty thing and they don't even realize that your attitude is in that area there is no difference between four and six stories.

Thank you.

>> Chair Tregub: Thank you.

I'm going to ask the applicant to come back up.

And you can use this time to respond to any points.

>> Sure.

Let me quickly go on to the comment about having a roof deck on the roof.

I am planning to have a green roof deck, so there would be planters.

Also the roof deck just takes a part of the roof.

The rest of the roof I'm planning to install solar panels on.

>> Chair Tregub: If you could address the chair, please.

Thank you so much.

>> Yes.

I apologize.

So as I said, as far as environmental concerns, I am planning to have solar on my roof and I am planning to have a green roof.

So I would like to have a convenient access to this roof.

And also just to reiterate.

As it was noted, I'm just asking for two and a half more feet of what was originally approved.

And the building as a whole was reduced.

So of course if you concentrate on that small part of the roof, yes, it got higher by three feet, but actually the whole mass of the building is smaller.

The shadow study shows that the shadow got also smaller.

So I think as a whole there is less impact on my neighbors than it was before.

And also I have no other way of getting up to the roof.

So please let me have this few more feet.

Thank you.

>> Chair Tregub: Thank you.

If you could stay for a few minutes.

If there were any questions for the applicant?

No?

Okay.

>> Move to close the public hearing.

>> Chair Tregub: All right.

We are going to close the public hearing and bring this back to the board for discussion or action.

>> This new information that came out, I can't comment to that?

Solar usually takes up more height, and we are talking about context here in terms of slope versus this.

We are not talking about the same thing.

I'm not allowed to talk?

>> Chair Tregub: Thank you.

So we are now closing the public hearing.

We are going to bring this back to the board for discussion or possible action.

Would anyone like to start?

>> T. Clarke: I'll make a motion to approve the project.

>> Chair Tregub: Is there a second?

>> C. Kahn: Second.

>> Chair Tregub: Moved by Teresa, seconded by Charles.

Discussion?

Shoshana, John, and Teresa.

>> S. O'Keefe: If the only scenario where we deny it is based on a detriment finding, then I can say for sure that I can make the non-detriment finding.

I can't find detriment here.

That's a better way to say it.

I empathize with the concerns of the neighbors, but the standard that we have to meet in order to deny this is just too high.

The public hearing is closed.

So we are just going to talk now.

Thank you.

So the standard is just too high, and I think based on what we are asked to decide tonight I would support the motion.

>> Chair Tregub: John.

>> J. Selawsky: And I would add I have some sympathy for the neighbors.

I hear your concerns.

And I do have sympathy with your concerns, but I do have sympathy with the homeowner as well and access to his own roof.

So I'm trying to weigh those two things, and I'm not sure there's a better solution.

Let's put it that way.

So that's where I'm coming from.

>> Chair Tregub: Teresa.

>> T. Clarke: You know, I take heart to what the woman in the red -- what's her name -- Elisa? -- Elisa said.

Because I feel like we do spend a lot of time on very minor issues in the single-family home neighborhoods.

We look at where exactly is a window placed, where exactly is this three feet.

And we all do have concerns about -- we sympathize with the neighbors.

But we have a zoning code, and -- I am talking please.

I'm not making a discussion.

That's not how it works.

So basically what I was trying to say before I got interrupted was I feel like this is well within the limits of the district.

That is what I was trying to point out, that this building could be higher than 28 feet.

It could be at the peak probably as high as 32 or 34, maybe 35 depending on the pitch.

So I feel this is a very modest request.

The applicant -- he had to do it based on the building code.

So I think it is a very modest request.

But the other point that I do want to make is I think we often give more time to small issues like this, and you give less time to much more important issues about more housing, larger housing projects, and I would hope we can spend more time looking at the bigger projects and not spending so much time on these smaller issues.

>> Chair Tregub: Thank you.

Go ahead.

>> C. Kahn: Not wanting to spend more time on this, I just want to quickly thank Kelly for your comments.

I am delighted to hear that the client -- the client -- the homeowner will be developing solar -- if that's his intention -- on the roof.

We thoroughly agree with the importance on that, which in some cases is easier to achieve with a flat roof than a gabled roof where you only get solar on one side of the gable frequently.

Also want to clarify my position about rooftop decks.

I don't think they are a good idea generally in multifamily buildings if they are unsupervised.

I think that a lot of risky behavior can take place and people hurt themselves.

I think in a single-family home it is okay by me.

But it was previously approved, so that's really not is on our agenda.

So I will support the motion.

>> Chair Tregub: Thank you.

We have a long night ahead of us.

I will be very brief.

I'm going to echo John in saying that I do sympathize with the concerns of the neighbors.

And at times we have been here and we have seen use permit modifications, and I know it may seem like a bait and switch, approving one thing and then years later the predict comes back.

In this case, however, I agreed with Shoshana that it is difficult for me to make a detriment finding.

In particular, given recent events I am particularly sensitive right now to concerns about life safety code issues.

And I do understand that as the applicant was putting together this project he received clear instructions from the city that it would be unsafe to do -- or not in conformance with the code to do what was initially proposed, which is why he is here today.

With that, I am going to ask staff to call for a roll call vote.

>> G. Powell: Before I go do, I want to inform the ZAB of a condition of approval that I think applies tonight based on testimony provided by the applicant.

It is in the zoning ordinance but also placed in all of our use permits as a condition, condition number five.

I'm just going to read it because I think it is important to bring up.

The title of it is plans and representations become conditions.

So I'm going to read almost all of it.

I except as specified herein, site plans, floor plans, elevations, and any information or representations, whether oral or written, indicating the proposed structure or manner of operation submitted within the application or during the approval process are deemed conditions of approval.

The applicant tonight said I'm doing solar panels.

And we have often had cases where applicants have said we will do something and we didn't make it a specific condition.

I think at least one ZAB member appreciated that solar was part of the project, so I would recommend that actually be added, that your expectation is that the rear building does have solar.

And with the board's consent to that, because any representation they make we can hold them to it later, and it is much better if it is written down if the board wants it written down than just relying on going back and listening to the tape.

So if you believe that you are making this decision and you are thinking that is a good thing there is solar, I recommend you make it a condition.

>> Chair Tregub: Thank you

>> G. Powell: And note the ability for local jurisdictions to regulate solar is almost 0.

So they are pretty much allowed anywhere and they can exceed the height limits.

That is because the state of California decided years ago they want to permit these things.

So even if the neighbor didn't like it tonight the city wouldn't have the ability to say no to it in the future.

I'm done.

>> Chair Tregub: Thank you.

I believe, Teresa, did you make the motion?

>> T. Clarke: I make the motion and I would not accept that.

I don't think that is right to require that as a condition of approval.

I don't think that that would make any difference as to whether I would vote for it or not.

I know that solar panels are very expensive.

And I wouldn't want to impose such -- they can be upwards of \$20,000 for a system on a house like this.

So as much as I love solar panels -- in fact, I have them on my own house -- I know how much that costs and I know how much this building is going to cost to build and how much we need more housing in the City of Berkeley.

So I would not want to impose that as a condition of approval for this minor modification.

>> S. O'Keefe: I agree with Teresa.

Let's vote.

>> Chair Tregub: So the maker was not friendly to that suggestion.

I agree that was a good suggestion.

We will now hold a roll call vote.

>> G. Powell: Perfect.

Board Member Brazile Clark.

>> Yes.

>> Erickson.

>> Yes.

>> Clarke -- Teresa Clarke.

>> Yes.

>> Kahn.

>> I liked the solar condition, but I will say yes.

>> O'Keefe.

>> Yes.

>> Selawsky.

>> Yes.

>> Vice Chair Pinkston.

>> Yes.

>> Chair Tregub.

>> Chair Tregub: Yes.

Now we will move to item five, 3132-38 Martin Luther King way  
and 3135-39 Harper Street.

>> T. Clarke: I have to recuse myself.

>> Chair Tregub: If you wouldn't mind stating the reason for the  
recusal.

>> T. Clarke: I am working on this project, Satellite Affordable  
Housing Associates, I work for them.

>> Chair Tregub: Thank you.

>> Good evening.

This is ZP2016-0234, a use permit modification to a previously approved use permit for a four-story senior housing project at 3132 Martin Luther King.

The previous use permit was approved in 2007 and the project is currently under construction.

The project proposes to modify the previously approved construction hours.

Originally the project was approved with a limitation on construction hours for 8:00 a.m. to 6:00 p.m. Monday through Friday and 9:00 a.m. to noon on Saturday with no construction on Sundays.

The applicant has proposed to expand construction hours by one hour Monday through Friday to allow work to begin 7:00 a.m. by seven hours on Saturdays to allow work from 8:00 a.m. to 6:00 p.m. and by eight hours on Sundays to allow work from 8:00 a.m. to 4:00 p.m. with no work on federal holidays.

This request comes from SAHA, Satellite Affordable Housing Association, which is a non-profit affordable housing organization, and they have requested it in order to meet construction deadlines.

They originally started construction.

It was delayed because of unforeseen soil remediation issues.

Much of the construction for this project has already been completed, including foundation work and most wood framing.

During the extended construction hours the applicant would only conduct indoor construction activities such as drywall, door installation, doorway finishing and painting with no loud equipment use.

I'm happy to answer any questions.

>> Chair Tregub: Thank you.

Questions or comments?

John.

>> J. Selawsky: A question first.

Tell me what residences surround this construction site.

Is there any -- are there any?

I know there are businesses, but I'm not clear about what residences they are around.

>> G. Powell: This site is abutted by dwellings to the north and across the street across harper.

>> J. Selawsky: Immediately to the north?

>> G. Powell: They are sharing the same property line.

A rear yard situation on one and a side yard situation for another and then it is across harper.

>> J. Selawsky: That is my only question.

I will have comments later.

>> Chair Tregub: We will get there.

>> G. Powell: And I have a clarification to make.

Anytime there's hours for construction that are exceptional or diverge from the normal 8:00 to 6:00 Monday through Friday and 9:00 to 12:00 on Saturday, we place more restrictions.

So there are more restrictions should the ZAB approve this modification than in place today.

Yes, we will be more open to the hours, but there will be more controls.

That is shown on page four of the staff report at the bottom.

>> Chair Tregub: Thank you very much.

Is the applicant team here?

Go ahead.

Feel free to present.

And I would encourage you to focus specifically on the issue of construction hours.

>> Yeah.

Thanks for having me.

Well, we are really excited about this project.

We have had over 700 applicants apply for the 42 units.

We were originally intended to complete construction in February.

We have experienced delays.

Now we are looking at a May completion schedule.

And we would like to bump that up in any way we can in order to get applicants into the units.

So as far as the Sunday hours, which seem to be your main point of concern, we are limiting it to only indoor construction activity not to exceed 55 decibels, which is actually according to the Berkeley noise ordinance allowed exterior noise limit of 55 DBA anytime.

So we feel like this will be indoor work, mostly painting, hanging doors, laying carpet.

And our intent is not to annoy the neighbors.

I feel like we have maintained really good relationships with them thus far.

We just want to get people moved in.

>> Chair Tregub: Thank you.

What's your name and affiliation?

>> I'm Devon Ellen, the project manager, and I'm with Satellite Affordable Housing Associates.

>> Chair Tregub: Thank you.

Questions for the applicant?

We will start on this side.

John.

>> J. Erickson: How much longer is the construction scheduled to continue?

>> Right now we are scheduled -- I think our completion date is May 23rd.

>> J. Erickson: Thank you.

>> Chair Tregub: Shoshana.

>> S. O'Keefe: Have you reached out to your immediate neighbors about this issue in particular?

>> Yes.

We have reached out to neighbors across the street.

There are three neighbors we have reached out to and no one has expressed concerns.

After clarifying that it was indoor construction.

>> S. O'Keefe: You said there's neighbors to the north, right?

>> There's neighbors to the --

>> S. O'Keefe: And neighbors to your west.

>> -- to the north and to the west across the street.

>> S. O'Keefe: And you have reached out to all of them?

>> We were able to get in contact with three.

One is an apartment multifamily and we haven't made contact with them.

>> S. O'Keefe: How close are they?

I think the question was asked but I can't remember.

>> It is -- I don't know the exact -- two buildings down.

>> S. O'Keefe: Five feet or 30 feet?

>> 30 feet.

>> G. Powell: Just for the board's information two weeks ago we mailed out a public hearing notice to all abutting and confronting and everyone 300 feet opposed to the site in six locations.

>> S. O'Keefe: Can I follow up?

I'm sure it has been noticed according to legal requirements but this particular issue I was wondering if the neighbors were aware about this sort of unusual aspect of this project.

It sounds like a couple of them are and most of them aren't.

Is that a fair characterization?

>> Yes.

>> Chair Tregub: Denise.

>> D. Pinkston: In the staff report it indicated you need to complete by May not because you need to move people in but you have a tax credit deadline.

What is the time line or did we get that wrong in the staff report?

>> No.

Basically we are already exceeding our tax credit deadline.

So we start taking tax credits in March.

And then as each month goes by we get a larger penalty.

So money going to the project, it is right now currently scheduled looking at a \$70,000 hit if we end construction in May.

And that just keeps extending on as we delay and that impacts things like our furniture budget or things to the project we want to add like solar PV, for example.

>> D. Pinkston: Another question.

Things like drywall and door installation can include hammers or nail guns, things that do make some amount of noise.

But painting, finishes, fixture installation is pretty much completely quiet.

>> Okay.

>> D. Pinkston: How much of the work is drywall versus painting?

>> Given the time constraints that we could limit activities as needed to doing painting during the early hours.

Were very open to working with you on this.

>> C. Kahn: So how far along are you right now?

Your foundation's in, your framing is up.

Is your exterior skin on the building?

Do you have plywood on yet?

What is the status.

>> We have plywood, a roof on, windows on.

We are now putting up paper and we need to do siding still.

So obviously those activities would be limited to the current hours.

>> C. Kahn: Sure.

Okay.

And to hit the 55 decibel level, you'll have to have the siding on before you can be putting sheet rock, I would guess.

I don't know.

Maybe it can work without that.

But insulation in there. You might have to do your interior sheet rock after normal business hours.

I know you provide housing needs to the elderly.

We appreciate that.

I personally would like to support you.

I think it is great that you did reach out to neighbors and that the neighbors were noticed and where he don't have any objections.

John, do you have any particular concerns?

I would like to hear what you are saying.

>> Chair Tregub: Yeah.

So if there are no other questions, we might as well get into comments now.

>> J. Selawsky: Right.

And I appreciate your comments because coming here tonight.

Actually, I want to see this built and completed and I want to see housing for the folks that need it.

I live next door to somebody who is doing construction right now and they work on Sundays frequently.

And they are very sensitive to our schedule and our needs.

But there is noise every single day.

And it is not just the pneumatic devices.

There are trucks coming in and out.

There are people screaming across the yard.

There is noise.

Look at the hours on Sunday.

Would you want that next door to you?

I'm saying noon to 4:00, noon to 5:00 on a Sunday.

Give people a little break on a Sunday.

That's all I'm asking for.

That is kind of ridiculous on a Sunday morning, quite honestly.

>> The issue we have been having, we currently have Saturday hours starting at 9:00 a.m. and we have been having a hard time getting crews to come out because a lot of people are coming out from Tracy and it has been hard to get them to commit.

So we haven't seen a big increase in our -- reduction, I guess, in our schedule based on that.

>> Chair Tregub: Thank you.

>> B. Clark: I have a couple questions.

>> J. Selawsky: I just want to point out that thick about construction going on on a Sunday morning at 8:00 or 9:00 in the morning.

You want a little peace at some time, right?

>> Chair Tregub: Brazile.

>> B. Clark: My questions were related to moving materials in and out of the project.

One side is on Adeline close to the BART station.

I was wondering were moving materials impacting parking, especially on the weekends?

Because there is a market there at the BART station.

And also I was concerned about the hours on Sunday as one block away it says there's a congressional church.

So I just want to know how parking and foot traffic were impacting the neighbors on those days.

>> I can't speak to the church because we haven't had Sunday work hours, but I can speak to the market, BART.

We are fairly far removed from that.

We are still on MLK at that point right where Adeline meets.

I can't say for certain but I don't think that would have a strong impact for parking in that area

>> G. Powell: If I may interject, quite often for construction zones they have permits from the city to use part of the right of way for staging.

And I wonder for this site if there is already a permit granted to use frontage on MLK that is reserved for this thing.

The city's traffic plan wouldn't allow them to take additional travel lanes.

So you are confirming this, they likely have a zone that is 60 or 70 feet long along the frontage that is reserved for the loading trips.

I can't imagine we have done the same for harper because the building is set back a little bit.

>> No.

>> G. Powell: There are allowances without impeding further into the parking that is in that area.

Does that address your concern?

>> B. Clark: Yes.

>> Chair Tregub: Let me see if I can summarize what I'm hearing from John -- and correct me, John, if I am off base.

But it seems like there is heartburn over sort of the limitless -- this will continue in perpetuity until construction is complete.

I know that in the past ZAB has granted waivers, but it was for specific reasons.

For example, when it was a project to require modular construction to stage all the materials and get everything -- all the components wheeled onsite, there was a one-time exception for a particular Sunday to get it done.

Given that it is the non-standard hours on Sunday that seems in particular to be your concern, is there anything that you would be willing to agree to?

I understand that if I was SAHA I would try to create as much flexibility as I can to get this done, but given that you know this project better than any of us, would you be willing to limit it to certain Sundays where you would feel comfortable that would allow you to complete construction activities?

>> Yeah.

I mean, I think our preference on Sunday is just as far as getting manpower to the site would be to limit it in the later half of the day.

So I don't know if that is something that you would consider.

Maybe 8:00 to 1:00.

>> D. Pinkston: John, I understand part of the concern is crews and the other part is noise.

What they are saying is their crews are coming from the central valley and those crews typically arrive on the job site early in the morning and go home early.

That's part of the labor problem they are having.

>> J. Selawsky: Right.

>> D. Pinkston: Since this is an affordable senior project personally I would like to see them get done as quickly as possible so they have money to spend on things that would make the building nice for people to live in rather than spend more money on construction crews over a longer period of time.

So I would see if there are ways to leave the hours on Sunday so they can get their crews in early but have the crews doing things that don't make any noise like painting, fixture installation.

Not sheet rocking where you are carrying big things of sheet rock in and out and you are hammering.

Is there some way?

>> C. Kahn: I would like to suggest kind of a compromise here.

We all want senior housing and we want to support it.

But I really heard you, John, like Sunday after Sunday after Sunday incessantly.

Half days probably don't help you a heck of a lot anyway because it is hard to get people out and back.

I'm wondering if we couldn't -- this is a strange provision but I think it could work if you are interested in the idea, John -- where we would have four or six Sundays at critical periods where you are trying to finish up, get it painted, but it is not an endless thing where it is going on from now until May and there is absolutely no relief.

What do you think of that?

>> J. Selawsky: If that can be worked out and if that's agreeable, sure.

It is that seven days a week for the next four, five months.

Think about that as a neighbor.

>> Chair Tregub: Would you be willing to propose -- and I realize you might need to think about this request, but if you can anticipate particularly busy weekend dates and tell us what they are, perhaps we may be able to compromise.

>> C. Kahn: Administratively, is there a way to do this, Greg, that she notifies you of the days it comes up, like six Sundays?

>> May I ask a quick question?

If this was approved, say, how soon would it go into effect?

I heard there was a month waiting period.

Is that correct?

>> G. Powell: I'm happy to answer that.

Anything that is done tonight is subject to an appeal period of 14 days, which wouldn't start until a week.

So the new hours wouldn't start until after the new year anyway.

What I was hearing earlier is every Sunday is too much, so the ZAB will say we will give you the hours for six Sundays and they can choose when they are.

>> Right.

>> G. Powell: And another option, if there is concerns about noise in particular places, the ZAB could say we will give you unlimited Sunday hours if it is on the southeast corner of the site, far from dwellings, and different hours on the northwest side of things.

I'm not saying you have to do that, but there is sensitivity only in a portion of the site.

It is not the entire site.

And I also heard the ZAB say it is the sheet rock might be noisy but the other stuff isn't.

So you can say you don't get to do sheet rock on Sundays because it is the drilling.

They don't hammer that stuff anymore.

So you could say no drywall on Sundays.

Insulation doesn't make any noise.

>> J. Selawsky: I can live with any of those.

I just want to make it easier.

I don't think the delay in the construction had knowing anything to do with the neighbors so I don't want them to suffer more than they need to.

Okay?

>> D. Pinkston: I'll make a motion that we limit Sunday construction to non-noisy activities specifically excluding sheet rock or the use of nail guns or screwdrivers, pneumatic generators, things that make noise.

And I hope we could move along quickly.

>> Chair Tregub: Just to clarify, you are not including a limitation on the number of Sundays, just what activities are conducted?

>> D. Pinkston: I wouldn't.

Because I have been through construction and it is very hard to control how that stuff goes, and you think you are going to be this Sunday and then you are not and it ends up being the next Sunday.

Let them get done.

The best gift we can give the neighborhood is to finish the project.

>> Chair Tregub: I'll second the motion.

Are there any other comments?

John, that satisfies you?

>> J. Selawsky: Yes.

And I appreciate the work.

You all met halfway here, and I appreciate that.

>> S. O'Keefe: Can we ask the applicant if that's okay or what they think?

>> That's fine.

And the other thing that I wanted to just add, Sunday is an option.

We are paying overtime for it.

So it is not necessarily going to be every Sunday.

Just wanted to also throw that out there.

These are concerns.

>> Chair Tregub: Thank you for that.

I think we are ready for a roll call vote.

>> Brazile Clark.

>> Yes, with the conditions.

>> Erickson.

>> Yes.

>> We are noting that Teresa Clarke has recused herself.

[Roll call vote]

>> Chair Tregub: Congratulations.

You have your use permit.

It is appealable to the city council.

>> G. Powell: We need to shuffle to get a new staff permit up here and I will find Teresa.

>> Chair Tregub: And staff, do we need a captioner's break?

>> G. Powell: Sounds like it is time for a break.

>> Chair Tregub: We will take a ten-minute break.

[ RECESS ]

>> Chair Tregub: Thank you.

We are going to go back in session.

If I could ask members of the audience to finish their thoughts and conversations.

We are going to move on to item number 6, which is 2212 Tenth Street.

Staff, please open it up.

>> G. Powell: Tonight for this item staff is represented by a consultant that we have hired to manage this project.

So I'm going to turn the mic over to Jean iceberg and she will give the staff presentation.

>> Thank you.

Good evening, Chair Tregub and members of the board.

2212 Tenth Street is a 5200 square foot lot located just south of Allston Way.

Just pointing to it right here surrounded in red.

The site is located in the R-1A district surrounded by single family homes.

Currently a 1,080 square foot single family home and detached accessory structure are located on the site.

You can see them outlined in the background here.

The use permit requests are to demolish the existing dwelling and accessory structure, construct two new detached two-story dwellings totaling 4,000 square feet, and increase the number of bedrooms on the site from two to eight.

The proposed project meets the R-1A district requirements including building height, lot coverage, open space, and parking development standards for the number of bedrooms and units that are that are proposed.

The project also meets front and side yard setback requirements but requests a rear yard reduction from 20 to 15 feet.

The new dwelling units will be built in a traditional architectural style with a combination of gable and flat roof forms and projecting bays.

Each unit has four bedrooms and two bathrooms.

The front unit contained an attached garage and the rear unit is parked with uncovered parking space.

The finishes are proposed as gray stucco, board and batten siding, shingled roof, and standing seam metal canopies at the front porches.

The applicant prepared a complete shadow study.

I'm just showing a couple examples here.

We have an existing on the left and the proposed at the lower right.

And then on the top and bottom of the screen you'll see the shadows that would be cast to the adjacent unit on the south and on the bottom the adjacent unit to the north with the hashing showing the new shadows that would be under the proposal.

Staff found the shadows to be non-detrimental and consistent can conditions found elsewhere in the neighborhood in the urbanized area.

So looking at this photograph the existing dwelling proposed for demolition is in the center.

Since the staff report was published several additional communications were received, expressing concerns about the scale and density in the development in the context of the neighborhood, the shadow

and privacy impacts on habitable rooms and usable open space, for example on the north unit.

The potential for overcrowding and on Street parking impacts, and the demolition of an existing unit that is currently occupied.

An additional communication expressed support for two units on one lot.

One correction to the staff report on page 11, the first paragraph refers to condition of approval 15.

It should refer to condition of approval 15, not 14.

This is regarding landscape screening.

In summary, staff supports approval of the project as conditioned.

That concludes my staff report.

I'm happy to answer any questions.

The applicant is also here.

>> Chair Tregub: Thank you.

Are there any questions for staff?

Yes.

We will go down the row here.

Go ahead.

>> T. Clarke: I just wanted to ask, this doesn't -- because it is that many bedrooms it doesn't have the mini dorm thing because this district there is no mini dorm issue?

>> Right.

This is not proposed as a mini dorm.

>> T. Clarke: Anything over six bedrooms would have to apply for -- isn't there a use permit for that?

>> G. Powell: And there is on this project.

>> For the number of bedrooms over six.

But each unit is proposed for four bedrooms.

>> T. Clarke: I thought it was the parcel.

This doesn't apply?

>> G. Powell: It does apply to the parcel, and there is a permit requested.

>> T. Clarke: Number three, increase the number from two to eight for the bedrooms?

I don't see it saying exceeding maximum.

>> G. Powell: I think you are referring to the sort of project blurb on page one of the staff report.

Usually we just try to be topical for the layperson to say here is generally what is happening and then the permits required we do mention it is more than six bedrooms on a parcel that is proposed.

And then the project description later on in the report has more detail.

>> T. Clarke: Oh, okay.

That's the third use permit.

Just to construct six more bedrooms on a single parcel.

Thanks.

I missed that.

I was reading the first part.

>> Chair Tregub: Thank you.

Charles.

>> C. Kahn: I am intrigued by V on page seven, housing accountability act on page seven.

This is the first time I remember seeing this on a project.

It seems to have some legal implications here.

I don't fully understand what our obligations are relative to the Zoning Adjustments Board related to that act.

I don't want to get us sued.

What's the story here?

>> Chair Tregub: And I was remiss.

I'm glad you brought up that question because I was going to ask staff to tell us about the history of why this is now supposed to be included in every staff report.

>> G. Powell: So you are correct.

This is the first meeting that this has been proposed at the ZAB.

>> C. Kahn: I'm glad I'm not crazy.

Maybe I am.

>> G. Powell: On page seven it provides the background.

The background is for the city's decision to add dwellings on Haskell Street that went to the board and was appealed, there was a lawsuit.

And the settlement agreement was that the city from now on will conduct an analysis.

And this is the so-called Annie NIMBY law, if we are going to deny dwellings we need to make specific findings.

For any new dwellings in the city, we will have it in the analysis and then on administrative use permits that applies for any new dwellings in the mixed residential.

It is new and we have to do this to comply with the lawsuit.

>> C. Kahn: Okay.

So I'm just trying to get a sense of where our elbow room is as a zoning board.

If I am understanding this, eight units are proposed, eight bedrooms are proposed here.

That is a certain kind of density.

So we could rule on things like the 15-foot exception as long as the eight bedrooms could still be provided, but we couldn't make them have six bedrooms, for example.

Am I right about that?

Unless it gets back to adverse health outcomes.

>> G. Powell: It gets back to should the city -- we need to make specific findings.

It is about obstruction of dwelling units, any dwelling unit.

>> C. Kahn: All right.

>> G. Powell: If you find that once you have read through this -- we try to make it as factual and as informative as possible without going too far.

If you find you would like a little bit more background in the future or changes, we are open to that.

I can't say whether or not this is going to be in front of you again in two weeks at the next meeting, but it could be.

So we still have time to make changes.

>> D. Pinkston: Can I restate your question?

The housing accountability act was recently amended to allow housing non-profits, or non-profits that defend affordable housing to file suit against cities that are denying or reducing density of projects.

That is sort of the purpose of the law.

It has been on the books for a very long time.

It is hard to enforce because typically the developer had to sue the city after having received an approval, which almost never happens because they are so happy to finally get an approval that they have to go build it.

The amendment to the law made it easier for non-profits to sue when there is a density reduction, but I believe that only applies if the density is consistent with the underlying standards in the zoning ordinance.

So when the application is asking us to modify the standards in the general plan in the zoning ordinance, we don't have to make the housing accountability act findings.

Is that a fair way of restating what you put in the staff report?

>> G. Powell: I was reading what we wrote while you were talking, so I apologize.

Would you mind just saying the last couple sentences?

>> D. Pinkston: What you wrote, which is what I just restated, is that the standard in the law is if the project is consistent with the general plan, the objective general plan and zoning starts, which are

typically height, density, bulk, open space, those things that can be quantified, then if you reduce the density below the zoning standards you have to make these health and safety findings, which are very hard to make, but you can only reduce the density because there is some overwhelming health and safety concern.

But when the proposal is to build something more dense than the general plan and zoning standards, you don't have to make those same findings as long as what you approved is consistent with the general plan and zoning.

So this is a use permit application to do something that is more dense than the underlying general plan in zoning, which is why -- yeah.

>> G. Powell: It is not more dense.

The R-1A district allow two dwellings if the lot's big enough.

So thank you for repeating that.

I agree completely with the way you described that.

>> But it is not the case.

>> G. Powell: It is not.

This act creates an incredibly high bar to the city to say no or condition approval when there is production of dwelling units involved.

>> T. Clarke: But there are three elements which do not comply with applicable objective general plan and zoning standards, which you put in your staff report.

And so those are the only ones we could modify, is that correct, if we found an impact on public health or safety?

And there's no part of this --

>> Chair Tregub: Shoshana.

>> S. O'Keefe: If density is reduced, do we say one further bedroom?

>> G. Powell: Dwelling.

On the Haskell case the city said no and that was reducing the dwelling that was proposed.

>> S. O'Keefe: It is saying you can't have as many dwelling units.

That is what triggers it.

Okay.

>> Chair Tregub: Thank you.

That's really helpful.

Any other questions for staff?

Let's hear from the applicant.

And you have five minutes from the time you get started.

>> Hello.

My name's John Newton, the designer of this project. I know the neighborhood well.

I have designed another project on Ninth Street a block away a few years ago that I think had been generally well-received.

I would like to highlight a couple of the architectural features of this project.

Is there a laser pointer?

Just to highlight a couple of the main design features we did is we located the driveway to the left, and so our house would be more central.

Therefore, we were able to give a generous separation to both the house to the left and to the right.

The original house was seven-foot eight-inches away from the house to the left, or south, and it is now going to be 13-foot-8 to the second floor and 15-foot-2 to the first floor.

The house to the right will be 14-foot 3.5 inches away.

We feel that was a good amendment to the site layout.

It is a little bit hard to see.

So I take pride in my work.

I decided to design traditional houses.

We talked with the neighbors and did get that input from them that in general they were really feeling -- they really care about their neighborhood, and I understand that.

And there are a lot of nice houses in the neighborhood that are generally traditional.

And so we agreed with that.

To be able to make the houses look both interesting and not be too tall, you can see I did a wide variety of smaller gables and flat roofs.

So that allows the houses to be more interesting from all angles and get the height down.

One thing too that is important is on all the gables I made the plait heights low.

Instead of it being nine feet tall, which is standard, I dropped it to 7-foot-6, which is a nice way to bring the massing down.

The last thing is really important to understand.

The context of the neighborhood, you can see here's the existing house here and here is our proposed house here.

I think a lot of the complaint from the neighbors is due to the fact that their house is the shortest house around.

So there is just certain implications of that that is not in our control, but I think if you look at the broader neighborhood, our house is very much consistent and lower in fact than many of the houses on the block.

And I think I did a good job of lowering the roof lines where I could to kind of make it blend in.

But I think it is an attractive addition to the neighborhood.

So I just would like to close by saying that I do agree with the staff report that the development is in character with the neighborhood, and I think the solar impacts, there is always something to be expected, but I think really in context it is not detrimental.

And I do believe that more housing is needed.

>> Chair Tregub: Thank you.

Are there any questions for the applicant?

Was that a question, Brazile?

No?

Thank you so much.

We are going to call up the members of the public.

Actually, if there's anyone here who is still here and has young kids and wants to speak on this project, we will give you a chance to go first.

I don't know if anyone is in that situation.

If not, I'll just call up the first five names.

And if you could line up.

First is Kelly Hammargren followed by Fred Constantino, Susan, and Alon.

Sorry if I butchered your name.

Kelly.

>> Hello.

My name is Fred Constantino.

I have lived on Tenth Street since 1980.

I oppose the development for the following reasons.

Rosa Parks school has no off-street parking and no parking on Allston Way, thus our neighborhood is flooded with teachers and neighbors who park on 9 And Street as though there is Allston Way between the two streets.

The proposed eight-bedroom project will likely generate at least eight additional cars in the neighborhood.

Two, the shadows of this proposed project would cast onto its neighbor would severely negatively impact the quality of life for those owners currently living there.

Three, the proposed project would evict the people currently renting and living in affordable housing at 2212 Tenth Street and replace that structure with two multimillion dollar plus homes.

Currently our Tenth Street neighborhood consists of open and spacious single families.

This proposed project is not consistent with our existing neighborhood.

Thank you.

>> Chair Tregub: Thank you.

Sarah, you are up next.

>> Sarah Schumer.

It has been and was my pleasure to have served on ZAB for many years a few years ago as Jesse Arreguin's appointment.

At that time we were worried about the interpretation of the R-1A standards which would allow a maximum or near-maximum development particularly of second units.

This resulted in ignoring the detriment to the nearby houses and we do think rather than maintaining the open and spacious development that the zoning requires, or seeks.

This project furthers that.

The density and bulk of this project is four times that which exists.

It is 1,000 square feet to 4,000 square feet, two to eight beds.

If this becomes a mini dorm, which the transportation system going up to Cal will make it quite likely, you can have 20 to 24 young adults on this property.

And I want to focus on two particular points in the staff report.

One is that the criterion for the setting of detriment for shading says that the increase in the shading, which they agree is quite extensive for the house to the north, is consistent with what is to be expected in an urbanized area and therefore is not detrimental.

Urbanized area does not offer any criteria.

What is urban?

Is it San Francisco?

Is it Manhattan?

Downtown?

The hills?

We have a guideline for open and spacious.

The second thing is -- lack of time.

Okay.

The next thing that I would like to suggest is we have a solar access.

And the importance of --

>> Chair Tregub: Finish your thought, please.

>> The importance of the sunlight on windows is both for the light itself but also for the passive warming.

And the sunlight on backyards is also for vegetable gardens, etc., which also work to help on the environment.

Thank you.

>> Chair Tregub: Thank you.

Susan.

Next up is Alon.

>> I'm Susan Springboard.

I live at 2227 Tenth Street, which is across the street from 2212 and two houses down.

I have lived there since 1965.

So over 50 years.

And I have seen the neighborhood change a lot, obviously, in the half century that I have lived there.

But the proposed development at 2212 is a change that I find extremely unacceptable because of the density that it brings.

There are no lots on our block that have two large, very large houses on them.

We have just two properties that have two houses.

Both of those front houses are small and the back houses are much smaller than the ones in the front, in compliance with zoning standards.

We have -- my concern is that we are letting the self-interest of a developer to out within weigh the concerns of the neighbors.

This is someone who will build large and expensive houses and leave, and they will leave the neighbors with the problems of parking, insufficient sunlight in the house that is to the north of him, the problem of lack of open space. All of these are problems that we are going to need to deal with when he leaves.

I think that there are values that we haven't talked about that have been the hallmark of our neighborhood for 50 years.

That of affordability, and that of diversity.

And I think a building -- two buildings like this of this size really, really call into question the kind of neighborhood that we have.

Thank you.

>> Chair Tregub: Thank you.

Alon.

>> My name is Alon Danino.

My wife and I and we are the owners of the house of 2212.

Before we bought the house, we made the research where and what would be the best house for us.

>> Chair Tregub: I'm going to stop you.

Are you part of the applicant team then?

>> I'm the owner of the house.

>> Chair Tregub: You're the owner of the house.

So the five minutes that I have provided at the beginning was for everyone who was part of the applicant team.

So you will have an opportunity to speak again.

I'll give you time to rebut after public comment.

>> That's fine.

>> Chair Tregub: Thank you.

My apologies for not clarifying that sooner.

Next up before I call names I want to say thank you for trying to keep this succinct.

We are going to give everyone two minutes.

But if you agree with something that a previous speaker has already said, it is perfectly fine to say "ditto" or just that you echo someone's thoughts.

So we have Margaret, Shiva, scout chase, and Greg Martin.

>> My name is Margaret F, and I have lived four doors away from this property for 37 years.

Our street I has no lots with more than one large house.

We do have two with cottages.

And a lot with two very large houses will be very out of place on our street.

A two-story house, one, two-story house with a cottage might be acceptable as long as there was adequate parking and green space for each dwelling.

I don't want to see the neighborhood urbanize with minimal green space and increased parking problems.

At present we have a terrible parking situation because faculty, staff, and parents at Rosa Parks school use our street for parking, along with customers and employees of businesses on San Pablo.

Because of the scarcity of parking, some of the neighbors are forced to park across their driveways, and that creates a fire hazard for all of us.

I myself have a huge problem with outsiders parking across my driveway sometimes just for hours but sometimes for overnight.

So I'm unable to get in or out of my garage.

The proposed new houses will add more than two cars, and the developer is just providing parking for two cars.

I'm not against development, but we are already heavily impacted by development outside of our street.

There is a huge apartment building and retail space going up on San Pablo and Addison.

And Berkeley seems to overlook parking whenever they develop new retail space, living space, or schools.

>> Chair Tregub: Thank you.

Shiva.

>> Hi.

I'm Shiva, the resident of 2606 Tenth Street two houses down from the property that you are discussing.

And I echo what everyone says on the parking situation because I find it challenging to find parking, especially on the days where we have waste pickup and I have to park on San Pablo paid parking because there is just not enough parking space.

And the second thing I have another question on is the pollution prevention plan, if there is a construction, especially because we have a three-month baby in our house now.

So what are the pollution control plans to keep anything like asbestos or anything down so that it doesn't impact our health?

>> Chair Tregub: Thank you.

Next up we have Scout.

>> Hi.

I arrive in 2210 Tenth Street, the small house next door to the proposed development, and I agree with my neighbors' concerns, especially about replacing affordable housing with multimillion dollar homes.

I'm also really concerned about the detrimental effect of the sunlight lost on our property.

Our house is 800 square feet.

It is four rooms.

It is not very far off the ground.

We love our house.

We love our sunny yard.

We garden.

We love our neighborhood.

It is our dream house and we want to live there forever.

And one of our favorite things about it is the fact we get direct south-facing natural light in two of our four rooms every single day of the year.

The shadow study, which is in your packet, shows that in the winter our natural light would go from a lot to pretty much 0.

And in the fall and spring it would also be significantly reduced.

So I hope to live in my home for a very long time.

This project is going to impact the house that I wake up in every day, the house that I drink coffee in every morning, the house that I open Christmas presents in on Christmas.

So please consider reducing the height and making other changes to this plan so that my home is not wrecked.

Thank you.

>> Chair Tregub: Thank you.

I'm going to call up Greg and announce the last batch of speaker cards that I have.

Emile.

I'm sorry.

Emile up followed by Greg.

And then I'm going to read off three more names.

And if you are able to, please line up at the front.

Walker staples, Adam F, and Debra Scott.

Go ahead.

>> Hi.

So scout and I are the co-owners of the tiny little house on the north side of the proposed development.

We bought it less than a year ago.

And if this house that is being proposed was already built I might not have bought it.

We paid \$725,000 for a four-room house.

Two of those rooms get direct sunlight.

The other two do not.

The proposed development as scout said completely eradicates our natural light in the winter, really detracts it during the rest of the year, and also three people live in this house.

It is four rooms big.

Three people live in four rooms.

In that case, every room is the room I live in the most because that is really small for that many people.

And also I am an avid gardener.

And when my house is so small I garden.

The reason I bought that house and the reason I spent 14 months looking for something was because I wanted a sunny yard.

It may seem silly, but that was the number one thing why I bought this house, because I had a sunny yard.

And if you look at the shadow study, they shade out my entire property for the whole year.

That's a really expensive -- that's a huge financial burden on me.

I have no equity in this house so far.

I have owned it less than a year.

They have a tabula rasa.

They can make any decision they want.

Just because it is common for buildings to be shaded out does not mean it is not a detriment.

It is an extreme detriment to my daily life and he is not going to leave there.

Test he's going to leave and I will be left with a very expensive shady little house.

I'm not against development, but please make it smaller, make it shorter.

>> Chair Tregub: Thank you.

If you can come back up.

>> T. Clarke: Excuse me.

I have a question.

What are you doing with the garage in the back?

>> The garage in the back as it currently stands is uninhabitable.

Long term I would love to -- I would love for somebody to live there.

But its current state, it was an expanded carport that was used as Bible study.

There is a kitchenette and all the utility lines running to it, but it is kind of --

>> T. Clarke: So it is not a legal unit?

>> It is not a legal unit and it would need extensive work.

>> T. Clarke: That's all I wanted to know.

>> Chair Tregub: Thank you.

Greg.

>> I live at 2227 Tenth Street.

Lived there for 30 years.

I must say that the people who have come before me have really stated much better than I have all the points that I was going to make so I think I'll just cede the floor.

>> Chair Tregub: Thank you very much for your brevity.

Walker.

>> Hey.

So I'm the third housemate at 2210 Tenth Street, the one being shaded out.

I want to get to the points about the light.

We spend a lot of time in the garden.

It would be a shame to watch all the plants we put love into die, and one of our food sources and as well.

I want to echo the concern about -- it is something that I'm very passionate about and not something that I want reflected in my community.

Thank you.

>> Chair Tregub: Thank you.

Adam.

>> I'm Adam F.

I live at 2214 Tenth Street.

Lived there for 16 years.

My neighbors have said a lot of the things that I agree with.

I know the study is trying to increase housing for folks, but this particular project because of its bulk and scale is not consistent with this particular portion of the neighborhood.

I know there are things on Ninth Street, but frankly they are out of scale as well.

The other project this architect has built, the developer owned both lots so he had no neighborhood issues next to him when he built them.

This also -- there is challenges to the R-1A zoning that currently were talked about in April for clarification about the size of the two units.

And in September there was a meeting that was supposed to decide some clarification on that, and that was kicked down the road.

I think this project, if it is not shrunken, should at least be delayed until we get clarification on the R-1A zoning, which would limit or make the size of the two units relative, either the front or the back, 75% of the front or back unit.

Also the lot size and the distance between the two units would be considered.

Because right now it is okay to build two exactly the same size units, which are not within the scale of our particular neighborhood.

And again, what people have said about this is affordable housing going to very expensive housing, shoe horning million dollar homes into every lot will change the essence of the neighborhood.

It is being done by a developer who will leave us with the results that we have to live with for a long time.

Thank you for your time.

>> Chair Tregub: Thank you.

And last comment is from Debra.

>> Hi.

I'm Debra Scott at 2230 Tenth Street, be there for 24 years, two houses south of the development.

I want to say ditto to everything the neighbors said.

I'm really afraid it is going to set a huge precedent for our neighborhood and to think of this neighborhood becoming so completely dense with other structures like this in the future is terrifying.

Thank you.

>> Chair Tregub: Thank you very much.

If there are no other speakers, we will call the applicant's team back up.

Feel free to divide the time between the two of you as you see fit.

I would encourage you to respond specifically to the comments that have been made.

>> Okay.

So my name is Alon Danino.

Before we bought this house, we made research what would be the best house for us.

We checked the neighborhood, the school system, the shops.

>> We have such little time.

Maybe a minute.

>> So I don't know why everybody says that I'm not going to live over there.

I spent all my money and put into this house.

I talked to John before we bought this house.

And I did my homework.

I know what I can build over there.

And I'm going to live in one of the houses.

The other house will be for an investment to my family for the school, for our future, for my retirement.

I don't think I did something wrong with that.

In our block there is a lot of houses that are big, big houses over there and higher than what we are going to build over there.

Houses like 4,000 square feet, 5,000 square feet, multiple units with eight units, nine units.

So I don't think -- and you can look on the block map what I gave you.

>> Trying to go fast.

So really quickly, I just want to reiterate I don't believe the houses are particularly tall, and so I really can't make them significantly shorter.

The one thing that I have done in the past that I would offer as an option is for us to add skylights to the neighbors' house as part of the thing.

I have done that once before on a project in Berkeley.

One skylight or two or three skylights would give a lot more light than the windows that we are affecting.

And I don't believe the shadowing is a detriment.

>> Chair Tregub: Thank you.

Are there any questions?

>> Is this the map that you are referring to?

>> Yes, the block map.

>> T. Clarke: That we got earlier tonight.

Okay.

>> Chair Tregub: Thank you.

We are now going to close the public hearing on this project.

Are you making a comment?

You nut a card?

>> I did not put in a card, but I would like to make a comment.

>> Chair Tregub: We are going to give you two minutes.

And if there's anyone else who needs to fill out a card, please come up here.

We will give you two minutes.

>> I'm Ann Rojas.

I'm a resident of Berkeley, lived here for the last, I don't know, 20 years.

I'm here for an issue coming up later but this is really disturbing.

As people were mentioning, I think you should do your research.

If somebody comes up here and is not being honest, it is upsetting.

I think this person is doing this to make a profit and lives in Sunnyvale, doesn't live in Berkeley, but insinuated that he is a Berkeley resident and his children are here.

I'm really concerned about that.

I agree with what these neighbors are saying and I'm concerned as a Berkeley resident about developing housing to make money as opposed to affordable housing.

And I think you should be really careful about these decisions.

I'm very interested in housing for people, and non-profits do that well.

And corporations and people who want to make a million bucks, I don't think they are very welcomed here, and I'm concerned.

So please think hard about this.

>> Chair Tregub: Thank you.

We are now going to close the public hearing and bring this back to the board.

Would anyone like to start?

John.

>> J. Selawsky: Just a question for staff.

Going back to one of the preceding conversations you said during the property owner's testimony he intended -- the homeowner's testimony -- he intended to install solar and you said we can put that in as a condition of use.

We decided not to.

And I don't disagree with that decision not to.

We just heard from the property owner that he intends to live in one of these houses.

Is that something that we can use as a condition of use?

Hypothetically.

How far can we take that?

>> G. Powell: Well, the condition of approval on the statute that is in the MUNI code would broadly say anything they say becomes a condition of approval.

>> J. Selawsky: And he did say that.

I heard him.

>> G. Powell: I appreciate that.

I guess I would feel more comfortable if it was about either characteristics of the building or the use of the building, and I haven't found anything that says that applicants have to live in there.

>> J. Selawsky: I understand that response.

I do.

I'm just curious how far this could be stretched.

>> T. Clarke: It really can only be applied to the zoning part of it, the code part of it.

>> J. Selawsky: Solar is not zoned.

>> T. Clarke: Right.

That's why I didn't think it could be applied.

>> D. Pinkston: I think the standards is physical improvements.

The zoning code and our authority is as to the physical improvements on the property which have a shelf life of 50 to 100 years.

And if we are to try and reach beyond that to something like occupancy other than -- in particularly this sort of a setting, how do we enforce that?

>> S. O'Keefe: I think it violates his constitutional rights, actually, to tell him where he has to live.

I'm pretty sure you can make that argument.

We are not doing it.

Let's move on.

>> G. Powell: In light of that, I think something the ZAB could consider is when folks are offering stuff is going beyond what you really want to hear and you can base your decision on, you can say that's not something we find relevant.

Like bend things away from people saying stuff that is not a matter.

>> Chair Tregub: Charles.

>> C. Kahn: I would like to recommend, if my board members, fellow board members are good with this, that we disregard the comment from the applicant that he is going to live there.

I'm not aware of any place in the zoning code that it says that because someone is going to live there -- am I wrong about that?

>> S. O'Keefe: I was going to say we should disregard all the comments of who will live where, because it is irrelevant, as Greg pointed out.

Really, we should be looking at the project regardless of who occupies it.

We always have to look at projects with those eyes.

>> T. Clarke: There is only one case where that applies, with the in-law units where it does require owner-occupancy in one of the buildings in a specific type of in-law accessory dwelling unit.

So it is very specific in the code.

And then you can't rent it out if you don't live there.

>> D. Pinkston: That's not what we have in front of us.

>> G. Powell: To elaborate on my comment earlier, if you are going to rely on something that is said, then you should make it a condition of approval.

If you are not, you can choose to just say that is something that is not a matter to this.

But I often hear applicants say I'm going to do this and that and the other thing and I want to stop and say is the ZAB using that to find and make the non-detriment finding?

If so, we need to do a condition so you can actually get what you expect.

But you have made it very clear where they live, and I have heard that many times myself as a planner.

This is going to be my home and then they don't.

So I'm like please don't tell me that anymore.

>> Chair Tregub: That is duly noted.

I have a question.

And this might be for the benefit of some of our newer members.

Can you discuss the significance of an R-1A zone versus something like an R-1 or R-2?

And I understand that the Planning Commission has been discussing R-1A.

Could you update us on the issues at hand?

>> G. Powell: I need to dust this off but every quarter we have this in front of the ZAB.

It is an important distinction to make.

The R-1A differs from the R-1 district mainly because the R-1 doesn't allow two equally sized dwellings.

The R-1A does if the lot is at least 4500 square feet.

But the lot coverage in the building setbacks are essentially the same as they are in the R-1 district.

The R-1A is different from the R-2 district mainly because to have two units in the R-1A you need 4,500 square feet but the R-2 could have two, three, four, five, ten, 20 dwellings depending on how big the lot is.

That's the first break between the R-1A and the R2.

But the R-2 district can allow two dwellings on a lot that is 5,000 square feet.

The R-1A allows two dwellings on a lot 4500 square feet.

In terms of the density per private parcel there is not much of a difference.

The difference between the R-1A and R-2 in terms of the building envelope is the R-2 is a little bit more permissive on height, lot coverage is more permissive, more allowance -- that is not true.

There is still the break for year yard setbacks like in the R-1 district.

The difference is R-1A has no building-to-building separation on the same lot, whereas the R-2 does.

It is kind of mixed.

In some ways they are very similar but in some ways a development that could be the same in the R-1A could be more restricted than the R-2 district.

I hope that is succinct and not too much.

>> Chair Tregub: Before I call on Shoshana, I want to follow up. You mentioned 4,500 is the threshold for R-1A.

>> G. Powell: To have two dwellings, but the minimum lot size if you are creating a parcel is 5,000 square feet.

Is that is what is depicted in the staff report?

>> Chair Tregub: That was the origin of my question.

5,000 is the minimum.

>> G. Powell: If you want today subdivide.

The minimum lot size in the R-1, in most residential districts is 5,000 square feet.

But to have two dwellings is 4500 square feet.

>> Chair Tregub: Interesting.

Thanks.

Shoshana.

>> S. O'Keefe: Greg, did I hear you say that in the R-1A the two buildings are allowed to be the same size but they are not in the R-1?

Did I hear you say that?

>> G. Powell: Yes.

The only way to have two dwellings in the R-1 district is one would be a main dwelling and then the other would be an accessory dwelling unit, which there is a cap of how big they can be in relationship to the main dwelling.

>> S. O'Keefe: That is specifically not the case with R-1A

>> G. Powell: Well, you could have a main dwelling and accessory dwelling unit in the R-1A but that is not what is applied for.

>> S. O'Keefe: The second building could be bigger in the R-1A.

That sounds like the most distinctive difference based on what you said.

>> G. Powell: Yeah, it is worth noting in the R-1 district the accessory dwelling unit can be sold separately whereas in the R-1A you can create a parcel map and have condos of each dwelling.

>> S. O'Keefe: Basically R-1A can be two houses where R-1 can't. A little extra thing.

>> G. Powell: R-1 could never be created into a condo, whereas in R-1A it could.

>> Chair Tregub: What is the issue attempted to be discussed at the Planning Commission?

>> G. Powell: It was a continuation of what was brought up several years ago and the ZAB has seen two or three times in the last two or three years, which is should the city say that the R-1A district has a relationship between the main and the back dwelling in that maybe the back dwelling has to be smaller?

And I think that is primarily it.

I don't know if we will go anywhere else with that, but it will be on the agenda with the Planning Commission, and we will see where it goes.

The thrust of it is if there is a second unit some believe it should be smaller.

>> Chair Tregub: Thank you.

>> S. O'Keefe: Sorry.

For the new people, this issue has been hotly debated on this board very recently.

>> J. Erickson: Thank you.

>> Chair Tregub: For years, but also very recently.

>> T. Clarke: I would like to make a motion to approve so we can start discussing specifics.

>> Chair Tregub: Is there a second?

Well, Teresa, maybe you can speak to the motion.

>> T. Clarke: I'm looking at the requirements on page five of 14.

The setbacks on the left and right side for both the front building and the rear building are met, have met the requirements.

So although the neighbor to the south will be impacted with shade, they are meeting the four-foot setback on the side yard.

And the building is only two stories.

So it is not a three-story where you might want a six -- in some cases it would be six feet if it was three stories, is that correct?

>> G. Powell: Only in the R-2 district is there a six-foot standard for the third floor.

>> T. Clarke: In this district the side yard setback is only four feet for any building and that building could be up to three stories.

The other reason I think this is a reasonable proposal is that both of the buildings are under the 28-foot maximum.

In addition, the square footage for the usable open space has exceeded by almost 500 feet than what is required.

They have two spots, met the parking requirement.

Parking on the public street is a public use, not reserved for anyone in particular unless that particular neighborhood gets permit parking, which is up to the neighborhood to decide on a global basis.

So I don't think we can assume extra requirements on this particular parcel to add parking.

I think they have met the minimum.

Sure, there might be parking issues because of Rosa Parks, but they have met the requirement in this case.

They are under the maximum of lot coverage.

And they are believe the number of stories.

The only section where they have not met the minimum is in the rear setback which has a 20-foot minimum, and they are proposing a 15-foot.

So I think the only place where we might want to adjust that, if it improved the sunlight to the neighbor to the south, would be in that case.

And right now, unfortunately, that would not improve the sunlight for the south neighbor because there is a building in that location.

So even if they pushed the rear building back they would not increase the sunlight available to the yard because there is a yard already on the south side of that lot for the resident who spoke who is the most impacted by the shading.

So because of that I feel like the project meets the overall development standards for the district.

It has not asked for anything special, really, except for that one setback.

And I think that by having the smaller setback in the rear, you are actually creating a better open space between the two buildings, which I personally think is actually a better relationship for the two houses because then there's more interaction between the two homes when you have some open space between them.

So I think 15 feet from the rear yard is okay.

There is also it looks like two garage buildings on the lot directly to the west -- is that to the west?

So if you look at the west, there are two existing garages.

So here you have their building is creating a 15-foot setback, the rear house, which is a pretty good setback considering these two garages are basically on the property line.

So that particular property to the west is actually non-compliant.

They would have to have a 15-foot or 20-foot setback there.

So currently they are responding to that by not pushing further back, I assume, perhaps.

So I think the open space that is created between the houses in the front and back is all pretty usable for the properties.

I think that is a positive.

And in practice if you look at the bedrooms that are on the first floor those, I suspect, would be used as offices.

And these really seem to me -- and I am surprised that the developer or the owner has not applied for a condominium map with this.

It seems like it would be a perfect opportunity to create two condominium single-family homes that could be starter homes.

I don't know if these would be worth \$1 million, but who knows what the prices are with the way they are going in Berkeley.

But they could be at least an \$800,000 home for sale if they wanted to, each of them.

Unfortunately that's the environment we are in.

But I think the buildings themselves and the proposal is within this zoning district, and that's why I feel I can support approval of this, even though there are objections from the neighbors.

This is the zoning district here, and if you want to change the zoning district for an area it is really more of a Planning Commission purview.

Our purview here at the Zoning Adjustments Board is to review the rules and make sure that the buildings that are being proposed underneath the rules are meeting the zoning code that we have in this district right now.

And so that's why I recommend approval.

>> Chair Tregub: Thank you.

Charles and then Shoshana.

>> C. Kahn: Actually, I would like to hear Shoshana's thoughts before I speak.

I felt great sympathy for the neighbors and their concerns about shadow.

The reason I didn't second the motion is I'm interested in seeing, this is the Zoning Adjustments Board.

Maybe there is an adjustment that can make this more palatable.

>> S. O'Keefe: You are going to copy me, Charles?

I think I'm going to support this project.

I'm hoping we will maybe make some adjustments.

But the reason I was questioning Greg about the difference between R-1 -- Igor actually brought up the question but I was continuing it -- the difference between R-1 and R-1A, it is very intentional this type of development is allowed in the R-1A, it appears to be the difference between R-1 and R-1A.

This seems to be fulfilling the vision of the zone that it is in.

So as Teresa pointed out, it is not maxing out or particularly pushing any boundaries.

It seems like what the city has asked for in writing the R-1A code.

So it is hard to deny it when it is sort of exactly what the city has expressed it would like in this area of Berkeley.

And I am sorry for the people impacted.

And I would like to explore the skylight issue.

That was a nice offer from the applicant.

I would be curious -- not now but at some point when Chair Tregub thinks it is appropriate I would like to hear from the neighbors who will be impacted if that would be something they would like, especially because I'm guessing now -- we will see how the discussion goes -- I'm guessing it is going to pass so that is something you may want to consider asking for.

>> Chair Tregub: Let's hear from Charles and then I'll reopen the public hearing for the specific purpose of hearing from the immediate neighbors.

Charles.

>> C. Kahn: Well, I agree with Shoshana.

And I do also agree with Teresa.

But we are the Zoning Adjustments Board, and I'm hoping that there could be some adjustment that would at least partly accommodate the shading concerns.

I really was touched by Scout and her two roommates and the way they spoke.

They spoke very well very much from the heart.

We are somewhat constrained.

I know it looks like, well, we can do whatever we want up here.

But it is really not the case.

We have to follow the zoning code.

But if we can make adjustments that help things out, I'm always interested in doing that.

One thing that I noticed in the staff report is that it is actually-the 15-foot reduction, this could be built with a 20-foot but the shadow studies, there were shadow studies that were done according to the staff report that showed that there was better yard, better light in the rear yard for the neighbors with the 15 feet rather than the 20 feet, which kind of makes sense.

I would say maybe we should require as a condition of approval they go to ten feet.

The only impacted buildings would be the garages to the west.

That's one idea to get some more light for the neighbors.

It is not much, but it is something.

So I'm just open to discussion about that.

>> D. Pinkston: Igor, I have a question, and maybe the folks will come back up.

Yes, new buildings are going to cast new shadows.

And you have a two-story building proposed where three stories is allowed.

Typically where you see bigger buildings in most zoning districts is to the front of the lot which would mean the new building would shadow your existing home.

And where we debate this stuff is how tall is the rear building and is the rear building causing shadowing on adjacent yards beyond something that feels reasonable.

And in the past we have reduced the height of the rear building to take into account the rear yard shading.

As Teresa pointed out, you have a garage there that is also shading your own rear yard.

So I wonder if we were able to make an adjustment, what area of the yard is it that is the most important?

Or is that not a question you can answer because it is all important?

Knowing there are two houses that are going to get built and one is two to three stories tall and the other can be two oh three stories tall as well, so when you are talking about would the skylight work, I would also like to know what is it in particular that would work that will be of help.

>> Chair Tregub: Okay. Maybe I'm going to reopen the public hearing to the immediate two neighbors, 2210 and 2214 to come up here.

>> C. Kahn: That is the one impacted.

Yeah.

>> Chair Tregub: 2210.

The two adjoining buildings.

And I'm sure you haven't had time to collect your thoughts, but feel free to just let us know if you have thought through what might be some particular concessions or adjustments that could be made.

>> Yeah.

In terms of skylights, if we installed skylights we would have to change the ceiling shape inside our house, so I think it would not make architectural sense.

Our house is Victorian, built in 1892.

It would look weird.

Although that is a nice gesture.

>> In addition to that, our house is the oldest house on the block.

Also one of the oldest houses in the neighborhood.

I really want to apply to get our house on the historic commission or whatever that is because it is almost unchanged from when it was built.

There is an addition in 1910 but beyond that it is pretty much as-is from when it was built.

So, yeah, we can throw skylights in it but --

>> It would look crappy.

>> And it doesn't work with having a historic house.

>> And when it comes to the garden, we agree our vegetables back behind the garage and that is probably where sunlight is most important for growing food.

But you are right that it is all important.

>> It is the most sunny spot for the moment so it is where we put all of our vegetables.

I like the ten-foot idea.

I really like that idea.

It is hard just because I feel like I paid a lot of money for this house.

And just to address Ms. Clarke's thing about the houses, what price they will go for.

I paid \$725,000 for a house that almost didn't pass the criteria.

We have foundation things, our roof leaks.

>> It can sell for 800 if he puts a hole in the roof and you can see the sky.

>> T. Clarke: That is irrelevant for our purposes.

>> Is there anything else you need to know?

Any other questions?

>> And I'm totally willing to work with you on figuring something out.

And I want there to be more housing in our neighborhood.

Our house is so tiny that this is a really big impact.

>> D. Pinkston: We understand that.

We do.

But the rules allow them to build up to a three-story house in two places on the lot and he is building two, two-story houses.

>> Maybe you should change the rules.

>> That is not our job.

Our job is to enforce the rules adopted elsewhere.

He is within the rules.

That being said we can shave and cut and nip and tuck to the extent it reduces the impacts, and we think those impacts have already been reduced.

These are two, four-bedroom houses, so maybe there is a way to do that.

You said two things that I'm not understanding the shadow studies.

But you said the most valuable land for gardening the along the back fence.

>> Not quite the back fence but if you go -- we can laser pointer it.

>> We have it on the screen.

This is the extreme a.m. in the summer.

>> I don't know how laser pointers work.

>> 15 feet from the back fence to where the house hits.

>> Down there.

Not up, down.

That section.

>> Where there is shadow in that image that is morning in June.

And in June the sun lights up the whole yard in the middle of the day.

I'm talking about September-October, March-April.

>> And we don't know if we will keep the garage if that is relevant.

>> Pushing the house back would create more shadow.

>> You said ten feet is better but it provides more shadow.

>> I'm not sure about less shadow.

I would rather take less shadow than less shadow in a particular place.

Does that explain it?

>> D. Pinkston: If you look at the building if the back and you see the shadow line on the drawing on the right-hand side, yeah, if you

move that house forward during certain times of the day there will be less shadow on your yard.

If you move it back, then --

>> Would you look at the afternoon?

In the afternoon if you moved it back we would have more light.

>> D. Pinkston: Okay.

Thank you.

>> T. Clarke: It is probably in a good spot.

Maybe five feet would help.

But I think it wouldn't make too much of a difference.

>> Chair Tregub: Just on a very tactical level, are these kinds of discussions something that you have held with the applicant?

>> Yeah.

We have met with him two or three times to talk about our concerns about the shadows.

And the architect has talked about trying to make adjustments, but no changes have been made in response to what we have brought up.

>> Chair Tregub: Thank you.

Are there any other questions for the neighbors?

>> T. Clarke: The only other thing I could suggest architecturally is that the front house, which shades the bulk of their house, could have a slightly different roof configuration and window configuration that would allow more of a sloped roof there.

But that is beyond our ability to design that here.

So that could be a suggestion for a staff-level -- maybe we could ask the applicant's architect to come up and he could explain whether --

>> S. O'Keefe: Can I say something before we decide to do that?

>> Chair Tregub: Go ahead, Shoshana.

>> S. O'Keefe: I'm wondering -- I don't really have an appetite to redesign this right now.

I'm wondering if there's an appetite on the board to continue this to date-certain and give the applicant and the neighbors a chance to work out the answer to these questions in a better way, like maybe as Teresa suggested, change the roof.

I don't know.

I'm not an architect.

Perhaps there is a solution that could improve the situation to the neighbors.

It is funny that I'm suggesting this because I usually complain about it whenever someone suggests this.

But in this case if we could continue it, just what would be the minimum?

>> G. Powell: At least until the first meeting in January.

That way we can renotify it or write another staff report.

January 12th.

>> S. O'Keefe: I would hate to delay the project.

That's why I don't like doing that.

But if it is a short period of time that might be worth it.

I will move that.

>> J. Selawsky: If you are moving that, I'll second it.

Triple it.

>> C. Kahn: I would like to give some clear instructions to the architect and to you guys.

The concern that you have interested that we all sympathize with is the shadow issue.

>> T. Clarke: Can we limit it to the shadow issue?

I would approve if we only limit it to that and to the neighbor who is affected.

I don't want it to become an open thing where we have to renegotiate everything.

>> C. Kahn: And I would like to further say that someone noted that the dormers, I think, are adding to the shadow.

To reduce the shadow that would be one measure to reduce it.

A second one, if it can be shown that going to ten feet at the rear was demonstrably better, that could be a possibility.

Maybe it is or isn't.

The third that I would like to offer the board is there is a 20-foot required setback in the front yard.

The 2010 house has more like 15.

This would require your assent as well as the neighbor on the other side at 2014.

But I certainly as a board member would consider moving the front house forward a little bit to let more light into the backyard.

No?

Okay.

>> I think that would reduce the light in our house.

>> C. Kahn: In that case forget I said it.

>> But thank you.

>> C. Kahn: That or other suggestions that you mutually can find to enhance the light and shading.

I commend the design, which is not -- believe me, we have seen much more kind of grabby designs than this one.

It is a design that is sensitive to the neighborhood and its character.

It is not a Victorian, but hey, it is not -- anyway.

I know we have a lot of people here that want us to proceed.

>> D. Pinkston: I call the question that we continue it with that direction.

>> Chair Tregub: Shoshana, before we vote I wanted clarification that you are okay with limiting the continuance discussion that will happen to shadow issues.

>> S. O'Keefe: Yes.

>> Chair Tregub: But that it is shadow issues writ-large, so whatever is the most important aspect to them, whether it is the inside the house or the garden.

>> S. O'Keefe: Yeah.

To what date? You said January 7th?

>> G. Powell: January 12th.

>> S. O'Keefe: That's my motion.

>> Chair Tregub: Two meetings from now.

Great.

Staff, if you can please call the roll.

>> D. Pinkston: You can ask us to say yes all at the same time.

>> Chair Tregub: If you could repeat the motion.

It was going to be a continuance.

Staff, maybe you can repeat it as you understood it.

>> G. Powell: What I understand is that the board is recommending -- the motion is to continue this to January 12th, 2017, and that the applicant and the neighbor to the north work on massing changes to the front building to resolve any shading impacts that they can.

So that may mean --

>> S. O'Keefe: Either building.

>> G. Powell: Either building.

Excuse me.

That may involve changing the roof form or lowering building height or shifting the footprint of the rear building.

I got it all.

>> Chair Tregub: Thank you.

>> S. O'Keefe: Good job, Greg.

>> Chair Tregub: Okay.

It sounds like we can do a voice vote.

So all in favor please say aye.

Opposed?

Abstentions?

All right.

This will be continued to the January meeting.

Do we need a captioner break or can we keep moving?

Let's have a three-minute recess.

>> G. Powell: What was the duration of that recess?

Three.

[ RECESS ]

>> Chair Tregub: We have reached the finale, 1900 Fourth Street, and it is a discussion on the draft environmental impact report.

I'm going to hand it over to staff to provide further details.

>> S. Allen: Thank you, Chair Tregub.

The purpose of tonight's meeting is to review and comment on the draft environmental impact report for the 1900 Fourth Street project.

The proposed project is the redevelopment of a 96,000 square foot surface parking lot, the Spenger's parking lot, redevelop with a five-story 191,362 square foot mixed use development with 155 dwelling units, 30,000 square feet of retail and restaurant use, and 372-space parking garage on a site located as a designated City of Berkeley landmark, the West Berkeley Shellmound.

The project requires multiple use permits subject to review by the Zoning Adjustments Board as well as a structural alteration permit subject to the review of the Landmark Preservation Commission.

Approvals are also requested under the state density bonus law.

For some background, on February 10th, 2016, the city circulated a notice of preparation notifying responsible agencies and interested parties that an EIR would be prepared for the project and indicated the environmental topics anticipated to be addressed in the EIR.

Two public scoping sessions were held for the draft EIR.

The Landmark Preservation Commission scoping session was held on March 3rd and the Zoning Adjustments Board scoping session was held on March 10th.

The notice of preparation and the comments received during the scoping period are included in appendix A of the draft EIR and a summary of the comments received at the March 10th ZAB meeting is the second to last entry in that appendix.

The comments were reviewed and addressed if appropriate as part of the draft EIR.

The draft EIR for the project is currently available for public review.

The public comment period began on Wednesday November 16th and ends Thursday January 12th at 5:00 p.m. The city has extended the public comment period past the 45-day minimum to 58 days to accommodate holiday times.

Due to state law, it is not possible to further extend the review period.

In addition to the ZAB hearing tonight, a public hearing to receive comments on the draft EIR at the Landmarks Preservation Commission was held on December 1st.

40 members of the public spoke and the vast majority of whom spoke for the preservation of this landmark area.

The staff report in front of you this evening notes that the Design Review Committee is scheduled to conduct preliminary design review on December 15th.

However, this item has been removed from the DRC agenda.

It may be removed at their meeting on January 19th, but that agenda has not yet been set.

Again, the purpose of the meeting tonight is to provide comments on the draft EIR.

No action on the project is required or even could be taken at this time.

The verbal comments received this evening will be taken in the captioner's record of the meeting and a stenographer was present at the LPC hearing.

And written comments received by January 12th will be compiled.

Written comments will be provided in the CEQA comments in what is called a response to comments document.

We anticipate publishing it in the spring or summer or 2017.

The final EIR which consists of the draft EIR and the response to comments document together will return to the ZAB for a decision on certification.

Following certification of the EIR, the LPC can deliberate on the structural alteration permit and the ZAB can deliberate on the use permit.

The balance of the presentation this evening will be made by LSA, the city's consultant on the draft EIR.

Sitting next to me is Teresa Wallace, draft project manager, and LSA technical experts on traffic and archaeology.

Teresa.

>> Thank you.

Good evening.

I'm just going to briefly go over the key findings of the environmental analysis.

So first an initial study was prepared to identify potentially significant impacts of the project.

The initial studies included as appendix B of the draft EIR.

The preliminary analysis in the initial study indicated that impacts related to aesthetics, agriculture, and forestry resources, biological resources, historic architectural resources, geology and soils, greenhouse gas emissions, hydrology and water quality, land use and planning, mineral resources, population and housing, public services, recreation, and utilities would either not occur or would be less than significant.

With respect to paleontological resources and hazardous materials, the analysis determined these impacts would be less than significant with the implementation of mitigation measures.

Regarding historic archaeological resources, as Shannon mentioned, the project site is part of the West Berkeley Shellmound, a city landmark.

The EIR analysis determined there would be an impact to this resource and potentially to intact archaeological deposits but that the impact could be mitigate today a less than significant level with implementation of a four-part mitigation measure.

Among other measures this requires onsite monitoring of ground disturbances by an archaeologist and Ohlone representative, which would ensure two things.

If archaeological deposits are identified during excavation, these would be evaluated, documented and studied in accordance with standard archaeological practice.

Two, any identified archaeological deposits or human remains would be treated in accordance with appropriate state codes and regulations and according to culturally appropriate norms acceptable to the Ohlone most likely descendant.

Although not required to reduce the impact to a less than significant level --

These include donations to the Ohlone Indian Tribe for improvements and maintenance of the Ohlone cemetery in Fremont, creation of a GIS database detailing areas of archaeological --

And funding and maintenance of a publicly accessible permanent display within the city landmark boundary of the West Berkeley Shellmound that describes the archaeological and cultural significance of the site.

So for the topic of traffic and circulation, the draft EIR identified four potential traffic impacts that could occur with implementation of the project during the cumulative-plus project conditions, and that is the year 2040.

No impacts were identified for near-term conditions, which would occur within the next five years.

Under cumulative conditions the project would increase vehicle trips and intersection level of delay at intersections of fourth and Hearst, sixth and Hearst, sixth and university, and San Pablo and university.

Installation of a traffic signal at the fourth and herself intersection is recommended as a mitigation measure, however, the city has no program to fund and install a signal at this location.

Signal timing changes were recommended at the three remaining intersections, however, secondary impacts would occur such as safety conflicts and possible effects on other signals along those corridors.

So therefore the level of service impacts these 44 study intersections were determined to be significant and unavoidable, but no feasible mitigation could be implemented.

-- -- this measure is not required to reduce impact to a less than significant level but is recommended as a condition of approval.

For the topic of air quality, the draft EIR identified one impact that could occur with implementation of the project.

During construction the project could generate air pollutant emissions that could violate air quality standards.

However, standard construction period mitigation measures recommended by the Bay Area air quality management district would reduce this impact to a less than significant level.

No operation period air quality impacts were identified.

The draft EIR also identified operation and construction period impacts related to noise and vibration.

The project would locate residential land uses in an area that based on the city's criteria is generally considered an unacceptable noise environment for residential land uses.

The applicant would be required to implement measures such as installation in mechanical ventilation systems to reduce the interior noise level to within acceptable standards.

And that would reduce the impact to a less than significant level.

In addition, two recommended measures are identified that would further lessen the impact related to operation period noise.

The first would require the project applicant to disclose proximity of the rail corridor to future tenants and ensure that the property manager provides public education materials to future residents regarding rail safety.

The second would result in the implementation of vibration reduction design measures to reduce ground-bourn vibration levels within the buildings.

These are not required but recommended as conditions of approval.

In addition, construction noise would result in a substantial temporary and periodic increase in noise levels in the project vicinity above existing noise levels.

Implementation of a site-specific noise reduction program including notification to neighbors and posting contacts for noise complaints onsite would reduce this impact to a less than significant level.

So to just summarize, the draft EIR concluded that most potential impacts could be reduced to a less-than-significant level;

however, the impacts at four study intersections cannot be mitigated, and they would be significant and unavoidable.

The draft EIR looked at alternatives to the project.

The draft EIR is required to evaluate a reasonable range of alternatives which would maintain the objectives and avoid or lessen any of the significant impacts of the project.

The draft EIR analyzed three alternatives.

Other than the no building alternative the reduced building density alternative is seen as the greatest alternative while it would provide the greatest reduction in environmental impacts while meeting the objective.

This would eliminate the significant but unavoidable impact at two study intersections, fourth and Hearst and sixth and Hearst intersections during the cumulative condition.

The other two impacts would remain.

So that concludes the summary of the EIR section.

>> S. Allen: And I will throw it back to the chair.

>> Chair Tregub: Are there any questions for the staff or the consultant?

>> D. Pinkston: I have a question.

In the letter from Caltrans commenting on the EIR, which is in the back, it says what is the TDM management strategies the city is using to reduce single-occupant trips.

There weren't mitigations per se for TDM, is that something you'll do in conditions or approval or should we do it now, because there

are four significant unavoidable impacts making TDM strategies particularly more important.

I'm sorry.

The pages in the document aren't numbered.

But it is the back third of the book.

>> S. Allen: I think there are two responses in all of that.

I'll let Teresa flip through, or also if we want to bring Amanda W up to talk about assumptions.

As you know the City of Berkeley has a standard condition of approval that talks about the traffic demand management plans.

So there will be a condition of approval that would look at project entitlements, but the question of what was assumed for the trip generation rates in the EIR, I can -- I am hoping somebody --

>> The analysis didn't account for implementation of TDM measures.

So I assume if there are measures that would be implemented as a condition of approval the impact to the intersections would be less.

The analysis is conservative and doesn't account for --

>> S. Allen: And I will piggyback on that.

For the sake of a conservative analysis, it would not be included as part of the trip generation reduction in the TDM program.

And that is standard practice in the Bay Area program.

There are very robust programs but it is hard for traffic firms to put an exact number that would reduce the traffic for specific items.

>> I can speak to that.

Amanda LEAHY.

No factors were assumed for TDM, however the project sponsor will be unbundling parking, providing AC Transit passes, and providing a substantial amount of bicycle parking that exceeds code requirements.

They have also -- they would participate in the gateway transportation management association commuter shuttle, should that be, I guess, a condition of approval.

I know it was recommended for 1500 San Pablo just north of this site as well.

So those are TDM measures that they have agreed to, but again, those aren't included in the analysis in terms of trip reductions for the intersection operations.

>> D. Pinkston: This is just a theoretical question and we can move off of it.

If any particular TDM measures were to help reduce trips sufficiently enough that we could take an intersection from being significant and unavoidably impacted to be sufficiently mitigated, how are we to evaluate those if they haven't been sliced?

I understand the base data is conservative if identifying the impacts but how do you evaluate the range of mitigation measures if you don't know what they can offer you in terms of trip reduction?

>> So there are a number of ways the ARBEMIS model has factors that you can associate with certain TDM measures.

And that would be one approach.

However, these impacts that we are talking about do only occur in the cumulative condition.

And we have looked at reducing project size, for example, and the project would have to shrink quite a bit to eliminate these impacts.

And so TDM measures would have to be incredibly aggressive as well in order to reduce those impacts.

I think that it is not out of the question to do some type of monitoring to see if even the trips generated by the site come close to the estimated trips, the ITE estimates.

But in terms of actually achieving the types of reductions we would be looking at to eliminate those impacts, it would be pretty substantial.

>> D. Pinkston: I guess the reason I'm pursuing it is just the relatively minor reduction in the retail square footage eliminated one of the four significant impacts.

Anyway, that is enough on that.

Thank you for answering those questions.

I appreciate that.

>> Chair Tregub: From Teresa.

>> T. Clarke: I didn't see it in here, but is there a -- do you add up the trip generations on the retail and the housing separately?

Are those broken out in the thing?

>> They are broken out, yes.

The commercial, retail, the restaurant use, and the residential are broken out.

>> T. Clarke: And I notice though when I was reading it that you didn't say parking.

Parking wasn't a factor, but if you had no parking how could you have trips?

So I didn't understand why parking and the amount of parking being provided does not relate to trips.

Because if there was no parking there there would be no car trips to the site.

So can you explain that?

>> Well, it is City of Berkeley guidelines that we are applying to conduct this analysis, and it is standard practice not only in City of Berkeley but in other cities that while you are absolutely correct, parking is the driver of trip generation, the institute of transportation engineers has certain rates they associate with land uses and not provision of parking.

>> T. Clarke: In theory, if we reduce the number of parking spaces provided, it would reduce trip generation.

>> Parking demand management, parking pricing are all proven strategies to reduce trips generated, yes.

>> Teresa, there is always street parking.

The parking in the project isn't the only way that there could be trip generation.

That's all.

>> Chair Tregub: Other questions?

Then we are going to in a second start the public hearing I wanted to get in the practice of explaining acronyms that we use.

TDM stands for "transit demand management." I know that has been used several times.

What we are going to do is going to be a little.

I what we are going to do right now is, it is 11:00 and we have 65 speaker cards.

I'm going to be generous.

If you can't finish in a minute I'll give you extra time.

But we will start with -- can I get a show of hands on who here plans to speak?

All right.

Would a minute and a half be reasonable?

No?

We are going to go to two minutes.

Two minutes sounds like a compromise.

We are very sorry, but we are going to be generous.

So if you need to take additional time, you'll be able to do that.

We will start at two minutes as the baseline.

One thing that we are going to do to try to save time is we will ask speakers to just line up.

We are going to ask if you haven't filled out a speaker card that you do so later on.

We won't be calling folks based on speaker cards.

We will ask folks to line up.

Can you confirm that speakers are turned on in the hallway in case the line stretches into the hallway you'll be able to hear what is going on up here?

>> G. Powell: They are.

>> Chair Tregub: There are several individuals with young kids or have other needs, and I would like to ask you to line up.

If everyone that wants to speak, you can line up behind them.

We can use the center row.

Really appreciate your flexibility.

I know this has been a long meeting.

And we will do everything we can to make sure that you are heard tonight.

Also, if you could state your name for the record at the beginning.

Thank you.

>> First of all, tiny home magazine, also with the stolen land hoarded resources tour. I want to honor our Ohlone relatives upon whose land we are humbly standing. I want to honor the fact that in honor of a sacred site that the 5,700 years old was put at the end of an agenda after the raising of roofs by an inch and the building of structures on land that has already been stolen and is being profited off of and being bought and sold for the profiting of developers and real estate snakes and people when we are standing on land that is sacred and shouldn't belong to anybody. Having that said I'm here with my son and my niece as part of a school called decolonize academy. The current issue of decolonize is they focus on sacred sites and Shellmound in Berkeley. And we are here to basically make it clear that a sacred site that has the ancestors buried is no less than sacred and should never be considered for the developing of a condominium that is going to be for rich people and has nothing to do with the honoring of the land of mother earth and of the people who came

before us. Secondly, how can we be even talking about things like the building of condominiums when we are not talking about reparations for indigenous people, on whose land these structures were built on. All this happening by the proposal is a perpetuation of more desecration of indigenous peoples. And I'm going to ask if you scholars want to say anything.

>> So my name is SIYU and I'm with decolonize academy. And we waited a long time to speak and there are a lot of people still here that I bet want to go to sleep just like I do. And I just want to say that I thank you guys all for being here because it takes a really strong amount of people to wait for three hours to speak your mind, and I'm glad you all waited to speak when it is really important. I just wanted to give props to all of you guys.

>> And thank you Ohlone people and thank you for even being conscious enough, but please do not put this at the end of an agenda and let's lift it up and lift up our ancestors and honoring and stop desecration. Thank you.

>> Chair Tregub: Thank you.

>> My name is Robert. I just wanted to say that kind of like what she said that certain things are spiritual and sacred and kind of go above and beyond rules that people just decide to make. I think it is collective to all human beings that you don't tear down the Egyptians' pyramids, let's say, or something that is really special to human beings that is collective to everyone. So it is kind of immoral that we ignore that there was a mound there and the mound got tore down. It used to be a pastime in Berkeley for people to dig up Native-American bones and collect

them and shells and whatever. It was like we didn't care about our fellow human beings. And we wouldn't go unbury people in a cemetery and say let's throw their bones around and collect them and use them as souvenirs. But yet this is what happens in Berkeley and has happened in Berkeley, people that lived here previously dug up bones on Hearst and said let's collect them and throw them on a shelf, sell them or keep them and show them to our kids. Basically certain things that we should respect like the spirit of life and the spirit of each other rather than just saying, okay, well, we don't care about this. We should care. You have some kind of spiritual connection to our ancestors and to our past and to who belonged here and just respect that. Thank you.

>> Chair Tregub: Thank you.

>> Good evening, commissioners. Steve Finacom. I would like to note that only six survived for the public record. I'm on the landmarks commission but speaking as an individual. Like you I'm not going to make up my mind on the merits of the project until all the testimony is in. So I'm not going to speak to you about the project. And I'm here as an interested observer. Last week the landmarks commission did have a public hearing, as staff noted, and heard testimony from about 40 people. A lot of interesting, detailed questions about the EIR that the two commissions should take into account and study. The LPC decided to continue the public hearing, and I would like to suggest that you do the same, continue this public hearing after all the testimony tonight until January and make your decision then and allow an additional time for comment then. You meet on January 12th which is the last day of public comment, and that would work, I believe. As an individual, I would also like to ask you that you receive

in your packet for January the transcript of the public testimony at the landmarks commission. A lot of interesting comments were made there. You should see them. The commission should not be put in little boxes where they only see little parts of things. And I'm also going to ask that the landmarks commission be given the transcript of this hearing. And there is sufficient time, I think, to prepare both of those so everybody sees all the same material. So those are my two requests for you. I just want to say as an editorial comment what the hell is the city doing starting public hearings on major issues at 11 o'clock at night?

I know it is not your fault. You are presented with an agenda. But this is a practice that has to stop in Berkeley. And when there are major issues like this, they need to be set for special meetings, and they need to have public hearings that start at a time-certain. Thank you.

>> Chair Tregub: If you could stay for a second.

>> S. O'Keefe: I just want to second the request. I would also like to see -- I would have liked to have seen the comments from the LPC hearing. That would have been nice. Maybe next time. Thanks for that suggestion.

>> Hi. I'm Perry BORKIN. And I had a very inspiring thing happen this afternoon. I went to pick up a copy of the EIR and Shannon spoke to me about the culture of the City of Berkeley and how the city goes out of its way to make sure that the citizens can speak to the various issues. And culture is intangible but it is really important. And the culture of this community is very special in that it respects the sacred, it respects the meaningful. And it would not be appropriate to go forward with this project because this is sacred ground, and you will hear this again and

again and again. And we need to respect sacred ground and we need to make a way for the diversity of the community to be celebrated and those who respect the sacred and ancestors to be celebrated. And I speak as an elder. And one of the roles of the elder is to be a living bridge between the past and the future. It is not only the immediate environmental impact, but it is the environmental impact on the youth and the generations who come after us to know that in this community here we made a stand. We made a stand for the sacred. We made a stand for the ancestors who were here before us. And I really want you to expand your consciousness. There's a big piece in this EIR about culture. And I really want you to expand your consciousness. It is not about the itty-bitty details of it. It is about the culture we are dealing with. And I hope you would honor that.

Thank you very much.

>> Chair Tregub: Thank you very much.

>> I want to associate myself with the previous speaker. I'm Margie Wilkinson. I live in South Berkeley. On Friday November 25th of this year I participated in what seemed to me to be a healing ceremony at the site of the Emeryville Shellmound, now a large outdoor shopping mall. I carried a sign given to me by the event organizers that said "shop in your own cemetery."

Given the history which I was unaware of until tonight of the actions that the City of Berkeley has taken around the West Berkeley Shellmound, I'm amazed that you guys are even talking about this. I don't know why it is here before us. But it is. And so let's do this. Let's protect the West Berkeley Shellmound. Let's give stewardship of that land

to the descendants of those who were buried there and make our actions a model for the Bay Area, for California, for the world. To those of you who say we need more unaffordable housing and another mall, I say please shop in your own cemetery.

>> Good evening. I'm Bill BERLAN. I'm here in a dual capacity tonight. I'm an attorney and our offices are at 1816 Fifth Street, which is about a block from Spenger's. So I'm here on behalf and my partner and myself as owners of the property and here as an attorney representing the Fourth Street shops. We would like to make four points as to why the EIR is inadequate and needs to be redone or you need to get an extension of time so that additional reports can be submitted that address parking and other crucial issues that are going to be brought before you tonight. I would like to touch on the four points that jumped out at me when I reviewed the EIR report, and by no manner of the means am I an expert on land use planning and EIR reports, but these just jumped out. For the parking, given the massive size and scope of the proposed project, we asked PHA transportation consultants to review the traffic report prepared by Kittleson and associates which was submitted to and relied upon the EIR. I gave the clerk to give to you a copy of the PHA report that was prepared given to us. About a three-page little letter. It contains a number of items that show why there are inadequacies for conclusions drawn in the EIR report. I'll give you an example. The proposal doesn't take into account the number of dwellings in the project. Doesn't take into account the project on Hearst and Fourth Street that is just being developed. Those are going to have traffic implications. These are going to have pedestrian implications. That is not addressed in the traffic

report. Not addressed in the EIR. There are other examples I could give you, but I know you are going to read the letter that I gave you, so I'm not going to go into it. The University Avenue strategic plan is not addressed in the EIR report. The University Avenue strategic plan talks about limiting height to 40 feet, other things. The EIR report talks about the university strategic plan only in the end of the EIR where it talks about project alternatives on page 227 to the end. But it doesn't really talk about what the University Avenue strategic plan says are recommendations and limitations for the development of that area.

>> Chair Tregub: Finish your thought, please. If you can summarize the other two points.

>> I'm just going to raise the points, no details. The train station. In the EIR it doesn't address the train station and the impact it will have on the train station which is in the university area plan. And finally Union Pacific railroad wrote a letter to the city which is part of what is going to be impacted, and they raised concerns in their letter about what was going to be done, for example, what is a resolution to the parking encroachment on the railroad property. That's not addressed in the EIR report. My point is the EIR report as it stands now is inadequate and incomplete. It is a draft report, and by definition the draft is not finished. And it shouldn't be adopted or considered by you as finished until an opportunity to have these additional reports and information gotten before you is completed. Thank you very much.

>> Chair Tregub: And this is the letter?

>> That is the letter that contains what the open-ended issues are. My vision isn't that good. I'm assuming it has the PHA.

>> Chair Tregub: Noted. It said Fourth Street shops. We just want to make sure we have received it. Thank you.

>> Good evening. I'm Curtis Manning. I live at Fifth and Addison about two blocks from the project site. Lived there since 1976. And we have two issues. One is development. And I will tell you right now somebody talked about you can always park on the street. You can't always park on the street. It is really jammed all the time unless you want to pay a meter. And the problems with those intersections are awfully bad. Sometimes I see cars parked up there at Hearst and fourth parked up right to the railroad tracks waiting to get to the intersection because pedestrians piddle along. The other aspect of the project, besides serving the interests of people who want to make more money, as much as they can, is the idea of the sacred site. And I think one of the things that makes it sacred, not only is it sacred to the Indian people and friends to the Indians. It is sacred because of the genocide which occurred in California. And it devastated their communities. And the devastation is apparent in the way we have treated that area. Everything is in total disregard. You can paint some pictures on the underside of the overpass or put a few etchings in the concrete, but it is not paying respect as it should be paid to these people and to this land. The other thing I want to say is the project site, they did their digs to see if there were any bodies there, cultural artifacts. But the fact is strawberry creek ran right through the middle of that. I saw a map at the Bancroft library and they called that thing willow grove park and it had a picture of the thing going through there. It was underground down university and a little before 1900. So expect to find more stuff. They found five bodies,

apparently, across the street at Spenger's. I found artifacts in my backyard. Thousands of people lived there. It is that whole area. And what they want, what they need is an area in which you devote a significant amount of land and respect those people. Actually, I heard someone say give them the ability to plan how they want to deal with it. That's their land.

>> Chair Tregub: Thank you very much.

>> Hello. My name's Denny Abrams. I have been on fourth street when I started the development there since 1978. I'm committed to this area, building it, and building a real economic force in this town. The EIR completely fails to recognize there are 750 people just working in the retail community alone. We are getting robbed of 350 parking spaces. We cannot survive with that. With regard to the traffic study, it totally fails to look at the railroad crossing. I live there. I see it every day. These developers are putting the entry to the garage 15 feet from the rail crossing. The rail crossing, we are going to have traffic tied up all the way towards Frontage Road to the freeway. What you are doing is you are destroying some of the most important businesses, Truitt and White. That's a \$300 million business that you will put traffic to get into a silly garage because the site is overbuilt. What I want you to do is address the University Avenue strategic plan which named that site and said it should not be higher than 40 feet and address the importance of the train station to the City of Berkeley. This project buries the train station. The train station is now -- the Capitelli corridor train is operated by BART. Someday the train station will connect to BART. We need to enhance the train station, not bury it. Finally, there are three alternative plans.

One of them recognizes this university plan and calls for 50 residential units, 7,500 square feet of retail, and a mid-block passageway through the AMTRAK station. I would like to add to that it would also leave enough space to create a great memorial for the Ohlone Indians, maybe even daylighting Strawberry Creek in that effort. So I suggest to the EIR that the plan that calls for nothing, that they add one more alternative, and that alternative is to speak to the Ohlone tribe and see their vision for that site and what they might do that. And maybe they can come up with a vision that should also be explored by the EIR. Thank you very much.

>> Chair Tregub: Thank you.

>> (Speaking native language). My name is Corrina Gould. I'm Lisjan, representative for the Confederated Villages of Lisjan. Ohlone was a name we took in the '60s, Costanoa was a name given to us by the Spanish. Our name in the area was Lisjan. One of the things that I want to talk about is there has not been adequate consultation with all tribal people from the area. It is not just one tribe that is here. There are multiple tribal people that are from the area. Andy Galvan is one tribe. I represent another tribe and there are other tribal entities here and I feel like the draft does not recognize there are other people that have something to say. The mitigation is absolutely asinine according to me and the tribal people that I represent. There is no way we would take \$75,000 to disturb a Shellmound or a burial site of our ancestors. This is not just a burial site. This is the oldest place that people ever lived in the entire Bay Area. We have to think about that as the City of Berkeley that this isn't just a site that affects my ancestors. It affects our entire place, the society that is here now. This is something that we ought to

think about when we decide to make these decisions. This encompasses a huge place. It is landscape. It is not just a parking lot. We talk about 1919 Fourth Street had five bodies, five of my ancestors, I'm directly related to them by DNA pulled out of there this spring. We know that Truitt and White has stuff there. But we know our landscape went all the way down to aquatic park. This was a part of multiple complexes of people that lived along the bay at one time. Did you know that there was 425 Shellmounds that ring the entire Bay Area at one time?

These are my ancestors. These are people that I'm related to. These are people that I still have connection with. Do you know that we still go to that parking lot and pray?

I have to take my grandchildren to a parking lot to pray. And now we are talking about putting a building on top of it. I always have to take my kids and grandchildren to the places that have been developed on. This society has been here less than 200 years and has destroyed all 425 of these burial sites that are older than the pyramids in Egypt. I am asking you not to give this permit, to stop right now, to allow this. To say that no plan is a good plan right now, that we can come together and figure out a different plan, if there has to be a plan. But right now I'm saying this does not have to be the plan. This is not what we should do as human beings to one another. This colonization and this stuff stops now and that it is in your laps to do that. That's what I'm asking to do, that this stops, that the zoning board actually does not give the permits for this thing to happen and that Andy Galvan is not the only person that speaks for Ohlone people.

>> Thank you, remaining commissioners. Some of your people have left and a whole bunch of our friends and family have left tonight as well. It is 11:35, I believe, right now, for the record. My name is Chris Oaks from the Choctaw Nation of Oklahoma. I think that the timing of this event that it is 11:30 at night as well as the fact we were pushed to the back of the agenda, agenda item number seven, speaks to the following. The very beginning of September before Labor Day weekend Corrina Gould, who just spoke and myself, submitted a FOIA request, California public records act request to the City of Berkeley for all information they had pertaining to the development of 1900 Fourth Street. This was two and a half months before the EIR was released. We wanted to give of our attorneys plenty of time to digest the information in order to appropriately hire experts and review the roughly 250-page document that would come out on November 16th. Section 6253 C of the law that pertains to the California public records act states that the act shall within ten days notify the asking parties about their request and then no notice shall specify a date that would result in an extension for more than 14 days. We received no notice for 47 days. On October 19th we received notice from project planner Shannon Allen, and she said I sincerely apologize that your organization was not contacted in response to your PRA request. Files were pulled but due to internal miscommunication you were never contacted to let you know that the files were available. Staff will compile these documents. I will reach out to you again next week likely on October 26th. Please assume files will be ready for your review on October 27th. October 27th would put it at 55 days after we had made this request. Not only was the information over a month late, but they said it

was going to take them an extra week to burn a CD that they said that they had already made ready the week or two weeks or three weeks or four weeks before when they were supposed to contact us about our California public records act request. That's a week or two weeks or three weeks to burn a CD. I must add that Corrina Gould, who along with myself -- Corrina Gould is an Ohlone woman who has been seeking consultation under AB 52 and also as a pending application before the Native-American heritage commission. Instead of having nearly two and a half months to prepare for the EIR being released, we were left with about two weeks. That is not adequate consultation. That is not adequate. Two months cut down to two weeks. And I might add that the EIR comment period would not be extended to its full 60 days due to closures of the office of the planning department since it falls on a weekend and a day when the planning office happens to be closed. I personally made several trips to the planning office to find that it is closed on Fridays to pick up our CPRA request. With several other unrelated people who had unrelated projects who also showed up on Friday to find out that the office was closed. The EIR comment period also started the week before Thanksgiving, an observed holiday in Berkeley, as well as on the Christmas holidays, Hanukkah and Kwanzaa and everything else which are observed in Berkeley, as well as new year's, which is also an observed holiday in Berkeley. The final days of the allowable 60 day, because they are allowed to extend to 60 days, also happened to fall on a weekend or Friday when the office is closed. And also there happens to be a moving of the government of Berkeley during this time as well. That is inadequate. How do we have an EIR released at this time of the year with this many holidays with this many concerned people who show up at 11:30 at

night to speak to you. Don't allow this to happen. Consult the Ohlone people of what they want for this project, and certainly don't allow condos and apartments on a 5,700-year-old burial ground, the first place that human beings ever lived in the entire Bay Area. Thank you.

>> Good evening. My name is Clair G, I'm a resident of Berkeley for the last 46 years and a former member of the City of Berkeley Public Works Commission and the waterfront commission. I'm speaking here tonight to tell you that you have the opportunity to do something historic and important. We are facing a time when we are facing a blowback of civil rights, human rights, community rights like we have never seen before after 60 years of progress in the country. Not saying it is perfect but we have made progress. You know what I'm talking about. We are facing a national crisis of a rollback of civil rights and Berkeley of all places should do something about it. And one way Berkeley can do something about it is being reasonable, fair and open about the process. Key points.

Yes the 50 days has been extended to 57 days. I appreciate the pressures on staff and the problems it takes and the pressure from development to do it in a timely fashion. However if this EIR had been released in January we wouldn't be here complaining like this. We would have had time adequate to speak to consultants, time to bring the public together, but to release it the week before Thanksgiving is just insulting. We are facing 500 years of discrimination against indigenous people in the country and Berkeley couldn't find a way to release an EIR in a respectful way at a time when 500 people are at the standing rock Sioux reservation. Do more than wave your hand. Direct the city attorney to extend the comment period. I asked Shannon before the meeting and I

respect that staff has a lot of work to do. She told me the city attorney had the power. But in your testimony here tonight you said they didn't. Which is it?

Does the city attorney have the power to extend it or not?

You said no. I'll keep talking. By the way you can cede to the rest of us, since 25 people left, you should give us all four minutes to do. That would be the way to do it. Second thing, this is a plus to have it at 11 o'clock at night. The ZAB should direct the city attorney to extend the CEQA period. And it is not just a question of extra federal, city, state, holidays, but also the most busy time of the year, offices are closed, people are on vacation, travel days are gone. We don't have 57 days, plus we can't reach our own experts. So you should request and direct that the comment period be extended, and I would recommend to the very minimum at March 9th, as if it started on January 5th, which is when it should have been started. With the timing 50 percent of the public had to leave tonight, another reason the public hearing should be extended. Like another colleague from the LPC, the hearing should be extended and people should have a chance to come and speak. Extended to January 12th, which gives people time to prepare, or your meeting on the 24th. With that in mind the CEQA period needs to be extended so there will be adequate time to bring any comments. Further, landmark status. It is unthinkable this has gotten this far on a piece of property that has landmark status at the city and state level and is eligible for federal level. It is kind of unbelievable. This is one of the last open places of land where Ohlone history is actually available and there's a possibility to do something great. We could reopen the situation, the city could work with the state,

federal, and other agencies to create something special in Berkeley that will stand against the tide of repression and anti-civil rights we will see in the country like you have never expected in the next eight or four years, it is unbelievable what we are facing and this is a time for us to absolutely do the right thing.

Finally, the United Nations Declaration on the Rights of Indigenous People which the City of Berkeley passed in 2009 and recommended implementation. And under Article ten and 11 of the Declaration of the Rights of Indigenous Peoples, which by the way I participated very actively in the campaign to pass that. And I have a document I can share with all of you on implementing the declaration on the rights of indigenous people that I cowrote. Article 11, states shall provide redress through effective mechanisms which may include restitution with respect to property taken without free and prior and inform consent. I would argue the mitigations proposed are completely inadequate in addressing article 11 on the declaration which the City of Berkeley council it wanted to implement as a matter of city and municipal policy. So going further is a complete violation of the city's recommendation on that level.

Finally, I appreciate how difficult this is, but under SB18 with senate bill 18 it says that Berkeley's general plan and anything related to housing should be done in consultation with all indigenous people of the community, whether they are federally recognized tribes or not. As far as I can tell by the EIR there is no mention of the housing element that was passed in 2015 that was supposed to go to 2023. No consultation

mentioned whatsoever. And SB18 isn't referenced at all. The housing element, does this impact the way housing is planned for West Berkeley?

This needs to be taken into account. Finally, let's do something wonderful here. Let's do something great. Let's show the rest of the country that Berkeley can stand the tide. Bottom line is development is good in many cases. I suffered with a development next to my house, and I'm actually getting to like. It can happen. There can be positive development. But in this case with the last open land that can be developed into a historical memory of the Ohlone people here that also won't hurt the merchants of Fourth Street we all love so much and other businesses there, guys, do it, let's do the right thing. Extend the hearing to the next meeting, instruct the city attorney to extend the CEQA period, and let's go forward and do something wonderful for Berkeley and our Ohlone people.

>> My name is Michelle Steinberg. I'm a film maker and a few years ago I made a film for PBS on a lot of the issues. I'm sad to see that Berkeley is in the same place it is at. I don't want to resay what most people said, so I will say ditto. Where the UN declaration being passed last year, it seemed like lip service. The City of Berkeley is making a strong statement but it is not doing anything to back it up. When I look at SB18 and I see that your general plan is most likely implementing changes without consulting native people and that is how we even got to the point where you are making a decision on this. Because actually if native people had been consulted in that plan in a way that involved more than just Andy Galvan, this never would have been passed in the first place, that you could have development there. But here we are,

nonetheless. And I was told earlier this evening that comments that weren't directly related to the EIR were just going to float out of here because I see some of you waving your fingers when you talk about what happened at standing rock. This is our front line, this is our chance to say that we actually support what went on out there. Because sometimes Berkeley is really good at just doing the token gesture, and this is an opportunity for you to actually put your money where your mouth is. So I would say with that that the two main things that jump out to me about the EIR are the fact that there was inadequate consultation. As we have already said, Andy Galvan had other interests at heart. He took \$75,000 to participate in digging up his ancestral remains, while meanwhile there were other Ohlone people who were waving their hands in front of your faces saying we have an opinion as well. At the same time, clearly the people who were making the EIR weren't even paying attention to previous EIRs in the neighborhood. Grocery outlet when they did their EIR it actually stated that there were remains. This didn't even appear in the present draft EIR. This is egregious. If there was any kind of archaeological peer review, that would not have passed. So I'm simply asking that you take a step back from all of the small lines that say, oh, maybe we can't take more time, maybe we can't do this. This has been here for 7,500 years. We can take more time. That is something that you can do. And that we actually say what would benefit everybody in the situation?

What would adequate consultation look like?

As everybody else has said, this is a chance for Berkeley to actually stand up. Thank you.

>> My name is Rick Auerbach. I have been in bed for four days and I dragged myself out. My borrowed is really sick. But I came here tonight because I felt compelled to address a deeper sickness. This is the sickness of the soul of this nation, the sickness of the soul of western civilization, the sickness of the soul of our economic system. It started long ago, but on this continent it started when people came here and the only rights were ever respected were the rights of white men. Millions of Native-Americans were killed by disease, massacred. You can trace a straight line from Plymouth Rock to the sand creek massacre, through wounded knee, through all the terrible things that have been inflicted upon Native-American people. There is a history. All the treaties were made with Native-Americans in California and signed and then the state of California went to the federal government and lobbied them not to ratify these treaties. So there's a whole history of that. But here we are today. Berkeley has a history of setting a new wave. It has done this environmentally and many different ways. It has set a new path that is spread throughout the nation and the world. A new way of looking at things and doing things. Berkeley has the opportunity to do that now in the same way by the first time respecting Native-Americans, respecting sacred sites, respecting burial sites. I am on the staff of a West Berkeley non-profit, the West Berkeley artisans and industrial companies association. I don't come here speaking for them, but in this capacity and the capacity of a not profit I was the staff on before, I sat on the West Berkeley planning commission subcommittee for eight years. We wrote the West Berkeley plan. It was an exemplary plan process. What we did was we planned an area and we go on for a year and we realized, wow, we didn't

consult those residents and we would make an outreach effort and bring them in. We didn't consult the businesses on San Pablo. Outreach and brought them in. So at the end of the process everybody signed the document and bought into it. But we made a terrible unforgivable mistake. We didn't acknowledge the Native-American presence and history in West Berkeley. So if you go through the entire West Berkeley plan document, there is not one reference to the Ohlone people or their presence for 5,700 years in West Berkeley. That's ridiculous and terrible. In the document, the West Berkeley plan, there are still things that you can hang your hat on as a board to deny this project. In the physical form strategic statement it says on a physical level the plan seems to integrate historic preservation and urban design policies, not treat the two as separate issues. Thus the whole plan, not just this element, is broadly preservationist and clearly in contrast with the development path some Bay Area communities have chosen. And we were specifically referring to Emeryville when that statement was written. We knew they were going one way. We wanted to go another way.

It also says maintaining the mix of uses in West Berkeley is the overriding goal of the West Berkeley plan. This mix is the key feature which distinguishes West Berkeley from other areas and the region. If it disappeared, so would West Berkeley's uniqueness. There is nothing more unique. There is nothing more central to the mix of uses than the Shellmound. Preserve this mix by preserving the Shellmound. Take your marching orders from what the Ohlone people want. Set a new path for development in West Berkeley. There's other places for housing. There's other places for retail. Thank you.

>> Chair Tregub: Thank you. If you could fill out a speaker card when you get a chance. We didn't get one for you. Thanks so much.

>> My name is Jane Perry. And I'm a concerned community member. I also successfully landmarked my work site, the Mary Lee Jones child education center. I'm an educator. And as someone who did successfully landmark, I was really upset and confused as to why this process has progressed so far. So in order to understand that, I went to your website and I read the NOD to approve landmark designation for West Berkeley Shellmound. I also read the DEIR. I read the initial study. I read the NOP comment letters. I went to the 2016 CEQA statutes and guidelines. I read the secretary of the interior standards for the treatment of historic properties. I went to the Berkeley Municipal Code chapter 3.24 section 260, permit applications. And then I went to the California assembly bill AB 52, Native-American Historic Resource Protection Act. And I find that the Berkeley Shellmound qualifies as a historic resource per CEQA guideline section 15064.5 A1 and that it is eligible by the state historic resources commission for listing as a historical resource. Why if it is a historical resource is it not being respected for the boundaries that it was delineated as a landmark?

So I go to CEQA and CEQA guidelines section 15126.4 B, mitigation measures, because it seemed as though a lot of the DEIR mitigated away the protection of this landmark. And I find that if you are going to reconstruct the historical resource, you must conduct it in a manner that follows the secretary of interior standards for treatment of historic properties. So when I go there I find that for preservation you must act in a way that generally focuses on the ongoing maintenance and

repair of historic materials and features rather than extensive replacement and new construction. In fact, a property is going to be used as it was realistically. I note that in the NOD to the landmark for this Shellmound, quote, it is most highly significant to native descendants as a sacred burial ground. I'm exhausted. Half of you are falling asleep. This is in a five-page single-spaced letter that I have spent inordinate amounts of time because I was told by the landmark committee that if we don't tie our heartfelt concerns to CEQA guidelines that all this is just not going to give you the reason to say -- yeah, to say no. So I can't tell you how dejecting it is to have put so much time into this and to be at this hour and to have all these people here.

>> T. Clarke: So you submitted the letter, right?

>> Here is the letter.

>> Chair Tregub: You can give it to staff.

>> I'll send it to you in e-mail because I read an awful lot tonight sitting here. But I just want to point out that the landmark committee member who said please read the public comment, we were in a much better state a week ago than we are at this hour. And I just think this has been appalling.

>> Chair Tregub: Thank you.

>> S. O'Keefe: I'm sorry, ma'am. Before you speak I just want to remind the speak that we are actually not making a decision tonight. The purpose of the hearing tonight is to provide feedback on the draft EIR. That's why you are here. Thank you for being here to provide your comments. And we are going to make some comments, but there won't be a

decision at all tonight. I want to make sure that everyone knows that. This is what you should be doing. You are doing the right thing.

>> Chair Tregub: You are doing the right thing. We are not taking any vote on this tonight.

>> When are you?

>> Chair Tregub: Staff, could you again go through the time line?

>> S. Allen: On page three of the staff report there's key milestones in the EIR process. As I described again, so tonight we are having a hearing on the draft EIR. We received comments from multiple boards as well as the public. We review those and respond to those. The response to comments document is anticipated to be published sometime in the spring. My guess based on the volume of comments that we are hearing in front of LPC and ZAB, that is most likely to be summer of 2017. Once that document is published, then we could set the hearing for certification. There will be a certification hearing in se summer, maybe fall of 2017. And once, assuming the EIR is certified, then the city can make a decision on the structural alteration permit, which is done by the Landmarks Preservation Commission. And it will go back to ZAB for the use permit entitlements. So likely summer or fall is when there will be an actual decision on the project.

>> Chair Tregub: Thank you. All right. Go ahead.

>> My name is Ann Rojas Cheatom. I have lived in Berkeley ten years and this is the first time that I have come down to make public comments, and two things are shocking me, shocking me. One, you put the issue that the staff must have known -- you may have known -- would be the

most important issue that would have people show up tonight to express themselves last. I don't understand that. It feels like a purposeful thing to -- okay. I'm pretty upset about that. I think many people are. And I would say this is your opportunity to take your leadership reins. You are not representing the City of Berkeley to be microtech decision makers. You are representing to be leaders. And one thing as leaders I would really ask is that you say, hey, we represent the people here so when the people have a need to show up en masse because they care, we need to make a reasonable time for them to come. Given that it is not related to the second thing that I am really shocked by, which is that this issue has even come you to. How could this issue come to you? How? I don't understand. I have lived in Berkeley 18 years. I'm really sad. I'm really sad that this is now about a report. This is not -- I'm sorry, but I'm not going to comment on the report. I'm not. I'm asking you to be leaders. I am asking you to go to the mayor, to the attorney general of Berkeley, whatever these people are, and say, guess what, guys, we are done. Because of what people have already pointed out to you, that Berkeley, the people of Berkeley have decided that this is a human rights issue where indigenous people need to be consulted tremendously and the Ohlone people need to be the ones to do on this land, I can guarantee you that the majority of the people in the City of Berkeley want the Ohlone people to decide what to do on this land. You can tell your mayor, you can tell them that we are not going to do this report. You reject the report. You don't say we don't like this one and we want another one. You say we don't like this and, sorry, the City of Berkeley has said this is not okay, that we

are in the going to have a corporate development here. The city has spoken. You need to represent them.

>> Chair Tregub: Thank you.

>> Richard Schwartz, Berkeley. Magic. Magic. I am realizing that the moment this project was proposed something magical happened. There is a line in the sand. Our futures, our culture, our relations in Berkeley are in your hands. The magic is you can't just hear this and walk away. You can't just hear this and go to bed tonight without taking it to bed. It will follow you into bed. It will with the first thing you think of tomorrow morning, the magic. That everything has changed.

This is the last proposal where Ohlone and Native-American history and lives get wiped out for money. We are not going to allow it. This is the end of that era. I was in this line and I was thinking about the beautiful Campanile towering over the city and how everybody loves it and it is there to represent what magic the university can offer the kids at school. The West Berkeley site is the real education for our community. That is where we are going to get educated, and we are going to stand together or this city as we know it will die because it will have to heart like it has had the whole time. It is that serious. And your responsibilities are that serious. Please, please take it in your hearts and consider this is what you have to do. I'm a historian. I brought you copies of an Oakland Tribune article from 1876. 300 Indian burials were taken out by two Frenchmen from the West Berkeley Shellmound, 300. Grave woods. Take a look at them. None of this made it in the report. I was hired to share the historical data. I have been studying the West Berkeley site, Alameda 307, for a couple decades. They hired me to share my data. I

have recorded over 400 burials with the state and they have been accepted by the state. Not one mention of those burials is in the archaeologist report. How did that happen? I don't know. But I did get an e-mail from the archaeologist because he promised me he would let me review the data that I had submitted to make sure it was accurate before the report was released. I never got to review it, and I contacted him. I said is the report done? When do I get to review it? And he said the developers are asking for another couple rounds of edits before they want the report given out to anybody. And when I got the report, like a month later after it was released for a month, not only did I not get to edit anything or review it, but there was nothing in it that I had given them. I had given them 400 burials and tons of artifacts. And I would like the people in the audience to look at these. Nothing. And there's another thing about this EIR and Allen pastor's report. This table is the site. The federal government designated this site, the boundaries were set in 2003 by the federal government. The state followed three months later and agreed the boundaries are set by the Garcia report, Garcia and associates which is up at the state archives. The city hired these people to find the parameters of the Shellmound in 2003. When the if you want designated this a federal historic landmark eligibility, the boundaries were set by that last report. And it goes on for blocks. It is bigger than the city landmark. Both the EIR and the archaeologist's report say we are looking for the Shellmound. They both focus on the Shellmound. There is no Shellmound, so let's go build. Here is the wrong methodology. Here is the improper methodology that I have to talk about. If this is the site, the Shellmound is about this big. The Shellmound is within the site. And I could read

you -- I brought it with me, Allen pastor, the archaeologist saying we decided that on 1900 fourth there is no Alameda 307 in proximity on this site and we don't think there ever was. He is mistaking the Shellmound for the site. The Shellmound is within the site.

>> Chair Tregub: Is that something that you have submitted or can provide to us in writing?

>> I will be happy to do that in my written response. I reported ten burials in a cluster. That's called a cemetery. They were covered in petrified wood almost abutting the Spenger's parking lot. On the other end I reported burials at an old boarding house, almost all in the 18 hundreds these were found. I'm a historian. I go through old newspapers. So it gives me chills to think that all this important information, how would you analyze the importance of this site if you are missing 400 burials that were given to you? I was hired to give it to them. The University of California told them to call me, and they did, and they hired me to share my 20 of research. And then all of a sudden -- and the archaeologist in the field said this is the greatest, this is the first new information. We are going to make 3D mapping of all the burials and not one of them made it into the report.

>> Chair Tregub: We understand the gist of your comments.

>> You are a certified local government. Because you took money from the federal government and then you became -- that's your kind of government you are. You have obligations under that and you can be disqualified to be a certified government because you have obligations of historical preservation and you have to do a report every year. How could you think of destroying this and putting it in the report when you are

obligated to protect it? And I have one more thing to say. The boundaries of the site were put in in 2003 by the federal government and the state government. They are tone. It is not up for grabs. Why did the city let the archaeologists dig on this site? Once it is eligible or nominated as a national historic landmark, digging is considered damaging the site. So in 2003 this was designated. And yet ten years later the city threat archaeologist and dig. What were they trying to find? The site was designated ten years ago. They damaged the site by digging it. The archaeologist said there is nothing there but there could be something there and we may find it. We did ground penetrating radar so there is no chance, it is really sure. And then he goes before any construction begins, a real ground penetrating radar study has to be done. It is too late. How would you stop the project if you found another 300 burials? You couldn't. You have to deny this EIR and I have to believe that. You have to know that's your responsibility. Because otherwise you are going to rip the culture of this town in a way that it has never been ripped before. This is the end of this whole period of American culture where you can do this. You have to know that. This is the magic. This is the end. Thank you.

>> Chair Tregub: Thank you. Before we go to the next comment, and I know we are wrapping up, clearly we have been going much past the two minutes. I wanted to do that because we started very late and the fairest thing to the public would be to give you an additional opportunity to speak. But I also wanted to ask that you try to stay within two minutes. I'm not going to cut you off if you go over, but just a request. Thank you so much.

>> S. O'Keefe: It is not for our benefit -- it will stay as long as we need -- but it is for the benefit of the people waiting in the back of the line.

>> We can't stay until 1:00 and 2:00 in the morning.

>> Chair Tregub: Is there anyone that would -- is there anyone here that would like to come up right now?

>> (Speaking native language).

>> Good evening, relatives. My name is Mr. CANDALARIA. I am Ohlone and Apache. My ancestors come from the Monterey Bay area. I am here in support of my relative Ohlone people here in the Bay Area. My entire life I have had to witness the removal of my ancestral remains from our homeland. As a traditional singer I have had to provide the ceremonial songs to reinter these remains back into the ground from the time that I was a young child. So for a span of 35 years I have had to witness the desecration and the disruption of my ancestral history knowing very well who I was as an Ohlone person participated in my culture and our ceremonies. So knowing very well who I was and witnessing this desecration up and down the coast has formulated and shaped the way that I feel and think about my relationship to this land.

And one of the things that the EIR cannot transcribe spiritually and culturally is the desecration of our souls, our spirit that is being done when you make an attack on the land which we are inherently connected to through our culture. I'm not going to stand here and tell you what to do because in the end our people are always been resilient and we find ourselves praying on top of concrete, finding new ways to penetrate these layers of oppression, layers of desecration, and being stronger for it. As

well as I think we are all clear and really know what happens when we build on Native-American burial sites. They make movies about these, right? So I think it is just important to remember that we are human beings. I'll come back and haunt you. And I'm not afraid to do that. But not trying to be funny, but we forget that we are human beings. And what we are trying on the cusp here right now is that we have in front of us this moment to change the trajectory of this country. I as a Native-American, I as an indigenous person of this country, I want to live in the country that you white folks talk about. I want all of the benefits that you receive, that you tout that this country is so great for. I want to see it. I want to receive it. I want to be like I'm American. But it is shameful because these processes, these continued colonial processes. From just right here where this is being done in the middle of the night when we are talking about people are coming to gather on something important. But how many people are here being paid? I don't have to look behind me to know who is being paid and who is not here. But we have an opportunity to deconstruct these colonial systems and really actually build a healing system with the indigenous people of this land. So I'm not going to tell you what to do. I only ask that you follow your heart and you listen to your spirit. Because the answers are already there. And remember, EIRs can't transcribe the humanness that is within our heart and spirit. Thank you. (Speaking native language).

>> Chair Tregub: Thank you.

>> Good evening, board members. It is an honor to be a guest on Ohlone land. We are all guests on this beautiful land. My name is Janice globe. I have lived in Oakland and Berkeley area since I was a child. It

is a very special place. I don't want to see major changes. I have always found it to be a culturally wonderful city in Berkeley. And I don't want to see it change too much, change at all, really. I strongly, strongly urge each of you to oppose the development project at 1900 Fourth Street. Do not allow the desecration of the oldest Ohlone Shellmound and burial site in the Bay Area. Don't allow this to happen. Instead, please with the Ohlone people create whatever they feel is appropriate. Let them guide. Please consult with them. It can be a beautiful, beautiful thing. And please don't desecrate the area. As guests on Ohlone land, I ask each of you to please find it in your heart and in your spirit to respect the Ohlone people. To honor the ancestors, and to honor the future generations. Up the.

>> Chair Tregub: Thank you very much.

>> My name's Michael Warburton and I have lived in Berkeley for about 40 years. But my real job is I'm executive director of a non-profit trust alliance where we advocate for public rights and public interests. And we often intervene in formal processes when the trustees of our trust resources choose not to protect the very things that they are supposed to protect. And I work mostly for the public utilities commission on issues of water and public rights to water. But this one is an amazing one because we have a real unique treasure, the oldest Shellmound, and it is still open. It is not paved over. It is not developed. It is not developed. And as a matter of fact our own laws say we should not develop the last remaining resource that we have. And all the people who have spoken about the good things that can happen in Berkeley from this -- I went to a fantastic event in the north Berkeley senior center where people

got together and they demonstrated what it was, what this land is, and what the Ohlone have. And they said that this land was used to celebrate and to grieve. And that's what we can use it for together into the future. And they wanted to have a prayer service right there for those young people who died in a fire so needlessly. And circumstances have changed. There is a legal doctrine called changed circumstances that as a sacred site this has become much more valuable in the last few weeks than it was before. And any environmental document which doesn't have the context of what was happening at Standing Rock misses the point. And I agree with everyone who says how dare this body be talking about development of this land at this point? It is inappropriate and it is against the law.

>> Hello. My name's Amanda bloom. Thank you all for trying to stay awake. I'm trying to stay awake myself. I see there will be three people who will be making a decision who aren't here to listen to the public comments, and I think there is something really wrong with that besides the fact it is happening in the middle of the night way past my bedtime and probably way past yours. We heard of a lot of different problems with the EIR and the way that it is, which is what we are supposed to confine our remarks to. I'll say a couple things I noticed in it. Some of the proposals are that it could include documentation and scientific study of the human remains. It might be a possibility to take some of these remains and to put them on display as part of the presentation that you all are going to make. Now how would you feel if someone came along and dug up your graveyard and put your grandmother's bones on display? This is inexcusable besides everything else that is going on here. We have to look at the history of genocide of this country.

Why aren't there a lot of Ohlone people here standing up? Why do we have one person who is given the responsibility speaking for the Ohlone people? It is because of the genocide. It is because it was illegal to be native in the State of California. It is because California never made treaties with the native people because native people do not have a land base. One of the things about Berkeley is it prides itself on being progressive, on making all kinds of different stands on things, and that is a tradition that you can all go along with. But I will tell you if you decide to go ahead and approve this despite all of this trying to have it in the middle of the night, we are not going to go quietly away. And let me tell you there are a lot of supporters here who support the Ohlone people. And you saw what happened at Standing Rock and you saw how much money local governments have to spend to protect their resources. I guarantee you there will be people down at that sacred site and it will not go ahead no matter what you decide.

>> Chair Tregub: Thank you very much. Just as a point of information for the previous speaker, and I have heard this comment before, there is one member of the board who left early. There is another member who is recused and will not be voting on a decision. And there is one vacancy created by the fact that right now the district four council seat has a vacancy. Infrastructure in addition, Greg said if you do want to vote on it the absent member would have to look at the testimony.

>> Chair Tregub: They would have to watch the video of the proceedings and the public testimony. With that, go ahead.

>> Hi. My name's Juliet Flores. I am what is considered a first generation Mexican-American and a second generation Italian according to

this country's system. I have a relationship with Berkeley and I have a relationship with sacred sites and the Shellmounds. My family has been residents for many generations here. My aunt went to the Berkeley hearing school of the deaf. And we all -- some of us are federally recognized but for people like me because my tribe isn't federally recognized we don't have recognition as indigenous people. When you take away the Shellmound, you are taking away our indigeneity. It happened to my grandmother when she was put in a boarding school. We ask for the City of Berkeley to stand and support our sacred site and all of our intertribal community to stop the construction and development of the west Shellmound as well as we ask for the support of permanently stopping the Dakota access pipeline and honoring all ancestral lands, water, and secret sites. We ask upon the City of Berkeley to call upon the U.S. army corps of engineers to take -- prior to taking action with the DAPL that would harm and destroy the land's ancestral site and is water. We ask that for here. We challenge you to have that here by consulting all Ohlone spiritual leaders and all federal tribes within the Ohlone. We ask that the City of Berkeley proclaims a day with the consultation of all our Ohlone spiritual leaders for an indigenous peoples day and also to commemorate what is going on when it comes to stopping the Dakota Access Pipeline in opposition to that. I want to leaf on that note because I'm not as articulate as some folks. But I am consistent so I will e-mail a comment, as I was given direction. So thank you for your time, and I hope everyone has a nice night.

>> Chair Tregub: Thank you, Juliet. We don't have your speaker card for this item so if you wouldn't mind just filling one out. Thank you so much. Next speaker. Go ahead.

>> Hi. My name is Morgan Hughes. I am a delegate and former executive board member of the industrial workers of the world which is one of the oldest labor unions in the United States. It was also the first antiracist, all-inclusive labor union in the United States from indigenous people, people of color, queer people, women, while other labor unions were not that progressive at that time. It is really hard for me to stand here right now. Ten of my friends died in the Oakland fire. And I have been crying all week with my friends about that tragedy. And I am here wearing their clothes to make me stronger. And I think about the mourning that I have right now. And of all my friends dying because of the irresponsibility of that slumlord derrick. He was irresponsible. And I am a stagehand and we pull high safety standards. And I don't care about this right now. I think about that tragedy. My mourning is minuscule compared to the tragedy the Ohlone people have gone through. I want you to take that into context here. The pain that I feel about this and I know my pain is probably more than a lot of yours, is nothing compared. It is very minuscule compared to the atrocities that the Ohlone people have gone through. I was at a union meeting and we were organizing against the Trump Administration because he is going to try to run all of our labor unions into the ground. There is some very powerful organizing and labor solidarity that hasn't been seen in this country since the 1920s, 1930s where masses of people will be in the streets. And I'm organizing directly with all those people. And don't dare interrupt me right now. I am

going -- basically what I have been doing is I got that union meeting to formally endorse coming here to be opposed to this project. And also I have been going to different development sites and talking to construction workers, union and non-union, about this development. And they are saying that this is disgusting and that even the non-union people will do a work stoppage and refuse to do work on that site because they don't want to dig up dead bodies. And it is disgusting that it would be even proposed to do so. And this would go two or three stories underground at this parking lot. It would totally destroy this cultural artifact. And it is enraging that this would even get here. And it really speaks to the colonialism of this country that still is happening today. And I want you to know that all of you -- John, Teresa, Igor, Shoshana, Denise, John, and Brazile, all the people on the city council -- you are choosing your legacy. Do you want to be a colonial person who contributed to the cultural genocide of Ohlone people and the desecration of sacred sites? Because that will haunt you and that will haunt your family. That will haunt your children. Because they will reflect back on your legacy and they will say that was disgusting what my family did. And I want that to be very clear to you. And if you all do not do what you have, everything that you have in your power to make sure that this project is stopped and that also Ohlone people get back their land and that there is a way for them to pray on what is now a parking lot and actually have this be a beautiful memorial for these people, and if for some reason you had such a cold, dark heart to let this project go through, we will be there picketing and we will join this community. I helped organize with labor for Standing Rock and we are getting union pipeline workers out there to help join that fight. We

will be there and there will be a movement and I promise you of that. And you will have shamed by the entire -- and I will make sure my personal responsibility that each and every one of you are shamed in the media.

>> Chair Tregub: Thank you.

>> Let me make that clear. And also I just really want to thank all the people for coming out. I want to say that it is humbling to be amongst all these people that spent so much time, and I'm sorry that I'm so emotional, but it is just like I have been going through a lot. And I really want to honor Corrina Gould and all the Ohlone people on this land, because it is a privilege and a blessing to be here. Thank you.

>> Chair Tregub: Thank you.

>> Hi. Hi, John. Hi Teresa. Hi Igor. Shoshana. Denise, hi. And John. My dad's name's John, Jack. I actually just want to ask what it would take for you all to consider this an opportunity. I don't know if you need to pat your face or wave out your hands or something to actually be awake and listen because I don't feel like -- so many people have spoken and so many people are going to speak and we really need you to be available. So I'm asking for your consent and I'm asking for you to get consent from the Ohlone people before giving them permission to build on top of their ancestors. I'm aware that I'm not an expert. I think it is inappropriate that the EIR does not have page numbers. Everything that has already been said. And I don't know hardly anything, John. And I recognize that. But I also know that just as has been also said previously that with the Trump Administration and all that is coming our way we can't just be like, oh, these are the rules and I follow the rules. We can't do that. That is not going to work anymore. I'm also speaking from the place of a

young person, and I have a feeling this divide growing between myself and the older folks, because I'm like, yo, these are my kids, these are my grandkids. I'm not worried about the earth because she is going to take care of herself. I'm worried about the relationships. I'm worried we are not going to be able to take care of each other. And I want my kids, I want my grand kids to wake up, and I want to be alive, you know? And we need our history. We need stuff at our backs. We need to feel this posse to be able to be in the future. So please, please, whatever is in your power, I don't know, but you do. Take that. Thank you.

>> Chair Tregub: Thank you. And could you please state your name for the record?

>> Amelia Inez B.

>> Chair Tregub: And you filled out your speaker card? Thanks so much.

>> Good evening. My name is Collin miller and I live in HOCHI, Ohlone land, which is stolen land, just as all of us do. And I stand here before you with the full belief that you all know in your hearts what the right decision is. I don't think you have a doubt in your hearts what the right decision is. Whether you actually do the right thing is up to each of you and your consciences. I know you, Igor, and I believe you are a good person and that you will do the right thing. This is about human rights. This is about the rights of mother earth. This is about doing your part to correct the legacy of genocide and colonization of this country. It is a small but important step to seek to reverse that legacy. As descendants of colonizers -- my dad is white, my mom is black, Mexican, and FILIPINA. We are not responsible for the genocide but we are

responsible for doing everything that we can to correct it. And so please do not approve the EIR. Work with the Ohlone people. I don't see Andy Galvan here tonight to advocate for this project. Where is he? Please work with the Ohlone people to plan a memorial and educational site that we can all be proud of. Thank you very much. I believe you will listen to your conscience.

>> Chair Tregub: Thank you.

>> There's no microphone. Oh, it is right here. Hello. My name's Travis. I live here in Berkeley. And I just want to start with just a quick three things. I got into a fight with my girlfriend to be here tonight because she didn't want me out super late and it turned out that was the case, unfortunately, because we were put last. I don't know why that was decided that this was going to be put last. I just want to echo that. That is ridiculous. Another thing, I took off from work to be here too. I didn't really need to do that I guess since it was starting at 12:30. Whatever. Last thing, I'll say really provocative things but I don't care. I'm just going to say it. We see the Islamic state blowing up the city of PALMYRA in the Middle East. People are outraged. They are blowing up the artifacts. PALMYRA is only 4,000 years old. Why do people care so much about that and in the this? This is ridiculous. I don't even care. Whatever the paper, the book that has no page numbers on it. The whole thing is designed to be confusing and the whole thing is full of lies. It is a book of lies right there. That is a book of lies. I don't care that the paper said blah blah, whatever. The whole genocide on this continent was justified on paper. So whatever your papers say, it is crap. So I don't know what you are going to have to do to stop this, but it is

not going to happen. It is not going to happen. We are going to stop it one way or another. And hopefully you will be the ones that will be able to do that. Going back to what I was saying. We get all upset about the Islamic state blowing up stuff and ancient artifacts and all this. We are going to become just like them by doing this if we destroy this. I think that is shameful and I don't want to be living in a city that would do such a thing. I don't want to be like the Islamic State.

I don't want to be worshipping the evil money deity. I don't want my tax money going to that. It is unacceptable to me. Thank you.

>> Chair Tregub: Thank you.

>> ZAB, hi. My name is Frieda M and I would like to start by thanking Corrina Gould for allowing me on her land, the village of HOCHIN and the ancestors of the Chochenyo Ohlone and the Lisjan, as she said earlier, and the descendants as well. I'm a member of a tribe from the northwestern Alaskan territory, so I'm a settler and colonizer on the lands. I'm here in a personal capacity but also a researcher for the center for social impact. I want to advocate for the self-determination of the Lisjan in this matter and for the sacred site protection for all indigenous people across the world and in North Dakota. I also want to say a few words about the magnitude of what the destruction of this site means not just to Berkeley but to indigenous cultures and tribal peoples. The Fourth Street site has an enduring historic cultural meaning for the city and for the Ohlone. And it enriches the cultural diversity of where we stand. The magnitude of that original Shellmound that was several stories high, over 300 feet across, it represented generations of people who lived there continuously in that complex since the beginning of time. Not just

5,700 years, but by our reckoning the beginning of time itself. Our ceremonial sites form a large part of our world view, our connection to our lands are hugely important to our identity as indigenous people. Our understanding of our place in the world, our ancestors, our stories, the meaning of survival in our families and our tribes and the loss of that. Not only is it a landmark at the city and state levels but the Shellmound complex was continuously inhabited and it had so many ancestors buried there you have to wonder about how so many could have been taken for there to be so few here today, as was mentioned by Amanda. In 1851 and 1852 the California and U.S. state treasury enacted a extermination policy which meant thousands of people were meant murdered in their village sites, roving bands of MAURARDERS killed so that there were only a few surviving members. Extinction for most tribes were a reality. And in truth we do not know the names and histories of in California native tribes to this day. As you heard earlier, we are still piecing together those histories, still trying to make sense and understand what is left as descendants of those policies. So if you approve this EIR by extension you are not treating the ancestors of the Lisjan and their descendants and Corrina Gould as full human beings. To revive their spiritual traditions. I hope I don't need to knead to remind the ZAB and Chair Tregub about what history teaches us about groups that are not treated as fully human, about the histories of genocide committed against those whose cultural sites were desecrated in a similar way, whose graves were unmarked, whose deaths and named were meant to be erased forever. If you erase our sacred sites you condemn us forever to genocide. We cannot bring back all of those that we lost to California's genocidal laws and policies, but we can honor them and learn

from their surviving descendants and the legacies they left behind, their cultural sacred sites, how to be full human beings in the world. Please stand with us and listen to Corrina Gould, preserve their self-determination and vote for the no project alternative.

>> Chair Tregub: Thank you.

>> My name is Bridget BRAYHEN and I want to thank the Ohlone people for allowing me as a guest on their lands as we all are today. I am a resident of Berkeley and I wanted to humbly offer a point as a human rights worker. It may be the hour and maybe getting tired will get us closer to the kind of heartfelt resilience and resistance that everybody has been saying that I want to echo, and before I get to that point I keep thinking about the kids who came here to read a poem in public comment and had to leave because of the hour, and that has been sufficiently addressed, but I want to say a heartfelt ditto to that, to rejecting the conditions in which we are giving our comment. But I'm a resident of Berkeley and also a human rights worker who has done extensive international human rights monitoring observation on the rights of indigenous peoples, especially consultation. So to add to what somebody expertly delineated as the U.N. declaration on the rights of indigenous people which has been adopted by the City of Berkeley, there are clear outlines for free and prior informed consent and the precedent for that is there is a duty to consult. So to responsibility of that lies with you and with the landmark commission and with anybody anywhere else that we need to take this that is a state entity that is responsible for this project. And so in order to -- I just want to highlight something specific to the EIR since that is our limitation tonight. The EIR in the consultation

section states that five letters were issued and there was one response. Notification is not consultation. Invitation or as it says in the EIR an opportunity to give input, that is not consultation.

Gate keeping to have access to information, that is not consultation. Free and prior, the difficulties that people have had with FOIA requests and getting copies, that goes contrary to the consultation processes that are required in order to attain free, prior, and informed consent. So the consultation section of the EIR is gravely, gravely lacking, but the real heartbreak that I feel is that why are we even here in the first place? Because free, prior, and informed consent, there is a lot already invested in this project. It is very clear from the way it is being discussed this evening. So I just wanted to humbly suggest that that be considered, free, prior and informed consent that is robust, inclusive, that actually consults with the Ohlone people. My heart feels broken but I know our community is whole and I know that the way forward is to get leadership from the Ohlone people and the other tribes affected. So thank you.

>> Hi. I'm Rebecca OLSTED. I'll keep my comments short. I waited in line and I'm here basically to say ditto. I agree with what everybody said before me. It is important for me to be here because as an occupier on the land I know I need to listen to indigenous leadership. In order to live in a right way that is what I must do and what you have the opportunity to do right now. You have heard more than enough reasons for so much doubt about the EIR, mostly the questionable lack of consultation with the Ohlone people, questionable methods of serving, the actual archaeology, but most of all you know what is right.

You know we are all here to hold you accountable for making the right decision. Thank you.

>> Chair Tregub: Thank you.

>> Good morning. My name is Marissa Hernandez Evans and I am a small business owner in Berkeley and a grad student at Pacific school of religion which is part of the graduate theological union and I'm here representing many seminary colleagues and professors as well as interfaith leaders who were present at a recent interfaith vigil at the site of 1900 Fourth Street, the West Berkeley Shellmound. As many people have said, there has not been adequate tribal consultation with the report's preparation. And the primary consultant had multiple conflicts of interest while a second Ohlone person repeatedly requesting inclusion was not consulted for this report. The manner of consultation with the Ohlone people seems like a mere token gesture given the importance of the site to the Ohlone people. As people who are not indigenous to the land I think it is near-impossible for us to comprehend the significance of the site. Perhaps we can imagine digging up cemeteries, demolishing churches and community gathering places, and this is completely inappropriate, and I would like to echo all of the former technical comments made by Corrina and others. Thank you.

>> Chair Tregub: Thank you.

>> Hello. My name is Erin Reece. I'm a resident of Berkeley. First of all I'm sorry I'm not at my most eloquent at this hour of the night. And I would like to ditto the fact it is absurd that was put so late, that we had a 40-minute conversation about a visual easement for somebody's roof deck before this conversation was able to happen. I don't

have as much emotion at stake in this issue as some other people do and I think you are put in a difficult position because I don't think your decision is necessarily an emotional or moral one. On the one hand I see your pens moving the most when someone gives you a logistical reason why the EIR cannot be taken seriously or rejected, and that is ultimately what your job falls to, the letter of the law and interpreting the letter of the law you are not a governing board that passes laws, you are one that interpreting them and sees they are being followed. On the other hand, I think you do have a sort of moral obligation to fight as hard as you can to find whatever the legal loophole is for the EIR, whether that is the issues brought up by the human rights worker who was here, the lawyer who was here. Mr. Oaks who brought up several facts of consultation, how they were not adequate. I just want to say that we are all here for reasons that are not personal at all. I have nothing personal tied to this land. We are not here because someone's blocking our view. We are not here because we have money to be made on a development. We are all here at this hour taking off of work getting in fights with our loved ones because this is something that we as constituents believe in. All the people are in line waiting to speak to you and my hope is you will walk away from this as exhausted as the rest of us but with a clear imperative to work as hard add you can. And I'm sure you are talented from backgrounds of urban development, law, academia, and you are in the unfortunate position of being much smarter than other people in the room to find out what are the loopholes that you can see through to help us fight. This is the civic opportunity to fight back against something that we clearly don't believe

is not right. We don't have the tools to do so so the responsibility rests on you to help us do that.

And I hope you take that seriously and realize that the letter of the law is not the reason that you have public comment, the same reason that judges can interpret the law. Your job is to help us in justice. Thank you.

>> My name's Matt. Again, I want to acknowledge Corrina Gould, our elder in the community. I'm here to amplify your voice and I take my cues from you. And I learn every time I listen to you, I was inspired to hear you speak tonight. I did not know about the Lisjan and now I do and I want to continue to know you and follow your example. And LUTA I'm really glad to see you here. I really respect you and your courage and humor and the beauty of your songs. And I have been honored to know you. To the council, I want to raise specific objections to this EIR. People have said the consultation is not adequate. There are Ohlone people tonight, Lisjan people, who were telling you their wishes were not respected or consulted. There are other people who are not here tonight, one of whom was at the landmark hearing, another of whom is at Standing Rock if I am correct, and likely many more who are being represented. And Andy Galvan has conflicts of interest that some people have raised. He has a company called Ohlone tribe, Inc. He gets paid on multiple ends of the deal for a cemetery he runs in Fremont as well as consulting for an architect. He has a financial interest in not finding remains or minimizing the remains as were found, as he was supervising the dig with the architect. The other thing, it talks about cultural resources in the EIR. This is a living cultural resource. As Corrina said, people still go down there to pray. I have been

at prayer circles at this very site. This would be destroying and desecrating a living cultural resource that living people use, and it is an amazing resiliency that people survived the genocide and are still here to pray and to stand for their lives. And it is also already an act of desecration they dug in the site after many studies were done showing there are human remains and a settlement there, that earlier this year -- it shows in the EIR they dug large trenches into the site. That is already a desecration of the site. I think the developer should be punished, whatever that is, whether that is. The justice should be negotiated. I think they should give the land back as reprimand for having desecrated the site in this way already. And the third point that I want to make is that desecration of sacred sites is an act of genocide if you look at genocides throughout the history. It involves killing people and involves taking away languages, taking away people's children, putting them in boarding schools and it also involves desecrating historic and sacred sites. I implore the people on the council to not only use your powers in the apparatus as the zoning board to deny the permit at the sooner possible place in the process. If there is any way tonight that you can unanimously make a way to kill the permit, kill the project, do it as soon as possible. Look at all these elders and grandmothers who came out to implore you to kill this project. Don't do death by a thousand paper cuts and try to shove it through in the middle of the night. And at the soonest possible place that you can within your powers as well as use all of the rest of your influence at every level of law and government, the lawyers that you know, the Planning Commission, whatever, the mayor, the city attorney, every single place, the police department. Good lord. Any

place where you might have influence to draw a line in the sand to kill this. This isn't even about healing at this point. This is about stopping the bleeding. We can talk about healing when the Ohlone are under stewardship of this land. So that's what I have to say. And we are all responsible.

>> Thank you very much for allowing me to be here. I have a terror of public speaking so I'm just going to say that right now so everyone knows. Like all these people looking at me. I did not get in a fight with my loved ones. My 13-year-old made dinner tonight and I had no idea how long this was going to go, so I was going to be a little late. She is not mad at me because he really supports that I'm here. And he is so happy. And I think that for me is so powerful is how our young people -- he is like me, he is a descendent of settlers. He has no reason. But he understands and our young people do understand that their future is justice. And without justice they don't have a future. That's it. And they get that. They see it very clearly. And so I feel like I'm also here on behalf of our young people and my son and all the kids that I love. And like the gentleman said, it is a junction. If we look at how could Mr. Orange get elected. He's a rapist. I'm a rape survivor. When we say stop, people don't listen. And I have been the person that stayed stop, please, don't, you're hurting me. And no one listens. So I feel like it is important for us culturally to say, yeah, we are going to elect a rapist. We are. Until we can deal with the rape of the land and the rape of the people. Until we can all agree that when someone says stop, we stop.

>> Chair Tregub: Thank you. And what is your name?

>> I'm Jen Collins. Sorry. Got a little more personal than I expected. It's late.

>> Chair Tregub: If you have a speaker card, we will find it. Thank you.

>> My name is Wendy HENNON. I live in Berkeley. Last year I completed an eight-year term on the Berkeley peace and justice commission. And out of all the things I worked on on that commission, without a doubt the most important thing I did was create a form on indigenous rights, the UN declaration of rights of indigenous people, and it included five declarations we put together with the people of the Ohlone Chochenyo community. We had to work hard to work with them and have their input. One of the items was specifically titled Berkeley Shellmound. And it states in there that the Shellmound will not be disturbed without free, prior, and informed consent. And it took the language from the U.S. declaration on the rights of indigenous peoples, which we had passed at the city council years before, which was endorsed by the city council years before. And at the same time at the Shellmound resolution passed, there was another resolution that passed that said the City of Berkeley would implement the U.S. declaration of the rights of indigenous people as a city policy. So we have all these ordinances in place in the city as part of Berkeley policy and it is not being enforced. Not only that, the actual forum took place April 7, 2014. So those resolutions passed the Peace and Justice Commission that night. They were supposed to get to city council May or June of 2014. Every month we were notified they were not going to be on that month's city council agenda, they would be on the following month. For two years that happened. And during that time was when the permit for

1919 Fourth Street for the Spenger development was granted and was exempted from CEQA and passed your zoning board without mention that it was in the boundaries of the historic landmark. So I want to underscore that this is all business as usual. This is how we get around following the laws. We just exempt ourselves from the laws. We just push it through the zoning board without mentioning the historic landmark. That is how it got to this point. That's what I see just because of my little window that I have just because I worked on the resolutions. So I feel like sick to my stomach that the situation is the way it is, that it is the hour that it is, I have to get my car off to school in the morning, I missed my chance to buy groceries tonight. I don't know how I'm going to pull it off. I'll be paying for my sleep deprivation for the next couple days. And it is just business as usual. So I just want to underscore the messages that we got from people here and actually I feel strengthened to speak about the previous speaker who talked about the rape of the land. We can't be fragmented from our environment in such a way. We can't be fragmented in such a history, from our past. As a Jewish person, the Torah, the Christian Bible started 5,700 years ago, and that's the century that this Shellmound is from. I don't think I have a lot more to add except to just say that we are the City of Berkeley. We are supposed to hear about human rights. This is also a religious freedom issue, which that has not been mentioned tonight. And I think it is the most hypocritical thing. We pass resolutions to stop the U.S./Mexico border wall. We support Standing Rock

The city supports all these things but when it comes to development it is like because the developer wrote it up we have to consider it, and it shouldn't even be considered.

>> Chair Tregub: Thank you.

>> Hello. My name is Rebecca KRUMM. And like most people I want to acknowledge that I'm on Lisjan territory and I'm a settler like most of you. And I'm really angry and heartbroken this has gotten this far. I just don't understand how this could be. This is already a historical landmark. How can we even be thinking about this? It is disturbing. It is awful. It is their ancestors. Their bodies are still in there. There are ceremonial objects. I know that if it was a cemetery of people that looked like me this wouldn't be considered. It is yen side all over again. And I just feel like I expect better of Berkeley, and maybe that's naive of me. But I really hope that you will go with your heart and do the right thing. We all know that consultation was not done properly. We know that this site is older than the pyramids. This is important to all of us here in the Bay Area, and the site is sacred. It needs to be protected. Thank you.

>> Chair Tregub: Thank you very much.

>> My name is Jesse Bradford. I live in Berkeley and I'm a middle school teacher in east Oakland. And I just want you all to know and everyone else to know that what was happening right now is already being taught. I am teaching this situation right now to my can I see, my sixth, seventh, eighth graders. They care about what was going on in the world, about the election. They are learning about what is happening in North Dakota and they are learning about what is happening here in the East Bay as well. So I just wanted you to know that. I also, speaking about education, just wanted to say that even my awareness of any of these issues, my education on these kinds of things just barely happened, and not through the education system, through being in school for 16 years or even living

in the City of Berkeley, but because Corrina and other indigenous people are out there holding it down, educating, and holding space for people who otherwise wouldn't know. And the fact that people can live in this city and not even know what this site is, there's a painting -- it is not enough. Also having artifacts in a case is not enough. This site needs to be not given back but recognized who has the authority over these areas, and it is not us. So I just hope that y'all do whatever you can and do the right thing to recognize the importance of this site and that we can build a new legacy in Berkeley and in this country.

>> Chair Tregub: Thank you.

>> I'm Myra Moynahan Shirley.

>> And my name is Chris Moynahan Shirley.

>> And we will just combine ourselves. We're tired. And I'm sure you are too. Thank you. Thank you for the elders. Thank you to the organizers. We are honored to be here. Many people have mentioned that this country was built on the lands of indigenous people. This town was built on the lands of indigenous people, the Ohlone people. The very existence of our country is based on genocide and an attempt to exterminate one group of people and take was wanted by force. And people in this room talk about genocide, but we as a country don't really ever talk about that. You learn in school, oh, there were native people who lived on the land and then there were the colony and is then there was America. And we never have really, really reckoned with the fact that our country is based on a genocide. And until we do that, we are just going to continue to have this tension, and it seems having observed this last election that there is this strain of violence that is woven into the

fabric of our country as a country that is built on genocide, that is built on taking something by force and assuming we are entitled to it. So I really think this is a moment when we can shift. The events in Standing Rock offer not just a victory but an opportunity to really shift the paradigm in our country about how we view our history, how we view land, what we do with it, what is entitled to this land. And it is not the developers. This land is not there for us to make money off of, for settlers to make money off of. And I think the leadership at this time, it is not going to come from the federal level, that's for sure. It is going to come from meetings like these, brutal meetings like these. And y'all just finding the ways, finding the ways to really just correct the legacy of this genocide and shift the paradigm. It has to shift. And this is the time. And if Berkeley can't do it, how are we going to do it as a country? So I just really think that this is a moment and there is a reason this is happening now, and I just ask y'all to do what you have in your power, and I think you have a lot to make sure this does not go through. Thank you for your time.

>> Chair Tregub: Thank you.

>> I was tired earlier during the comments that weren't on the agenda so I have to speak to that. It pertains to this issue. I have lived in Berkeley my entire life. I was born at Alta Bates hospital. I'm informed and believe that my mother was sterilized without her permission when I was born. My original name was twin A. I'm estranged from my twin sibling. But because I was chalk white when I was born I was not slain at birth because my mother, I'm informed, was sterilized without her permission at Alta Bates hospital. There were many women sterilized

without their permission in California, Sweden, and other parts of the world because they were part Native-American, such as my mother, my birth mother, and other factors. Moving right along. Yes, I do have Native-American ancestry which I don't like to talk about because I'm the victim of police violence recently. So with regards to the Native-American culture, it is not just in California. It is in every so-called state in the United States of America. The Native-American people of my descendants were originally on the East Coast, the Seneca and Delaware tribes. And what my mother taught me when I was a child was that everybody on the earth has one mother, and that one mother is mother earth. So no matter what you look like and no matter who you think you are, a highly paid staff person, highly paid staff person, highly paid consultant, highly paid staff person, political appointees, including Denise Pinkston --

>> Chair Tregub: If you could please --

>> I'm tell this. Please. You are from somewhere else, Igor. You are a guest in America too. It doesn't matter where we are from. Wherever we are from, wherever who we are, we all have the same mother. This is not a philosophy. This is a reality. Nobody created themselves. We are all in mother earth. And I want to remind this city that I have lived here my entire life. The landlord of the property where I was trying to live indoors criminalized me with the help of at least one staff person from the Berkeley Police Department. My left wrist was fractured by an overzealous police Sergeant who thought he was enforcing the law. So I'm trying to remind this body which is entitled, privileged, but bound to obey the law that this body is not allowed to break the law, break bones, and do other things that we have judiciary at the Alameda County superior

court level, including someone who calls himself commissioner Hendrickson, commissioner SLAVIK. No one is allowed to break the law and violate people's constitutional rights. And you are all real parties in interest, whether you know it or not. I do not worship Mark Rhoades. I am not obsessed with Mark Rhoades. I do not have a raging erection for Mark Rhoades. My name is not Tom Bates.

>> Chair Tregub: Thank you.

>> So I'm going to tell you this. Everyone who spoke at this meeting was very, very upset about the desecration of a burial site, which is illegal. We have the stereotypical role of women transcribing fluid documents for patriarchal perverts. Why are all the real estate developers men? Why are the women given the task to transcribe and communicate their sick ideas? This project is disgusting. It is unethical. It transcends racism. It transcends insanity. It transcends our local Alameda County judiciary. I know what the developer plans, to prevail. One of his female servants already said the project's scheduled to have a decision come before it in the next several months.

>> Chair Tregub: Please finish your thoughts.

>> This project is totally unethical. You are all real parties in interest, whether you know it or not. And you are not supposed to do something which desecrates all of us. The emotionality is not here. This is a factual fact, which may sound redundant, so I will say it. It is a fact. It is a fact this project is unethical. It is illegal. And it is only being proposed because Mark Rhoades and his friends want to make a huge amount of money. And this is not even an original idea. If Mark

Rhoades were the first person to come up with the idea to rape mother earth, I would say this is a novel idea. But it is not even original.

>> Chair Tregub: Thank you.

>> It is the same stupid thing over and over and over again.

>> Chair Tregub: Thank you.

>> You can stop it tonight.

>> Chair Tregub: Thank you.

>> Good evening. My name is Briana. I'm a previous resident of Berkeley. The draft EIR found no impacts or less than significant impacts in the area of cultural historical resources and less than significant impacts to the cultural archaeological resources. You have heard the testimonies tonight. These are not less than significant impacts. This calls into validity the entire EIR. The aforementioned site has been declared a landmark of this city, a historic place in the California state registry, the oldest settlement in the entire Bay Area, and of course a sacred site to Berkeley's own indigenous people, the Ohlone people. I ask you, is that not more than enough proof of a cultural historic site here in our very own Berkeley, which we are proud of? Berkeley is privileged to be able to protect this site for the entire Bay Area. And each of you has a great honor before you to be able to do so. The EIR itself states ground-disturbing activities which would disturb the human burials, ancestral remains that have been proven to be there. Even the proposed options in the EIR to survey the sites disturbs the sacred site there. Furthermore, the City of Berkeley, which was to first to declare indigenous peoples day and in 2009 as you heard adopted the U.S. declaration on the rights of indigenous people, it calls for the

consultation and cooperation and good faith with the indigenous peoples' concern. This clearly hasn't been done here by this EIR process. I urge you all as people of good hearts, moral conscience, and responsibility to the City of Berkeley to make sure we honor and respect our indigenous peoples in the Bay Area. The EIR options to reduce impact call for an Ohlone tribal member to serve on the archaeological team. You have Ohlone tribal members here today that are telling you with their expertise that no desecration cannot occur without a significant disturbance to Ohlone sites. There are no other options. This EIR incorrectly includes the impacts can be mitigated to a less than significant impact. You cannot mitigate a desecration of ancestral remains or a cemetery, and this site needs to be protected forever so that we never have to go through this process ever again for this Shellmound or any other indigenous site in Berkeley. Please. Thank you.

>> Chair Tregub: Thank you.

>> KAT wilder. I came here from Santa Cruz with my friend here and we are driving back tonight so we will have a late night. But it has been an honor to be here with all the strong people that have spoken so eloquently, and thank you for listening. And pretty much everything that I thought to say has been said very well. So I'm just going to underscore just a couple of key points briefly. First, just this is not an appropriate site for retail housing and parking development whatsoever under any circumstances. The cultural resources assessment in the EIR and the mitigation measures are grossly inadequate and outrageously disrespectful. To say that the desecration of burial sites and of this sacred site is less than significant, as an archeologist and Ohlone

individual who is being paid will oversee the removal of artifacts and remains is totally ridiculous. And to say that a \$75,000 pay all of is also going to mitigate the desecration of Ohlone ancestors. And also the fact that the report states that there is no significant archaeological resources known to occur within the project area when it is a designated historical site on the California and national level and the City of Berkeley level, this is within the boundaries of the site. And I want to point out that as has been stated, across the street, directly across the street at 1919 Fourth Street the City of Berkeley in 2014 stated in a staff report that there were no significant archaeological resources known to occur and therefore there was no environmental review needed. And earlier this year a minimum of five individuals' remains were desecrated and removed from that site. They are in holding right now. They haven't been returned to the earth. And so now we are looking at this new EIR directly across the street and the report is saying there is no evidence of significant cultural resources. It is just outrageous. Anyway, and then about consultation with the Ohlone people has absolutely not been adequate or legal. One individual MLD cannot represent the entire community of Ohlone descendants, which is a diverse community. This is their sacred grounds. These are their ancestors. And we need to consult with more Ohlone groups and descendants, including Corrina Gould and the confederated villages of Lisjan. And the UN declaration on the rights of indigenous people was adopted by the City of Berkeley as municipal policy, so if that is going to mean anything, it means free, prior, and informed consent in matters concerning these most important sacred sites to Ohlone people. And that certainly has not been obtained, as you have witnessed

tonight through the testimony of other Ohlone people who are not here this evening. So thank you.

>> Chair Tregub: Thank you.

>> Hello, everyone. As a resident of Berkeley, a student at UC Berkeley and social and environmental justice advocate, I come before you tonight during finals week to ask you to take into account the adverse effects associated with desecration of sacred Ohlone sites. The native and un-native voices that you have heard before me should be enough to help you make your decision. However as a multicultural and Native-American descendant, I personally ask you to immediately eradicate the proposal to build on sacred indigenous land. The world is watching the atrocities occurring at Standing Rock and this revolution has sparked other movements across the country including the sacred land you stand on. I would like to remind you the proposal is not an indigenous issue but an attack on humanity, so please make the only just decision.

>> Chair Tregub: Thank you. What is your name?

>> Brenda Ruiz.

>> Chair Tregub: Thank you so much. Did you fill out a speaker card? Go ahead.

>> Hi. My name is Irene PASSACARAL. I did fill out a speaker card. I want to highlight this is development on a sacred site and therefore the EIR is highly suspect. It can only be invalid. Because any building would be significant. Any digging, any disturbance of the burial site would be significant and entirely unacceptable. This zoning board should not allow bulldozing through a cemetery. And this is in effect a cemetery, a ceremonial center, the oldest bayside settlement in the Bay

Area. As people have said before, there was not adequate consultation of indigenous people as written into Berkeley law and the U.N. declaration on the rights of indigenous people. So we are asking the city to stand against construction on this sacred site now and forever. And there's a very short period of time to act, which you know, and you have the power to protect from this bogus EIR and protect Ohlone Lisjan sacred sites for all of Berkeley, California, and the world. Thank you.

>> Chair Tregub: Thank you.

>> Thank you so much for this opportunity. I want to thank the Ohlone of this land, Lisjan. Corrina Gould, thank you so much for your leadership and your courage and your great sacrifices for us. As settlers -- I'm an immigrant from the south Pacific island called Tonga nearby Samoa and Fiji. And I want to thank Corrina and the Ohlone people. Thank you so much for your words and your passion and commitment. It is through my journey in coming to Berkeley. I have this whole story, of course, about my migration, and a lot of why people migrate is for violent reasons. They don't want to leave their beautiful homelands. So I think that is something that the Ohlone understand very well. But they have to go somewhere because something happened to them. Coming to Berkeley, we love Berkeley so much. I have an 18-year-old son and my sister FUI, FUI, we came here because she is a student at Cal, but we stayed and my son has gone to the Berkeley public school system. And in these public hearings I always say how much I love Berkeley because I just want to share that. And I want to share that because I think we love Berkeley because of the social justice, the arts, the creativity. Actually, and also quirkiness, a lot of love that people have for each, the diversity. And I have learned

as I have stayed here longer and I have learned from all the different folks in Berkeley and also with knowing about the native people of the Bay Area. I have learned that all of this stuff has a foundation. You know, the beauty of Berkeley didn't just come from the air. All of our ancestors know so well. Igor, you have a story of how you got here, right, in front of me sitting there. You have ha story, and it is from your ancestors. That's how I feel about Berkeley, you guys. I love this place so much. I'm going to wrap it up. I think I'm the last person. I promise aisle finish really fast. I value your time here with us and everybody's who has come to support. Okay, where are you now? I just know that it is not a fluke that Berkeley is such a beautiful place, that a lot of people come here for refuge, and that we stay here and we love it and we come from all walks of life. One of the reasons we love it is because any land there was a foundation, and it was laid down by the first people who come here, and they are called Ohlone. I just learned from Corrina Gould, Lisjan, the village. Native people here were people who cared about social justice. They laid that foundation here so our forefathers and foremothers can come and do the free speech movement. We can work for women's rights, for LGBT rights, all these rights. They come also from the Ohlone people of this land, who built that foundation for us, who built those Shellmounds to also be literal about it, who built the Shellmounds, the landmark that we are talking about tonight. And so that is something that I'm really proud of. So if I love this place so much and I'm willing to come here, I know like all of us here at 2:00 in the morning, we are willing to do that.

And to tell you, I feel so energized by this energy of being here together with all of you. I feel energized. And I love it. If I can

do this the rest of my life, no wonder you are going into public service, if I can do this, this is the work that I will do for the rest of my life, with the community and people. I lost my train of thought again because I got energized. I think you understand what I'm saying. I have this great love for this place and I learned it is from a people. It is not just from. It is from a people that we have tried to erase that have been invisiblized, if that is such a word. And that is something that I can relate to as an indigenous person from the Pacific. We are learning about them, like someone put it to eloquently. Corrina Gould and LUTA and all the native people of the land are standing up. Thank the ancestors for your ancestors, for your courage and your strength. And because you are standing up, I want to stand up you. And that's what we ask of you too. Please stand up with them, the first nations people of this land, and please stand up with us and let's work together. I also want to dispel that indigenous people don't care about development, do not want any kind of development. I want to dispel that big myth. The Ohlone love to develop their land. That's why they made their Shellmound. They made a committee and the committee came together and said what are the zoning rules? How tall should something be? Would it be good for our kids? I'm not kidding, right? Would it be good for our kids, would it be good for our elders? Would our elders be able to do this, have access to that? The Ohlone are all about development. Yeah. And they thought to themselves when the outsiders came, the Spanish, when other settlers came, they said things to themselves, they said in their meetings, they said in their meetings and they said to each other how is it that we can include these people in our culture? How can we make -- I know they did. They said how can we make our

Shellmound so actually some settlers can have some cattle raised here and gardens put there? I know that said that. They sat until 2:00, 5:00, 6:00 in the morning and discussed it on this land. We are continuing this struggle. And the struggle is beautiful. We are living in Berkeley, which I love so much. Thank you so much.

>> Chair Tregub: Thank you. What is your name?

>> -- --

>> Chair Tregub: Get a speaker card. Thank you. All right. We are going to close the public hearing. I would like to thank everyone who spoke to us today about this issue. And I would look like to thank my fellow commissioners as well for burning the midnight oil and staying here and doing your jobs. I'm going to give everyone an opportunity for three minutes or less to provide any comment for staff and the consultant, which will become part of the responses in the final EIR document. So we will start with John.

>> T. Clarke: Are we going to extend our comment period to the 12th?

>> Chair Tregub: That's a good question. Could staff speak to that? What is possible here?

>> T. Clarke: I thought we could.

>> G. Powell: By extend you mean continue this discussion to a later date?

>> T. Clarke: Yeah. We have the close of draft EIR comment period. You said we were having another meeting.

>> G. Powell: There are two more meetings between now and the closing date.

>> T. Clarke: And the latest one was the January 12th?

>> G. Powell: Yes.

>> Chair Tregub: I'm sorry. So we closed the public hearing.

>> T. Clarke: Anyway, so that's the latest date we can close the public hearing, right?

>> G. Powell: The latest date that the ZAB could hold a hearing to talk about this, yes.

>> Chair Tregub: Well --

Oh. So my apologies. What I meant was we are bring this back to the board. I was using terminology for how we generally conduct a use permit hearing. I realize this is an EIR. It will remain open until January 12th.

>> J. Selawsky:

Good. That's what I was going to suggest. December 22nd is a bad date for a lot of people. January 12th is the obvious date. I guess I'll work this out. Meaning the public, not the board members. December 22nd, for the public.

>> Chair Tregub: I did have a question for staff about the possibility of extending it further given the number of holidays and VTOs and other things that get in the way this time of year.

>> S. Allen: Sure. And I'm sorry I'm not able to find the exact language from the CEQA guidelines. This was a conversation hold between myself and Carol Johnson and Zach Cowan. When the document was published we had a conversation about when the 45-day public review period ends, when we should extend it so it is not located between Christmas and new year's during the time the city offices are closed, and so we originally

extended it to January 5th. We heard from many members of the public very promptly that was not enough time and we looked at the CEQA guidelines. There is a minimum 45-day review period and maximum 60-day period and it could be extended longer if there were unique or some sort of -- under original circumstances or something. So there was a conversation with the city attorney and the planning director and the city attorney's determination is that there had been no unique or different circumstances that would persuade the city to extend the comment period beyond the 58 days that we have.

>> Chair Tregub: Can we get that opinion in writing, please, for the next meeting?

>> S. Allen: Sure.

>> Chair Tregub: Thank you. In light of that, we do have some options. We can continue this and have a discussion about it at a future meeting, or we could spend a little bit of time, I guess, going into almost 2:00, but if they are brief, three minutes per speaker or less, provide that feedback tonight.

>> S. O'Keefe: How about we talk for just two or three minutes at most and we can talk again later, if we have more things to add.

>> Chair Tregub: Sure.

>> D. Pinkston: I would like to continue this conversation. I'm not fully capable of having a sufficiently articulate discussion about the EIR this evening. And whatever we do will be televised and made publicly we will know what we discussed even if you don't make it to whatever the next discussion is scheduled.

>> Chair Tregub: Would you like to make that as a motion?

>> D. Pinkston: Sure.

>> Chair Tregub: The motion is to continue it to a time that -- do we need to provide a time-certain now?

>> D. Pinkston: I would so folks know when it is that they want to come.

>> G. Powell: We expect it will be January 12th, 2017.

>> Chair Tregub: I'm happy to support that. I will, however, ask staff to do everything in their power -- if it is not possible to schedule this on a separate night because we saw what happens when you schedule controversial things on the same night as a bunch of other things, then perhaps we can start the meeting a little earlier, and we may need to work out -- or just have the one item.

>> G. Powell: We will support you guys starting earlier but we can't support the idea if it is a one-item thing but we would if you wanted to have a special meeting. We don't have the ability to say, sure, we can have one item because we have, I don't know, 75 items that need to be taken under consideration in the next six to 12 months.

>> Chair Tregub: Would it be possible in the motion to just continue it until no later than whatever the deadline is and then staff can --

>> G. Powell: We need to be able to state tonight what it is or we renounce it. And just for the board's benefit --

>> T. Clarke: We don't have time for a special meeting between now and the meeting -- Powell the landmarks commission meets on the fifth.

>> Chair Tregub: All right.

>> S. O'Keefe: How about we make it go first?

>> G. Powell: Anytime that is something continued it is agendized before other items. This would be continued along with the Tenth Street project. And the ZAB always has the ability to reorder the agenda. Any continued items go before other items. So it would be earlier in the agenda than otherwise.

>> Chair Tregub: Let's continue it to January 12th otherwise. Sorry, Denise, we needed to work out the motion. But if you would like to incorporate January 12th into your motion.

>> D. Pinkston: Yes.

>> Chair Tregub: Is there a second?

>> J. Selawsky: Yes, second.

>> Chair Tregub: It will be continued to January 12th. It will be the first item on the agenda.

>> S. O'Keefe: After consent.

>> Chair Tregub: Yeah, after consent. And that is going to be the spirit of the motion. Anyone object? Okay. So let's all be recorded as voting aye on the continuance.

>> G. Powell: And I suggest we hold over talking about the 2017 ZAB calendar. It is not required that you talk about it tonight.

>> Chair Tregub: I think that's a good idea.

>> G. Powell: Just as long as we do it next time.

>> T. Clarke: After taking the public comment, we would have been able to give our comments. So when we start the meeting next time, are we going to take more public comment and then we will do our discussion? Or are we saying that we are going to start our discussion next time?

>> D. Pinkston: My intention was that we have our discussion. The public had an opportunity to comment tonight. They have an opportunity to comment again in writing before the deadline.

>> T. Clarke: So we should encourage everyone to put your comments in writing, any more comments that you have or points that you wanted to make that you didn't get to make tonight verbally that were on the record. So whatever you said tonight is on the record. If you want to add more points or clarify things or emphasize things, you should put it also in writing before the twelfth.

>> Chair Tregub: Go ahead, Shoshana.

>> S. O'Keefe: And also please encourage those who either had to leave or couldn't come at all to submit in writing. Because it really go in the record and there will be response in the response to comments.

>> D. Pinkston: Why don't we do two minutes apiece so folks can hear where we are coming from.

>> Chair Tregub: We will figure something out. I made special exceptions since we started so late but we are going to keep very strict time limits the next time around.

Comments can still be provided as a non-agenda item at the next meeting. It won't be on the record. So we really encourage you -- what is the e-mail to which comments need to be provided?

>> S. Allen: SHALLEN@cityofBerkeley.info. That information is included on the notice of availability.

>> G. Powell: It is worth noting for the purposes of EIR if a member of the public commented at the landmarks commission there is no

need to comment again here because it is still going to be registered and responded to.

>> Chair Tregub: Thank you.

>> T. Clarke: Just to clarify, what happens next is all these comments, even our comments -- we are not voting on anything. Our comments will be incorporated into the comments, and then those comments will need to be responded to. So everything that is brought up needs to be responded to in the final draft.

>> G. Powell: Final EIR, as is everything that was said.

>> T. Clarke: What we want to make sure is that everyone gets in their comments so they can be responded to. We are not here to vote on anything tonight. We can't vote on it. All we are doing is providing our own comments to it. So we will be building on whatever comments you had.

>> Chair Tregub: We will not be voting in January either.

>> T. Clarke: That's our role. People were asking us to vote it down. Unfortunately, that's not what this meeting is about as far as I understand. We are providing comments as well. We are providing you a venue to make your comments as well as we are going to be making our comments.

>> Chair Tregub: So we are going to -- if any members of the public wish to speak, you can speak to us after we adjourn. I'll stay here and answer questions, I think. But I think we are all ready to go home. So I'm going to adjourn this meeting. I would like to adjourn it in meeting of Judith Scherer and the victims of the Oakland fire. Thank you.

[ZAB Meeting adjourned.]