

PIEDMONT PLANNING COMMISSION

Regular Meeting Minutes for Monday, June 12, 2017

A Regular Session of the Piedmont Planning Commission was held June 12, 2017, 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 May 26, 2017. Revised agendas were posted on June 2, 2017, and June 8, 2017.

CALL TO ORDER

Chairman Ramsey called the meeting to order at 5:05 p.m.

ROLL CALL

Present: Commissioners Eric Behrens, Susan Ode, and Tom Ramsey, and Alternate Commissioner Clark Thiel

Absent: Commissioners Aradhana Jajodia and Jonathan Levine (both excused)

Staff: Planning Director Kevin Jackson, Senior Planner Pierce Macdonald-Powell, Assistant Planners Emily Alvarez and Chris Yeager, and City Attorney Representative Kevin Siegel

Council Liaison: Councilmember Jennifer Cavanaugh

PUBLIC FORUM

Christopher Van Gundy requested that the Commission hear Agenda Item #5, 139 Lexford Road, prior to Agenda Item #4. Chairman Ramsey responded that no such changes to the agenda order could be made.

REGULAR SESSION

The Commission considered the following items of regular business:

Approval of Minutes

Resolution 13-PL-17

RESOLVED, that the Planning Commission approves as submitted its meeting minutes of the May 8, 2017, regular hearing of the Planning Commission.

Moved by Ode, Seconded by Behrens

Ayes: Behrens, Ode, Ramsey

Noes: None

Recused: Thiel

Absent: Jajodia, Levine

Consent Calendar

The Commission placed the following applications on the Consent Calendar:

- Amendments to the Interim Design Guidelines
- 2 Littlewood Drive (Fence Design Review Permit and Expedited Design Review Permit Referred)

Resolution 14-PL-17

RESOLVED, that the Planning Commission approves the Consent Calendar as noted.

Moved by Thiel, Seconded by Ode

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

At the end of the meeting, the following Resolutions were approved under the Consent Calendar:

Amendments to the

Recommended approval to the City Council of the following Resolution to

**Interim Design
Guidelines**

amend the Interim Design Guidelines, finding that the recommended amendments are not subject to CEQA and are appropriate and necessary for the Interim Guidelines to be consistent with the current regulations provided in Chapter 17, Planning and Land Use.

WHEREAS, on March 20, 2017, the City Council adopted a reorganization and update to the City's zoning regulations, at City Code Chapter 17; and

WHEREAS, as part of this update, on March 20, 2017, the City Council adopted Interim Design Guidelines, which include the following components: General Plan references to design; Residential Design Guidelines adopted May 16, 1988; Other Guidelines, Protocols and Measurements; Design Review Permit; and Director's lists; and

WHEREAS, it is a benefit to the community to include in the Interim Design Guidelines: 1) frequently asked questions regarding accessory dwelling units that are consistent with regulations for accessory dwelling units adopted by the City Council on May 15, 2017; and 2) a list of example site features as indicated in City Code section 17.90.010, Definitions; and

WHEREAS, the City intends to update and expand its design guidelines in 2017; in the interim, the proposed Interim Design Guidelines serves as the Design Guidelines for the City. Having these Guidelines is an essential part of implementing Chapter 17, Planning and Land Use; and

WHEREAS, the Planning Commission held a public hearing on the proposed revisions to the Interim Design Guidelines on June 12, 2017, and voted to recommend that the City Council adopt the revised Interim Design Guidelines; and

WHEREAS, the adoption of these revisions to the Interim Design Guidelines is not subject to the California Environmental Quality Act (CEQA) because it is not a project within the meaning of CEQA and it can be seen with certainty that there is no possibility that the adoption of Interim Design Guidelines may have a significant effect on the environment. (Public Resources Code section 21065; CEQA Guidelines, 14 Cal. Code of Regs. Sections 15061(b)(3), 15378.); and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Piedmont does hereby resolve, declare, determine, and order as follows:

SECTION 1. The above recitals are correct and are incorporated into this Resolution as findings of the City Council.

SECTION 2. The Interim Design Guidelines, adopted March 20, 2017 are amended as follows:

- Section C.13, Accessory Dwelling Unit – frequently asked questions, is amended and replaced in its entirety to read as set forth in Exhibit A; and
- Examples of Site Features, attached as Exhibit B, is added as Section C.14.

SECTION 3. All portions of this resolution are severable. If an individual component of this Resolution is adjudged by a court to be invalid and unenforceable, then the remaining portions will continue in effect.

Moved by Thiel, Seconded by Behrens

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

**Fence Design Review
Permit & Expedited
Design Review Permit
Referred
2 Littlewood Drive**

Resolution 318-DR-17

WHEREAS, the Property Owner is seeking retroactive approval for the replacement and design modification of the wood fence in the street yard setback along Littlewood Drive and Dudley Avenue and for modifications to the guardrail above the garage, located at 2 Littlewood Drive, Piedmont, California, which construction requires a design review 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 the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15301, Class 1(e), and that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines: The new fence design is compatible with the avant-garde, modern, sleek architectural style of the residence it serves. The new fence compliments the residence and does not compete, disconnect, or challenge the styles of the residence. The new fence speaks to a modern landscape and residence style. The Mid Century modern flat straight lines of the fence play out the same plane of the house ceilings visible from outside. The new fence allows the classic mid century feature of bringing the outside in to be exhibited by spaces between boards on the fence allowing light to show.

2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light: The design and siting of the fence is sensitive and does not deprive neighboring residents of views, access to sunlight, openness, or any enjoyments. The original fence had dry rot, had fallen over in several areas, and was an eye sore. The new fence enhances the light flow to neighbors through board spacing without negating privacy.

3. The proposed design does not adversely affect pedestrian or vehicular safety: The fence/gate located in a side yard off Dudley Avenue does not obstruct emergency access from the street or to the rear yard or additional rear/side yards of neighbors. No views are obstructed to drivers by the gate or fence in the front or side yards.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for proposed construction at 2 Littlewood Drive, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following condition:

1. **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.

Moved by Thiel, Seconded by Ramsey
Ayes: Behrens, Ode, Ramsey, Thiel
Noes: None
Recused: None
Absent: Jajodia, Levine

Regular Calendar

The Commission considered the following items as part of the Regular Calendar:

Wireless Communication Facilities Permits and Variances Various Sites

Crown Castle NG West LLC (Crown Castle) and Beacon Development are requesting the construction of wireless communication facilities (WCF) antenna installations at nine sites generally surrounding Piedmont Park. Prior to more detailed discussions for the nine proposed WCFs, Staff and Commissioners discussed the review procedures and outlined the pertinent federal, state and local regulations. Planning Director Jackson explained that the Commission is tasked with reviewing each application and making the appropriate findings to support its recommendation to the City Council.

Chairman Ramsey reviewed the procedures for public speakers, stating that each speaker should address the Commission and keep comments to three minutes or less. He requested that signs be left out of the Council Chambers.

Planning Director Jackson reported on the required pre-application process, during which City department heads provided initial feedback to Crown Castle and Beacon Development. He explained that Staff suggested during the pre-application process that the applicants avoid locating WCFs in front of historic sites and that WCF equipment be installed in vaults rather than on poles or on the ground to mitigate visual clutter in the City. In response to a question from Commissioner Ode, Director Jackson clarified that the pre-application process gives the applicant a chance to hear the concerns of the City, but that it in no way indicates Staff approval of a resulting application.

Senior Planner Macdonald-Powell provided additional information about the WCF proposals and clarified that the proposed projects were submitted by a wireless communication company and were not initiated by the City or School District. She explained that the projects are proposed within the City rights-of-way, and that although the land is owned by the City, the rules for use of public rights-of-way are set by the State. She explained that utility companies, such as Crown Castle, have a right to use the public rights-of-way if a proposal complies with the City's regulations. She explained that some of the proposals request a variance from the City's WCF regulations regarding antenna height or equipment siting. Senior Planner Macdonald-Powell explained that the Park Commission reviewed five of the WCF proposals on June 7, 2017, focusing on their impacts to City street trees and amenities within the City rights-of-way.

She also referred to the public comments received regarding these nine applications and reported that the Council is expected to hear the applications at one of its regular meetings in July.

City Attorney Representative Kevin Siegel spoke generally about the federal, state and local laws that govern WCFs. He explained that the state and federal laws are continually evolving and that the current trend (including proposed California Senate Bill 649) is to limit local authority regarding WCF permitting. He explained that the Federal Communications Act allows for local zoning authority to regulate the siting and aesthetics of facilities, but does not allow municipalities to regulate electric and magnetic field (EMF) emissions from WCFs, if the EMF emissions comply with federal regulations. Mr. Siegel explained that the California Public Utilities Code provides utilities with the right to use the rights-of-way, but provides municipalities with review authority regarding aesthetics and public safety issues related to the use of City rights-of-way. Given these federal and state regulations, Mr. Siegel explained that the City has the right to review each application based on the following sections of the Municipal Code: Division 17.46 (Wireless Communication Facilities); Division 17.70 (Variances); Section 5.4.11 (Noise); Chapter 3, Article IV (Trees on Public Property); and Chapter 18 (Streets and Sidewalks). He added that for those sites owned by the City (i.e. street lights), the Council will also review the proposals in a proprietary capacity to evaluate how the WCFs will attach to the street light poles.

Staff responded to several questions from the Commission. Mr. Siegel and Planning Director Jackson defined the term *right-of-way*. Planning Director Jackson explained that a WCF permit is a type of conditional use permit with review criteria specific and appropriate to wireless communication facilities. He explained that until updated design guidelines are implemented, the Commission can utilize general provisions outlined in the Interim Design Guidelines. Senior Planner Macdonald-Powell added that the Interim Design Guidelines require compliance with the City's General Plan, which includes language specific to wireless facilities. Planning Director Jackson also responded to questions about the preference for collocation and the possibility of collocation in the future. He explained that collocation of antennas is more appropriate on large monopoles, but that it may be infeasible on small sites, due to the requirement for separate equipment for each wireless service provider. He also discussed incentives for collocation built into the code. Mr. Siegel responded to a question about the broad goals listed at the beginning of Code Division 17.46 and suggested that Commissioners consider these as city-wide goals and not try to apply them to each site individually. He also stated that certain questions relating to utility undergrounding and WCF siting should be discussed along with individual applications.

Written notice was provided to neighbors for both the planning review and the street tree (Park Commission) review. For the nine sites combined, **2 affirmative and 73 negative planning response forms** were received, and **2 affirmative and 36 negative street tree response forms** were received.

Correspondence was received from: Stephen Kozinchik; Kristin Kozinchik; Mimi Lee and Raymond Chueh; Garrett Schwartz; Kirsten and Mirah Myers; Nicole Nealon; Lisa and Chris Carnazzo; Boleyn Ni; Amy and Aaron Aubrecht; Laura Przetak; Edit Kinces; Julia Chung and Mike Nachtwey; Shanti Kim; Elizabeth Arney; Casey Sullivan; Mike and Melanie Layman; Mark Harris;

Stephen Porter; Jennifer Porter; Julie Carling; Poppea Dorsam; Tanuja Karunkar; Lukas Bruggemann; Sarah Roberts; Kim Seto; Amaia Lasa; Shady Shahid; Alison Montes; Rick Nguyen; Karen Toto; Keith Roberts; Joseph Saah; Bernard Koh; Shary Nunan; Mr. and Mrs. Paul Hertelendy; Jamie Pantellis; Bruce and Marilena Scott; Jeff Camp; Rick Fehr; Tracy Nemiro; Jeff Scofield; Mary West and Audrey Frankel; Sherk Chung; Joyce and David Rickenbaker; Don Sande; Joy and Dick Hunt; Amanda Straub; Lincoln Silver; Betsy and Robert Andersen; Jennifer and Michael Siegel; Emily Weisner; and Luis R. Alonso.

A petition objecting to all nine proposed projects was authored by change.org Piedmont Neighbors and signed by: Garrett Schwartz, Amy Ajello, Suzanne Skugstad, Amy Aubrecht, Melanie Layman, Jayne Biehn, Kristina Melick, Liz Willner, Amie OShaughnessy, John Hiestand, Michelle Luna, David Richmond, Katie Anderson, Mary Silver, Lincoln Silver, Sam Deaner, Julie Carling, Lukas Bruggemann, Cassia Leet, Joseph Saah, David Hitchcock, Karen Toto, Deborah Banks, Debi Fitgerrell, Lisa Kieraldo, Patty White, Joyce Rickenbaker, Bess Gurman, Cynthia Lavis, Carole Parker, Jon Reining, Janie Hirata, Scott Fitzgerrell, Sharleen Cole, Mona Fung, Stacy George, Doriel Lauth, Julia Chung, Andrea Viel, Peter Cole, Lucy Armentrout, Helen Sandoval, Sinead Biskup, Ernest Fong, Regina Chan, Debra Bakal, Noura Fakoury, Christine Petersen, Kristin Kozinchik, Rick Schiller, Jennifer Marinelly, Isabel Laingor, Ginny Wright, Tara Levy, Josephine Lee, Judy Richardson, Sara Alspaugh, Mayford Dare, Kerry Higuera, Shary Nunan, Stephen Kozinchik, Banafsheh Rafii, Sylvia Banks, Lindsay Snyder, Geoff Snyder, Gayle Young, Barb Eisenbach, Sherk Chung, Lisa Li, Caroline Jung, Julia Swanson, Reichel Broussard, Karin Fetherston, Stephen Dawson-Haggerty, Mary Purcell, Gino Radzik, Sandy Chan, Jennifer Bretan, Adam Thacher, Rebecca Abrams, Chris Scholl, David Taggart, Kate Waldron, Annis Kukulan, Jane Strauch, Lisa Carnazzo, Chris Carnazzo, Lionel Chan, Nicole Nealon, Ina Kim, Adrienne Krumins, Kirsten Myers, Jonathan Becker, Wendi Sue, Alison Hampton, Kathy Derrigo, Daylan Dauchot, Melissa Stevens, Amber Brumfiel, Vanessa Spofford, Allison Allesio, Diana Thomas, Maryam Tavakkoli, Barbara Sloan, Grace Erickson, Joy Nieman, Ilana Friedkin, Beverly Rothenberg, Matthew Nealon, Cindy Hinman, and Kala Hale.

Following the general discussion of the proposed WCF application, the Commission considered groups of sites individually. Commissioner Behrens recused himself from consideration of sites PHS02 and PHS05, due to the proximity of these sites to his residence, and left the room.

Site PHS02, near 505 Blair Avenue; and Site PHS05 near 303 Hillside Avenue

Crown Castle and Beacon Development request wireless communication facilities antenna installations within the public right-of-way in Zone A (single-family residential zone) near 505 Blair Avenue and 303 Hillside Avenue. Senior Planner Macdonald-Powell described the proposed projects, explaining that each installation consists of three antennas, stand-off brackets, and power and communication risers attached to an existing utility pole, and a 4-foot by 6-foot underground vault beneath the sidewalk for communication equipment. She explained that each location requires two variances in order to exceed the height limit and locate equipment closer than 18 inches from the curb. Senior Planner Macdonald-Powell also reviewed recommended conditions of approval that

were added by Staff since the completion of the staff report, including the following conditions: Defense of Legal Challenges, Non-slip Surfacing of Underground Vault Covers, City of Piedmont Climate Action Plan, Timelines for Permit Issuance, The Wireless Communication Facilities Permit Duration, and Electricity Meters All Having a Minimum Height of 7 Feet Above Grade. She also noted some suggested changes for recommended Staff condition #9.

Public testimony was received from:

Jason Osborne, representative for Crown Castle, explained how his company minimized the impacts of the facilities by vaulting the equipment, so as not to impact the Americans with Disabilities Act (ADA) accessibility of the sidewalk or add to the visual clutter of the streetscape. He reported that Crown Castle would place the pole-mounted PG&E meter at 7 feet off the ground to meet PG&E requirements, despite the different height shown on the proposed drawings. In response to topics brought up during the general discussion, Mr. Osborne confirmed that Crown Castle has a lease agreement with PG&E, which he could share with the City upon final approval of the applications. He explained that the proposed WCFs are part of a small-cell network designed to enhance coverage and capacity in the surrounding residential district, and that collocation opportunities are not available. He also noted that no trees would be removed, but that light tree trimming might be necessary.

Following Mr. Osborne's testimony, the Commission asked numerous questions that were answered by Mr. Osborne, Morgan Hunt (Crown Castle's Manager of RF Engineering), and Michael Miller (Crown Castle's Construction Manager). Mr. Osborne reported that the proposed WCFs would be part of the Verizon Wireless network, which currently is experiencing coverage issues in and around downtown Piedmont and Piedmont High School. He discussed the factors that went into selecting the proposed sites. He stated that the utility poles are not proposed to be replaced, but that PG&E will complete structural calculations on the poles to determine if a new pole, new below-grade concrete footing, and/or new guy-wires are necessary. Mr. Osborne responded to questions about the specifications of the vault, its non-slip covering, its exhaust system and the equipment within the vault. Mr. Osborne, Mr. Hunt and Mr. Miller clarified that the installations would each include four coax cables exiting the vault through a 4-inch stub, running parallel to the utility pole housed within 4 risers (half-inch conduits), splitting into 12 coax jumpers at the top of the pole, and extending across a 24-inch standoff bracket. Mr. Osborne explained that the 7-foot extension at the top of the wood pole is mandated by PG&E, but that the antennas would need to be at roughly the same height even if they were not placed on an existing PG&E utility pole. Mr. Osborne commented on the impact that the equipment would have on ADA accessibility of the sidewalk, and he responded to questions and comments from the Commission and Staff regarding radiation emissions and the report provided by Crown Castle. He also stated that a maintenance truck would visit the equipment no more than twice a month.

Carole Porter, resident at 1658 Lower Grand, discussed her experience with a utility box located across the street from her house. She stated that additional equipment is being added to the box, demonstrating that these types of projects are rarely a "once and done thing". She stated that the equipment had been poorly maintained and not properly decommissioned, and she reported that the fan is loud in the summer. Ms. Porter questioned whether the City understands

the proposal and what alternative technologies exist, and whether additional cell sites are even needed in the City.

Lisa Carnazzo, resident at 150 Highland Avenue stated that the proposed WCF near 505 Blair Avenue is 3 feet from her backyard. She expressed her opposition to the proposal, arguing that her backyard and several rooms in her house would have a direct view of the antennas. She also argued that the proposed WCF would impact the aesthetics of the City, create noise, and cause traffic congestion during maintenance. Ms. Carnazzo stated that the narrow sidewalk is already difficult to maneuver with bikes and strollers, and that the vault covering would cause pedestrians to slip and fall at a busy intersection. She also wondered how the vault would be installed without impacting her property. Ms. Carnazzo noted that the Crown Castle representatives appeared to be ill-prepared and not familiar with the City of Piedmont. In response to Commissioner questions regarding the impact on her view, Ms. Carnazzo held up a photo showing the proximity of the pole to her backyard and stated that she could not avoid looking at it and that it would be larger than the existing pole.

The Commission expressed unanimous opposition to the proposed projects and considered the applications to be lacking necessary information. Commissioners Ramsey and Thiel stated that the proposed placement of antennas on an existing utility pole is consistent with the City's collocation policy, but that they remain unconvinced that the proposed locations are the most appropriate in the one-block radius, or that the proposal represents the least intrusive installation at these locations. Alternate Commissioner Thiel also objected to the approval of the height variance, given the lack of evidence presented to support such a height. The Commissioners expressed concern for the safety issues posed by the proposed installations, especially related to the conduits and brackets that are proposed to extend into the sidewalk. Commissioner Ramsey noted the narrow width of the sidewalks and stated that he found no evidence to show that accessibility requirements would be maintained once the installations are complete. Commissioner Ode expressed concern for the safety of the vault cover and requested a completed emissions report that factors in all the emissions. Commissioners Ode and Thiel expressed concern for the noise produced by the equipment, which they said could not be quantified based on the information presented. The Commission was also in opposition to the proposals based on aesthetics. Despite the placement of equipment in an underground vault, Commissioner Ramsey maintained that the proposals do not meet the City's design guidelines, since the pole-mounted equipment would not be camouflaged. He argued that the exposed brackets and cables are more akin to an industrial setting than a residential one. Commissioner Ode suggested that a decommissioning plan be provided for the WCFs. Alternate Commissioner Thiel expressed sympathy for those concerned about how the proposals might impact their home values, but stated that home values are also dependent on community amenities, such as cellular reception. He also questioned how future undergrounding of the utilities in this neighborhood might be impacted by these proposals.

Resolution 358(1)-WCF/V-16

WHEREAS, Crown Castle NG West LLC and Beacon Development are requesting a wireless communication facilities antenna installation within the public right-of-way near 505 Blair Avenue, Piedmont, California. The proposed antenna installation includes three antennas attached to the top of an existing

utility pole, and an underground vault beneath the sidewalk for communication equipment, which construction requires a wireless communication facilities permit; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to exceed the height limit and locate equipment closer than 18 inches from the curb and with a clearance height of less than 7 feet above grade; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Planning Commission finds that the proposal does not comply with the variance criteria under Section 17.70.040 of the Piedmont City Code, regarding height:

1. The applicant has not shown that the property and existing improvements present unusual physical circumstances that would require the proposed height. The size, shape, topography, location, and surroundings within a one-block radius do not preclude the installation of a similar structure within the height requirements called for in the City Code. The topography of the proposed site has not been shown by the applicant to be specific to the location, meaning that it does not preclude the ability to put a conforming installation, that would not require a height variance, within a one-block radius.
2. The applicant has not shown that accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction, because a similar installation that accomplishes the applicant's radio frequency requirements could possibly be erected elsewhere within the height requirements.

WHEREAS, the Planning Commission finds that the proposal does not comply with the variance criteria under Section 17.70.040 of the Piedmont City Code, regarding obstructions within the public right-of-way:

1. Safety hazards and nonconforming obstructions in the public right-of-way at 505 Blair Avenue do not present unusual physical circumstances, such that strictly applying the terms of this chapter would keep the property from being used in the same manner as other conforming properties in the zone. It has not been shown that the horizontal extensions from the pole into the right-of-way at various heights below 7 feet are necessary or reasonably designed to protect pedestrians. There is no requirement that the proposed wireless communications equipment be installed on a utility pole. Strictly applying the 18-inch setback requirement would not prevent the applicant from installing their equipment elsewhere in the right-of-way, in a location that would enable the project to conform to the setback requirements.
2. The installation of wireless communications equipment within 18 inches of the face of the curb could potentially interfere with public use of the right-of-way, and therefore could be a detriment to the public welfare.
3. Accomplishing the improvement without a variance could potentially be done at an alternate location without causing an unreasonable hardship in planning,

design, or construction, because the applicant has not shown that this particular location is the only location that would serve its needs for utility purposes.

WHEREAS, the Planning Commission does not believe that the proposed wireless communication facility installation at 505 Blair Avenue will comply with Division 17.46 of the Piedmont City Code:

1. The applicant has not shown that the antenna and vault facilities are necessary to close a significant gap in the operator's service coverage or capacity.
2. The applicant's coverage maps show only minor gain in coverage or capacity resulting from the installation on this site, which does not warrant the adverse impacts to public welfare.
3. The applicant has not shown that it has evaluated and met the priority for location standards of section 17.46.040 A, because there are potentially alternate locations within the public right-of-way that would not require a variance from the City Code and would be more in conformance with the public welfare.
4. The proposal does not satisfy each of the applicable development standards in section 17.46.070, because:
 - The location is not on either publically-owned property outside of the public right-of-way in Zone B, or on publicly-owned facilities in any other zone outside of the public right-of-way; and, although it is within the public right-of-way, it is not located in a way that does not hinder or inhibit the use of that public right-of-way.
 - The applicant has not shown that it is infeasible or impossible to comply with requirement 17.46.070.A.2 (Height limits; Screening). Although this section relates to roof-mounted equipment and antennas, such that they may be located to minimize visibility, this does not comply with the intent of that application.
 - The proposed project does not comply with 17.46.070.A.3 (Visual impact), in that it is not designed to minimize visual impact. While the antenna itself may be, the conduits and wiring that run up the pole are not minimized, camouflaged or concealed, and may pose a safety hazard.
 - The applicant has not shown that it complies with 17.46.070.A.4 (Public health, peace and safety), in that the physical obstructions created by the stanchions pose a safety hazard for pedestrians on the sidewalk in the right-of-way, and the proposed vault could potentially pose safety hazards, depending on how they are covered and how the tread is worn over time.
 - The proposal does not conform with the 18-inch minimum from the front of the curb and does interfere with the public's use of the right-of-way.
 - The Planning Commission has questions about conformance with Section 18.8 of the Streets and Sidewalks Ordinance of the Piedmont City Code, which provides "No person shall erect or cause to be erected upon or in any public street . . . , any telegraph, telephone or electric light pole, or any pole for the suspension of electric telegraph," in that it is unclear on what affect this would have on the removal of those poles in the future.

- The project does not comply with Section 18.22 of the Streets and Sidewalks Ordinance, in that the stanchions restrict a portion of the sidewalk that is already narrow.

5. The proposed design is not consistent with the Piedmont Design Guidelines, in that the connections from the antenna to the vault are not concealed as much as possible, and in fact are a significant addition to an already unsightly utility pole, which will further detract from the aesthetics of the pole and the equipment already on it.

6. The applicant has not shown that the proposed facility has been located and designed for collocation to the greatest extent reasonably feasible, in that no other wireless communication facilities exist in the public right of way; other wireless communication facilities in the area, including those at the church, are concealed from public view and are located in a similar area; and the applicant has not shown that the proposed location is infeasible for collocation or other existing cellular sites in the area.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends that the City Council deny the proposed wireless communication facilities permit and variance application for the public right-of-way near 505 Blair Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Thiel, Seconded by Ode

Ayes: Ode, Ramsey, Thiel

Noes: None

Recused: Behrens

Absent: Jajodia, Levine

Resolution 358(2)-WCF/V-16

WHEREAS, Crown Castle NG West LLC and Beacon Development are requesting a wireless communication facilities antenna installation within the public right-of-way near 303 Hillside Avenue, Piedmont, California. The proposed antenna installation includes three antennas attached to the top of an existing utility pole, and an underground vault beneath the sidewalk for communication equipment, which construction requires a wireless communication facilities permit; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to exceed the height limit and locate equipment closer than 18 inches from the curb and with a clearance height of less than 7 feet above grade; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Planning Commission finds that the proposal does not comply with the variance criteria under Section 17.70.040 of the Piedmont City Code, regarding height:

1. The applicant has not shown that the property and existing improvements present unusual physical circumstances that would require the proposed height. The size, shape, topography, location, and surroundings within a one-block radius do not preclude the installation of a similar structure within the height

requirements called for in the city code. The topography of the proposed site has not been shown by the applicant to be specific to the location, meaning that it does not preclude the ability to put a conforming installation, that would not require a height variance, within a one-block radius.

2. The applicant has not shown that accomplishing the improvement without a variance would cause unreasonable hardship in planning, design, or construction, because a similar installation that accomplishes the applicant's radio frequency requirements could possibly be erected elsewhere within the height requirements.

WHEREAS, the Planning Commission finds that the proposal does not comply with the variance criteria under Section 17.70.040 of the Piedmont City Code, regarding obstructions within the public right-of-way:

1. Safety hazards and nonconforming obstructions in the public right-of-way at 303 Hillside Avenue do not present unusual physical circumstances, such that strictly applying the terms of this chapter would keep the property from being used in the same manner as other conforming properties in the zone. It has not been shown that the horizontal extensions from the pole into the right-of-way at various heights below 7 feet are necessary or reasonably designed to protect pedestrians. There is no requirement that the proposed wireless communications equipment be installed on a utility pole. Strictly applying the 18-inch setback requirement would not prevent the applicant from installing their equipment elsewhere in the right-of-way, in a location that would enable the project to conform to the setback requirements.

2. The installation of wireless communications equipment within 18 inches of the face of the curb could potentially interfere with public use of the right-of-way, and therefore could be a detriment to the public welfare.

3. Accomplishing the improvement without a variance could potentially be done at an alternate location without causing an unreasonable hardship in planning, design, or construction, because the applicant has not shown that this particular location is the only location that would serve its needs for utility purposes.

WHEREAS, the Planning Commission does not believe that the proposed wireless communication facility installation at 303 Hillside Avenue will comply with Division 17.46 of the Piedmont City Code:

1. The applicant has not shown that the antenna and vault facilities are necessary to close a significant gap in the operator's service coverage or capacity.

2. The applicant's coverage maps show only minor gain in coverage or capacity resulting from the installation on this site, which does not warrant the adverse impacts to public welfare.

3. The applicant has not shown that it has evaluated and met the priority for location standards of section 17.46.040 A, because there are potentially alternate locations within the public right-of-way that would not require a variance from the City Code and would be more in conformance with the public welfare.

4. The proposal does not satisfy each of the applicable development standards in section 17.46.070, because:

- The location is not on either publically-owned property outside of the public right-of-way in Zone B, or on publicly-owned facilities in any other zone outside of the public right-of-way; and, although it is within the public right-of-way, it is not located in a way that does not hinder or inhibit the use of that public right-of-way.
- The applicant has not shown that it is infeasible or impossible to comply with requirement 17.46.070.A.2 (Height limits; Screening). Although this section relates to roof-mounted equipment and antennas, such that they may be located to minimize visibility, this does not comply with the intent of that application.
- The proposed project does not comply with 17.46.070.A.3 (Visual impact), in that it is not designed to minimize visual impact. While the antenna itself may be, the conduits and wiring that run up the pole are not minimized, camouflaged or concealed, and may pose a safety hazard.
- The applicant has not shown that it complies with 17.46.070.A.4 (Public health, peace and safety), in that the physical obstructions created by the stanchions pose a safety hazard for pedestrians on the sidewalk in the right-of-way, and the proposed vault could potentially pose safety hazards, depending on how they are covered and how the tread is worn over time.
- The proposal does not conform with the 18-inch minimum from the front of the curb and does interfere with the public's use of the right-of-way.
- The Planning Commission has questions about conformance with Section 18.8 of the Streets and Sidewalks Ordinance of the Piedmont City Code, which provides "No person shall erect or cause to be erected upon or in any public street . . . , any telegraph, telephone or electric light pole, or any pole for the suspension of electric telegraph," in that it is unclear on what affect this would have on the removal of those poles in the future.
- The project does not comply with Section 18.22 of the Streets and Sidewalks Ordinance, in that the stanchions restrict a portion of the sidewalk that is already narrow.

5. The proposed design is not consistent with the Piedmont Design Guidelines, in that the connections from the antenna to the vault are not concealed as much as possible, and in fact are a significant addition to an already unsightly utility pole, which will further detract from the aesthetics of the pole and the equipment already on it.

6. The applicant has not shown that the proposed facility has been located and designed for collocation to the greatest extent reasonably feasible, in that no other wireless communication facilities exist in the public right of way; other wireless communication facilities in the area, including those at the church, are concealed from public view and are located in a similar area; and the applicant has not shown that the proposed location is infeasible for collocation or other existing cellular sites in the area.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends that the City Council deny the

proposed wireless communication facilities permit and variance application for the public right-of-way near 303 Hillside Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Thiel, Seconded by Ode

Ayes: Ode, Ramsey, Thiel

Noes: None

Recused: Behrens

Absent: Jajodia, Levine

The Commission recessed for dinner at 7:03 p.m. and reconvened at 7:32 p.m. Following the recess, Commissioner Behrens returned to the dais for consideration of the remaining sites.

Site PHS06, near 428 El Cerrito Avenue; Site PHS07 near 355 Jerome Avenue; and Site PHS08 near 1159 Winsor Avenue

Crown Castle and Beacon Development request wireless communication facilities antenna installations within the public rights-of-way in Zone A (single-family residential zone) near 428 El Cerrito Avenue (site #6), 355 Jerome Avenue (site #7), and 1159 Winsor Avenue (site #8). Each of the proposed new installations would have one to three antennas attached to the top of a utility pole and would have an underground vault beneath the sidewalk for communication equipment. Each of the three projects requires consideration of a wireless communication facilities permit application and consideration of applications for variances from City of Piedmont development standards related to height limits and obstructions in the right-of-way. Senior Planner Macdonald-Powell reviewed recommended conditions of approval that were added by Staff since the completion of the staff report, including the following conditions: Defense of Legal Challenges, Non-slip Surfacing of Underground Vault Covers, City of Piedmont Climate Action Plan, Timelines for Permit Issuance, The Wireless Communication Facilities Permit Duration, and Electricity Meters All Having a Minimum Height of 7 Feet Above Grade. She also noted some suggested changes for recommended Staff condition #9. During the public testimony (below), Senior Planner Macdonald-Powell reviewed the City arborist's recommendations and read the Park Commission's findings, which recommend that the City Council deny these three installations due to their potential impact on street trees and public amenities.

Public testimony was received from:

Nicole Harrison, arborist for Crown Castle, stated that her task is to make recommendations to preserve trees during project construction, and that she visited all the trees adjacent to the proposed installations. She recommended that the vault be relocated for installation of proposed site #6, due to concerns regarding its proximity to the adjacent tree. She explained that she made specific recommendations to protect the trees adjacent to proposed sites #7 and #8, but that the installations are not expected to harm the trees. She read a portion of the City's arborist's report, which she said made a similar conclusion. She also reported on the recommendations made by the Park Commission.

Jason Osborne, Crown Castle representative, stated that an existing fire hydrant and street sign located in the public right-of-way adjacent to site #6 make the coax cables less of a stand-alone safety hazard. He then answered various

questions from the Commission. In response to questions from Commissioner Ramsey, Mr. Osborne explained that a radome would have a greater visual impact than the bare antennas and is therefore not proposed for these sites. He also responded to a discussion about the impact that the installations would have on street trees and he commented on the recommendations made by the Park Commission. He stated that Crown Castle is willing to shift the equipment vault to the north side of the pole at site #6 to eliminate its impact on the adjacent street tree; but he acknowledged that this alternate vault location would be in front of a resident's driveway, which would be blocked for 4 to 6 days during installation. In response to a question from Commissioner Ramsey regarding the architecturally significant context of site #7, Mr. Osborne stated that Crown Castle chose the location based on the viability of the utility pole. He also responded to questions about the details of the new utility pole and confirmed that the coax cables would still be external to the new wood pole. He estimated that the vault excavation area would be approximately 10 feet by 5 feet and stated that it would be completely within the public right-of-way. Mr. Osborne suggested that replacing the proposed vault at site #7 with pole-mounted equipment could preserve the decorative brick paving, eliminate the need for a 24-inch standoff, and minimize the size of the equipment. Mr. Osborne responded to questions about site #8 and explained the design of the antennas and wood extensions. He stated that the proposal does not widen or shrink the existing sidewalk and that the new guy wire will replace an existing guy wire.

Morgan Hunt, Crown Castle's Manager of RF Engineering, responded to questions from the Commission, including those from Commissioner Ramsey about the mechanisms by which the antennas tilt. In response to a question from Commissioner Thiel, Mr. Hunt explained that it would not be feasible to split a three-antenna installation into three one-antenna installations, since each installation would require its own full-sized equipment vault. In response to a question from Commissioner Ramsey, Mr. Hunt explained that smaller DAS antennas would not work properly with the topography of Piedmont.

Joyce Rickenbaker, resident of 355 Jerome Avenue, expressed her strong opposition to proposed site #7 that sits less than 15 feet from her historic home. She spoke about the negative impacts that the project would have on property values, aesthetics, and public safety. She reported on the hazards that cell towers pose regarding fire and collapse, and she cited a New York Times article stating that one-tenth of cell towers emit more radiation than allowed for by the FCC. She also expressed concern about the hazards posed by a car hitting the proposed pole, and she noted that several car accidents have occurred in front of her house in recent years. Ms. Rickenbaker maintained that the proposed 10-foot by 6-foot vault would not fit in the existing 5-foot wide sidewalk and that the noise from the vault fans would be beyond acceptable levels. She also expressed opposition to Crown Castle's suggestion for a pole-mounted installation. Ms. Rickenbaker noted several inaccuracies in the application, and expressed her distrust in Crown Castle's ability to install the equipment properly. In closing, she noted that no cell tower exists near the estate owned by Crown Castle's CEO.

Mike Humphries, resident of 411 El Cerrito Avenue, spoke in opposition to the proposal. He stated that as a former Piedmont teacher and coach he can attest to the high volume of pedestrian traffic going to and from Witter field along El Cerrito Avenue (site #6). He expressed concern that the proposed vault cover

poses a safety hazard, especially given the steep slope of the sidewalk. He argued that kids wearing cleats would likely slip on a wet vault cover, despite the non-skid surface. He reported that a similar vault cover in front of the middle school has become worn down and slippery over time.

Joy Hunt, resident of 160 Arbor Drive (near site #7), spoke in opposition to the proposal. She noted discrepancies in the applicant's application, making it unclear whether Crown Castle proposes to replace the existing 45-foot pole with a new 55-foot pole, or extend the existing pole to 55 feet.

Dennis Miller, resident of 340 Jerome Avenue (near site #7), spoke in opposition to the proposal for reasons of aesthetics, safety, property values and preservation of street trees. He stated that his house would have a direct view of the proposed antennas, and he urged the Commission to oppose the proposals.

Sherk Chung, resident of 438 El Cerrito Avenue, spoke in opposition to the proposal at site #6. He claimed that, based on laws governing WCFs, an approved wireless facility can be extended by 25 feet without additional approvals, which could turn the proposed 50-foot pole into a 75-foot pole. He argued that, despite requirements outlined in federal and local law, he had seen no evidence proving that the antennas are required for proper wireless coverage or that alternative sites could not be found outside of Zone A. Mr. Chung presented a coverage map from the Verizon website showing adequate coverage throughout Piedmont. He also showed a map submitted by Crown Castle, which he argued was misleading in its omission of the lowest levels of coverage.

Amber Brumfiel, resident of 1150 Winsor Avenue (near site #8), spoke in opposition to the project and its effect on property values. She noted that the presence of three nearby schools means that most buyers in the neighborhood have young children. She argued that these potential buyers will take health fears into account regardless of whether their fears are rational. In response to questions from Commissioner Thiel, Ms. Brumfiel stated that she opposes any proposed location in a residential neighborhood, especially those close to schools. She stated that her time as an attorney working with eminent domain law makes her aware of the rights utilities have within the rights-of-way, but she argued that the WCFs could be placed outside of Zone A. She added that she has never had an issue with cell coverage at her house.

Alexis Smith, resident of 450 Jerome Avenue, spoke in opposition to proposed site #6. She stated that the sidewalk near the pole is extremely narrow and steep and is already constrained by a fire hydrant and signage. She reported that people use this corner to pick up their kids after sports practices. Ms. Smith expressed concern for the impacts that the proposed installation would have on safety and aesthetics at this corner. She also expressed concern that any future plans to underground utilities would be undermined by approval of the project. Ms. Smith also expressed concern for the impact the proposal would have on her home's value, given that the antennas would be located across from her daughter's bedroom window. Ms. Smith's young daughter Storey Smith also spoke about her concerns. She stated that the antennas would be dangerous and unsightly and that kids might fall on the metal vault cover.

Stephen Kozinchik, resident of 443 Jerome Avenue, spoke in opposition to the proposal at site #6. He argued that the proposal does not comply with the City's

General Plan and that it will impact aesthetics, property values, safety, and noise. He stated that Crown Castle was unable to explain why the nine sites were selected and that they have failed to prove that a coverage gap exists that warrants the proposed installations. He cited Verizon's website that shows full coverage for the City of Piedmont, and referred to a statement submitted by the Piedmont Unified School District opposing the proposed projects. Mr. Kozinchik noted that the application includes inaccuracies and urged the Commission to recommend disapproval to preserve and protect the City.

Jeanne Alvis, resident of 425 Jerome Avenue, spoke in opposition to proposed site #6, citing concerns regarding aesthetics, safety and property values. She stated that homebuyers would be intimidated by warning signs on the poles, and that both real and perceived threats would impact home prices. She noted that she has had no trouble with her Verizon coverage.

Sandra Beck, resident of 421 Jerome Avenue (near site #6), spoke in opposition to all the proposed installations. She described site #6 as being narrow with lots of pedestrian traffic. She noted that she has had no trouble with her Verizon coverage.

Sarah Roberts, resident of 400 Jerome Avenue (near site #6), stated that the site is already cluttered with things in the right-of-way and that her primary concern with the application is the adverse aesthetic impact of the proposal. She argued that homebuyers rarely walk around the neighborhood to check cell coverage, but that they do take into consideration unsightly utility poles, as she did when buying her home. Ms. Roberts also expressed concern that additional equipment could be collocated on the site in the future and noted that the project could complicate future plans to underground utilities in the neighborhood. Ms. Roberts also expressed concern for the project's impact on safety. She noted that site #6 is extremely busy with people going to and from Witter Field, and that semimonthly maintenance would exacerbate congestion and safety concerns. She noted that sites #1, #3, #4, #6, #8, and #9 are within heavily trafficked student zones, and doubted that these sites have a safe fall zone in case of an earthquake. She noted that the applicant has failed to show proof of a gap in coverage, and urged the Commission to oppose the proposals.

Monica Piniella, resident of 135 Arbor Drive (near site #7) spoke in opposition to the project. She described a situation in which she chose not to buy a house in Berkeley that was close to an electrical substation, and she argued that the proposed WCF projects would similarly impact home values.

Dan Piniella, resident of 135 Arbor Drive (near site #7), spoke in opposition to the proposal. He reported that his Verizon coverage is poor, but that he would prefer to switch to AT&T (which provides good coverage at his home) rather than support the installation of new WCFs. He argued that Crown Castle has appeared unprepared and disorganized with their inaccurate drawings and contradictory responses, and he stressed that he lacks confidence in them to execute the project properly. Mr. Piniella also asked the Commission to consider whether the City or Crown Castle would be liable if someone were to get hurt from the WCFs.

Margaret Bridges, resident of 332 Jerome Avenue (near site #7), spoke in opposition to the proposed project. She argued that the proposed cell tower is

not in keeping with the residential neighborhood and that it would negatively impact property values. She reported that while walking around the neighborhood, she had been approached separately by a real estate agent and a homebuyer with questions about the proposed project. Ms. Bridges also noted that unpleasant safety signage would be added to the utility poles. She urged the Commission to oppose the project.

Tom Lee, resident of 344 Jerome Avenue (near site #7), explained that his background as a medical oncologist, clinical investigator for the National Cancer Institute, and US Navy officer, taught him great respect for radiation, regardless of strength or intensity. He stated that scientists have an incomplete understanding of the potential hazards of the electromagnetic radiation emitted by cell towers, but referred to scientific articles that attest to the dangers posed. Dr. Lee also discussed the hazards related to the power requirements of each WCF. He stated that a WCF requires two to three times as much power as a house, which poses an explosion hazard. He stated that this hazard is incongruous with the high-volume of pedestrians, especially children, walking to and from the schools.

Donald E. Sande, resident of 428 El Cerrito Avenue (site #6), spoke in opposition to the project and its impact on views, safety and property values. He stated that the proposed antenna would impact his view of San Francisco and Oakland. Regarding safety, Mr. Sande explained that kids currently run down the hill and grab the sign at the end of the street to slow down. He suggested that they might do the same with the coax cables.

In response to questions from the Commission, City Attorney Representative Siegel explained that a collocation provision enacted by Congress (Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012) would allow an approved WCF to receive a future height or width expansion of 10% or 10 feet, whichever is greater, without discretionary review. He stated that such a collocation project could simply apply for a building permit with documentation showing that the expansion is within the limits. City Attorney Representative Siegel also confirmed that the City has no authority to address concerns regarding radiation emissions if the applicants show that they are within the federal parameters for emissions.

The Commissioners expressed unanimous opposition to the proposed projects near 428 El Cerrito Avenue, 355 Jerome Avenue, and 1159 Winsor Avenue. They considered the application to be lacking necessary information, including: a complete emissions report, finalized construction details (including the location of the vault and guy wires near 428 El Cerrito Avenue), accurate elevational drawings and photo simulations, and a reliable map showing coverage gaps. The Commissioners also expressed concerns regarding an impact on public safety, neighborhood aesthetics, and views. Commissioner Ode agreed with Ms. Roberts' concern for the traffic and safety impacts caused by the semimonthly maintenance. Commissioner Behrens stated that the view impact caused by the proposal at 355 Jerome Avenue would be extreme. Alternate Commissioner Thiel argued that the applicant has not shown that a need for greater service coverage warrants such negative impacts to the community. He referenced the municipal code, which puts the burden of proof on the applicant to show a significant gap in service coverage or capacity that would be demonstrably improved by the proposed project. He stated that he would be

willing to support an application if it showed a proper balance between the need for service coverage or capacity and the impact on the community. He argued that the current application, which shows only a marginal increase in the service coverage, warrants only minimal impacts. Commissioner Ramsey agreed and referenced Mr. Chung's point about Verizon's claim to have great coverage throughout the City.

Resolution 358(3)-WCF/V-16

WHEREAS, Crown Castle NG West LLC and Beacon Development are requesting wireless communication facilities antenna installations within the public rights-of-way near 428 El Cerrito Avenue, 355 Jerome Avenue, and 1159 Winsor Avenue, Piedmont, California. The proposed antenna installations each include one to three antennas attached to the top of a utility pole, and an underground vault beneath the sidewalk for communication equipment, which construction requires a wireless communication facilities permit; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary for each site to exceed the height limit and locate equipment closer than 18 inches from the curb and with a clearance height of less than 7 feet above grade; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Planning Commission finds that the proposal does not comply with the variance criteria under Section 17.70.040 of the Piedmont City Code, regarding height:

1. The properties and existing improvements do not present unusual physical circumstances, and the properties are crowded with many students. Strictly applying the terms of this chapter would not keep the property from being used in the same manner as other conforming properties in the zone. There is no basis for a variance. The applicant has not established that the height should be expanded beyond the limit of 35 feet to improve service. There is nothing unique that requires extending the height above 35 feet. The applicant has shown that the height limit can be met on other sites.

2. The projects are not compatible with the immediately surrounding neighborhood and the public welfare, because increasing the building height beyond the 35-foot limit by granting a variance would interfere with views, exacerbate already crowded utility poles, and be destructive for adjacent trees, per the Park Commission findings.

3. Accomplishing the improvements without a variance would not cause unreasonable hardship in planning, design, or construction, because the applicants have not demonstrated in their proposals for these three sites that a variance to extend the height beyond the 35-foot limit is needed to improve service in Piedmont.

WHEREAS, the Planning Commission finds that the proposal does not comply with the variance criteria under Section 17.70.040 of the Piedmont City Code, regarding obstructions within the public right-of-way:

1. There is no basis for granting a variance to allow the applicant to avoid the 18-inch setback requirement to the curb or the 7-foot clearance requirement, since they have not shown how to avoid the resulting danger. The properties and existing improvements do not present unusual physical circumstances, so that strictly applying the terms of this chapter would not keep the properties from being used in the same manner as other conforming properties in the zone. No physical conditions prevent the electric meter from being located a minimum of 7-feet above ground, and there is no requirement that the proposed wireless communications equipment be installed on a utility pole. Strictly applied, the 18-inch setback requirement would not prevent the applicant from installing their equipment elsewhere in the right-of-way, in a location that would enable the project to conform to the 18-inch setback requirements.

2. The projects are not compatible with the immediately surrounding neighborhoods and the public welfare, because installing the electric meter at a clearance height of less than 7 feet presents a hazard to pedestrians and is a detriment to the public welfare, and installing the wireless communications equipment within 18 inches of the face of curb interferes with the public use of the right-of-way, and therefore would be a detriment to the public welfare.

3. Accomplishing the improvements without a variance would not cause unreasonable hardship in planning, design, or construction, because the electric equipment could easily be installed at a height of 7 feet above grade, and there is no hardship in utilizing sites other than utility poles.

WHEREAS, the Planning Commission finds that the proposed wireless communication facility installations at 428 El Cerrito Avenue, 355 Jerome Avenue, and 1159 Winsor Avenue will not comply with Division 17.46 of the Piedmont City Code:

1. The evidence shows that the proposed antenna and vault facilities are not necessary to close a significant gap in the operator's service coverage or capacity, because the applicant's coverage maps show only a minor gain in coverage or capacity resulting from the proposed installations, which does not warrant the adverse impacts on the public welfare shown in this application.

2. The applicant has not evaluated and met the priority for locations standards of Section 17.46.040 A, because there are alternative nearby locations within the public right-of-way that would not require a variance from the City Code and would be more in conformance with the public welfare.

3. The proposal does not satisfy each of the applicable development standards in section 17.46.070, because:

- It is not clear that the new WCFs are collocated with existing facilities.
- The proposed WCFs do not satisfy the standard height limit, which should not exceed 35 feet in height, measured from the ground to the highest point of the wireless communications facility, which is required in residential areas.
- The WCFs do not appear to be designed to minimize visual impacts. There is no attempt to camouflage them or conceal them.
- The public health, peace and safety is potentially adversely affected by these installations.

- A WCF located in the public right-of-way is not supposed to cause physical or visual obstruction or safety hazards to pedestrians, cyclists or motorists. A WCF located in the public right-of-way is not supposed to cause an inconvenience to the public's use of the right-of-way. None of the three proposed locations meet this standard. All three locations are located closer than 18 inches from the front of the curb. They all interfere with the public's use of the right-of-way.

4. The proposed design is not consistent with the Piedmont Design Guidelines, because the proposed WCFs are not as inconspicuous as possible. The residential character of Piedmont is badly impacted by these proposals and the proposed WCFs negatively impact existing views. For the proposed WCF near 1159 Winsor Avenue, the wood pole extension on the top makes it even more unsightly.

5. The applicant has not submitted a statement of its willingness to allow other wireless service providers to collocate on the proposed facilities. The proposed WCFs have not been located and designed for collocation to the greatest extent reasonably feasible.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends that the City Council deny the proposed wireless communication facilities permit and variance application for the public right-of-way near 428 El Cerrito Avenue, 355 Jerome Avenue, and 1159 Winsor Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Behrens, Seconded by Thiel

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

Site PHS01 near 340-370 Highland Avenue; Site PHS03 near 799 Magnolia Avenue; Site PHS04 near 358 Hillside Avenue; and Site PHS09 near 314 Wildwood Avenue

Crown Castle and Beacon Development request wireless communication facilities antenna installations on street lights within the public right-of-way in Zone B (public facilities zone) near 340-370 Highland Avenue (site #1), 799 Magnolia Avenue (site #3), 358 Hillside Avenue (site #4), and 314 Wildwood Avenue (site #9). Each of the proposed new installations would have two to three antennas attached atop a street light and would have an underground vault beneath the sidewalk for communication equipment. Each of the four projects requires consideration of a wireless communication facilities permit application. Two of the four projects (near 799 Magnolia Avenue and 358 Hillside Avenue) also require consideration of a variance from City of Piedmont development standards related to obstructions in the right-of-way, due to power meters at a height of less than 7 feet. Senior Planner Macdonald-Powell stated that the street lights are owned by the City, which has some responsibilities and rights regarding the use of the street lights. She also reviewed recommended conditions of approval that were added by Staff since the completion of the staff report, including the following conditions: Defense of Legal Challenges, Non-slip Surfacing of Underground Vault Covers, City of Piedmont Climate Action

Plan, Timelines for Permit Issuance, The Wireless Communication Facilities Permit Duration, and Electricity Meters All Having a Minimum Height of 7 Feet Above Grade.

In response to questions from the Commission, Senior Planner Macdonald-Powell clarified that the applicant is proposing a completely new street light at site #9, where no street light currently exists; replacement of existing street lights at sites #3 and #4; and modifications to an existing street light at site #1. Senior Planner Macdonald-Powell and Director Jackson responded to questions from the Commission regarding the new street light at site #9 and how it addresses the City's transportation plans or lighting needs. They indicated that the proposed new street light is not a result of any known lighting needs, but is based on the needs of the applicant. Director Jackson noted that the applicants had originally suggested mounting the antennas on a fake utility pole at site #9, but that Staff had suggested that they instead install a new post-top street light at the entrance to the park, outside of the public right-of-way. He also explained that existing street lights in the area are affixed to utility poles, and that freestanding street lights do not currently exist in the vicinity.

Public testimony was received from:

Jason Osborne, Crown Castle representative, explained that sites #1, #3, #4, and #9 differ from the other sites, in that the antennas are proposed to be mounted to City-owned street lights. He stated that sites #1, #3, and #4 utilize existing infrastructure and therefore adhere to the City Code as much as possible. He noted that Crown Castle is negotiating a contract with the City for these locations, and that they would pay a yearly rent to the City for use of the street lights. Mr. Osborne acknowledged Crown Castle's willingness to meet the City's requirements by mounting the power meters at 7 feet above grade. In response to a question from Alternate Commissioner Thiel, Mr. Osborne explained that sites #3 and #4 provide coverage to different areas, despite their proximity. Mr. Osborne clarified details of the mock-up installed at site #9, and confirmed that the radome would have a diameter of 17 inches.

Morgan Hunt, Crown Castle's Manager of RF Engineering, responded to questions from the Commission regarding the coverage maps on pages 20 and 21 of the Crown Castle report. He explained that the existing map on page 20 shows the overall existing coverage, while the proposed map on page 21 shows only the signal that would be covered by the new antennas.

Crown Castle representatives answered numerous questions from the Commission about alternative antenna locations. The Commission repeatedly asked for clarification on whether the proposed antennas could be collocated with the existing cellular antennas atop the fire station and other locations in the downtown area. They stressed that the City's Code lists collocation as its priority over public rights-of-way in locating cellular equipment. Mr. Hunt responded that Verizon does not have any macro tower sites in the City and that they are instead proposing small cell design within the public rights-of-way. Initially, Mr. Osborne argued that the blanket coverage of macro sites does not meet Verizon's needs of being at building level and that RF data showed that the collocation sites would not meet their client's coverage objectives. Mr. Osborne directed the Commissioners to the 58-page document submitted with the application as a response to numerous requests to see the supporting data.

Commissioner Ramsey pointed out that the proposed antenna locations appear to be at about the same height as the existing facilities atop the fire station. Ahmad Coraba, RF engineer for Verizon, clarified that the area's coverage is unreliable and that additional sites are needed. He stated that a site like the one atop the fire station could potentially work, but that by the time the small-cell team at Crown Castle is working on the issue, other options have already been exhausted. He theorized that Crown Castle's real estate professionals may have attempted to collocate with these locations but were unsuccessful. In response to repeated questions from Commissioner Ramsey and Alternate Commissioner Thiel, Mr. Osborne acknowledged that he had not personally met with any building owners regarding collocation opportunities and that Crown Castle's search ring only includes sites within the public right-of-way. Mr. Osborne ultimately stated that there was no doubt that a macro site across the street could provide coverage, but that it would require a different proposal.

John Hiestand, resident of 314 Wildwood Avenue (site #9), spoke in opposition to the proposed WCFs in general and site #9 specifically. He stated that he has been a Verizon Wireless customer for the past five years, and has always had excellent coverage. He argued that the proposed projects would impact home values, create unnecessary noise, cause greater traffic congestion in a heavily-trafficked area, and pose a slip hazard for pedestrians. He also noted that his second-story bedroom would look directly out on the proposed antennas and obstruct the view of the park.

Sophia Hiestand, resident of 314 Wildwood Avenue (site #9), spoke in opposition to the proposed WCFs. She discussed her fight with brain cancer when she was 15 months old, reporting on the surgeries, the chemotherapy, the bone marrow transplant, the dozens of MRI scans, and her current cancer-free status. She admitted to fearing the radiation that would be emitted from the proposed installations and hoped that no other children would have to go through what she had gone through. She urged the Commission to oppose the proposed WCFs.

Alyssa Wong (resident of 15 Prospect Road) and Ava Hersch (resident of 254 Wildwood Avenue) spoke in opposition to the proposed WCFs, citing the health concerns related to radiation from cell towers. They spoke about their friend's struggle with brain cancer and expressed concern that one of the proposed cell towers is directly across from her house. Ms. Wong and Ms. Hersch also expressed concern for the health of all their fellow students, given the proximity of the proposed WCFs to schools and houses.

Rex Ko, resident of 459 Jerome Avenue, asked the City Attorney to comment on the liability of the proposed wireless sites. In response, City Attorney Representative Siegel stated that the City would have an agreement with Crown Castle that would articulate the indemnification responsibilities in the case of an incident. He stated that the responsibility would typically fall on Crown Castle, but that he was not familiar with the proposed agreement.

Blake Wong, resident of 15 Prospect Road, spoke in opposition to the proposed projects and their proximity to schools. He stated that the area is heavily used by pedestrians and vehicles, and that it is extremely congested. He stressed that the potential impact the towers have on children is paramount. In response to a question from Commissioner Ode, Mr. Wong stated that it is best to err on the

side of caution and to avoid cell towers next to schools if there is any possibility of the radiation affecting children's growth.

Following the above public testimony, the Commission discussed the proposals for sites #1, #3, #4, and #9. During the discussion, Staff responded to questions and offered information about applicable laws. Director Jackson and City Attorney Representative Siegel explained that, despite the City Code preference for collocation, state law (Section 7901 of the Public Utilities Code) gives utilities the right to utilize City rights-of-way regardless of whether there are alternative sites outside of the right-of-way. They further explained that although a proposal cannot be denied solely on the presence of alternative collocation options, it must still meet the City's requirements, holding the proposal to certain standards, such as those related to aesthetics or safety. Director Jackson also explained that radiation emissions that meet federal guidelines cannot be a means for disapproving a project. He suggested that if the Commission sees inconsistencies in the emissions report, but would otherwise approve the project, the inconsistencies could be addressed through a condition of approval requiring that the emissions study be completed and peer-reviewed by a consultant chosen by the City. Senior Planner Macdonald-Powell also suggested that if the Commission finds that the proposed variances for sites #3 and #4 cannot be approved, the Commission can add a condition of approval that requires a height clearance of 7 feet for the proposed power meters.

The Commissioners had mixed opinions about the proposed sites #1, #3, #4, and #9. They indicated that they would prefer to see WCFs collocated with existing cellular installations or mounted to buildings (and questioned whether that had even been considered), but stated that of the nine right-of-way proposals, the street-light-mounted proposals for sites #1, #3, and #4 had the least impact on the community. Commissioner Behrens noted that the proposed sites are in Zone B, which is favorable, and that the variances can be avoided with a condition of approval. Commissioner Ramsey noted that, despite some confusion regarding design details, the street-light installations appear to better meet the code requirement for the concealment of equipment, since the cables can be placed inside the light pole. Concerns for the proposals remained, however. Commissioner Ode expressed concern for the applicant's incomplete information, especially related to the emissions report. She also expressed concern for the safety hazards resulting from the closing of streets and sidewalks around the schools during semimonthly maintenance. Commissioner Ramsey indicated that residents in Piedmont are kept to a much higher aesthetic standard than that shown in these proposals, and he expressed concern that the proposed street light installation at 340-370 Highland Avenue is in a highly visible and public location. Alternate Commissioner Thiel suggested that instead of bolting the meter and antenna to an existing light fixture, the applicant could incorporate the meter and antenna into an appealing, custom light standard, which would be more in keeping with Piedmont's design standards. He indicated that the City has required Piedmont residents to install custom light fixtures during undergrounding, and that Crown Castle should not be held to a lower standard. Commissioner Ramsey also made suggestions about alternative vault and vent locations.

The Commissioners unanimously agreed that the proposed installation at 314 Wildwood Avenue (site #9) is not appropriate, since the proposed street light would be an anomaly in a predominately residential location. Additionally,

without a lighting survey stating otherwise, Commissioner Ode was concerned about the impact that the new unshielded light could have on adjacent properties.

Resolution 358(4)-WCF/V-16

WHEREAS, Crown Castle NG West LLC and Beacon Development are requesting wireless communication facilities antenna installations within the public rights-of-way near 340-370 Highland Avenue (site #1), 799 Magnolia Avenue (site #3), 358 Hillside Avenue (site #4), and 314 Wildwood Avenue (site #9), Piedmont, California. Each of the proposed antenna installations include two to three antennas attached atop a street light (with site #9 proposing a street light where none currently exists) and an underground vault beneath the sidewalk for communication equipment, which construction requires a wireless communication facilities permit; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary for the sites near 799 Magnolia Avenue and 358 Hillside Avenue, due to the power meters being proposed at a height of less than 7 feet; and

WHEREAS, regarding the variance from safety hazards and nonconforming obstructions in the public right-of-way related to the sites near 799 Magnolia Avenue and 358 Hillside Avenue, the Planning Commission finds that the proposal does not comply with the variance criteria under Section 17.70.040 of the Piedmont City Code:

1. The properties and existing improvements do not present unusual physical circumstances of the property (including but not limited to size, shape, topography, location and surroundings), so that strictly applying the terms of this chapter would not keep the property from being used in the same manner as other conforming properties in the zone, because no physical conditions prevent the electric meter from being located at a minimum of 7 feet above grade or otherwise articulated not to intrude into the public right-of-way.
2. The projects are not compatible with the immediately surrounding neighborhoods and the public welfare, because installing the electric meter as proposed would present a hazard to pedestrians, are potentially not compliant with ADA and PG&E requirements, and would be detrimental to the public welfare.
3. Accomplishing the improvements without a variance would not cause unreasonable hardship in planning, design, or construction, because the light standards can be adapted, modified, and designed to incorporate the various components in an aesthetically pleasing manner consistent with the other freestanding light standards in the City and surrounding area.

WHEREAS, the Planning Commission finds that the proposed wireless communication facility installations near 340-370 Highland Avenue, 799 Magnolia Avenue, 358 Hillside Avenue, and 314 Wildwood Avenue do not comply with Division 17.46 of the Piedmont City Code:

1. The proposed design is not consistent with the Piedmont design guidelines because the antenna portion of the light standard is not concealed as much as

possible, and is not as inconspicuous as possible. The light standards are not aesthetically pleasing or consistent with the infrastructure in the neighborhood, and are not consistent with the freestanding street lights in the surrounding community. The installation is also not aesthetically pleasing regarding the locations proposed and the attachment and bolted-on appearance of the various components that the applicant proposes.

WHEREAS, the Planning Commission finds that the proposed wireless communication facility installation at 314 Wildwood Avenue does not comply further with Division 17.46 of the Piedmont City Code:

1. The applicant has not shown evidence that the proposed facility is necessary to close a significant gap in the operator's service coverage or capacity.
2. The applicant has not evaluated and met the priority for locations standards of Section 17.46.040 A, because there are potential alternative nearby locations within the public right-of-way that would not impose the potential for light pollution and incongruity with the remainder of the street on Wildwood Avenue, with regard to putting in a free-standing street light where none currently exists.
3. The proposed design is not consistent with the Piedmont Design Guidelines, because it is not concealed as much as possible, and is not as inconspicuous as possible.
4. The proposed facility has not been located and designed for collocation, and the applicant has not shown that collocation is infeasible or inappropriate.
5. The applicant has not shown a need to vary from Section 18.8 of the Street and Sidewalk Ordinance of the Piedmont City Code, regarding the erection of an electric light pole or any pole.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission recommends that the City Council deny the proposed wireless communication facilities permits and variance applications for the public rights-of-way near 340-370 Highland Avenue, 799 Magnolia Avenue, 358 Hillside Avenue, and 314 Wildwood Avenue, Piedmont, California, in accordance with the plans and specifications on file with the City.

Moved by Thiel, Seconded by Ode

Ayes: Ode, Ramsey, Thiel

Noes: Behrens

Recused: None

Absent: Jajodia, Levine

**Design Review Permit
For a New House and
Retaining Wall
139 Lexford Road**

The Property Owner is requesting permission to construct a new, approximately 4,573-square-foot, single-family residence on an existing vacant lot in Zone A. The new residence is proposed to be four levels with three bedrooms, two bathrooms, half bath, living room, dining room, kitchen, family room, office, laundry room, elevator, and conforming two-car garage. A front terrace is proposed at the upper level, and patios are proposed at the rear of the house. A landscape plan has been submitted with retaining walls, stairs, walkways and exterior lighting. The height of the proposed retaining wall in the front setback would exceed 30 inches, requiring consideration of a retaining wall design review permit by the Planning Commission.

Written notice was provided to neighbors. **One affirmative and one negative response forms** were received. **Correspondence** was received from: M. Reza Bazargani, Christopher Van Gundy and Stuart I. Block. Correspondence received for the May 8, 2017 Planning Commission meeting from Paul Giordano and Christopher Van Gundy was distributed at the dais before the start of the meeting.

Public testimony was received from:

Kirk E. Peterson, project architect, explained that the proposed plans are the same as those approved two months ago. He stated that the neighbors have indicated concern regarding the review of the conditioned engineering plans. He noted that a shoring plan may not be necessary, since the contractors instead plan to build the footings and retaining walls from the top down using tie-backs. In response to questions from Alternate Commissioner Thiel regarding the thoroughness of the drawings, Mr. Peterson stated that the exact drawings have been approved by the Planning Commission twice and that the building department has processed the application through plan check. In response to a question from Commissioner Ramsey, Mr. Peterson confirmed that the permit drawings include materials and details. He requested that any clarifications about the design details be addressed at a Staff level.

In response to a question from the Commission, Director Jackson explained that the project is being considered again by the Planning Commission, after having been approved in May, because a computer glitch resulted in insufficient neighbor notification.

Christopher Van Gundy, neighbor at 132 Lexford Road, referred to condition #1 of the prior approval (Staff recommended condition #1 of the current proposal), which requires that the applicant provide engineering plans (showing grading, foundation, excavation and shoring) and that the neighbors and a third-party engineer have the chance to review and comment on the plans. He questioned how the project could have gone through the building permit process without the neighbors having had the chance to review the plans. Mr. Van Gundy discussed the history of the site and the project and explained that he had settled his lawsuit based on this agreement. He asked for assurance that the City would comply with this condition.

In response to a question from Commissioner Ramsey, Director Jackson stated that the applicant has submitted a building permit application, but that it is still under review. He assured the Commission that the building department would adhere to the conditions of approval during the review of the building permit

application. He suggested that the neighbors contact the City's Building Official Bob Akiyama with any questions about the neighbor-review process.

Stuart Block, neighbor at 87 Huntleigh Road, spoke in agreement with Mr. Van Gundy, stating that the previously approved conditions, which require the submittal and review of a shoring plan along with other engineering plans, contributed to the project moving forward without further challenges from the neighbors. Mr. Block expressed concern that the building department has since provided conflicting information and has claimed that no shoring plan is required. He reiterated the requirements of condition #1 and acknowledged that the challenges with communication may be a result of the requirements not being the same as with a typical building permit application. He stressed that the City needs to assure the neighbors that the process outlined in the conditions of approval will be followed. He stated that the onus should be on the property owner to get the information to the neighbors for review by the third-party engineer. In response, Commissioner Ramsey suggested that Mr. Block contact the building department and ask about the process for informing neighbors about the required engineering plans.

Reza Bazargani, neighbor at 150 Somerset Road, stated that he agreed with Mr. Van Gundy and Mr. Block about the importance of a third-party engineer reviewing the plans. He explained that as an engineer himself, he can attest to the fact that third-party reviews are very common. He also noted that in Conditions #2 (Neighboring Property Inspection) and #7 (Neighboring Property Damage Security), his address is missing from a list of possibly impacted neighbors that includes 130 Somerset, 140 Somerset, 160 Somerset, and 170 Somerset. He said that he moved into his home four years ago and is not sure how his address was left off the list. Mr. Bazargani also asked that the construction workers adhere to the working hours during construction.

In response to questions from Commissioners Ramsey and Behrens, Director Jackson stated that the Commissioners could add Mr. Bazargani's address to the conditions if they feel it is appropriate. He confirmed that the 2 conditions in question predate the neighbors' legal settlement. In response, Mr. Petersen authorized the addition of 150 Somerset Road to the list of properties affected by Conditions #2 and #7.

The Commission was divided in its support of the project. Commissioners Behrens, Ode and Ramsey expressed support for the project, stating that the exact plans had been approved twice by the Planning Commission. Commissioner Ode also expressed satisfaction that the neighbors' concerns are being addressed by the conditions. Alternate Commissioner Thiel spoke favorably about the general design of the proposed new house, but stated that he was unable to support its approval due to a lack of information on the drawings. He stressed that numerous design details are missing from the plans, including details for the proposed windows, garage doors, exterior lighting, roof material, and retaining walls. Commissioner Behrens made a motion to approve the application using the Planning Commission's findings from May 8, 2017, with the amendment that 150 Somerset Road be added to the list of potentially affected neighbors under conditions #2 and #7.

Resolution 78-NH DR-17

WHEREAS, the Property Owner is requesting permission to construct a new, approximately 4,573-square-foot, single-family residence on an existing vacant lot in Zone A; the new residence is proposed to be four levels with three bedrooms, two bathrooms, half bath, living room, dining room, kitchen, family room, office, laundry room, elevator, and conforming two-car garage; a front terrace is proposed at the upper level, and patios are proposed at the rear of the house; a landscape plan has been submitted with retaining walls, stairs, walkways and exterior lighting; a retaining wall exceeding 30 inches in height is proposed in the front setback located at 139 Lexford Road, Piedmont, California, which construction requires a design review 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 the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15303, Class 3(a), making the following findings:

1. There is no cumulative impact because the application proposes a single house on the lot and there is no reasonable probability of a significant effect on the environment;
2. The current application proposes a structure sited lower on the lot, with the majority of proposed excavation occurring on the lower portion of this lot. The amount of excavation has been reduced to 1,350 cubic yards from a previous proposal of 2,000 cubic yards that was not approved by the City Council;
3. Submitted geotechnical evidence indicates that the proposed lot has a rock base;
4. Geotechnical, soils and structural engineers will be involved in the development/construction process and there is no evidence that there will be a significant effect on the environment;
5. Based upon the submittals from the applicant's geotechnical expert, the site appears feasible for development, and that based on available data, there are no indications of Geotechnical hazards that would preclude the use of the site for development;
6. The project does not require the City to grant a variance. All features comply with the requirements set forth in the City's municipal code, which demonstrates that this project is not unique as compared to some other properties in the City, and that the underlying lot does not present any unusual physical characteristics that prevent the strict application of the City Code;
7. Among other Bay Area and Piedmont single-family developments, the City has previously approved numerous developments involving significant amounts of excavation, earth movement and retaining walls under a categorical exemption without an EIR including:
 - seven new single-family houses on steep vacant lots (53 Cambrian Avenue, 74 Huntleigh Road, 1 Maxwellton Road, 3 Maxwellton Road,

151 Maxwelton Road, 155 Maxwelton Road, and 14 Littlewood Drive);

- seven projects involving the removal of all or a significant portion of an existing residence to be replaced by a new residence (62 Glen Alpine, 419 Hillside Court, 330 La Salle Avenue, 198 Maxwelton Road, 201 Park Way, 74 Sandringham Avenue, 505 Scenic Avenue);
- ten projects with renovations to an existing residence or site (1454 and 1456 Grand Avenue, 218 Greenbank Avenue, 137 Greenbank Avenue, 212 Lafayette Avenue, 11 Muir Avenue, 77 and 79 Oakmont Avenue, 120 Requa Road, 213 Sunnyside Avenue); and

8. There is no substantial evidence that any exception to the Class 3 Categorical Exemption applies to this project, specifically including the unusual circumstances exception.

WHEREAS, regarding design review, the Piedmont Planning Commission finds that the new house proposal, as conditioned, conforms with the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines, in that the exterior design elements are aesthetically pleasing as a whole and harmonious with existing and proposed neighborhood development. 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, because it has been designed to have a street-accessible driveway and has a unique architectural style that is in keeping with the neighborhood. The proposed house is similar in size to other houses in the neighborhood and is substantially below the maximum allowable floor area ratio.

2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light, because the structure has been designed to be nestled into the hillside to minimize view and light impacts on neighboring properties. The distance between the addition and adjacent residences is reasonable and appropriate due to the existing topography and neighborhood development pattern. Upper level setbacks greater than the setbacks required for the lower level have been considered and are not necessary to reduce losses of ambient and reflected light, because the decks and lower level roofs and staircases are appropriate.

3. The proposed design does not adversely affect pedestrian or vehicular safety, considering the circulation pattern, parking layout and points of ingress and egress. The existing or proposed on-site parking is appropriate to the size of the new addition, and additional parking is not required to prevent unreasonable short and/or long term parking impacts on the neighborhood, because the proposed house has a code-compliant garage that is easily accessible and usable.

4. The application complies with the following guidelines: I-1(a), I-2(a), I-2(b), I-2(c), I-2(d), I-5, I-5(a), I-5(b), I-6, I-7, I-9, I-9(a), III-1, III-1(a), III-2, III-2(a), III-3, III-4, III-5, III-5(a), III-6, III-6(a), III-7, III-7(a), IV-1, IV-1(a), IV-1(b), IV-2, IV-2(a), IV-3, IV-3(a), IV-5, IV-6, V-1, V-2, V-4, V-5, V-6, V-9.

5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Design and Preservation Element Goal 28 (Residential Architecture), 28.1 (Scale, Height, and Bulk Compatibility), 28.2 (Style Compatibility), 28.4 (Setback Consistency), 28.5 (Garages, Decks, and Porches), 28.6 (Exterior Materials), 28.7 (Hillside Home Design), 28.8 (Acoustical and Visual Privacy), 28.9 (Eyes on the Street), 28.11 (Design Review), 28.12 (Creativity and Innovation), 29 (Yards and Landscapes), 29.1 (Conserving Residential Yards), 29.2 (Landscape Design), 29.3 (Front Yard Enclosures), 29.5 (Fence and Wall Design), 29.6 (Retaining Walls), 29.7 (Driveway and Parking Location), 29.8 (Exterior Lighting), and 29.9 (Sight Obstructions); and Environmental Hazards Goal 18.4 (Soil and Geologic Reports).

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for proposed construction at 139 Lexford Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **Foundation/Shoring/Excavation Plan.** The Property Owner shall submit grading, foundation, excavation, and shoring plans prepared by a licensed civil or structural engineer that fully address issues of site shoring, fencing and hillside security issues. The plans shall not require any trespassing or intruding into neighboring properties (without prior written consent), and shall mitigate against any subsidence or other damage to neighboring properties. Such plans shall incorporate the recommendations of the Property Owner's geotechnical engineer and to the extent feasible, the City's geotechnical consultant, and shall be subject to approval by the City Engineer and the Building Official. The plans shall include the signatures of the Property Owner's geotechnical engineer and the City's geotechnical consultant, certifying that they have reviewed the proposed plans and they find them in conformance with the recommendations of the various geotechnical reports for this project. Within 10 days of Property Owner's submission of the plans, the property owners of the properties listed in Condition of Approval No. 2 (the "Neighboring Property Owners") shall have the opportunity to provide their comments on any grading, foundation, excavation, and shoring plans to the City's geotechnical consultant before the geotechnical engineer certifications are provided.

- a. Neighboring Property Owner Permission. Should the execution of the Foundation/Shoring/Excavation Plan require excavation into a neighboring property or if access onto the neighboring property is necessary for construction, the applicant shall submit, prior to the issuance of Building Permit, a written statement from the neighboring property owner granting permission for access onto his/her property for the purpose of excavation and/or construction.

2. **Neighboring Property Inspection.** Should the neighboring property owner provide consent, a licensed civil or structural engineer (chosen by the City, and paid for by the Property Owner) shall inspect neighboring homes and retaining walls at 132 Lexford Road, 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 150 Somerset Road, 160 Somerset Road, & 170 Somerset Road

with the intent of establishing base-line information to later be used in determining whether damage was caused by any activities on Property Owner's property (including damage caused by vibrations or other factors due to excavation, construction or related activities). The inspection shall include both foundations and non-foundation related details (walls, windows, general overall condition, etc.) at a level of inspection City Staff deems appropriate. The inspection shall only include readily visible and accessible areas of the neighboring homes. The licensed civil or structural engineer shall provide a full report to the City of his or her conclusions, and the report may be considered in developing the Construction Management Plan. If other independent consultants or specialists are required by the City to review plans and monitor construction activity, they shall be retained at the Property Owner's cost. Before a neighbor agrees to an inspection, City will advise neighbors that the property inspection is necessarily a public record under the California Public Records Act.

Within 45 days after the Certificate of Occupancy is issued on Property Owner's property, the same licensed civil or structural engineer chosen by the City (or a substitute licensed civil or structural engineer chosen by the City) shall inspect the same area in each neighboring home and property initially inspected, and shall present to the City a Report detailing any evidence of apparent damage that has been or reasonably might have been caused by activities on the Property Owner's property. The Report may include text, photographs, diagrams, or other evidence that would document the apparent damage. The Report will become a public record and may be used in connection with private causes of action.

3. Geotechnical Report and Review. The Property Owner shall submit a report prepared by a geotechnical engineer of the Property Owner's choice that fully assesses the existing site conditions, and addresses all issues regarding excavation and grading, foundations and their construction, drainage, retaining wall systems, periodic on-site observations, shoring requirements, permanent site stabilization, and other related items involving the Project.

- a. Peer Review. The City, at the Property Owner's sole expense, shall retain Alan Kropp as an independent geotechnical consultant to perform a peer-review of the Property Owner's geotechnical report and advise the City in connection with the Property Owner's proposals. Mr. Kropp's services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. Mr. Kropp shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction of the foundations as Mr. Kropp deems necessary. The Property Owner shall provide payment for this at the time of the Building Permit submittal. Mr. Kropp shall provide the Neighboring Property Owners with limited necessary status reports as the Foundation/Shoring/Excavation Plan progresses. Except for these status reports, the Property Owner will not pay for consultation between Mr. Kropp and the Neighboring Property Owners, and Mr. Kropp shall provide the Property Owner and City with all reports and correspondence among Mr. Kropp and the Neighboring Property Owners. Before visiting the Project site, Mr. Kropp must provide Lakritz reasonable notice and evidence of

professional liability insurance covering Mr. Kropp and naming Lakritz as an additional insured. Lakritz will not be liable for any acts or omissions of Mr. Kropp or any of his representatives. If Mr. Kropp is or becomes unable to serve as the independent geotechnical consultant for the Project, Van Gundy may nominate an alternative independent geotechnical consultant for the Project, subject to Lakritz's and City's approval. Lakritz and City will not unreasonably withhold or delay their approval of Van Gundy's nominee.

4. 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, site safety security and other potential construction impacts, as well as other details involving the means and methods of completing the Project, including the construction route and the days and hours permitted for heavy excavation. Outside construction involving high levels of noise, including excavation, hammering, and tile sawing, shall be limited to Monday through Saturday, from 8:30 a.m. to 4:30 p.m. Construction personnel shall be instructed not to park in front of 132 Lexford Road. The plan shall specify the sequencing of grading, excavation, shoring, foundation and construction activities. The City Building Official may require modifications and amendments to the Construction Management Plan throughout the course of the Project and until the Final Inspection.

- a. Construction Site Control of Stormwater. The California Regional Water Quality Control Board requires all projects that disturb the site to comply with Provision C.6 of the San Francisco Bay Regional Stormwater NPDES Permit in order to prevent construction site discharges of pollutants and other regulated materials during construction. Prior to the issuance of a building permit, the Applicant shall submit a construction stormwater management plan prepared by a licensed Civil Engineer to achieve timely and effective compliance with Provision C.6. Permit Provision C.6.c.ii provides sources for site specific, and seasonally- and phase-appropriate, effective Best Management Practices (BMPs) that must be incorporated into the stormwater management plan. Copies of the Municipal Regional Stormwater Permit are available from the Piedmont Public Works Department and on-line at cleanwaterprogram.org.
- b. Continual Street Access for Emergency Vehicles. The Construction Management Plan shall specifically address methods of providing continual street access for emergency vehicles at all times, which shall be subject to review and approval by the Fire Chief.
- c. Haul routes. Haul routes shall be provided to the City for review and approval. To the extent possible, haul routes shall attempt to minimize or eliminate use of minor residential roadways. Street and pavement conditions shall be observed and documented by the City on all haul routes prior to commencement of construction. Damage or observable and unusual wear and tear to haul routes on

Hampton Road and Lexford Road as specified by the City shall be repaired at the Property Owner's expense after Final Inspection.

5. **Site Safety Security.** The City and the public have an interest in not having an unfinished project blighting the neighborhood and undermining property values. These public interests are primarily safety and aesthetics, and diminishment of property values. Prior to the issuance of a Building Permit, the Property Owner shall provide to the City a specific cash deposit, letter of credit, bank guarantee, or other similar financial vehicle ("Site Safety Security") in the amount of \$200,000 to stabilize the foundation of the Project to ensure the Project site is not left in a dangerous or unfinished state, and if any funds are remaining, to complete excavation and landscape for aesthetic purposes. City shall release such security to Lakritz at the time it issues the first certificate of occupancy for the Project, which may be a temporary, partial or final certificate of occupancy.

- a. The Site Safety Security shall be in an amount to include three components: i) safety, which means the cost to make the site and structure safe if construction should cease mid-way through the Project; ii) aesthetics, which means an amount to install and maintain landscaping all around the Project to protect the immediate local views from neighbors and public property; and iii) staff and consultant time to evaluate and implement this condition.

If, as the Project proceeds, the expected cost of these components increases beyond the original estimate in the opinion of the Director of Public Works, the City may require the Property Owner to increase the amount of the Site Safety Security by the additional amount. The Property Owner shall provide City with written evidence of compliance within 15 working days after receiving written notice of the additional required amount. The City shall retain, at the Property Owner's expense, an independent estimator to verify the total expected costs to complete the Project and any subsequent revisions.

- b. The form and amount of the Site Safety Security is subject to the approval of the Director of Public Works. Payment to City under the Site Safety Security shall be made payable upon demand by the City and prior to the issuance of the Building Permit, conditioned solely on the Director of Public Works' certification on information and belief that all or any specified part of such Performance Security is due to the City.
- c. The Site Safety Security shall not be released until the Project has an approved Final Inspection by the Building Official. However, if sufficient work has been completed according to the benchmarks and construction values as established under the Construction Completion Schedule, the Site Safety Security may be reduced to the extent the Director of Public Works in his sole discretion determines is appropriate.

6. **City Facilities Security.** The Property Owner shall provide a specific cash deposit, letter of credit, bank guarantee, or other similar financial

vehicle (“City Facilities Security”) in the amount of \$350,000 as established by the Director of Public Works. This financial vehicle serves as an initial sum to cover the cost of any potential damage to City property or facilities in any way caused by Property Owner, Property Owner’s contractors or subcontractors, or any of their agents, employees or assigns, and related in any way to the Project. The Property Owner is responsible for the full cost of repair as determined by the City Engineer prior to final inspections. The form and terms of such City Facilities Security shall be determined by the Director of Public Works after consultation with the Property Owner. The Director may take into account any of the following factors: the cost of construction; past experience and costs; the amount of excavation; the number of truck trips; the physical size of the proposed project; the logistics of construction; the geotechnical circumstances at the site; and City right-of-way and repaving costs.

- a. To provide clear baseline information to assist in determining whether damage to the City’s facilities has been caused by the Property Owner or others working for or on behalf of Property Owner, the City will document such facilities (including, without limitation, streets and facilities along the approved construction route as specified in the Construction Management Plan, to establish the baseline condition of the streets and facilities. The City shall further re-document the streets as deemed appropriate after the Project commences until the Director of Public Works determines that further documentation is no longer warranted. As part of the documentation, the City may water down the streets to better emphasize any cracks or damage in the surface. The Property Owner is responsible for the full cost of the documentation and repair work as determined by the City Engineer, and shall reimburse the City for those costs prior to the scheduling of final inspection.
- b. When the City Facilities Security is in a form other than cash deposit with the City, the proceeds from the City Facilities Security shall be made payable to the City upon demand, conditioned solely on the Director of Public Works’ certification on information and belief that all or any specified part of the proceeds are due to the City.

7. Neighboring Property Damage Security. The Applicant shall provide adequate and appropriate Insurance or bonds, as approved by the Director of Public Works and City Attorney against damage to neighboring properties at 132 Lexford Road, 135 Lexford Road, 140 Lexford Road, 145 Lexford Road, 77 Huntleigh Road, 87 Huntleigh Road, 130 Somerset Road, 140 Somerset Road, 150 Somerset Road, 160 Somerset Road, and 170 Somerset Road, by any construction, excavation, and related work in any way involving the project, such insurance or bonds to be in the amount of \$3,000,000.00 and with any conditions established by the Director of Public Works after consultation with the Applicant. If the Director of Public Works determines that obtaining any particular insurance would be extremely difficult for Applicant due to its lack of availability even at an increased cost, the Director of Public Works may authorize an alternative method of providing equal protection to neighboring properties, including but not limited to partial coverage by Umbrella Insurance if that appears appropriate. Such insurance or any

alternative method shall allow for claims to be made for up to one year after the issuance of the Certificate of Occupancy on Applicant's project. Any and all such insurance or any alternative method shall specifically indicate that it covers damages to the above properties, and if such insurance is meant to also cover other potential damages, such as personal injuries or damages to other than the above-named properties, any such further coverage shall be in addition to the \$3,000,000 earmarked for neighboring properties.

8. Contractor's General Liability Insurance. To ensure that the contractor doing work in the City will be responsible for damages caused by the work to City property or to neighboring property, the Property Owner shall require all contractors performing work on the Project to maintain General Liability Insurance for protection from claims for damages because of bodily injury, including death, and claims for damages, other than to the contractor's work itself, to property which may arise out of or result from the contractor's operations. Such insurance shall be written for not less than \$1,000,000 per occurrence. The insurance shall include an endorsement requiring notice to the City if the insurance is cancelled or changed, and Property Owner shall immediately arrange for substitute insurance coverage. If the Property Owner does not have a general contractor, the Property Owner shall maintain property insurance and coverage for contractors, which is substantially equivalent to the contractor's requirement of this section.

9. Subsidence. The Property Owner acknowledges and agrees that all work on the Project may be immediately stopped by the City in the event of any unanticipated landslides, subsidence, creep, erosion or other geologic instability, and may not resume until the City Engineer is fully assured that no further subsidence or erosion will occur. If in the opinion of the City Engineer, the instability poses a danger to public or private property, and Property Owner is not responding in a diligent manner, the Director of Public Works may use proceeds from the Site Safety Security required above to address the instability.

10. 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.

- 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 and Shoring; 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 Site Safety Security, if one is required, in order to complete the benchmark. The Director of Public Works has the option to refer the application to the Planning Commission for public review.

11. Sound and Vibration Mitigation Plan and Review. As required by the Director of Public Works, the Property Owner shall submit a plan prepared by a licensed engineer of the Property Owner's choice that fully assesses the existing site conditions for the mitigation and monitoring of vibration and decibel levels at the Project during construction (including being periodically present at the construction site during excavation and foundation work). If, in the Engineer's sole discretion, such monitoring indicates that the sound or vibration levels exceed those anticipated in the Property Owner's Construction Management Plan and/or the Sound and Vibration Mitigation Plan, all work on the Project may be immediately stopped by the City and may not resume until the City Engineer is fully assured that the sound and vibration transmissions generated by work on the Project can be maintained at or below a reasonable level and duration.

- a. Peer Review. The City, at the Property Owner's sole expense, shall retain an independent engineering consultant to perform a peer-review of the Property Owner's Sound and Vibration Mitigation Plan and advise the City in connection with the Property Owner's proposals. The City Engineer shall select this independent engineering consultant, whose services shall be provided for the sole benefit of the City and whose reports and recommendations can be relied upon only by the City. The independent engineering consultant shall also review the building plans during the permit approval process, and may provide periodic on-site observations during excavation and construction as deemed necessary by the City Engineer. The Property Owner shall provide payment for this at the time of the Building Permit submittal.

12. Modifications to Conditions. Any insurance or security requirement, or related Condition of Approval, may be implemented and, if necessary modified, in a reasonable manner with the joint agreement of the Director of Public Works and the City Attorney, consistent with the intent of the condition.

13. Dedication of Funds. All funds or financial vehicles set forth in any of the above conditions shall be earmarked or dedicated so that they are not subject to creditor's or creditors' claims.

14. City Attorney Cost Recovery. If there is a substantial additional commitment of City Attorney's time required to accommodate the scope and nature of the Project, the Property Owner shall, at the time of the Building Permit Application, make a cash deposit with the City in the amount of \$5,000 to be used to offset time and expenses of the City Attorney relating to the Project. If such cash deposit has been reduced to \$2,500.00 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated additional City Attorney time and expenses. Any unused amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Building Official.

15. Consultant Cost Recovery. In order to accommodate the scope and nature of the Project proposed by the Property Owner, if the Director of Public Works deems it necessary to retain independent consultants with specialized expertise, including the City Engineer, the Property Owner shall make a cash deposit with the City at the time of the Building Permit Application in the amount of \$10,000 to be used to pay for the fees and expenses of such City consultants, or in any way otherwise required to be expended by the City for professional consultant assistance. If the cash deposit has been reduced to \$2,500 or less at any time, the Director of Public Works may require the Property Owner to deposit additional funds to cover any further estimated fees and expenses associated with consultants retained by the City on a regular basis or specifically for the Property Owner's Project. Any unexpended amounts shall be refunded to the Property Owner within 90 days after the Project has an approved Final Inspection by the Building Official.

16. Errors and Omissions Insurance. Notwithstanding any other condition hereof, any Project Architect, Structural Engineer, Civil Engineer, Geotechnical Engineer or Shoring Engineer to be retained by the Applicant to perform work relating to project on Applicant's property shall be required to maintain errors and omissions insurance coverage with limits of no less than \$1,000,000.00 per claim that will specifically be available to cover any errors and/or omissions relating to any work performed by that professional involving Applicant's property.

17. Approved Plan Set. The approved plans are those submitted on April 28, 2017, after notices to neighbors were mailed and the application was available for public review.

18. 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.

19. C&D Compliance. Compliance with Chapter 5 Article I of the Municipal Code, which governs the recycling of construction and demolition debris, is required for all phases of this project.

20. Setback from Property Line Verification. Prior to foundation inspection, the applicant shall submit to the Building Official written verification by a licensed land surveyor stating that the construction is located at the setback dimension from the southeastern property line adjacent to 145 Lexford Road and the northern property line adjacent to 130 and 140 Somerset Road as shown on the approved plans. The intent is to verify that the approved features are constructed at the approved dimension from the property line(s).

21. Building Height and Floor Level Verification. Prior to foundation and/or frame inspection, the applicant shall provide the Building Official written verification by a licensed land surveyor stating that the floor level(s) and roof of the new structure(s) are constructed at the approved height(s) above grade. Existing grades shall be established by the licensed land surveyor prior to the start of excavation and construction.

22. Double Trailer Truck Prohibition. To reduce potential damage to the streets and to avoid traffic hazards on narrow curving city streets, no double trailers shall be used as part of the Project.

23. California's Water Efficient Landscape Ordinance. Unless exempt, the property Owner shall comply with the requirements of California's Model Water Efficient Landscape Ordinance in effect at the time of building permit submittal, by submitting the following required information to the Building Department:

- a. Landscape Documentation Package that includes the following 6 items: i) Project Information; ii) Water Efficient Landscape Worksheet; iii) Soil Management Report; iv) Landscape Design Plan; v) Irrigation Design Plan; and vi) Grading Design Plan. The Landscape Documentation Package is subject to staff review and approval before the issuance of a building permit.
- b. Once a building permit has been issued, the Property Owner shall submit a copy of the Water Efficient Landscape Worksheet, to the local water purveyor, East Bay Municipal Utility District.
- c. After completion of work, the Property Owner shall submit to the City and East Bay Municipal Utility District a Certificate of Completion, including an irrigation schedule, an irrigation maintenance schedule, and an irrigation audit report. The City may approve or deny the Certificate of Completion.

(The form for the Landscape Document Package and a Frequently Asked Question document on the CA-WELO requirements is available at the Public Works Counter and on the City website at www.ci.piedmont.ca.us).

24. City Easement. City records indicate that a City sewer main and associated easement abut the east property line of this project and are located near the proposed construction. The applicant shall work with City staff to verify the location and depth of the sewer main. In addition, the City shall videotape the existing sanitary sewer main to assess its pre-construction condition in order to make a determination as to whether any repairs to or replacement of the sewer main is required prior to the commencement of excavation and/or construction. (The City is responsible for the cost of the main line, and the property owner for costs of the lateral.) As part of the final

inspection the same sanitary sewer lines shall be inspected as required by the Director of Public Works, who shall also determine if the sewer line was damaged as a result of the construction and therefore must be repaired at the applicant's expense. The applicant is responsible to locate their private sewer lateral and note such location on the building permit drawings.

25. **Blasting.** No blasting shall be allowed for any rock removal on this project.

26. **Sidewalk.** The applicant shall be responsible for installation of sidewalk fronting the entire project. Sidewalk construction shall be per City standards.

27. **Driveway.** The applicant shall be responsible for installation of a driveway for the property. The portion of the driveway within City right-of-way shall be constructed per City Standards.

28. **Right-of-Way.** Any work within the City's right-of-way will require obtaining an encroachment permit prior to commencement of work.

29. **Elevator Tower.** The elevator tower shall be provided with additional faux windows, recesses, decorative vents, or other elaborations that break up the massing of the tower and provide visual interest. Said modifications shall be subject to staff review and approval.

30. **Arborist's Report and Certified Tree Preservation Plan.** Before the issuance of a building permit, the Property Owner shall submit an Arborist's Report and Certified Tree Preservation Plan that includes tree preservation measures to preserve the existing Oak and Eucalyptus trees on the property and shown as to remain on the landscape plan. The tree preservation measures shall be on the appropriate sheets of the construction plans. The arborist shall be on-site during critical construction activities, including initial and final grading, to ensure the protection of the existing trees that are intended to be retained. The arborist shall document in writing and with photographs the tree protection measures used during these critical construction phases. If some trees have been compromised, mitigation measures must be specified in writing, and implementation certified by the Project Arborist. Trees proposed for removal shall have an in-lieu replacement tree planted elsewhere on the property, which shall be shown on the final landscape plan. Replacement tree size is subject to staff review, and shall be commensurate with the size and numbers of trees to be removed. They shall generally be a minimum of 24" box size. Before the Final Inspection, the Project Arborist shall file a report to the City certifying that all tree preservation measures as recommended have been implemented to his/her satisfaction and that all retained trees have not been compromised by the construction.

Moved by Behrens, Seconded by Ode

Ayes: Behrens, Ode, Ramsey

Noes: Thiel

Recused: None

Absent: Jajodia, Levine

**Variance and Design
Review Permit for a
New House
89 Maxwellton Road**

The Property Owner is requesting permission to construct a new, approximately 4,916-square-foot, three-story, single-family residence on an existing vacant lot. The new residence is proposed to have four bedrooms, three and a half bathrooms, dining room, family room, kitchen, media room, rear balconies, and an attached 677-square-foot, three-car garage at the front of the house. A 30-foot wide curb cut is proposed along Maxwellton Road that connects to a driveway bridge. Proposed landscape features include a patio and entry porch within the front yard, raised garden beds in the rear yard, and new planting, stairs, pathways, and lighting throughout the property. A variance is required in order to construct within the front (north) setback. A second variance is required from Municipal Code Section 17.34.040 in order to pave a portion of the front setback for a purpose other than ingress and egress.

Written notice was provided to neighbors. **Six negative response forms** were received. **No affirmative response forms** were received. **Correspondence** was received from: Lincoln and Lena Chu; Sudthida Cheunkarndee and Christopher Jung; Lucas and Mojdeh Tomsich; and Philip and Jean Stein.

Public testimony was received from:

John Newton, project designer, explained that the design includes a front courtyard to capture the natural light on the site. He commented on the neighbors' privacy concerns, stating that he had minimized the windows facing the neighbors, and that landscape architect Denise Bates is proposing a pittosporum hedge along both sides of the property. He submitted a drawing showing how the hedge would improve the neighbors' privacy. Mr. Newton also commented on the neighbors' concerns about the loss of an on-street parking space to accommodate the new three-car garage. He explained that the third parking space is proposed to serve the new accessory dwelling unit. He discussed the possibility of restriping the road to retain the three parking spaces, but indicated that the City had not supported the idea. In response to questions from Commissioner Ramsey, Mr. Newton stated that complying with the front setback or stepping the house down the hill would push the house further back on the steep lot, making it more massive and unable to comply with the City's height limit. He also maintained that the curb cut could not be reduced in size, and he discussed the proposed vertical siding. In response to questions from Commissioner Behrens, Mr. Newton stated that matching the size of the adjacent houses would be difficult, since the applicant wants a house of approximately 5,000 square feet. He maintained that houses vary in Piedmont and that the proposal meets the coverage limits of the zoning code.

Jean Stein, adjacent neighbor at 16 Nellie Avenue, spoke in opposition to the proposed house. She objected to the mass of the proposed house, its intrusion on the light and privacy of her home, its incompatibility with the neighborhood, and the loss of an on-street parking space. She expressed doubt that the proposed pittosporum hedge would mitigate her privacy concerns, given the time it would take for the plants to grow. Ms. Stein argued that the architectural plans are misleading, and she discussed the building height dimensions. She referred to a diagram showing her house being dwarfed by the proposed house. Ms. Stein later approached the Commissioners to respond to a question from Alternate Commissioner Thiel and indicate on the plans what portion of her home is within the 20-foot setback.

Philip Stein, adjacent neighbor at 16 Nellie Avenue, spoke in opposition to the proposed house, arguing that a variance should not be granted for personal

reasons. He discussed his home's design, which includes two, mostly-glass cylinders that provide light throughout his house. He argued that the proposed house would dwarf his house, depriving it of natural light, and that the 10 proposed windows on the side of the new house would impact his privacy. Mr. Stein stated that the proposed landscape plan does not maintain openness or retain existing vegetation, and that an existing stand of redwood trees would have otherwise provided screening of the new house. He maintained that the new house would be completely out of scale with the neighborhood, with its height, massing and large garage. He also objected to the proposed removal of the on-street parking space that serves many homes in the neighborhood.

Joan Anspach, neighbor at 90 Maxwellton Road, spoke in opposition to the removal of the on-street parking space. She stated that the new house would not impact her privacy, since she is located across the street, and that she has accepted that she will no longer have a view of oak trees; but she argued that the loss of an on-street parking space to allow for the construction of a large, unprecedented 3-car garage, is unacceptable and detrimental to the whole neighborhood. She explained that a dozen houses share three existing on-street parking spaces, which provide parking for guests and maintenance vehicles. Ms. Anspach suggested that she could support the construction of an appropriately-sized house with a 2-car garage.

Jack Preston, neighbor at 102 Maxwellton Road, spoke in opposition to the proposed new house. He described Maxwellton Road as a small winding street with difficult parking and an increase in traffic in recent years. He argued that the proposed 5,000-square-foot home with accessory dwelling unit could result in more cars, more maintenance vehicles and more visitors, while eliminating an on-street parking space. He suggested that the applicants redesign the driveway to retain all three on-street parking spaces. Mr. Preston also commented on the design of the proposed house, which he argued is too large and not in keeping with the neighborhood. He spoke in opposition to the 50-foot tall rear elevation and the front setback variance. He suggested that he could support a three-car garage if the proposed house were smaller and more in keeping with the neighborhood, if it were proposed farther from the road, and if it did not result in the loss of an on-street parking space.

Lucas Tomsich, adjacent neighbor at 81 Maxwellton Road, spoke in opposition to the proposed new house, citing its mass and privacy impacts. He explained that the sole entrance to the proposed accessory dwelling unit would impact his privacy by overlooking his patio and kitchen. He stated that although he appreciates the attempt to plant screening vegetation, the proposed hedges would take several years to grow tall enough to mitigate the situation. Mr. Tomsich argued that the proposed house, with its rear height being almost four times the height of his house, does not comply with the City's Design and Preservation Element Goal #28.1.

Lincoln Chu, neighbor at 12 Nellie Avenue, agreed with his neighbors that the size of the proposed house is not consistent with the neighborhood. He noted that the proposed house would be twice the size of his recently-expanded house. Mr. Chu also opposed the removal of an on-street parking space, stating that his recent remodel highlighted how little parking exists in the neighborhood for contractors and other visitors.

Following public testimony, the Commissioners began their discussion of the proposal. Consistent with City policy, the Commission paused at 11:30 p.m. to consider whether to continue or extend the hearing.

Resolution 15-PL-17

RESOLVED, that the Planning Commission extends the meeting an additional 30 minutes, until 12:00 a.m.

Moved by Thiel, Seconded by Behrens

Ayes: Behrens, Ode, Thiel

Noes: Ramsey

Recused: None

Absent: Jajodia, Levine

The Commission echoed many of the neighbors' concerns and was unanimously opposed to the proposed new house, citing its bulk, privacy impacts, and inconsistency with the neighborhood. Commissioner Ode stated that she considered the architecture to be overwhelming and not aesthetically pleasing. Commissioner Behrens stated that the proposed house is too large compared to other houses in the neighborhood and noted that the proposal runs counter to many of the City's guidelines, including Design and Preservation Element Goal #28.1. He indicated that he opposed the removal of an on-street parking space and would be more supportive of a two-car garage lower on the property. Commissioner Ramsey suggested that the applicant consider other options to retain the on-street parking, such as funneling the driveway to a smaller curb cut or rotating the third parking space. Alternate Commissioner Thiel considered the size of the house to be within reason, given its conformance with the lot coverage requirements, but found the house to be too massive. He and Commissioner Ramsey stated that the current design appears to have been designed for a flat lot, and they suggested that the house be redesigned to follow the slope of the lot. They also suggested that they would be open to a front setback variance, given the steep slope of the lot, if the house were more integrated into the topography. Commissioner Ramsey explained that redesigning the house so that the mass of the house steps down with the slope could result in a more interesting design, a simpler roof type, and a less expensive construction.

Director Jackson consulted with the Commissioners regarding their options for acting on the application. Assistant Planner Alvarez responded to Commissioner's questions. She explained the requested variance for a courtyard at the front of the house and clarified that an accessory dwelling unit no longer requires its own parking space.

Resolution 87-NH V/DR-17

WHEREAS, the Property Owner is requesting permission to construct a new, approximately 4,916-square-foot, three-story, single-family residence on an existing vacant lot. The new residence is proposed to have four bedrooms, three and a half bathrooms, dining room, family room, kitchen, media room, rear balconies, and an attached 677-square-foot, three-car garage at the front of the house. A 30-foot wide curb cut is proposed along Maxwellton Road that connects to a driveway bridge. Proposed landscape features include a patio and entry porch within the front yard, raised garden beds in the rear yard, and new planting, stairs, pathways, and lighting throughout the property, located at 89 Maxwellton Road, Piedmont, California, which construction requires a design review permit; and

WHEREAS, variances from the requirements of Chapter 17 of the Piedmont City Code are necessary to construct within the front (north) setback and to pave a portion of the front setback for a purpose other than ingress and egress; and

WHEREAS, after reviewing the application, plans and any and all testimony and documentation submitted in connection with such application, and after having visited the subject property, the Piedmont Planning Commission finds that the proposal does not conform to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is not consistent with the City's General Plan and Piedmont Design Guidelines, in that the following building features are not consistent with neighborhood development: the size and massing of the new house would be excessive.
2. The design has major effects on neighboring properties' existing views, privacy, and access to direct and indirect light, because the views are significant for the neighborhood, there is not sufficient vegetative screening on both sides of the house; and the topographical differences are not appropriate to preserve views, light, and privacy for the two neighbors on either side of the house. The height of the project, especially in the back, is excessively tall and is not as low as possible.
3. The proposed design does adversely affect pedestrian or vehicular safety, because the additional garage parking space results in the removal of an on-street parking space.
4. The application does not comply with the following guidelines: I-1, I-1(a), I-1(b), I-1(c), I-2, I-2(c), I-2(d), I-5(a), I-8, I-9, I-9(a), I-10, I-11, I-12, III-6(a), IV-1(b).
5. The project is not consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element, including: Land Use Element Policy 1.3 (Harmonious Development), Design and Preservation Element Policy 28.1 (Scale, Height, and Bulk Compatibility), 28.6 (Exterior Materials), 28.7 (Hillside Home Design), 28.8 (Acoustical and Visual Privacy), 28.9 (Eyes on the Street), 28.11 (Design Review), 28.12 (Creativity and Innovation), 29.1 (Conserving Residential Yards), 29.2 (Landscape Design), and 29.8 (Exterior Lighting).

WHEREAS, regarding variance, the Planning Commission finds that because the design review permit has been denied, there is no approved project in need of the setback or landscape variances.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission denies without prejudice the design review permit application for proposed construction at 89 Maxwellton Road, Piedmont, California, in accordance with the plans and specifications on file with the City;

BE IT FURTHER RESOLVED, that the Piedmont Planning Commission continues the consideration of the applications for a setback variance and a landscape variance at 89 Maxwellton Road, Piedmont, California, until the applicants return with a new application for design review permit.

Moved by Ode, Seconded by Behrens

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None
Recused: None
Absent: Jajodia, Levine

**Design Review Permit
and Fence Design
Review Permit
118 Bonita Avenue**

The Property Owner is requesting permission to demolish the existing garage and shed in the rear (east) of the property; construct an approximately 718-square-foot, two-story addition including a two-car garage with living space above on the right (south) side of the residence; enclose the existing entry porch and construct a new entry porch; modify windows and doors throughout; modify hardscape throughout the property including a new patio, driveway, curb cut, and pathways; construct a new 8-foot tall (maximum) wood fence on the right property line; and construct retaining walls at the front right corner of the property that are within the 20-foot street yard setback.

Written notice was provided to neighbors. **One affirmative and one negative response forms** were received.

Public testimony was received from:

Susan McLaughlin, homeowner, stated that the goals of the project are to construct a usable garage for her family's two cars, expand the rear garden, add a main-floor family room, reorient the front door, and create a foyer at the front of the house. She explained that the existing family room is in the basement, which makes it dark and unpleasant, and that the proposed family room (labeled "guest room" on the plans) would be constructed atop the proposed garage, giving it direct access to the back yard.

Dan McLaughlin, homeowner, outlined the efforts made to discuss the proposal with the neighbors. He expressed an understanding for their concerns and discussed the efforts made to address them. He explained that after completing the proposed design, erecting story poles, and gathering feedback from neighbors, his architect redesigned the project to shrink the addition's width and length, lower its height by 4 feet, and decrease its massing by 15%. Mr. McLaughlin outlined other revisions that were made to address the neighbors' concerns, including moving the person door on the garage and proposing no windows facing 120 Bonita Avenue. For 120 Bonita Avenue, he also offered to remove existing trees that currently block light and to construct a higher fence to increase privacy. In response to a question from Commissioner Behrens, Mr. McLaughlin explained that a set of stairs from the garage to the main level had been removed to reduce the bulk of the garage and had been replaced by more-complicated and more-expensive interior stairs.

Fred Karren, project architect, explained that the existing garage sits at the rear of the property, is difficult to access and is therefore not used. He commented on the importance of preserving the privacy and light for the adjacent neighbor at 120 Bonita Avenue, and explained the efforts to excavate so that the garage is almost at basement level and has less of an impact on the adjacent neighbor. Mr. Karren discussed other parts of the proposal, including the leveling of the rear yard, changes to the front entry, and general design details that would match those of the existing house. He noted that the application proposes no variances, because there is no hardship. In response to questions from Commissioner Ramsey and Alternate Commissioner Thiel, Mr. Karren explained how the finished floor elevations relate to the sidewalk, and he stated that the driveway would slope down from the sidewalk if the addition were lowered further. He also discussed the roof slope and stated that a flat roof would make the addition

appear to be tacked on. In response to a question from Commissioner Ramsey, Mr. Karren explained that the plate height of the addition's second story is 7 feet, despite the 12-foot, 2.5-inch overall ceiling height.

Jerry Becker, adjacent neighbor at 120 Bonita Avenue, spoke in opposition to the proposed addition, despite the design changes made to reduce the mass of the structure. He argued that the addition appears to be a massive two-story house directly adjacent to his house, and that it impacts light in his kitchen and bathroom. He indicated that his concerns regarding a loss of light are related to the addition itself and are not affected by the removal of the trees, with which he expressed ambivalence. He also noted that his concerns are not related to the garage, but to the family room (labeled "guest room" on the plans) atop the garage.

Following public testimony, the Commissioners began their discussion of the proposal. Consistent with City policy, the Commission paused at 12:00 a.m. to consider whether to continue or extend the hearing.

Resolution 16-PL-17

RESOLVED, that the Planning Commission extends the meeting an additional 30 minutes, until 12:30 a.m.

Moved by Ramsey, Seconded by Thiel

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

The Commissioners were divided in their support of the application. They spoke favorably about the design of the project and its architectural consistency, but some of the Commissioners expressed concern for its prominence on the street and its impact on the light of the adjacent neighbor at 120 Bonita Avenue. Commissioner Behrens commended the applicants on their design and considered the impact of the addition to be somewhat minimal. He suggested that removing the trees would help with the neighbor's light. Commissioner Ode commended the applicants on working with their neighbors, but maintained that the addition reads as a second house and does not fit with the neighborhood. Alternate Commissioner Thiel and Commissioner Ramsey agreed that the addition is too massive and suggested that the massing could be reduced by excavating further, pushing the addition back, stepping the addition, and/or lowering the plate heights. Commissioner Ramsey stressed his opinion that a ceiling height of 12 feet, 2.5 inches is too high, and suggested that the structure be lowered by at least 3 feet.

The Commission called Mr. Karren back to discuss the possibility of lowering the addition. He warned that lowering the grade too much could impact the safety of the driveway, that pushing the addition back could impact the privacy of the adjacent neighbor, and that other changes could impact the design aesthetics; but he stated that he would examine the options.

Commissioner Ramsey indicated that he was willing to approve the application with the condition that the height of the addition be reduced by 3 feet and that the architectural style remain the same, subject to staff review. Commissioner Ode and Alternate Commissioner Thiel were apprehensive to support such a motion given their concerns that the design could change too much or remain too massive. Given the mixed opinions and the late hour, Director Jackson

suggested that the Commission could ask the applicant if they would consent to having their application continued to a future meeting, at which point the applicant could return with an alternate design. Mr. Karren returned to the podium to offer consent and his full support in continuing the application so that he could revisit the design to address the Commissioner's concerns.

Resolution 89-DR-17

RESOLVED, that the Planning Commission continues the consideration of the application for a design review permit and a fence design review permit at 118 Bonita Avenue, to a regular upcoming Planning Commission meeting, as agreed to by the applicant.

Moved by Thiel, Seconded by Ode

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

Agenda Order

Commissioner Ramsey suggested that the Commission consider altering the agenda order to move the discussion of Agenda Item #11, 100 Dracena Avenue, before that of Agenda Item #9, 80 Somerset Road, given the late hour and the lack of speakers present for Agenda Item #9.

Resolution 17-PL-17

RESOLVED, that the Piedmont Planning Commission amends the agenda to move Agenda Item #11 before Agenda Item #9.

Moved by Ramsey, Seconded by Ode

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

**Variance
100 Dracena Avenue**

The Property Owner seeks retroactive approval for the addition of approximately 403 square feet of habitable space within the basement. A variance is required in order to exceed the floor area ratio limit.

Written notice was provided to neighbors. **Ten affirmative response forms** were received.

Public testimony was received from:

Lisa Joyce, project architect, explained that the proposed addition of habitable space within the basement of her applicants' home requires retroactive approval because of a misunderstanding about the degree of finishing that is allowed under code. She referred to the overwhelmingly positive response from neighbors. She also reported that 11 properties on the block exceed the FAR by the same amount or more, indicating that the applicants would not have an advantage over their neighbors. In response to questions from the Commission, Ms. Joyce stated that the additional habitable space was not on the original application, because the applicants planned to wait three years, as allowed for in the code. She noted that the code has changed since the applicants' project approval, to require that a homeowner wait three years from the time of a final permit (not, as previously required, from the time of the permit issuance) to increase FAR within the building envelope. She clarified that the applicants do not have a final building permit, and that it has been 15 months since permit issuance. Ms. Joyce stated that the basement space has the same ceiling height

as shown on the original plans, but that the applicants misunderstood direction from the building department, believing that the walls of the space could be finished. She stressed that the applicants were trying to follow the letter of the law. She suggested that the hardship for the variance relates to the fact that the yard will need to remain unfinished to accommodate construction again in three years.

Following public testimony, the Commissioners began their discussion of the proposal. Consistent with City policy, the Commission paused at 12:30 a.m. to consider whether to continue or extend the hearing.

Resolution 18-PL-17

RESOLVED, that the Planning Commission extends the meeting an additional 10 minutes, until 12:40 a.m.

Moved by Thiel, Seconded by Ramsey

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

The Commission discussed the variance application at length. Staff answered Commissioners' questions throughout the discussion, and Director Jackson suggested that the Commission consider the project as if the applicants were applying for the FAR variance with their original application. The Commission and Staff also discussed how this application could inform future changes to the code regarding the FAR exemption.

The Commission was divided in its support of the project. Commissioners Behrens and Ramsey considered the error to be an honest misunderstanding and were in favor of approving the variance. Commissioner Behrens commented on the beautifully designed project and the code change related to the timing of the exemption. He also indicated that he would likely have approved the original application with an FAR variance. Commissioner Ramsey maintained that the variance would not give the applicants an unfair advantage. Alternate Commissioner Thiel and Commissioner Ode were not in favor of approving the variance. Alternate Commissioner Thiel expressed his belief that the applicants' actions were disingenuous. He argued that the code change related to the timing of the exemption is moot, as is the fact that they would have to tear out the construction. He stated that he is unable to make findings to support a hardship. Commissioner Ode maintained that a misunderstanding does not constitute a hardship. When the Commissioners determined that the vote would be evenly split, Director Jackson explained that at least 3 people are needed to carry a motion. He recommended continuing the application to the next available Planning Commission hearing.

Resolution 139-DR-17

RESOLVED, that the Planning Commission continues the consideration of the application for a variance at 100 Dracena Avenue to the next available Planning Commission hearing, due to a lack of a motion that carries.

Moved by Ode, Seconded by Behrens

Ayes: Behrens, Ode, Ramsey, Thiel

Noes: None

Recused: None

Absent: Jajodia, Levine

**Fence Design Review
Permit
80 Somerset Road**

The Property Owner is seeking retroactive approval for fences and gates within the 20-foot street setback including: a chain-link fence on the left (south) property line; a wrought iron gate and fences along the driveway; and a redwood fence and gate along the right (north) property line.

Written notice was provided to neighbors. **Two affirmative response forms** were received.

No Public testimony was received and no comments were made by the Commission.

Resolution 135-DR-17

WHEREAS, the Property Owner is seeking retroactive approval for fences and gates within the 20-foot street setback including: a chain-link fence on the left (south) property line; a wrought iron gate and fences along the driveway; and a redwood fence and gate along the right (north) property line, located at 80 Somerset Road, Piedmont, California, which construction requires a design review 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 the subject property, the Piedmont Planning Commission finds that the project is categorically exempt under the California Environmental Quality Act, pursuant to CEQA Guidelines Section 15301, Class 1(e), and that the proposal, as conditioned, conforms to the criteria and standards of Section 17.66.060 of the Piedmont City Code:

1. The proposed design is consistent with the City's General Plan and Piedmont Design Guidelines, in that the following building features are consistent with the original architecture and neighborhood development: the lot is steep and the fences do not impose on the sidewalk, and the fence and gate match other fences in the neighborhood.
2. The design has little or no effect on neighboring properties' existing views, privacy, and access to direct and indirect light, because the height of the fence is 4 feet to 5 feet, 6 inches tall, and the majority of the fence is currently screened by vegetation.
3. The proposed design does not adversely affect pedestrian or vehicular safety, because the open iron fencing near the driveway does not block the view at the sidewalk.
4. The application complies with the following guidelines: V-5(a), V-5(b), V-7, V-9, V-10, V-11.
5. The project is consistent with General Plan policies and programs, including the land use element, housing element, and design and preservation element.

RESOLVED, that based on the findings and facts set forth heretofore, the Piedmont Planning Commission approves the design review permit application for proposed construction at 80 Somerset Road, Piedmont, California, in accordance with the plans and specifications on file with the City, subject to the following conditions:

1. **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.

2. **Encroachment Permit.** Before the issuance of a building permit, the Property Owner shall apply for an encroachment permit to allow for the construction within the public right-of-way.

Moved by Ramsey, Seconded by Behrens

Ayes: Behrens, Ode, Ramsey

Noes: Thiel

Recused: None

Absent: Jajodia, Levine

ADJOURNMENT

There being no further business, Chairman Ramsey adjourned the meeting at 12:40 a.m., June 13, 2017.