

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, March 11, 2013

A Regular Session of the Piedmont Planning Commission was held March 11, 2013, in the City Hall Council Chambers at 120 Vista Avenue. In accordance with Government Code Section 54954.2(a) the agenda for this meeting was posted for public inspection on February 25, 2013.

CALL TO ORDER

Following the 2012 Design Awards Reception held in the City Hall Courtyard, Chairman Chase called the meeting to order at 5:45 p.m.

ROLL CALL

Present: Commissioners Phillip Chase, Michael Henn, Jim Kellogg, Melanie Robertson, Tom Zhang and Alternate Commissioner Susan Ode

Staff: City Planner Kate Black, Assistant Planner Kevin Jackson, Planning Technicians Sylvia Toruno, Jennifer Feeley and Janet Chang and Recording Secretary Chris Harbert

City Council Liaison: Councilmember Robert McBain

DESIGN AWARD PRESENTATION

Chairman Chase summarized the Commission's review and selection process for annually recognizing superior design projects whose construction quality and design elements exemplify the City's Design Review Guidelines and enhance the aesthetics of the community. Award recipients receive framed photographs of their designs and a cast stone Design Award Plaque which features the Piedmont Exedra. Tonight's presentation honors exceptional projects in the following categories:

- *Best Outdoor Living Space*
- *Best Fence and Landscaping*
- *Best Garage*
- *Best Comprehensive Remodel & Addition*
- *Best Seamless Expansion within Building Envelope*
- *Best Green Remodel*
- *Best Overall Renovation*
- *Best Integrated Design for Garage & Accessory Structures*

Commissioner Robertson presented the Award for *Best Outdoor Living Space* to **April Gruber** and **Eric Shalev** of **53 Crest Road** in recognition of the creation of inviting yet functional space reflecting a comprehensive design vision and skillful craftsmanship that compliments the existing architecture of the home.

Commissioner Henn presented the Award for *Best Fence and Landscaping* to **Mr. and Mrs. Steve Zovickian** of **122 Crocker Avenue** in recognition of a comprehensive remodel of their front yard to create a functional yet aesthetically pleasing landscape.

Commissioner Kellogg presented the Award for *Best Garage* to **Mr. and Mrs. Allen Bouch** of **420 Wildwood Avenue** in recognition of a garage that is outstanding in design and proportion, is in keeping with the architectural style and quality of the residence and is a positive addition to the neighborhood.

Commissioner Zhang presented the Award for *Best Comprehensive Remodel & Addition* to **Mr. and Mrs. Paul Taylor** of **127 Hagar Avenue** in recognition of

a stunning and sleek contemporary style architecture that showcases exceptional design and construction detail.

Chairman Chase presented the Award for *Best Seamless Expansion within Building Envelope* to **Mr. and Mrs. David Charron of 310 San Carlos Avenue** in recognition of an ingenious expansion of living space that preserves the modest proportions of the original home, reflects quality craftsmanship and fine design detailing and serves as a superb example of subtle, sub-level home expansion opportunities.

Commissioners Ode and Kellogg presented Awards for *Best Green Remodel* and *Best Overall Renovation* to **Mr. and Mrs. Rob Bloemker of 621 Blair Avenue** in recognition of the transformation of a modest, mid-century house and garage into a beautiful, LEED Platinum Certified residence that is not only remarkable in style and livability but also serves as an excellent example of the types of sustainable technologies and designs available for improving homeowner quality of life.

Chairman Chase presented the Award for *Best Integrated Design for Garage & Accessory Structures* to **Mr. and Mrs. Tyler Johnston of 312 Sea View Avenue** in recognition of new construction that is seamlessly integrated with the architecture of the existing house without significant impact on neighbors.

In conclusion, Chairman Chase congratulated tonight's award recipients and their design and construction professionals.

APPRECIATION

Chairman Chase thanked and acknowledged the contributions of retiring Commissioners Michael Henn, Jim Kellogg and Melanie Robertson after six years of service, stating that their exceptional dedication and expertise has been a true public service to the residents of Piedmont for which the City is very grateful. In appreciation, the Chair presented each retiring Commissioner with an orchid plant.

CONSENT CALENDAR

There was no consent calendar.

PUBLIC FORUM

There were no speakers for the public forum.

APPROVAL OF MINUTES

Resolution 3-PL-13

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of February 11, 2013.

Moved by Zhang, Seconded by Henn

Ayes: Chase, Henn, Kellogg, Zhang, Ode

Noes: None

Abstain: Robertson

Absent: None

REGULAR CALENDAR

The Commission considered the following items of regular business:

Proposed Ped/Bike SR2S Plan Outline

As initially presented at the February 11th meeting, the City Planner briefly updated the Commission on the status of the City's grant application to the Alameda County Transportation Commission (Alameda CTC) to fund Piedmont's proposed Pedestrian and Bicycle Plan, with a Safe Routes to School (SR2S) component. The Planner acknowledged receipt of numerous letters from residents expressing strong support for the City's Pedestrian and Bicycle

Plan, noting that such letters will be included as an integral part of the City's application documentation. The City's application will be submitted to the Alameda CTC on March 15th.

**Second Unit Permit
with Parking Exception
322 Howard Avenue**

The Property Owner is requesting a second unit permit with parking exception to legalize a second unit believed to have been constructed prior to 1930.

Written notice was provided to neighbors. **Four affirmative, one negative response forms** were received.

Public testimony was received from:

Barbara Transue, stated that she purchased the property in 1987, lived there for 8 to 10 years while her children were in school and rented the lower-level second unit while she lived in the house. She noted that she currently does not live on site but that it is conceivable that one of her daughters may return to live in the residence someday in the future.

The Commission supported application approval, agreeing that there is compelling evidence indicated by voter records, building permits, architectural detailing/hardware, unit configuration/layout and the 1926 Sanborn Map that the second unit was original construction with the house and in existence in the 1920's. The Commission also thanked Gail Lombardi of the Piedmont Historical Society for providing historical records and information regarding this property.

Resolution 200-SU-12

WHEREAS, the Property Owner is requesting permission to legalize a second unit believed to have been constructed prior to 1930 located at 322 Howard Avenue, Piedmont, California, which permission requires a second unit permit; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and the proposal conforms with the criteria and standards of Section 17.40.b.5iii of the Piedmont City Code:

- there is sufficient, reliable evidence that the unit was established before 1930, including (i) the physical attributes of the unit, including architectural detailing and hardware; and (ii) historic documentation, including the 1926 Sanborn Map, voting records and building permits.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves a second unit permit, with parking exception for property located at 322 Howard Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including

the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Robertson, Seconded by Kellogg

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

**Design Review
123 Dudley Avenue**

An appeal has been filed by the property owners of 459 Mountain Avenue with regard to a February 5, 2013, staff decision conditionally approving an application to make changes to a previously approved deck along Mountain Avenue, including railing material modifications and the installation of new exterior deck lighting submitted by the property owners of 123 Dudley Avenue. The Planning Commission approved the construction of the new deck at 123 Dudley Avenue on February 13, 2012.

Written notice was provided to neighbors. **No response forms** were received.

Chairman Chase recused himself from discussion and action on this application and left the chambers.

Public testimony was received from:

Elizabeth Becker, Appellant, stated that her appeal is based on concerns over irregularities in the staff review process, inconsistencies in submitted plans regarding lighting details and a belief that staff failed to adequately evaluate the impacts of the proposed lighting changes on the neighborhood. She noted that the former deck (which was replaced by the new deck) had a solid stucco railing thus its imposition on the neighborhood was muted. However, the new deck has a slat railing which allows light spill from the applicant's home to intrude upon the neighborhood. This light spill will be further accentuated with the addition of the four lights approved by staff. She noted her support of the railing change approved by staff. Ms. Becker also circulated photographs of the new deck displayed on her I-phone.

Margaret Hutchins, Bobbi & Jack Stehr and Christine Droessler concurred with Ms. Becker's comments, stressing that light spill from the new deck is very intrusive on the neighborhood, deck lighting should never have been approved at the staff level since it was not originally proposed or discussed during the Commission's 2012 consideration of the deck project, and there is no need for the additional lights.

Paul and Florence Raskin, the Applicants, urged the Commission to uphold staff's approval of the four very small lights. They emphasized that the low wattage lights (10 watt) are intended to eliminate the need to use the home's existing wall sconce lights to illuminate the deck while in use. They noted that the existing 4 wall sconce lights are 75-100 watts and match sconce light fixtures elsewhere on the home. To enjoy watching the sunset on the deck, the new 10 watt, downward-directed lights will provide sufficient illumination so that the brighter house lights will not be necessary. In response to a Commission suggestion, they stated their refusal to replace the existing sconce lights with another type of light fixture, preferring instead to forego the new 10 watt lights and continue to rely on the sconce lights for deck illumination. However, Mr. Raskin noted his willingness to place lower wattage bulbs in his sconce lights.

Grier Graff, Project Architect, described the placement and light output of the proposed new deck lights.

The Commission, with the exception of Commissioner Kellogg, supported staff's decision, agreeing that the proper process was followed, the approved railing change was an improvement over the original design and the very small, new low-wattage lights represent an insignificant incremental amount of additional light relative to the existing ambient light situation in the neighborhood. The Commission noted the presence of a street light, stairway lights and other light sources in the immediate area in support of this conclusion. The Commission also felt that the new low-watt lights which are the equivalent of candle-light would lessen existing light spill impacts on neighbors by eliminating the current need by the homeowners to use higher intensity lights for deck illumination. Commissioner Kellogg preferred that the existing sconce lights be replaced with downward-directed light fixtures to minimize light spill and that the new, low-watt deck lights be restricted to 10W Xenon bulbs only.

Resolution 9-DR-13

WHEREAS, the Property Owners of 459 Mountain Avenue are appealing a staff decision conditionally approving an application to make changes to a previously approved deck along Mountain Avenue, including railing material modifications and the installation of new exterior deck lighting submitted by the property owners of 123 Dudley Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application and appeal, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and that staff appropriately applied the City's Design Review Guidelines in terms of evaluating aesthetics and impacts on neighboring properties.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies the appeal, upholds the planning staff's decision of February 5, 2013, and approves the staff design review application for construction at 123 Dudley Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

- the wattage of the existing sconce light fixtures shall be reduced by the amount of wattage added by the new lights being mounted on the deck (e.g. a 40 watt reduction).

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Robertson, Seconded by Ode

Ayes: Henn, Robertson, Zhang, Ode

Noes: Kellogg

Recused: Chase

The Commission recessed for dinner at 7:40 p.m. and reconvened at 8:05 p.m.

**Design Review and
Fence Design Review
331 Hillside Avenue**

The Property Owners are requesting design review and fence design review to stylistically alter and remodel the house. The application proposes to demolish the front porte-cochere and rear deck; construct a new front entry and porch with balcony above; construct decks at the rear and north side yard; construct additions at the rear and front; make alterations to the roof, windows, doors, chimneys, guardrails, and exterior lighting; make various changes to the interior including relocating a bedroom from the second floor to the basement level and creating a family room on the main level; various site modifications including: the demolition of the north yard trellis and rear shed; the construction of a new 1-car carport in the rear yard; the construction of a new free-standing stone wall along the front property line; landscape improvements in the front yard; and hardscape modifications throughout.

Written notice was provided to neighbors. **Three affirmative, one negative response forms** were received. **Correspondence** was received from: Paul Kuroda & Janie Hirata;

Public testimony was received from:

Natalie Williamson described her on-going efforts to repair and restore this old historic home and simplify the home's existing mix of architectural styles and finishes to create a more coherent overall architectural character.

Amy Nunes, Project Architect, explained that this *centennial* home has been neglected for years and in great need of repair and upgrade to improve the home's architectural style, form and structure. She explained the proposed exterior changes, noting that the front deck proposal is primarily for aesthetics -- all recreational and outdoor living/entertaining will occur in the rear yard.

Darren Bonnington, Project Contractor, explained the steps that will be taken to minimize construction disruption/impact on the neighborhood.

Paul Kuroda submitted photographs of the property and neighborhood in stressing his opposition to the proposed renovation, urging that the home's *centennial* architectural heritage be preserved rather than destroyed. He felt that the proposed design would upset the existing balance and symmetry which exists amongst this highly recognized "Tudor-style" grouping of three large residences along a signature avenue in Piedmont. He felt that other design solutions are available to structurally improve the old home without destroying its historic architectural character and appearance.

The Commission discussed the proposal at length, agreeing that while many elements of the proposed renovation were acceptable; overall, the proposed improvements, especially to the front facade, failed to preserve or enhance the architectural greatness of this historic home. In particular, the Commission noted the following concerns:

- the front upper level deck is too massive and incompatible with the character of the existing house, creates too much shadowing on the lower level entrance into the home, poses potential privacy impacts on neighboring properties, serves no useful purpose or function and is out of character with the extended bay at the front. The Commission requested that the front elevation be redesigned to create a more inviting, less massive front entry. One suggestion was consideration of a railing rather than deck to minimize shadowing and mass -- suggesting that the railing design for both the front and rear of the house be consistent with each other. The Commission also referenced a historic photograph of the original home (circa 1913) provided by Gail Lombardi of the Piedmont Historical Society as the type of front facade appropriate for the home;
- the proposed BBQ component on the north side deck intended to replace an on-grade walkway -- the Commission requested that this BBQ element be deleted;
- the front entry's failure to present any architectural interest or provide a good "sense of entry" into the home
- a need for improved window treatment consistency. A suggestion was made that the 2nd floor windows match up with the peaked roof vents

During the discussion, the project architect submitted a rough sketch of a redesigned front entry deck that was reduced in size and length. The Commission agreed that this was an improved approach toward resolving the problems with the front facade.

Also, during discussion the Commission noted its general acceptance of the landscaping plan (including stone wall), proposed side deck connecting walkway (sans the BBQ), the carport, family room and window material and style.

Resolution 41-DR-13

WHEREAS, the Property Owners are requesting permission to stylistically alter and remodel the house. The application proposes to demolish the front porte-cochere and rear deck; construct a new front entry and porch with balcony above; construct decks at the rear and north side yard; construct additions at the rear and front; make alterations to the roof, windows, doors, chimneys, guardrails, and exterior lighting; make various changes to the interior including relocating a bedroom from the second floor to the basement level and creating a

family room on the main level; various site modifications including: the demolition of the north yard trellis and rear shed; the construction of a new 1-car carport in the rear yard; the construction of a new free-standing stone wall along the front property line; landscape improvements in the front yard; and hardscape modifications throughout the property located at 331 Hillside Avenue, Piedmont, California, which construction requires design review; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e) and while many of the proposed design elements are aesthetically pleasing and appropriate for the property, the project, taken as a whole, fails to conform with the criteria and standards of Section 17.20.9 of the Piedmont City Code:

1. The exterior design elements that are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development are appropriate in scale and siting to the property and respectful of neighboring residents. These elements include: balconies, minor expansions of the house to the west and into the rear yard, the positioning of the stairway at the south end of the building leading to the pool level (as modified by revised plans dated March 7), expansion at the north end, including the slight expansion of the main level deck and the minor addition of a family room off the kitchen, the minor-sized balcony over the family room roof and the removal of the porte-cochere with its faux Tudor-style roof and its replacement structure. The above-cited elements comply with Design Review Guidelines II-1, II-2 and II-7. However, the design as a whole architecturally is not blended together in a cohesive, simple design that fits within context with the original house -- an early 1900's California eclectic-style structure, with gambrel roof and carefully detailed windows, railings, position and scale of fenestration. The proposed design fails to carry forward this continuity of having an appropriately-articulated entrance, a scale at the front bay that articulates the entrance and landing at the main stair at the second level, and fails to include a continuation of gable style roofing present in both the original and existing home. The project fails to comply with the Design Review Guidelines II-3(b) through (d), II-6 and II-6(b) in that there is not a consistent architectural style, with all elements integrated in a way that does not look tacked on and out of place proportionally.

2. The proposed second floor expansion of the stair landing and proposed balcony facing the front yard is out of scale. The balcony has no real functional purpose, is very large in scale and includes an uninterrupted railing that extends the full length of the house (north to south) which is not in keeping with the original design intent of the architecture.

3. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. The removal of the porte-cochere parking space in the front and its replacement with a carport in the rear yard of simple, wood-framed design is appropriate in that the net bedroom count of the house remains unchanged and is consistent with special exception Municipal Code Section 17.20.6. The overall parking and circulation on the property will be improved in that the driveway loop improves circulation and the landscaping, with small retaining walls and planting areas along the driveway,

further accentuates the traffic flow ingress/egress to the betterment of the property owner and neighborhood.

4. Although there is merit in some of the aspects of the design that has been proposed, the aspects that do not meet the City's guidelines are a significant part of the overall scheme so that the overall scheme is denied.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies, without prejudice, the design review application for construction at 331 Hillside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Kellogg, Seconded by Henn

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

**Variance and
Design Review
132 Sunnyside Avenue**

The Property Owner is requesting variance and design review to make several modifications to the rear of the house including constructing a first story addition; new decks and stairs at the main and basement level; and making several door and window changes. The requested variance is from Section 17.10.7 to allow the new construction to extend to within 2'1" of the left (north) property line in lieu of the code required minimum of a 4 ft. side yard setback.

Written notice was provided to neighbors. **No response forms** were received.

Public testimony was received from:

Kate Stechschulte, Project Architect, responded to questions, noting in particular that the entire rear structure will be painted white.

The Commission supported application approval, agreeing that the proposed project is logical in its design and placement, will have no negative impact on adjacent neighbors and will improve the livability of the residence.

Resolution 47-V/DR-13

WHEREAS, the Property Owner is requesting permission to make several modifications to the rear of the house including constructing a first story addition; new decks and stairs at the main and basement level; and making several door and window changes located at 132 Sunnyside Avenue, Piedmont, California, which construction requires variance and design review; and

WHEREAS, a variance from the requirements of Chapter 17 of the Piedmont City Code is necessary in order to build within the 4 ft. side (north) setback; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited subject property, the Piedmont Planning Commission makes the following findings:

1. The project is categorically exempt under the California Environmental Quality Act, pursuant to Section 15301, Class 1(e)
2. The underlying lot and existing improvements present unusual physical circumstances, including but not limited to the narrowness of the lot and the fact

that the existing house is located within the setback. Because of these circumstances, strictly applying the terms of this chapter would keep the property from being used in the same manner as other properties in the zone which conform to the zoning requirements.

3. The variance is compatible with the immediately surrounding neighborhood and the public welfare because the proposed addition is consistent with the home's existing design and the low-level stairs and landing located within the setback is consistent with neighborhood conditions.

4. Accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction because stairway access would be compromised and the property's aesthetics negatively impacted.

5. The proposal conforms with the criteria and standards of Section 17.20.9 of the Piedmont City Code.

6. The exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. The proposed project will upgrade the appearance of the property by removing an existing tacked-on addition.

7. The proposed upper level addition/expansion has been designed in a way that reasonably minimizes view and light impacts on neighboring properties (as defined in Section 17.2.70). There is no adverse impact on neighbors because of the separation distances between neighboring structures and the presence of screening vegetation.

8. The size and height of the addition is commensurate with the size of the lot (excluding the portions of the lot that cannot reasonably be built on), and is in keeping with the existing neighborhood development pattern. The proposed improvements replace an existing enclosed porch of comparable size.

9. The safety of residents, pedestrians, and vehicle occupants and the free flow of vehicular traffic are not adversely affected, considering the circulation pattern, parking layout and points of ingress and egress. There is no change in existing circulation patterns.

10. The project complies with Design Review Guidelines II-1, II-3 and II-4.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the variance and design review application for construction at 132 Sunnyside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Construction Management Plan.** The Property Owner shall develop a comprehensive Construction Management Plan. The Construction Management Plan shall address noise, vibrations, traffic control, parking, debris removal, dust control, sanitary facilities, and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route. The City Building Official has the authority to require modifications and amendments to the Construction

Management Plan as deemed necessary throughout the course of the Project and until the final issuance of a Certificate of Occupancy.

2. **Construction Completion Schedule.** Work on the Project, once begun, shall be promptly executed with continuous good faith and reasonable progress. Since timely completion of this Project is of the essence, the Property Owner shall submit for approval a Construction Completion Schedule, which will specify, in detail, the duration and percentage complete of each phase (benchmark).

a. The Construction Completion Schedule with associated construction values for each benchmark shall set forth completion dates for the following benchmarks:

- i. Completion of Excavation;
- ii. Completion of Retaining Walls;
- iii. Completion of Foundation;
- iv. Completion of Rough Framing;
- v. Completion of Electrical;
- vi. Completion of Plumbing;
- vii. Completion of Mechanical;
- viii. Completion of Fire Sprinklers;
- ix. Completion of Home;
- x. Completion of Hardscaping and Landscaping; and
- xi. any further construction benchmarks and conditions of occupancy as may be determined by the Director of Public Works.

b. Before the Project begins, the Director of Public Works shall make a determination as to the reasonableness of the proposed completion dates applicable to the Project, and that determination shall constitute the "Approved Schedule" and be binding on the Property Owner. The City may, at the Property Owner's sole cost, engage the services of a consultant to review the Property Owner's proposed Construction Completion Schedule and, to the extent the period allocated for any work appears unjustifiable, recommend to the Director of Public Works a reasonable completion date for any benchmark.

c. If the work for any specific benchmark has not been completed within 90 days after the completion date set forth in the Approved Schedule, and the delay in completion has not been caused by force majeure, the Director of Public Works has the option at any time thereafter to make a claim against the Property Owner's Performance Security, if one is required, in order to complete the benchmark.

3. **C & D Compliance.** Compliance with Chapter 9 Article III of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

4. **Defense of Legal Challenges.** If there is a third party administrative, legal or equitable action challenging the project approvals, including CEQA issues, the Property Owner shall defend and indemnify the City against any liability, fees and costs arising out of the defense, including the costs of City's own counsel. If such an action is filed, the Property Owner and City shall then enter into an agreement regarding selection of counsel and other provisions

related to the defense. For this purpose, "City" includes the City and its elected and appointed officials, agents, officers and employees.

RESOLVED FURTHER, that the approval of the Planning Commission/City Council and any conditions of that approval shall not extend to any particulars set forth in the documents submitted for the project which are inconsistent with or in violation of any applicable law, including but not limited to Chapters 5 and 17 of the City Code, nor does the approval extend to matters not set forth, or inadequately represented, in submitted documents (whether or not consistent with applicable law). The City reserves the right to require compliance with applicable laws and to attach conditions after initial approval is given, if noncompliance is discovered or additional conditions are considered necessary and appropriate in light of Commission/Council findings.

Moved by Henn, Seconded by Zhang

Ayes: Chase, Henn, Kellogg, Robertson, Zhang

Noes: None

Absent: None

ADJOURNMENT

There being no further business, Chairman Chase adjourned the meeting at 9:45 p.m.