



# CITY OF PALO ALTO CITY COUNCIL FINAL MINUTES

Special Meeting  
August 17, 2020

The City Council of the City of Palo Alto met on this date in Virtual Teleconference at 5:02 P.M.

Participating Remotely: Cormack, DuBois, Filseth, Fine, Kniss, Kou, Tanaka

Absent:

## Closed Session

1. PUBLIC EMPLOYEE APPOINTMENT  
Title: City Auditor  
Authority: Government Code Section 54957 (b)

**MOTION:** Mayor Fine moved, seconded by Council Member Kniss to go into Closed Session.

**MOTION PASSED:** 7-0

Council went into Closed Session at 5:05 P.M.

Council returned from Closed Session at 7:28 P.M.

Mayor Fine announced no reportable action.

## Agenda Changes, Additions and Deletions

Mayor Fine advised that Agenda Item Number 4 was continued.

## Oral Communications

Jonathan Littke asked the Council to approve and proceed with Fiber to the Premises (FTTP).

Matt Barthelemy also supported FTTP.

Rebecca Eisenberg believed the Council was obligated to share firms' bids for the position of City Auditor. Hiring a firm to replace an individual was not cost savings and did not benefit the community.

Joe Rimsa supported FTTP in light of working and schooling from home.

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Vice Mayor DuBois indicated the public could send emails to the Council to share thoughts, petitions or survey results.

## Minutes Approval

1. Approval of Action Minutes for the August 03, 2020 City Council Meeting.

**MOTION:** Mayor Fine moved, seconded by Council Member Cormack to approve the Action Minutes for the August 03, 2020 City Council Meeting.

**MOTION PASSED:** 7-0

## Consent Calendar

**MOTION:** Vice Mayor DuBois moved, seconded by Council Member Cormack to approve Agenda Item Number 2.

2. Resolution 9912 Entitled, "Resolution of the Council of the City of Palo Alto Amending Utility Rate Schedule E-15 (Electric Service Connection Charges), and Utilities Rules and Regulations 2, 15, 20, 27 and 29."

**MOTION PASSED:** 7-0

## City Manager Comments

Ed Shikada, City Manager announced a heat advisory and a red flag warning were in effect and the potential for Statewide rotating power outages would continue throughout the week. Utilities customers were cooperating with the Utilities Department's request for voluntary load reductions. A cooling center was going to be open on August 18, 2020 at Mitchell Park Community Center. COVID-19 cases seemed to be stabilizing but at a very high number. More than 600 people were tested for COVID-19 at the Palo Alto testing site on August 14, 2020. The testing site was available on September 11 and 25, 2020. The Council received race and equity updates on August 24, 2020. The prior week, the Human Relations Commission (HRC) held a listening session regarding racism. The Palo Alto Library was going to hold a virtual conversation with "Color of Law" authority Richard Rothstein on August 27, 2020. The removal of blue United States Postal Service (USPS) postal boxes was delayed. Congresswoman Eshoo was going to host a press conference regarding the USPS on August 18, 2020. The Enjoy! catalog was offering in-person, online and modified recreation classes during the fall. A virtual Town Hall regarding rail grade separation was going to launch on August 19, 2020.

Council Member Kniss was disappointed by the fact that only two COVID-19 testing sites were open on weekends when the message to the public was "get

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tested." The County of Santa Clara (County) did not seem to coordinate everything.

Mr. Shikada noted the County was attempting to include private healthcare providers in testing efforts.

Council Member Cormack seemed to recall the pop-up testing site was to be open on August 28, 2020 as well.

Mr. Shikada advised that it would be open on August 28, 2020.

Council Member Cormack reported the County was targeting testing in the areas with the largest outbreaks. She inquired about the total number of power outages in the City since Thursday.

Dean Batchelor, Utilities Director stated the City had suffered two outages, one Friday evening and one Saturday morning.

Council Member Tanaka emphasized the need for Fiber to the Premises (FTTP) with everyone utilizing the internet at home.

Molly Stump, City Attorney advised that a future Agenda Item would be the appropriate time to discuss FTTP.

## Action Items

- 2A. PUBLIC HEARING / QUASI-JUDICIAL. 2353 Webster Street [18PLN00339]: Appeal of Director's Approval of an Individual Review Application to Demolish an Existing One-story 1,593 Square Foot (SF) Home and Construct a Two-story Home (Approximately 2,935 SF) With a Basement and an Attached Garage. Zoning District: Single-family Residential (R-1) (Continued From August 10, 2020).

Jodie Gerhardt, Current Planning Manager reported the application proposed a 2,935 square-foot single-family home with a 1,621 square-foot basement. An oak tree, 72 inches in diameter, was located in the rear yard. Staff's approval was issued December 5, 2019. A timely request for the hearing was filed on December 19, 2019. A Director's Hearing was held on February 27, 2020, at which time the Director approved the application with additional conditions of approval. A timely appeal was filed on March 31, 2020. Key considerations were Individual Review (IR) Guidelines, oak tree protections and basement dewatering. A 60 foot Tree Protection Zone (TPZ) covered a fair amount of buildable area. The new home was proposed as close to the front setback as possible and about 40 feet from the tree. The Director included conditions of approval to protect the tree during demolition of the

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existing home. Construction of the new home was likely going to damage 17 percent of the critical root zone, which was well below the definition of tree removal. New standards for dewatering applied to the project. Preliminary reports indicated groundwater was found 9 feet below the surface in one location. Staff recommended the use of wood lagging for shoring during dewatering to protect the tree. The Director found the project complied with the Municipal Code and IR Design Guidelines 1-5 and added conditions of approval for tree protection.

Council Member Cormack disclosed that she had responded to a phone call from an appellant and declined to visit a site other than the project site.

Vice Mayor DuBois disclosed that he met with the appellants to view secant walls at a nearby property and the tree in question. The appellants supplied him with written information, which they had also provided to the Council. Mr. Bennett informed him that a renowned arborist had stated a valley oak relied upon groundwater rather than surface water.

Council Member Filseth disclosed that he had visited the site with Mr. Morton, spoken with the architect, and viewed the excavation at a nearby property.

Mayor Fine disclosed that he had received a number of phone calls from Mr. Morton several months ago as well as an additional phone call last week, at which time he declined to discuss the matter.

Council Member Kniss talked briefly with Mr. Morton and visited the site.

Council Member Kou drove by the property, spoke with Mr. Morton and met him at the site to view the tree and secant walls at a nearby property.

Council Member Tanaka disclosed a phone conversation with Mr. Morton, a visit to the site, and two occasions when this was the topic of his office hours. Recordings of his office hours were available on his YouTube channel.

Molly Stump, City Attorney requested Council Member Tanaka indicate whether he had received any material or evidence that might influence his thinking during those contacts.

Council Member Tanaka indicated information discussed during his office hours was also contained in the Staff Report.

Public Hearing opened at 8:08 P.M.

Jack Morton, Appellant emphasized that the oak tree was a protected tree and met the conditions of a heritage tree under Section 18.10.09(b). An arborist who cared for the tree for many years submitted a recommendation to the

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Council. The existing house did not have a basement. The tree's roots had never suffered a major violation of the soil. He read a definition of tree removal. He interpreted tree removal as anything could affect the soil within the tree's dripline. The property owner purchased the property with the knowledge that the tree was a protected species. The opinion of the Applicant's arborist was not to be utilized in an approval of a building permit. The Council's role was to protect the tree. The issue was whether a basement should be allowed to invade the root space of a 300-year-old protected heritage tree. The biggest threat to the oak tree was the construction of a massive basement. Staff incorrectly referred to sections of the Code that did not apply to single-family homes.

Keith Bennett, Appellant team advised that dewatering could be accomplished through the use of secant walls or broad area dewatering. Per Wikipedia, valley oak trees required year-round access to groundwater. Arborist Walter Levison explained that valley oak tree root systems extended much deeper than commonly thought. Groundwater on the site was normally 7-11 feet below the surface. The use of secant walls was probably not practical for the project. Broad area dewatering was going to lower the water table 8-10 feet, which caused an intense, localized drought at the site. He recommended a condition of approval that limited the basement floor surface to a maximum of 8 feet belowground.

Yali Zhou, Applicant indicated her family had nurtured the tree. She engaged two arborists to advise her on designing the new house without endangering the tree. She hoped to move into the new house in 2021.

Gordana Pavlovic, Applicant's designer appreciated the beauty of the tree and wanted to protect it. A team of advisors and the Planning Department had guided the design of the new house. At the closest point, the distance between the proposed house and the tree was 34 feet 4 inches. A structural engineer was going to join the team to determine the best and least invasive structural solution for the project and to minimize, if not avoid, dewatering. Another engineer was to determine groundwater levels and the best time for construction.

Elizabeth Lanham, Applicant's arborist related that tree roots could extend 20 feet below the ground's surface. About a third of the tree's life was spent in urban conditions, which meant any deep tree roots probably died and were replaced with surface roots. The likelihood of the tree utilizing groundwater was low. Mature oak trees did not have a deep tap root. The majority of tree roots were located within the top 2 feet of soil. The tree was showing signs of damage to its roots. She thought removal of the tree could be approved because the TPZ covered slightly more than 50 percent of buildable lot space.

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According to City policy, a tree was considered for removal when the TPZ covered 25 percent. Arborists involved in the project and her review of the project agreed that the tree had a better future with construction of a new home.

Winter Dellenbach referred to Code Section 8.10.050(b) and noted a valley oak tree on her property had suffered from the construction of a home on the adjacent lot. The Council needed to deny the application because of the proposed basement.

Karen Holman indicated the Council should guide Staff in applying Code provisions to the project and allow an 8 foot basement only, no dewatering.

Walter Levison, Appellant's arborist related that soils in Palo Alto allowed tree roots to grow deeper than expected.

Rachel Tanner, Assistant Director of Planning and Development Services reported members of the Applicant and Appellant teams were not allowed to speak during public comment.

Sandra Browman remarked that the basement should be eliminated from the project as construction of a basement damaged tree roots and required dewatering.

Trish Goity did not believe damage to 17 percent of tree roots was acceptable. The effects of a basement was unknown. The tree was irreplaceable.

Anne Goess expressed concern about the lack of hydrology studies. Approximately ten years ago, a construction project on the next block had required dewatering, which probably weakened the tree. Further dewatering damaged the tree. She urged the homeowner not to build a basement because it would likely damage the tree. (Comment translated by Sophie Chuan).

Rebecca Eisenberg commented regarding verbal and print advisories about the tree when the property was on the market about five years earlier. The Council's role was not to solve a private party's investment mistake.

Ruth Benz referred to the neighborhood's efforts to save the tree and encouraged the Council to preserve the protected tree.

Deb Goldeen remarked regarding the effects of construction on a heritage tree at a nearby property. Street trees protected during construction but were in decline.

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Dan Sakols stated the oak tree was a public landmark and should not be jeopardized. The potential for damaging the tree was not justified by the benefit to a single family.

Vincent de Martel commented that the homeowners were following the letter of ordinances instead of the spirit of ordinances. Dewatering in other projects created issues in the neighborhood. Simple changes to the house design mitigated the neighbors' concerns.

Susan Heller shared her experience with a construction project on the adjacent property that damaged a protected tree on her property. Conditions of approval and protections were worthless without enforcement.

Mary Ellen White, Appellant, related that the groundwater table was approximately 6 feet below the ground surface. The City's Tree Protection Ordinance needed to be enforced.

Ms. Tanner noted Ms. White was an Appellant.

Peter commented that a new home could be built without a basement, but the tree was not so easily replaced.

Rob Levitsky hoped the tree could be saved.

Curtis Smolar stated the Council was slowly taking citizens' rights.

Cari Templeton encouraged the Council to take care of the canopy and species diversity. Replacing the tree was not possible.

Mr. Levison discussed the growth of tree roots and their use of groundwater. Temporarily removal of a tree's water supply threatened the tree's health. Dewatering had real effects on Palo Alto's trees.

Mr. Morton indicated preserving and reducing risks to the tree did not require the reduction of the proposed house's footprint or square footage or relocation of the house because a basement was not included in floor area.

Ms. Lanham advised that groundwater had probably not been the tree's main water supply for many years. Treatments applied to the tree did stimulate surface root growth. The design was developed to ensure the tree remained a resource.

Lucas Ottoboni, Applicant team reported groundwater levels were determined prior to construction. Dewatering depended upon groundwater level at the time of construction. Construction was able to occur during the months that

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groundwater was at its lowest level. The soil was stiff clay, which was not conducive to deep root growth.

Ms. Pavlovic, on behalf of Ms. Zhou, reported the size of the house was necessary for her four children and two parents.

Public Hearing closed at 9:30 P.M.

Council took a break at 9:30 P.M. and returned at 9:42 P.M.

Mayor Fine noted the Council was adjudicating a decision, not negotiating a different outcome. The Council needed to respect due process and existing laws.

Council Member Filseth requested the depth of the proposed basement.

Ms. Gerhardt responded 9 feet on the interior plus a couple of feet for the foundation.

Council Member Filseth inquired whether an 11 foot basement reduced the groundwater table from 10 feet to 20 feet.

Mike Nafziger, Public Works Senior Engineer explained that the excavation for a typical basement required 12-13 feet. If the groundwater table was between 9-9.5 feet, dewatering required that the water level be brought to 3 feet below the proposed excavation or about 15 feet. The water table was going to be lowered 6-7 feet. Once the basement was poured, dewatering was able to be reduced, and the water table was able to rise to approximately 1 foot below the slab.

Council Member Filseth inquired about enforcing conditions of approval and construction plans.

Mr. Nafziger reported Public Works inspectors visited dewatering sites daily, if not multiple times a day. This project was going to be inspected regularly.

Vice Mayor DuBois inquired whether the critical root zone extended under the house.

Ms. Gerhardt advised that the TPZ defined by the Code was a standard circle, but Staff reviewed each project to determine the actual location of tree roots.

Walter Passmore, Chief Arborist reported the Tree Technical Manual defined a TPZ radius. Critical root zone was an industry term used in arborist reports. Oftentimes, TPZ and critical root zone were the same, but some professionals differentiated the two based on location and type of tree.



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Vice Mayor DuBois asked what could be learned through soil excavation.

Mr. Passmore related that the location of surface roots could be revealed. Ground penetrating radar was able to determine locations of deeper roots, but only to a depth of 5-10 feet. Typically, 90 percent of tree roots were located in the top 18 inches of soil.

Vice Mayor DuBois inquired whether arborists included the impacts of dewatering in their reports.

Mr. Passmore answered no, unless it was specifically requested.

Vice Mayor DuBois requested the proposed shoring method for this project and asked if the proposed method would require dewatering.

Ms. Gerhardt indicated the shoring method was determined during the building permit stage. Staff believed the lagging method was the most beneficial for this project, but not all information was available for Staff to reach a final determination.

Vice Mayor DuBois inquired regarding the method of construction for lagging. The conditions of approval did not mention construction equipment going into the tree canopy.

Ms. Gerhardt advised that Staff did not recommend the use of secant walls because of concerns about equipment going into the canopy and the inability to avoid tree roots when drilling into the soil.

Mr. Nafziger clarified that equipment in both methods penetrated the canopy, but the secant wall method precluded the ability to observe tree roots.

Vice Mayor DuBois asked if the lagging method would require dewatering.

Mr. Nafziger replied yes. The secant wall method required some dewatering once the wall was constructed.

Council Member Kniss asked what occurred between the time the house was for sale and the present time that brought the matter and the community before the Council.

Ms. Gerhardt indicated the tree was a protected tree, but not a heritage tree. Staff utilized Code provisions to ensure the tree was not removed. Construction was going to impact the tree but, based on Staff's past experiences, the tree was able to survive if less than 25 percent of the tree was removed.

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Council Member Kniss inquired whether Staff utilized Code Section 8.10.050.

Ms. Gerhardt advised that the Staff Report incorrectly referred to Section 8.10.050(d). The correct Code section was 8.10.050(b).

Council Member Kniss asked if Staff believed the requirements would protect the tree.

Ms. Gerhardt answered yes.

Council Member Kniss asked if the basement depth could be 8 feet instead of the proposed 11 feet. She understood someone would be living in the basement.

Ms. Gerhardt indicated the Council could discuss ceiling heights but reducing the ceiling height reduced the overall height by a foot. The applicants discussed constructing during the dry season when the groundwater level was lower.

Council Member Kniss noted public comment regarding construction impacting trees and the inability to reverse damage to or the death of a tree. She preferred an 8 foot basement.

Council Member Cormack asked if the IR Guidelines excluded tree health.

Ms. Gerhardt responded yes. The main points of IR Guidelines were massing, streetscape and privacy.

Council Member Cormack asked if the IR Guidelines addressed basement size and location.

Ms. Gerhardt replied no. The Municipal Code addressed basements.

Council Member Cormack asked if the IR Guidelines addressed dewatering during construction.

Ms. Gerhardt answered no. Public Works procedures addressed dewatering.

Council Member Cormack asked if Staff had ever utilized a condition of approval requiring daily arborist visits to a construction site.

Mr. Passmore did not recall a previous requirement for daily inspections.

Council Member Cormack requested Staff address Ms. Martineau's written comments.

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Mr. Passmore reported Ms. Martineau's proposed conditions were reasonable, and typically Staff applied them during the building permit phase.

Council Member Kou preferred a City arborist be onsite constantly during demolition. Basements may be discretionary as there were no requirements for them. If basements were discretionary, the Council needed to determine the appropriate depth to protect the tree.

Molly Stump, City Attorney advised that the Code contained ministerial requirements for basements.

Ms. Gerhardt added that Section 18.12.90 contained basement requirements.

Council Member Kou did not believe the requirements included basement depth. In this case, the Council was obligated to preserve the tree.

Council Member Tanaka requested Staff's opinion of the arborists' reports.

Mr. Passmore stated none of the arborists utilized specific data regarding the underground root structure of the tree, and the comments were general in nature. He did not disagree with any of the general comments.

Council Member Tanaka inquired about soil conditions in Palo Alto and the depth of tree roots.

Mr. Passmore noted the engineer stated the site soil had a high clay content, which indicated most of the root structure was concentrated in the top reaches of the soil. He suspected very few of the tree's roots extended deep into the soil.

Council Member Tanaka asked if the proposed home could be located in the front setback and if the Council could authorize that.

Ms. Gerhardt reported a variance to allow construction in the front setback was possible, but the applicant had not applied for a variance, and a variance had not been advertised. Staff needed to consider the findings for a variance.

Council Member Tanaka inquired about the possibility of requiring a bond for the tree.

Mr. Passmore related that the Tree Technical Manual allowed Staff to collect a security deposit in special circumstances, but Staff had not required one in a residential project. Staff was able to impose a security deposit of 25-100 percent of the appraised value of the tree. He appraised the value of the tree at \$64,000; therefore, the amount of the deposit could be \$16,000 to \$64,000.

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Council Member Tanaka asked if Staff had ever required a deposit.

Mr. Passmore reiterated that deposits had been required for commercial projects.

Mayor Fine requested the range of the Council's authority for this Item.

Ms. Stump advised that the Council's authority was bounded by the IR program. A number of areas in the IR Guidelines were appropriate for the Council's consideration. The Council needed to deny the appeal and approve the Director's approval unless they were not able to make the findings.

Ms. Gerhardt indicated Staff believed the project adhered to the Municipal Code and the IR Guidelines.

Mayor Fine clarified that the Council should reject the appeal and approve the project if they were able to make the five IR findings. If the Council was not able to make the findings, they needed to identify the findings they could not make. He requested a brief description of the Tree Protection Plan for the tree.

Ms. Gerhardt explained that the TPZ was 60 feet in diameter. Staff required the supervision and use of hand tools when any type of construction occurred within the tree protection zone and required retention of parts of the existing foundation.

Mr. Passmore added that Staff customized the Tree Protection Plan for each project. The Proposed Tree Protection Plan for this project exceeded requirements, and Staff believed it was sufficient to prevent permanent damage to the tree or the tree's death. Unique to this project were requirements for retention of portions of the existing foundation, daily inspections, and intensive arborist supervision. Staff recognized the need to require additional protections for this tree.

Council Member Kou asked if Staff had studied the site to know the depth of tree roots.

Ms. Tanner replied no.

Ms. Gerhardt added that Staff utilized ground penetrating radar for only one project in the past eight years.

Council Member Kou remarked that data specific to the site and the tree was unknown. She had many concerns about the tree and proposed protections.

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Vice Mayor DuBois remarked that the height, mass, and scale of the house were out of character with the neighborhood; therefore, he was not able to make Findings 2 and 3. Public comments pertained to the tree. Construction on this site seemed risky for the tree. He questioned whether the Applicant would consider a smaller basement further away from the tree or extending the basement aboveground in order to reduce its depth into the soil. The arborists' reports offered conflicting information and opinions. Additional testing and consideration of the water table was possibly warranted. The arborist's recommendations needed to be explicit in the conditions of approval. The duration of the tree appraisal needed to be 15 years rather than 5 years. He inquired whether tie backs would be allowed in any of the construction methods for the project.

Mr. Nafziger answered not for a single-level basement.

Vice Mayor DuBois suggested the conditions of approval address the use of cranes beneath the tree's canopy.

Mr. Nafziger related that Staff had not imposed conditions on crane activity. Staff was able to ensure the contractor was educated regarding the sensitivity of mobilizing cranes around the canopy.

Council Member Filseth inquired about the impacts of the water table at 10 feet and 14 feet if the tree's roots were located in the top 2 feet of soil.

Ms. Tanner reiterated Mr. Passmore's statements that the roots were likely located within the top 2 feet of soil and that the tree's water supply was probably not groundwater.

Council Member Filseth understood, based on Mr. Passmore's comments, that dewatering was irrelevant to the tree. The relevant issues were the diameter of the TPZ and roots within the footprint of the house.

Ms. Tanner indicated that the Appellants had raised dewatering as a significant issue of construction and a potential danger to the tree.

Council Member Filseth suggested the use of ground penetrating radar to determine the depth of the tree's roots.

Ms. Tanner reported Staff had not required applicants to utilize the technology for a tree.

Mr. Passmore did not believe dewatering would have a significant impact on the tree.

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Council Member Kniss asked if Vice Mayor DuBois suggested an 8 foot basement and having someone work with the applicant to achieve that.

Vice Mayor DuBois reiterated his comments of a less deep basement and extending the basement aboveground.

Mayor Fine reminded the Council that their role was to adjudicate the matter.

**MOTION:** Council Member Kniss moved, seconded by Council Member Kou to add to the conditions of approval:

- A. Reduce the basement depth to 8 feet in total dimension, which includes the exterior wall;
- B. Add Catherine Martineau's recommendations:
  - i. Reporting tree protection compliance during construction. In addition to daily inspection reporting during demolition phase, a mandatory Contractor and Arborist Monthly Tree Activity Report shall be sent monthly to the City Urban Forester beginning with issuance of building permit, using the template in the Tree Technical Manual, Addendum 11. The Contractor and Owner shall implement any corrective actions as directed by project arborist or Urban Forester;
  - ii. Basement and light well excavation should utilize vertical cut, I-beam and lagging or other minimal-cut method that leaves rooting soil intact, if approved by the Urban Forester; and
  - iii. The building permit shall include a comprehensive landscape plan prepared by a landscape architect, approved by both the Project Arborist and Urban Forester. The plan shall include plantings required by Condition Number 13, and in the rear yard specify Valley Oak compatible plant species comparable to Tree Technical Manual, Addendum 5, Landscaping Under Native Oaks; and
- C. To allow the plans to go up an additional 2 feet from the ground.

Ms. Gerhardt asked if the 8 foot dimension applied to the basement interior or the total basement.

Council Member Kniss answered the total basement.

Ms. Stump advised the Council to obtain the Applicant's and Staff's comments regarding the feasibility and impacts of the proposed changes.

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Mayor Fine clarified the Motion as adding conditions of approval to a project that had been neither approved nor denied.

Vice Mayor DuBois interpreted Mayor Fine's comments as the Motion should approve the project subject to the additional conditions of approval.

Ms. Tanner indicated Subpart C was unclear as to whether the entire house or only the basement was able to be 2 feet taller. Ms. Martineau's conditions were typically part of the building permit process. Including them now may preclude some action during the building permit process. The minimum allowed ceiling height was 7 feet. Depending upon the material and construction of the basement ceiling, an 8 foot basement could be usable and habitable.

Mr. Nafziger explained that the total excavation depth would be about 12 feet for a basement with an 8 foot ceiling height. If the total excavation depth was 8 feet, the basement ceiling height was going to be less than 6 feet. To comply with the 7 foot ceiling height requirement and the 8 foot excavation depth, the basement needed to extend aboveground.

Ms. Gerhardt added that the IR analysis would change if the house was 2 feet taller.

Council Member Kou requested the excavation depth for a basement with a 10 foot ceiling height.

Mr. Nafziger replied about 14 feet. Typically, basements were not allowed to extend aboveground, but it was an option to provide a livable ceiling height with minimal excavation.

Council Member Kou commented that another option was to eliminate the basement.

Mayor Fine reported basements were not part of the IR Guidelines.

Council Member Kniss noted many houses were built a couple of feet aboveground, sometimes 3-4 feet.

Council Member Kou inquired whether the basement could have a 10 foot ceiling height, 8 feet belowground and 2 feet aboveground.

Council Member Kniss responded yes.

Ms. Tanner stated the Motion proposed significant changes to the project. Staff had to determine a way for the project to conform with existing

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requirements and Subpart C. The Applicant did not indicate their amenability to the proposed conditions.

Council Member Kniss related that she was attempting to preserve the tree and provide the Applicants with the house they wanted.

Ms. Gerhardt commented that Staff attempted to apply IR Guidelines consistently across projects. Guideline 2 talked about locating upper floors well back from the front facade and/or away from the side lot lines if the house was adjacent to a single-story house. The adjacent house to the left of the project site was one-story.

Mayor Fine understood the Motion changed the massing, scale, shade, and elevations of the project.

Ms. Pavlovic advised that she was attempting to process Council Members' comment, but they did not understand the input from the professional team. She had to determine her clients' wishes. Increasing the height of the building violated the daylight plane. She asked why the Council was discussing the depth of the basement when the City Arborist and two other arborists had agreed that the tree's roots did not exceed 2 feet in depth.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to change the Motion to read, "... to approve the project with the following conditions: ... ."

Council Member Tanaka asked if the Appellant's arborist wished to rebut Mr. Passmore's comments.

Mr. Bennett read from Mr. Levison's letter and suggested Valley Oak Trees absorbed water through surface roots during the winter and spring and deep roots during the summer and fall. At least three basements had been built without requiring excavation. Normally, this was possible with an excavation depth of about 9.5 feet.

Council Member Tanaka requested Mr. Passmore's response to Mr. Levison's letter.

Mr. Passmore advised that he had received the letter that night. Mr. Levison's letter used the words "in general" and did not reflect a site visit or review of soils reports.

Mr. Bennett agreed that factual information about the site was unknown.

Council Member Tanaka asked if the arborist saw the Soils Report.



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Mr. Bennett indicated he did not.

Vice Mayor DuBois interpreted the Motion as an attempt to avoid groundwater and dewatering. If the depth of the project could be modified so as not to hit groundwater, the Motion would approve the project.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** "... modify conditions of approval to:

- i. Direct Staff to add all recommendations from the Arborist Report as additional conditions of approval;
- ii. Change Condition Number 30 to read, "For the duration of hand demolition within the Tree Protection Zone, the project Arborist shall *be on site* to ensure that tree protection measures, materials and best practices are being employed by the contractor and on-site foreman overseeing the work;" and
- iii. Change Condition Number 32 to read, "The tree appraisal duration period shall be *ten* years from the date of final occupancy ... ." (New Part D)

Council Member Kniss asked if Subpart C of the Motion should be deleted.

Ms. Gerhardt reported if the height of the house increased by a foot, Staff was likely able to make the findings.

Vice Mayor DuBois suggested combining Subparts A and C.

Council Member Kniss agreed.

Ms. Tanner stated there was no scenario of excavation that did not require dewatering. If the goal was to avoid dewatering, it was not achieved through the Motion.

Mayor Fine reiterated that the Council was to evaluate the project in light of IR Guidelines, which did not include basements and trees.

Mayor Fine announced Agenda Item Number 3 was continued.

**SUBSTITUTE MOTION:** Council Member Cormack moved, seconded by Council Member Filseth to uphold the Planning and Development Services Director's approval of the Individual Review (IR) application. (File No. 18PLN-00339).

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Council Member Cormack reviewed all information provided to the Council and could make the required findings.

Council Member Filseth believed the three arborists agreed that the depth of the tree roots depended on the soil, but the City Arborist was the only one to look at the soil. The Council was attempting to modify the design of the proposed house. He inquired about the threat to the tree, assuming it had some deep roots, if the water table dropped from 10 feet to 15 feet.

Mr. Passmore reported it was unlikely the tree's roots would consistently draw water from that depth, especially during the term of construction. The impact was fairly minimal. Arborists never predicted zero impact. The tree was able to tolerate the impact, and its health and longevity were not significantly changed.

Ms. Tanner advised that the Applicants' arborist reviewed the Soils Report, but the Appellant's arborist had not.

Council Member Filseth asked if irrigation could compensate for lowering the water table.

Mr. Passmore answered yes. The Arborist Report required supplemental irrigation as needed. The Applicants were treating the area under protection to enhance new root growth.

Council Member Filseth believed Staff's work was thorough. The impacts of dewatering were unlikely, but unknown.

Mayor Fine was able to make the IR findings. Staff's approach to protecting the tree was correct. The Council was not authorized to privilege an area outside the IR process to potentially and negatively affect areas inside the IR process. The Applicant had followed the rules, and the Council should as well.

Vice Mayor DuBois proposed amending the Substitute Motion to include recommendations from the arborist's Report as conditions of approval and to change Condition of Approval Numbers 30 and 32.

Council Member Cormack indicated the arborist's recommendations were already part of the conditions of approval.

Vice Mayor DuBois wanted all recommendations stated explicitly in the conditions of approval.

Ms. Gerhardt advised that the conditions of approval referred to and required compliance with all of the arborist's recommendations. The arborist Report

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was also a part of the project plans, which was available to contractors on the site.

Council Member Cormack inquired whether Vice Mayor DuBois wanted the arborist onsite all day every day during demolition.

Vice Mayor DuBois responded yes.

Council Member Cormack requested the scope of work and length of an arborist's daily visit.

Mr. Passmore reported visits typically occurred at milestone events and any work that was especially sensitive. The arborist was to spend as much as needed to inspect activities. Activities for much of a day may not require an arborist's supervision.

Ms. Tanner suggested adding that demolition would include more than digging and excavation work because the home had to be demolished.

Council Member Cormack inquired whether a daily visit was sufficient to protect the tree and ameliorate potential damage.

Mr. Passmore reiterated that the proposed conditions of approval were far more extensive than any the City had imposed. More inspection was obviously better, which the condition for daily inspections attempted to implement. Very few conditions of approval were violated.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER**, "... and change Condition Number 32 to read, "The tree appraisal duration period shall be *ten* years from the date of final occupancy ... ."

**AMENDMENT TO THE SUBSTITUTE MOTION:** Vice Mayor DuBois moved, seconded by Council Member Kou to add to the Substitute Motion:

- A. Direct Staff to add all recommendations from the Arborist Report as additional conditions of approval; and
- B. Change Condition Number 30 to read, "For the duration of hand demolition within the Tree Protection Zone, the project Arborist shall *be on site* to ensure that tree protection measures, materials and best practices are being employed by the contractor and on-site foreman overseeing the work."

Council Member Kou believed an onsite arborist could remedy any potential impact and supervise contractors.

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Mayor Fine felt Subpart i was redundant, not harmful, and somewhat disrespectful of Staff. Subpart ii was unreasonable and an imposition on the Applicant.

Council Member Tanaka inquired regarding the cost of using ground penetrating radar.

Ms. Gerhardt indicated it would be very expensive, especially for a single-family home.

Mr. Passmore added that a rough cost estimate was \$5,000, but ground penetrating radar would provide limited information.

Council Member Tanaka asked if it could be used during excavation, such that digging and searching for roots could alternate.

Ms. Tanner commented that the Item before the Council was an IR hearing, and the basement and tree were not subject to the hearing. It would be unusual to require actions based on other actions, which made advancing the project difficult. The Item needed to be continued if the Council wished to do that.

Council Member Tanaka requested the process for using ground penetrating radar.

Mr. Passmore indicated it was most accurate at depths of 5 feet but was able to detect roots at depths of 20 feet. The accuracy diminished with depth.

Ms. Pavlovic disclosed that the depth of the existing basement was 9 feet. Prior to the meeting, she discussed increasing the building height by 6 inches to reduce the depth of the basement with Ms. Gerhardt. The project minimized dewatering as much as possible. She inquired whether the Motion proposed 8 feet as the ceiling height or the depth of excavation for the basement.

Ms. Stump stated the Council was considering the Substitute Motion. If it did not pass, the Council was going to return to the Motion, and the Applicant was able to speak at that time.

Mayor Fine requested the Applicant comment regarding the amended Substitute Motion.

Ms. Pavlovic agreed to the terms of the amended Substitute Motion.

Council Member Filseth indicated requiring an arborist to be onsite all day every day was a waste of time.

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Ms. Tanner clarified that the Applicant would have to hire a third-party arborist to be onsite. It involved a great amount of money and time.

Council Member Kniss remarked that the application was before the Council because of the tree, and the Applicant knew about the protected tree prior to purchasing the property.

Council Member Cormack asked if people were allowed to appeal an IR decision based on trees.

Ms. Stump advised that the issue was not contained within the IR process, but the City had not previously rejected an appeal based on concerns about a tree. The appeal was processed and denied because trees were not contained within the parameters of the program. In the spirit of public participation, the appeal was processed even though it did not involve an appealable subject under the IR program.

Council Member Kou remarked that Staff should not accept an appeal and the Appeal Fee if the subject on appeal was not appealable.

**AMENDMENT TO THE SUBSTITUTE MOTION PASSED:** 4-3 Cormack, Filseth, Fine no

Council Member Kou proposed amending the Substitute Motion to conduct a Ground Penetrating Radar Study in order to remove any doubt about the tree roots.

Council Member Cormack requested the anticipated result of the Study.

Council Member Kou advised that it could determine the location and depth of roots.

Council Member Cormack asked how the Applicant, or the Council could utilize that knowledge.

Council Member Kou indicated it could inform the building permit process.

Ms. Tanner reported that the Study could confirm current knowledge and fail to confirm the existence of deep roots.

Mr. Passmore explained that the Study would assess roots within the building footprint. Usually that occurred before Staff approved a final design. If the Study revealed a significant number of roots, Staff needed to evaluate the remainder of the TPZ to determine if it constituted a significant impact to the tree. It significantly delayed the project and was possibly going to cause major changes to the project design.

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Council Member Cormack declined the proposed Amendment.

**AMENDMENT TO THE SUBSTITUTE MOTION:** Council Member Kou moved, seconded by Council Member XX to direct the applicant to perform a ground penetrating radar study.

**AMENDMENT TO THE SUBSTITUTE MOTION FAILED DUE TO THE LACK OF A SECOND**

**SUBSTITUTE MOTION AS AMENDED:** Council Member Cormack moved, seconded by Council Member Filseth to uphold the Planning and Development Services Director's approval of the Individual Review (IR) application (File No. 18PLN-00339) and:

- A. Direct Staff to add all recommendations from the Arborist Report as additional conditions of approval;
- B. Change Condition Number 30 to read, "For the duration of hand demolition within the Tree Protection Zone, the project Arborist shall *be on site* to ensure that tree protection measures, materials and best practices are being employed by the contractor and on-site foreman overseeing the work."; and
- C. Change Condition Number 32 to read, "The tree appraisal duration period shall be *ten* years from the date of final occupancy..."

**SUBSTITUTE MOTION AS AMENDED FAILED:** 3-4 DuBois, Kniss, Kou, Tanaka no

Ms. Tanner was unsure whether Subpart A resulted in a habitable basement; perhaps it could be amended to indicate the interior of the basement could be 8 feet in height.

**INCORPORATED INTO THE MOTION WITH THE CONSENT OF THE MAKER AND SECONDER** to restate Motion, Part A to read, "Reduce the basement depth to an 8-foot ceiling height and allow 1-foot above grade;"

Mayor Fine requested the Applicant comment on the amended Motion.

Ms. Pavlovic agreed to an 8 foot ceiling height and believed she could design the project in compliance with IR Guidelines.

Council Member Kou understood the ceiling height would be 9 feet, 8 feet belowground and 1 foot aboveground.

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Ms. Gerhardt interpreted the Motion as the ceiling height would be 8 feet, 7 feet belowground. The excavation was to be 7 feet, including the thickness of the foundation.

Ed Shikada, City Manager understood Council Member Kniss' intention was to minimize the necessity of dewatering.

Ms. Pavlovic stated the Applicant wanted to avoid dewatering and would have more information if the Council allowed the project to proceed.

Council Member Tanaka proposed amending the Motion to include a ground penetrating radar Study. If the Study revealed no deep roots, the project was able to proceed as proposed. Otherwise, the requirements of the Motion needed to be implemented.

Council Member Kniss agreed to conducting a Study but not any provisions dependent on the results of the Study.

Council Member Kou preferred a requirement to avoid dewatering or to minimize dewatering as much as possible.

Council Member Kniss declined to amend the Motion.

Mayor Fine did not support the Motion because Ms. Martineau's recommendations had not been evaluated and designing the project during a meeting was dangerous. He inquired whether Subpart A could trigger a second IR process.

Ms. Stump noted Staff's review involved many hours and great care. Changing the project without allowing Staff to analyze the changes fully was a concern. She encouraged the Council to consider its decision as final and not subject to further appeal. The IR process was intended to allow the construction of single-family homes without a great deal of review and involvement.

Mayor Fine remarked that if the Council wished to consider trees and basements in the IR process, they needed to update their IR Guidelines and process.

Council Member Cormack asked if Subpart A required the Applicant to redesign the house.

Ms. Gerhardt answered no.

Council Member Cormack asked if it required the Applicant to expend additional time and funds.

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Ms. Tanner believed the Applicant would expend some funds and time to redesign the project.

Council Member Cormack remarked that the Council redesigning a project was not appropriate, especially when the project complied with all requirements. Mr. Passmore stated that Ms. Martineau's recommendations would be addressed in the building permit process. Requiring an arborist to be onsite at all times was an unnecessary expense. The Applicant had followed the rules. Staff had seriously considered all concerns about the tree and had imposed mitigations.

Council Member Tanaka inquired regarding additional language in the Motion that indicated the Council's decision was final.

Ms. Stump indicated the language of Council approval created the finality.

Council Member Kou did not believe the Council was redesigning the project. The Motion addressed the appeal.

Council Member Filseth remarked that Subpart B was useful, but Subpart C did not add value. Subpart A had no practical effect.

Ms. Pavlovic advised that the Applicant would do what was best for the tree. She had to review the Council's requirements to determine their effects on the project.

**MOTION AS AMENDED RESTATED:** Council Member Kniss moved, seconded by Council Member Kou to approve the project with the following conditions:

- A. Reduce the basement depth to 8-foot ceiling height and allow 1 foot above grade;
- B. Add Catherine Martineau's recommendations:
  - i. Reporting tree protection compliance during construction. In addition to daily inspection reporting during demolition phase, a mandatory Contractor and Arborist Monthly Tree Activity Report shall be sent monthly to the City Urban Forester beginning with issuance of building permit, using the template in the Tree Technical Manual, Addendum 11. The Contractor and Owner shall implement any corrective actions as directed by project arborist or Urban Forester;



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- ii. Basement and light well excavation should utilize vertical cut, I-beam and lagging or other minimal-cut method that leaves rooting soil intact, if approved by the Urban Forester; and
  - iii. The building permit shall include a comprehensive landscape plan prepared by a landscape architect, approved by both the Project Arborist and Urban Forester. The plan shall include plantings required by Condition #13, and in the rear yard specify Valley Oak compatible plant species comparable to Tree Technical Manual, Addendum 5, Landscaping Under Native Oaks; and
- C. Modify conditions of approval to:
- i. Direct Staff to add all recommendations from the Arborist Report as additional conditions of approval;
  - ii. Change Condition Number 30 to read, "For the duration of hand demolition within the Tree Protection Zone, the project Arborist shall *be on site* to ensure that tree protection measures, materials and best practices are being employed by the contractor and on-site foreman overseeing the work."; and
  - iii. Change Condition Number 32 to read, "The tree appraisal duration period shall be *ten* years from the date of final occupancy..."

## **MOTION AS AMENDED PASSED:** 4-3 Cormack, Filseth, Fine no

- 3. ~~Staff and Utilities Advisory Commission Recommend the City Council Adopt a Resolution Amending the City's Electric Supply Portfolio Carbon Neutral Plan and Electric Utility Reserves Management Practices. (THIS ITEM HAS BEEN CONTINUED TO AUGUST 24, 2020)~~
- 4. ~~PUBLIC HEARING/LEGISLATIVE: Adoption of Several Ordinances Regarding Accessory Dwelling Units and Junior Accessory Dwelling Units Amending Palo Alto Municipal Code Titles 16 (Building) and 18 (Zoning). Amendments Include Repealing Section 18.42.040 (Accessory and Junior Accessory Dwelling Units); Adding a new Chapter 18.09 (Accessory Dwelling Units and Junior Accessory Dwelling Units); Updating Chapters 18.04 (Definitions); 16.58 (Development Impact Fees); 16.04 (California Building Code); 16.06 (California Residential Code); and 16.14 (California Green Building Standards Code). Environmental Assessment: Exempt From Review Under the California Environmental Quality Act (CEQA) Pursuant to Q&A 3 August 17, 2020 MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE~~

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~~AVAILABLE FOR PUBLIC INSPECTION IN THE CITY CLERK'S OFFICE AT PALO ALTO CITY HALL, 250 HAMILTON AVE. DURING NORMAL BUSINESS HOURS. Public Resources Code Section 21080.17 and CEQA Guidelines Sections 15061(b)(3), 15282(h), 15301, 15302 and 15305 (THIS ITEM HAS BEEN CONTINUED TO SEPTEMBER 14, 2020)~~

## Council Member Questions, Comments and Announcements

Council Member Cormack announced the Policy Committee of the Bay Area Water Supply and Conservation Agency (BAWSCA) had recommended BAWSCA not proceed with the Los Vaqueros Project, a storage project in the East Bay. Water supply was functioning during power outages. Critical San Francisco Public Utilities Commission (SFPUC) facilities were not at risk from the Marsh Complex wildfire. She requested Council Member Kou provide any information from the recent meeting of the airplane noise roundtable, if she had attended the meeting.

Mayor Fine noted the United States Postal Service had delayed plans to remove postal boxes in Palo Alto.

Adjournment: The meeting was adjourned at 12:13 A.M.