



City of Palo Alto

City Council Staff Report

(ID # 9936)

Report Type: Action Items

Meeting Date: 12/17/2018

Summary Title: 429 University Avenue: Appeal of Director's Decision on Condition Compliance

Title: PUBLIC HEARING / QUASI-JUDICIAL: 429 University Avenue [18PLN-00240]: Appeal of the Planning and Community Environment Director's Denial of a Minor Architectural Review Application for Proposed Exterior Building Materials, Colors, and Craftsman Related to a Previously Approved Mixed-Use Project. Environmental Assessment: Use of Mitigated Negative Declaration Prepared for 14PLN-00222. Zoning District: CD-C(G)(P) (Downtown Commercial With Ground Floor and Pedestrian Shopping Overlay) (Continued From December 3, 2018)

From: City Manager

Lead Department: Planning and Community Environment

Recommendation

Staff recommends the City Council:

1. Deny the appeal by Kipling Post, LP of the Director's partial denial of Application No. 18PLN-00240 and approve the corresponding Record of Land Use Action.
2. Amend the City Council's prior approval, memorialized in Record of Land Use Action No. 2017-02, by extending the term of that approval to December 31, 2019.

Executive Summary

This report provides the background information concerning prior City Council review of the 429 University Avenue project, subsequent Architectural Review Board review for condition compliance, and the current appeal of the Planning and Community Environment Director's decision. Kipling Post, LP timely appealed the Director's Decision partially approving and partially denying an application for minor architectural review. Other elements of the project, including the square footage and overall massing of the project, were conditionally approved by the City Council in 2017 and are beyond the scope of the present appeal. The sole issue currently in dispute is the Director's denial regarding exterior building materials, colors, and

craftsmanship-related detailing.

Background

This project was first presented to the City Council on appeal from a Director's approval on April 6, 2015. After holding public hearings on May 4 and November 30, 2015, the Council directed that it be returned to the ARB for further refinement. The project returned to the Council on February 6, 2017, at which time the City Council denied the appeal, approved the Mitigated Negative Declaration and Mitigation and Monitoring Plan, and approved a modified project with conditions. Among these conditions was a requirement the project to return to the ARB to evaluate the following three specific items:

- a. A decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation)
- b. Landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator.
- c. The exterior building materials, colors and craftsmanship-related detailing associated with the project.

The previous staff report from the February 6, 2017 hearing includes extensive background information, project analysis and evaluation against City Codes and Policies. The report, action minutes, transcript, and video of the meeting are available online:

February 6, 2017

Document	Link
Staff Report	https://www.cityofpaloalto.org/civicax/filebank/documents/55707
Action Minutes	https://www.cityofpaloalto.org/civicax/filebank/documents/56154
Transcript	https://www.cityofpaloalto.org/civicax/filebank/documents/56868
Video	http://midpenmedia.org/city-council-115/

On March 20, 2017, staff returned to City Council with written findings contained in a Record of Land Use Action (Attachment D). These findings specifically relied on the existence of the conditions highlighted above. With respect to the City's former Architectural Review findings,¹ the conditions were incorporated into findings 2, 4, 5, and 6, relating to context and compatibility:

¹ The City Council updated and streamlined its Architectural Review findings in December 2016, which the earlier appeal of the project was pending. The Council's adopted Record of Land Use Action analyzed the project under both the former and current Architectural Review findings.

“ . . . Conditions of approval for the project also ensure that the design of the building will be compatible with the immediate environment of the site. Conditions No. 3b and 3c require that the applicant return to the ARB for approval of the materials, colors, craftsmanship and landscaping, and Condition No. 3a requires a decorative wall treatment, feature or element along the southern elevation of the building. These requirements will ensure that design features are compatible with the immediate environment of the site. . . . ”

With respect to the City's current Architectural Review findings, the conditions were incorporated into finding 3, relating to high aesthetic quality and compatibility with the surrounding area:

“ . . . Lastly, the project, will have high quality materials, textures, colors and finishes because it is conditioned to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment of exterior building materials, colors and craftsmanship-related detailing associated with the project. . . .”

March 20, 2017:

Document	Link
Staff Report	https://www.cityofpaloalto.org/civicax/filebank/documents/56356
Action Minutes	https://www.cityofpaloalto.org/civicax/filebank/documents/56839
Transcript	https://www.cityofpaloalto.org/civicax/filebank/documents/57427
Video	http://midpenmedia.org/city-council-120/

The applicant submitted project plans on July 30, 2018 addressing the three items conditioned by the City Council. The ARB reviewed these proposals at the August 16, 2018, September 20, 2018, and October 4, 2018 public hearings. All of these reports and minutes are also available online:

The project plans reviewed at the October 4, 2018 hearing are available as Attachment H of this staff report and available online: bit.ly/429University.

August 16, 2018 ARB

September 20, 2018

Document	Link
Staff Report	https://www.cityofpaloalto.org/civicax/filebank/documents/66720
Minutes	https://www.cityofpaloalto.org/civicax/filebank/documents/67283
Video	http://midpenmedia.org/architectural-review-board-74-09202018/

October 4, 2018

Document	Link
Staff Report	https://www.cityofpaloalto.org/civicax/filebank/documents/66964
Minutes	https://www.cityofpaloalto.org/civicax/filebank/documents/67470
Video	https://youtu.be/PKsAfsKOTbA?t=456

On October 4, 2018, the ARB recommended denial of the subject application. After considering the ARB's comments, the Interim Planning and Community Environment Director approved in-part for the design of the west wall (Condition 3A) and the landscaping (Condition 3B). The Interim Direction also denied in-part for the materials, colors and craftsmanship-related detailing associated with the project (Condition 3C) on October 16, 2018. The decision letter is included in Attachment C.

On October 18, 2018, the applicant, Kipling Post LP, filed a timely appeal (Attachment B) pursuant to Palo Alto Municipal Code section 18.77.070. The appeal notes that the materials, colors, and craftsmanship are integral features of the project, modeled after buildings at 102-116 University Avenue. These features were sought with the approval for and granted by Council. The appellant notes that Planning staff did not object to the concrete and had recommended approval to the ARB.

The appellant further states that because the project has residential units, the project must be reviewed in the context of California's Housing Accountability Act (CHAA). The appellant states that the purpose of the statute is to limit the ability of local governments to "reject or make infeasible housing developments...without a thorough analysis of the economic, social and environmental effects of the action." Because the residential units are encompassed in the CHAA and comply with objective standards, the City must provide evidence supporting the denial with specific findings that their approval would result in a "specific, adverse impact" on "public health or safety." The appellant states that no such findings were made, nor can such findings be made as the City has no objective, identified written public health or safety standards or policies that would warrant disapproval.

On November 13, 2018, the appellant's attorney, Timothy Kassouni, submitted a letter brief arguing that the appeal must be upheld for a variety of reasons, including that the October 16, 2018 Director's decision conflicted with the Council's findings in Record of Land Use Action 2017-02, that the City's architectural review findings are constitutionally vague, and that the

CHAA applies to this project. The City Attorney's Office will provide separate, confidential advice evaluating Mr. Kassouni's assertions. Correspondence from Mr. Kassouni is provided in Attachment G.

On November 29, 2018, Kipling Post submitted a supplement to the appeal stating that the primary issue on appeal concerns compliance with Condition of Approval No. 3. Kipling Post argues that the denial is in error, lacks substantial evidence, is inconsistent with previous findings, exceeds the scope of the condition, and wrongly relies on elements of the Municipal Code that apply to new applications, and not condition compliance. This additional correspondence from Kipling Post is provided in Attachment H.

The applicant/appellant's appeal was agerized for the City Council's December 3, 2018 consent calendar. At this meeting, the City Manager recommended removal from the consent calendar to schedule for a future hearing and allow staff time to respond to questions regarding changes to the fourth floor.

Discussion

The Council's purview in this appeal is limited to the items discussed in the Director's decision. Other elements of the project, including the square footage and overall massing of the building, were approved in 2017 and are beyond the scope of the present appeal. Of the items discussed in the Director's decision, only the Director's denial regarding exterior building materials, colors, and craftsmanship-related detailing is disputed by the applicant. Some questions have arisen regarding the project's compliance with the original Council approval with regard to massing on the fourth floor, which is discussed further in this report.

Appeal Issue 1: Exterior building materials, colors and craftsmanship-related detailing

Response: The ARB reviewed the applicant's proposal for exterior building materials, colors and craftsmanship-related detailing at the August 16, September 20, and October 4, 2018 meetings. Although the ARB was able to provide some feedback at its August 16 and September 20 meetings, which the applicant incorporated into the design – such as use of lighter colors and more clearly differentiating between the upper and lower floors – the applicant did not provide renderings of the craftsmanship-related detailing in context until the October 4, 2018 hearing. Upon reviewing these renderings, the ARB noted that the details were not adequate for approval. More specifically, the project does not comply with the contextual and compatibility criteria of the municipal code in that it does not share general characteristics or establish design linkages with the overall pattern of development. Surrounding buildings have design elements and material detailing that are human-scaled, regardless of the overall building envelope. The ARB found that the project's lack of such features rendered it incompatible with the surrounding area.

On October 15, 2018, the Interim Director provided Kipling Post LP an opportunity to incorporate detailing into the design in an effort to secure complete project approval. Kipling Post LP refused the opportunity. The Interim Director's communication to the applicant is provided in Attachment F and states that minor adjustments, such as incorporating sunshades or awnings along University Avenue and adding texture to the exterior concrete on the first and second floors would bring the project into alignment with the required findings.

Appeal Issue 2: Review of the project as a residential project under the California Housing Accountability Act.

Response: The project is a mixed-use project, consisting of residential, commercial and office uses. The CHAA applies to "housing development projects," including mixed-used projects with at least two thirds of the square footage designated for residential use. The project approved by the City Council on February 6, 2017 includes 20,407 square feet of non-residential uses and only 8,140 square feet of residential uses. This ratio of residential to commercial floor area disqualifies this project from being subject to the CHAA.

Amendment of Record of Land Use Action 2017-02 to extend entitlement

The Council's approval of a modified project on February 6, 2017 required that the applicant secure a building permit within one year. In order to allow the applicant to incorporate the Council-directed modifications and to seek ARB approval of the three remaining items, the Planning Director approved a one-year extension of the project entitlement to February 6, 2019, but any further extension would require Council action. The applicant asserts that any expiration of its entitlement would be invalid in light of its good faith attempt to commence construction. If the Council denies the applicant's current appeal or continues the hearing, staff recommends that the Council amend its prior approval to extend the life of the entitlement until December 31, 2019. This extension would avoid potentially unnecessary disputes regarding the validity of the original entitlement while the applicant resolves any remaining issues regarding exterior building materials, colors, and craftsmanship.

Project Revisions to the Fourth Floor

Some questions have been raised regarding changes made to the fourth floor since the City Council approved the project. These changes were necessitated to restore floor area removed from other portions of the building to accommodate project refinement. The conceptual project plans approved by the City Council did not benefit from the typical review process and were never fully developed by the applicant. It was anticipated that there would be some refinement to account for compliance with building code and other requirements. Moreover, the applicant received approval for a certain amount of project floor area. While the fourth floor received considered attention when this project was previously reviewed by Council to

ensure neighborhood compatibility – this floor level offered the only reasonably place to accommodate the lost floor area. Approximately 600 square feet of the building floor area was transferred to the fourth floor. This includes portions of the third floor at the corner of Kipling and University that the City Council directed be removed to reduce mass. While a portion of the building was removed from this location, the overall project floor area was not reduced and there was no guidance on where that floor area would be placed.

When accounting for this and other floor area, staff directed the additional area way from Kipling and University Avenue. The floor area respects the previously approved setbacks and is located toward the interior property line, which is largely hidden from view. Staff's review of the building finds it generally consistent with the conceptual plans previously reviewed by the City Council. The diagram below highlights the approximate location of the change.



Evaluation of Landscaping

The project proposes landscaping in planters bordering the open space area along the Lane 30 alley. The landscaping is placed in five planters, and the applicant includes the garden wall concept previously reviewed by Council. The applicant proposes 18 rectangular planters bordering the edge of the fourth floor glass railing. These planters are two-and-a-half feet (2.5 ft) long, 18 inches wide and 20 inches high. The Option 1

plan did not include planters on the fourth floor.

Environmental Review

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. On February 6, 2017, the City Council approved the Initial Study and Mitigated Negative Declaration for this project, which is available online at:

<https://www.cityofpaloalto.org/civicax/filebank/documents/49897>

Attachments:

Attachment A: Draft Record of Land Use Action (DOCX)

Attachment B: October 18, 2018 Appeal of Director's Decision (PDF)

Attachment C: October 16, 2018 Director's Decision Letter (PDF)

Attachment D: February 6, 2017 Record of Land Use Action (PDF)

Attachment E: Location Map (PDF)

Attachment F: Email Correspondence to Kipling Post LP, dated October 15, 2018 (PDF)

Attachment G: Kassouni Law Kipling Post Correspondence, Dated November 13 and October 31, 2018 (PDF)

Attachment H: Kipling Appeal Supp Final 11 29 18 (PDF)

Attachment I: Appellant Correspondence (PDF)

Attachment J: Project Plans (DOCX)

APPROVAL NO. _____

**RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE
ACTION FOR 425 AND 429 UNIVERSITY AVENUE: MINOR
ARCHITECTURAL REVIEW APPLICATION [18PLN-00240]**

On December 3, 2018, the City Council of the City of Palo Alto considered an appeal of the Planning and Community Environment Director's decision to deny in part a Minor Architectural Review for the exterior building materials, colors and craftsmanship-related detailing subject to the following findings, determinations and declarations to support their decision:

SECTION 1. Background. The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A The project site is comprised of two lots, 425 and 429 University Avenue (APN Nos. 120-15-029 and 120-15-028, respectively) of approximately 11,000 square feet. The site contains two commercial structures bordered by University Avenue to the southeast, Lane 30 E to the northwest, and Kipling Street to the northeast. Single-story businesses border the site to the northeast along Kipling Street, and one-and-a-half story businesses border the project site along University Avenue.

B On February 6, 2017, the City Council denied an appeal, thereby affirming the decision of the Planning and Community Environment Director, approving Kipling Post LP's request for a Major Architectural Review for the development of a mixed-use project on an 11,000 square foot parcel ("The Project").

C On March 20, 2017, the City Council approved written findings and conditions of approval contained in Record of Land Use Action No. 2017-02. Condition of Approval #3 required the Architectural Review Board (ARB) to conduct minor architectural review, evaluating the following: a decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation); landscape details and plans for all proposed planting, including individual planters, the green wall, and landscaping near the rooftop elevator; and the exterior building materials, colors and craftsmanship-related detailing associated with the project.

D On July 13, 2018 the applicant submitted plans in response to Condition of Approval No. 3.

E On August 16, 2018, the Architectural Review Board reviewed the applicant's proposed response to Condition of Approval No. 3 from Record of Land Use Action No. 2107-02, and directed the applicant to return with clarification about how the west wall design relates to the entire building. The motion referenced that the design include more detail and layering to better reflect the architectural design intent resembling a tree-like motif; include construction details that demonstrate the craftsmanship of the building; and, return with details showing how the landscaping would look over time.

F The applicant submitted revised plans on August 24, 2018, in response to the ARBs comments.

G On September 9, 2018, the project was continued to a date certain on September 20, 2018 to allow the ARB to assemble a quorum.

H On September 20, 2018 the ARB requested that the grey color be lightened and that samples of the grey color on the various materials be provided. The ARB was also open to beige colors and warmer colors generally to better integrate the building into the surrounding neighborhood. The ARB requested that the color scheme be divided between the first two floors and the top two floors, which would include making the concrete floors/ceiling between levels consistent with the floor levels; include construction details that demonstrate the craftsmanship of the building; that additional planters be added to the first and fourth level of the building and to have an actual green screen on the rear wall and fourth floor area where the vine is proposed; better integrate the west wall with the building, particularly the top two floors; and, provide a minimum of two high quality photo renderings: the first rendering from University Avenue, looking towards the west wall; the second rendering from Kipling Street, showing the Kipling Street and the Lane 30 elevation.

I On September 26, 2018, the applicant provided revised plans in response the ARBs September 20, 2018 comments.

J The ARB considered the project on October 4, 2018 and recommended denial to the Interim Director of Planning and Community Environment. In making this determination, the Board articulated concerns with the project meeting required architectural review findings, specifically findings number 2 and 3.

K On October 15, 2108, the applicant refused the Interim Director's opportunity to incorporate detailing into the design in an effort to secure a complete project approval.

L On October 16, 2108, the Interim Planning and Community Environment Director issued an approval in part related to the west wall tree-motif design (ROLUA No. 2017-02 Condition of Approval 3a) and landscaping (ROLUA No. 2017-02 Condition of Approval 3b); and denial in part relating to the exterior building materials, colors, and craftsmanship-related detailing associated with the project (ROLUA No. 2017-02 Condition of Approval 3c).

M On October 18, 2108, a timely appeal was filed by Kipling Post, LP ("the Appellant") stating that the building materials, colors, and craftsmanship are integral features of the project; that Planning recommended approval to the ARB at three hearings; and that the City did not adopt the correct findings as prescribed by the California Housing Accountability Act to deny the project.

N The City Council reviewed the appeal on December 3, 2018, removed it from the Consent Calendar, and continued it to be heard at a public hearing on December 17, 2018.

O The City Council reviewed the appeal on December 17, 2018, and duly rejected the appeal, hereby affirming the decision of the Interim Planning and Community Environment Director.

SECTION 2. Environmental Review. The City as the lead agency for the Project has determined that the project is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Guideline section 15070, Decision to Prepare a Negative or Mitigated Negative Declaration. An initial study was prepared for the project in 2014 and was updated

in August of 2015 and it was determined that, with the implementation of conditions of approval, and mitigation measures no potentially adverse impacts would result from the development, therefore, the project would have a less than significant impact on the environment.

SECTION 3. Architectural Review Findings. Pursuant to Palo Alto Municipal Code Section 18.76.020(d), neither the director, nor the city council on appeal, shall grant architectural review approval, unless it is found that the project is consistent with certain adopted findings. At the time that the project application was filed and appealed to Council, the findings presented in this section were in use, and the Council finds that the project is consistent with them as follows:

Finding #1: The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

The proposed decorative wall treatment and landscape plan are consistent with this finding in that it is in general conformance with the Downtown Design Guidelines and the following Comp Plan Goals and Policies. With respect to the exterior building materials, colors and craftsmanship-related detailing, however, the project is inconsistent with Comp Plan policies L-1.3 and L-4.7, as detailed below.

<i>Comp Plan Goals and Policies</i>	<i>How project adheres or does not adhere to Comp Plan</i>
The Comprehensive Plan land use designation for the site is Regional/Community Commercial	The project proposes landscaping, materials and color board, and decorative wall design treatment to a previously approved building that is consistent with the Regional/Community Commercial designation
<i>Land Use and Community Design Element</i>	
Goal L-1: A compact and resilient city providing residents and visitors with attractive neighborhoods, work places, shopping districts, public facilities and open spaces.	The project is a compact mixed-use development along University Avenue. It contributes to an attractive neighborhood through the use of long lasting materials, landscaping, and a decorative design to the interior property line wall.
Policy L-1.3: Infill development in the urban service area should be compatible with its surroundings and the overall scale and character of the city to ensure a compact, efficient development pattern.	The decorative wall treatment and landscape plan are compatible the project's surroundings and with the overall scale and character of the City in that they add visual interest to the project, retain or replace existing street trees, and otherwise represent sustainable principles of design. The building exterior is not compatible with its surroundings, however, because it fails to incorporate detail and craftsmanship in design

	that is similar to the surrounding buildings.
Goal L-2: An enhanced sense of community with development designed to foster public life, meet citywide needs and embrace the principles of sustainability.	The project uses native indigenous landscaping and drip irrigation systems that represent sustainable principles of design.
Policy L-4.7: Maintain and enhance the University Avenue/Downtown area as a major commercial center of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.	The project consists of a quality designed building by treating the west wall elevation with a pattern that breaks up the façade, employs long lasting materials in the form of concrete, and strategically places landscaping in key open space areas of the building. The project fails, however, to apply level of detail found in the surrounding area to other parts of the building exterior, which features several large, blank walls.

Finding #2: The project has a unified and coherent design, that:

- a. creates an internal sense of order and desirable environment for occupants, visitors, and the general community,
- b. preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,
- c. is consistent with the context-based design criteria of the applicable zone district,
- d. provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,
- e. enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.

The proposed decorative wall treatment and landscape plan are consistent with this finding. The decorative wall treatment provides an aesthetic element that enhances the design and provides an alternative to a blank wall at the upper floor elevations. The proposed landscaping plan provides color, softens and integrates well with the building architecture.

With respect to the exterior building materials, colors and craftsmanship-related detailing, however, the project is inconsistent with Findings 2c and 2d. The project does comply with contextual and compatibility criteria set forth in the City's municipal code. Compatibility is achieved when new construction shares general characteristics and establishes design linkages with the overall pattern of buildings so that the visual unity of the street is maintained. Existing buildings in the surrounding area are pedestrian- and human-scaled containing rich architectural details that promote visual interest and warm colors that create an inviting pedestrian experience. By contrast, the proposed project uses exterior building materials (concrete) and colors (gray) that results in a design with little to no architectural detailing and no design linkages that reflect the overall pattern of buildings in the area. Visual unity is disrupted by the proposed use of building materials, colors and limited detailing and is not contextually appropriate to the area. More specifically, the project does not comply the context-

based criteria in PAMC sections 18.18.110(b)(1)(B)1; 18.18.110(b)(2)(B)2; 18.18.110(b)(2)(C)3, which seek to promote pedestrian-oriented design by incorporating covered waiting areas, weather protection, projecting overhangs, appropriately sized recessed building entrances and other architectural elements that promote a human scale.

Finding #3: The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.

The proposed decorative wall treatment uses integrated materials and appropriate construction techniques. The proposed landscaping plan incorporates drought tolerant species and a variety of trees, shrubs and perennials suitable to the site.

With respect to the exterior building materials, colors and craftsmanship-related detailing, however, the project is not consistent with this finding. The proposed textures, colors and craftsmanship are not compatible with and do not enhance the surrounding area. The surrounding area predominately consists of buildings that include a warm color palette and architectural detailing that promotes the pedestrian-oriented environmental along University Avenue. Comparably scaled buildings in the area, such as 432 and 488 University include warm colors, varied construction materials and detailing that adds relief and dimension at the first and second levels. Some of these details include Juliet balconies, faux balustrade screens in front of windows, recessed store fronts, awnings and recessed windows that enhance the pedestrian-scale and experience. Other nearby, lower-profile buildings similarly employ planters, decorative lighting, and architectural detailing that enhance the area. The proposed project, however, uses flat textures and glazing combined with a cool color palate and includes no architectural details that relate to or enhance the pedestrian environment and results in building that stands in stark contrast to other improvements in the area. To achieve compliance with this finding based on the existing, previously approved mass and scale, the applicant could explore using building materials, colors and craftsmanship-related detailing that adds a depth of dimension and visual relief to enhance the surrounding area. The use of textured concrete in a warmer color palate combined with other pedestrian-scale features, such as awnings or sunscreens would be more compatible with the type of development found along pedestrian-oriented University Avenue.

Finding #4: The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.).

1 PAMC 18.18.110(b)(1)(B): On primary pedestrian routes, climate and weather protection where possible, such as covered waiting areas, building projections and colonnades, and awnings (Figure 1-2).

2 PAMC 18.18.110(b)(2)(B): Facades that include projecting eaves and overhangs, porches, and other architectural elements that provide human scale and help break up building mass (Figure 2-2).

3 PAMC 18.18.110(b)(2)(C): Entries that are clearly defined features of front facades, and that have a scale that is in proportion to the size and type of the building and number of units being accessed; larger buildings should have a more prominent building entrance, while maintaining a pedestrian scale.

The project is consistent with this finding in that the proposed elements that are being considered in this application are located in appropriate locations and do not impede the ease or safety of pedestrians or cyclists and generally support the buildings operations.

Finding #5: The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained.

The project is consistent with the finding because it preserves existing street trees along University Avenue and replaces trees along Kipling Street. The project's landscaping includes drought tolerant species and a variety of trees, shrubs and perennials suitable to the site. The plantings focus on the most logical locations in the building that consist of open circulation areas, and along areas accessible to the public, such as along the Lane 30 alley.

Finding #6: The project incorporates design principles that achieve sustainability in areas related to energy efficiency, water conservation, building materials, landscaping, and site planning.

In accordance with the City's Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2. A summary of the project's compliance is on sheet GB-1 of the plans. The project includes a number of measures to preserve water including using drip irrigation and proposing landscaping that is drought tolerant and is less than 500 square feet in size. The small area of landscaping and compliance with CALGreen Mandatory + Tier 2 will achieve sustainable principles related to energy efficiency and water conservation.

SECTION 4. Term of Approval. For the portions of this project that were approved, this entitlement shall expire at the same time as the previously granted entitlement (ROLUA No. 2017-02).

SECTION 5. Amendment of Record of Land Use Action 2017-02. Section 7 (Conditions of Approval) of Record of Land Use Action 2017-02 is hereby amended to amend Condition 12, Expiration to read as follows:

“12. EXPIRATION. The project approval shall be valid until December 31, 2019. In the event a building permit(s) is not secured for the project within the time limit specified above, the Architectural Review approval shall expire and be of no further force or effect. The project approval is not eligible for further extension by the Director.”

PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO CONTENT:

Interim Director of Planning and Community Environment

APPROVED AS TO FORM:

Senior Asst. City Attorney

CITY OF PALO ALTO
Office of the City Clerk
APPEAL FROM THE DECISION OF DIRECTOR OF PLANNING CLERK'S OFFICE
AND COMMUNITY ENVIRONMENT*

18 OCT 18 PM 3:05

For appeals of final decisions on Architectural Review Board and Home Improvement Exception applications (rendered after public hearing), this appeal form shall be completed and submitted by appellant within fourteen days from date of the Director's decision. Appeals of final decisions on Individual Review applications (rendered after public hearing) must be submitted within ten days of the Director's decision. Complete form, the current fee and a letter stating reasons for the appeal shall be submitted to front desk staff of the Planning Division, 5th floor, City Hall, 250 Hamilton Avenue, except for 980 Fridays when City Hall is closed, when these items shall be submitted to Planning staff at the Development Center, 285 Hamilton Avenue (glass storefront across from City Hall on the corner of Bryant and Hamilton).

* Director of Planning includes his designees, which are Planning Managers or the Chief Planning Official

Appeal Application No. 18-PLN 00240 Receipt No. _____
Name of Appellant ELIZABETH WONG Phone (650) 814-3051
Address P.O. Box 204, Palo Alto, 94302
Street City ZIP

LOCATION OF PROPERTY SUBJECT TO APPEAL:

Street Address 429 UNIVERSITY AVENUE

Name of Property Owner (if other than appellant) KIPLING POST LP

Property Owner's Address P.O. Box 204 PALO ALTO 94302
Street City ZIP

The decision of the Director of Planning and Community Environment dated OCTOBER 16, 20 18

whereby the application 18-PLN 00240 by KIPLING POST LP
(file number) (original project applicant)

was DENIED, is hereby appealed for the reasons stated in the attached letter (in duplicate)
(approved/denied)

Date: 10/18/18 Signature of Appellant Elizabeth Wong

PLANNING COMMISSION RECOMMENDATION TO THE CITY COUNCIL (TO BE FILLED OUT BY STAFF):

Date _____ Approved _____ Denied _____

Remarks and/or Conditions:

CITY COUNCIL DECISION (TO BE FILLED OUT BY STAFF):

Date _____ Approved _____ Denied _____

Remarks and/or Conditions:

SUBMITTAL REQUIREMENTS SATISFIED:

1. Letter stating reasons for appeal
2. Fee (currently \$280.00)

Received by: Jessica Bretts
Received by: Jessica Bretts

APPEAL FROM THE DECISION OF DIRECTOR OF PLANNING
AND COMMUNITY ENVIRONMENT

October 18, 2018

This letter is in support of the appeal of the decision by the Director of Planning and Community Environment for the project proposed at 429 University Avenue in his letter dated October 16, 2018 [18-PLN00240].

The project, as presented to the Architectural Review Board Minor Level Review (ARB) at its three hearings on August 16, September 20, and October 4, 2018, was for minor architectural review of (a) west wall details, (b) landscape and (c) exterior building materials, colors and craftsmanship to fulfill conditions of approval stated in the Land Use Approval letter by City Council dated February 6, 2017. Planning concurred that the plans presented to the ARB are in conformance with Option 1, which is the project version approved by Council, and subsequently presented the plans to ARB for review of the three items above.

In his determination letter dated October 16, 2018, Items (a) and (b) above were approved by the Director of Planning and are not objected to in this appeal. Item (c) was denied although the exterior building materials, colors and craftsmanship are integral features of this project, are modeled after buildings at 102 - 116 University Ave, and were what Applicant sought approval for and granted by Council. Furthermore, Planning, in its many iteration of review, never objected to the concrete, it being a large component of the Option 1 design approved by Council. In fact, Item (c) was recommended by Planning for approval to the ARB at all three hearings and such recommendation for approval is well documented in all three Staff Reports to ARB by Planning.

This project was panned by the ARB Major Review in each of its past hearings which caused the project to appear and subsequently be approved by Council. The Minor Level ARB had similar negative biases against this project. To further complicate the review only three members were available to hear this project as two of its members were recused for various reasons. Of the 3 remaining members, Chair Alexander Lew voted to approve and members Robert Gooyer ("I never liked the project it will go before council anyway") and member Osma Thompson voted to disapprove.

Ms. Thompson, as a new member of the ARB, had not had the benefit of the lengthy discussion and review process which ultimately resulted in Council's approval of this building. The approved building is modern by design. In her comments at the ARB, Ms. Thompson repeatedly said that the modern style of the building was massive and not compatible with downtown Palo Alto, even though there are many examples of modern buildings existing next to traditional styles in the vicinity of the project. Further, massiveness and compatibility of the project was already approved by Council and not relevant to item (c) above and not the subject of the ARB review.

Because this project has residential units, the project must be reviewed in the context of California's Housing Accountability Act (CHAA). (Government Code § 65589.5.) The purpose of this statute is to limit the ability of local governments to "reject or make infeasible housing developments ... without a thorough analysis of the economic, social, and environmental effects of the action...." (§ 65589.5, subd. (b).) Subdivision (j) of the statute provides that "[w]hen a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project's application is determined to be complete," a local agency which "proposes to disapprove the project ... shall base its decision regarding

the proposed housing development project upon written findings supported by substantial evidence on the record that ... [¶] (1) [t]he housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved" and "(2) [t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact ... other than the disapproval of the housing development project...."

Residential housing projects, such as that proposed by the Applicant, are expressly included in the CHAA as a "housing development project." (See Government Code § 65589.5, subd. (h)(2)(A)(C).) Applicant's project is intended to include the construction of three residential housing units in a City with a severe housing shortage. The ARB has not articulated any public health or safety rationale for disapproval.

Because the residential units are encompassed within the CHAA, and comply with all objective standards, the burden of proof shifts to the City and ARB to support denial with specific findings that approval would result in a "specific, adverse impact" on "public health or safety." The phrase "specific, adverse impact" means a "significant, quantifiable, direct, and unavoidable impact, based on *objective*, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete." (Government Code § 65589.5, subd. (j)(1). (Emphasis added.) No such findings were made, nor can such findings be made as the City has no objective, identified written public health or safety standards or policies that would warrant disapproval.

Respectfully submitted,

Kipling Post LP



PLANNING & COMMUNITY ENVIRONMENT

CITY OF
**PALO
ALTO** 250 Hamilton Avenue, 5th Floor
Palo Alto, CA 94301
650.329.2441

October 16, 2018

Peter Ko
Ko Architects
900 High Street
Palo Alto, CA 94301

Subject: 429 University Avenue [18PLN-00240] Minor ARB Review Pursuant to Condition of Approval No. 3 from Record of Land Use Action No. 2017-2

Dear Mr. Ko:

On October 4, 2018, the Architectural Review Board recommended denial of the subject application. After considering the Board's comments, I am approving in-part and denying in-part this application on October 16, 2018. The decision is effective 14 days from the date of this letter, unless an appeal is filed in accordance with Title 18 of the Palo Alto Municipal Code. The denial is based on the findings in Attachment A and is for the project described below.

In accordance with the City Council approved Record of Land Use Decision (Approval No. 2017-2), the subject development is required to obtain approval from the director of Planning and Community Environment, for the following prior to the issuance of building permits:

- a. A decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation) starting at an elevation equivalent to the building height of the adjacent structure and extending to the roofline of the proposed building.
- b. Landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator.
- c. The exterior building materials, colors and craftsmanship-related detailing associated with the project.

The application is approved with respect to the decorative wall treatment for the project's west elevation and the landscape details; it is denied with respect to exterior building materials, colors, and craftsmanship-related details. Findings and conditions for this decision are provided in Attachment A.

The denial in part is consistent with comments and concerns expressed by Architectural Review Board Members at its August 16, September 20, and October 4, 2018 meetings regarding the



exterior detailing and craftsmanship of the project. It also follows Kipling Post LP's refusal, on October 15, 2018, of my suggestion to incorporate detailing into the design in an effort to secure a complete project approval.

Should you have any questions regarding this determination, please do not hesitate to contact the Project Planner, Adam Petersen, by email at apetersen@m-group.us or by phone at (408)340-5642.

Sincerely,



Jonathan Lait, AICP
Interim Director
Planning and Community Environment

c: Elizabeth Wong, Kipling Post LP, PO Box 204 Palo Alto CA 94302

Attachments: A: Project Findings and Conditions of Approval

ATTACHMENT A
FINDINGS AND CONDITIONS OF APPROVAL
429 University Avenue / File No. 18PLN-00240

The subject project complies with all applicable findings set forth in Palo Alto Municipal Code (PAMC) Chapter 18.76, with the exception of Findings 1, 2, and 3 with respect to exterior building colors, materials and craftsmanship, as detailed below.

Finding #1: The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

The proposed decorative wall treatment and landscape plan are consistent with this finding in that it is in general conformance with the Downtown Design Guidelines and the following Comp Plan Goals and Policies. With respect to the exterior building materials, colors and craftsmanship-related detailing, however, the project is inconsistent with Comp Plan policies L-1.3 and L-4.7, as detailed below.

<i>Comp Plan Goals and Policies</i>	<i>How project adheres or does not adhere to Comp Plan</i>
The Comprehensive Plan land use designation for the site is Regional/Community Commercial	The project proposes landscaping, materials and color board, and decorative wall design treatment to a previously approved building that is consistent with the Regional/Community Commercial designation
<i>Land Use and Community Design Element</i>	
Goal L-1: A compact and resilient city providing residents and visitors with attractive neighborhoods, work places, shopping districts, public facilities and open spaces.	The project is a compact mixed-use development along University Avenue. It contributes to an attractive neighborhood through the use of long lasting materials, landscaping, and a decorative design to the interior property line wall.
Policy L-1.3: Infill development in the urban service area should be compatible with its surroundings and the overall scale and character of the city to ensure a compact, efficient development pattern.	The decorative wall treatment and landscape plan are compatible the project's surroundings and with the overall scale and character of the City in that they add visual interest to the project, retain or replace existing street trees, and otherwise represent sustainable principles of design. The building exterior is not compatible with its surroundings, however, because it fails to incorporate detail and

	craftsmanship in design that is similar to the surrounding buildings.
Goal L-2: An enhanced sense of community with development designed to foster public life, meet citywide needs and embrace the principles of sustainability.	The project uses native indigenous landscaping and drip irrigation systems that represent sustainable principles of design.
Policy L-4.7: Maintain and enhance the University Avenue/Downtown area as a major commercial center of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.	The project consists of a quality designed building by treating the west wall elevation with a pattern that breaks up the façade, employs long lasting materials in the form of concrete, and strategically places landscaping in key open space areas of the building. The project fails, however, to apply level of detail found in the surrounding area to other parts of the building exterior, which features several large, blank walls.

Finding #2: The project has a unified and coherent design, that:

- a. creates an internal sense of order and desirable environment for occupants, visitors, and the general community,
- b. preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,
- c. is consistent with the context-based design criteria of the applicable zone district,
- d. provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,
- e. enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.

The proposed decorative wall treatment and landscape plan are consistent with this finding. The decorative wall treatment provides an aesthetic element that enhances the design and provides an alternative to a blank wall at the upper floor elevations. The proposed landscaping plan provides color, softens and integrates well with the building architecture.

With respect to the exterior building materials, colors and craftsmanship-related detailing, however, the project is inconsistent with Findings 2c and 2d. The project does comply with contextual and compatibility criteria set forth in the City's municipal code. Compatibility is achieved when new construction shares general characteristics and establishes design linkages with the overall pattern of buildings so that the visual unity of the street is maintained. Existing buildings in the surrounding area are pedestrian- and human-scaled containing rich architectural details that promote visual interest and warm colors that create an inviting pedestrian experience. By contrast, the proposed project uses exterior building materials (concrete) and colors (gray) that results in a design with little to no architectural detailing and no design linkages that reflect the overall pattern of buildings in the area. Visual unity is

disrupted by the proposed use of building materials, colors and limited detailing and is not contextually appropriate to the area. More specifically, the project does not comply the context-based criteria in PAMC sections 18.18.110(b)(1)(B)¹; 18.18.110(b)(2)(B)²; 18.18.110(b)(2)(C)³, which seek to promote pedestrian-oriented design by incorporating covered waiting areas, weather protection, projecting overhangs, appropriately sized recessed building entrances and other architectural elements that promote a human scale.

Finding #3: The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.

The proposed decorative wall treatment uses integrated materials and appropriate construction techniques. The proposed landscaping plan incorporates drought tolerant species and a variety of trees, shrubs and perennials suitable to the site.

With respect to the exterior building materials, colors and craftsmanship-related detailing, however, the project is not consistent with this finding. The proposed textures, colors and craftsmanship are not compatible with and do not enhance the surrounding area. The surrounding area predominately consists of buildings that include a warm color palette and architectural detailing that promotes the pedestrian-oriented environmental along University Avenue. Comparably scaled buildings in the area, such as 432 and 488 University include warm colors, varied construction materials and detailing that adds relief and dimension at the first and second levels. Some of these details include Juliet balconies, faux balustrade screens in front of windows, recessed store fronts, awnings and recessed windows that enhance the pedestrian-scale and experience. Other nearby, lower-profile buildings similarly employ planters, decorative lighting, and architectural detailing that enhance the area. The proposed project, however, uses flat textures and glazing combined with a cool color palate and includes no architectural details that relate to or enhance the pedestrian environment and results in building that stands in stark contrast to other improvements in the area. To achieve compliance with this finding based on the existing, previously approved mass and scale, the applicant could explore using building materials, colors and craftsmanship-related detailing that adds a depth of dimension and visual relief to enhance the surrounding area. The use of textured concrete in a warmer color palate combined with other pedestrian-scale features, such as awnings or sunscreens would be more compatible with the type of development found along pedestrian-oriented University Avenue.

¹ PAMC 18.18.110(b)(1)(B): On primary pedestrian routes, climate and weather protection where possible, such as covered waiting areas, building projections and colonnades, and awnings (Figure 1-2).

² PAMC 18.18.110(b)(2)(B): Facades that include projecting eaves and overhangs, porches, and other architectural elements that provide human scale and help break up building mass (Figure 2-2).

³ PAMC 18.18.110(b)(2)(C): Entries that are clearly defined features of front facades, and that have a scale that is in proportion to the size and type of the building and number of units being accessed; larger buildings should have a more prominent building entrance, while maintaining a pedestrian scale.

Finding #4: The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.).

The project is consistent with this finding in that the proposed elements that are being considered in this application are located in appropriate locations and do not impede the ease or safety of pedestrians or cyclists and generally support the buildings operations.

Finding #5: The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained.

The project is consistent with the finding because it preserves existing street trees along University Avenue and replaces trees along Kipling Street. The project's landscaping includes drought tolerant species and a variety of trees, shrubs and perennials suitable to the site. The plantings focus on the most logical locations in the building that consist of open circulation areas, and along areas accessible to the public, such as along the Lane 30 alley.

Finding #6: The project incorporates design principles that achieve sustainability in areas related to energy efficiency, water conservation, building materials, landscaping, and site planning.

In accordance with the City's Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2. A summary of the project's compliance is on sheet GB-1 of the plans. The project includes a number of measures to preserve water including using drip irrigation and proposing landscaping that is drought tolerant and is less than 500 square feet in size. The small area of landscaping and compliance with CALGreen Mandatory + Tier 2 will achieve sustainable principles related to energy efficiency and water conservation.

CONDITIONS OF APPROVAL
429 University Avenue: 18PLN-00240

PLANNING DIVISION

1. **CONFORMANCE WITH PLANS.** This approval is granted only for the proposed construction of the tree motif decorative wall treatment at the west elevation and the landscape plans and shown on the project plans and supporting application material stamped as received by the City on July 30, 2018 on file with the Planning Department, 250 Hamilton Avenue, Palo Alto, California except as modified by these conditions of approval. No approval is granted for the exterior materials or colors.
2. **BUILDING PERMIT PLAN SET.** The ARB approval letter including all Department conditions of approval for the project shall be printed on the plans submitted for building permit.
3. **PROJECT MODIFICATIONS:** Any modifications to the approved decorative wall treatment or landscape plan shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant's responsibility to highlight any proposed changes to the project and to bring it to the project planner's attention.
4. **PROJECT EXPIRATION.** This project approval shall be incorporated with and subject to the same permit time limits that apply to Record of Land Use Action No. 2017-2, approved on March 20, 2017. In the event a building permit(s), if applicable, is not secured for the project within the time limit specified above, the ARB approval shall expire and be of no further force or effect.
5. **INDEMNITY:** To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.
6. **DEVELOPMENT IMPACT FEES:** Per PAMC 16.61.040, and RLUA No. 2017-2, all applicable Development Impact Fees shall be paid prior to the issuance of the related building permit.
7. **FINAL INSPECTION:** A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, landscaping and hard surface locations. Contact your Project Planner, Adam Petersen at apetersen@m-group.us to schedule this inspection.

APPROVAL NO. 2017- 2
RECORD OF THE COUNCIL OF THE CITY OF PALO ALTO LAND USE ACTION FOR
425 AND 429 UNIVERSITY AVENUE: MAJOR ARCHITECTURAL REVIEW
APPLICATION [14PLN-0022]

On February 6, 2017, the City Council of the City of Palo Alto considered an appeal of the Planning and Community Environment Director's decision to approve a Major Architectural Review for the development of a four-story, 50-foot tall, 28,547 square-foot, mixed-use project at 429 University Avenue and directed staff to return to Council with the following findings, determinations and declarations to support their decision to adopt a modified project design:

SECTION 1. Background. The City Council of the City of Palo Alto ("City Council") finds, determines, and declares as follows:

A The project site is comprised of two lots, 425 and 429 University Avenue (APN Nos. 120-15-029 and 120-15-028, respectively) of approximately 11,000 square feet. The site contains two commercial structures bordered by University Avenue to the southeast, Lane 30 E to the northwest, and Kipling Street to the northeast. Single-story businesses border the site to the northeast along Kipling Street, and one and two story buildings border the project site along University Avenue.

B On June 19, 2014, Kipling Post LP applied for a Major Architectural Review for the development of a mixed-use project on an 11,000 square foot parcel ("The Project").

C On February 25, 2015, the Planning and Community Environment Director approved the Major Architectural Review.

D On March 11, 2015, a timely appeal was filed by Dr. Michael Harbour ("the Appellant") stating concerns related to parking, traffic and circulation concerns and safety issues, impacts to historical resources, and the size and massing of the project

E On May 4, 2015, the City Council remanded the project to the Historic Resource Board (HRB) and Architectural Review Board (ARB) for further review and requested project revisions to address issues of scale and compatibility. Specifically, the Council requested that the applicant redesign the project and return to the HRB and ARB to address a variety of concerns. The HRB was asked to review and comment on the historic resource evaluation report as it relates to the project's potential impact to other historic resources in the area; the applicable 'area of potential affect' pursuant to the California Environmental Quality Act (CEQA); the potential impact of the project's mass, scale and compatibility to existing historic properties; and whether the proposed building would change the setting of the historic properties on Kipling Street or University Avenue and have an impact under CEQA. The Council directed the ARB to evaluate the project's compatibility with the immediate environment of the site; neighborhood character; other buildings in the area; consistency with the roof lines, entries, setbacks, mass and scale with context based design criteria; shadow patterns; vehicular access to the site, including possible impacts to Lane 30 (alley) circulation; and, to provide direction on the design linkages with the overall pattern of development in the area. On September 10 and 17, 2015, the HRB and ARB, respectively, considered project revisions presented by the applicant. Their respective comments are available in the administrative record and meeting minutes. The HRB members expressed concern with various aspects of the project, notably related to the mass and scale of the proposed building and expressed concerns regarding the project's compatibility to nearby designed Birge Clark buildings and the Victorian-style structures on Kipling Street. The ARB had a variety of comments regarding the project, including expressing concerns with project compatibility when viewed from Kipling Street and encouraged further architectural

refinement to address other concerns expressed by Council. On November 30, 2015, the City Council remanded the project to ARB for further review and consideration as it relates to the following specific Architectural Review Findings and Context-Based Design Criteria:

PAMC chapter 18.76.020(d):

- (1): Architectural Review Findings in relation to design's consistency and compatibility with applicable elements of the Palo Alto Comprehensive Plan
- (2): Architectural Review Findings in relation to design's compatibility with the immediate environment of the site
- (4): Architectural Review Findings in relation to design's compatibility with areas as having a unified design character or historic character
- (12): Architectural Review Findings in relation to compatibility and appropriateness in materials, textures, colors, details of construction and plant materials to the project's function and to adjacent structures, landscape elements and functions

And PAMC Section 18.18.110

- (a)(2)(B)(i): Contextual and Compatibility Criteria – Compatibility goal in relation to siting, scale, massing and materials
- (a)(2)(B)(iii): Contextual and Compatibility Criteria – Compatibility goal in relation to pattern of roof lines and projections
- (b)(2)(B): Context-based Design Considerations and Findings – Street building facades in relation to eaves, overhang, porches and other architectural elements that provide human scale and help break up building mass

F On March 17, 2016 the applicant returned to the ARB with a revised project, consisting of two options prepared by Topos Architecture. The ARB preferred Option B with recommended changes to better reduce building scale and mass, and continued the project to May 19, 2016.

G On August 4 the applicant returned to the ARB with a revised project prepared by Jo Bellomo and Associates, the fourth design professional known to the City to be engaged by the applicant to prepare plans and make presentations regarding the project. Based on the administrative record, including meeting minutes, the ARB expressed concern that this latest iteration was not responsive to earlier ARB or City Council comments and requested staff prepare recommended findings to deny the project.

H On September 1, 2016, at the applicant's request, the ARB conducted a study session of a project that closely resembled Option 1. While ARB members continued to express concerns, the Board commented that this design concept showed progress toward addressing previously stated concerns regarding the project's compatibility to adjacent structures and neighborhood character.

I The ARB reviewed a project on October 20, 2016 (described as Option 2 in the February 6, 2017 City Council report). This design included changes that increased the mass of the building at the street corner on the third floor and additional mass on the fourth floor that was previously removed from the plans reviewed on September 1, 2016. The ARB forwarded a recommendation of denial of the project to the City Council.

J The Applicant submitted revised plans on October 26, 2016 (described as Option 1 in the February 6, 2017 City Council report), which was a refined version of the plans presented at a study session of the ARB on September 1, 2016, which addressed many of the Board's comments.

K The Applicant submitted revised plans on December 8, 2016 (described as Option 3 in on the February 6, 2017 City Council report), which represented another iteration of the Option 1 design, but included concepts previously reviewed by the ARB on August 4, 2016.

L The City Council reviewed Option 1, Option 2, and Option 3 of the project on February 6, 2017 and approved Option 1 based on the findings and subject to the conditions of approval included below.

SECTION 2. Environmental Review. The City as the lead agency for the Project has determined that the project is subject to environmental review under provisions of the California Environmental Quality Act (CEQA) under Guideline section 15070, Decision to Prepare a Negative or Mitigated Negative Declaration. An initial study was prepared for the project in 2014 and was updated in August of 2015 and it was determined that, with the implementation of conditions of approval, and mitigation measures no potentially adverse impacts would result from the development, therefore, the project would have a less than significant impact on the environment.

SECTION 3. Architectural Review Findings. Pursuant to Palo Alto Municipal Code Section 18.76.020(d), neither the director, nor the city council on appeal, shall grant architectural review approval, unless it is found that the project is consistent with certain adopted findings. At the time that the project application was filed and appealed to Council, the findings presented in this section were in use, and the Council finds that the project is consistent with them as follows:

Comprehensive Plan and Purpose of ARB:

Finding #1: The design is consistent and compatible with applicable elements of the Palo Alto Comprehensive Plan.

Finding #16: The design is consistent and compatible with the purpose of architectural review, which is to:

- Promote orderly and harmonious development in the city;
- Enhance the desirability of residence or investment in the city;
- Encourage the attainment of the most desirable use of land and improvements;
- Enhance the desirability of living conditions upon the immediate site or in adjacent areas; and
- Promote visual environments which are of high aesthetic quality and variety and which, at the same time, are considerate of each other.

The project is consistent with Findings #1 and #16 because:

On balance, the project is consistent and compatible with applicable elements of the Palo Alto Comprehensive Plan. The proposed project is in conformance with the following Comprehensive Plan Goals and Policies. The project is compatible with the surrounding development based on the building's size, scale and mass. The project reflects a similar massing and rhythm to other properties along University Avenue and includes building articulate and setbacks at the third and fourth floors that provide for an appropriate transition, particularly along Kipling Street, to the lower profile buildings nearby. Some of the goals and policies the project is in compliance with include the following:

- **Goal L-1:** A well-designed, compact city, providing residents and visitors with attractive neighborhoods, work places, shopping district, public facilities and open spaces.
- **Policy L-5:** Maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due their size and scale.
- **Goal L-4:** Inviting, pedestrian-scale centers that offer a variety of retail and commercial services and

provide focal points and community gathering places for the City's residential neighborhoods and Employment Districts.

- **Policy L-20:** Encourage street frontages that contribute to retail vitality in all Centers. Reinforce street corners with buildings that come up to the sidewalk or that form corner plazas.
- **Policy L-23:** Maintain and enhance the University Avenue/Downtown area as the central business district of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.
- **Policy L-24:** Ensure that University Avenue/Downtown is pedestrian-friendly and supports bicycle use. Use public art and other amenities to create an environment that is inviting to pedestrians.
- **Goal L-6:** Well-designed buildings that create coherent development patterns and enhance city streets and public spaces.
- **Policy L-48:** Promote high quality, creative design and site planning that is compatible with surrounding development and public spaces.
- **Policy L-49:** Design buildings to revitalize streets and public spaces and to enhance a sense of community and personal safety. Provide an ordered variety of entries, porches, windows, bays and balconies along public ways where it is consistent with neighborhood character; avoid blank or solid walls at street level; and include human-scale details and massing.
- **Goal T-3:** Facilities, services and programs that encourage and promote walking and bicycling.
- **Policy T-21:** Support the use of Downtown alleyways for pedestrian- and bicycle-only use.
- **Policy T-23:** Encourage pedestrian-friendly design features such as sidewalks, street trees, on-site parking, public spaces, gardens, outdoor furniture, art, and interesting architectural details.

Option 1, as presented to the City Council on February 6, 2017, provides a transition in scale and character along University Avenue. The building's modern design blends and transitions with the surrounding buildings through similar materials and horizontal rooflines. The building reinforces the pedestrian character of University Avenue as required by Policy L-23 and Policy L-24 because it provides a widened sidewalk for pedestrians with sheltered entrances. These same pedestrian features are extended to Kipling Street as well, and the seating area at the rear of the building activates a pedestrian space in the alley. Conditions of Approval Nos. 2b, 2c, 2d, and 2e all reduce the massing and visual prominence of the building along Kipling Street, creating the appearance of a three-story structure. This design provides a smoother transition from the single and two-story structures along Kipling Street.

The proposed project incorporates similar pedestrian and human friendly features found in other buildings along University Avenue. The first floor plate height reflects the plate height of the buildings to the west along University Avenue. The surrounding buildings contain sidewalk dining areas, recessed entries, and are predominantly two-story structures, with a low first floor plate height to relate to a human and pedestrian scale. The project incorporates similar features with designated pedestrian areas at the entryways and natural building overhangs along University Avenue and Kipling Street. These design features create a project that is pedestrian friendly and designed at a human scale on elevations fronting rights-of-way. Condition of Approval No. 2e requires that the elevator tower height not exceed 54.5 feet and Condition of Approval No. 2b requires the fourth floor guardrails to be setback from the edge of the terrace along all streetscapes. These conditions reduce the visual prominence of the structure along Kipling Street, and they create the appearance of a three story building. The appearance of a three-story building helps the project achieve an orderly and harmonious design along Kipling Street, which has lower profile buildings.

Compatibility and Character:

Finding #2: The design is compatible with the immediate environment of the site.

Finding #4: This finding of compatibility with unified or historic character is not applicable to the project (there is no unified design or historic character).

Finding #5: The design promotes harmonious transitions in scale and character in areas between different designated land uses.

Finding #6: The design is compatible with approved improvements both on and off the site.

The project is consistent with Findings #2, #4, #5 and #6 because:

The project is compatible with the immediate environment of the site. Buildings located to the southwest of the site along University Avenue consist of two-story buildings. The first two floors of the project are consistent with the height of these buildings, while the third floor is setback approximately eight-feet. The fourth floor is setback approximately 40-feet. These features result in a gradual transition in scale thereby increasing the compatibility and character of the project with its immediate environment. Further, the design obscures the fourth floor from views along University Avenue. The setbacks along Kipling Street and Lane 30 also promote a design that is compatible with the immediate environment of the site and offer harmonious transitions. The setbacks on the fourth floor along Kipling Street obscure views of the building features above the third floor from many vantage points, thereby reducing the building scale and improving compatibility with smaller structures nearby. To accomplish this result, the conditions of approval require that the elevator tower height be reduced to a maximum of 54.5 feet and the elevator shaft is setback 11 feet from Kipling Street, while the stairs and office are setback approximately 20 feet and 37 feet, respectively. This condition and these design features will obscure views of the fourth floor and result in a building with a three-story appearance from vantage points that are close to the site on Kipling Street. This results in a harmonious transition from the two story structures along Kipling Street to the proposed project because it effectively only increases the height of the project by one story from the structure at the corner of Kipling and University and two stories from the business at Kipling Street and Lane 30.

Conditions of approval for the project also ensure that the design of the building will be compatible with the immediate environment of the site. Conditions No. 3b and 3c require that the applicant return to the ARB for approval of the materials, colors, craftsmanship and landscaping, and Condition No. 3a requires a decorative wall treatment, feature or element along the southern elevation of the building. These requirements will ensure that design features are compatible with the immediate environment of the site.

The design of the building offers a harmoniously compatible transition with the design character of the streetscape along University Avenue. The design of the project transitions from the mid-century designs found along University Avenue to a more modern looking building that defines the street corner. The project consists of rectilinear features in a glass and concrete style building. These features are consistent with the character of the surrounding buildings to the east of the site along University Avenue and the building located at the corner of Kipling Street and University Avenue.

The Historic Resources Memorandum notes that the historic character of the area has been compromised by intrusions including incompatible materials, height, massing and architectural features. Because the area has not been recognized as having a unified design or historic character, this finding is not applicable.

Functionality and Open Space:

Finding #3: The design is appropriate to the function of the project.

Finding #7: The planning and siting of the building on the site creates an internal sense of order and provides a desirable environment for occupants, visitors and the general community.

Finding #8: The amount and arrangement of open space are appropriate to the design and the function of the

structures.

The project is consistent with Findings #3, #7, and #8 because:

The design and arrangement of the open space is appropriate for the function of the project. The project proposes a seating area off the alley at the back of the project. The Comprehensive Plan encourages these spaces such as these to activate alley spaces for pedestrian use. Further, the project incorporates terraced areas around the third floor for the residential users and on the fourth floor for the office use. These areas serve as a functional open space for residents and tenants of the project and are easily accessible to the building users. Therefore, the design, amount, arrangement and planning of open space is appropriate and creates a sense of order for the project.

The planning and siting of the building on the site creates a sense of order and provides a desirable environment for visitors, occupants and the general community. The siting of the building is located along the back of the sidewalk, consistent with other buildings along University Avenue streetscape and forms an edge along Kipling Street consistent with the existing buildings along both streets. Vehicle access to the building from the alley provides convenient and safe accessibility that minimizes vehicle interactions along Kipling Street and University Avenue. Internally, stairs and elevators provide access to each floor, and these are conveniently reached from the street or the subterranean parking. The floorplans create individualized floors that separates the residents and commercial and office tenants. Occupants, visitors and the community are provided with a desirable environment because of this ease of access to the individualized uses on each floor. Therefore, the siting and floor plan create a sense of order and provide a desirable environment for occupants, visitors and the general public.

Circulation and Traffic:

Finding #9: Sufficient ancillary functions are provided to support the main functions of the project and the same are compatible with the project's design concept.

Finding #10: Access to the property and circulation thereon are safe and convenient for pedestrians, cyclists and vehicles.

The project is consistent with Findings #9 and #10 because:

The project contains sufficient ancillary functions to support the main functions. Access to the property and circulation thereon is convenient for cyclists because it provides long-term and short-term bicycle parking. The short term parking is easily accessible from the street and the long term parking is located in the garage where it is screened from public view.

Access to the property and circulation thereon are safe and convenient for all users. The alley provides a dedicated, separate access point to the project from the street. This will minimize vehicle interactions with other vehicles as well as pedestrians and cyclists. Further, the traffic study has determined that there is adequate site distance for exiting the alley onto Kipling Street. The project will incorporate mirrored installations at the parking garage ingress and egress to improve visibility and reduce conflicts between vehicles and pedestrians and cyclists. The onsite circulation was reviewed in accordance with generally accepted traffic engineering standards. Generally, the proposed plan would provide one main drive aisle that would lead to an underground parking structure. Parking is shown at 90 degrees to the main drive aisle. This drive aisle makes several 90 degree turns to spiral down to the farthest parking spaces. The City parking facility design standards specify a minimum width of 16 feet for two-way underground ramps; 25 feet for two-way drive aisles lined with 8.5 foot wide, 90 degree spaces; and maximum slope of 2% adjacent to accessible parking spaces. The proposed project

meets these standards. Further, the project was also found to meet the applicable parking requirements of the PAMC. Therefore, these features ensure access and circulation thereon are safe and convenient for all users.

The project is subject to the loading area requirements in the City's Zoning Code because it is a mixed-use project with commercial, office and residential uses. Consistent with past practice, the staff has recommended approval of an off-site loading area near the building rather than on the project site itself. There is a loading zone at Kipling Street and the alley provides sufficient loading space for the project and service alleys throughout downtown have historically been used for the purpose of shared loading and access. Using the alley is consistent with prior projects reviewed by the City and with previous iterations of the project design, and meets the intent of the City's Code requirement.

Landscaping and Plant Materials:

Finding #11: Natural features are appropriately preserved and integrated with the project.

Finding #12: The materials, textures and colors and details of construction and plant material are an appropriate expression to the design and function and compatible with the adjacent and neighboring structures, landscape elements and functions.

Finding #13: The landscape design concept for the site, as shown by the relationship of plant masses, open space, scale, plant forms and foliage textures and colors create a desirable and functional environment on the site and the landscape concept depicts an appropriate unit with the various buildings on the site.

Finding #14: Plant material is suitable and adaptable to the site, capable of being properly maintained on the site, and is of a variety that would tend to be drought-resistant and to reduce consumption of water in its installation and maintenance.

The project is consistent with Findings #11- #14 because:

The project will preserve existing street trees along University Avenue and will replace two perimeter trees along Kipling Street with ginkgo biloba. Two other street trees along Kipling Street will be retained. The project proposes appropriate, drought tolerant, sustainable landscaping in key open space areas that will complement and enhance the design of these spaces. The landscaping will form a soft edge and perimeter around the ground floor and terrace area on the third floor. Further, as conditioned, the project is required to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment for landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator. Therefore, the landscape design is appropriate and compatible for the project.

The proposed project is consistent with the above finding because it incorporates materials, textures, colors and details that are compatible with adjacent structures and functions. Adjacent structures employ brick, stucco and glass windows with a rough texture and organic colors. The proposed structure consists of concrete, glass windows, and metal mesh screens. These features compliment the adjacent buildings and the third and fourth floor consist of a similarly colored concrete as nearby buildings. Further, as conditioned, the project is required to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment of exterior building materials, colors and craftsmanship-related detailing associated with the project. Therefore, the project is compatible with the materials, colors and textures of adjacent buildings.

Sustainability:

Finding #15: The design is energy efficient and incorporates renewable energy design elements including, but not limited to:

- Careful building orientation to optimize daylight to interiors
- High performance, low-emissivity glazing
- Cool roof and roof insulation beyond Code minimum
- Solar ready roof
- Use of energy efficient LED lighting
- Low-flow plumbing and shower fixtures
- Below grade parking to allow for increased landscape and stormwater treatment areas

The project is consistent with Finding #15 because:

In accordance with the City's Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2.

SECTION 4. Architectural Review Findings. Revised Architectural Review Findings were adopted by ordinance of the City Council on November 14, 2016 (second reading December 12, 2016) and became effective on January 12, 2017. The Council finds that the project as modified is consistent with these findings and the Context-Based Design Criteria in PAMC 18.18.110 as follows:

Finding #1: The design is consistent with applicable provisions of the Palo Alto Comprehensive Plan, Zoning Code, coordinated area plans (including compatibility requirements), and any relevant design guides.

The proposed project, as modified by the conditions of approval, is generally consistent with the Palo Alto Comprehensive Plan, including the following goals and policies:

- **Goal L-1:** A well-designed, compact city, providing residents and visitors with attractive neighborhoods, work places, shopping district, public facilities and open spaces.
- **Policy L-5:** Maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due their size and scale.
- **Goal L-4:** Inviting, pedestrian-scale centers that offer a variety of retail and commercial services and provide focal points and community gathering places for the City's residential neighborhoods and Employment Districts.
- **Policy L-20:** Encourage street frontages that contribute to retail vitality in all Centers. Reinforce street corners with buildings that come up to the sidewalk or that form corner plazas.
- **Policy L-23:** Maintain and enhance the University Avenue/Downtown area as the central business district of the City, with a mix of commercial, civic, cultural, recreational and residential uses. Promote quality design that recognizes the regional and historical importance of the area and reinforces its pedestrian character.
- **Policy L-24:** Ensure that University Avenue/Downtown is pedestrian-friendly and supports bicycle use. Use public art and other amenities to create an environment that is inviting to pedestrians.
- **Goal L-6:** Well-designed buildings that create coherent development patterns and enhance city streets and public spaces.
- **Policy L-48:** Promote high quality, creative design and site planning that is compatible with surrounding development and public spaces.
- **Policy L-49:** Design buildings to revitalize streets and public spaces and to enhance a sense of community and personal safety. Provide an ordered variety of entries, porches, windows, bays and balconies along public ways where it is consistent with neighborhood character; avoid blank or solid walls at street level; and include human-scale details and massing.
- **Goal T-3:** Facilities, services and programs that encourage and promote walking and bicycling.

- **Policy T-21:** Support the use of Downtown alleyways for pedestrian- and bicycle-only use.
- **Policy T-23:** Encourage pedestrian-friendly design features such as sidewalks, street trees, on-site parking, public spaces, gardens, outdoor furniture, art, and interesting architectural details.

More specifically, the project is consistent with Policy L-5, which seeks to maintain the scale and character of the City. Avoid land uses that are overwhelming and unacceptable due their size and scale. As conditioned, the approved project reduces the scale and visual prominence of the building along University Avenue and Kipling Street, creating the appearance of a three-story structure. This design provides a smoother transition from the single and two-story structures along University Avenue and Kipling Street, thereby maintaining the scale of the blocks. The building's modern design blends and transitions with the surrounding buildings and other buildings in the City through use of similar materials, design features, massing, and character.

The project is further consistent with Goals L-4 and Policies L-20, L-23 and L-24 and L-49, in that the project provides ground floor commercial space at a prominent intersection that serves as a focal point for a variety of retail uses that could occupy the space. The rhythmic position of the doors along University Avenue and Kipling Street also enhance retail vitality of the streets by locating retail uses immediately adjacent to the sidewalk and reflects the pattern of development along University Avenue. The project is consistent with Policy L-23 as it provides a mixture of commercial, office and residential uses comprised in a quality designed building. The project is consistent with Policies L-24, L-49, T-21 and T-23 because it provides a widened sidewalk for pedestrians with sheltered entrances. These same pedestrian features are extended to Kipling Street as well, and the seating area at the rear of the building activates a pedestrian space in the alley. The project is consistent with Goal L-6 and Policies L-48 and L-49 because the project is well designed, creates a coherent development pattern, is of high quality, and creative design that is compatible with surrounding development. Conditions of Approval Nos. 2b, 2c, 2d, 3b, 3c ensure that materials, landscaping and colors will be of high quality; reduce the massing and scale of the building to make it compatible with the surrounding buildings by limiting the elevator tower height, removing the library from the third floor, and reducing the projection of the eyebrow on the building; and setting back the guardrails and planters on the fourth floor to further reduce the massing and scale and enhance the buildings compatibility with the surrounding environment.

The project has also been reviewed to the objective development standards in the zoning code and found to be in compliance with the intent and regulations contained therein. A comprehensive review of the project to applicable development standards is included in the administrative record.

The project is consistent with the Downtown Urban Design plan. The project is located in the Commercial Core and more specifically the University Avenue District. The Urban Design plan notes that the alley from Kipling Street is designated for opportunities for pedestrian friendly use. The project satisfies this design requirement by providing a courtyard area with tables for pedestrians to use at the rear of the project site. The alley façade also incorporates a green wall which provides a sense of life to the alleyway. Other relevant goals in the plan include reinforcing University Avenue as the retail core by maintaining ground floor retail space, develop and enhance the qualities of University Avenue which make it an exciting outdoor and pedestrian environment with eclectic architecture, outdoor food, and entertainment and public amenities. The project maintains commercial uses along University Avenue by designating the ground floor area of the building for commercial spaces. The design of the project generates interests on the side streets. The clear glass windows allow pedestrians to see through the corner of the building which strengthens the pedestrian experience. The project provides pedestrian spaces through the recessed entries and widened sidewalk. The building is designed with attention to all facades. Kipling Street and University Avenue have the same attention to detail as the alley and southern elevation. The attention to detail in the alley is exhibited through the use of a green wall planter. Further, as conditioned, the southern elevation is required to incorporate a decorative wall treatment, feature or element.

Therefore, the project is conditioned and incorporates attention to detail on each façade. The ground floor of the project is primarily comprised of glass which is consistent with the plan's requirement for ground floor treatments that allow for easier pedestrian views of displays and merchandise.

Further, the project is located in the Kipling Street secondary district. The plan calls for Kipling Street between Lytton and University Avenue to retain older single family structures and the architectural character they provide. The project is not subject to this requirement because it does not propose to convert a single-family structure, and therefore its architecture, on Kipling Street. The project would convert commercial structures. The plan also calls for the terminus of Kipling Street and University Avenue to be enhanced through tie-ins to the Varsity Theater. The project would tie-in to the Varsity Theater by providing a structure that is of similar height and massing, located at the street front.

The project is not subject to any coordinated area plans.

Finding #2: The project has a unified and coherent design, that:

- a. creates an internal sense of order and desirable environment for occupants, visitors, and the general community,
- b. preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,
- c. is consistent with the context-based design criteria of the applicable zone district,
- d. provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,
- e. enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.

The project is consistent with Finding #2 because:

The project has a unified and coherent design and creates an internal sense of order in that each use of the building is separated onto a specific floor. Each use also has access to own open space and the floor plans facilitate the proposed uses through appropriate layouts and configurations of the internal spaces. Internal spaces are provided with direct access and circulation routes and amenities like kitchen spaces for the commercial and office uses.

The project is designed to preserve, respect and integrate natural features. Natural features for this project consist of street trees along University Avenue and Kipling Street. The project site will preserve the existing street trees along University Avenue and will replace the ginkgo biloba trees along Kipling Street with new gingko biloba trees. The building respect the street trees by maintain setbacks from the vegetation and Condition of Approval No. 3b ensures that vegetation from the project will integrate with the street trees. Because the area has not been recognized as having a unified design or historic character, the finding for historic character is not applicable Therefore, the project will preserve, respect and integrate natural features that contribute positively to the site.

The project is consistent with the context-based design criteria for the applicable zone district:

The design and architecture of the proposed project has been reviewed with respect to the Context-Based Design Criteria set forth in PAM 18.18.110. Section 18.18.110 notes that the project shall be:

- Responsible to its context and compatible with adjacent development, and shall promote the establishment of pedestrian oriented design (where "responsible to context" is not a desire to replicate surroundings, but provide appropriate transitions to surroundings), and

- Compatible with adjacent development, when apparent scale and mass is consistent with the pattern of achieving a pedestrian oriented design and when new construction shares general characteristics and establishes design linkages with the overall pattern of buildings so the visual unit of the street is maintained.

Pursuant to PAMC 18.18.110(b), the following additional findings have been made in the affirmative:

- (1) **Pedestrian and Bicycle Environment:** *The design of new projects shall promote pedestrian walkability, a bicycle friendly environment, and connectivity through design elements.* This finding can be made in the affirmative in that the project supports widen sidewalk with recessed entries on primary pedestrian routes, at-grade bicycle racks near the building entrances, secured bicycle facility at ground level and within the underground parking garage.
- (2) **Street Building Facades.** *Street facades shall be designed to provide a strong relationship with the sidewalk and the street(s), to create an environment that supports and encourages pedestrian activity through design elements.* This finding can be made in the affirmative in that the proposed street facades are designed to create an environment that supports and encourages pedestrian activity. The building façade facing University Avenue preserves the existing storefront pattern with distinguish architectural elements to break up building mass. Entries are clearly defined and have a scale that is in proportion to the building functions. Elements that signal habitation such as entrances, stairs, and balconies are visible to people on the street. Proposed placement and orientation of doorways, windows and landscape elements are appropriate to create strong and direct relationships with the streets. Upper floors are setback, width of overhang is reduced and elevator shaft is oriented inward to reduce building mass and to fit in with the context of the neighborhood;
- (3) **Massing and Setbacks.** *Buildings shall be designed to minimize massing and conform to proper setbacks.* This finding can be made in the affirmative in that the project incorporates design with a series of recessed terraces and interchange in materials to break down the scale of building and provide visual interest. Variation in massing and materials create a façade with two distinctive frontages, which respect the existing storefront patterns and rhythms on University Avenue. Proposed design incorporates columns framework and tall display windows to reinforce the street corner. With the intent to minimize massing and ensure greater setback, proposed design has reduced the height of stairway tower and setback roofline for upper floor terrace at the corner of Lane 30 and Kipling Street;
- (4) **Low-Density Residential Transitions.** *Where new projects are built abutting existing lower scale residential development, care shall be taken to respect the scale and privacy of neighboring properties.* Although the parcels abutting the project site along Kipling Street have a commercial zoning designation, most of the built forms have a low density residential appearance. While the height is taller than most of the buildings in the neighborhood, the proposed building height of 50 feet is compliant with the height limit in the Downtown Commercial District. Proposed design includes at least a 10 feet setback with open terraces at the second and third floors to reduce the impact of the building height on to adjacent lower density neighborhood. Potential privacy concern is at a less than significant level as the buildings behind the project site are mostly one-story with commercial/office uses and mature trees along Kipling Street would provide some degree of screening. Proposed design includes storefront glass on both frontages to introduce a daylight source on the ground level.
- (5) **Project Open Space.** *Private and public open space shall be provided so that it is usable for residents, visitors, and/or employees of the site.* This finding can be made in the affirmative in that the project provides open

space with wider sidewalks, balconies, and a roof-top terrace. The balconies are accessible by residents on the site and are located on four sides of the building that encourage 'eyes on the street'. Proposed roof-top terrace is for office tenants and would provide ample solar exposure;

- (6) **Parking Design.** *Parking needs shall be accommodated but shall not be allowed to overwhelm the character of the project or detract from the pedestrian environment.* This finding can be made in the affirmative in that the project's parking is located within the below-grade garage and does not detract from pedestrian environment. The project includes a well-integrated garage entry, four feet setback, and mirrors that aid traffic and improve visibility on Lane 30. In addition, the project incorporates landscaping element to soften the exit of Lane 30. The intent is to enhance the character of pedestrian environment, while maintaining traffic visibility with low profile plant materials;
- (7) **Large (Multi-Acre) Sites.** *Large sites (over one acre) shall be designed so that street, block, and building patterns are consistent with those of the surrounding neighborhood.* This finding does not apply;
- (8) **Sustainability and Green Building Design.** *Project design and materials to achieve sustainability and green building design should be incorporated into the project.* This finding can be made in the affirmative in that the project would comply with the City's green building ordinance, and the design includes overhangs, recesses, and other shading devices and techniques to reduce the solar heat gain and energy consumption related to the cooling of the building. Design is easy for pedestrian, bicycle and transit access. The project incorporates high efficiency LED light fixtures, low-flow plumbing fixtures and high efficiency HVAC equipment for efficiency energy and water use. Green building features will be incorporated to achieve CalGreen Tier 2 standards for the commercial portion and Green Point rated standards for the residential portion.

Condition of Approval No. 2e requires that the elevator tower height not exceed 54.5 feet and Condition of Approval No. 2b requires the fourth floor guard rails to be setback from the edge of the terrace along all streetscapes. These conditions reduce the visual prominence of the structure along Kipling Street, and they create the appearance of a three story building. Along Kipling Street and University Avenue, the project would constitute a one to two-story increase in height from the adjacent structures. Additionally, the second and third floors are setback 10-feet from the alley way, and the third floor is setback approximately seven-feet off of Kipling Street and University Avenue. Condition Nos. 2c and 2d requires the library to be removed from the third floor at the intersection of Kipling Street and University Avenue and for the third floor roofline to follow the fourth floor plan, which further reduces the mass and scale of the building. These conditions and design feature help the project achieve a harmonious transition in scale and mass between adjacent land uses along Kipling Street and University Avenue.

Further, the project is consistent with Finding #2 because it enhances the living conditions on the site by providing residential units in downtown. The project enhances the adjacent residential areas because it provides space for employment and commerce that residences can access easily from surrounding areas.

Finding #3: **The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.**

The project is consistent with Finding #3 because:

The project has a high aesthetic quality, materials, construction techniques, textures, colors and other details that are compatible with and enhance the surrounding area. The buildings surrounding the site are comprised of concrete, stone, glass, brick, and metal and range in height from two to four stories along University Avenue. Along Kipling Street, buildings consist of cement, stucco, glass and brick structures. The proposed structure is comprised of high quality glass, concrete and steel design which is similar and representative of the materials found in the surrounding environment. Further, the materials, textures, and attention to detail in the structure is consistent throughout each elevation which represents a high quality aesthetic design. Lastly, the project, will have high quality materials, textures, colors and finishes because it is conditioned to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment of exterior building materials, colors and craftsmanship-related detailing associated with the project. Therefore, the project is consistent with Finding #3 because it consists of a high quality aesthetic design with integrated materials, textures, colors and other details that are compatible with the surrounding environment.

Finding #4: The design is functional, allowing for ease and safety of pedestrian and bicycle traffic and providing for elements that support the building's necessary operations (e.g. convenient vehicle access to property and utilities, appropriate arrangement and amount of open space and integrated signage, if applicable, etc.).

The project is consistent with Finding #4 because:

Access to the property and circulation thereon are safe and convenient for all users. The alley provides a dedicated, separate access point to the project from the street. This will minimize vehicle interactions with other vehicles as well as pedestrians and cyclists. Further, the traffic study has determined that there is adequate site distance for exiting the alley onto Kipling Street. The project will incorporate mirrored installations at the parking garage ingress and egress to improve visibility and reduce conflicts between vehicles and pedestrians and cyclists. The onsite circulation was reviewed in accordance with generally accepted traffic engineering standards. Generally, the proposed plan would provide one main drive aisle that would lead to an underground parking structure. Parking is shown at 90 degrees to the main drive aisle. This drive aisle makes several 90 degree turns to spiral down to the farthest parking spaces. The City parking facility design standards specify a minimum width of 16 feet for two-way underground ramps; 25 feet for two-way drive aisles lined with 8.5 foot wide, 90 degree spaces; and maximum slope of 2% adjacent to accessible parking spaces. The proposed project meets these standards. Further, the project was also found to meet the applicable parking requirements of the PAMC. Therefore, these features ensure access and circulation thereon are safe and convenient for all users.

Finding #5: The landscape design complements and enhances the building design and its surroundings, is appropriate to the site's functions, and utilizes to the extent practical, regional indigenous drought resistant plant material capable of providing desirable habitat that can be appropriately maintained.

The project is consistent with Finding #5 because:

The project will preserve existing street trees along University Avenue and will replace two perimeter trees along Kipling Street with ginkgo biloba. Two other street trees along Kipling Street will be retained. The project proposes appropriate, drought tolerant, sustainable landscaping in key open space areas that will complement and enhance the design of these spaces. The landscaping will form a soft edge and perimeter around the ground floor and terrace area on the third floor. Further, as conditioned, the project is required to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community

Environment for landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator. Therefore, the landscape design is appropriate and compatible for the project.

Finding #6: The project incorporates design principles that achieve sustainability in areas related to energy efficiency, water conservation, building materials, landscaping, and site planning.

The project is consistent with Finding #6 because:

In accordance with the City's Green Building Regulations, the building will satisfy the requirements for CALGreen Mandatory + Tier 2.

SECTION 7. Conditions of Approval. The following conditions of approval shall be implemented as part of the modified project approved by this Record of Land Use Action. Condition numbers 2 and 3 are those specifically adopted by the City Council to ensure that the modified project is consistent with all applicable findings.

Planning Division

1. SUBSTANTIAL CONFORMANCE. The plans submitted for a Building Permit shall be in substantial conformance with plans received on October 26, 2016, hereby labeled as Option 1, containing 24 pages, except as modified to incorporate the following conditions of approval.
 2. BUILDING PERMIT PLAN SET. A copy of this cover letter and conditions of approval, including Exhibit A (MMRP), shall be printed on the second page of the plans submitted for building permit. Project plans submitted for Building permits shall incorporate the following changes, to the satisfaction of the Director of Planning and Community Environment:
 - a. Applicant shall submit detailed plans that demonstrate compliance with floor area and other applicable development standards.
 - b. The fourth floor guardrails and planters shall be set back a minimum of five feet from the edge of the third floor roofline (all elevations), as modified by these conditions.
 - c. The 'library' shown on the third floor, floor plans, at the street corner, shall be removed.
 - d. The third floor roofline above the removed 'library' area shall be removed, except to allow a three-foot overhang.
 - e. The elevator adjacent to Kipling Street, inclusive of any associated mechanical equipment, shall not exceed fifty-four and one-half feet (54.5') in height.
 3. BOARD LEVEL ARCHITECTURAL REVIEW: Prior to the issuance of building permits, the applicant shall return to the ARB for approval of the following items, to the satisfaction of the Director of Planning and Community Environment:
 - a. A decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation) starting at an

- elevation equivalent to the building height of the adjacent structure and extending to the roofline of the proposed building.
- b. Landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator.
 - c. The exterior building materials, colors and craftsmanship-related detailing associated with the project.
 4. Prior to issuance of a building permit, the project applicant shall demonstrate how interior and exterior lighting sources will be reduced after operating hours or when the use of the facility is reduced. This may require the use of timing devices for exterior and interior lights in order to minimize light glare at night without jeopardizing security of employees/residents.
 5. PROJECT MODIFICATIONS: All modifications to the approved project shall be submitted for review and approval prior to construction. If during the Building Permit review and construction phase, the project is modified by the applicant, it is the responsibility of the applicant to contact the Planning Division/project planner directly to obtain approval of the project modification. It is the applicant's responsibility to highlight any proposed changes to the project and to bring it to the project planner's attention.
 6. DEVELOPMENT IMPACT FEES: Estimated Development Impact Fees in the amount of **\$312,634.85** plus the applicable public art fee, per PAMC 16.61.040, shall be paid prior to the issuance of the related building permit.
 7. REQUIRED PUBLIC ART. In conformance with Ordinance No. 5226, and to the satisfaction of the Public Art Commission, the property owner and/or applicant shall select an artist and receive final approval of the art plan , or pay the in-lieu fee equivalent to 1% of the estimated construction valuation, prior to issuance of a Building permit. All required artwork shall be installed as approved by the Public Art Commission and verified by Public Art staff prior to release of the final Use and Occupancy permit. The Public Art requirements Application information and documents can be found at www.cityofpaloalto.org/publicart under the "policies and documents" tab.
 8. IMPACT FEE 90-DAY PROTEST PERIOD. California Government Code Section 66020 provides that a project applicant who desires to protest the fees, dedications, reservations, or other exactions imposed on a development project must initiate the protest at the time the development project is approved or conditionally approved or within ninety (90) days after the date that fees, dedications, reservations or exactions are imposed on the Project. Additionally, procedural requirements for protesting these development fees, dedications, reservations and exactions are set forth in Government Code Section 66020. IF YOU FAIL TO INITIATE A PROTEST WITHIN THE 90-DAY PERIOD OR FOLLOW THE PROTEST PROCEDURES DESCRIBED IN GOVERNMENT CODE SECTION 66020, YOU WILL BE BARRED FROM CHALLENGING THE VALIDITY OR REASONABLENESS OF THE FEES, DEDICATIONS, RESERVATIONS, AND EXACTIONS. If these requirements constitute fees, **taxes, assessments**, dedications, reservations, or other exactions as specified in Government Code Sections 66020(a) **or 66021**, this is to provide notification that, as of the date of this notice, the 90-day period has begun in which you may protest these requirements.

9. INDEMNITY. To the extent permitted by law, the Applicant shall indemnify and hold harmless the City, its City Council, its officers, employees and agents (the "indemnified parties") from and against any claim, action, or proceeding brought by a third party against the indemnified parties and the applicant to attack, set aside or void, any permit or approval authorized hereby for the Project, including (without limitation) reimbursing the City for its actual attorneys' fees and costs incurred in defense of the litigation. The City may, in its sole discretion, elect to defend any such action with attorneys of its own choice.
10. MITIGATION MONITORING REPORTING PROGRAM (MMRP). The MMRP associated with the project and attached here as Exhibit A is incorporated by reference and all mitigation measures shall be implemented as described in said document.
11. PLANNING FINAL INSPECTION. A Planning Division Final inspection will be required to determine substantial compliance with the approved plans prior to the scheduling of a Building Division final. Any revisions during the building process must be approved by Planning, including but not limited to; materials, fenestration and hard surface locations. Contact your Project Planner at 650-329-2441 x0 to schedule this inspection.
12. EXPIRATION. The project approval shall be valid for a period of one year from the original date of approval. In the event a building permit(s) is not secured for the project within the time limit specified above, the ARB approval shall expire and be of no further force or effect. Application for extension of this entitlement may be made prior to the one year expiration.

Building Division

13. The permit application shall be accompanied by all plans and related documents necessary to construct the complete project.
14. A demolition permit shall be required for the removal of the existing building(s) on site.
15. The entire project is to be included under a single building permit and shall not be phased under multiple permits.
16. Separate submittals and permits are required for the following systems: E.V., P.V. and Solar Hot Water.
17. Design of building components that are not included in the plans submitted for building permit and are to be "deferred" shall be limited to as few items as possible. The list of deferred items shall be reviewed and approved prior to permit application.
18. The plans submitted for the building permit shall include an allowable floor area calculation that relates the mixed occupancies to type of construction.
19. The plans submitted for the building permit shall include allowable floor area calculations that relate the proposed occupancies to type of construction. This includes possible future installation of assembly occupancies such as large conference rooms or cafeterias, for example.

20. An acoustical analysis shall be submitted and the plans shall incorporate the report's recommendations needed to comply with the sound transmissions requirements in CBC Section 1207.

Green Building

21. Green Building Ordinance:
- a. Commercial Portion - CALGreen Tier 2: The project must meet the California Green Building Code Tier 2 requirements. Due to the size of the project, the team must engage a commissioning agent and fulfill on the commissioning requirements. Additional information may be found at the following link http://www.cityofpaloalto.org/gov/depts/ds/green_building/default.asp. The new Energy California Energy Code contains significant changes and Palo Alto is currently enforcing code minimum for the energy code. The details can be found at the following link <http://www.energy.ca.gov/title24/2013standards/>
 - b. Residential Portion- Green Point Rated: The project is required to achieve Green Point Rated Certification through Build It Green. The project team must engage a Green Point Rater. The required minimum points value is 70. The required prerequisite and points associated with exceeding the code shall be excused. Additional information may be found at the following link http://www.cityofpaloalto.org/gov/depts/ds/green_building/default.asp
22. EV Parking Ordinance: The project is subject to meet the new Electric Vehicle Parking Ordinance that requires but is not limited to:
- a. Multi-family: One EVSE Ready or EVSE Installed per unit. For guest parking, either conduit only, EVSE Ready or EVSE Installed shall be provided for 25% of the parking. A minimum of 1 EVSE Installed for multi-family guest parking shall be provided.
 - b. Commercial: For commercial parking, either conduit only, EVSE Ready or EVSE Installed shall be provided for 25% of the parking. A minimum of 1 EVSE Installed for commercial parking shall be provided.

Urban Forestry

23. STREET TREES: City street trees approved to remain shall be maintained and protected during construction per City of Palo Alto standard requirements as further described in the City's Tree Technical Manual and below:
- a. UNIVERSITY AVENUE: Two regulated street trees (London Plane) on University Ave frontage are to be retained and protected. Protection shall consist of Modified Type III for the entire trunk and will include primary branches on the building side. Prior to any clearance/pruning, the project applicant shall:
 - i. Submit a written Tree Care Application to Dorothy.dale@cityofpaloalto.org,
 - ii. Receive approval of said Tree Care Application, and
 - iii. Shall coordinate with Urban Forestry for direct supervision by staff of private tree contractor.
 - b. KIPLING STREET: Four trees in the right of way are approved for removal. Four replacement trees shall be installed, Ginkgo biloba 'Autumn Gold', Maidenhair, 36-inch box size, in 5'x5' Kiva tree grates, two irrigation bubblers per tree (PW Standard Detail # 603a and 513). A certified arborist for the applicant shall evaluate/select matching trees

for quality. Contractor shall coordinate an Urban Forestry inspection of the new trees, before they are planted in the ground.

- i. SIDEWALK BASE MEDIUM: As a root growing medium between the curb and building face, Silva Cell technology or approved equal, shall be designed as a suspended sidewalk element and provide low compaction area for long term root growth. A certified arborist for the applicant shall calculate how many cubic feet of soil and Silva cell material will be needed for each tree, for approval by the Urban Forester.

24. All landscape material shall be well maintained for the life of the project and replaced if it fails.

Public Works Engineering Department

PRIOR TO BUILDING PERMIT AND GRADING AND EXCAVATION PERMIT SUBMITTAL:

25. CERTIFICATE OF COMPLIANCE: The applicant has revised the project description to indicate that she is no longer pursuing the development of condominiums. Since the project site is located within two parcels 120-15-029 and 120-15-028 a certificate of compliance for a lot merger is required. Applicant shall apply for a certificate of compliance and provide the necessary documents. Certificate of Compliance shall be recorded prior to issuance of a building or grading and excavation permit.

PRIOR TO ISSUANCE OF A DEMOLITION PERMIT:

26. LOGISTICS PLAN: The applicant and contractor shall submit a construction logistics plan to the Public Works Department that addresses all impacts to the City's right-of-way, including, but not limited to: construction fence, construction entrance, stockpile areas, office trailer, temporary bathroom, measures for dewatering if needed, pedestrian control, traffic control, truck routes, material deliveries, contractor's parking, on-site staging and storage areas, concrete pours, crane lifts, work hours, noise control, dust control, storm water pollution prevention, contractor's contact. The plan shall be prepared and submitted along the Rough Grading and Excavation Permit. It shall include notes as indicated on the approved Truck Route Map for construction traffic to and from the site. Plan shall also indicate if the bus stop will need to be relocated.

27. Applicant shall schedule a meeting with Public Works Engineering and Transportation Division to discuss the existing building demolition, excavation and building construction logistics. Construction fence shall be located at the building property line, travel lane closures will not be permitted. Applicant shall propose a logistics plan that shows how pedestrian access is maintained and eliminating the least number of parking spaces during construction.

PRIOR TO ISSUANCE OF EXCAVATION AND GRADING PERMIT:

28. GRADING PERMIT: An Excavation and Grading Permit is required for grading activities on private property that fill, excavate, store or dispose of 100 cubic yards or more based on PAMC Section 16.28.060. Applicant shall prepare and submit an excavation and grading permit to Public Works separately from the building permit set. The permit application and instructions are available at the Development Center and on our website: http://www.cityofpaloalto.org/gov/depts/pwd/forms_and_permits.asp

29. ROUGH GRADING: provide a Rough Grading Plan for the work proposed as part of the Grading and Excavation Permit application. The Rough Grading Plans shall include the following: pad elevation, basement elevation, elevator pit elevation, ground monitoring wells, shoring for the proposed basement, limits of over excavation, stockpile area of material, overall earthwork volumes (cut and fill), temporary shoring for any existing facilities, ramps for the basement access, crane locations (if any), etc. Plans submitted for the Grading and Excavation Permit, shall be stand-alone, and therefore the plans shall include any conditions from other divisions that pertain to items encountered during rough grading for example if contaminated groundwater is encountered and dewatering is expected, provide notes on the plans based Water Quality's conditions of approval. Provide a note on the plans to direct the contractor to the approved City of Palo Alto Truck Route Map, which is available on the City's website.
30. BASEMENT SHORING: Provide shoring plans for the basement excavation, clearly including tiebacks (if any). Tieback shall not extend onto adjacent private property or into the City's right-of-way without having first obtained written permission from the private property owners and/or an encroachment permit from Public Works. During the ARB process and via email dated 9/25/14 the applicant indicated that the tiebacks will extend into the adjacent private property. As such provide a letter from the neighboring property owner to allow the encroachment of permanent tiebacks into their property. In addition the shoring plans shall clearly show the property line and the dimension between the outside edge of the soldier piles and the property line for City records. Also provide notes on the Shoring Plans for the "Contractor to cut-off the shoring 6-feet below the sidewalk elevation." AND "Contractor shall submit and obtain a permanent encroachment permit from Public Works for the tiebacks and shoring located within public right-of-way."
31. DEWATERING: Basement excavation may require dewatering during construction. Public Works only allows groundwater drawdown well dewatering. Open pit groundwater dewatering is not allowed. Dewatering is only allowed from April through October due to inadequate capacity in our storm drain system. The geotechnical report for this site must list the highest anticipated groundwater level. We recommend that a piezometer be installed in the soil boring. The contractor shall determine the depth to groundwater immediately prior to excavation by using a piezometer or by drilling an exploratory hole if the deepest excavation will be within 3 feet of the highest anticipated groundwater level. If groundwater is found within 2 feet of the deepest excavation, a drawdown well dewatering system must be used, or alternatively, the contractor can excavate for the basement and hope not to hit groundwater, but if he does, he must immediately stop all work and install a drawdown well system before he continues to excavate. Based on the determined groundwater depth and season the contractor may be required to dewater the site or stop all grading and excavation work. In addition Public Works may require that all groundwater be tested for contaminants prior to initial discharge and at intervals during dewatering. If testing is required, the contractor must retain an independent testing firm to test the discharge water for contaminants Public Works specifies and submit the results to Public Works.

Public Works reviews and approves dewatering plans as part of a Street Work Permit. The applicant can include a dewatering plan in the building permit plan set in order to obtain approval of the plan during the building permit review, but the contractor will still be required to obtain a street work permit prior to dewatering. The street work permit to dewater must be obtained in August to allow ample time to dewater and complete the dewatering by October 31st. Alternatively, the applicant must include the above dewatering requirements in a note on the site plan. Public Works has a sample dewatering plan sheet and dewatering guidelines available at the Development Center and on our website:

http://www.cityofpaloalto.org/gov/depts/pwd/forms_and_permits.asp

The following links are included to assist the applicant with dewatering requirements:

<http://www.cityofpaloalto.org/civicax/filebank/documents/30978>

<http://www.cityofpaloalto.org/civicax/filebank/documents/51366>

[http://www.cityofpaloalto.org/civicax/filebank/documents/47388.](http://www.cityofpaloalto.org/civicax/filebank/documents/47388)

32. WATER FILLING STATION: Applicant shall install a water station for the non-potable reuse of the dewatering water. This water station shall be constructed within private property, next to the right-of-way, (typically, behind the sidewalk). The station shall be accessible 24 hours a day for the filling of water carrying vehicles (i.e. street sweepers, etc.). The water station may also be used for onsite dust control. Before a discharge permit can be issued, the water supply station shall be installed, ready for operational and inspected by Public Works. The groundwater will also need to be tested for contaminants and chemical properties for the non-potable use. The discharge permit cannot be issued until the test results are received. Additional information regarding the station will be made available on the City's website under Public Works.
33. GROUNDWATER USE PLAN: A Groundwater Use Plan (GWUP) shall be submitted for review for any project which requires dewatering. The GWUP, a narrative that shall be included in or accompany the Dewatering Plan, must demonstrate the highest beneficial use practicable of the pumped groundwater. The GWUP shall also state that all onsite, non-potable water needs such as dust control shall be met by using the pumped groundwater. Delays in submitting the GWUP can result in delays in the issuance of your discharge permit as Public Works requires sufficient review time which shall be expected by the applicant.
34. GEOTECHNICAL REPORT: Shall clearly identify the highest projected groundwater level to be encountered in the area of the proposed basement in the future will be _____ feet below existing grade. Provide a note on the Rough Grading Plan that includes the comment above as a note.
35. GAS METERS: In-ground gas meters are not typically allowed by Public Works Utilities. If in-ground gas meters are not allowed, the above ground gas meter shall be located complete within private property. Plot and label the proposed location. If in-ground gas meters are permitted, applicant shall submit an email from Utilities that indicates in-ground gas meters are acceptable for this project.

PRIOR TO ISSUANCE OF A BUILDING PERMIT

36. MAPPING: Applicant has revised the project description to indicate that she is no longer pursuing the development of condominiums. If at any point the applicant intends to sell portions of the building a Minor or Major Subdivision Application will be required. Public Works' Tentative Maps and Preliminary Parcel Maps checklist must accompany the completed application. All existing and proposed dedications and easements must be shown on the submitted map. The map would trigger further requirements from Public Works, see Palo Alto Municipal Code section 21.12 for Preliminary Parcel Map requirements and section 21.16 for Parcel Map requirements.
37. OFFSITE IMPROVEMENT PLANS: Prior to submittal of Building and/or Grading permit applicant shall meet with Public Works to discuss off-site improvements. These may include but are not limited to new concrete or asphalt work, utility upgrades or relocations, and/or street resurfacing.

38. The following items were not addressed through the final ARB submittal and shall be shown on the plans.
- a. Explain how all of the site runoff will drain directly into the media filter. The media filter shall be located complete with the private property as shown on the approved ARB plans. The details provided indicate that the media filter is to be installed below ground and discharge would need to be pumped to the surface. However that is not reflected on the Utility Plan.
 - b. Plot and label the total number of disconnected downspouts. The civil has indicated that the downspouts runoff will drain into the media filter, but it's not clear on the plans how this will be accomplished.
 - c. The site plan shall demonstrate how the runoff from the MFS flows by gravity into the gutter, provide pipe inverts and flowline grades. If a new separate structure is required to allow runoff to flow by gravity into the gutter or reduce the velocity, then the structure shall be located completely within the private property. The 4th and 5th resubmittal ARB plans show a junction box within the public right of way, this box shall be located completely within the private property.
 - d. The 5th submittal shows a planter box adjacent to the alley and the MFS has been relocated to be within this planter boxes. The plans submitted lack information, show how the roof runoff is directed into the mechanical treatment facility. Plot and label the pump, drain lines, downspouts. Show how all of the site runoff is treated by the proposed MFS.
 - e. It's not clear if the planter box is intended to provide C3 treatment. If LID treatment is proposed provide the surface drainage areas and calculations.
 - f. Resize the new planter box to allow the junction box to be within the private property and behind the Kipling Street sidewalk. The planter box and planting material shall be revised to meet the 4-ft by 6-ft clear site distance and height clearance. In addition the planter box shall be located 1-foot minimum away from the adjacent alley.
39. GRADING AND DRAINAGE PLAN: The plan set must include a grading & drainage plan prepared by a licensed professional that includes existing and proposed spot elevations, earthwork volumes, finished floor elevations at every grade door entrance, area drain and bubbler locations, drainage flow arrows to demonstrate proper drainage of the site. See Palo Alto Municipal Code Section 16.28 Adjacent grades must slope away from the building foundation at minimum of 2% or 5% for 10-feet per 2013 CBC Section 1804.3. Downspouts and splashblocks should be shown on this plan, as well as any site drainage features such as swales. Grading will not be allowed that increases drainage onto, or blocks existing drainage from, neighboring properties. Public Works generally does not allow rainwater to be collected and discharged into the street gutter or connected directly to the City's infrastructure, but encourages the developer to keep rainwater onsite as much as feasible by directing runoff to landscape and other pervious areas of the site. Plan shall also include a drainage system as required for all uncovered exterior basement-level spaces such as lightwell, stairwells or driveway ramps.
40. BASEMENT DRAINAGE: Due to high groundwater throughout much of the City and Public Works prohibiting the pumping and discharging of groundwater, perforated pipe drainage systems at the exterior of the basement walls or under the slab are not allowed for this site. A drainage system is, however, required for all exterior basement-level spaces, such as lightwells, patios or stairwells. This system consists of a sump, a sump pump, a backflow preventer, and a closed pipe from the pump to a dissipation device onsite at least 10-feet from the property line, such as a bubbler box in a landscaped area, so that water can percolate into the soil and/or sheet flow across the site. The device must not

allow stagnant water that could become mosquito habitat. Additionally, the plans must show that exterior basement-level spaces are at least 7-3/4" below any adjacent windowsills or doorsills to minimize the potential for flooding the basement. Public Works recommends a waterproofing consultant be retained to design and inspect the vapor barrier and waterproofing systems for the basement.

41. IMPERVIOUS SURFACE AREA: The project will be creating or replacing 500 square feet or more of impervious surface. Accordingly, the applicant shall provide calculations of the existing and proposed impervious surface areas with the building permit application. The Impervious Area Worksheet for Land Developments form and instructions are available at the Development Center or on our website.
42. STORM WATER POLLUTION PREVENTION: The City's full-sized "Pollution Prevention - It's Part of the Plan" sheet must be included in the plan set. The sheet is available here: <http://www.cityofpaloalto.org/civicax/filebank/documents/2732>
43. STORM WATER TREATMENT: This project shall comply with the storm water regulations contained in provision C.3 of the NPDES municipal storm water discharge permit issued by the San Francisco Bay Regional Water Quality Control Board (and incorporated into Palo Alto Municipal Code Chapter 16.11). These regulations apply to land development projects that create or replace 10,000 square feet or more of impervious surface, and restaurants, retail gasoline outlets, auto service facilities, and uncovered parking lots that create and/or replace 5,000 square feet or more of impervious surface. In order to address the potential permanent impacts of the project on storm water quality, the applicant shall incorporate into the project a set of permanent site design measures, source controls, and treatment controls that serve to protect storm water quality, subject to the approval of the Public Works Department. The applicant shall identify, size, design and incorporate permanent storm water pollution prevention measures (preferably landscape-based treatment controls such as bioswales, filter strips, and permeable pavement rather than mechanical devices that require long-term maintenance) to treat the runoff from a "water quality storm" specified in PAMC Chapter 16.11 prior to discharge to the municipal storm drain system. Effective February 10, 2011, regulated projects, must contract with a qualified third-party reviewer during the building permit review process to certify that the proposed permanent storm water pollution prevention measures comply with the requirements of Palo Alto Municipal Code Chapter 16.11. The certification form, 2 copies of approved storm water treatment plan, and a description of Maintenance Task and Schedule must be received by the City from the third-party reviewer prior to approval of the building permit by the Public Works department. Within 45 days of the installation of the required storm water treatment measures and prior to the issuance of an occupancy permit for the building, third-party reviewer shall also submit to the City a certification for approval.
44. UTILITY PLAN: shall be provided with the Building Permit that demonstrates how the site's drainage flows by gravity into the City's system and is not pumped. Public Works generally does not allow downspout rainwater to be collected, piped and discharged directly into the street gutter or connect directly to the City's infrastructure. The utility plan shall indicate that downspouts are disconnected, daylight at grade, and are directed to landscaped and other pervious areas onsite. Downspouts shall daylight away from the foundation.

If pumps are required, plot and label where the pumps will be located on-site, storm water runoff from pumped system shall daylight onto onsite landscaped areas and be allowed to infiltrate and flow by gravity

- to the public storm drain line. Storm water runoff that is pumped shall not be directly piped into the public storm drain line.
45. TRANSFORMER AND UTILITIES: Applicant shall be aware that the project may trigger water line and meter upgrades or relocation, if upgrades or relocation are required, the building permit plan set shall plot and label utility changes. The backflow preventer, and above grade meters shall be located within private property and plotted on the plans. Similarly if a transformer upgrade or a grease interceptor is required it shall also be located within the private property.
46. WORK IN THE RIGHT-OF-WAY: The plans must clearly indicate any work that is proposed in the public right-of-way, such as sidewalk replacement, driveway approach, or utility laterals. The plans must include notes that the work must be done per City standards and that the contractor performing this work must first obtain a *Street Work Permit* from Public Works at the Development Center. This project may be required to replace the driveway approach the sidewalk associated with the existing driveway may be required to replaced with a thickened (6" thick instead of the standard 4" thick) section.
47. SIDEWALK ENCROACHMENT: Add a note to the site plan that says, "The contractor using the city sidewalk to work on an adjacent private building must do so in a manner that is safe for pedestrians using the sidewalk. Pedestrian protection must be provided per the 2013 California Building Code Chapter 32 requirements. If the height of construction is 8 feet or less, the contractor must place construction railings sufficient to direct pedestrians around construction areas. If the height of construction is more than 8 feet, the contractor must obtain an encroachment permit from Public Works at the Development Center in order to provide a barrier and covered walkway. The contractor must apply to Public Works for an encroachment permit to close or occupy the sidewalk(s) or lane."
48. SIDEWALK, CURB & GUTTER: As part of this project, the applicant must replace all of the existing sidewalks, ramps, curbs, gutters or driveway approaches in the public right-of-way along the frontage(s) of the property. Applicant shall be responsible for replacing the two ramps immediately across the street from the project site. Applicant shall meet with Public Works and Transportation to discuss the potential for adding a bulb-out along the University Avenue side to widen the sidewalk. If construction of the new ramps and/or sidewalk results in a conflict with utilities or traffic signal than applicant will be responsible for adjusting to grade or relocating conflict and to bring the improvements to current designs standards. The site plan and grading and drainage plan submitted with the building permit plan set must show the extent of the replacement work. Provide references to the specific City's Standard Drawings and Specification. The plan must note that any work in the right-of-way must be done per Public Works' standards by a licensed contractor who must first obtain a *Street Work Permit* from Public Works at the Development Center.
49. RESURFACING: The applicant is required to resurface (grind and overlay) the entire width of the street on University Avenue and Kipling Street frontages adjacent to the project. In addition this project is required to resurface the full width of the Lane along the project frontage. Note that the base material for these 3 streets varies. Thermoplastic striping of the street(s) will be required after resurfacing. Include an off-site plan that shows the existing signage and striping that is to be replaces as part of this project and for the contractor's use.
50. DEMOLITION PLAN: Place the following note adjacent to an affected tree on the Site Plan and Demolition Plan: "Excavation activities associated with the proposed scope of work shall occur no closer

than 10-feet from the existing street tree, or as approved by the Urban Forestry Division contact 650-496-5953. Any changes shall be approved by the same".

51. STREET TREES: The applicant may be required to replace existing and/or add new street trees in the public right-of-way along the property's frontage(s). Call the Public Works' arborist at 650-496-5953 to arrange a site visit so he can determine what street tree work, if any, will be required for this project. The site plan submitted with the building permit plan set must show the street tree work that the arborist has determined, including the tree species, size, location, staking and irrigation requirements, or include a note that Public Works' arborist has determined no street tree work is required. The plan must note that in order to do street tree work, the applicant must first obtain a *Permit for Street Tree Work in the Public Right-of-Way* from Public Works' arborist (650-496-5953).
52. GARBAGE/TRASH RECEPTACLES: The plans provided for preliminary review do not include the existing garbage/trash receptacle along University Avenue. This shall be shown on the Building permit plans and remain in its location for as long as possible during construction. If construction activities require the temporary removal of the receptacle, the contractor may remove during that construction activity but must place it back as soon as those activities have been completed. Prior to doing so, the contractor must notify the public works department to determine if Public Works Operations should pick it up for storage during that time.
53. ADJACENT NEIGHBORS: For any improvements that extend beyond the property lines such as tie-backs for the basement or construction access provide signed copies of the original agreements with the adjacent property owners. The agreements shall indicate that the adjacent property owners have reviewed and approved the proposed improvements (such as soldier beams, tiebacks) that extend into their respective properties
54. "NO DUMPING" LOGO: The applicant is required to paint the "No Dumping/Flows to San Franscисquito Creek" logo in blue color on a white background, adjacent to all onsite storm drain inlets. Stencils of the logo are available from the Public Works Environmental Compliance Division, which may be contacted at (650) 329-2598. A deposit may be required to secure the return of the stencil. Include the instruction to paint the logos on the construction grading and drainage plan. Similar medallions shall be installed near the catch basins that are proposed to be relocated. Provide notes on the plans to reference that medallions and stencils.
55. OIL/WATER SEPARATOR: Parking garage floor drains on interior levels shall be connected to an oil/water separator prior to discharging to the sanitary sewer system. The oil/water separator shall be located within private property.
56. GREASE INTERCEPTOR: If a commercial kitchen is proposed requiring the installation of a grease interceptor, the grease separator shall be installed and located within private property. In no case shall the City of Palo Alto allow the right-of-way (ROW) to be used to satisfy this requirement.

PRIOR TO BUILDING PERMIT FINAL:

57. STORM WATER TREATMENT: At the time of installation of the required storm water treatment measures and prior to the issuance of any occupancy permit, a third-party reviewer shall also submit to the City a

certification for approval that the project's permanent measures were constructed and installed in accordance to the approved permit drawings.

58. STORMWATER MAINTENANCE AGREEMENT: The applicant shall designate a party to maintain the control measures for the life of the improvements and must enter into a maintenance agreement with the City to guarantee the ongoing maintenance of the permanent C.3 storm water discharge compliance measures. The maintenance agreement shall be executed prior to the first building occupancy sign-off. The City will inspect the treatment measures yearly and charge an inspection fee. There is currently a \$381 (FY 2015) C.3 plan check fee that will be collected upon submittal for a grading or building permit.
59. Contractor and/or Applicant shall prepare and submit an electronic (pdf) copy of the Off-Site Improvements As-Built set of plans to Public Works for the City's records. The as-built set shall include all the improvements within the public road right-of-way and include items such as: shoring piles, tiebacks, public storm drain improvements, traffic signs, street trees, location of any vaults or boxes, and any other item that was installed as part of this project.
60. Contractor shall submit and obtain an Encroachment permit for the permanent structures (shoring and tiebacks) that were installed within the public road right-of-way.

Fire Department

61. Residential sprinklers to be designed per NFPA 13. Fire sprinklers and fire alarm systems and standpipes required in accordance with NFPA 13, NFPA14, NFPA 24, NFPA 72 and State and local standards. Sprinkler, fire alarm and underground fire supply installations require separate submittal to the Fire Prevention Bureau.
62. Sprinkler main drain must be coordinated with plumbing design so that 200 gpm can be flowed for annual main drain testing for 90 seconds without overflowing the collection sump, and the Utilities Department approved ejector pumps will be the maximum flow rate to sanitary sewer.
63. Applicant shall work with Utilities Department to provide acceptable backflow prevention configuration.
64. All floor levels in multi-story buildings must be served by an elevator capable of accommodating a 24 x 84 inch gurney without lifting or manipulating the gurney.
65. All welding or other hot work during construction shall be under a permit obtained from the Palo Alto Fire Department with proper notification and documentation of procedures followed and work conducted.
66. Low-E glass and underground parking areas can interfere with portable radios used by emergency responders. Please provide an RF Engineering analysis to determine if additional devices or equipment will be needed to maintain operability of emergency responder portable radios throughout 97% of the multi-family buildings in accordance with the Fire Code Appendix J as adopted by the City of Palo Alto. A written report to the Fire Marshal shall be provided prior to final inspection.

Utilities Electrical Engineering

GENERAL:

67. The applicant shall comply with all the Electric Utility Engineering Department service requirements noted during plan review.
68. The applicant shall be responsible for identification and location of all utilities, both public and private, within the work area. Prior to any excavation work at the site, the applicant shall contact Underground Service Alert (USA) at 1-800-227-2600, at least 48 hours prior to beginning work.
69. The applicant shall submit a request to disconnect all existing utility services and/or meters including a signed affidavit of vacancy, on the form provided by the Building Inspection Division. Utilities will be disconnected or removed within 10 working days after receipt of request. The demolition permit will be issued after all utility services and/or meters have been disconnected and removed.

THE FOLLOWING SHALL BE INCORPORATED IN SUBMITTALS FOR ELECTRIC SERVICE:

70. A completed Electric Load Sheet and a full set of plans must be included with all applications involving electrical work. The load sheet must be included with the preliminary submittal.
71. Industrial and large commercial customers must allow sufficient lead-time for Electric Utility Engineering and Operations (typically 8-12 weeks after advance engineering fees have been paid) to design and construct the electric service requested.
72. Only one electric service lateral is permitted per parcel. Utilities Rule & Regulation #18.
73. This project requires a padmount transformer. The location of the transformer shall be shown on the site plan and approved by the Utilities Department and the Architectural Review Board. Utilities Rule & Regulations #3 & #16.
74. The developer/owner shall provide space for installing padmount equipment (i.e. transformers, switches, and interrupters) and associated substructure as required by the City.
75. The customer shall install all electrical substructures (conduits, boxes and pads) required from the service point to the customer's switchgear. The design and installation shall be according to the City standards and shown on plans. Utilities Rule & Regulations #16 & #18.
76. Location of the electric panel/switchboard shall be shown on the site plan and approved by the Architectural Review Board and Utilities Department.
77. All utility meters, lines, transformers, backflow preventers, and any other required equipment shall be shown on the landscape and irrigation plans and shall show that no conflict will occur between the utilities and landscape materials. In addition, all aboveground equipment shall be screened in a manner that is consistent with the building design and setback requirements.
78. For services larger than 1600 amps, the customer will be required to provide a transition cabinet as the interconnection point between the utility's padmount transformer and the customer's main switchgear.

The cabinet design drawings must be submitted to the Electric Utility Engineering Department for review and approval.

79. For underground services, no more than four (4) 750 MCM conductors per phase can be connected to the transformer secondary terminals; otherwise, bus duct must be used for connections to padmount transformers. If customer installs a bus duct directly between the transformer secondary terminals and the main switchgear, the installation of a transition cabinet will not be required.
80. The customer is responsible for sizing the service conductors and other required equipment according to the National Electric Code requirements and the City standards. Utilities Rule & Regulation #18.
81. If the customer's total load exceeds 2500 kVA, service shall be provided at the primary voltage of 12,470 volts and the customer shall provide the high voltage switchgear and transformers.
82. For primary services, the standard service protection is a padmount fault interrupter owned and maintained by the City, installed at the customer's expense. The customer must provide and install the pad and associated substructure required for the fault interrupter.
83. Any additional facilities and services requested by the Applicant that are beyond what the utility deems standard facilities will be subject to Special Facilities charges. The Special Facilities charges include the cost of installing the additional facilities as well as the cost of ownership. Utilities Rule & Regulation #20.
84. Projects that require the extension of high voltage primary distribution lines or reinforcement of offsite electric facilities will be at the customer's expense and must be coordinated with the Electric Utility.

DURING CONSTRUCTION:

85. Contractors and developers shall obtain permit from the Department of Public Works before digging in the street right-of-way. This includes sidewalks, driveways and planter strips.
86. At least 48 hours prior to starting any excavation, the customer must call Underground Service Alert (USA) at 1-800-227-2600 to have existing underground utilities located and marked. The areas to be checked by USA shall be delineated with white paint. All USA markings shall be removed by the customer or contractor when construction is complete.
87. The customer is responsible for installing all on-site substructures (conduits, boxes and pads) required for the electric service. No more than 270 degrees of bends are allowed in a secondary conduit run. All conduits must be sized according to National Electric Code requirements and no 1/2 – inch size conduits are permitted. All off-site substructure work will be constructed by the City at the customer's expense. Where mutually agreed upon by the City and the Applicant, all or part of the off-site substructure work may be constructed by the Applicant.
88. All primary electric conduits shall be concrete encased with the top of the encasement at the depth of 30 inches. No more than 180 degrees of bends are allowed in a primary conduit run. Conduit runs over 500 feet in length require additional pull boxes.

89. All new underground conduits and substructures shall be installed per City standards and shall be inspected by the Electrical Underground Inspector before backfilling.
90. The customer is responsible for installing all underground electric service conductors, bus duct, transition cabinets, and other required equipment. The installation shall meet the National Electric Code and the City Standards.
91. Meter and switchboard requirements shall be in accordance with Electric Utility Service Equipment Requirements Committee (EUSERC) drawings accepted by Utility and CPA standards for meter installations.
92. Shop/factory drawings for switchboards (400A and greater) and associated hardware must be submitted for review and approval prior to installing the switchgear to:

Gopal Jagannath, P.E.
Supervising Electric Project Engineer
Utilities Engineering (Electrical)
1007 Elwell Court
Palo Alto, CA 94303

93. Catalog cut sheets may not be substituted for factory drawing submittal.
94. All new underground electric services shall be inspected and approved by both the Building Inspection Division and the Electrical Underground Inspector before energizing.

AFTER CONSTRUCTION & PRIOR TO FINALIZATION:

95. The customer shall provide as-built drawings showing the location of all switchboards, conduits (number and size), conductors (number and size), splice boxes, vaults and switch/transformer pads.

PRIOR TO ISSUANCE OF BUILDING OCCUPANCY PERMIT:

96. The applicant shall secure a Public Utilities Easement for facilities installed on private property for City use.
97. All required inspections have been completed and approved by both the Building Inspection Division and the Electrical Underground Inspector.
98. All Special Facilities contracts or other agreements need to be signed by the City and applicant.

ADDITIONAL COMMENTS:

99. The following conditions apply to three-phase service and any service over 400 amperes:
 - a. A padmount transformer is required.

- b. The Utilities Director, or his/her designee, may authorize the installation of submersible or vault installed facilities if in their opinion, padmounted equipment would not be feasible or practical.
- c. Submersible or vault installed facilities shall be considered Special Facilities as described in Rule and Regulation 20, and all costs associated with the installation, including continuing ownership and maintenance, will be borne by the applicant (see Rule and Regulation 3 for details).
- d. The customer must provide adequate space for installation, or reimburse the Utility for additional costs to locate the transformer outside the property boundaries.

All service equipment must be located above grade level unless otherwise approved by Electric Engineering.

Utilities Water Gas Wastewater Department

PRIOR TO ISSUANCE OF DEMOLITION PERMIT:

100. Prior to demolition, the applicant shall submit the existing water/wastewater fixture unit loads (and building as-built plans to verify the existing loads) to determine the capacity fee credit for the existing load. If the applicant does not submit loads and plans they may not receive credit for the existing water/wastewater fixtures.
101. The applicant shall submit a request to disconnect all utility services and/or meters including a signed affidavit of vacancy. Utilities will be disconnected or removed within 10 working days after receipt of request. The demolition permit will be issued by the building inspection division after all utility services and/or meters have been disconnected and removed.

FOR BUILDING PERMIT:

102. The applicant shall submit completed water-gas-wastewater service connection applications - load sheets for City of Palo Alto Utilities for each unit or place of business. The applicant must provide all the information requested for utility service demands (water in fixture units/g.p.m., gas in b.t.u.p.h, and sewer in fixture units/g.p.d.). The applicant shall provide the existing (prior) loads, the new loads, and the combined/total loads (the new loads plus any existing loads to remain).
103. The applicant shall submit improvement plans for utility construction. The plans must show the size and location of all underground utilities within the development and the public right of way including meters, backflow preventers, fire service requirements, sewer mains, sewer cleanouts, sewer lift stations and any other required utilities.
104. The applicant must show on the site plan the existence of any auxiliary water supply (i.e. water well, gray water, recycled water, rain catchment, water storage tank, etc).
105. The applicant shall be responsible for installing and upgrading the existing utility mains and/or services as necessary to handle anticipated peak loads. This responsibility includes all costs associated with the design and construction for the installation/upgrade of the utility mains and/or services.
106. The applicant's engineer shall submit flow calculations and system capacity study showing that the on-site and off-site water and sanitary sewer mains and services will provide the domestic, irrigation, fire

flows, and wastewater capacity needed to service the development and adjacent properties during anticipated peak floor demands. Field testing may be required to determine current flows and water pressures on existing water main. Calculations must be signed and stamped by a registered civil engineer. The applicant is required to perform, at his/her expense, a flow monitoring study of the existing sewer main to determine the remaining capacity. The report must include existing peak flows or depth of flow based on a minimum monitoring period of seven continuous days or as determined by the senior wastewater engineer. The study shall meet the requirements and the approval of the WGW engineering section. No downstream overloading of existing sewer main will be permitted.

107. For contractor installed water and wastewater mains or services, the applicant shall submit to the WGW engineering section of the Utilities Department **four** copies of the installation of public water, gas and wastewater utilities improvement plans (the portion to be owned and maintained by the City) in accordance with the utilities department design criteria. All utility work within the public right-of-way shall be clearly shown on the plans that are prepared, signed and stamped by a registered civil engineer. The contractor shall also submit a complete schedule of work, method of construction and the manufacturer's literature on the materials to be used for approval by the utilities engineering section. The applicant's contractor will not be allowed to begin work until the improvement plan and other submittals have been approved by the water, gas and wastewater engineering section. After the work is complete but prior to sign off, the applicant shall provide record drawings (as-builts) of the contractor installed water and wastewater mains and services per City of Palo Alto Utilities' record drawing procedures. For contractor installed services the contractor shall install 3M marker balls at each water or wastewater service tap to the main and at the City clean out for wastewater laterals.
108. An approved reduced pressure principle assembly (RPPA backflow preventer device) is required for all existing and new water connections from Palo Alto Utilities to comply with requirements of California administrative code, title 17, sections 7583 through 7605 inclusive. The RPPA shall be installed on the owner's property and directly behind the water meter within 5 feet of the property line. RPPA's for domestic service shall be lead free. **Show the location of the RPPA on the plans.**
109. An approved reduced pressure detector assembly is required for the existing or new water connection for the fire system to comply with requirements of California administrative code, title 17, sections 7583 through 7605 inclusive (a double detector assembly may be allowed for existing fire sprinkler systems upon the CPAU's approval). Reduced pressure detector assemblies shall be installed on the owner's property adjacent to the property line, within 5' of the property line. **Show the location of the reduced pressure detector assembly on the plans.**
110. All backflow preventer devices shall be approved by the WGW engineering division. Inspection by the utilities cross connection inspector is required for the supply pipe between the meter and the assembly.
111. Existing wastewater laterals that are not plastic (ABS, PVC, or PE) shall be replaced at the applicant's expense.
112. Existing wastewater main is 5.4" PE on Kipling Street. (sewer lateral to be 4")
113. Existing water services (including fire services) that are not a currently standard material shall be replaced at the applicant's expense.

114. The applicant shall pay the capacity fees and connection fees associated with new utility service/s or added demand on existing services. The approved relocation of services, meters, hydrants, or other facilities will be performed at the cost of the person/entity requesting the relocation.
115. Each unit or place of business shall have its own water and gas meter shown on the plans. Each parcel shall have its own water service, gas service and sewer lateral connection shown on the plans.
116. A separate water meter and backflow preventer is required to irrigate the approved landscape plan. Show the location of the irrigation meter on the plans. This meter shall be designated as an irrigation account and no other water service will be billed on the account. The irrigation and landscape plans submitted with the application for a grading or building permit shall conform to the City of Palo Alto water efficiency standards.
117. A new water service line installation for domestic usage is required. For service connection of 4-inch through 8-inch sizes, the applicant's contractor must provide and install a concrete vault with meter reading lid covers for water meter and other required control equipment in accordance with the utilities standard detail. Show the location of the new water service and meter on the plans.
118. A new water service line installation for irrigation usage may require. Show the location of the new water service and meter on the plans.
119. A new water service line installation for fire system usage is required. Show the location of the new water service on the plans. The applicant shall provide to the Engineering Department a copy of the plans for fire system including all Fire Department's requirements. Please see a fire/domestic combination service connection for your provide- see City of Palo Alto standard WD-11.
120. A new gas service line installation is required. Show the new gas meter location on the plans. The gas meter location must conform with utilities standard details. Gas meter to be installed above ground.
121. A new sewer lateral installation per lot is required. Show the location of the new sewer lateral on the plans.
122. All existing water and wastewater services that will not be reused shall be abandoned at the main per WGW utilities procedures.
123. Utility vaults, transformers, utility cabinets, concrete bases, or other structures cannot be placed over existing water, gas or wastewater mains/services. Maintain 1' horizontal clear separation from the vault/cabinet/concrete base to existing utilities as found in the field. If there is a conflict with existing utilities, Cabinets/vaults/bases shall be relocated from the plan location as needed to meet field conditions. Trees may not be planted within 10 feet of existing water, gas or wastewater mains/services or meters. New water, gas or wastewater services/meters may not be installed within 10' of existing trees. Maintain 10' between new trees and new water, gas and wastewater services/mains/meters.
124. To install new gas service by directional boring, the applicant is required to have a sewer cleanout at the front of the building. This cleanout is required so the sewer lateral can be videoed for verification of no damage after the gas service is installed by directional boring.

125. All utility installations shall be in accordance with the City of Palo Alto utility standards for water, gas & wastewater.
126. All WGW utilities work on University Avenue is 1.5 times the stated fee due to traffic; existing conditions require the work to be done outside of regular work hours.

Zero Waste/ Solid Waste

PRIOR TO ISSUANCE OF A BUILDING PERMIT

127. Provide a garbage and recycling chute for the residential unit with either an additional chute or a bin space for compostables on the residential floor.
128. SERVICE LEVELS: Without a restaurant: the enclosure should be sized for 3-yard garbage bin, 4-yard recycling bin, 1-yard compostables bin; with a restaurant: With a restaurant: 3-yard garbage bin, 4-yard recycling bin, 2-yard compostables bin.
129. TRASH DISPOSAL AND RECYCLING (PAMC 18.23.020): (A) Assure that development provides adequate and accessible interior areas or exterior enclosures for the storage of trash and recyclable materials in appropriate containers, and that trash disposal and recycling areas are located as far from abutting residences as is reasonably possible. (B) Requirements: (i) Trash disposal and recyclable areas shall be accessible to all residents or users of the property. (ii) Recycling facilities shall be located, sized, and designed to encourage and facilitate convenient use. (iii) Trash disposal and recyclable areas shall be screened from public view by masonry or other opaque and durable material, and shall be enclosed and covered. Gates or other controlled access shall be provided where feasible. Chain link enclosures are strongly discouraged. (iv) Trash disposal and recycling structures shall be architecturally compatible with the design of the project. (v) The design, construction and accessibility of recycling areas and enclosures shall be subject to approval by the architectural review board, in accordance with design guidelines adopted by that board and approved by the city council pursuant to Section 18.76.020.
130. RECYCLING STORAGE DESIGN REQUIREMENTS (PAMC 5.20.120): The design of any new, substantially remodeled, or expanded building or other facility shall provide for proper storage, handling, and accessibility which will accommodate the solid waste and recyclable materials loading anticipated and which will allow for the efficient and safe collection. The design shall comply with the applicable provisions of Sections 18.22.100, 18.24.100, 18.26.100, 18.32.080, 18.37.080, 18.41.080, 18.43.080, 18.45.080, 18.49.140, 18.55.080, 18.60.080, and 18.68.170 of Title 18 of this code.
131. SERVICE REQUIREMENTS: (a) Collection vehicle access (vertical clearance, street width and turnaround space) and street parking are common issues pertaining to new developments. Adequate space must be provided for vehicle access. (b) Weight limit for all drivable areas to be accessed by the solid waste vehicles (roads, driveways, pads) must be rated to 60,000 lbs. This includes areas where permeable pavement is used. (c) Containers must be within 25 feet of service area or charges will apply. (d) Carts and bins must be able to roll without obstacles or curbs to reach service areas "no jumping curbs".
132. GARBAGE, RECYCLING, AND YARD WASTE/COMPOSTABLES CART/ BIN LOCATION AND SIZING:

a. Office Building: The proposed commercial development must follow the requirements for recycling container space¹. Project plans must show the placement of recycling containers, for example, within the details of the solid waste enclosures. Collection space should be provided for built-in recycling containers/storage on each floor/office or alcoves for the placement of recycling containers.

- i. Enclosure and access should be designed for equal access to all three waste streams – garbage, recycling, and compostables.
- ii. Collection cannot be performed in underground. Underground bins locations require a minimum of 77" of vertical clearance. Pull out charges will apply. In instances where push services are not available (e.g., hauler driver cannot push containers up or down ramps), the property owner will be responsible for placing solid waste containers in an accessible location for collection.
- iii. All service areas must have a clearance height of 20' for bin service.
- iv. New enclosures should consider rubber bumpers to reduce wear and tear on walls.

For questions regarding garbage, recycling, and compostables collection issues, contact Green Waste of Palo Alto (650) 493-4894.

b. Restaurants and Food Service Establishments: Please contact Green Waste of Palo Alto (650) 493-4894 to maximize the collection of compostables in food preparation areas and customer areas.

For more information about compostable food service products, please contact City of Palo Alto Zero Waste at (650) 496-5910.

c. Multi-family Residential: The proposed multi-family development must follow the requirements for recycling container space². All residential developments, where central garbage, recycling, and compostables containers will serve five or more dwelling units, must have space for the storage and collection of recyclables and compostables. This includes the provision of recycling chutes where garbage chutes are provided. Project plans must show the placement of recycling and compostables containers, for example, within the details of the solid waste enclosures.

- i. Enclosure and access should be designed for equal access to all three waste streams – garbage, recycling, and compostables.
- ii. Collection cannot be performed in underground. Underground bins locations require a minimum of 77" of vertical clearance. Pull out charges will apply. In instances where push services are not available (e.g., hauler driver cannot push containers up or down ramps), the property owner will be responsible for placing solid waste containers in an accessible location for collection.
- iii. All service areas must have a clearance height of 20' for bin service.
- iv. New enclosures should consider rubber bumpers to reduce wear-and-tear on walls.

For questions regarding garbage, recycling, and compostables collection issues, contact Green Waste of Palo Alto (650) 493-4894.

133. COVERED DUMPSTERS, RECYCLING AND TALLOW BIN AREAS (PAMC 16.09.075(q)(2)):

¹ In accordance with the California Public Resources Code, Chapter 18, Articles 1 and 2

² In accordance with the California Public Resources Code, Chapter 18, Articles 1 and 2

- a. Newly constructed and remodeled Food Service Establishments (FSEs) shall include a covered area for all dumpsters, bins, carts or container used for the collection of trash, recycling, food scraps and waste cooking fats, oils and grease (FOG) or tallow.
- b. The area shall be designed and shown on plans to prevent water run-on to the area and runoff from the area.
- c. Drains that are installed within the enclosure for recycle and waste bins, dumpsters and tallow bins serving FSEs are optional. Any such drain installed shall be connected to a Grease Control Device (GCD).
- d. If tallow is to be stored outside then an adequately sized, segregated space for a tallow bin shall be included in the covered area.
- e. These requirements shall apply to remodeled or converted facilities to the extent that the portion of the facility being remodeled is related to the subject of the requirement.

It is frequently to the FSE's advantage to install the next size larger GCD to allow for more efficient grease discharge prevention and may allow for longer times between cleaning. There are many manufacturers of GCDs which are available in different shapes, sizes and materials (plastic, reinforced fiberglass, reinforced concrete and metal).

The requirements will assist FSEs with FOG discharge prevention to the sanitary sewer and storm drain pollution prevention. The FSE at all times shall comply with the Sewer Use Ordinance of the Palo Alto Municipal Code. The ordinances include requirements for GCDs, GCD maintenance, drainage fixtures, record keeping and construction projects.

134. CONSTRUCTION AND DEMOLITION DEBRIS (CDD) (PAMC 5.24.030):

- a. Covered projects shall comply with construction and demolition debris diversion rates and other requirements established in Chapter 16.14 (California Green Building Code). In addition, all debris generated by a covered project must haul 100 percent of the debris not salvaged for reuse to an approved facility as set forth in this chapter.
- b. Contact the City of Palo Alto's Green Building Coordinator for assistance on how to recycle construction and demolition debris from the project, including information on where to conveniently recycle the material.

Public Works Water Quality Control

135. DISCHARGE OF GROUNDWATER (PAMC 16.09.170, 16.09.040): Prior approval shall be obtained from the city engineer or designee to discharge water pumped from construction sites to the storm drain. The city engineer or designee may require gravity settling and filtration upon a determination that either or both would improve the water quality of the discharge. Contaminated ground water or water that exceeds state or federal requirements for discharge to navigable waters may not be discharged to the storm drain. Such water may be discharged to the sewer, provided that the discharge limits contained in Palo Alto Municipal Code (16.09.040(m)) are not exceeded and the approval of the superintendent is obtained prior to discharge. The City shall be compensated for any costs it incurs in authorizing such discharge, at the rate set forth in the Municipal Fee Schedule.

136. UNPOLLUTED WATER (PAMC 16.09.055): Unpolluted water shall not be discharged through direct or indirect connection to the sanitary sewer system (e.g. uncovered ramp to garage area).

137. COVERED PARKING (PAMC 16.09.180(b)(9)): If installed, drain plumbing for parking garage floor drains must be connected to an oil/water separator with a minimum capacity of 100 gallons, and to the sanitary sewer system.
138. DUMPSTERS FOR NEW AND REMODELED FACILITIES (PAMC 16.09.180(b)(10)): New buildings and residential developments providing centralized solid waste collection, except for single-family and duplex residences, shall provide a covered area for a dumpster. The area shall be adequately sized for all waste streams and designed with grading or a berm system to prevent water runon and runoff from the area.
139. ARCHITECTURAL COPPER PAMC (16.09.180(b)(14)): On and after January 1, 2003, copper metal roofing, copper metal gutters, copper metal down spouts, and copper granule containing asphalt shingles shall not be permitted for use on any residential, commercial or industrial building for which a building permit is required. Copper flashing for use under tiles or slates and small copper ornaments are exempt from this prohibition. Replacement roofing, gutters and downspouts on historic structures are exempt, provided that the roofing material used shall be prepatinated at the factory. For the purposes of this exemption, the definition of "historic" shall be limited to structures designated as Category 1 or Category 2 buildings in the current edition of the Palo Alto Historical and Architectural Resources Report and Inventory.
140. LOADING DOCKS (PAMC 16.09.175(k) (2)): (i) Loading dock drains to the storm drain system may be allowed if equipped with a fail-safe valve or equivalent device that is kept closed during the non-rainy season and during periods of loading dock operation. (ii) Where chemicals, hazardous materials, grease, oil, or waste products are handled or used within the loading dock area, a drain to the storm drain system shall not be allowed. A drain to the sanitary sewer system may be allowed if equipped with a fail-safe valve or equivalent device that is kept closed during the non-rainy season and during periods of loading dock operation. The area in which the drain is located shall be covered or protected from rainwater run-on by berms and/or grading. Appropriate wastewater treatment approved by the Superintendent shall be provided for all rainwater contacting the loading dock site.
141. CONDENSATE FROM HVAC (PAMC 16.09.180(b)(5)): Condensate lines shall not be connected or allowed to drain to the storm drain system.
142. SILVER PROCESSING (e.g. photoprocessing retail) (PAMC 16.09.215): Facilities conducting silver processing (photographic or X-ray films) shall either submit a treatment application or waste hauler certification for all spent silver bearing solutions. 650-329-2421.

143. COPPER PIPING (PAMC 16.09.180(b)(b)): Copper, copper alloys, lead and lead alloys, including brass, shall not be used in sewer lines, connectors, or seals coming in contact with sewage except for domestic waste sink traps and short lengths of associated connecting pipes where alternate materials are not practical. The plans must specify that copper piping will not be used for wastewater plumbing.
144. MERCURY SWITCHES (PAMC 16.09.180(12)): Mercury switches shall not be installed in sewer or storm drain sumps.
145. COOLING SYSTEMS, POOLS, SPAS, FOUNTAINS, BOILERS AND HEAT EXCHANGERS (PAMC 16.09.205(a)): It shall be unlawful to discharge water from cooling systems, pools, spas, fountains boilers and heat exchangers to the storm drain system.
146. UNDESIGNATED RETAIL SPACE (PAMC 16.09): Newly constructed or improved buildings with all or a portion of the space with undesignated tenants or future use will need to meet all requirements that would have been applicable during design and construction. If such undesignated retail space becomes a food service facility the following requirements must be met, in addition to other applicable codes: Grease Control Device (GCD) Requirements, PAMC Section 16.09.075; Drainage Fixture Requirements, PAMC Section 16.09.075; Covered Dumpsters, Recycling and Tallow Bin Areas PAMC, 16.09.075(q)(2); Large Item Cleaning Sink, PAMC 16.09.075(m)(2)(B).

PASSED: 5-3-1

AYES: Filseth, Fine, Scharff, Tanaka, Wolbach

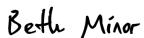
NOES: DuBois, Holman, Kou,

ABSENT:

ABSTENTIONS: Kniss

ATTEST:

DocuSigned by:



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City Clerk

DocuSigned by:



6FB3765F09D34EA...

Mayor

APPROVED AS TO CONTENT:

DocuSigned by:



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Director of Planning and Community Environment

APPROVED AS TO FORM:

DocuSigned by:



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Senior Asst. City Attorney

PLANS AND DRAWINGS REFERENCED:

Those plans prepared by Jo Bellomo Associates titled "429 University Avenue", consisting of 24 pages, dated October 26, 2016.

Exhibit A

429 University Avenue Project Mitigation Monitoring Program

INTRODUCTION

Section 15097 of the Guidelines for the California Environmental Quality Act (CEQA) requires that, whenever a public agency approves a project based on a Mitigated Negative Declaration (MND) or an Environmental Impact Report (EIR), the public agency shall establish a mitigation monitoring or reporting program to ensure that all adopted mitigation measures are implemented.

This Mitigation Monitoring Program (MMP) is intended to satisfy this requirement of the CEQA Guidelines as it relates to the 429 University Avenue project. This MMP would be used by City staff and mitigation monitoring personnel to ensure compliance with mitigation measures during project implementation. Mitigation measures identified in this MMP were developed in the Initial Study prepared for the proposed project.

As noted above, the intent of the MMP is to ensure the effective implementation and enforcement of all adopted mitigation measures. The MMP will provide for monitoring of construction activities, as necessary, and in the field identification and resolution of environmental concerns.

MITIGATION MONITORING PROGRAM DESCRIPTION

The City of Palo Alto will coordinate monitoring activities and ensure appropriate documentation of mitigation measure implementation. The table below identifies each mitigation measure for the 429 University Avenue Project and the associated implementation, monitoring, timing and performance requirements.

The MMP table presented on the following pages identifies:

1. the full text of each applicable mitigation measure;
2. the party or parties responsible for implementation and monitoring of each measure;
3. the timing of implementation of each mitigation measure including any ongoing monitoring requirements; and
4. performance criteria by which to ensure mitigation requirements have been met.

Following completion of the monitoring and documentation process, the final monitoring results will be recorded and incorporated into the project file maintained by the City's Department of Planning and Community Environment.

It is noted that the mitigation measure numbering reflects the numbering used in the Initial Study prepared for the 429 University Avenue Project (Dudek 2014).

429 University Avenue Project

Mitigation Monitoring Program

No mitigation measures are required for the following resources:

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> ▪ Aesthetics ▪ Agricultural Resources ▪ Air Quality ▪ Geology, Soils, and Seismicity | <ul style="list-style-type: none"> ▪ Greenhouse Gas Emissions ▪ Hydrology and Water Quality ▪ Land Use and Planning ▪ Mineral Resources | <ul style="list-style-type: none"> ▪ Population and Housing ▪ Public Services ▪ Recreation ▪ Utilities and Service Systems |
|---|---|--|

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
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BIOLOGICAL RESOURCES

<p>Mitigation Measure BIO-1: The following measures shall be implemented to reduce impacts to protected trees:</p> <ul style="list-style-type: none"> • City of Palo Alto (City)-approved Modified Type III fencing shall be installed for the two street trees to be retained along University Avenue. City-approved tree protection signs shall be posted on all fencing. • Soil conditions for the four new trees to be planted along Kipling Street shall be improved by preparing a planting area at least 6 feet square for each tree and installing Silva Cells to reduce compaction. The Silva Cells shall be filled with proper soil amendments and growing medium as determined by the City Arborist. • Unless otherwise approved, each new tree shall be provided with 1,200 cubic feet of rootable soil area, utilizing Standard Drawing #604/513. Rootable soil is defined as compaction less than 90% over the area, not including sidewalk base areas. • Two bubbler drip irrigation units shall be installed for each new tree to adequately water the new planting area. • New sidewalk shall be installed such that the final planting space opening is at least 5 feet by 5 feet for each new tree. 	<p>Applicant</p>	<p>City of Palo Alto Urban Forestry Group/Planning Division Arborist</p>	<ul style="list-style-type: none"> • Prior to issuance of demolition, grading, and building permits • During demolition, excavation, and construction 	<ul style="list-style-type: none"> • Approved site plans reflect applicable conditions • Field inspections conducted to verify adherence to conditions
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429 University Avenue Project Mitigation Monitoring Program

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
<ul style="list-style-type: none"> • Kiva tree grates shall be used around each new tree. • Replacement tree size shall be a 36-inch box, properly structured nursery stock. • Based on growth habit and proven performance, <i>Ginkgo biloba</i> "Autumn Gold" is highly recommended for the replacement trees. Other tree species may be approved by the City Arborist. • All work within the Tree Protection Zone, including canopy pruning of protected trees, shall be supervised by a Certified Arborist approved by the City. 				
CULTURAL RESOURCES				
Mitigation Measure CUL-1: Prior to commencement of site clearing and project grading, the project applicant shall retain a qualified archaeologist to train construction personnel regarding how to recognize cultural resources (such as structural features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains) that could be encountered during construction activities. If artifacts or unusual amounts of shell or bone or other items indicative of buried archaeological resources or human remains are encountered during earth disturbance associated with the proposed project, the on-site contractor shall immediately notify the City of Palo Alto (City) and the Native American Heritage Commission as appropriate. All soil-disturbing work shall be halted within 100 feet of the discovery until a qualified archaeologist, as defined by the California Environmental Quality Act (CEQA) Guidelines (14 CCR 15000 et seq.) and the City, completes a significance evaluation of the finds pursuant to Section 106 of the National Historic Preservation Act. Any human remains unearthed shall be treated in accordance with California Health and Safety Code, Section 7050.5, and California Public Resources Code, Sections 5097.94, 5097.98, and 5097.99, which include requirements to	Applicant	City of Palo Alto	Prior to and during earth disturbance	<ul style="list-style-type: none"> • Training materials provided to construction contractors • Field inspections conducted to verify compliance

429 University Avenue Project Mitigation Monitoring Program

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
notify the Santa Clara County Medical Examiner's office and consult with Native American representatives determined to be the Most Likely Descendants, as appointed by the Native American Heritage Commission. Identified cultural resources shall be recorded on State Department of Parks and Recreation Form 523 (archaeological sites). Mitigation measures prescribed by the Native American Heritage Commission, the Santa Clara County Medical Examiner's office, and any Native American representatives determined to be the Most Likely Descendants and required by the City shall be undertaken before construction activities are resumed. If disturbance of a project area cultural resource cannot be avoided, a mitigation program, including measures set forth in the City's Cultural Resources Management Program and in compliance with Sections 15064.5 and 15126.4 of the CEQA Guidelines, shall be implemented.				
HAZARDS AND HAZARDOUS MATERIALS				
Mitigation Measure HAZ-1: Prior to building demolition, the project applicant shall demonstrate to the satisfaction of the City of Palo Alto that a survey of the existing buildings has been conducted by a qualified environmental specialist who meets the requirements of the current U.S. Environmental Protection Agency regulations for suspected lead-containing materials (LCMs), including lead-based paint/coatings; asbestos containing materials (ACMs); and the presence of polychlorinated biphenyls (PCBs). Any demolition activities likely to disturb LCMs or ACMs shall be carried out by a contractor trained and qualified to conduct lead- or asbestos-related construction work. If found, LCMs and ACMs shall be disposed of in accordance with state and federal regulations, including the EPA's Asbestos National Emissions Standards for Hazardous Air Pollutants, the Cal-OSHA Construction Lead Standard (CCR Title 8, Section 1432.1), and California Department of Toxic Substances Control and EPA	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of demolition permit and during demolition	Building survey report submitted LCMs and ACMs handled by qualified contractor and disposed of in accordance with the U.S. Environmental Protection Agency's (EPA) Asbestos National Emissions Standards for Hazardous Air Pollutants, the California Occupational Health and Safety's

429 University Avenue Project Mitigation Monitoring Program

Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
requirements for disposal of hazardous waste. If PCBs are found, these materials shall be managed in accordance with the Metallic Discards Act of 1991 (California Public Resources Code, Sections 42160–42185) and other state and federal guidelines and regulations. Demolition plans and contract specifications shall incorporate any necessary abatement measures in compliance with the Metallic Discards Act, particularly Section 42175, Materials Requiring Special Handling, for the removal of mercury switches, PCB-containing ballasts, and refrigerants.				Construction Lead Standard (CCR Title 8, Section 1432.1), and California Department of Toxic Substances Control and EPA requirements for disposal of hazardous waste. PCBs, mercury and other hazardous building materials handled by qualified contractor and disposed of in accordance with applicable regulations as identified.
NOISE				
Mitigation Measure NOI-1: Residential Uses: Window and exterior door assemblies with Sound Transmission Class (STC) rating up to 45 and upgraded exterior walls shall be used in the residential portion of the proposed building to achieve the City's maximum instantaneous noise guideline for residential uses. The City of Palo Alto shall ensure that these standards are met through review of building plans as a condition of project approval. Commercial Uses: Window and exterior door assemblies for the commercial portions of the building shall have a minimum STC rating of 32 at the corner of University Avenue and Kipling Street, and a minimum STC of 28 at all other commercial	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include window sound transmission ratings and interior noise levels verification from a qualified acoustical consultant.

429 University Avenue Project Mitigation Monitoring Program

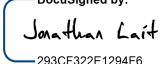
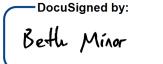
Mitigation Measure	Implementation Responsibility	Monitoring Responsibility	Timing	Performance Evaluation Criteria
locations within the proposed building to comply with the State of California CalGreen noise standards (maximum interior noise level of 50 dB during the peak hour of traffic). The City of Palo Alto shall ensure that these standards are met through review of building plans as a condition of project approval.				
Mitigation Measure NOI-2: The residential portion of the proposed building shall have a ventilation or air-conditioning system to provide a habitable interior environment when windows are closed.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include details of the residential ventilation system.
Mitigation Measure NOI-3: Noise levels from rooftop equipment shall be reduced to meet the City of Palo Alto Noise Ordinance requirements. An enclosure or other sound-attenuation measures at the exhaust fans shall be provided to reduce rooftop equipment noise is no greater than 8 dB above the existing ambient level at potential future neighboring buildings to meet the property plane noise limit. Use of quieter equipment than assumed in this analysis may support reduced mitigation, which shall be evaluated by a qualified acoustical consultant.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include garage exhaust fan manufacturer's information regarding equipment noise levels and noise attenuation details
TRANSPORTATION AND TRAFFIC				
Mitigation Measure TRANS-1: Mirrors shall be installed at the parking garage driveway to allow drivers to see when a pedestrian or vehicle is approaching in Lane 30.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include parking garage mirrors
Mitigation Measure-TRANS-2: Mirrors shall be installed at each turn within the parking garage to provide adequate sight distance.	Applicant	City of Palo Alto Department of Planning and Community Environment	Prior to issuance of building permit	Approved building plans shall include parking garage mirrors

Certificate Of Completion

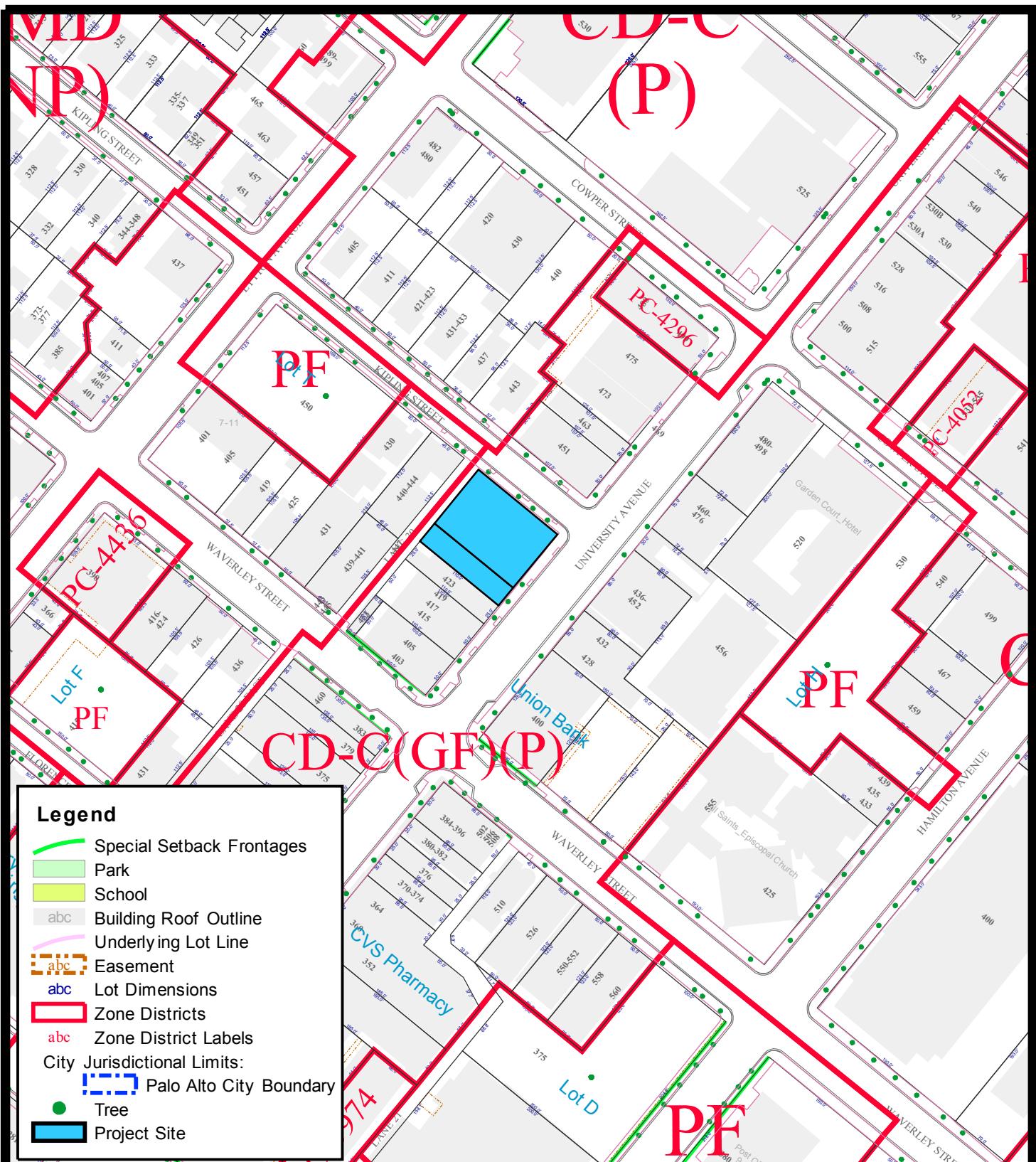
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 250 Hamilton Ave
 Palo Alto , CA 94301
 Yolanda.Cervantes@CityofPaloAlto.org
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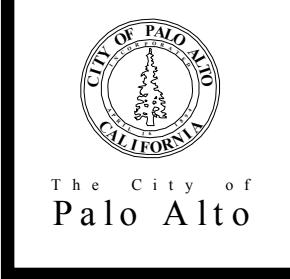
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Jonathan Lait Jonathan.Lait@cityofpaloalto.org Asst. Director Planning and Comm Environment City of Palo Alto Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	 <small>DocuSigned by: Jonathan Lait 293CF322E1294F6...</small>	Sent: 4/21/2017 3:27:20 PM Resent: 4/21/2017 3:33:33 PM Viewed: 4/21/2017 3:33:56 PM Signed: 4/21/2017 3:34:13 PM
Albert Yang Albert.yang@cityofpaloalto.org Senior Deputy City Attorney City of Palo Alto Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	 <small>DocuSigned by: Albert Yang 15B6C45220134DC...</small>	Sent: 4/21/2017 3:34:17 PM Viewed: 4/24/2017 8:55:46 AM Signed: 4/24/2017 8:56:17 AM
Greg Scharff greg.scharff@cityofpaloalto.org Mayor City of Palo Alto Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	 <small>DocuSigned by: [Signature] 6FB3765F09D34EA...</small>	Sent: 4/24/2017 8:56:20 AM Resent: 4/25/2017 10:47:36 AM Viewed: 4/24/2017 3:32:28 PM Signed: 4/25/2017 8:27:28 PM
Beth Minor beth.minor@cityofpaloalto.org City Clerk City of Palo Alto Security Level: Email, Account Authentication (None) Electronic Record and Signature Disclosure: Not Offered via DocuSign ID:	 <small>DocuSigned by: Beth Minor 45F95502DB71492...</small>	Sent: 4/25/2017 8:27:32 PM Viewed: 4/25/2017 9:37:47 PM Signed: 4/25/2017 9:39:10 PM
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Payment Events	Status	Timestamps



429 University Avenue
[18PLN-00240]



This map is a product of the
City of Palo Alto GIS



0'
148'

From: [Lait, Jonathan](#)
To: [Elizabeth Wong \(elizabethwong2009@gmail.com\)](#)
Subject: 429 University Avenue
Date: Friday, October 12, 2018 5:01:26 PM

Dear Elizabeth,

I write in advance of issuing a Director's decision for the subject Architectural Review application. Following the Architectural Review Board's October 4, 2018 recommendation, I am prepared to partially approve the application with respect to the decorative element on the southern elevation and landscaping plan, and partially deny the application with respect to the exterior building materials, colors, and craftsmanship. As currently presented, the exterior materials, colors, and craftsmanship are not consistent with Architectural Review findings 2 and 3 (see below).

However, I believe a few simple changes may be effective to address ARB's concerns and allow me to make the required findings. For example, the following changes would add textures, colors, and details more compatible with the highly ornamented character of the surrounding area:

- Addition of sun shades or awnings along the University Ave frontage
- Recessing the ground floor glass façade by 18-24" on the University Avenue (with removed floor area added to second floor)
- Adding texture to the exterior concrete on the first and second floors that recognizes the high level of detail on surrounding buildings.

If you are amenable to incorporating some or all of these changes, I would seek recommendation of approval from the ARB on the updated design prior to issuing my decision. I believe the ARB's support is important for the ultimate success of your project. Please contact me by 650 329-2679 if you are interested in pursuing this path for your application.

Jonathan

Relevant ARB Findings

Finding #2: The project has a unified and coherent design, that:

- a. creates an internal sense of order and desirable environment for occupants, visitors, and the general community,
- b. preserves, respects and integrates existing natural features that contribute positively to the site and the historic character including historic resources of the area when relevant,
- c. is consistent with the context-based design criteria of the applicable zone district,
- d. provides harmonious transitions in scale, mass and character to adjacent land uses and land use designations,
- e. enhances living conditions on the site (if it includes residential uses) and in adjacent residential areas.

Finding #3: The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.



KASSOUNI LAW

Via E-Mail and U.S. Mail

November 13, 2018

Molly Stump
Office of the City Attorney
City of Palo Alto
250 Hamilton Ave.
Palo Alto, CA 94301

Re: 429 University Ave., 14PLN-00222

Dear Ms. Stump:

This firm represents Kipling Post, LP, the owner of 429 University Avenue (referred to as the Project). This letter is a follow-up to my prior letter of October 31, 2018 (which explained why Palo Alto has no discretion to shut down the Project based upon the Municipal Code section 18.77.090), and is submitted in support of the October 18, 2018 Administrative Appeal of Interim Director Jonathan Lait's decision to deny approval of the "exterior building materials, colors and craftsmanship-related detailing associated with the project."

This letter sets forth the legal grounds compelling the City of Palo Alto's (City) grant of the appeal and approval of the Project. All prior correspondence, documents, photographs, Public Records Act responsive documents to this firm's prior requests, and comments from Kipling Post and its representatives are incorporated herein and deemed part of the record.

As will be explained, the record over the last 18 months evidences an obvious disconnect between planning staff and the Architectural Review Board (ARB); inexplicable delays in having this minor project approval heard by the ARB; the failure of Interim Director Lait to even pay lip service to independent review of the ARB's routine denials (16 in a row); the failure of all involved to recognize that the City Council has already approved this Project with specific findings approving mass, scale, colors, and detailing; and the astonishing concessions of bias by members of the ARB, in particular Board Members Gooyer and Thompson.

It is telling that Interim Director of Planning Lait recommended approval in his Staff Reports for all three Minor Level ARB reviews. Kipling Post had made changes for each ARB hearing and these were reviewed and accepted by the Planning Department. Attached as Exhibit A are the first two pages of the Staff Reports for the August 16, 2018, September 20, 2018, and October 4, 2018, Minor Level ARB hearings. The Staff Reports strongly show Kipling Post's full cooperation with the Planning Department, which earned Staff's recommendation for approval at each ARB.

Kipling Post is not required to spend hundreds of thousands of dollars on yet another round of submissions before a biased ARB, after having already proposed three separate iterations for the ARB over three separate hearings, all of which were rejected without any commitment from Mr.

Lait that an alternative would actually be approved. On this point, Interim Director Lait's Notice of Proposed Decision is grossly inaccurate when it accuses Kipling Post of a "refusal" to consider the "suggestion of incorporating detail into the design in an effort to secure complete project approval." Neither the ARB nor Interim Director Lait proposed specific changes that *would* result in approval. (Planning Department staff already requested ARB to recommend approval, to no avail.) In any event, Kipling Post is not required to go through a *fourth* post-City Council ARB hearing in front of members who have already evidenced their desire to fundamentally alter an approved modern design, at a cost of hundreds of thousands of dollars with no assurance of recommendation of approval.

Kipling Post has been left with no option at this point but to pursue legal remedies in Court. **Should the appeal be denied, Kipling Post will immediately file a Complaint against the City of Palo Alto. This legal action will compel issuance of the building permit, and will award Kipling Post all damages and attorney's fees attributable to the City of Palo Alto pursuant to C.C.P section 1094.5 and the Federal and State Constitutional Takings Clauses. This office is also investigating the liability of individual City of Palo Alto employees pursuant to 42 U.S.C 1983.** Specific grounds are as follows:

I. THE CITY HAS ALREADY APPROVED THE PROJECT'S GLASS, CONCRETE, AND STEEL DESIGN, AND MADE SPECIFIC FINDINGS REGARDING SIZE, SCALE, MASS, AND COMPATIBILITY WITH SURROUNDING AREAS

The City Council approved this Project on February 6, 2017 (Approval No. 2017-2). Among other things, the City Council found the following:

- "The project is compatible with the surrounding development based upon the building's size, scale and mass."
- "The building's modern design blends and transitions with the surrounding buildings through similar materials and horizontal rooflines."
- "The project is compatible with the immediate environment of the site."
- "The design of the building offers a harmoniously compatible transition with the design character of the streetscape along University Avenue....*The project consists of rectilinear features in a glass and concrete style building. These features are consistent with the character of the surrounding buildings* to the east of the site along university Avenue and the building is located at the corner of Kipling Street and University Avenue."
- "The proposed project is consistent with the above finding because *it corporates materials, textures, colors and details that are compatible with adjacent*

structures and functions. Adjacent structures employ brick, stucco and glass windows with a rough texture and organic colors. The proposed structure consists of concrete, glass windows, and metal mesh screens. These features compliment the adjacent buildings and the third and fourth floor consist of a similarly colored concrete as nearby buildings.”

- “*The project has a high aesthetic quality, materials, construction techniques, textures, colors and other details that are compatible with and enhance the surrounding area.*”
- “*The proposed structure is comprised of high quality glass, concrete and steel design which is similar and representative of the materials found in the surrounding environment.* Further, the materials, textures, and attention to detail in the structure is consistent throughout each elevation which represents a high quality aesthetic design.”

These findings are consistent with the City Council’s approval of the Option 1 design in 2017, in particular Sheet A.3.7, in which the materials are clearly specified. In short, the Project was already approved as a glass, concrete, and steel design. The only missing element from the City Council’s approval of Option 1 was the decorative wall treatment for the Project’s west elevation and the landscaping, both of which have been approved by Interim Director Lait and are not the subject of this appeal.

II. THE PLANNING AND COMMUNITY ENVIRONMENT DEPARTMENT’S FINDINGS ARE IN DIRECT CONFLICT WITH THE CITY COUNCIL’S FINDINGS

Not only has the City Council already made the above (and other) core findings, Planning Department staff has recommended approval of Kipling Post’s submissions at every ARB hearing since the 2017 approval of this Project. Unfortunately, it is apparent that the staff reports were highly confusing to the ARB, as they set up mandated findings above and beyond the limited issue of “exterior building materials, colors and craftsmanship-related detailing associated with the project.” This gave the ARB an erroneous belief that it could force the redesign of an approved project.

For example, the staff report for the October 4, 2018, ARB hearing treated the matter as if the ARB were evaluating the Project for the first time, and thus *erroneously mandated support for all the findings contained in Municipal Code section 18.76*. Yet, as noted above, the ARB’s role is limited to the issue of “exterior building materials, colors and craftsmanship-related detailing associated with the project.”

Interim Director Lait’s October 16, 2018, correspondence to Project architect Peter Ko attached findings supporting denial of the Project. These findings illustrate the attempt by the Planning Department to force fundamental architectural design changes to an approved project. The

following are examples of the Planning Department's errant findings when contrasted with the City's previously approved findings:

- "The building exterior is not compatible with its surroundings, however, because it fails to incorporate detail and craftsmanship in design that is similar to the surrounding buildings." [Compare with the City's approved finding that the Project incorporates "materials, textures, colors and details that are compatible with adjacent structures and functions."]
- The proposed Project "uses exterior building materials (concrete) and colors (gray) that result in a design with little to no architectural detailing and no design linkages that reflect the overall pattern of buildings in the area." [Compare with the City's approved finding that the Project "has a high aesthetic quality, materials, construction techniques, textures, colors and other details that are compatible with and enhance the surrounding area."]

Lest there be any doubt that the Planning Department is seeking a redesign of the previously approved Project, its findings also contend that "comparably scaled buildings in the area" include details such as "Juliet balconies, faux balustrade screens in front of windows, recessed store fronts, awnings and recessed windows that enhance the pedestrian scale and experience." Yet the City Council has approved this Project as a "modern design" which "blends and transitions with the surrounding buildings through similar materials and horizontal rooflines." The detail proposed by architect Peter Ko is fully consistent with the design of a "modern building" as already approved by the City Council when it found that the "materials, textures, and attention to detail in the structure is consistent throughout each elevation which represents a high quality aesthetic design." "Detail" in architectural circles is commonly understood to be coterminous with "detail and craftsmanship in design." Thus, the City Council's previous finding of "high quality aesthetic design" does not grant the ARB or the Planning Department carte blanche for wholesale architectural revisions at the cost of hundreds of thousands of dollars to Kipling Post.

III. TWO OF THE THREE VOTING MEMBERS OF THE ARB DISPLAYED OVERT BIAS AGAINST THE PROJECT AND COMPLETE DISREGARD FOR THE CITY COUNCIL'S FINDINGS

A. ARB Member Gooyer

The Planning Department's erroneous requirement that every finding in Municipal Code section 18.76 be addressed is inconsistent with the limited role of the ARB post-City Council approval of the Project on February 6, 2017. Thus several members of the ARB, in particular Mr. Gooyer, believed that the ARB was reviewing the Project from the ground up:

"I voted against this project go-around. I have a hard time now saying, yes, you know, some very minor changes were made, but not enough for me to go from a negative vote to a positive vote. It's tough for me to now approve this project because of this."

This is a startling admission of bias by Mr. Gooyer, and discloses the necessity of Interim Director Lait's intervention and independent assessment (which he failed to do). Mr. Gooyer is admitting that because he was against this Project in general prior to the City Council approval in 2017, "it's tough for me to now approve this project."

Mr. Gooyer further revealed his inherent bias when he remarked that he was only able to make a decision between two binary options (A or B): "If the proposal...is worded so that we're not discussing anything other than Option A or B, I can make a vote. *Other than that, I would just vote no.*" He admitted he was unable (based upon his historical voting record) to assess the submission presented by Kipling Post, and recommended by staff. Again, Interim Director Lait should have intervened when issuing his decision, but did nothing but parrot the ARB.

B. ARB Member Thompson

ARB member Thompson similarly failed to acknowledge the City Council's prior finding that the Project is "compatible with the surrounding development based upon the building's size, scale and mass." On the contrary, she expressly cited "massing" concerns as the first of her issues: "In terms of considering the context and the lines that are coming out of the context, I don't think that this massing actually works, even if, on its own, when you're not looking at the context it looks fine."

Ms. Thomson contradicted the City Council's prior findings yet again by asserting a second "issue" with the Project, this time criticizing the "clean line building" when compared to the "detail in adjacent structures." Yet as noted in Section I, the City Council made several findings establishing the Project's compatibility with "surrounding buildings," "adjacent structures and functions," and the "surrounding environment." Significantly, Ms. Thomson expressed no clear preference for lighter or darker colors, noting that she could be "swayed either way for that."

Ms. Thompson then proceeded to raise a third issue with the "scale" of the Project, despite the City Council's prior finding that the "[t]he project is compatible with the surrounding development based upon the building's size, scale and mass." Ms. Thompson erroneously asserted that "we can talk about scale, because I think that is related to the details....It is not compatible when it comes to scale." Ms. Thompson's confusion was the direct result of staff having imposed finding requirements unrelated to the limited issues on the table.

C. ARB Chair Alexander Lew

The third and only other voting member, Alexander Lew, has been on the ARB since the beginning and recommended approval.

The ARB normally consists of five members. Recommendation of approval at a Minor level hearing takes two affirmative votes, 2 of 5 or 40%. Two members were recused for various reasons resulting in an approval threshold of 2 of 3 members or 67%. Nowhere in the ARB charter does it envision requiring such a high threshold. This 67% threshold is even higher than for a regular Major level ARB hearing which requires a threshold of 3 of 5 members or 60%.

There was no consideration given to this important imbalance by the Interim Planning Director in his decision.

IV. PLANNING DEPARTMENT'S STONEWALLING APPLICANT'S REQUEST FOR ARB MINOR LEVEL HEARING

The Applicant has diligently pursued obtaining a Building Permit since approval by City Council on February 6, 2017. Building plans were submitted to the Building Department for plan check on March 2, 2018. The ARB Minor level review is one of the Conditions of Approval.

Applicant requested multiple times, by telephone and then continuously in writing as early as February 1, 2018, that the Planning Staff schedule such a hearing. An ARB Minor level hearing finally took place six months later, on August 16, 2018. These interminable delays by the Planning Staff ignoring Applicant's requests have caused costly delays to the Project, especially considering that the City's rules only allow construction excavation during the dry summer months. The scheduling delays have caused the Project to lose one year's window for in-ground work. The Applicant has otherwise obtained approval of the building plans from all other departments in the City except for Planning and contractor-related logistics issues from Public Works Engineering (The Public Works Engineering issues are normally resolved by a General Contracting firm, which will not commit to the Project without a final approval from Planning.) The list of Departmental approvals is shown in Exhibit B.

V. MICHAEL HARBOUR'S COMMENTS AT THE ARB HEARINGS WERE WILDLY INACCURATE AND FURTHER REVEAL THE ATTEMPT TO REDESIGN THE PROJECT

The comments of Michael Harbour at the hearings (a Project opponent from day one) did little to alleviate the confusion. Among other things, Mr. Harbour commented that the "mass and size is incompatible with the neighboring buildings, and it's not pedestrian friendly." As noted above, this had already been resolved in February, 2017, thus adding to the confusion initiated by the staff report. Indeed, Mr. Harbour is the only neighborhood resident whose comments were expressly referenced in the ARB staff report. Those written comments included the gross fabrication that Bellomo Architects had been "fired," and that it has disavowed the Project. It is apparent that Mr. Harbour's personal animus toward the Project has reached the level of the absurd.

It is also apparent that Mr. Harbour has been utilizing Jodie Gerhardt as his personal pipeline for information regarding the Project. (See e-mail exchange between August 16, 2018 and August 23, 2018, Exhibit C.) It is telling that after this e-mail exchange, Ms. Gerhardt took the position on October 26, 2018, that any further approval extensions would have to be considered by City Attorney staff, in contradiction to her year-prior written communication on September 20, 2017, to Ko Architects that "[t]he Planning approval period is 'stayed' during building permit review." (Exhibit D)

A city cannot "deprive an individual of property rights by a plebiscite of neighbors. . . . Such action is arbitrary and unlawful." *Ross v. City of Yorba Linda* (1991) 1 Cal.App.4th 954, 968.

Notably, the Court reached its decision after it exhaustively canvassed the applicable case law. *Id.* at 967-968. While the Court recognized that a city council might consider the objections of neighbors, such objections are no substitute for the constitutional obligation to consider “*what those objections are worth*—not the mere fact that they are made.” *Id.* at 966 (emphasis in original). In short, an exercise of approval power cannot be made to depend upon a “count of noses.” *Id.*, quoting *Mettee v. County Commissioner of Howard County* (1957) 212 Md. 357 [129 A.2d 136, 140.] (See also *Hardin County v. Jost* (1957) 897 S.W.2d 592, 595 “[b]asing zoning decisions solely on the complaints of neighbors ignores the basic premise of planning and zoning...”].)

VI. INTERIM DIRECTOR LAIT HAS DENIED PROJECT APPROVAL BASED UPON UNCONSTITUTIONALLY VAGUE STANDARDS IN VIOLATION OF FEDERAL AND STATE STATUTORY LAW

It is a “fundamental rule in zoning...that an ordinance must establish a standard to operate uniformly and govern its administration and enforcement in all cases.” *Redwood City Co. of Jehovah’s Witnesses v. City of Menlo Park* (1959) 167 Cal.App.2d 686, 697-98. An ordinance is invalid where it “leaves its interpretation, administration or enforcement to the ungoverned discretion” of the decision-making body. *Id.* Indeed, as the United States Supreme Court held in *Papachristou v. City of Jacksonville* (1972) 405 U.S. 156, 170, laws that permit and encourage “arbitrary and discriminatory enforcement” violate the Fourteenth Amendment. *Id.*; see also *Yick Wo v. Hopkins* (1886) 118 U.S. 356, 373 (An ordinance which clothes a government actor with unbridled discretion “hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void.”).

In *Lakewood v. Plain Dealer Pub. Co.* (1992) 486 U.S. 750, 769, the Supreme Court further held that even in limited circumstances where a law might constitutionally allow an administrator or agency to exercise discretion to protect “the health, safety or welfare of the public,” such a law is unconstitutional if it does not place “explicit” textual limitations on the exercise of such discretion. *Id.* at 770. In *Lakewood* more specifically, the Court struck down a law that permitted the mayor to deny approval of newspaper stand permits if the mayor found the approval was “not in the public interest,” because the law did not expressly limit or define what the mayor could determine to be in such “public interest.” *Id.* at 769.

Like the laws at issue in the cases mentioned above, the ARB has been granted unfettered and limitless discretion to deny recommendation of Project approval with no accountability or adherence to objectively quantifiable standards, thus leaving the door open to arbitrary and discriminatory decisions. As even the City’s former Planning Director Hillary Gitelman conceded at the May 4, 2015 City Council hearing, “compatibility is in the eyes of the beholder.”

Furthermore, this Project is subject to California’s Housing Accountability Act (CHHA), in particular Government Code section 65589.5, subd. (h)(2), as there are three residential units in a City with a severe housing crisis. Neither the ARB nor Interim Director Lait articulated any specific adverse impact on public health or safety in support of the purely subjective, biased denial of the Project. The purpose of this statute is to limit the ability of local governments to

“reject or make infeasible housing developments … without a thorough analysis of the economic, social, and environmental effects of the action....” (§ 65589.5, subd. (b).) Subdivision (j) of the statute provides that “[w]hen a proposed housing development project complies with applicable, objective general plan and zoning standards and criteria, including design review standards, in effect at the time that the housing development project’s application is determined to be complete,” a local agency which “proposes to disapprove the project … shall base its decision regarding the proposed housing development project upon written findings supported by substantial evidence on the record that … [¶] (1) [t]he housing development project would have a specific, adverse impact upon the public health or safety unless the project is disapproved” and “(2) [t]here is no feasible method to satisfactorily mitigate or avoid the adverse impact … other than the disapproval of the housing development project....”

Residential housing projects, such as that being proposed by Kipling Post, are expressly included in the CHAA as a “housing development project.” (See Government Code § 65589.5, subd. (h)(2)(A)(C).) (See also *Honchariw v. County of Stanislaus* (2011) 200 Cal.App.4th 1066, 1073.) As such, the burden of proof shifts to the City to support denial with specific findings that approval would result in a “specific, adverse impact” on “public health or safety.” Not only that, the phrase “specific, adverse impact” means a “significant, quantifiable, direct, and unavoidable impact, based on *objective*, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete.” (Government Code § 65589.5, subd. (j)(1). (Emphasis added.) No such findings were made, nor can such findings be made as the City has no objective, identified written public health or safety standards or policies that would warrant project denial.

VII. THE CITY IS EXPOSING ITSELF TO LIABILITY FOR A TAKING AND CIVIL RIGHTS VIOLATIONS

When governmental restrictions interfere with a property owner’s “distinct investment-backed expectations” for developing property, the government generally must compensate for the loss. *Kavanau v. Santa Monica Rent Control Bd.* (1997) 16 Cal.4th 761, 775; *see also Penn Central Transportation Company v. New York City* (1978) 438 U.S. 10. The First District Court of Appeal affirmed this Constitutional mandate in *Lockaway Storage v. County of Alameda* (2013) 216 Cal.App.4th 161. There, the plaintiff had purchased a parcel of land for which the County had granted a Conditional Use Permit allowing the property to be used for storage of recreational vehicles and boats. *Id.* at 168. After the plaintiff purchased the property, however, the County refused to issue the permits that were necessary for the plaintiff to construct such a storage facility. The County justified its denials by claiming that the proposed construction would be “inconsistent with the County’s [newly adopted] general plan.” *Id.* at 171. Nonetheless, the Court still found a taking, in part, because the County’s actions had denied the plaintiff its “reasonable investment backed expectation” that it could use the property as a storage facility. *Id.* at 186.

Please be further advised that Kipling Post will be entitled to damages for a temporary taking even if a building permit is ultimately issued.. In the *Lockaway Storage* case referenced above, of which the undersigned was counsel of record, several million dollars of damages and over \$700,000 in attorney’s fees were awarded the property owner for the wrongful delay in issuing

building permits. Individual Alameda County employees were also named as defendants in a civil rights action under 42 U.S.C. section 1983. That matter settled for \$500,000.

Similarly here, the ARB and Planning Department's perpetual delay in approving the Project has interfered with Kipling Post's "reasonable investment backed expectations." The denial of an investment backed expectation is ad hoc—a fact-specific inquiry that necessarily considers all circumstances surrounding the denial. Obeisance to the design whims of Michael Harbour, coupled with the astonishing lack of consideration of the City Council's prior findings, will only result in further depriving Kipling Post's investment backed expectations.

CONCLUSION

Especially tragic, after so many years of work and expense on this Project, is Interim Director Lait's refusal to intervene and restore some semblance of objectivity and discretion to the process. In particular, Board Member Gooyer's express concession of bias should have been enough for Mr. Lait to approve the "exterior building materials, colors and craftsmanship-related detailing associated with the project." It is clear that Mr. Lait will do nothing contrary to the ARB on this issue, regardless of the circumstances, and regardless of the express concessions of bias of ARB members. One wonders why the Municipal Code provision mandating the Director to approve or deny ARB recommendations even exists.

We expect the City Council to grant the appeal and put the matter to rest. As you know from my prior correspondence, Kipling Post began construction activity and has spent inordinate time and expense in obtaining Project approval. This is evidenced by:

- Retention of the Ko Architects firm to provide three separate sets of drawings to address three separate ARB hearings at great expense;
- Completion of the removal of street trees pursuant to validly issued permits;
- Payment of fees for new water service connections, fire service capacity, and water meters;
- Removal of hazardous materials;
- Archaeological services;
- Disconnection of utilities to the site;
- Eviction of tenants;
- Preparation of construction documents;
- CALGreen compliance;
- Building permit fees (\$186,871.77);

- Issuance of Encroachment Permit for installation of ground water level monitoring piezometer;
- Hundreds of hours of work and hundred of thousands of dollars in expenses in obtaining Building Permit approval status from multiple departments as set forth in Exhibit B; and
- Three ARB Minor level hearings

Evidence of the above examples is attached as Exhibit E.

To have this entire Project ground to halt because an ARB member just doesn't like it is arbitrary and capricious. I sincerely hope that you recognize the liability facing the City if, under these circumstances, the Project is denied. Accordingly, the City Council is urged to grant the appeal and approve Kipling Post's proposal for exterior building material, colors and craftsmanship-related detailing, which was recommended for approval by Planning Department staff in their ARB Staff Reports (Exhibit A).

Thank you for your prompt attention.

Sincerely,



Timothy V. Kassouni

cc [via e-mail]: Ed Shikada
Jonathan Lait
George Hoyt
Brad Eggleston
Rosemary Morse
Peter Ko

Exhibit A

Staff Reports to Minor Level Review ARB



Architectural Review Board

Staff Report (ID # 9470)

Report Type: Action Items **Meeting Date:** 8/16/2018

Summary Title: 429 University: Condition Compliance - West Wall, Landscaping, Materials (1st Formal)

Title: PUBLIC HEARING / QUASI-JUDICIAL. 429 University Avenue [18PLN-00240]: Recommendation on the Applicant's Request for Approval of a Minor Architectural Review Consistent With Condition of Approval #3, for a Previously Approved Mixed-Use Building (14PLN-00222), Requiring Architectural Review Board Approval for the Proposed West Elevation Wall Design, Landscape Details, and Exterior Building Materials, Colors, and Craftsmanship. Environmental Assessment: Use of Mitigated Negative Declaration Prepared for 14PLN-00222. Zoning District: CD-C(G)(P) (Downtown Commercial with Ground Floor and Pedestrian Shopping Overlay). For More Information Contact the Project Planner Adam Petersen at apetersen@m-group.us

From: Jonathan Lait

Recommendation

Staff recommends the Architectural Review Board (ARB) take the following action(s):

1. Recommend approval of the proposed project to the Director of Planning and Community Environment based on findings and subject to conditions of approval.

Background

The subject project was reviewed and approved by the City Council on February 6, 2017. Condition of Approval #3 in the attached Record of Land Use Action (Attachment G) requires the project to return to the ARB to evaluate three specific items. These items are:

- a. A decorative wall design treatment, feature or element, shall be applied to the exterior walls immediately adjacent to the southern property line (project's south elevation)

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Planning & Community Environment
250 Hamilton Avenue
Palo Alto, CA 94301
(650) 329-2442

- b. Landscape details and plans for all proposed planting, including individual planters, the greenwall, and landscaping near the rooftop elevator.
- c. The exterior building materials, colors and craftsmanship-related detailing associated with the project.

The previous staff report from the February 6, 2017 hearing includes extensive background information, project analysis and evaluation against City Codes and Policies. The report, action minutes, transcript, and video of the meeting are available online:

Document	Link
Staff Report	<u>https://www.cityofpaloalto.org/civicax/filebank/documents/55707</u>
Action Minutes	<u>https://www.cityofpaloalto.org/civicax/filebank/documents/56154</u>
Transcript	<u>https://www.cityofpaloalto.org/civicax/filebank/documents/56868</u>
Video	<u>http://midpenmedia.org/city-council-115/</u>

Additionally, the project returned to City Council on March 20, 2017 as an item on the consent calendar for adoption of the findings and the Record of Land Use Action (ROLUA). The report, action minutes, transcript and video of the meeting are available online:

Document	Link
Staff Report	<u>https://www.cityofpaloalto.org/civicax/filebank/documents/56356</u>
Action Minutes	<u>https://www.cityofpaloalto.org/civicax/filebank/documents/56839</u>
Transcript	<u>https://www.cityofpaloalto.org/civicax/filebank/documents/57427</u>
Video	<u>http://midpenmedia.org/city-council-120/</u>

Additional history is available on the City's project webpage at bit.ly/429University. A copy of the City Council staff report without prior attachments is available in Attachment D.

The purpose of this report is to detail the applicant's response to the condition of approval, as part of a Minor Architectural Review application. Other minor changes to the project are being reviewed through the building permit process, as is the City's standard process. The analysis section below builds upon information contained in earlier reports and is modified to reflect recent project changes.

Analysis¹

¹ The information provided in this section is based on analysis prepared by the report author prior to the public hearing. The Architectural Review Board in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to take an alternative action from the recommendation in this report.



Architectural Review Board

Staff Report (ID # 9555)

Report Type:	Action Items	Meeting Date: 9/6/2018
Summary Title:	429 University: Condition Compliance - West Wall, Landscaping, Materials (2nd Formal)	
Title:	PUBLIC HEARING / QUASI-JUDICIAL. 429 University Avenue [18PLN-00240]: Recommendation on the Applicant's Request for Approval of a Minor Architectural Review Consistent With Condition of Approval #3, for a Previously Approved Mixed-Use Building (14PLN-00222), Requiring Architectural Review Board Approval for the Proposed West Elevation Wall Design, Landscape Details, and Exterior Building Materials, Colors, and Craftsmanship. Environmental Assessment: Use of Mitigated Negative Declaration Prepared for 14PLN-00222. Zoning District: CD-C(G)(P) (Downtown Commercial with Ground Floor and Pedestrian Shopping Overlay). For More Information Contact the Project Planner Adam Petersen at apetersen@m-group.us	
From:	Jonathan Lait	

Recommendation

Staff recommends the Architectural Review Board (ARB) take the following action(s):

1. Recommend approval of the proposed project to the Director of Planning and Community Environment based on findings and subject to conditions of approval.

Report Summary

The subject project was previously reviewed by the ARB at the August 16, 2018 public hearing. The Municipal Code encourages the Director of Planning and Community Environment to make a decision on projects after two public hearings for Minor AR projects.

Earlier staff reports include background information, project analysis and evaluation of City codes and policies; these reports are available online; a copy of the August 16th report without

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 Planning & Community Environment
 250 Hamilton Avenue
 Palo Alto, CA 94301
 (650) 329-2442

prior attachments is available in Attachment H. Links to the full staff report and video of the meeting are provided below:

Document	Link
Staff Report	https://www.cityofpaloalto.org/civicax/filebank/documents/66300
Video	http://midpenmedia.org/architectural-review-board-74-2-3-2-2-2-2-2-2-2-2-2-2/

The purpose of this report is to restate the comments made by the Board and detail the applicant's response to those comments. The analysis section below builds upon the information contained in earlier reports and modified to reflect recent project changes.

The ARB is encouraged to make a final recommendation to approve, conditionally approve or deny the project.

Discussion¹

The ARB last considered this project on August 16, 2018. The Board expressed the following comments:

ARB Comments	Project Response
West Wall Plans: The ARB requested clarification about how the west wall design relates to the entire building. The motion referenced that the design include more detail and layering, and better relay the architect design intent of resembling a tree like structure.	The proposed reveals have been revised to take the shape of an up-lifting tree-like pattern
Craftsmanship: The ARB noted in their motion that the applicant should include construction details that demonstrate the craftsmanship of the building.	The applicant has provided photos and construction level details of the building showing the elevations, with building sections, and details for the roof, windows and doors.
Landscaping: The ARB expressed concerns about how the landscaping would look over time and that the garden wall planter along the rear alley Lane 30 may be overbearing.	The applicant is proposing indigenous plant material in conformance with the ARB Findings. A detail of the proposed vine trellis is shown on Sheet L4.

Staff has prepared Architectural Review Findings and Conditions of Approval contained in Attachments B and C. The project plans are available as Attachment J of this staff report and they are also available online at the following link: bit.ly/429University.

¹ The information provided in this section is based on analysis prepared by the report author prior to the public hearing. The Architectural Review Board in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to take an alternative action from the recommendation in this report.



Architectural Review Board

Staff Report (ID # 9674)

Report Type:	Action Items	Meeting Date: 10/4/2018
Summary Title:	429 University: Condition Compliance - West Wall, Landscaping, Materials (3rd Formal)	
Title:	PUBLIC HEARING / QUASI-JUDICIAL. 429 University Avenue [18PLN-00240]: Recommendation on the Applicant's Request for Approval of a Minor Architectural Review Consistent With Condition of Approval #3, for a Previously Approved Mixed-Use Building (14PLN-00222), Requiring Architectural Review Board Approval for the Proposed West Elevation Wall Design, Landscape Details, and Exterior Building Materials, Colors, and Craftsmanship. Environmental Assessment: Use of Mitigated Negative Declaration Prepared for 14PLN-00222. Zoning District: CD-C(G)(P) (Downtown Commercial with Ground Floor and Pedestrian Shopping Overlay). For More Information Contact the Project Planner Adam Petersen at apetersen@m-group.us	
From:	Jonathan Lait	

Recommendation

Staff recommends the Architectural Review Board (ARB) take the following action(s):

1. Recommend approval of the proposed project to the Director of Planning and Community Environment based on findings and subject to conditions of approval.

Report Summary

The subject project was previously reviewed by the ARB at the August 16, 2018 public hearing. The project was then scheduled for the September 6, 2018 ARB hearing, but a quorum was not achieved for that meeting. Accordingly, the project was continued to the September 20, 2018 hearing. At the September 20th hearing, the ARB recommended the project return for a third hearing with the following changes.

City of Palo Alto
Planning & Community Environment
250 Hamilton Avenue
Palo Alto, CA 94301
(650) 329-2442

ARB Comments/Direction

Building Colors. Lighten the two proposed grey colors. Ensure the color of overhangs relate to the color of the wall it is shading.

Landscaping. Provide additional landscaping on all floors, especially the 4th floor, to buffer uses and provide visual interest. Enhance the proposed green screen at rear of the building to provide additional support for vines.

West Wall Design. The proposed design on the west wall needs to be better integrated with the rest of the building.

Renderings. Provide accurate renderings that include views from University Avenue, the corner of University and Kipling, and the rear of the building at a minimum.

Earlier staff reports include background information, project analysis and evaluation of City codes and policies; these reports are available online. The staff report for the September 6, 2018 hearing, which was continued to September 20th, is available in Attachment J. Additional staff reports, project plans and other information may be found on the City's project webpage at bit.ly/429University

Public Comment

Applicant Response

The applicant is proposing lighter colors and will provide an updated material board at the hearing. However, the applicant has some concerns that the colors will fade over time and become even lighter than the ARB desires. Grey overhangs will be provided on the third and fourth floors to match the wall color of these floors, as shown in the renderings.

Additional planters have been added to the project, especially on the 4th floor where 16 rectangular pots will be secured to the roof just outside the railing on the upper floor. The green screen will be enhanced with a trellis to further encourage vine growth at the rear of the building.

The applicant is proposing two options for the west wall as shown in the plan set. The first option is the same as was presented to the ARB on September 20th. The second option uses the proposed tan color on the top half of the 3rd and 4th floor west wall with the grey color on the bottom half of the wall to better integrate all four floors while providing interest on the west wall.

The applicant has provided high quality renderings of the west wall from the vantage point of University Avenue to demonstrate how the west wall and 4th floor landscaping will be perceived from street level. Additional renderings may be available at the hearing.

Exhibit B

City of Palo Alto Approvals

10/9/18

<u>Task</u>	<u>Status</u>	<u>Status Date</u>	<u>Action By</u>
Building Review	Approved	10/05/2018	DAVID CHU...
Elect Utilities Review	Approved With Conditions	04/05/2018	DANIEL ER...
Fire Review	Approved Inspection Re...	06/29/2018	HENRY RAF...
Planning Review	Not Approved	09/17/2018	ADAM PETE...
Public Works Eng. Review	Not Approved	09/26/2018	PAIGE SAF...
Water Quality Review	Approved Inspection Re...	03/16/2018	BRIAN JON...
WGW Utilities Review	Approved With Conditions	08/03/2018	JOHN NGUY...
Landscape Review	Not Required	06/07/2018	KELSEY AN...
Urban Forestry Review	Approved	06/25/2018	WALTER PA...
Ready To Issue			
Permit Issuance			
Structural	Approved	08/02/2018	MEDHAT HE...
Structural	Approved	07/13/2018	MEDHAT HE...
Architectural	Approved	08/02/2018	DAVID CHU...
Mechanical/Plumbing	Approved	08/02/2018	DAVID CHU...
Electrical	Approved	08/02/2018	DAVID CHU...
Structural	Approved	08/02/2018	DAVID CHU...
Architectural	Approved	08/01/2018	DAVID CHU...
Mechanical/Plumbing	Approved	08/01/2018	DAVID CHU...
Electrical	Approved	08/01/2018	DAVID CHU...
		08/01/2018	DAVID CHU...

18000-00536 - KIPLING POST LP

<u>Task</u>	<u>Status</u>	<u>Status Date</u>	<u>Action By</u>
Building Review	Approved	08/06/2018	GOPAL JAG...
Elect Utilities Review			
Fire Review			
Planning Review	Not Approved	09/17/2018	ADAM PETE...
Public Works Eng. Review	Not Approved	09/11/2018	PAIGE SAF...
Water Quality Review			
WGW Utilities Review	Approved	08/17/2018	JOHN NGUY...
Landscape Review			
Urban Forestry Review	Approved	07/25/2018	WALTER PA...
Ready To Issue			
Permit Issuance			

18000-00537 - KIPLING POST LP

Exhibit C

Gerhardt & Harbour Pipeline

Cervantes, Yolanda

From: Gerhardt, Jodie <Jodie.Gerhardt@CityofPaloAlto.org>
Sent: Thursday, August 23, 2018 11:11 AM
To: Michael Harbour
Cc: Lait, Jonathan; Adam Petersen; Yang, Albert
Subject: 429 University - Building Permits

Michael,

The Planning Department, along with Building, discussed this issue and confirmed we will not be issuing Building permits until after Minor Architectural Review approval of the three (3) items/conditions (File No. 18PLN-00240). However, we are allowing the applicant to move forward with the demolition permit after the appropriate mitigation measures and logistics plan are in place/prepared.

Sincerely,



Jodie Gerhardt, AICP | Manager of Current Planning | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
T: 650.329.2575 | E: jodie.gerhardt@cityofpaloalto.org



From: Michael Harbour [mailto:dr.mharbour@gmail.com]
Sent: Wednesday, August 22, 2018 8:53 PM
To: Gerhardt, Jodie
Subject: Re: Request to speak

Hi Jodie,

What was the status of your meeting with Jonathan Lait with regard to issuing a building permit before all council mandated items are approved?

Could you please let me know?

Thanks,

Michael Harbour

On Sat, Aug 18, 2018 at 12:08 PM, Michael Harbour <dr.mharbour@gmail.com> wrote:

Hi Jodie,

Thank you for speaking with me yesterday about the status of 429 University Ave project. You mentioned that you would be meeting with Jonathan Lait to discuss the next steps. Can you please email me and let me know the outcome of the meeting?

The appellant's concerns remain with the design features of the building including wall design, landscaping, exterior building materials, colors, and craftsmanship. These were some of the issues on which we won our appeal under violation of municipal code 18.18.100. The city council's resolution on February 6, 2017 was clear that all of these items would need to be addressed and approved by the ARB before a building permit was issued. If the applicant was to begin the building before all items were resolved including demolishing existing buildings, it would give her a "vesting claim" to continue building the project without adhering to the council

mandate. The responsibility of submitting the design plans to the ARB lies solely with the applicant. It is not our fault that she exceeded her one year limit, applied for an extension, and then submitted her first proposal to the ARB more than 18 months after the city's resolution. The very fact that the ARB unanimously voted 3-0 against the current design plans is very significant at this stage of the process. We appreciate the planning department's respectful adherence to our issues which the council mandated.

I look forward to hearing the outcome of your meeting.

Thanks,
Michael Harbour
Lead appellant for 429 University Ave

On Thu, Aug 16, 2018 at 7:57 PM, Michael Harbour <dr.mharbour@gmail.com> wrote:

Thanks, Jodie, for your quick response.

I'll call you in the morning.

Michael

On Thu, Aug 16, 2018 at 7:56 PM, Gerhardt, Jodie <Jodie.Gerhardt@cityofpaloalto.org> wrote:

Yes, I will be in tomorrow morning.

Jodie
Sent from my iPhone

On Aug 16, 2018, at 7:50 PM, Michael Harbour <dr.mharbour@gmail.com> wrote:

Hi Jodie,
I left you a voice message earlier today. Can you please call me tomorrow at (650) 224-4171.
Thanks,
Michael Harbour

Exhibit D

Timeline Extension

ABOUT THIS E-MAIL: The information transmitted may contain confidential and/or legally privileged material that is only for the person or entity to which it is addressed. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material immediately.

From: Gerhardt, Jodie [mailto:Jodie.Gerhardt@CityofPaloAlto.org]
Sent: Wednesday, September 20, 2017 3:45 PM
To: Laura Roberts <laura@koarch.com>; Lait, Jonathan <Jonathan.Lait@CityofPaloAlto.org>
Cc: Peter Ko <design@koarch.com>; 'Elizabeth Wong' <elizabethwong2009@gmail.com>; Reich, Russ <Russ.Reich@CityofPaloAlto.org>
Subject: RE: 425-429 University Ave. Mixed use project timeline

Laura,

The Planning approval period is "stayed" during building permit review. Therefore, if you submit a building permit prior to the expiration and keep that building permit active, the Planning approval would not expire. However, if the building permit goes inactive, then the Planning approval would expire.

<image001.jpg>

Jodie Gerhardt, AICP | Manager of Current Planning | P&CE Department

250 Hamilton Avenue | Palo Alto, CA 94301

T: 650.329.2575 | E: jodie.gerhardt@cityofpaloalto.org

From: Laura Roberts [mailto:laura@koarch.com]
Sent: Wednesday, September 20, 2017 2:15 PM
To: Lait, Jonathan
Cc: Gerhardt, Jodie; Peter Ko; 'Elizabeth Wong'; Reich, Russ
Subject: RE: 425-429 University Ave. Mixed use project timeline

From: **Gerhardt, Jodie** <jodie.Gerhardt@cityofpaloalto.org>
Date: Fri, Oct 26, 2018 at 4:48 PM
Subject: RE: Request for Permit Time Extension
To: Elizabeth Wong <elizabethwong2009@gmail.com>, Lait, Jonathan <Jonathan.Lait@cityofpaloalto.org>
Cc: Hoyt, George <George.Hoyt@cityofpaloalto.org>, Peter Ko <design@koarch.com>, Laura Roberts <laura@koarch.com>, Andrew Wong <a.jalme.wong@gmail.com>, Jaime Wong <jandewong@gmail.com>

Elizabeth,

The City has already issued one extension for this project (see attached) which is allowed by the Zoning Code. I will need to speak with our attorneys to better understand if a second extension is allowed.

Sincerely,

Jodie Gerhardt, AICP | Manager of Current Planning | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
T: 650.329.2575 | E: jodie.gerhardt@cityofpaloalto.org

From: Elizabeth Wong [mailto:elizabethwong2009@gmail.com]
Sent: Friday, October 26, 2018 10:15 AM
To: Gerhardt, Jodie; Lait, Jonathan
Cc: Hoyt, George; Peter Ko; Laura Roberts; Andrew Wong; Jaime Wong
Subject: Re: Request for Permit Time Extension

Jodie, Jonathan,

Please email me form and instructions for extending the Building Permit deadline.

Thank you.

Elizabeth Wong

Exhibit E

Construction Activity

EXAMPLES OF COMMENCEMENT OF PROPOSED USE OF SITE
425-429-435-441-447 UNIVERSITY AVENUE, PALO ALTO

DATE	DESCRIPTION	EXHIBITS
6/7/2018	Completed Removal of Street Trees	Tree Removal Permit and Fees Paid
3/2/2018	Building Permit Fees	Submitted Construction Plans for Building Permit; Amount Paid \$186,871.77
5/7/2018	Paid fees for new water service connection, fire service capacity, and water meter	Receipts from City of Palo Alto Utilities Department
8/27/2018	Removal of Hazardous Materials	Completion Notice from JWH Asbestos Removal Services
8/29/2018	Archaeological Services as required in Conditions of Approval	Executed Contract with Holman & Associates
10/30/2018	Move Sewer Line in Lane 30	Contract with Able Septic Tank Service
7/25/2018	Disconnection of Utilities to Site	Termination of Service and Declaration Concerning Tenancy
6/13/2018	Eviction of Tenants	Court Stipulation and Order for removal of the last tenant by July 15, 2018
9/1/2017	Preparation of Construction Documents	Contract acknowledgement letter and Timeline from Ko Architects
5/7/2018	CALGreen Compliance	Contract for Cal Green Tier 2 and Cal Green Consulting Services
9/5/2018	Installation of Piezometer and Ground Water Level Monitoring	Encroachment Permit and Temporary Lease by Exploration Geoservices Inc.



City of Palo Alto

Public Works Engineering

Phone: 650/329-2151 FAX: 650/329-2240

Inspection: 650/496-6929

RECEIVED

AUG 17 2018

ENCROACHMENT PERMIT
& TEMPORARY LEASE

DEVELOPMENT SERVICES

Job Copy

PERMIT TYPE:

- ENCROACHMENT PERMIT (Right-of-way or public utilities easement encroachments)
- TEMPORARY LEASE (Encroachments on City-owned property)

PERMITTEE NAME AND ADDRESS:

Name: Exploration Geoservices, Inc
1535 Industrial Ave
San Jose, CA 95112
Phone: 408.280.6822

LOCATION OF ENCROACHMENT/LEASE:

Kipling St

DURATION:

Temporary (360 Days)
Indefinite

ENCROACHMENT PERMIT TYPE:

Residential (Single Family)

- Standard: Architectural, structural, decks, spas, etc. in a Public Utilities Easement (PUE) or City right-of-way (ROW).
- Dumpster or container (no insurance certificate is required).
- Fence: Placement of a fence in a PUE or ROW (no insurance certificate is required).

Non-Residential (Commercial)

- Standard: Awnings, lane or sidewalk closures, pedestrian protection structures, structural or architectural features, private structures, other long term encroachments in a PUE or ROW, lasting more than 5 days.
- Short-Term: Sidewalk/street/alley encroachments, lane or sidewalk closures, unloading of materials, etc., lasting 5 days or less.
- 1 Day: Sidewalk or lane closure lasting 1 day or less.
- Minor: Placement of dumpster within downtown districts (additional fee for parking space rental, if applicable), and restaurant tables & chairs on sidewalk.

Pursuant to the provisions of Sec 12.12 * of the Palo Alto Municipal Code, permission is hereby requested to construct and maintain an encroachment, or to use City-owned property, at the above location and in the manner described below:

NATURE OF ENCROACHMENT OR USE: Piezometer Installation

REASON FOR ENCROACHMENT/LEASE: Non, for water level
during construction

Permittee shall, at Permittee expense, remove said encroachment or any improvements constructed, and this permit/lease shall terminate within thirty (30) days after written notice from the City Engineer/Real Property Manager*. Permittee agrees that in the event of failure to remove such encroachment/improvement* within the time specified, the same may be removed, and the City's property or easement restored, by the City, and the cost thereof made a lien upon/against* Permittee/Lessee, pursuant to the provisions of Sec 12.12 of the Palo Alto Municipal Code.

Permittee, in consideration of the issuance of this permit/lease, agrees to maintain required evidence of liability insurance, for the life of the encroachment, that indemnifies and holds harmless the City of Palo Alto, its officers, agents, and employees from any liability of any nature whatsoever caused in whole or in part by reason of or in any manner connected with any and all operations, structures or conditions authorized or permitted by this permit/lease. The Permittee agrees and understands that this permit vests no estate.

Permittee shall be responsible for obtaining any and all permits which may be required by an Agency having jurisdiction over the property and/or proposed use. Notwithstanding the above, nothing contained herein shall obligate City to issue any permits or approvals required for construction.

Permittee hereby accepts this permit/lease* subject to all conditions set forth herein, and the attached Special Provisions and conditions, and agrees that all of said conditions and provisions shall be binding on Permittee, co-owners, heirs, assigns, transferees and successors within interest of every nature. This permit/lease* shall expire if work on the encroachment described within does not commence within sixty (60) days of the date of approval, or by the anticipated start date as indicated above, whichever is later.

X

Permittee Authorized Representative

SIN/18

Date

APPROVED BY

9/5/18
Issuance Date

For inspection call the Public Works Inspector @ (650) 496-6929 - Provide minimum one working day advance notice.



CITY OF
PALO
ALTO

APPROVED
URBAN FORESTRY SECTION

TREE PERMIT

FOR REGUL-1LD, TYPE: C.R.

DATE: 6/7/18 WP

TRE-

PUBLIC WORKS

Public Services Division - Urban Forestry Section
pwps@cityofpaloalto.org

18000-0036
\$0

PROJECT ADDRESS: 429 University

APPLICANT INFORMATION

Name: Ko Architects, Inc.

Address:

Phone: (650) 853-1908

Cell:

Fax:

E-mail: design@koarch.com

SCOPE OF WORK

Tree Site No.	Removal	Planting	Pruning	Other	Description	Species	Value	Size	Dist. From Left Prop. Line
R2					Remove street tree inventoried at 447 University, site R2	Carob	\$1750	35	SB
R1					Remove street tree inventoried at 447 University, site R1	Carob	\$1750	40	100
R1					Plant 4 new street trees according to building permit sheet L1	Ginkgo			TBD

Application Date: 6/7/18 Start Date: 6/7/18 Completion Date: 7/7/2020

REQUIRED ATTACHMENTS

1. Site Plan 2. Other:

PERMIT CONDITIONS

1. The permitted work shall conform to City of Palo Alto standard specifications and the Tree Technical Manual, including those checked above. See attached specifications.
2. Permit shall be available on site during work.
3. Permittee removing trees and stumps, and/or planting new trees shall use PW Detail #604.
4. Permittee is responsible to notify Underground Service Alert (USA) prior to stump removal and replacement tree planting.
5. All work shall be completed by a licensed tree service or landscaping contractor.
6. New tree shall be inspected by urban forestry inspector prior to installation (650.496.5853).
7. When required, irrigation bubbler heads shall be supplied to each new tree per PW Detail #513.
8. Applications that include pruning or removal of regulated trees must attach a report from a certified arborist.
9. In consideration of the granting of this permit, for pruning an International Society of Arboriculture Certified Arborist must be on site. All work shall be done in accordance with:
 - Palo Alto Municipal Code, Title 8, Trees and Vegetation
 - Tree Technical Manual, PAMC, 8.00.150
 - American National Standards Institute (ANSI) Standards for Tree Care Operations A300 & Z133
 - ANSI Standard for Nursery Stock Z60.1
 - Underground Service Alert (USA) notification requirements
 - Proof of insurance as specified by the City of Palo Alto
 - Scope of work must be completed
10. Additional Conditions:

Conditions for site preparation, soil volume, and irrigation as specified in the building permit

Permittee affirms that the facts stated herein are true and agrees that (s)he, his or her agents, employees, and contractors shall perform all work described herein in conformance with ordinances and standard specifications of the City of Palo Alto. The permittee agrees to abide with the Permit Conditions outlined above and hold the City of Palo Alto, its officers, officials, agents, and employees harmless from all costs and damages which might arise from the Permittee's use or occupancy of public right-of-way. This permit may be revoked at any time for violation of the above conditions.

[Signature]
APPLICANT SIGNATURE

6/7/18
DATE

[Signature]
PERMIT ISSUER

6/7/18
DATE



**CITY OF PALO ALTO
DEVELOPMENT CENTER
285 HAMILTON AVENUE
PALO ALTO, CA 94301
(650) 329-2496**

**OWNER: KIPLING POST LP
CONTRACTOR:
PROPERTY ADDRESS: 429 UNIVERSITY AV
RECEIPT NUMBER: 334699
RECEIPT DATE: 3/2/2018 9:53:31AM
PERMIT NUMBER: 18000-00536**

**Print Date: 03/02/2018
Type: Project
Sub-Type: Building Permit
Category: Building Permit**

FEES DESCRIPTION	SUBFUND-ACTIVITY	UNITS	FEES AMOUNT
Landscape Plan Check - Commercial & Multi-Family	65060001 1337	1	\$1,973.00
Building Plan Check Fee	65030001 1337	1	\$66,627.98
Utilities Plan Check	65030001 1337	1	\$118.00
Public Works Plan Check Fee	65040001 1337	1	\$39,088.12
Fire Plan Check - Commercial & Multi-Family	65050001 1337	1	\$47,971.73
Zoning Plan Check Fee	65020001 1323	1	\$31,092.94
Amount Due:			\$186,871.77
Check			Amount Paid:
check# KP 1098			\$186,871.77
3/2/18			

Fees paid include a Technology Surcharge of 1.8% per transaction approved in FY 18 Municipal Fee Schedule

Comment:

20170818



CITY OF PALO ALTO
UTILITIES

City of Palo Alto
250 Hamilton Ave.
Palo Alto, California 94301

Billing Address:
KIPLING POST LP
P. O. Box 204
Palo Alto CA 94301

Service Address:
429 University Ave
Palo Alto CA 94301

Invoice Number : 95019717
Invoice Date : 05/07/2018
Customer No : 20002551
Contract Account : 10006981

**CITY OF PALO ALTO
UTILITIES DEPARTMENT
W-G-W ENGINEERING**

**BILLING AMOUNT GOOD
FOR 90 DAYS**
DUE IN FULL,
PARTIAL PAYMENTS NOT ACCEPTED

Item No /Ref.	Sales Order/ Service Order	Service Description	Amount
000010	70041155 40023443	NEW 6" WATER SERVICE CONNECTION	8,137.00
000020	70041155 40023443	6" FIRE SERVICE CAPACITY FEES	22,530.00
000030	70041155 40023443	5/8" WATER METER INSTL CHARGE	698.00

Total Due \$ 31,365.00

Remit Payment to:

Mail: Revenue Collections-City of Palo Alto P.O. Box 10250 Palo Alto, CA 94303
In person: Revenue Collections, 250 Hamilton Ave., 1st Floor, Palo Alto, CA 94301
For Billing Contact: email: kelly.haruta@cityofpaloalto.org
phone: (650) 617-3106

This invoice amount is good until 90 days after the effective date of the next Council-approved rate increase. If you have not paid the amount due within that time, a new invoice will be prepared and mailed to you. The new invoice will be prepared using the rates in effect at the time of mailing.

City of Palo Alto
City of Palo Alto
Revenue Collection

Reference Number: 2018128002-68
Date/Time: 05/08/2018 1:54:55 PM

S D Pro-Forma Payment
2018128002-68-1
S D Pro-Forma Payment
Contract Account: 000010005981

Last Name: LP
First Name: KIPLING POST
Amount:

Total: \$31,365.00

1 ITEM TOTAL: \$31,365.00

TOTAL: \$31,365.00

Check
Check Nbr: 04672
Total Received: \$31,365.00



C E 2 0 1 8 1 2 8 0 0 2 - 6 8

Customer Copy

City of Palo Alto
250 Hamilton Ave.
Palo Alto, California 94301

90038714

Invoice Number : 95019717
Invoice Date : 05/07/2018
Customer No : 20002551
Contract Account : 10000981

**CITY OF PALO ALTO
UTILITIES DEPARTMENT
W-G-W ENGINEERING**
**BILLING AMOUNT GOOD
FOR 90 DAYS**
**DUE IN FULL
PARTIAL PAYMENTS NOT ACCEPTED**

Description	Amount
SERVICE CONNECTION	8,137.00
: CAPACITY FEES	22,530.00
TER INSTL CHARGE	698.00

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**City of Palo Alto
250 Hamilton Ave.
Palo Alto, California 94301**

**CITY OF PALO ALTO
UTILITIES**

**Billing Address:
KIPLING POST LP
P. O. Box 204
Palo Alto CA 94301**

**Invoice Number : 95018723
Invoice Date : 05/09/2018
Customer No : 20002561
Contract Account : 10000861**

**Service Address:
429 University Ave
Palo Alto CA 94301**

\$100.39 - 7.30

Item No /Ref.	Sales Order/ Service Order	Service Description	Amount
000010	70041276 40023479	NEW 8" WATER SERVICE CONNECTION	1,332.00

Total Due \$ 1,332.00

Remit Payment to:

**Mail: Revenue Collections-City of Palo Alto P.O. Box 10250 Palo Alto, CA 94303
In person: Revenue Collections, 250 Hamilton Ave., 1st Floor, Palo Alto, CA 94301
For Billing Contact: email: kelly.haruta@cityofpaloalto.org
phone: (650) 617-3105**

This invoice amount is good until 90 days after the effective date of the next Council-approved rate increase. If you have not paid the amount due within that time, a new invoice will be prepared and mailed to you. The new invoice will be prepared using the rates in effect at the time of mailing.

CLEAN / SAFE / RESPONSIVE



**J.W.H. Asbestos
REMOVAL SERVICES**
CSLB No. 777430 OSHA No. 270

COMPLETION NOTICE

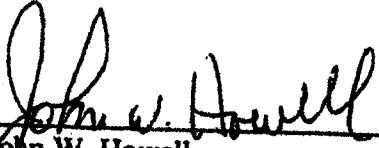
This is to certify that J.W.H. Asbestos Removal Services has completed the removal of the asbestos contracted per HMA Asbestos Survey #18.240 dated July 27, 2018

Removal and disposal of 1,600 sq ft of sheetrock/joint compound @ less than 1% non-friable asbestos from lower walls on sides and back wall and 2 upper walls in Unit#425. Removal and disposal of 120 sq. ft. VAT tile and mastic and tape on flue pipe in Unit#441. Removal and disposal of asbestos tape on plenum box in Unit#447. Removal and disposal of carpet, floor tile and mastic on wood, transite flue pipe and asbestos tape on metal pipe in Unit#450.

at the following job location:

425,441,447 University Ave, Palo Alto, CA 94301
450 Kipling Street, Palo Alto, CA 94301

In accordance with J.W.H. Asbestos Removal Services proposal signed/dated August 6, 2018. This notice conforms to and is in strict compliance with all applicable standards and regulations. This provision of completion is our acknowledgment by authorized signature that all services that have been contracted for are completed as specified at the above referenced property location.


John W. Howell
J.W.H. Asbestos Removal Services

August 27, 2018

Date



holman & ASSOCIATES
Archaeological Consultants
"SINCE THE BEGINNING"

3615 FOLSOM ST. SAN FRANCISCO,
CALIFORNIA 94110 415/550-7986

Elizabeth Wong
Steleco LLC
PO Box 2014
Palo Alto, CA 94302

29 August 2018

re: Proposal/Authorization for Historical Resources/Archaeological Training, 425-429 University Avenue, Palo Alto

Thank you for contacting us regarding an archaeological and historical resources Mitigation Measure requiring training for construction personnel for your Project at 425-429 University Avenue in Palo Alto. A redevelopment project proposed for the property will require excavations about 30 feet deep, which would adversely impact historical or archaeological resources, if any, therefore the City has required this training.

The Scope of Services for this work will be to provide a training session "... regarding how to recognize cultural resources ... that could be encountered during construction activities" as per Mitigation Measure CUL-1 (attached). Such a training session would typically take 45 minutes to one hour and would be conducted at the jobsite. Potential attendees would be determined by you and your construction contractor(s).

Our fee for these services will be Not to Exceed \$400 (plus mileage at \$8.5¢/mile), depending on which of our staff is used, and could be less if we can coordinate the training session with other work in the vicinity that same day. Any additional work or site visits would be charged at standard hourly rates of \$100/hr for Senior Associate(s), \$85/hr for Staff Archaeologist(s), or \$80/hr for Archaeological Technician(s), plus a maximum daily mileage charge up to 100 miles.

What we need from you:

1. Notice at least one week before the training, specifying time and place.
2. Authorization to Proceed.

Please sign and return an original of this Proposal to serve as Authorization to Proceed and as agreement to pay Invoices within 30 days of receipt. A signed digital copy will suffice, or you may fax a signed copy to 415-282-6239, or send your standard contract/authorization with this Proposal as an exhibit.

Please call Miley or email Holman.Assoc@comcast.net or me at 650-726-6269 or mrcrm@comcast.net if you have any questions.

Cordially yours,

Matthew R. Clark, RPA
Senior Associate



E.Wong re 425 University Palo Alto Archaeological Training, 28 August 2018, page 2 of 2

C. Stephen Wong, Mgr.

Authorizing Signature

Elizabeth Wong

Name

Manager

Title

Company/Agency

STERCO LLC

Dated:

8/29/18

Total Contract Price: NTE \$458.50

Project: H&A 08-06/18

CULTURAL RESOURCES

Mitigation Measure CUL-1: Prior to commencement of site clearing and project grading, the project applicant shall retain a qualified archaeologist to train construction personnel regarding how to recognize cultural resources (such as structural features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains) that could be encountered during construction activities. If artifacts or unusual amounts of shell or bone or other items indicative of buried archaeological resources or human remains are encountered during earth disturbance associated with the proposed project, the on-site contractor shall immediately notify the City of Palo Alto (City) and the Native American Heritage Commission as appropriate. All soil-disturbing work shall be halted within 100 feet of the discovery until a qualified archaeologist, as defined by the California Environmental Quality Act (CEQA) Guidelines (14 CCR 15060 et seq.) and the City, completes a significant evaluation of the finds pursuant to Section 198 of the National Historic Preservation Act. Any human remains unearthed shall be treated in accordance with California Health and Safety Code, Section 7050.5, and California Public Resources Code, Sections 5087.94, 5097.94, and 5097.95, which include requirements to

Applicant	City of Palo Alto	Prior to and during earth disturbance
		<ul style="list-style-type: none"> • Training materials provided to construction contractors • Field inspections conducted to verify compliance

Notify the Santa Clara County Medical Examiner's office and consult with Native American representatives determined to be the Most Likely Descendants, as appointed by the Native American Heritage Commission. Identified cultural resources shall be recorded on State Department of Parks and Recreation Form 623 (archaeological sites). Mitigation measures prescribed by the Native American Heritage Commission, the Santa Clara County Medical Examiner's office, and any Native American representatives determined to be the Most Likely Descendants and required by the City shall be undertaken before construction activities are resumed. If avoided, a mitigation program, including measures set forth in the City's Cultural Resources Management Program and in compliance with Sections 15064.5 and 15128.4 of the CEQA Guidelines, shall be implemented.

[Signature]

ABLE

SEWER CONSTRUCTION

LIC # 677475

1020 Ruff Dr
San Jose, CA 95110
Office (408) 377-0000
Fax (408) 493-1000

PROJECT:

Customer: Developer Stateco
Attn: Elizabeth Wong
Address: 429 University Ave
City: Palo Alto **State:** CA **ZIP:** _____
Phone: 650-814-3081 **Email:** elizabethwong429@att.net

PROPOSAL

Misc.	
Date	10/30/2018
Order No.	AC-18-3781
Rep	Bob Hardesty
Review	

Qty	SCOPE OF WORK: Install a new manhole in the street and a sewer lateral with on-site install, per City permits.
•	Able to mark out the construction area 48 hours prior to any digging.
•	Able to pull the permits needed to complete this project (permit cost excluded).
•	Able to set up traffic control, lay out trench line and saw cut asphalt before digging.
•	Able to dig, trench and install a 4" sewer lateral approx. to 26' in length and approx. 6' deep.
•	Able to backfill with proper materials and compaction to be mechanical.
•	Able will off haul all spoils related to this job.
•	Able to use proper shoring on all trenches 5' or deeper.
•	Able to pave around newly installed manhole and new sewer lateral.
•	Able to replace small section of driveway approach.
•	Able to reconnect 4 existing sewer lines that are to be reconnected to our new sewer line.
•	Able to install one new sewer manhole to City of PA specs. <i>Approv</i> <i>SLW</i>
•	Able to use native backfill on the on-site sewer and replace the concrete up to 6" thick thru the trench line only. Compaction to be mechanical.
•	Able to dig, trench and install a 6" sewer line approx. 115' in length and approx. 6' deep.
•	We are estimating this project to take 5 to 6 working days to complete.
Excludes	Able to provide traffic control plan to customer before submission to the City. Able to provide certificate of ins. With customer provided additional insureds upon signing of the proposal.
•	Permits, fees or engineering if needed. Some hand digging is included.
•	Any concrete thicker than 6".
•	Any utilities that will cause use to hand dig through our trench line. This bid is for tractor work.
•	Hitting any unmarked utilities lines in our trench area.
•	Please note, we have excluded the cost to abandon the existing line until we get clarification.
•	<u>Rock and Ground Water Clause</u>
•	If rock/ground water is found, alternate methods may be applicable. If found, additional charges may be needed.
•	<u>Change orders</u>
•	Any alterations or deviations from this proposal, involving additional materials and/or labor will be executed only in a written change order and will become an additional charge outside the original proposal cost. Any additional down time created by a change order will be payable by the customer per our standard time and materials rates.
•	Thank you for giving us the opportunity to bid on your underground sewer project.

Subtotal	
10% Down	
60% Prg Pmt	
Total	

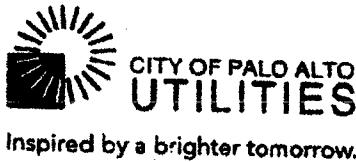
Please sign below to authorize project

CONTRACT NUMBER: AC-18-3781
Thank you for choosing ABLE

THANK YOU FOR CHOOSING ABLE UNDERGROUND CONSTRUCTION

Underground Construction: Septic - Sewer - Storm - Water - Excavated & Installed Septic Systems: Designed - Installed - Repaired Pumps - Inspected - Placing Sewer & Drain Line Cleaning - Roadway - Repaired - Replaced - Residential & Commercial Krebsour: Septic - Sewer - Storm - Grease Traps/Interceptors - Hydro Flushing: Sewer - Storm - Maintenance - Public Works - Overflow & Spill Response Main Line Stoppages - Pipeline Video Inspection: Pipeline Inspection - Line Locating - Detailed Reports Complete 24 Hr. Emergency Service

www.ableunderground.com • www.abledeckanddriveway.com • www.valleygaservice.com



DEMO

**DECLARATION CONCERNING TENANCY OF BUILDING
PRIOR TO ISSUANCE OF A DEMOLITION PERMIT**

Service Address for Demolition/Remodeling

Street # 435 Street Name UNIVERSITY AVE, PALO ALTO, CA

Palo Alto Municipal code 16.04.060 section 105.1.3 provides no work or demolition shall begin upon any portion of such a unit until each and every portion has been vacated by all tenants lawfully in possession thereof.

I, Elizabeth Wong, hereby declare that I am the owner, or owner's agent, of the premises located at the service address listed above. I also declare the building located at the service address listed above, for which a demolition permit is requested, is not currently occupied or presently being used for residential purposes.

Said Premise Consists of 1 number of buildings

I will not use not use any demolition permit issued to aid in securing vacation of said premisc. I certify under penalty or perjury that the foregoing is true and correct.

Elizabeth Wong, Manager
Print Name

Signature

650-814-3051
Phone Number

7/25/18
Date

City of Palo Alto Utilities, Customer Service Center 250 Hamilton Ave., Ground Floor, Palo Alto, CA 94301
Tel. 650-329-2161 Fax. 650-321-2786 Hours Mon - Thur 7:30 am to 5:30 pm Friday 8:00 to 5:00 pm
Email: UtilitiesCustomerService@cityofpaloalto.org Web: <http://www.cityofpaloalto.org/depts/uti/default.asp>



CITY OF PALO ALTO
UTILITIES

Inspired by a brighter tomorrow.

DEMO

Utilities Disconnection Prior
To Building Demolition/Remodeling

435 University Ave, Palo Alto

Service Address 425, 429, 435, 441, 447 University Ave, Palo Alto

All addresses on the property being demolished need to be listed. A separate Demo application is required for each address.

Single Family Dwelling

Multi Family Dwelling

Commercial Building

Applicant Name Elizabeth Wong, Manager Phone 650-814-3051

Owner Name KiPung Post LP Phone 650-814-3051

Billing Address P. O. Box 204, Palo Alto, CA 94302

Email Address elizabethwong2009@gmail.com

Services Requested for Removal (Check all applicable boxes)

Remove Electric Meter # _____
 Remove Gas Meter # _____
 Remove Water Meter # _____

Remove Electric Service Line
 Remove Gas Service Line

Utilities will be disconnected and/or removed within 1 and 10 working days after receipt of a completed application. Exact times and/or dates cannot be scheduled.

If utilities are to be reinstalled, a connection fee will be charged per current utility rate schedule.

Signature (Applicant)

7/25/18

Date

General Information

Will there be multiple or new address(s) when construction is complete?

Yes

No

Will you need temporary power during construction?

Yes

No

Have you applied for a building permit?

Yes

No

Will the foundation be removed?

Yes

No

What is the purposed property use after demolition? (Example: single family home, restaurant)

City of Palo Alto Utilities, Customer Service Center 260 Hamilton Ave., Ground Floor, Palo Alto, CA 94301
Tel. 650-329-2161 Fax 650-617-3142 Hours Mon - Thur 7:30 am to 5:30 pm Friday 8:00 to 4:30 pm
Email: UtilitiesCustomerService@cityofpaloalto.org Web: <http://www.cityofpaloalto.org/depts/utl/default.asp>



Inspired by a brighter tomorrow.

DEMO

Utilities Disconnection Prior
To Building Demolition/Remodeling

441 University Ave, Palo Alto

Service Address 425, 429, 435, 441, 447 University Ave, Palo Alto

All addresses on the property being demolished need to be listed. A separate Demo application is required for each address.

Single Family Dwelling

Multi Family Dwelling

Commercial Building

Applicant Name Elizabeth Wong, Manager Phone 650-814-3051

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Email Address elizabethwong2009@gmail.com

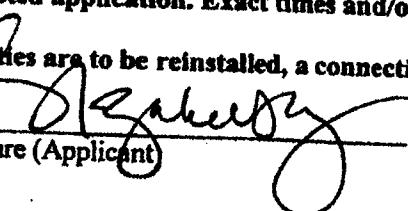
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7/25/18

Date

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No

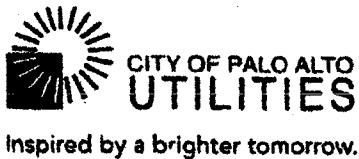
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DEMO

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PRIOR TO ISSUANCE OF A DEMOLITION PERMIT**

Service Address for Demolition/Remodeling

Street # 441 Street Name UNIVERSITY AVE, PALO ALTO, CA

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I, Elizabeth Wong, hereby declare that I am the owner, or owner's agent, of the premises located at the service address listed above. I also declare the building located at the service address listed above, for which a demolition permit is requested, is not currently occupied or presently being used for residential purposes.

Said Premise Consists of 1 number of buildings

I will not use not use any demolition permit issued to aid in securing vacation of said premise. I certify under penalty of perjury that the foregoing is true and correct.

Elizabeth Wong, Manager
Print Name

Signature

650-814-3051
Phone Number

Date 7/25/18

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CITY OF PALO ALTO
UTILITIES

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Utilities Disconnection Prior To Building Demolition/Remodeling

447 University Ave, Palo Alto

Service Address 425, 429, 435, 441, 447 University Ave, Palo Alto

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Single Family Dwelling

Multi Family Dwelling

Commercial Building

Applicant Name Elizabeth Wong, Manager Phone 650-814-3051

Owner Name Kipling Post LP Phone 650-814-3051

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Signature (Applicant)

7/25/18
Date

General Information

Will there be multiple or new address(s) when construction is complete? Yes No

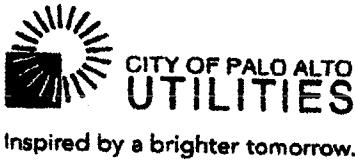
Will you need temporary power during construction? Yes No

Have you applied for a building permit? Yes No

Will the foundation be removed? Yes No

What is the purposed property use after demolition? (Example: single family home, restaurant)

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 Tel. 650 329-2161 Fax. 650-617-3142 Hours Mon - Thur 7:30 am to 5:30 pm Friday 8:00 to 4:30 pm
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Elizabeth Wong, Manager

Print Name

Elizabeth Wong
Signature

650-814-3051

Phone Number

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DEMO

**DECLARATION CONCERNING TENANCY OF BUILDING
PRIOR TO ISSUANCE OF A DEMOLITION PERMIT**

Service Address for Demolition/Remodeling

Street # _____ Street Name UNIVERSITY AVE, PALO ALTO, CA

Palo Alto Municipal code 16.04.060 section 105.1.3 provides no work or demolition shall begin upon any portion of such a unit until each and every portion has been vacated by all tenants lawfully in possession thereof.

I, Elizabeth Wong, hereby declare that I am the owner, or owner's agent, of the premises located at the service address listed above. I also declare the building located at the service address listed above, for which a demolition permit is requested, is not currently occupied or presently being used for residential purposes.

Said Premise Consists of 1 number of buildings

I will not use any demolition permit issued to aid in securing vacation of said premise.
I certify under penalty of perjury that the foregoing is true and correct.

Elizabeth Wong, Manager
Print Name

650-814-3051
Phone Number

Signature _____

7/25/18
Date

City of Palo Alto Utilities, Customer Service Center 250 Hamilton Ave., Ground Floor, Palo Alto, CA 94301
Tel. 650 329-2161 Fax. 650-321-2786 Hours Mon - Thur 7:30 am to 5:30 pm Friday 8:00 to 5:00 pm
Email: UtilitiesCustomerService@cityofpaloalto.org Web: <http://www.cityofpaloalto.org/depts/utl/default.asp>

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ENDORSED
FILED

JUN 13 2018

TODD ROTHEBARD #67351
ATTORNEY AT LAW
100 Saratoga Avenue #200
Santa Clara, California 95051
Tel.: (408) 244-4200

Attorney for the Plaintiff

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
KIPLING POST, LP,

Plaintiff,)
vs.) No. 18CV329356
DESIGN WITHIN REACH, INC., DOES I)
through V, inclusive,) STIPULATION AND ORDER
Defendants.)

IT IS HEREBY STIPULATED AND AGREED, by and between plaintiff KIPLING POST LP and defendant DESIGN WITHIN REACH, Inc. that:

1. Defendant and all occupants will vacate the premises located at 447 University Avenue, Palo Alto, Santa Clara County, California 94301 on or before July 15, 2018 (hereinafter "the vacate date"). Notwithstanding that the vacate date falls on a Sunday, there shall be no extension of this limit to the following working day. Defendant shall turn in all keys to said premises to plaintiff or plaintiff's agent at such time as it leaves, and shall leave said premises in broom clean and undamaged condition, ordinary wear and tear excepted, and shall comply in all respects with any requirements set forth in the lease respecting the manner in which possession of the premises

1 is to be restored to plaintiff. Defendant shall remove all
2 items of personal property from said premises at such time as it
3 leaves; any items of personal property remaining behind after
4 the vacate date may be disposed of by plaintiff without
5 liability and without need for resort to the procedures set
6 forth in Civil Code sections 1993, et. seq.

7 2. Defendant shall pay to plaintiff, on or before June 15,
8 2018, the sum of \$63,875.52. This sum is comprised of holdover
9 rent from June 1 through July 15 (\$59,445.72), reimbursement for
10 plaintiff's attorney's fees (\$3,500.00), reimbursement for
11 plaintiff's Court filing fee (\$435.00), reimbursement for
12 defendant's Court filing fee (\$435.00) and reimbursement of ex
parte fee (\$60.00).

13 3. If defendant pays and leaves as set forth above, upon
14 the completion of performance by defendant and upon written
15 demand to plaintiff's attorney by defendant or its attorney,
16 plaintiff shall file a dismissal of this action, with prejudice,
17 with no further award of fees or costs in favor of either party.

18 4. If defendant fails to pay or leave as set forth above,
19 or if any check given by defendant in payment of all or any part
20 of any amount due as set forth above is returned unpaid by the
21 bank upon which drawn, in any such event plaintiff shall be
22 entitled to immediate judgment for the full relief set forth in
23 the complaint, including restitution of possession of the
24 premises, unlawful detainer damages, attorney's fees, and costs,
25 less applicable credit(s) for any payment(s) made by defendant
26 prior to the date upon which such payment is obtained.
27 Plaintiff may obtain said judgment by ex parte application to
28

1 the Court, coupled with a declaration under penalty of perjury
2 setting forth the facts constituting defendant's failure to
3 perform in accordance with the foregoing requirements. Before
4 seeking to obtain said judgment, plaintiff's attorney shall give
5 notice by telephone and email to defendant's attorney (Ms. Jill
6 Rowe, Cooper, White & Cooper; tel.: 415-765-6239; email:
7 jrowe@cwclaw.com) of plaintiff's intention to so proceed. If
8 defendant fails to perform in accordance with the foregoing
9 requirements, defendant waives any right it might otherwise have
10 to contest, appeal, or seek to set aside said judgment, waives
11 any right it might otherwise have to seek any form of stay of
12 execution, either pursuant to Code of Civil Procedure sections
13 918, 1176, or otherwise, waives any right it might otherwise
14 have to seek any form of relief from forfeiture, either pursuant
15 to Civil Code section 3275, Code of Civil Procedure sections
16 1174, 1179, or otherwise, and waives any right it might
17 otherwise have to seek any form of relief from default, either
18 pursuant to Code of Civil Procedure sections 473, 473.5, or
19 otherwise.

20 5. Time is of the essence with respect to the provisions
21 of this STIPULATION. This provision shall be interpreted in its
22 strictest sense, with any failure to perform any requirement set
23 forth herein on or before the date upon which performance is
24 due, even if performance is late by only a single day, resulting
in the relief upon default set forth above without regard to the
relative hardship to the parties.

25 6. Other than with respect to a violation of the foregoing
26 requirements, both parties waive any and all claims, of any
27
28

1 nature whatsoever, which each might have against the other, or
2 against any principals, agents, shareholders, partners,
3 managers, members, employees, affiliates, or assigns of the
4 other. The parties understand that California Civil Code
5 section 1542 provides:

6 "A general release does not extend to the claims which the
7 creditor does not know or suspect to exist in his or her favor
8 at the time of executing the release, which if known by him or
9 her must have materially affected his or her settlement with the
10 debtor."

11 Notwithstanding this language, the parties specifically
12 waive its protection. The parties understand that they may have
13 sustained serious damage or consequential injuries which have
14 not manifested themselves and/or which are presently unknown,
15 but nonetheless deliberately intend to and do hereby release
16 these possible future claims.

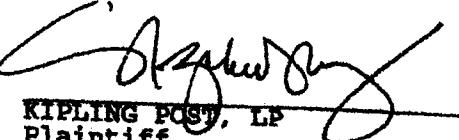
17 7. Each of the terms and conditions set forth above is a
18 material part of the consideration for the execution of this
19 STIPULATION. Strict performance of each and every term and
20 condition set forth above is required. The failure to perform
21 in strict compliance with each and every condition set forth
22 above shall be deemed a material breach of this STIPULATION
23 entitling plaintiff to the relief upon default set forth above.

24 8. This STIPULATION sets forth the entire agreement
25 between the parties with respect to the matters addressed
26 herein. It shall not be altered nor modified unless such
27 alteration or modification is in writing and signed by all
28 signatories hereto.

29 9. A fax or email copy of this STIPULATION, bearing the
30 faxed or emailed signatures of all signatories hereto, may be

1 used for all purposes in lieu of an original. This STIPULATION
2 may be executed in counterparts, with the sum of the
3 counterparts, whether executed by fax, email, or otherwise,
4 being the equivalent in legal contemplation of one fully
5 executed original.

6 DATED: 6/8/18


KIPLING POST, LLP
Plaintiff

9
10 DATED: 6/8/18


TODD ROTHBARD
Attorney for Plaintiff

11
12 DATED:

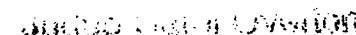
DESIGN WITHIN REACH, INC.
Defendant

13
14 DATED:

JILL ROWE
COOPER, WHITE & COOPER
Attorneys for Defendant

15
16
17 Multiple signature ORDER
18 The Court having read and reviewed the foregoing
19 STIPULATION of the parties, and good cause appearing therefor,
20 IT IS SO ORDERED.

21
22
23
24 DATED: JUN 13 2018



JUDGE OF THE SUPERIOR COURT

1 used for all purposes in lieu of an original. This STIPULATION
2 may be executed in counterparts, with the sum of the
3 counterparts, whether executed by fax, email, or otherwise,
4 being the equivalent in legal contemplation of one fully
5 executed original.

6 DATED:

7 KIPLING POST, LLP
8 Plaintiff

9
10 DATED:

11 TODD ROTHEARD
12 Attorney for Plaintiff

13
14 DATED: June 8, 2018

Lorraine DiSanto
DESIGN WITHIN REACH, INC.
Defendant
Lorraine DiSanto, CFO

Approved as to form

15
16 DATED: June 8, 2018

JIMMIE ROME
COOPER, WHITE & COOPER
Attorneys for Defendant

20 ORDER

21 The Court having read and reviewed the foregoing
22 STIPULATION of the parties, and good cause appearing therefor,
23 IT IS SO ORDERED.

24
25 DATED:

26 JUDGE OF THE SUPERIOR COURT

27
28 Todd Rotheard
Attorney at Law
100 S. Broadway, Suite 200
Santa Barbara, CA 93101
(805) 963-1221

wk copy



Ko Architects, Inc.

September 1, 2017

Mrs. Elizabeth Wong
Kipling Post LP, Successors and Assigns

RE: 425-429 University Mixed Use Project in Palo Alto

Dear Elizabeth,

Thank you very much for considering us to provide architectural services for construction documents of a mixed use project located at 425-429 University Avenue in Palo Alto, California. Please find the enclosed service proposal for your review and approval. We will proceed with the design services upon receiving your signature on our agreement.

We are looking forward to working with you on this exciting project. Please contact us if you have any questions.

Sincerely,

Peter Ko, AIA, LEED AP
Principal
Ko Architects, Inc.

900 High Street, Suite One, Palo Alto, CA 94301
Tel: 650/653-1908 Email: design@koarch.com



© Ko Architects, Inc.

PROJECT MANAGEMENT FLOW SCHEDULE: 2017-2018

DATE: September 6, 2017

CLIENT: Hoping Point LP, Successors & Assigns

PROJECT: 420 University Street Use Project (Ko# 17-721)

PREPARED BY: Ko Architects, Inc.

Task/Title	2017												2018													
	Sep	OCT.	NOV.	DEC.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.	NOV.	DEC.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.	SEPT.	OCT.
TASK 1: DESIGN DEVELOPMENT - DESIGN WITH CONSULTANTS	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
TASK 1: DESIGN DEVELOPMENT - CLIENT REQUIREMENTS																										
TASK 1: DESIGN DEVELOPMENT - DESIGN RECORDS																										
TASK 1: DESIGN DEVELOPMENT - CLIENT/CONTRACTOR APPROVAL																										
TASK 2: CONSTRUCTION DOCUMENTS - DESIGN WITH CONSULTANTS																										
TASK 2: CONSTRUCTION DOCUMENTS - CLIENT REQUIREMENTS																										
TASK 2: CONSTRUCTION DOCUMENTS - DESIGN RECORDS																										
TASK 2: CONSTRUCTION DOCUMENTS - CLIENT/CONTRACTOR APPROVAL																										
TASK 3: BUILDING PERMIT SUBMISSION & COMMENTARY																										
TASK 3: PLANS CHECKER RESPONSE & REVISIONS																										
TASK 3: BUILDING PERMIT APPROVAL																										
TASK 4: BIDDING AND NEGOTIATION - SUBCONTRACTORS																										
TASK 5: START CONSTRUCTION - EST. 22 MONTHS CONSTR. TIME																										
NOT CONTROLLED BY KO ARCHITECTS, INC.																										

Anticipated Project Milestone Dates:

- TASK 1: Complete DD phase
- TASK 2: Complete CD phase
- TASK 3: Building Permit Submittal:
- TASK 2: Provide Bid Sets (For Contractor);
- TASK 2: City Final Approval (Building Permit);
- TASK 4: Bidding and Negotiation - Subcontractors
- TASK 5: Demolition Start

Nov. 1st, 2017
Feb. 16th, 2018
Feb. 16th, 2018
March 1st, 2018
May 1st, 2018
March 1st, 2018
April 16th, 2018

Contract for CALGreen Tier 2 and CALGreen Consulting Services

This Agreement is made on April 26, 2018 by and between Elizabeth Wong the ("Client") and Kate Latham ("Consultant"), for the property at 429 University Avenue, Palo Alto, CA 94301, which is under the building jurisdiction of City of Palo Alto ("CPA"), with reference to the following:

1. Project Scope: Client's intention is to have a CALGreen Tier 2 certification for a three-unit, 8,100 ft², new construction residential project as required by the 2015 CPA Green Building Ordinance effective June 22, 2015.

2. Scope of CALGreen Tier 2 Consulting Services: Consultant agrees to provide the following consulting services required to obtain a CALGreen Tier 2 certification:

- Work with Client's project team to develop a cost effective CALGreen Tier 2 checklist that meets the requirements of the Ordinance for the specific building project noted above and the Client's needs.
- Review Client's plans prior to submission for a building permit and suggest CALGreen Tier 2 notes for architectural plans.
- Review Title 24 (T24) CF-1R for submission with GB-1 Application if necessary.
- Assist with preparing the Client's CALGreen Tier 2 checklist sheet for submittal for building permit and provide preparation assistance and signatures.
- Prepare and provide detailed CALGreen Tier 2 checklist requirements for project specific CALGreen Tier 2 measures and conduct preconstruction meeting with contractor and Client.
- Coordinate and lead the three mandatory inspections required by the City of Palo Alto (CPA), which include CPA Green Building Inspector.
- Prepare and provide detailed list of requirements for project specific CALGreen Tier 2 measures for preconstruction meeting.
- Provide timely CALGreen Tier 2 rater documentation and signatures for all the steps required in the Green Building Certification Summary on CPA submittal sheet GB-1 CALGreen Tier 2.
- Conduct site field inspections as part of basic CALGreen Tier 2 certification fee including pre-construction meeting with contractor.
- Conduct required CALGreen Tier 2 inspections in a timely manner.
- Assess whether each CALGreen Tier 2 measure applied for meets the detailed CPA requirements based on the CALGreen Tier 2 Manual and if not, provide suggestions of what CALGreen Tier 2 measures could be chosen by Client to meet the CALGreen Tier 2 requirements.
- If necessary, arrange for HERS inspections as required by the T24 report.
- Prepare comprehensive project documentation for each CALGreen Tier 2 measure certified with assistance from Client's project team for review by CPA. The role of the CALGreen Rater is primarily as a verifier. It is the responsibility of the Client and their contractor to provide written documentation of compliance with checklist requirements in the form of invoices, product labels and specifications, dump tags, etc. unless they can be confirmed onsite by the Rater through inspections and photos.
- Prepare and submit final project certified CALGreen Tier 2 checklist and all documentation to CPA for review demonstrating that project has met the minimum CPA green building ordinance.
- Maintain project documentation for 5 years in anticipation of CALGreen Tier 2 CPA project audit.

3. Fee for CALGreen Tier 2 Consulting Services: The basic CALGreen Tier 2 certification fee will be \$3,200.00 for Client's project as defined above and that meets the CALGreen Tier 2 certification requirements in effect at the time of this agreement.

4. Payment Schedule: Client is to pay Consultant on the following schedule:

- \$960.00 (30%) upon acceptance of this proposal
- \$1,600.00 (50%) at time of rough inspection with City Inspector
- \$640.00 (20%) due before final Cal Green building inspection

To Ko Architects, Inc

Client: Elizabeth Wong
429 University Avenue, Palo Alto

Consultant: Kate Latham
kate@lathamhomeringrating.com | 650-450-1827

Signature: Peter Ko AIA Kate Latham

Date: 5/7/18

Date: 4/26/2018

If proposal is acceptable, checks may be made to 'Latham Home Rating' and sent to:
Kate Latham at 765 N. Rengstorff Ave. #22, Mountain View, CA 94043



KASSOUNI LAW

Via E-Mail and U.S. Mail

October 31, 2018

Molly Stump
Office of the City Attorney
City of Palo Alto
250 Hamilton Ave.
Palo Alto, CA 94301

Re: 429 University Ave., 14PLN-00222

Dear Ms. Stump:

This firm represents Kipling Post, LP, the owner of 429 University Avenue. As you know, Elizabeth Wong, on behalf of Kipling Post, has spent the last 18 months seeking ARB approval for three minor aspects of the design of the above-referenced project, which was approved by the City Council in February of 2017. Recently, after the *third* ARB hearing, Jonathan Lait issued a Notice of Proposed Decision stating that the Planning Director (Acting) approved two of the three minor aspects of the design, but denied the third (building materials, colors, and craftsmanship-related details). (Ex. A). The denial contradicts the Planning Department's recommendation to ARB of approval of all three aspects of the design. I will be addressing the denial in more detail in a forthcoming letter, which will support Kipling Post's appeal.

The purpose of this letter is to address the issue of Palo Alto Code section 18.77.090, which sets forth a one year "expiration" of approvals. Last year Kipling Post sought and obtained a one year extension, up to and including February 6, 2019. Several days ago, in an abundance of caution, Ms. Wong requested of Jodie Gerhardt a second extension to February 6, 2020. As you will see in the attached e-mail (Ex. B), Ms. Gerhardt responded that she "will need to speak with our attorneys to better understand if a second extension is allowed."

I wish to state in the strongest terms that the City has absolutely **no discretion shut down this project based upon section 18.77.090**, nor is Kipling Post required to obtain such an extension in the first instance. I am aware that Michael Harbour has long opposed this project, and has been in close contact with key members of the Planning Department on this very issue. For the following reasons, it is hoped that as City Attorney you will proactively discourage staff from being led down the wrong path on this issue.

First, section 18.077.090 provides in part that the expiration date is only triggered if "the proposed use of the site or the construction of buildings has not commenced." Yet the history of the activity of Kipling Post unequivocally establishes commencement of proposed use as well as commencement of the construction of buildings. Examples include the following, all of which are set forth in more detail in Ex. C:

Molly Stump
Office of the City Attorney
October 31, 2018
Page 2 of 4

- Retention of the Ko Architects firm to provide three separate sets of drawings to address three separate ARB hearings at great expense;
- Completion of the removal of street trees pursuant to validly issued permits;
- Payment of fees for new water service connections, fire service capacity, and water meters;
- Removal of hazardous materials;
- Archaeological services;
- Disconnection of utilities to the site;
- Eviction of tenants;
- Preparation of construction documents;
- CALGreen compliance;
- Building permit fees (\$186,871.77);
- Issuance of Encroachment Permit for installation of ground level monitoring piezometer;
- Hundreds of hours of work and hundreds of thousands of dollars in expenses in obtaining building permit approval status from multiple departments, as set forth in Ex. D; and
- Three ARB hearings.

These and other activities and substantial expenses more than establish the good faith intent of Kipling Post to proceed with all approvals necessary for issuance of the building permit. As such, Kipling Post has a right to continue with the process without the threat of application of section 18.077.090. It is settled authority in California that the purpose of statutes or ordinances providing for automatic expiration or revocation of land use approvals if a use has not yet been established is to prevent the reservation of land for future purposes when the permittee has *no good faith intent to commence upon the proposed use*.

Molly Stump
Office of the City Attorney
October 31, 2018
Page 3 of 4

This conclusion is supported by the seminal First District Court of Appeal case on the subject, *Community Development Com. v. City of Fort Bragg* (1988) 204 Cal. App. 3d 1124, 1129. In this case, the trial court arbitrarily refused to consider factors other than completion of construction in determining whether there had been a good-faith effort to commence construction. In that case, the Community Development Commission of Mendocino County (CDC) obtained a use permit on April 26, 1983 for the construction of affordable housing. The Fort Bragg Municipal Code at the time contained a section providing for the expiration of conditional use permits in one year of the date of issuance unless substantial evidence of use was in progress. (Id. at p. 1126.) The trial court concluded that the use permit had expired on April 26, 1984 because no substantial work had been done on the property. (Id.. at p. 1128.) The trial court further concluded that residential use had not commenced on the property, and on-site construction expenses had not been incurred. The trial court stated that the "only activities undertaken by CDC with respect to this site related to steps preparatory to its application for a building permit." (Id.)

On appeal, the CDC argued that the trial court erroneously construed the Municipal code section as intending "to cause the automatic expiration of use permits where the permittee has neither actually used the land for the purpose stated in the permit nor substantially begun construction work necessary for the use." (*Community Development, supra*, 204 Cal.App.3d at p. 1129.) The CDC further contended on appeal that the trial court incorrectly found that the CDC's failure to actually construct buildings constituted a lack of substantial evidence of the use in progress. (*Ibid.*) The Court of Appeal agreed with the CDC and reversed the trial court's judgment and finding that the use permit had expired:

The record in this case clearly demonstrates CDC was proceeding with a good faith intent to commence upon the proposed use. It is undisputed that CDC pursued and obtained a funding commitment from HUD; that it purchased the Sanderson property at a cost of \$95,000; hired architects and engineers for the performance of preconstruction work at a cost of \$85,000; had soil borings performed; arranged for the removal of two small structures; and submitted plans to Fort Bragg's building inspection for "plan check review." The trial court's determination that substantial evidence of use was not shown because of the absence of actual on-site construction bears no definitive relationship to the purpose of the Fort Bragg ordinance. In a complex, government-financed development, ***a good faith intent to proceed may be established in several ways, exclusive of actual on-site construction it was unreasonable for the trial court to apply a standard concerned with the extent of construction alone.***

(*Community Development, supra*, 204 Cal.App.3d at pp. 1130-1131, emphases added.)

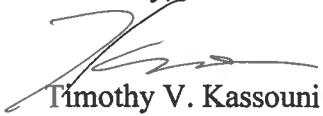
Molly Stump
Office of the City Attorney
October 31, 2018
Page 4 of 4

It would be gross abuse of process for the City to apply section 18.077.090 to shut down this project, and any such attempt will be opposed in Court in an action for writ relief and damages under the Fifth Amendment and under 42 U.S.C. 1983.

We anticipate that the City will promptly acknowledge and confirm that Kipling Post has already commenced proposed use of the site consistent with the foregoing Court of Appeal authority and the documentation included in this correspondence.

Thank you for your prompt attention.

Sincerely,



Timothy V. Kassouni

cc: Ed Shikada [via e-mail Ed.Shikada@cityofpaloalto.org]
Jonathan Lait [via e-mail Jonathan.Lait@cityofpaloalto.org]
George Hoyt [via e-mail George.Hoyt@cityofpaloalto.org]
Brad Eggleston [via e-mail Brad.Eggleston@cityofpaloalto.org]
Rosemary Morse [via e-mail Rosemary.Morse@cityofpaloalto.org]

Exhibits A-D

Ex. A



NOTICE OF PROPOSED DIRECTOR'S DECISION

Dear property owner or resident,

This is to notify you that the City has made a decision on a proposed project within 600 feet of your property. The project proposed for 429 UNIVERSITY AV was given a partial approval and partial denial by the City's Director of Planning and Community Environment.

ADDRESS: 429 UNIVERSITY AV

FILE NUMBER: 18PLN-00240

PROJECT DECISION: Approving in-part and denying in-part:

Approved with respect to the decorative wall treatment for the project's west elevation and landscape details; it is denied with respect to exterior building materials, colors, and craftsmanship-related details.

Denial in part is consistent with comments and concerns expressed by Architectural Review Board Members at its August 16, September 20, and October 4, 2018 Meetings regarding the exterior detailing and craftsmanship of the project. It also follows Kipling Post LP's ~~refusal~~ on October 15, 2018, of suggestion to incorporate detailing into the design in an effort to secure a complete project approval.

The plans may have changed since the initial plan submittal. More information about the project and the City's decision letter may be viewed online at:

<https://www.cityofpaloalto.org/gov/depts/pln/current/projects/default.asp>

In accordance with the provision of PAMC Chapter 18.77.070 (d), any person may file an appeal of the proposed decision. The director's decision shall become final 14 calendar days after the postmarked date that this notice is mailed or published, whichever is later, unless a formal written appeal and applicable fees are submitted to the Planning Department. Should you have any questions regarding the Director's decision, please do not hesitate to contact the Project Planner.

NAME: ADAM PETERSEN

PHONE: 408 340-5642

EMAIL: apetersen@m-group.us

Ex. B

From: Gerhardt, Jodie <Jodie.Gerhardt@cityofpaloalto.org>
Date: Fri, Oct 26, 2018 at 4:48 PM
Subject: RE: Request for Permit Time Extension
To: Elizabeth Wong <elizabethwong2009@gmail.com>, Lait, Jonathan <Jonathan.Lait@cityofpaloalto.org>
Cc: Hoyt, George <George.Hoyt@cityofpaloalto.org>, Peter Ko <design@koarch.com>, Laura Roberts <laura@koarch.com>, Andrew Wong <a.jaime.wong@gmail.com>, Jaime Wong <jandewong@gmail.com>

Elizabeth,

The City has already issued one extension for this project (see attached) which is allowed by the Zoning Code. I will need to speak with our attorneys to better understand if a second extension is allowed.

Sincerely,

Jodie Gerhardt, AICP | Manager of Current Planning | P&CE Department
250 Hamilton Avenue | Palo Alto, CA 94301
T: 650.329.2575 | E: jodie.gerhardt@cityofpaloalto.org

From: Elizabeth Wong [mailto:elizabethwong2009@gmail.com]
Sent: Friday, October 26, 2018 10:15 AM
To: Gerhardt, Jodie; Lait, Jonathan
Cc: Hoyt, George; Peter Ko; Laura Roberts; Andrew Wong; Jaime Wong
Subject: Re: Request for Permit Time Extension

Jodie, Jonathan,

Please email me form and instructions for extending the Building Permit deadline.

Thank you.

Elizabeth Wong

On Fri, Oct 26, 2018 at 9:07 AM Spotwood, Alicia <Alicia.Spotwood@cityofpaloalto.org> wrote:

Elizabeth,

Please discuss with Jodie, I don't have a form for you.

Thanks,
Jodie

-----Original Message-----

From: Elizabeth Wong [mailto:elizabethwong2009@gmail.com]
Sent: Friday, October 26, 2018 9:06 AM
To: Spotwood, Alicia
Cc: Hoyt, George; design@koarch.com; laura@koarch.com; Andrew Wong; jandewong@gmail.com
Subject: Request for Permit Time Extension

Hi Alicia

I don't have the permit yet so it is not in George Hoyt 's perview

It is in Planning 's perview. Could you email me the forms for the time extension?

Thanks

Elizabeth
Sent from my iPhone

Ex. C

EXAMPLES OF COMMENCEMENT OF PROPOSED USE OF SITE
 425-429-435-441-447 UNIVERSITY AVENUE, PALO ALTO

DATE	DESCRIPTION	EXHIBITS
6/7/2018	Completed Removal of Street Trees	Tree Removal Permit and Fees Paid
3/2/2018	Building Permit Fees	Submitted Construction Plans for Building Permit; Amount Paid \$186,871.77
5/7/2018	Paid fees for new water service connection, fire service capacity, and water meter	Receipts from City of Palo Alto Utilities Department
8/27/2018	Removal of Hazardous Materials	Completion Notice from JWH Asbestos Removal Services
8/29/2018	Archaeological Services as required in Conditions of Approval	Executed Contract with Holman & Associates
10/30/2018	Move Sewer Line in Lane 30	Contract with Able Septic Tank Service
7/25/2018	Disconnection of Utilities to Site	Termination of Service and Declaration Concerning Tenancy
6/13/2018	Eviction of Tenants	Court Stipulation and Order for removal of the last tenant by July 15, 2018
9/1/2017	Preparation of Construction Documents	Contract acknowledgement letter and Timeline from Ko Architects
5/7/2018	CALGreen Compliance	Contract for Cal Green Tier 2 and Cal Green Consulting Services
9/5/2018	Installation of Piezometer and Ground Water Level Monitoring	Encroachment Permit and Temporary Lease by Exploration Geoservices Inc.

RECEIVED



City of Palo Alto

Public Works Engineering

Phone: 650/529-2151 FAX: 650/529-2240

Inspection: 650/496-6929

AUG 17 2018

DEVELOPMENT SERVICES

ENCROACHMENT PERMIT
& TEMPORARY LEASE

Job Copy

PERMIT TYPE:

- ENCROACHMENT PERMIT (Right-of-way or public utilities easement encroachments)
 TEMPORARY LEASE (Encroachments on City-owned property)

PERMITTEE NAME AND ADDRESS:

Name: Exploration Geoservices, Inc
1535 Industrial Ave
San Jose, CA 95112
Phone: 408-280-6822

LOCATION OF ENCROACHMENT/LEASE:

Kipling St

DURATION:

Temporary (365 Days)
 Indefinite

ESTIMATED
START DATE:

(3)

ERIC

-OC117

Permit No.

Date

ENCROACHMENT PERMIT TYPE:

Residential (Single Family)

- Standard: Architectural, structural decks, spas, etc. in a Public Utilities Easement (PUE) or City right-of-way (ROW).
 Dumpster or container (no insurance certificate is required).
 Fence: Placement of a fence in a PUE or ROW (no insurance certificate is required)

Non-Residential (Commercial)

- Standard: Awnings, lane or sidewalk closures, pedestrian protection structures, structural or architectural features, private structures, other long term encroachments in a PUE or ROW, lasting more than 5 days.
 Short-Term: Sidewalk/street/alley encroachments, lane or sidewalk closures, unloading of materials, etc., lasting 5 days or less.
 1 Day: Sidewalk or lane closure lasting 1 day or less.
 Minor: Placement of dumpster within downtown districts (additional fee for parking space rental, if applicable), and restaurant tables & chairs on sidewalk.

Pursuant to the provisions of Sec 12.12 * of the Palo Alto Municipal Code, permission is hereby requested to construct and maintain an encroachment, or to use City-owned property, at the above location and in the manner described below:

NATURE OF ENCROACHMENT OR USE: Preconcrete Installation

REASON FOR ENCROACHMENT/LEASE: Monitor water level
during construction

Permittee shall, at Permittee expense, remove said encroachment or any improvements constructed, and this permit/lease shall terminate within thirty (30) days after written notice from the City Engineer/Real Property Manager. Permittee agrees that in the event of failure to remove such encroachment/improvement* within the time specified, the same may be removed, and the City's property or easement restored, by the City, and the cost thereof made a lien upon/against* Permittee/Lessee, pursuant to the provisions of Sec 12.12 of the Palo Alto Municipal Code.

Permittee, in consideration of the issuance of this permit/lease, agrees to maintain required evidence of liability insurance, for the life of the encroachment, that indemnifies and holds harmless the City of Palo Alto, its officers, agents, and employees from any liability of any nature whatsoever caused in whole or in part by reason of or in any manner connected with any and all operations, structures or conditions authorized or permitted by this permit/lease. The Permittee agrees and understands that this permit vests no estate.

Permittee shall be responsible for obtaining any and all permits which may be required by an Agency having jurisdiction over the property and/or proposed use. Notwithstanding the above, nothing contained herein shall obligate City to issue any permits or approvals required for construction.

Permittee hereby accepts this permit/lease* subject to all conditions set forth herein, and the attached Special Provisions and conditions, and agrees that all of said conditions and provisions shall be binding on Permittee, co-owners, heirs, assigns, transferees and successors in interest of every nature. This permit/lease* shall expire if work on the encroachment described within does not commence within sixty (60) days of the date of approval, or by the anticipated start date as indicated above, whichever is later.

X Permittee Authorized Representative 3/4/18 APPROVED BY 9/5/18
For inspection call the Public Works Inspector @ (650) 496-6929 - Provide minimum one working day advance notice.



CITY OF
PALO
ALTO

APPROVED

URBAN FORESTRY SECTION

TREE PERMIT FOR REGULATED SITE & AREA

PUBLIC WORKS

Public Services Division - Urban Forestry Section
pwps@cityofpaloalto.org

DATE: 6/7/18 WP

TRE-

18000-00536
\$0

PROJECT ADDRESS: 429 University

APPLICANT INFORMATION

Name: Ko Architects, Inc.

Address:

Phone: (650) 853-1908

Cell:

Fax:

E-mail: design@koarch.com

SCOPE OF WORK

Tree Site No.	Removal	Planting	Pruning	Other	Description	Species	Value	Size	Dist. From Left Prop. Line
R2					Remove street tree inventoried at 447 University, site R2	Carob	\$1750	35	58
R1					Remove street tree inventoried at 447 University, site R1	Carob	\$1750	40	100
R1					Plant 4 new street trees according to building permit sheet L1	Ginkgo			TBD

Application Date: 6/7/18 Start Date: 6/7/18 Completion Date: 7/7/2020

REQUIRED ATTACHMENTS

1. Site Plan
2. Other:

PERMIT CONDITIONS

1. The permitted work shall conform to City of Palo Alto standard specifications and the Tree Technical Manual, including those checked above. See attached specifications.
2. Permit shall be available on site during work.
3. Permittee removing trees and stumps, and/or planting new trees shall use PW Detail #604.
4. Permittee is responsible to notify Underground Service Alert (USA) prior to stump removal and replacement tree planting.
5. All work shall be completed by a licensed tree service or landscaping contractor.
6. New tree shall be inspected by urban forestry inspector prior to installation (650.496.5953).
7. When required, irrigation bubbler heads shall be supplied to each new tree per PW Detail #513.
8. Applications that include pruning or removal of regulated trees must attach a report from a certified arborist.
9. In consideration of the granting of this permit, for pruning an International Society of Arboriculture Certified Arborist must be on site. All work shall be done in accordance with:
 - Palo Alto Municipal Code, Title 8, Trees and Vegetation
 - Tree Technical Manual, PAMC, 8.10.130
 - American National Standards Institute (ANSI) Standards for Tree Care Operations A300 & Z133
 - ANSI Standard for Nursery Stock Z60.1
 - Underground Service Alert (USA) notification requirements
 - Proof of insurance as specified by the City of Palo Alto
 - Scope of work must be completed
10. Additional Conditions:

Conditions for site preparation, soil volume, and irrigation as specified in the building permit

Permittee affirms that the facts stated herein are true and agrees that (s)he, his or her agents, employees, and contractors shall perform all work described herein in conformance with ordinances and standard specifications of the City of Palo Alto. The permittee agrees to abide with the Permit Conditions outlined above and hold the City of Palo Alto, its officers, officials, agents, and employees harmless from all costs and damages which might arise from the Permittee's use or occupancy of public right-of-way. This permit may be revoked at any time for violation of the above conditions.

APPLICANT SIGNATURE

6/7/18
DATE

PERMIT ISSUER

6/7/18
DATE



**CITY OF PALO ALTO
DEVELOPMENT CENTER
285 HAMILTON AVENUE
PALO ALTO, CA 94301
(650) 329-2496**

OWNER: KIPLING POST LP
CONTRACTOR:
PROPERTY ADDRESS: 429 UNIVERSITY AV
RECEIPT NUMBER: 334699
RECEIPT DATE: 3/2/2018 9:53:31AM
PERMIT NUMBER: 18000-00536

Print Date: 03/02/2018
Type: Project
Sub-Type: Building Permit
Category: Building Permit

FEE DESCRIPTION	SUBFUND-ACTIVITY	UNITS	FEE AMOUNT
Landscape Plan Check - Commercial & Multi-Family	65060001 1337	1	\$1,973.00
Building Plan Check Fee	65030001 1337	1	\$66,627.98
Utilities Plan Check	65030001 1337	1	\$118.00
Public Works Plan Check Fee	65040001 1337	1	\$39,088.12
Fire Plan Check - Commercial & Multi-Family	65050001 1337	1	\$47,971.73
Zoning Plan Check Fee	65020001 1323	1	\$31,092.94
Amount Due:			\$186,871.77
Check			Amount Paid: \$186,871.77

Fees paid include a Technology Surcharge of 1.8% per transaction approved in FY 18 Municipal Fee Schedule

Comment:

*check# KP 1098
3/2/18*

20170818



CITY OF PALO ALTO
UTILITIES

City of Palo Alto
250 Hamilton Ave.
Palo Alto, California 94301

Billing Address:
KIPLING POST LP
P. O. Box 204
Palo Alto CA 94301

Service Address:
429 University Ave
Palo Alto CA 94301

Invoice Number : 95019717
Invoice Date : 05/07/2018
Customer No : 20002551
Contract Account : 10006981

**CITY OF PALO ALTO
UTILITIES DEPARTMENT
W-G-W ENGINEERING**

**BILLING AMOUNT GOOD
FOR 90 DAYS
DUE IN FULL
PARTIAL PAYMENTS NOT ACCEPTED**

Item No /Ref.	Sales Order/ Service Order	Service Description	Amount
000010	70041155 40023443	NEW 6" WATER SERVICE CONNECTION	8,137.00
000020	70041155 40023443	6" FIRE SERVICE CAPACITY FEES	22,530.00
000030	70041155 40023443	5/8" WATER METER INSTL CHARGE	698.00

Total Due \$ 31,365.00

Remit Payment to:

Mail: Revenue Collections-City of Palo Alto P.O. Box 10250 Palo Alto, CA 94303
In person: Revenue Collections, 250 Hamilton Ave., 1st Floor, Palo Alto, CA 94301
For Billing Contact: email: kelly.haruta@cityofpalocalto.org
phone: (650) 617-3106

This invoice amount is good until 90 days after the effective date of the next Council-approved rate increase. If you have not paid the amount due within that time, a new invoice will be prepared and mailed to you. The new invoice will be prepared using the rates in effect at the time of mailing.

ity of Palo Alto
City of Palo Alto
Revenue Collection

Reference Number: 2018128002-68
Date/Time: 05/08/2018 1:54:55 PM

S D Pro-Forma Payment

2018128002-68-1

S D Pro-Forma Payment

Contract Account: 000010006981

Last Name: LP

First Name: KIPLING POST

Amount:

\$31,365.00

\$31,365.00

\$31,365.00

Total:

1 ITEM TOTAL:

\$31,365.00

TOTAL:

\$31,365.00

Check

Check Nbr: 04672

Total Received:

\$31,365.00



C E 2 0 1 8 1 2 8 0 0 2 - 6 8

Customer Copy

**City of Palo Alto
250 Hamilton Ave.
Palo Alto, California 94301**

90038714

Invoice Number : 95019717
Invoice Date : 05/07/2018
Customer No : 20002551
Contract Account : 10006981

**CITY OF PALO ALTO
UTILITIES DEPARTMENT
W-G-W ENGINEERING**

**BILLING AMOUNT GOOD
FOR 90 DAYS
DUE IN FULL
PARTIAL PAYMENTS NOT ACCEPTED**

Description	Amount
SERVICE CONNECTION	8,137.00
CAPACITY FEES	22,530.00
TER INSTL CHARGE	698.00

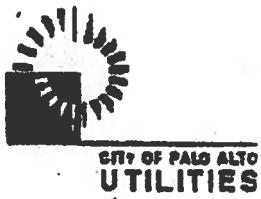
Total Due \$ 31,365.00

Remit Payment to:

Mail: Revenue Collections-City of Palo Alto P.O. Box 10250 Palo Alto, CA 94303
In person: Revenue Collections, 250 Hamilton Ave., 1st Floor, Palo Alto, CA 94301
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**City of Palo Alto
250 Hamilton Ave.
Palo Alto, California 94301**

Billing Address:
KIPLING POST LP
P. O. Box 204
Palo Alto CA 94301

Invoice Number : 95019723
Invoice Date : 05/09/2018
Customer No : 20002551
Contract Account : 10006981

Service Address:
429 University Ave
Palo Alto CA 94301

90038730

Item No /Ref.	Sales Order/ Service Order	Service Description	Amount
000010	70041276 40023479	NEW 8" WATER SERVICE CONNECTION	1,332.00

Total Due \$ 1,332.00

Remit Payment to:

Mail: Revenue Collections-City of Palo Alto P.O. Box 10250 Palo Alto, CA 94303
In person: Revenue Collections, 250 Hamilton Ave., 1st Floor, Palo Alto, CA 94301
For Billing Contact: email: kelly.haruta@cityofpaloalto.org

phone: (650) 617-3106

This invoice amount is good until 90 days after the effective date of the next Council-approved rate increase. If you have not paid the amount due within that time, a new invoice will be prepared and mailed to you. The new invoice will be prepared using the rates in effect at the time of mailing.

CLEAN / SAFE / RESPONSIVE



**J.W.H. Asbestos
REMOVAL SERVICES**

CSLB No. 777430 OSHA No. 270

COMPLETION NOTICE

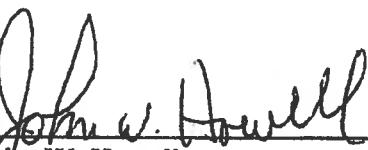
This is to certify that J.W.H. Asbestos Removal Services has completed the removal of the asbestos contracted per HMA Asbestos Survey #18.240 dated July 27, 2018

Removal and disposal of 1,600 sq ft of sheetrock/joint compound @ less than 1% non-friable asbestos from lower walls on sides and back wall and 2 upper walls in Unit#425. Removal and disposal of 120 sq. ft. VAT tile and mastic and tape on flue pipe in Unit#441. Removal and disposal of asbestos tape on plenum box in Unit#447. Removal and disposal of carpet, floor tile and mastic on wood, transite flue pipe and asbestos tape on metal pipe in Unit#450.

at the following job location:

425,441,447 University Ave, Palo Alto, CA 94301
450 Kipling Street, Palo Alto, CA 94301

In accordance with J.W.H. Asbestos Removal Services proposal signed/dated August 6, 2018. This notice conforms to and is in strict compliance with all applicable standards and regulations. This provision of completion is our acknowledgment by authorized signature that all services that have been contracted for are completed as specified at the above referenced property location.



John W. Howell
J.W.H. Asbestos Removal Services

August 27, 2018

Date



holman & ASSOCIATES

Archaeological Consultants
"SINCE THE BEGINNING"

3615 FOLSOM ST. SAN FRANCISCO,
CALIFORNIA 94110 415/550-7286

Elizabeth Wong
Steleco LLC
PO Box 2014
Palo Alto, CA 94302

29 August 2018

re: Proposal/Authorization for Historical Resources/Archaeological Training, 425-429 University Avenue, Palo Alto

Thank you for contacting us regarding an archaeological and historical resources Mitigation Measure requiring training for construction personnel for your Project at 425-429 University Avenue in Palo Alto. A redevelopment project proposed for the property will require excavations about 30 feet deep, which would adversely impact historical or archaeological resources, if any, therefore the City has required this training.

The Scope of Services for this work will be to provide a training session "... regarding how to recognize cultural resources ... that could be encountered during construction activities" as per Mitigation Measure CUL-1 (attached). Such a training session would typically take 45 minutes to one hour and would be conducted at the jobsite. Potential attendees would be determined by you and your construction contractor(s).

Our fee for these services will be Not to Exceed \$400 (plus mileage at 58.5¢/mile), depending on which of our staff is used, and could be less if we can coordinate the training session with other work in the vicinity that same day. Any additional work or site visits would be charged at standard hourly rates of \$100/hr for Senior Associate(s), \$85/hr for Staff Archaeologist(s), or \$80/hr for Archaeological Technician(s), plus a maximum daily mileage charge up to 100 miles.

What we need from you:

1. Notice at least one week before the training, specifying time and place.
2. Authorization to Proceed.

Please sign and return an original of this Proposal to serve as Authorization to Proceed and as agreement to pay Invoices within 30 days of receipt. A signed digital copy will suffice, or you may fax a signed copy to 415-282-6239, or send your standard contract/authorization with this Proposal as an exhibit.

Please call Miley or email Holman.Assoc@comcast.net or me at 650-726-6269 or mrcrm@comcast.net if you have any questions.

Cordially yours,

Matthew R. Clark, RPA
Senior Associate

C. Agnew, Mgr.
Authorizing Signature
Elizabeth Wong
Name
Manager
Title

Company/Agency STERECO LLC

Dated: 8/29/18

Total Contract Price: NTE \$458.50

Project: **H&A 08-06/18**

CULTURAL RESOURCES

Mitigation Measure CUL-1: Prior to commencement of site clearing and project grading, the project applicant shall retain a qualified archaeologist to train construction personnel regarding how to recognize cultural resources (such as structure features, unusual amounts of bone or shell, artifacts, human remains, or architectural remains) that could be encountered during construction activities. If artifacts or unusual amounts of shell or bone or other items indicative of buried archaeological resources or human remains are encountered during earth disturbance associated with the proposed project, the on-site contractor shall immediately notify the City of Palo Alto (City) and the Native American Heritage Commission as appropriate. All soil-disturbing work shall be halted within 100 feet of the discovery until a qualified archaeologist, as defined by the California Environmental Quality Act (CEQA) Guidelines (14 CCR 15000 et seq.) and the City, completes a significance evaluation of the finds pursuant to Section 106 of the National Historic Preservation Act. Any human remains unearthed shall be treated in accordance with California Health and Safety Code, Section 7050.5, and California Public Resources Code, Sections 5097.94, 5097.98, and 5097.99, which include requirements to

Applicant	City of Palo Alto	Prior to and during earth disturbance	• Training materials provided to construction contractors • Field inspections conducted to verify compliance

notify the Santa Clara County Medical Examiner's office and consult with Native American representatives determined to be the Most Likely Descendants, as appointed by the Native American Heritage Commission. Identified cultural resources shall be recorded on State Department of Parks and Recreation Form 523 (archaeological sites). Mitigation measures prescribed by the Native American Heritage Commission, the Santa Clara County Medical Examiner's office, and any Native American representatives determined to be the Most Likely Descendants and required by the City shall be undertaken before construction activities are resumed. If disturbance of a project area cultural resource cannot be avoided, a mitigation program, including measures set forth in the City's Cultural Resource Management Program and in compliance with Sections 15084.5 and 15126.4 of the CEQA Guidelines, shall be implemented.

Seth

ABLE

1020 Ruff Dr
San Jose, CA 95110
Office (408) 377-8090
Fax (408) 492-1008

Lic.# 677475

PROJECT:

Customer: Developer Steleco			
Attn: Elizabeth Wong			
Address: 429 University Ave			
City: Palo Alto	State CA	ZIP	
Phone: 650-814-3051	Email: elizabethwong2009@gmail.com		

PROPOSAL

Misc.	
Date	10/30/2018
Order No.	AC-18-3781
Rep	Bob Hardesty
Review	

Qty	SCOPE OF WORK: Install a new manhole in the street and a sewer lateral with on-site install, per City permits. <ul style="list-style-type: none"> • Able to mark out the construction area 48 hours prior to any digging. • Able to pull the permits needed to complete this project (permit cost excluded). • Able to set up traffic control, lay out trench line and saw cut asphalt before digging. • Able to dig, trench and install a 4" sewer lateral approx. to 26' in length and approx. 6' deep. • Able to backfill with proper materials and compaction to be mechanical. • Able will off haul all spoils related to this job. • Able to use proper shoring on all trenches 5' or deeper. • Able to pave around newly installed manhole and new sewer lateral. • Able to replace small section of driveway approach. • Able to reconnect 4 existing sewer lines that are to be reconnected to our new sewer line. • Able to install one new sewer manhole to City of PA specs. <i>approx</i> <i>SLH</i> • Able to use native backfill on the on-site sewer and replace the concrete up to 6" thick thru the trench line only. Compaction to be mechanical. • Able to dig, trench and install a 6" sewer line approx. 115' in length and approx. 6' deep. • We are estimating this project to take 5 to 6 working days to complete. • Able to provide traffic control plan to customer before submission to the City. Able to provide certificate of Ins. With customer provided additional insureds upon signing of the proposal.
Excludes	<p>Permits, fees or engineering if needed. Some hand digging is included.</p> <p>Any concrete thicker than 6".</p> <p>Any utilities that will cause use to hand dig through our trench line. This bid is for tractor work.</p> <p>Hitting any unmarked utilities lines in our trench area.</p> <p>Please note, we have excluded the cost to abandon the existing line until we get clarification.</p> <p>Rock and Ground Water Clause</p> <p>If rock/ground water is found, alternate methods may be applicable. If found, additional charges may be needed.</p> <p>Change orders</p> <p>Any alterations or deviations from this proposal, involving additional materials and/or labor will be executed only in a written change order and will become an additional charge outside the original proposal cost. Any additional down time created by a change order will be payable by the customer per our standard time and materials rates.</p> <p>Thank you for giving us the opportunity to bid on your underground sewer project.</p>

Subtotal	\$ 20,000.00
10% Dwn	\$ 2,000.00
60% Prg Pmt	\$ 12,000.00
Upon completion:	\$ 11,600.00
Total	\$ 33,600.00

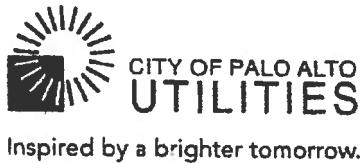
Please sign below to authorize project

CONTRACT NUMBER AC-18-3781

Thank you for choosing Able

THANK YOU FOR CHOOSING ABLE UNDERGROUND CONSTRUCTION

Underground Construction: Septic - Sewer - Storm - Water - Excavated & Installed Septic Systems: Designed - Installed - Repaired
 Pumped - Inspected - Plumbdry Sewer & Drain Line Cleaning - Rocking - Repaired - Renewed - Residential & Commercial
Vacuum: Septic - Sewer - Storm - Grease Traps/Interceptors - Hydro Flushing: Sewer - Storm - Maintenance - Public Works - Overflow & Spill Response
Main Line Stoppages: Pipeline Video Inspection: Pipeline Inspection - Line Locating - Detailed Reports - Complete 24 Hr. Emergency Service
www.chiosawu.com • www.abledeckandstorage.com • www.yalepavercrete.com



DEMO

**DECLARATION CONCERNING TENANCY OF BUILDING
PRIOR TO ISSUANCE OF A DEMOLITION PERMIT**

Service Address for Demolition/Remodeling

Street # 435 Street Name UNIVERSITY AVE, PALO ALTO, CA

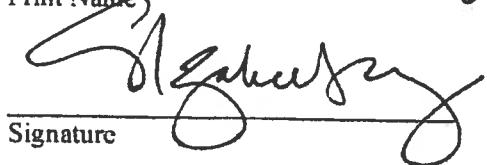
Palo Alto Municipal code 16.04.060 section 105.1.3 provides no work or demolition shall begin upon any portion of such a unit until each and every portion has been vacated by all tenants lawfully in possession thereof.

I Elizabeth Wong hereby declare that I am the owner, or owner's agent, of the premises located at the service address listed above. I also declare the building located at the service address listed above, for which a demolition permit is requested, is not currently occupied or presently being used for residential purposes.

Said Premise Consists of 1 number of buildings

I will not use not use any demolition permit issued to aid in securing vacation of said premisc. I certify under penalty or perjury that the foregoing is true and correct.

Elizabeth Wong, Manager
Print Name


Signature

650-814-3051
Phone Number

7/25/18
Date

City of Palo Alto Utilities, Customer Service Center 250 Hamilton Ave., Ground Floor, Palo Alto, CA 94301
Tel. 650 329-2161 Fax. 650-321-2786 Hours Mon - Thur 7:30 am to 5:30 pm Friday 8:00 to 5:00 pm
Email: UtilitiesCustomerService@cityofpaloalto.org Web: <http://www.cityofpaloalto.org/depts/uti/default.asp>



Inspired by a brighter tomorrow.

435 University Ave, Palo Alto

Service Address 425, 429, 435, 441, 447 University Ave, Palo Alto

All addresses on the property being demolished need to be listed. A separate Demo application is required for each address.

Single Family Dwelling

Multi Family Dwelling

Commercial Building

Applicant Name Elizabeth Wong, Manager Phone 650-814-3051

Owner Name Kipling Post LP Phone 650-814-3051

Billing Address P. O. Box 209, Palo Alto, CA 94302

Email Address elizabethwong.2009@gmail.com

Services Requested for Removal (Check all applicable boxes)

Remove Electric Meter # _____
 Remove Gas Meter # _____
 Remove Water Meter # _____

Remove Electric Service Line
 Remove Gas Service Line

Utilities will be disconnected and/or removed within 1 and 10 working days after receipt of a completed application. Exact times and/or dates cannot be scheduled.

If utilities are to be reinstalled, a connection fee will be charged per current utility rate schedule.

Elizabeth Wong
Signature (Applicant)

7/25/18
Date

General Information

Will there be multiple or new address(s) when construction is complete? Yes No

Will you need temporary power during construction? Yes No

Have you applied for a building permit? Yes No

Will the foundation be removed? Yes No

What is the purposed property use after demolition? (Example: single family home, restaurant)



Inspired by a brighter tomorrow.

DEMO

Utilities Disconnection Prior To Building Demolition/Remodeling

441 University Ave, Palo Alto

Service Address 425, 429, 435, 441, 447 University Ave, Palo Alto

All addresses on the property being demolished need to be listed. A separate Demo application is required for each address.

Single Family Dwelling

Multi Family Dwelling

Commercial Building

Applicant Name Elizabeth Wong, Manager Phone 650-814-3051

Owner Name Kipling Post LP Phone 650-814-3051

Billing Address P. O. Box 204, Palo Alto, CA 94302

Email Address elizabethwong2009@gmail.com

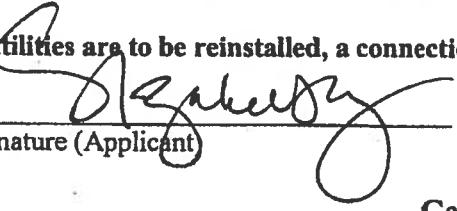
Services Requested for Removal (Check all applicable boxes)

Remove Electric Meter # _____
 Remove Gas Meter # _____
 Remove Water Meter # _____

Remove Electric Service Line
 Remove Gas Service Line

Utilities will be disconnected and/or removed within 1 and 10 working days after receipt of a completed application. Exact times and/or dates cannot be scheduled.

If utilities are to be reinstalled, a connection fee will be charged per current utility rate schedule.


Signature (Applicant)

7/25/18

Date

General Information

Will there be multiple or new address(s) when construction is complete? Yes No

Will you need temporary power during construction? Yes No

Have you applied for a building permit? Yes No

Will the foundation be removed? Yes No

What is the purposed property use after demolition? (Example: single family home, restaurant)



DEMO

**DECLARATION CONCERNING TENANCY OF BUILDING
PRIOR TO ISSURANCE OF A DEMOLITION PERMIT**

Service Address for Demolition/Remodeling

Street # 441 Street Name UNIVERSITY AVE, PALO ALTO, CA

Palo Alto Municipal code 16.04.060 section 105.1.3 provides no work or demolition shall begin upon any portion of such a unit until each and every portion has been vacated by all tenants lawfully in possession thereof.

I Elizabeth Wong hereby declare that I am the owner, or owner's agent, of the premises located at the service address listed above. I also declare the building located at the service address listed above, for which a demolition permit is requested, is not currently occupied or presently being used for residential purposes.

Said Premise Consists of 1 number of buildings

I will not use not use any demolition permit issued to aid in securing vacation of said premise. I certify under penalty of perjury that the foregoing is true and correct.

Elizabeth Wong, Manager

Print Name

Elizabeth Wong

Signature

650-814-3051

Phone Number

7/25/18

Date

City of Palo Alto Utilities, Customer Service Center 250 Hamilton Ave., Ground Floor, Palo Alto, CA 94301
Tel. 650 329-2161 Fax. 650-321-2786 Hours Mon - Thur 7:30 am to 5:30 pm Friday 8:00 to 5:00 pm
Email: UtilitiesCustomerService@cityofpaloalto.org Web: <http://www.cityofpaloalto.org/depts/util/default.asp>



Inspired by a brighter tomorrow.

Utilities Disconnection Prior To Building Demolition/Remodeling

447 University Ave, Palo Alto

Service Address

425, 429, 435, 441, 447 University Ave, Palo Alto

All addresses on the property being demolished need to be listed. A separate Demo application is required for each address.

Single Family Dwelling

Multi Family Dwelling

Commercial Building

Applicant Name Elizabeth Wong, Manager Phone 650-814-3051

Owner Name Kipling Post LP Phone 650-814-3051

Billing Address P. O. Box 204, Palo Alto, CA 94302

Email Address elizabethwong2009@gmail.com

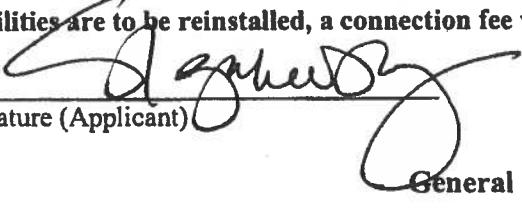
Services Requested for Removal (Check all applicable boxes)

Remove Electric Meter # _____
 Remove Gas Meter # _____
 Remove Water Meter # _____

Remove Electric Service Line
 Remove Gas Service Line

Utilities will be disconnected and/or removed within 1 and 10 working days after receipt of a completed application. Exact times and/or dates cannot be scheduled.

If utilities are to be reinstalled, a connection fee will be charged per current utility rate schedule.


Signature (Applicant)

7/25/18
Date

General Information

Will there be multiple or new address(s) when construction is complete? Yes No

Will you need temporary power during construction? Yes No

Have you applied for a building permit? Yes No

Will the foundation be removed? Yes No

What is the proposed property use after demolition? (Example: single family home, restaurant)



DEMO

**DECLARATION CONCERNING TENANCY OF BUILDING
PRIOR TO ISSUANCE OF A DEMOLITION PERMIT**

Service Address for Demolition/Remodeling

Street # 447 Street Name UNIVERSITY AVE, PALO ALTO, CA

Palo Alto Municipal code 16.04.060 section 105.1.3 provides no work or demolition shall begin upon any portion of such a unit until each and every portion has been vacated by all tenants lawfully in possession thereof.

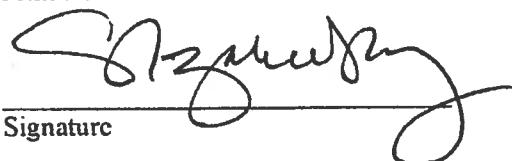
I Elizabeth Wong hereby declare that I am the owner, or owner's agent, of the premises located at the service address listed above. I also declare the building located at the service address listed above, for which a demolition permit is requested, is not currently occupied or presently being used for residential purposes.

Said Premise Consists of 1 number of buildings

I will not use not use any demolition permit issued to aid in securing vacation of said premise. I certify under penalty of perjury that the foregoing is true and correct.

Elizabeth Wong, Manager

Print Name



Signature

650-814-3051

Phone Number

7/25/18

Date



DEMO

**DECLARATION CONCERNING TENANCY OF BUILDING
PRIOR TO ISSURANCE OF A DEMOLITION PERMIT**

Service Address for Demolition/Remodeling

Street # _____ Street Name UNIVERSITY AVE, PALO ALTO, CA

Palo Alto Municipal code 16.04.060 section 105.1.3 provides no work or demolition shall begin upon any portion of such a unit until each and every portion has been vacated by all tenants lawfully in possession thereof.

I Elizabeth Wong hereby declare that I am the owner, or owner's agent, of the premises located at the service address listed above. I also declare the building located at the service address listed above, for which a demolition permit is requested, is not currently occupied or presently being used for residential purposes.

Said Premise Consists of 1 number of buildings

I will not use not use any demolition permit issued to aid in securing vacation of said premise. I certify under penalty or perjury that the foregoing is true and correct.

Elizabeth Wong, Manager
Print Name

650-814-3051
Phone Number

Signature

7/25/18
Date

City of Palo Alto Utilities, Customer Service Center 250 Hamilton Ave., Ground Floor, Palo Alto, CA 94301
Tel. 650 329-2161 Fax. 650-321-2786 Hours Mon - Thur 7:30 am to 5:30 pm Friday 8:00 to 5:00 pm
Email: UtilitiesCustomerService@cityofpaloalto.org Web: <http://www.cityofpaloalto.org/depts/utl/default.asp>

ENDORSED
FILED

1 TODD ROTHBARD #67351
2 ATTORNEY AT LAW
3 100 Saratoga Avenue #200
Santa Clara, California 95051
Tel.: (408) 244-4200

JUN 13 2018

4 Attorney for the Plaintiff

SUPERIOR COURT
COUNTY OF SANTA CLARA
PL. TREN

5
6
7 SUPERIOR COURT OF CALIFORNIA
8 COUNTY OF SANTA CLARA, STATE OF CALIFORNIA
9

10 KIPLING POST, LP,)
11 Plaintiff,) No. 18CV329356
12 vs.) STIPULATION AND ORDER
13 DESIGN WITHIN REACH, INC., DOES I)
through V, inclusive,)
14 Defendants.)
15

16 IT IS HEREBY STIPULATED AND AGREED, by and between
plaintiff KIPLING POST LP and defendant DESIGN WITHIN REACH,
Inc. that:

17 1. Defendant and all occupants will vacate the premises
located at 447 University Avenue, Palo Alto, Santa Clara County,
18 California 94301 on or before July 15, 2018 (hereinafter "the
vacate date"). Notwithstanding that the vacate date falls on a
20 Sunday, there shall be no extension of this limit to the
following working day. Defendant shall turn in all keys to said
22 premises to plaintiff or plaintiff's agent at such time as it
leaves, and shall leave said premises in broom clean and
24 undamaged condition, ordinary wear and tear excepted, and shall
26 comply in all respects with any requirements set forth in the
lease respecting the manner in which possession of the premises

1 is to be restored to plaintiff. Defendant shall remove all
2 items of personal property from said premises at such time as it
3 leaves; any items of personal property remaining behind after
4 the vacate date may be disposed of by plaintiff without
5 liability and without need for resort to the procedures set
6 forth in Civil Code sections 1993, et. seq.

7 2. Defendant shall pay to plaintiff, on or before June 15,
8 2018, the sum of \$63,875.52. This sum is comprised of holdover
9 rent from June 1 through July 15 (\$59,445.72), reimbursement for
10 plaintiff's attorney's fees (\$3,500.00), reimbursement for
11 plaintiff's Court filing fee (\$435.00), reimbursement for
12 defendant's Court filing fee (\$435.00) and reimbursement of ex
parte fee (\$60.00).

13 3. If defendant pays and leaves as set forth above, upon
14 the completion of performance by defendant and upon written
15 demand to plaintiff's attorney by defendant or its attorney,
16 plaintiff shall file a dismissal of this action, with prejudice,
17 with no further award of fees or costs in favor of either party.

18 4. If defendant fails to pay or leave as set forth above,
19 or if any check given by defendant in payment of all or any part
20 of any amount due as set forth above is returned unpaid by the
21 bank upon which drawn, in any such event plaintiff shall be
22 entitled to immediate judgment for the full relief set forth in
23 the complaint, including restitution of possession of the
24 premises, unlawful detainer damages, attorney's fees, and costs,
25 less applicable credit(s) for any payment(s) made by defendant
prior to the date upon which such payment is obtained.
Plaintiff may obtain said judgment by ex parte application to

1 the Court, coupled with a declaration under penalty of perjury
2 setting forth the facts constituting defendant's failure to
3 perform in accordance with the foregoing requirements. Before
4 seeking to obtain said judgment, plaintiff's attorney shall give
5 notice by telephone and email to defendant's attorney (Ms. Jill
6 Rowe, Cooper, White & Cooper; tel.: 415-765-6239; email:
7 jrowe@cwclaw.com) of plaintiff's intention to so proceed. If
8 defendant fails to perform in accordance with the foregoing
9 requirements, defendant waives any right it might otherwise have
10 to contest, appeal, or seek to set aside said judgment, waives
11 any right it might otherwise have to seek any form of stay of
12 execution, either pursuant to Code of Civil Procedure sections
13 918, 1176, or otherwise, waives any right it might otherwise
14 have to seek any form of relief from forfeiture, either pursuant
15 to Civil Code section 3275, Code of Civil Procedure sections
16 1174, 1179, or otherwise, and waives any right it might
17 otherwise have to seek any form of relief from default, either
18 pursuant to Code of Civil Procedure sections 473, 473.5, or
19 otherwise.

20 5. Time is of the essence with respect to the provisions
21 of this STIPULATION. This provision shall be interpreted in its
22 strictest sense, with any failure to perform any requirement set
23 forth herein on or before the date upon which performance is
24 due, even if performance is late by only a single day, resulting
25 in the relief upon default set forth above without regard to the
26 relative hardship to the parties.

27 6. Other than with respect to a violation of the foregoing
28 requirements, both parties waive any and all claims, of any

1 nature whatsoever, which each might have against the other, or
2 against any principals, agents, shareholders, partners,
3 managers, members, employees, affiliates, or assigns of the
4 other. The parties understand that California Civil Code
5 section 1542 provides:

6 "A general release does not extend to the claims which the
7 creditor does not know or suspect to exist in his or her favor
at the time of executing the release, which if known by him or
her must have materially affected his or her settlement with the
debtor."

8 Notwithstanding this language, the parties specifically
9 waive its protection. The parties understand that they may have
10 sustained serious damage or consequential injuries which have
11 not manifested themselves and/or which are presently unknown,
12 but nonetheless deliberately intend to and do hereby release
13 these possible future claims.

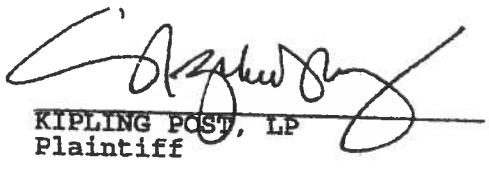
14 7. Each of the terms and conditions set forth above is a
15 material part of the consideration for the execution of this
16 STIPULATION. Strict performance of each and every term and
17 condition set forth above is required. The failure to perform
18 in strict compliance with each and every condition set forth
19 above shall be deemed a material breach of this STIPULATION
20 entitling plaintiff to the relief upon default set forth above.

21 8. This STIPULATION sets forth the entire agreement
22 between the parties with respect to the matters addressed
23 herein. It shall not be altered nor modified unless such
24 alteration or modification is in writing and signed by all
signatories hereto.

25 9. A fax or email copy of this STIPULATION, bearing the
26 faxed or emailed signatures of all signatories hereto, may be

1 used for all purposes in lieu of an original. This STIPULATION
2 may be executed in counterparts, with the sum of the
3 counterparts, whether executed by fax, email, or otherwise,
4 being the equivalent in legal contemplation of one fully
5 executed original.

6 DATED: 6/8/18


KIPLING POST, LP
Plaintiff

9 DATED: 6/8/18


TODD ROTHBARD
Attorney for Plaintiff

14 DATED:

DESIGN WITHIN REACH, INC.
15 Defendant

17 DATED:

JILL ROWE
COOPER, WHITE & COOPER
19 Attorneys for Defendant

21 Multiple Signature ORDER
22 The Court having read and reviewed the foregoing
23 STIPULATION of the parties, and good cause appearing therefor,
24 IT IS SO ORDERED.

25 DATED: JUN 13 2018

JUDGE CLAUDIO JAVIER

JUDGE OF THE SUPERIOR COURT

27 Todd Rothbard
Attorney at Law
100 Santega Avenue
Suite 200
28 Santa Clara, California 95051

1 used for all purposes in lieu of an original. This STIPULATION
2 may be executed in counterparts, with the sum of the
3 counterparts, whether executed by fax, email, or otherwise,
4 being the equivalent in legal contemplation of one fully
5 executed original.

6 DATED:

7 KIPLING POST, LP
8 Plaintiff

9
10 DATED:

11 TODD ROTHBARD
12 Attorney for Plaintiff

13
14 DATED: JUNE 8, 2018

Lorraine DiSanto
15 DESIGN WITHIN REACH, INC.
16 Defendant
17 Lorraine DiSanto, CFO

18 APPROVED as to FORM
19 *[Signature]*

20 JIM ROWE
21 COOPER, WHITE & COOPER
22 Attorneys for Defendant

23 ORDER

24 The Court having read and reviewed the foregoing
25 STIPULATION of the parties, and good cause appearing therefor,

26 IT IS SO ORDERED.

27 DATED:

28 JUDGE OF THE SUPERIOR COURT

wk copy



Ko Architects, Inc.

September 1, 2017

Mrs. Elizabeth Wong
Kipling Post LP, Successors and Assigns

RE: 425-429 University Mixed Use Project in Palo Alto

Dear Elizabeth,

Thank you very much for considering us to provide architectural services for construction documents of a mixed use project located at 425-429 University Avenue in Palo Alto, California. Please find the enclosed service proposal for your review and approval. We will proceed with the design services upon receiving your signature on our agreement.

We are looking forward to working with you on this exciting project. Please contact us if you have any questions.

Sincerely,

Peter Ko, AIA, LEED AP
Principal
Ko Architects, Inc.

900 High Street, Suite One, Palo Alto, CA 94301
Tel: 650/853-1908 Email: design@koarch.com



PROJECT MANAGEMENT FLOW SCHEDULE: 2017-2018
DATE: September 6 th, 2017
CLIENT: Kipling Post LP, Successes & Assigns
PROJECT: 429 University Mixed Use Perfect (KA# 17-721)
PREPARED BY: Ko Architects, Inc.

TASK/TIME	2018											
	Sep.	OCT.	NOV.	DEC.	JAN.	FEB.	MARCH	APRIL	MAY	JUNE	JULY	AUG.
enlarge 10/1 10/16 11/1	11/16	12/1	12/16	1/1	1/16	2/1	2/16	3/1	3/16	4/1	4/16	5/1
TASK 1: DESIGN DEVELOPMENT - DESIGN (WITH CONSULTANTS)												
TASK 1: DESIGN DEVELOPMENT - CLIENT REVIEW/COMMENTS *												
TASK 1: DESIGN DEVELOPMENT - DESIGN REVISIONS												
TASK 1: DESIGN DEVELOPMENT - CLIENT/CONTRACTOR APPROVAL *												
TASK 2: CONSTRUCTION DOCUMENTS - DESIGN (WITH CONSULTANTS)												
TASK 2: CONSTRUCTION DOCUMENTS - CLIENT REVIEW/COMMENTS *												
TASK 2: CONSTRUCTION DOCUMENTS - DESIGN REVISIONS												
TASK 2: CONSTRUCTION DOCUMENTS - CLIENT/CONTRACTOR APPROVAL *												
TASK 3: BUILDING PERMIT SUBMITAL & COMMENTS *												
TASK 3: PLAN CHECK RESPONSE & REVISIONS												
TASK 3: BUILDING PERMIT APPROVAL *												
TASK 4: BIDDING AND NEGOTIATION - SUBCONTRACTORS *												
TASK 5: START CONSTRUCTION * (EST. 22 MONTHS CONST. TIME)												
• NOT CONTROLLED BY KO ARCHITECTS, INC.												

Anticipated Project Milestone Dates:

- TASK 1: Complete DD phase** Nov. 1st, 2017
- TASK 2: Complete CD phase** Feb. 16th, 2018
- TASK 3: Building Permit Submittal:** Feb. 16th, 2018
- TASK 3: Provide Bid Sets (For Contractor):** March 1st, 2018
- TASK 3: City Final Approval (Building Permit):** May 1st, 2018
- TASK 4: Bidding and Negotiation - Subcontractors** March 1st, 2018
- TASK 5: Demolition start:** April 15th, 2018

Contract for CALGreen Tier 2 and CALGreen Consulting Services

This Agreement is made on April 26, 2018 by and between Elizabeth Wong the ("Client") and Kate Latham ("Consultant"), for the property at 429 University Avenue, Palo Alto, CA 94301, which is under the building jurisdiction of City of Palo Alto ("CPA"), with reference to the following:

1. Project Scope: Client's intention is to have a CALGreen Tier 2 certification for a three-unit, 8,100 ft², new construction residential project as required by the 2015 CPA Green Building Ordinance effective June 22, 2015.

2. Scope of CALGreen Tier 2 Consulting Services: Consultant agrees to provide the following consulting services required to obtain a CALGreen Tier 2 certification:

- Work with Client's project team to develop a cost effective CALGreen Tier 2 checklist that meets the requirements of the Ordinance for the specific building project noted above and the Client's needs.
- Review Client's plans prior to submission for a building permit and suggest CALGreen Tier 2 notes for architectural plans.
- Review Title 24 (T24) CF-1R for submission with GB-1 Application if necessary.
- Assist with preparing the Client's CALGreen Tier 2 checklist sheet for submittal for building permit and provide preparation assistance and signatures.
- Prepare and provide detailed CALGreen Tier 2 checklist requirements for project specific CALGreen Tier 2 measures and conduct preconstruction meeting with contractor and Client.
- Coordinate and lead the three mandatory inspections required by the City of Palo Alto (CPA), which include CPA Green Building Inspector.
- Prepare and provide detailed list of requirements for project specific CALGreen Tier 2 measures for preconstruction meeting.
- Provide timely CALGreen Tier 2 rater documentation and signatures for all the steps required in the Green Building Certification Summary on CPA submittal sheet GB-1 CALGreen Tier 2.
- Conduct site field inspections as part of basic CALGreen Tier 2 certification fee including pre-construction meeting with contractor.
- Conduct required CALGreen Tier 2 inspections in a timely manner.
- Assess whether each CALGreen Tier 2 measure applied for meets the detailed CPA requirements based on the CALGreen Tier 2 Manual and if not, provide suggestions of what CALGreen Tier 2 measures could be chosen by Client to meet the CALGreen Tier 2 requirements.
- If necessary, arrange for HERS inspections as required by the T24 report.
- Prepare comprehensive project documentation for each CALGreen Tier 2 measure certified with assistance from Client's project team for review by CPA. The role of the CALGreen Rater is primarily as a verifier. It is the responsibility of the Client and their contractor to provide written documentation of compliance with checklist requirements in the form of invoices, product labels and specifications, dump tags, etc. unless they can be confirmed onsite by the Rater through inspections and photos.
- Prepare and submit final project certified CALGreen Tier 2 checklist and all documentation to CPA for review demonstrating that project has met the minimum CPA green building ordinance.
- Maintain project documentation for 5 years in anticipation of CALGreen Tier 2 CPA project audit.

3. Fee for CALGreen Tier 2 Consulting Services: The basic CALGreen Tier 2 certification fee will be \$3,200.00 for Client's project as defined above and that meets the CALGreen Tier 2 certification requirements in effect at the time of this agreement.

4. Payment Schedule: Client is to pay Consultant on the following schedule:

- \$960.00 (30%) upon acceptance of this proposal
- \$1,600.00 (50%) at time of rough inspection with City Inspector
- \$640.00 (20%) due before final Cal Green building inspection

Peter Ko Architects, Inc.

Client: Elizabeth Wong
429 University Avenue, Palo Alto

Consultant: Kate Latham
kate@lathamhomerating.com | 650-450-1827

Signature: *Peter Ko, AIA*

Date: 4/26/2018

Date: 5/7/18

If proposal is acceptable, checks may be made to 'Latham Home Rating' and sent to:
Kate Latham at 765 N. Rengstorff Ave. #22, Mountain View, CA 94043

Ex. D

10/9/18

<u>Task</u>	<u>Status</u>	<u>Status Date</u>	<u>Action By</u>
Building Review	Approved	10/05/2018	DAVID CHU...
Elect Utilities Review	Approved With Conditions	04/05/2018	DANIEL ER...
Fire Review	Approved Inspection Re...	06/29/2018	HENRY RAF...
• Planning Review	Not Approved	09/17/2018	ADAM PETE...
• Public Works Eng. Review	Not Approved	09/26/2018	PAIGE SAF...
Water Quality Review	Approved Inspection Re...	03/16/2018	BRIAN JON...
WGW Utilities Review	Approved With Conditions	08/03/2018	JOHN NGUY...
Landscape Review	Not Required	06/07/2018	KELSEY AN...
Urban Forestry Review	Approved	06/25/2018	WALTER PA...
Ready To Issue			
Permit Issuance			
Structural	Approved	08/02/2018	MEDHAT HE...
Structural	Approved	07/13/2018	MEDHAT HE...
Architectural	Approved	08/02/2018	DAVID CHU...
Mechanical/Plumbing	Approved	08/02/2018	DAVID CHU...
Electrical	Approved	08/02/2018	DAVID CHU...
Structural	Approved	08/02/2018	DAVID CHU...
Architectural	Approved	08/01/2018	DAVID CHU...
Mechanical/Plumbing	Approved	08/01/2018	DAVID CHU...
Electrical	Approved	08/01/2018	DAVID CHU...

18000-00536 - KIPLING POST LP

<u>Task</u>	<u>Status</u>	<u>Status Date</u>	<u>Action By</u>
Building Review			
Elect Utilities Review	Approved	08/06/2018	GOPAL JAG...
Fire Review			
• Planning Review	Not Approved	09/17/2018	ADAM PETE...
• Public Works Eng. Review	Not Approved	09/11/2018	PAIGE SAF...
Water Quality Review			
WGW Utilities Review	Approved	08/17/2018	JOHN NGUY...
Landscape Review			
Urban Forestry Review	Approved	07/25/2018	WALTER PA...
Ready To Issue			
Permit Issuance			

18000-00537 - KIPLING POST LP

**SUPPLEMENT TO APPEAL FROM KIPLING POST LP FOR
429 UNIVERSITY AVENUE, PALO ALTO
November 29, 2018**

This submission supplements the form appeal timely submitted by Kipling Post.

The primary issue on appeal concerns compliance with Condition of Approval No. 3, as established by the City Council's February 2017 approval of the project.

The Planning Director asserts that one element of that condition, i.e., sign off on "exterior building materials, colors and craftsmanship-related detailing" has not been satisfied.

Kipling Post appeals that determination by the Planning Director because it is in error, lacks substantial evidence, is inconsistent with the previous findings of the City Council, exceeds the scope of the condition established by the City Council and wrongly relies on elements of the Municipal Code that apply to new applications, not condition compliance.

Further detail is provided below.

Approval No. 2017-2, Condition of Approval No. 3 states, in relevant part:

"... the applicant shall return to the ARB for approval of the following items, to the satisfaction of the Director of Planning and Community Environment:

...

c. The exterior building materials, colors and craftsmanship-related detailing associated with the project.

The Approval No. 2017-2 – Record of the Council of the City of Palo Alto Land Use Action for 425 and 429 University Avenue: Major Architectural Review Application [14PLN-00222] ("Land Use Approval") on p. 12 states that:

Finding #3: The design is of high aesthetic quality, using high quality, integrated materials and appropriate construction techniques, and incorporating textures, colors, and other details that are compatible with and enhance the surrounding area.

The project is consistent with Finding #3 because:

The project has a high aesthetic quality, materials, construction techniques, textures, colors and other details that are compatible with and enhance the surrounding area. The buildings surrounding the site are comprised of concrete, stone, glass, brick, and metal and range in height from two to four stories along University Avenue. Along Kipling Street, buildings consist of cement, stucco, glass and brick structures. The

proposed structure is comprised of high quality glass, concrete and steel design which is similar and representative of the materials found in the surrounding environment. Further, the materials, textures, and attention to detail in the structure is consistent throughout each elevation which represents a high quality aesthetic design. Lastly, the project, will have high quality materials, textures, colors and finishes because it is conditioned to return to the Architectural Review Board for review and recommendation to the Director of Planning and Community Environment of the exterior building materials, colors and craftsmanship-related detailing associated with the project. Therefore, the project is consistent with Finding #3 because it consists of a high quality aesthetic design with integrated materials, textures, colors and other details that are compatible with the surrounding environment.

Kipling Post engaged the Palo Alto architectural firm of Ko Architects to prepare construction plans for the approved project that would reflect Option 1 as approved, and to meet the additional requirements set forth in Condition No. 3.

Kipling Post has done that. The Planning Director agreed that Kipling Post has complied with the first two elements of Condition of Approval No. 3. The only disagreement before the City Council is the additional requirements added with respect to “exterior building materials, colors and craftsmanship-related detailing associated with the project.”

The Planning Director asserts in his staff report that “the project does not comply with the contextual and compatibility criteria of the municipal code in that it does not share general characteristics or establish design linkages with the overall pattern of development. Surrounding buildings have design elements and material detailing that are human-scaled, regardless of the overall building envelope.”

The Planning Director has erred in this determination. In its 2017 approval, the City Council already has determined that the project is compatible with the surrounding area and development. Therefore, demanding that the project be redesigned or add design or material elements to achieve compatibility misunderstands the scope of Condition of Approval No. 3.

The Planning Director has no authority to demand these items if they undermine the design and architecture already approved or require material changes to that design.

THE PROJECT IS FULLY COMPLIANT WITH CONDITION OF APPROVAL NO. 3, SUBSECTION C.

The third element of Condition of Approval No. 3 merely requires that any exterior building materials, colors and craftsmanship-related detailing be consistent with the Findings of the City Council in its February 2017 approval.

Other than the elements added as required in subsections a and b of Condition of Approval No. 3, Kipling Post has not added exterior building materials or other craftsmanship detail to the project. Subsection c does not require the addition of exterior building materials other than

specified in subsections a and b, and the Planning Director has ruled that the project has met those requirements.

The Planning Director, apparently at the urging of the ARB, now misinterprets this Condition of Approval as requiring the application of exterior building materials, even when the application of such materials is not required by the design approved by the City Council in 2017, and even when adding such materials requested by the Planning Director would require a re-design of the approved project, and would undermine the architectural and design aesthetic approved by the City Council and deemed compatible with the surrounding area by the Council.

In preparing for the additional, limited ARB review, Ko Architects responded to ARB concerns at every step with the concurrence of the Planning Director regarding building materials, color and how the craftsmanship of the building was reflected in the many details of the construction. Ko Architects also presented materials boards with different color palettes and how the various materials come together. The Planning Director initially agreed that Kipling Post had met this Condition as reflected in the staff reports' recommendations to ARB for approval prepared by the Planning Director for each of the three ARB Minor Level hearings related to this issue.

In compliance with Condition of Approval No. 3, Ko Architects created a new materials board, photo attached. The board included samples of the metal and glass, and sample materials and colors for cement, stucco, and paint. The two colors, "sandstone" and "silversmoke" were similar to those from the immediately adjacent building at 423 University. The materials board and its contents is documented in the staff report prepared by Planning for this ARB hearing. This materials board was submitted to Planning on March 2, 2018, and it was recommended by Planning for its approval to the ARB at its first Minor Level hearing on August 16, 2018. At that hearing the ARB wanted to see lighter colors in the concrete, stucco and paint colors.

The materials board was revised by Ko Architects for the second ARB Minor Level hearing on September 20, 2018, to include an option for a lighter palette at the request of the ARB, using "San Diego buff" and "pewter" as the two colors. At the hearing, Ko Architects recommended the darker hues with the explanation that the concrete colors would look different depending on the lighting, and that integral color concrete would naturally lighten over time. The ARB was given the choice of either and we would abide by their choice. [SLIDE 1]

Interestingly, at this second ARB hearing, two of the three voting members, Chair Lew and Member Gooyer were not opposed to the building exterior materials, color and craftsmanship-related detailing.

This fact was ignored by Interim Director Lait in his decision to deny the project. Member Gooyer's quote on page 36 of the Draft Minutes published by the City is:

"As far as the exterior building materials, it's a little hard to tell. I mean I'm guessing it's probably okay. The detailing, I'm sure I probably there. I could go either way on that. I don't really think that the upper story, at least from what I see relates to the rest of the building, but again, so even if I say I could accept the exterior building materials, color and craftsmanship, one out of three[3a, 3b and 3c] just really doesn't do it for me."

At the third ARB Minor Level hearing on October 4, 2018, concrete contractor Bill Brown, of Bill Brown Construction [specialist in architectural concrete construction] who did the concrete work at 102 University, was brought in to address the ARB and to answer any questions. He explained that the concrete is a natural material, that the concrete color changes over time and looks different depending on the light and the time of day, and that this can be seen at 102 University, which is 10 years old. Both he and Ko Architects recommended to use the original hues of the first materials board as integral color concrete does lighten over time. Member Thompson could accept the materials and colors of both materials boards; she could not agree to them based on compatibility with adjacent construction.

The use of architectural, finished concrete did not surface as an issue generally in the process until the past few weeks. Interim Planning Director Lait's request for changes to the surface of the concrete did not surface until **October 12, 2018, only four days before his Determination Letter was due and issued**, and nearly two years after the architectural concrete building in Option 1 was approved by the City Council.

When the City Council approved Option 1, it did not have the benefit of a materials board that reflected the exterior building materials, colors and craftsmanship-related detailing. Returning to the ARB was intended to simply ensure that the project check-in to tweak minor details. Indeed, that is in part why Interim Director Lait submitted the project for ARB review as a "minor" review. Despite this, ARB viewed this re-review as an opportunity to revisit fundamental design issues that have already been approved.

The project has met all aspects of Condition of Approval No. 3, and Kipling Post asks the City Council to sign off on that Condition.

THE PROJECT DESIGN FOLLOWS THE ACCLAIMED 102 UNIVERSITY AVENUE BUILDING AND THE CITY COUNCIL DETERMINED IN 2017 THAT THE PROJECT "HAS A HIGH AESTHETIC QUALITY, MATERIALS, CONSTRUCTION TECHNIQUES, TEXTURES, COLORS AND OTHER DETAILS THAT ARE COMPATIBLE WITH AND ENHANCE THE SURROUNDING AREA"

On February 6, 2017, the City Council approved the project at 429 University Avenue (presented as Option 1 by Palo Alto architect Joseph Bellomo). As set forth below, the City Council made findings that the project has a high aesthetic quality (and use of materials) and that the project is compatible with and will enhance the surrounding area. The City Council added Condition of Approval 3 simply to ensure that additional exterior building materials, colors and craftsmanship-related detailing did not detract from this.

The scope of the additional ARB review (and Planning Director approval) as set by Condition of Approval 3 is very narrow. It did not invite the ARB or the Planning Director to reconsider fundamental design or architectural elements. Rather, the condition focused on detail added to the exterior of the building and color.

Because of the nature of the building, other than color, there was little for the ARB or Planning Director to review. As the City Council is aware, the building design follows the architecturally acclaimed design at 102 University Avenue. Like that structure, 429 University is designed as a contemporary building of “*architectural concrete*,” glass and steel. The concrete is both structural in function and decorative in appearance. “*Architectural*” or “*finished*” concrete has become a signature element of many contemporary structures. Within the architectural community, the design approach is viewed as more authentic.

Thus, unlike many structures, there are few exterior building material issues to consider – those materials are fixed by the type of modern design that already has been approved by the City Council. There is no cladding, stone, stucco, sheetrock or paint to hide the concrete surface itself. Utilities such as electrical conduits and water lines are carefully planned to minimize perforations and surface installations later. In addition, the engineering itself must be integrated with the concrete, which provides strength, seismic resistance, and support for the steel and glass storefronts, doors and windows. Consequently, the integrated architecture, design and concrete installation are vital to the building’s soundness.

Likewise, exterior materials cannot be added that will undermine the structure’s integrity, soundness, strength or aesthetic.

The concrete chemistry renders it waterproof. The concrete surface is smooth with a pattern of dots created by the snap-ties used in preparing the forms. As stated by concrete contractor Bill Brown at an ARB meeting, they build fine furniture and then carefully fill it with concrete to attain that specific aesthetic. Integral color organic pigments will be added to the concrete mix. As can be seen at 102 University Avenue (now 10 years old), the color naturally evolves over time.

In sum, the nature of this building means that there will be very limited additional exterior building materials, colors and craftsmanship-related detailing to consider when compared to a more traditional building. The City Council has already made findings that the building is compatible and the ARB (and ultimately, the Planning Director), may not, under the pretext of Condition of Approval No. 3, compel fundamental changes to the architecture, design or construction of the building.

It must also be noted that the Planning Director’s assertion that he provided Kipling Post with an opportunity to incorporate additional design elements to satisfy this condition is disingenuous. On October 12, 2018, the Planning Director suggested changes that could be made, but he made clear that adding these changes would not guarantee his approval or a recommended approval by the ARB. Rather, he simply stated that he would seek ARB recommended approval. Since the ARB is advisory, the Planning Director has the authority to make this determination on his own. His refusal to do so is a telling sign that he had no intention of signing off the condition of approval even with the suggested changes.

In any event, the suggested changes are inconsistent with this City Council’s previous 2017 findings.

[SLIDE 2] – Option 1 approved by Council February 7, 2017

THE SUGGESTIONS BY THE PLANNING DIRECTOR ON THIS ISSUE WOULD REQUIRE REVAMPING THE ENTIRE BUILDING

The third ARB hearing took place on October 4, 2018. Planning's decision is due 2 weeks later. On October 16, 2018, the Planning Director issued his Determination Letter with a denial based on Condition of Approval 3c: exterior building materials, colors and craftsmanship-related detailing. He provided little or no detail supporting his rejection.

Planning Staff was fully familiar with the design proposal in Option 1 (that was approved by the City Council in February 2017) which included the look and feel of the architectural concrete and the same exterior building materials, colors and craftsmanship-related detailing. Planning recommended approval to the City Council based on that knowledge. Option 1 has not changed.

Initially, the Planning Director included draft findings in his staff report to the ARB concluding that Kipling Post had met all aspects of Condition of Approval No. 3. Only late in the process did he change his mind with respect to the last element of No. 3.

[SLIDE 3] – On October 12, 2018, only four days before his Determination Letter was due and issued, Interim Planning Director Lait sent us an email suggesting three "*simple changes*". He did not state that the changes would result in approval, but only that he would recommend approval to the ARB. Given the more than a dozen hearings that Kipling Post has been subjected to before the ARB, his representation provided no assurance to the Applicant.

His three suggestions were as follows:

The first, the "*addition of sun shades or awnings along the University Ave frontage*" is not an issue with us; we informed him we stand ready to incorporate, although we wonder why this never surfaced in all our earlier discussions with Planning. Indeed, in earlier iterations of the project, shades were included but were removed at the request of the Planning Department

The other two suggestions are by no means "*simple changes*", but rather would require extensive redesign of the project:

"Recessing the ground floor glass façade by 18-24" on the University Avenue (with removed floor area added to second floor)"

"Adding texture to the exterior concrete on the first and second floors that recognizes the high level of detail on surrounding buildings."

Implementing the above would require a complete redesign of the project, be subject to complete cycle of ARB reviews, and complete resubmittal for building permit, a cycle that has taken us over two years and hundreds of thousands of dollars.

For example, implementing the above would result in the following unacceptable outcomes: (a) a design not in keeping with the approved Option 1, (b) not being able to move removed ground floor square footage to the second floor which Planning knows is maxed out; it would require a major redesign of the building to move removed ground floor square footage to any other floor including even the fourth floor, due to mandated setbacks; (c) cause enormous delays and costs because of redoing all the construction drawings architecture, recalculating all the structural engineering; (d) having to seek approvals from the various city agencies again; (e) canceling Contractors and subs contracts; and (f) since a new design would be proposed, requiring ARB Major review when the appellant to the original project approval is eager to have another go at it and there is appetite for a moratorium in downtown construction.

Also, construction drawings would need to be re-done because each element of construction is integrally and intricately connected to each other and prepared in accordance with applicable Building Codes and the Palo Alto Municipal Code. They dictate distances to egress, width of path of travel, and ADA compliance, for example, which all will need to be redesigned and calculated. The following are some of the additional specific ways that changes 2 and 3 would affect the entire building. 1. Square footage would be affected in each floor. 2. Emergency egress distances will be violated. 3. There may be an encroachment on the public right of way. 4. The entire building would need to be recalculated for weight and structural design. Further, since the support columns are stacked through each floor from the lowest garage level up to the third floor, each and every floor will require a complete redesign. (See Ko Architects' letter of November 29, 2018. [SLIDE 4])

Putting aside these enormous consequences, the Planning Director ignored the fact that this project has been approved by the City Council since February 2017. The Planning Director appears to have followed the lead of ARB Member Thompson who improperly and illegally evaluated many other Findings in the City's Land Use Approval regarding size, scale, mass and compatibility, rather than focusing on the limited task of reviewing the application of exterior building materials, details and colors. By ARB Member Thompson and the Planning Director's reasoning, the project essentially must be reviewed as a brand new project, completely disregarding City Council's 2017 approval, not to mention Kipling Post's five years of work and enormous expenses.

On October 15, 2018, the day before the Determination Letter, Applicant and Ko Architects met with the Planning Director at 102 University to reiterate the similarity between the finish on that building and 429 University. At the meeting, Applicant and the Architect emphasized how the structural design was maxed out in weight so adding stucco or some sort of cladding to the concrete would entail a complete redesign of the building. Also, Ko Architects stated to him that one of the reasons they agreed to do this project was due to its signature feature concrete, that it had used that approach successfully in other recent, elegant, contemporary buildings.

On October 16, 2018, the Planning Director then issued his Determination Letter denying approval to the project on the basis of unacceptable “*exterior building materials, colors and craftsmanship-related detailing*”. In his denial, he stated Applicant’s had refused to cooperate with changes recommended in his October 12, 2018 email. This is false. As noted above, Applicant made its case in person at the 102 University meeting. In addition, the Planning Director never committed to approval based on Applicant’s acceptance of the three suggestions, instead leaving himself an out if the ARB didn’t agree with his suggestions. In any event, Applicant detailed to the Planning Director why the proposals were not feasible for an engineering and cost perspective, since they would require redesigning the project.

For two years, the project has been unchanged as far as materials of construction and execution of the architectural concrete concept; it was approved by the City Council as Option 1; and recommended for approval by the Planning Director himself in his staff report and draft findings submitted to the ARB (three times, including as recently as October 4, 2018).

Interim Planning Director Lait stated that if these certain changes were made, he would return to the ARB and seek recommendation of approval from the ARB. There was no assurance that the project would receive an approval recommendation by a hostile ARB that has never, in more than a dozen encounters, recommended approval of the project. He was equally non-committal about his own approval if the ARB returned with yet another refusal to recommend approval.

In the Staff Report for this City Council hearing of December 3, 2018, on page 5, Interim Director Lait states that “... applicant did not provide renderings of the craftsmanship-related detailing in context until the October 4, 2018, hearing.” In this case, renderings were prepared in response to a specific request by ARB Member Thompson at the previous ARB hearing on September 20, 2018, two weeks prior to the October 4th hearing. Ko Architects was surprised that renderings were required given that they are not usually part of an ARB Minor Level hearing; they are expensive and time-consuming. Nonetheless, Ko Architects delivered four color renderings in less than two weeks.

In sum, the suggested changes would require a revamping of the approved design, and exceed the scope of the Condition of Approval.

THE CITY HAS NOT REQUIRED DECORATIVE CONCRETE FOR OTHER BUILDINGS ON UNIVERSITY AVENUE OR IN THE AREA , AND IS ARBITRAILY IMPOSING THAT REQUIREMENT ON 429 UNIVERSITY

Evidence shows that the City has approved numerous other concrete buildings on University Avenue without any requirement for textured or decorative concrete. Thus, the Planning Director is applying a different standard to the 429 University project than other concrete buildings on University, even though each of those other buildings was constructed in the last decade or so.

[SLIDE 5] – Here is a look at 102 University Avenue, designed by Bellomo Architects, who also designed the adjacent 116 University building. The buildings were completed within the last 10 years, and exhibit architectural finished concrete. In the background is the Alma-High Street parking garage, also designed by Bellomo.

[SLIDE 6] – A close-up of 102 University shows how these three basic materials, concrete, glass and steel, comprise the entire façade of the building.

[SLIDE 7] – The detail of the snap ties on the surface of the smooth, integral-color concrete is seen here.

[SLIDE 8] – Here is Option 1 that was approved by Council. Observe that the upper two floors show a different color and a greater setback than the lower floors to give the appearance of separation between the two.

[SLIDE 9] – This rendering shows how this building fits in the context of University Avenue, with its eclectic mix of contemporary design, older even historical buildings, the Lululemon store at 428 University directly across from the 429 University site, and the 525 University tower in the background.

[SLIDE 10] – On the issue of materials of construction, colors and craftsmanship-related detailing, 240 Hamilton, across Ramona Street from City Hall, was recently completed. Reposado restaurant sits next to it along Hamilton. They are a study in contrast. It is puzzling why this building met with ARB and Planning Director approval and yet the 429 University project has been denied because it “*... does not share general characteristics or establish design linkages with the overall pattern of development and does not share elements and material detailing that are human-scaled, regardless of the overall building envelope. The ARB found that the project's lack of such features rendered it incompatible with the surrounding area*”.

This indicates that it is applying its design requirements in an entirely arbitrary manner. This a direct quote from page 5 of the City Manager’s staff report for tonight’s December 3, 2018, Council hearing.

[SLIDE 11] – Similarly, the Survey Monkey building on Lytton and Alma sits next to the Dahl heating business and a Victorian house. There is no sharing of design linkages which would signal compatibility.

[Slide 12] – The building at 500 University is half a block from the project site. It sits across Cowper from the site of the President Hotel.

[Slide 13] – 611 Cowper dwarfs a tiny building separating it from another small building at the corner of Hamilton, and shares no design linkages with either or with The Marc tower on the other side on Forest.

[SLIDE 14] – Again the Apple store is sandwiched between much older construction and the façade is pure glass in stark contrast with its surroundings.

[SLIDE 15] – Another example is 428 University housing Lululemon, which is 4-stories, directly across 429 University, and immediately adjacent to a series of Birge Clark one-story storefronts and the Varsity Theater.

By asking 429 University to add “*...texture to the exterior concrete on the first and second floors that recognizes the high level of detail on surrounding buildings*” as suggested in the October 12, 2018 email from Interim Planning Director Lait, the Planning Director is insisting on a requirement that has not been applied to other buildings, including concrete buildings.

Such a requirement in this case also is inconsistent and conflicts with the Findings of the City Council in the February 2017 approval because it would require re-designing the project to accommodate the extra weight of the external materials being added to the concrete walls. Such a requirement exceeds the scope of Condition of Approval No. 3 because the request is purportedly to make the building compatible with the area, when the City already made a finding that there is compatibility.

The history of repeated denials of the project despite heroic efforts to meet all requirements suggests hostility to this project. It is troubling that many projects located in the same downtown core were approved and built without the requirement to share design linkages in the matter of exterior building materials, colors and craftsmanship-related detailing and yet this one project at 429 University has been repeatedly denied because of the same requirement.

THE BUILDING PERMIT IS READY TO GO EXCEPT FOR THIS ISSUE

Following approval, Ko Architects prepared the construction drawings in accordance with Option 1 including the exterior building materials, colors and craftsmanship-related detailing. The construction plans are based on using architectural concrete with changes as mandated by the City Council and following discussions with the Planning Department. After months of intensive work, these were submitted for building permit on March 2, 2018.

Staff normally turns submissions around in 30 days. Many departments complied. For example, Water Quality Review approval was issued on March 16, 2018; Electric Utilities review was approved on April 5, 2018. There were a few changes requiring a re-submittal. However, many changes were due to revisions requested by the Planning Department which in turn caused resubmittals to the various departments for their review of Planning changes. The approval dates in Slide 16 reflect the last review date. For example, Building Review approval date of October 6, 2018, was the last review by Building Department following changes made at Planning’s request. The numerous iterations by Planning resulted in a tremendous cost to the City and tremendous costs and delays to Kipling Post.

[SLIDE 16] – The current status of the building permit is that the construction drawings have been approved by all the departments in the City except for Planning and for site logistics that will be provided by Contractor DPR to Public Works pending the outcome of this City Council

hearing. We have met with and made changes as required by water, gas, waste water, electric, structural, fire safety, and others, and are now stalled by Planning.

It should be noted that the issues with Planning have been distilled to the one sticking point regarding exterior building materials, colors and craftsmanship-related detailing. All other matters have been resolved. On September 13, 2018, Adam Petersen, Senior Planner wrote that we “*... satisfy the remaining mitigation measures. Further, as noted in our meeting today, the remaining comments related to the building permit and demo permit, excluding compliance with Condition of Approval No. 3a, b, and c, have been satisfied. Rosemary [Morse], please route the project to me in Accela so that I can make the above note on the building permit and demo permit.*” Conditions of Approval 3a and b have since been approved in Interim Planning Director Lait’s Determination Letter and 3c is exterior building materials, colors and craftsmanship-related detailing, the one remaining issue that is the substance of this appeal to Council.

NO OTHER RE COURSE

Kipling Post requests City Council to put an end to this interminable and unfair ordeal and overturn the denial without further delay. We first approached the ARB in November 2013, more than 5 years ago. From the beginning, Kipling Post has proposed to build a structure and facility that is good for Palo Alto, making huge efforts to meet all the requirements mandated by the City, and overcoming obstacles not imposed on other similar projects.

Kipling Post is committed to proceed with legal action to ensure its rights are not trampled. Please see the letter from Kassouni Law to City Attorney Molly Stump dated November 13, 2018.

Respectfully submitted,

Kipling Post LP

Members:

Elizabeth Wong, MBA – Wharton Graduate School of Business
MS, Computer Science – Moore School of Electrical Engineering
Jaime Wong, PhD, Engineering – University of Pennsylvania
Andrew Wong, JD – New York University School of Law
BS, Chemistry and Materials Sciences – MIT

Current 429 University Ave Proposal Violates Past City Council Motion and is Illegal

MH Michael Harbour
Sun 12/2, 1:02 PM

Appellant Communications

Dear Palo Alto City Council,

Tomorrow December 3 you will be asked to evaluate the current set of 429 University Avenue design plans. The ARB and Director of Planning, Jonathan Lait, have recommend that the plans be denied. The plans should be denied because they violate the City Council Motion from February 6, 2017. The Motion states the "approval is subject to the actual Project matching Option 1 as described by Staff."

- The submitted plans do no match those previously approved by the council.
- The contentious Fourth Floor is actually 16% larger and more visible from the street
- Landscaping on First Floor has been completely removed and reduced by 35% on Fourth Floor

I urge you to uphold the denial and reject any further extension of timeline. The Applicant was already allowed a one year extension and has had three years to develop these plans which have now been denied. An extension sets a bad precedent for future developers to violate city ordinances.

Sincerely,

Michael Harbour, MD, MPH

on Behalf of the Neighbors and Community to Protect Kipling St

Attachment J

Project Plans

Hardcopies of project plans are provided to Council members. These plans are available to the public online and/or by visiting the Planning and Community Environmental Department on the 5th floor of City Hall at 250 Hamilton Avenue.

Directions to review Project plans online:

1. Go to: bit.ly/PApendingprojects
2. Scroll down to find “429 University Avenue” and click the address link
3. On this project specific webpage you will find a link to the project plans and other important information

Direct Link to Project Webpage:

<https://www.cityofpaloalto.org/news/displaynews.asp?NewsID=4338&targetID=319>