

CITY OF CAMPBELL PLANNING COMMISSION

MINUTES

7:30 P.M.

TUESDAY

SEPTEMBER 10, 2019
CITY HALL COUNCIL CHAMBERS

The Planning Commission meeting of September 10, 2019 was called to order at 7:30 p.m., in the Council Chambers, 70 North First Street, Campbell, California by Chair Rivlin and the following proceedings were had, to wit:

ROLL CALL

Commissioners Present:	Chair:	Andrew Rivlin
	Vice Chair:	Mike Krey
	Commissioner:	Adam Buchbinder
	Commissioner:	Stuart Ching
	Commissioner:	Terry Hines
	Commissioner:	Maggie Ostrowski

Commissioners Absent: None

Staff Present:	Community	
	Development Director:	Paul Kermoyan
	Senior Planner:	Daniel Fama
	Associate Planner:	Stephen Rose
	Assistant Planner:	Naz Pouya
	City Attorney:	William Seligmann
	Recording Secretary:	Corinne Shinn

APPROVAL OF MINUTES

Motion: Upon motion by Commissioner Krey, seconded by Commissioner Hines, the Planning Commission minutes of the meeting of August 27, 2019, were approved with a clarification to a comment made by Commissioner Buchbinder on page 7. (5-0-0-1; Commissioner Ostrowski abstained)

COMMUNICATIONS

Director Paul Kermoyan advised that a packet of correspondence received since the agenda packet was distributed is provided this evening. This correspondence was distributed electronically to the members of the Planning Commission as received by staff. This is a hard copy of material already received.

AGENDA MODIFICATIONS OR POSTPONEMENTS

None

ORAL REQUESTS

Audrey Keihtreiber, Resident on Walnut Drive:

- Reported that a couple of weeks ago she asked the members of this Commission whether they had read the San Tomas Area Neighborhood Plan (STANP) by raising their hands. None of the Commissioners raised their hand.
- Pulled out a stack of STANP copies and asked staff to distribute it to the members.
- Stated that “we expect the Planning Commission to be familiar with and take the STANP to heart.

Commissioner Krey:

- Advised Ms. Keihtreiber that the Commission doesn't respond to such questions from speakers but rather accept the testimony they wish to relay under consideration once they begin deliberations on an item.
- Offered assurance that each time an item comes up each Commissioner reviews materials associated with that project including applicable area plans such as the STANP.

PUBLIC HEARINGS

Chair Rivlin asked if there were any disclosures from members relating to Agenda Item 1.

There were none.

Chair Rivlin read Agenda Item No. 1 into the record as follows:

1. **PLN2019-162** Public Hearing to consider the application of Adrian Nieto, on behalf of 8x8, Inc., for a Sign Permit (PLN2019-162) to allow two freeway-oriented signs (54 sq. ft. each) and two monument signs (50 sq. ft. and 78 sq. ft. respectively) on property located at **675 Creekside Way**. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Tentative City Council Meeting Date: October 1, 2019. Project Planner: *Stephen Rose, Associate Planner.*

Mr. Stephen Rose, Associate Planner, provided the staff report.

Chair Rivlin asked if there were questions for staff.

Commissioner Buchbinder asked if what were the intentions of the original ordinance and why this sign application doesn't fit in.

Planner Stephen Rose:

- Replied that the purpose of the Sign Ordinance is to prevent visual clutter when it comes to signage.
- Advised that this request is not inconsistent with the Sign Ordinance as the Ordinance provides flexibility to request a greater number/area of signs.

Commissioner Buchbinder asked about mandatory versus acceptable site signage.

Planner Stephen Rose:

- Reminded that this site is a large 3.5-acre property with 175,000 square feet of building space, 300 feet from the public street.
- Added that a small site can also have two signs, one wall and one monument.
- Said that proportionally, it may be found reasonable to give a larger site more signs than a small site.

Chair Rivlin opened the Public Hearing for Agenda Item No. 1.

Scott Trobbe, South Bay Development Company:

- Said that they are the owners of this site.
- Thanked Planner Stephen Rose for his staff report and presentation.
- Explained that it was discussed early that larger signage would be merited and necessary to help draw a larger tenant into Campbell. This company, 8X8, Inc., is taking the entire building.

Chair Rivlin asked if there were questions for the applicant.

There were none.

Chair Rivlin closed the Public Hearing for Agenda Item No. 1.

Commissioner Krey said that this sounds reasonable. He added that he likes the staff report provided and the proposed conditions of approval.

Commissioner Ostrowski said that this is a great new tenant for Campbell.

Commissioner Ching agreed.

Commissioner Hines:

- Pointed out that signage is very important to a business.
- Congratulated this business for coming to Campbell.

- Added that signs serve as advertising and must be consistent in appearance.

Commissioner Buchbinder said this proposal sounds like the exact situation the Sign Ordinance intends to consider when granting a greater number/area of signs.

Chair Rivlin agreed and said it is a nice design.

Motion: **Upon motion of Commissioner Krey, seconded by Commissioner Ostrowski, the Planning Commission adopted Resolution No. 4525 approving a Sign Permit (PLN2019-162) to allow two freeway-oriented signs (54 sq. ft. each) and two monument signs (50 sq. ft. and 78 sq. ft. respectively) on property located at 675 Creekside Way by the following roll call vote:**

AYES: **Buchbinder, Ching, Hines, Krey, Ostrowski and Rivlin**
NOES: **None**
ABSENT: **None**
ABSTAIN: **None**

Chair Rivlin advised that this item would be considered by the City Council for final action at its meeting on October 1, 2019.

Chair Rivlin asked if there were any disclosures for Agenda Item 2.

There were none.

Chair Rivlin read Agenda Item No. 2 into the record as follows:

2. **PLN2019-104** Public Hearing to consider the application of Iradj Rahnama for a Major Modification (PLN2019-104) to a previously approved Planned Development Permit (PD 82-05) to allow construction of a 539 square-foot addition to an existing one-story medical office building and an Authorization to Remove a Dead Tree on property located at **429 Llewellyn Avenue** in the P-D (Planned Development) Zoning District. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Tentative City Council Meeting Date: October 1, 2019. Project Planner: *Naz Pouya, Assistant Planner.*

Ms. Naz Pouya, Assistant Planner, provided the staff report.

Chair Rivlin asked if there were questions for staff.

There were none.

Commissioner Krey provided the Site and Architectural Review Committee report as follows:

- SARC had no real issues and agreed that the dead/dying tree needs to go.

Chair Rivlin opened the Public Hearing for Agenda Item No. 2.

Chair Rivlin closed the Public Hearing for Agenda Item No. 2.

Commissioner Ostrowski:

- Stated that the addition looks fine and meets the code.
- Concluded that she is supportive.

Commissioner Buchbinder:

- Said "likewise".
- Said this addition doesn't appreciable change the appearance of the building.
- Concluded that he is in favor.

Commissioner Hines:

- Said that this applicant is investing in Campbell in order to provide further medical services.
- Stated that this addition is consistent with the General Plan.
- Admitted that one concern he has is ADA (accessible) parking and wants to be sure that what's provided meets requirements.
- Asked staff to review that to be sure.

Commissioner Ching admitted that he thinks the replacement tree is better placed at the street than in the existing dead tree's location.

Chair Rivlin said he too is in support.

Motion: **Upon motion of Commissioner Ching, seconded by Commissioner Buchbinder, the Planning Commission adopted Resolution No. 4526 approving a Major Modification (PLN2019-104) to a previously approved Planned Development Permit (PD 82-05) to allow construction of a 539 square-foot addition to an existing one-story medical office building and an Authorization to Remove a Dead Tree on property located at 429 Llewellyn Avenue, by the following roll call vote:**

AYES: **Buchbinder, Ching, Hines, Krey, Ostrowski and Rivlin**
NOES: **None**
ABSENT: **None**
ABSTAIN: **None**

Chair Rivlin advised that this item would be considered by the City Council for final action at its meeting on October 1, 2019.

Chair Rivlin asked if there were any disclosures for Agenda Item 3.

There were none.

Chair Rivlin read Agenda Item No. 3 into the record as follows:

3. **PLN2019-101** Public Hearing to consider the application of Linda Tsai to remove/rescind (PLN2019-101) a Structure of Merit commonly known as the Smith House from the City of Campbell Historic Preservation Inventory (HRI), on property located at **74 N Second Street**. Staff is recommending that this item be deemed Categorically Exempt under CEQA. Tentative City Council Meeting Date: October 1, 2019. *Project Planner: Daniel Fama, Senior Planner.*

Mr. Daniel Fama, Senior Planner, provided the staff report.

Chair Rivlin asked if there were questions for staff.

Commissioner Krey asked if the property owner can do renovations to her home while it is included on the HRI.

Planner Daniel Fama replied yes.

Commissioner Krey asked staff if the front porch posts can be altered.

Planner Daniel Fama said that the front elevation is the most significant aspect and the posts might need to be retained.

Commissioner Buchbinder asked staff what the process was for notifying this owner of the potential inclusion of her home on the HRI.

Planner Daniel Fama:

- Reported that the Historic Preservation Board (HPB) did a comprehensive review of the inventory of potentials list.
- Said that this home at 74 N. Second Street was one of several added at that time.
- Advised that a new Historic Preservation Ordinance was adopted early last year and will require a Historic Resource Evaluation for any home proposed for addition to the HRI.
- Explained that under the previous HPB Ordinance, a property owner's consent for inclusion on HRI was not required. Now it is.
- Added that there was an opt-out process offered that some requested and were granted.

Director Paul Kermoyan:

- Added that the HPB conducted workshops.
- Said that the property owner at the time was informed but it seems didn't offer that information to the next buyer.

Commissioner Buchbinder asked if the review done was not enough.

Director Paul Kermoyan referenced pages two and three and said that the criteria listed as "A" through "F" were each discussed.

Chair Rivlin opened the Public Hearing for Agenda Item No. 3.

Mark Ebner, Resident on Milton Avenue:

- Admitted that he is a little concerned.
- Reported that he has lived in Campbell since 1958.
- Added that a lot of historic properties have been demolished in that time.
- Pointed out that the Historic Preservation Board and the City made notification outreach when considering this property for inclusion on the HRI and no one came forward in opposition on the part of this property.
- Stated that this property is an asset for Campbell. It is a beautiful example of Prairie Style architecture.
- Asked that this property not be rescinded from being on the HRI.

Chair Rivlin closed the Public Hearing for Agenda Item No. 3.

Commissioner Hines:

- Reminded that the intent of having a Historic Resource Inventory (HRI) is for the preservation of Campbell history.
- Opined that this property should remain on the HRI.
- Said that keeping this property on the HRI is consistent with the General Plan.
- Asked, "Who is Mr. Smith?"
- Concluded that he supports the staff recommendation not to rescind this property.

Chair Rivlin responded that he is a former Principal of Campbell High School.

Commissioner Ostrowski said that the notification of this proposed inclusion should have been a part of the real estate disclosure when this owner purchased the house.

Commissioner Ching:

- Asked what the mechanism is of putting a house on the list in the first place.
- Stated that it seems the inclusion was done according to the Ordinance in place at the time. Outreach was attempted. The process was okay.
- Pointed out that the Historic Preservation Board desires to work with this property owner as indicated in their August meeting minutes.
- Said he would not support rescinding this property from the HRI.

Commissioner Buchbinder:

- Said that there has not been a compelling reason made to retain this as an historic structure.
- Added that it sounds like the spirit of the current ordinance was violated.
- Stated that it also sounds like a matter of the current owner to take up with the previous owners who knew but didn't disclose at time of sale of this pending inclusion on the HRI.
- Admitted that he is more in favor of rescinding this property from the HRI.

Commissioner Hines clarified to Commissioner Buchbinder that the ordinance in place at the time was properly followed. The inclusion of this property was not the result of a violation of the ordinance.

Chair Rivlin said there is no compelling reason not to keep this property on the HRI.

Chair Rivlin re-opened the Public Hearing for Agenda Item No. 3.

Linda Tsai, Owner and Applicant, 74 N. Second Street:

- Reported that she submitted two pages of questions on each of the items considered for inclusion and reasons she did not agree.
- Stated she was available for questions.

Chair Rivlin confirmed that material from Ms. Tsai is Item 9 in the staff report.

Linda Tsai said that this house was built in 1930. Mrs. Smith lived there in 1912.

Chair Rivlin suggested that Ms. Tsai identify a couple of items from her letter that she feels are compelling reasons to remove her property from the HRI.

Linda Tsai:

- Stated that she questions why the Historic Preservation Board put her property on the HRI since Mrs. Smith only lived in the house for a short time.
- Advised that she wants to update her home. She wants to give it a facelift.
- Said that that would be easier done if she can get off the HRI list.

Chair Rivlin pointed out that this home could be restored even if it remained on the list.

Linda Tsai:

- Reported that she has already put an addition at the back and new windows were put in throughout the house.
- Suggested that if the City wants to keep her home on the HRI they should put up a plaque on the property.

Commissioner Krey asked Ms. Tsai if the costs for renovation are higher if a home is a Structure of Merit than if it were not.

Linda Tsai:

- Said that other homes have once been on the HRI list and later removed.
- Pointed out that it was the City that put her home on this list not her.
- Concluded that it's a hassle to be on the HRI.

Commissioner Ching:

- Stated that in reading the minutes of the last Historic Preservation Board meeting, the members of HPB are willing to work with you.
- Added that it seemed they didn't understand exactly what you plan to change.

Linda Tsai:

- Said that she wants a façade facelift at the front.
- Admitted that she hasn't yet hired an architect to design her proposed changes.
- Stated that she could show the Commission an example of what she hopes to do.
- Distributed two photographs to the members of the PC.

Chair Rivlin:

- Advised that being on the HRI does not prevent her from doing home improvements.

Linda Tsai said the photographs she has shared are a sample of just how different her home could work with modifications to the frontage.

Chair Rivlin:

- Said that HPB would have to approve any changes with the intent of retaining the home's original look and feel.
- Reminded that she was already able to put in an addition at the back of her home.

Linda Tsai:

- Said that she understands that.
- Reported that she is looking at a home that needs to go to review for any changes.
- Reminded that her windows were changed in 1991 and are no longer wood.

Commissioner Ostrowski asked Ms. Tsai when she purchased this home.

Linda Tsai replied 1987.

Commissioner Ostrowski said that means Ms. Tsai was already the homeowner when this property was added onto the HRI.

Chair Rivlin asked if she is the homeowner.

Linda Tsai:

- Replied yes, she is the homeowner.
- Admitted that at the time of consideration for HRI she simply didn't have the time to respond to the notifications from the City. She was very busy with her demanding job.
- Added that the notifications sent did not give clear information on what to do if we didn't want to be added to the HRI.

- Stated that at the time she thought that if it was so easy to add to the HRI it would be just as easy to remove it later when she had more time.

Director Paul Kermoyan:

- Stated that the meetings of the Historic Preservation Board are public. This owner was notified of that meeting. She was notified about the Planning Commission meeting on this issue. She was notified for the City Council meeting when the decision was made to add the proposed properties to the HRI.
- Assured that this was not a subvert thing done in secret.

Chair Rivlin:

- Asked staff to confirm that this meeting tonight is the culmination of the letter received from Ms. Tsai in 2018.
- Questioned if the Commission does not rescind this home could this homeowner apply again.

Director Paul Kermoyan advised that the Planning Commission will be forwarding its recommendation on to Council for final decision.

Chair Rivlin re-closed the Public Hearing for Agenda Item No. 3.

Planner Daniel Fama:

- Pointed out that who lived in a home is not the only reason for inclusion of this home on the HRI.
- Reminded that this home represents the Prairie Style of architecture from the 20's and 30's.
- Agreed that issues such as window changes do need to go to the HPB for review and approval.
- Said that only for certain properties, not including this one. Recently there have been several homes on Alice that have had to come to HPB for review of windows. Alice is the City's only Historic District.
- Advised that there have been property owners that have chosen to opt out from inclusion on HRI when offered the opportunity.

Commissioner Buchbinder:

- Said that this applicant is disputing that.
- Asked what the process is to remove a home.

Planner Daniel Fama:

- Replied that tonight's review is that process.
- Added that the PC could consider this item and ask the owner to pay to have a Historic Report prepared by a third-party.

Chair Rivlin asked if it would need to go to Council either way.

Planner Daniel Fama:

- Said that this matter could be continued by the PC if it cannot come to a decision tonight.
- Added if the recommendation from PC is different from that of HPB, HPB would need to work with the property owner to get the report ordered.
- Concluded that once the Historic Report is completed this document would be brought forth to the Council at which time a final decision could be made.

Commissioner Krey clarified with staff that the Historic Report is paid for by the property owner. He asked how much that might cost.

Planner Daniel Fama replied that it costs about \$5,000.

Chair Rivlin asked what if PC recommends rescinding this property what happens.

Planner Daniel Fama said that the PC recommendation goes on to Council along with the HPB recommendation.

Commissioner Ching:

- Said that he has not changed his mind after hearing from Ms. Tsai.
- Stated that the process was followed at the time this home was added to the HRI.
- Reminded that this owner was the owner at that time and was noticed several times.

Commissioner Hines:

- Stated his view has not changed as well.
- Advised that he will not support rescinding this property from the HRI.
- Agreed that staff properly provided material to this applicant at the time this property was considered for and then added to the HRI.

Commissioner Ostrowski:

- Informed of her intent to support the resolution as written not to rescind this home from the HRI.
- Added that the Commission has had HPB-referred projects come to us.
- Suggested that Ms. Tsai have a conversation with the right people at City Hall.
- Concluded that this is a home that was built within an historical period with a historic location.

Commissioner Buchbinder:

- Stated that he understands now that the applicant was noticed about the potential inclusion of her property on the HRI. That's important.
- Added that this owner having to pay \$5,000 to not have her home included on the HRI is still at risk for non-approval and is not guaranteed.
- Opined that this is a terrible situation for this owner, and he suggested that instead she work with HPB to make desired modifications to her home.
- Said that it is an uphill battle to remove this home from the HRI. He doesn't see a good way moving forward.

Chair Rivlin:

- Agreed with Commissioner Buchbinder's comments.
- Reported that there were opportunities for this owner to opt out prior to the HPB hearing.
- Added that historic structures are a benefit to the City.
- Stated that Ms. Tsai plaque request is interesting and perhaps could be considered by the HPB.
- Assured that homes in Campbell hold their value.
- Said that any modifications desired for this home can be vetted with staff and with the HPB's assistance. Sounds like it's a refresh that Ms. Tsai is looking to achieve.

Motion: **Upon motion of Commissioner Krey, seconded by Commissioner Ostrowski, the Planning Commission adopted Resolution No. 4527 recommending that the City Council deny the removal/rescinding (PLN2019-101) a Structure of Merit commonly known as the Smith House from the City of Campbell Historic Preservation Inventory (HRI), on property located at 74 N Second Street, by the following roll call vote:**

AYES: **Buchbinder, Ching, Hines, Krey, Ostrowski and Rivlin**
NOES: **None**
ABSENT: **None**
ABSTAIN: **None**

Chair Rivlin advised that this item would be considered by the City Council for final action at its meeting on October 1, 2019.

Chair Rivlin asked if there were any disclosures for Agenda Item 4.

Commissioner Buchbinder advised that he would need to recuse from this item due to living next door on the adjacent property at the Franciscan Apartments.

Commissioner Ching advised that since he made a public statement prior to joining this Planning Commission, he too must recuse from participating on this item.

Both Commissioners Buchbinder and Ching left the dais and chambers for the balance of the meeting.

Chair Rivlin read Agenda Item No. 4 into the record as follows:

4. **PLN2017-117 (CUP)** **PLN2017-118 (TRP)** **PLN2017-119 (SIGN)** **PLN2017-120 (EIR)** Public Hearing to consider the application of In-N-Out Burger for a Conditional Use Permit with Site and Architectural Review (PLN2017-117) to allow construction of a 3,812 square-foot 97-seat fast-food restaurant with a 28-vehicle double drive-through lane with outdoor activities (drive-up window), a 48-seat outdoor dining area, late-night hours, and associated site, lighting, parking, refuse collection, and landscaping improvements, including a Minor Alteration to the Hamilton Avenue Streetscape Standards and an adjustment to the landscape requirements, and an increase to the allowable fence height; a Tree Removal Permit (PLN2017-118) to allow removal of protected on-site trees; a Sign Permit (PLN2017-119) to allow a greater number of signs and an increased sign area to permit installation of new directional, informational/menu, "running neon," and building wall signs; and certification of a Final Environmental Impact Report (FEIR) (PLN2017-120), for property located at **499 E. Hamilton Avenue**. Planning Commission action final unless appealed in writing to the City Clerk within 10 calendar days.
Project Planner: Daniel Fama, Senior Planner

Mr. Daniel Fama, Senior Planner, provided the staff report.

Chair Rivlin asked for the SARC report.

Commissioner Krey provided the Site and Architectural Review Committee report as follows:

- Advised that SARC discussed a possible right-turn only option from Almarida.
- Said that SARC felt the queue seemed okay.

Commissioner Hines added the following comments as the second member of SARC:

- Said that he was concerned about the provision of ADA parking given the need for people using those spaces needing to take access to the building across the queuing lanes.
- Stated that the proposed signs seem to stretch the Sign Ordinance standards.
- Supported the use of larger replacement trees on site given all existing trees would be removed to accommodate construction.

Chair Rivlin pointed out that the proposed replacement trees are 36-inch box.

Planner Daniel Fama advised that the applicant removed two signs, but the two remaining proposed signs still exceeds allowances.

Chair Rivlin asked if there were questions for staff.

Commissioner Krey asked if there were alternatives to this project. Would the traffic volumes be lessened if there were to be a hotel on this site instead of fast food with drive thru service?

Planner Daniel Fama said he couldn't say. There are typically a lot of variables to consider including the size and type.

Chair Rivlin asked about the fair-share cost of future improvements to the SB17 exit onto Hamilton. Which direction would the improved lanes from the SB17 exit onto Hamilton go?

Matthew Jue, Traffic Engineer, City of Campbell:

- Replied that there would be a third exclusive left-turn lane and another straight-through lane to go to Salmar Avenue.

Commissioner Krey asked if there is room for an additional right turn lane.

Traffic Engineer Matthew Jue replied no.

Chair Rivlin asked when these improvements would go in.

Traffic Engineer Matthew Jue replied in approximately seven years.

Chair Rivlin asked if an EIR would be required for those improvements.

Traffic Engineer Matthew Jue said that's hard to answer.

Chair Rivlin asked if that work would be done by CalTrans or the City.

Traffic Engineer Matthew Jue replied the City most likely.

Chair Rivlin asked how much money is needed for this improvement project.

Traffic Engineer Matthew Jue:

- Said that there are Measure B funds available that require a 10-percent local match.
- Advised that for the Kohl's project approximately \$100,000 was collected as that project's fair-share.

Chair Rivlin said that this project is being assessed a fair-share amount of approximately \$80,000.

Traffic Engineer Matthew Jue said that the City's required 10 percent local match equates to \$200,000. From that the City can count the fair-share fees collected for this project and the previous Kohl's project.

Todd Capurso, Public Works Director:

- Advised that the estimate for the project was \$1.8 million but that is an eight to ten-year-old estimate.
- Said that for Measure B funds, there was a call for projects and set-asides by category including highway interchange. This SB17/Hamilton exit is included on the list to be eligible for funding.

- Reported that for a two-year period, none of the Measure B funds were available due to a court challenge. There is \$1.0 million to be allocated.
- Advised that this project is not yet included in the City's CIP (Capital Improvement Plan).
- Said that projects are not shown on the five-year CIP until there is more certainty of required funds.
- Added that it would be in next year's CIP but at the end of the five-year period of that CIP.
- Cautioned that it would take a lot of time to design and coordinate this project of between five and seven years.

Commissioner Ostrowski asked about the age of the \$1.8 million dollar estimate for this work.

Public Works Director Todd Capurso:

- Agreed that 10-years is a significant amount of time.
- Said that the scope of work is unchanged and there is no land acquisition required. That was part of the Kohl's project.

Commissioner Ostrowski asked how the estimate holds up.

Public Works Director Todd Capurso:

- Said that it would no doubt be a larger cost.
- Added that there is a funding agreement with VTA and City must come up with between 10 and 20 percent of the cost.

Commissioner Ostrowski said that the cost could potentially double in seven years or so. What are the plans?

Public Works Director Todd Capurso reiterated that the City would need to apply for 80% of the cost from VTA's Measure B funds.

Commissioner Hines said that SARC had questions about changes to the Almarida Avenue exits from this site.

Planner Daniel Fama said that a driveway restriction was considered that would allow only right-out and right-in turns. If traffic impacts occur, the project could be brought back to the Commission to require that change.

Commissioner Ostrowski asked staff, "What if people come onto this site from Almarida and want to join the drive-thru service lanes?"

Chair Rivlin asked about the potential for a sign advising that drive-thru traffic must enter from Hamilton Avenue.

Planner Daniel Fama said that is not found to be necessary at this time.

Commissioner Ostrowski asked why the EIR has a different number for week day traffic than does the TIA.

Mark Spencer, W-Trans, Traffic Consultant:

- Asked Commissioner Ostrowski to clarify which numbers she is comparing and finding to be different.

Commissioner Ostrowski reference the traffic count number of 2,672 that appears in the EIR while that number is 3,563 in the TIA for the same time frame.

Mark Spencer, W-Trans, Traffic Consultant:

- Referenced Traffic Table 7 that lists estimated trips of 3,563 per day.
- Advised that there is a 25 percent pass by credit, that represents drivers already on the road passing by and deciding to turn onto In-N-Out. That driver returns to the road and continue on their way after their stop at In-N-Out.
- Added that they kept that percentage conservative at 25 percent. The range per recommended practice is between 30 and 49 percent pass by.
- With the 25 percent the number reduces to the 2,672 estimate that is in the Traffic Study and EIR. They match.

Commissioner Krey asked about traffic demand if this site were to have a hotel on it.

Mark Spencer, W-Trans, Traffic Consultant:

- Said that it would depend on factors such as what type of hotel. Is it a local hotel, a conference hotel or a hotel with a restaurant?
- Advised that hotels can be less of a traffic generator but has a lot of parking needs.
- With more Uber and Lyft, the activity between this proposed use and a hotel is about the same.

Commissioner Krey asked what types of uses generate more traffic than a drive-thru restaurant.

Mark Spencer, W-Trans, Traffic Consultant, replied a successful Starbucks.

Commissioner Ostrowski added jokingly, a successful carwash.

Mark Spencer, W-Trans, Traffic Consultant, said it's not just the total but when they happen and where they peak.

Commissioner Hines asked about the 1.65 percent increase in off-ramp traffic.

Mark Spencer, W-Trans, Traffic Consultant, explained that the fair-share allocation covers the whole effect on the intersection not just the off-ramp.

Commissioner Ostrowski asked how the model looks at time of traffic.

Mark Spencer, W-Trans, Traffic Consultant:

- Explained that the background equals short-term with the project and already approved projects for a cumulative impact.
- Said that another restaurant at this site could come through.
- Said that the question of when we reach an “F” rating, that is estimated to be between 5 and 21 years.

Chair Rivlin asked if the average represents the entire Bay Area or just local.

Mark Spencer, W-Trans, Traffic Consultant:

- Stated that it encompasses Campbell and its surrounding area.
- Added that it takes into consideration average growth and a little more added to be conservative.

Chair Rivlin that it should include adjacent streets up to five miles away.

Mark Spencer, W-Trans, Traffic Consultant:

- Said that they look at growth and regional traffic.
- Added that the 1.75 percent picks up that ambient growth.

Chair Rivlin opened the Public Hearing for Agenda Item No. 4.

Director Paul Kermoyan:

- Pointed out that there are a lot of people here tonight wishing to address the Commission on this project.
- Advised that one organized group, Citizens for Sensitive Growth, has 11 representing members that plan to speak.
- Added that the applicant also wants more time to speak as well.
- Informed the Chair that it is up to the Chair to decide how best to allocate time so all who want a chance to speak will get it.

Chair Rivlin:

- Said that the applicant is asking for 10 minutes. There are 11 members of the Citizens for Sensitive Growth who will each be allotted a minute.
- Cautioned that if more time per speaker were offered such as 5 minutes, this meeting could run to 4 a.m.

Jim Lockington, Representative for In-N-Out Burger:

- Stated that he is thrilled to be here in Campbell.
- Introduced his team.
- Thanked the Planning Commission for their service and to the many members of the community who are present this evening.
- Said he appreciates how much time and effort put forth by everyone.
- Assured that being a good neighbor is an important goal for In-N-Out.
- Added that they are intent in addressing any concerns that may remain and make appropriate adjustments as necessary.
- Reminded that they have modified their original plans in terms of feedback received and listed a number of those changes.

- Said that they have complied with all requested changes including lowered heights of parking lot lots and raising the height of the fencing between the site and the Franciscan Apartments next door.
- Said that they attended the SARC meeting in April and the feedback provided resulted in a number of changes. They removed a monument sign at the request of their commercial next-door neighbor. They deleted an embossed element from one wall and increased replacement tree size to between 36 and 48-inch box. They have raised the wall height between this property and the adjacent commercial property from the existing two-foot height to an eight-foot height. These changes will improve privacy and reduce noise impacts.
- Stated this project has undergone a collaborative process which has resulted in a better project. It has been an open and transparent process.
- Reported that he agrees with the recommendations in the report.
- Pointed out that his team had no hand preparation of the staff report. He received it at the same time as everyone else.
- Said that they will have some suggested language changes provided by their attorney to clarify some of the conditions.
- Informed that there will be community benefits via this energy-efficient building. This will be a restaurant without alcohol. It serves food that is fresh, never frozen or microwaved.
- Said that they will provide high-quality jobs both entry and management level.
- Advised that the property owner will dedicate an easement to the City to allow for new street landscaping. Thirty-two new trees will be planted on this property. Utility boxes currently on the public sidewalk will be relocated at their cost.
- Concluded that he hopes the Commission will approve this project.

Commissioner Krey asked Mr. Lockington whether an In-N-Out restaurant without drive-thru service is not an option for this location.

Jim Lockington replied that they would not build without the drive-thru.

Chair Rivlin pointed out that they do have some locations without drive-thru.

Jim Lockington said just five of the 345 locations they have. Some are old, older than 20 years. There is one on Fisherman's Wharf, which has extensive foot traffic. Another is located at The Link, which is associated with Caesar's Palace in Las Vegas, also with extensive foot traffic.

Christina Caro, Member of Campbell Concerned Residents as well as Campbell Sensitive Growth:

- Pointed out that numerous people have expressed their concerns about traffic impacts from this location and concerns for public safety.
- Claimed that there are errors and omissions in the EIR.
- Advised that her group had forward written comments this afternoon outlining significant issues with the EIR including air quality and greenhouse gasses.
- Estimated that this restaurant would create 1,847 million tons of CO₂.

Jean Lund, Representing Citizens for Sensitive Growth:

- Stated the need of everyone here to be respectful, truthful and factual.
- Admitted that she is going to get emotional speaking to this project.
- Reported that she and her group have spent much time over the last two plus years reading every line on every document associated with this project.
- Added that they have gone so far as to hire their own consultants.
- Reported that they have observed activity at seven different In-N-Out Burger locations and what we saw was they were on streets like Bascom and Winchester than one such as Hamilton near this Highway 17 interchange.
- Pointed out that there is a reason why many other cities do not want an In-N-Out Burger location.
- Advised that she is a 20-year resident of Campbell.
- Declared that Campbell has a real problem here.
- Stated that consideration of this project has been a waste of time and money.
- Said that she believes the Commission will make the right decision tonight.
- Concluded that while she likes the burgers at In-N-Out Burger, ever her dog knows this is the wrong location for one.

Dawn Haskin, Resident on Lenor Way, Campbell:

- Said that while a new lane at the SB17 exit may help the queue line there is no way to widen Hamilton Avenue.
- Reminded that drivers need to get to the far-right lane to get onto Almarida Avenue.
- Asked the Commission to vote no on this project.

Mark Field, Resident on Harrison Avenue, Campbell:

- Reported that he commutes by freeway every day where traffic comes to a standstill.
- Predicted that with 276 feet of queue, it will close off.

John Nourse, Resident on Dolores, San Jose:

- Said that Measure B funds are only intended as seed money.
- Added that it is unlikely that the current Federal Administration would fund this program.
- Urged the Commission not to support this toxic project.

Robert Erwin, Resident on N. Central Avenue, Campbell:

- Said that he is a retired firefighter.
- Stated that traffic in this particular area is difficult especially for inexperienced motorists who don't understand the road lane markings.
- Advised that the intersection in this vicinity are often blocked.
- Concluded that this project is terrible for Campbell and the EIR prepared for it is wrong.

Rob Knudsen, Resident on Pamlar Ave, Campbell:

- Reported that he recently read an article in the Mountain View Voice that reported about accidents and an increase in auto burglaries associated with the In-N-Out Burger location at Grant and El Camino.

Karen Petersen, Resident on Almarida Drive, Campbell:

- Cautioned the Commission that approving this project would be setting precedent and make Campbell known as the loosest community in terms of drive-thru policies,
- Declared that this location is too close to residents. Other nearby cities haven't done that for decades.
- Suggested that, if this project is approved, the Almarida driveway should be exit only.

Larry Hansen, Resident on Central Avenue, Campbell:

- Said that before the Commission votes on this proposal, the members should remember the point of discussion at previous meetings about this project.
- Stated that this project would result in significant changes to the traffic at Almarida.
- Reported that he is a Campbell resident since 1973. During those years, the City tried to cut down on cut-thru traffic using Almarida.
- Asked the City not to go backwards with this project at this location, which can be better used by a business other than a drive-thru restaurant.

Chair Rivlin asked the applicant, Jim Lockington, if he has any rebuttal to the public comments made up to this point.

Jim Lockington, Representative for In-N-Out Burger:

- Said he agrees with Ms. Jean Lund, on the need for respect and decorum.
- Stated that there have been some outlandish claims made.
- Said he would himself try not to become emotional.
- Suggested that the Commission let the Traffic Report and EIR stand on their own.
- Pointed out that a letter provided just a couple of hours ago is clearly a cheap stunt to delay or stop the project.
- Concluded that all items have been answered.

Chair Rivlin called for a brief break at 9:51 p.m.

Chair Rivlin reconvened the meeting at 9:56 pm.

Mark Ebner, Resident on Milton Avenue, Campbell:

- Reported that he served on this Commission for eight years. Kohl's went in during that time.
- Reminded that the ranking for this intersection is already a "D-". Now we want to add an In-N-Out Burger?
- Asked if any members of the Planning Commission have gone to an IN-N-Out and observed? The one at El Camino and Grant Road is a nightmare and has required the use of barriers and signage by surrounding businesses.
- Stated that is not what Campbell needs.

Glenn Traw, Resident on Ricky Drive, Campbell:

- Reported that he is a 40-year resident of Campbell.
- Guaranteed that there will be traffic problems with this project and to think otherwise is delusional.
- Declared, "The people of Campbell don't want it. Period."

Niki Canotas, Resident on Sunberry Drive, Campbell:

- Said that she has been living in Campbell since 1952.
- Pointed out that the City will lose 30 trees with this project.
- Suggested a preference for orchards but said she knows that would never happen today.
- Stated that In-N-Out is great.

Sergio Lopez, Resident on Union Avenue, Campbell:

- Identified himself as a candidate for City Council.
- Stated that this project is the wrong fit for this neighborhood.
- Added that as this site is located close to Light Rail it would best serve the community if it were a pedestrian-friendly zoned area.

Audrey Kiehtreiber, Resident on Walnut Drive, Campbell:

- Said that there are issues including traffic, noise and pollution impacts.
- Pointed out that she attended the GPAC meeting recently where they are strongly considering a change forbidding fast food restaurants. They are not healthy and there are already more than 30 fast food restaurants in Campbell of every type.
- Urged the Commission to listen to these residents
- Concluded that this project should not go forward.

Charles Benjamin, Resident on Harrison Avenue, Campbell:

- Advised that he has been a Campbell resident since 1964.
- Recounted how just last month he was in Stockton and saw a right turn up ahead where traffic was stop and go for three blocks. The next right was to enter the queue for an In-N-Out Burger.
- Admitted that he had “visions of approaching Almarida.”
- Said that this site is on a short block and it is already one of the challenging drives in the valley.

Richard Sheehan, Resident on E. Campbell Avenue, Campbell:

- Stated that he is a 55-year Campbell resident.
- Said he has visited the In-N-Out in Mountain View and goes there on occasion.
- Opined that El Camino is busier than Hamilton at Highway 17 and he has never seen a problem on El Camino cause from In-N-Out traffic.
- Said his concern is that this lot has been vacant for several years offering no revenue potential for City services. Something needs to go in there.

Jeanne Navarra, Resident on Harrison Avenue, Campbell:

- Said she has been a Campbell resident since attending Campbell High School.
- Urged the Commission to vote “no” on this proposed In-N-Out Burger location.
- Stated that this is already a very impacted area and she doesn’t know how they are going to tolerate 24 cars and more.
- Pointed out that anyone that does not drive this area doesn’t not what the nearby residents are experiencing.
- Said that accidents are just waiting to happen all the time.
- Questioned the “reality” of all of those reports.

- Advised that cut-through traffic is occurring in this neighborhood already.
- Stated that she is concerned.

Glen Lynch, Resident on N. Central Avenue, Campbell:

- Said that he resides in this neighborhood.
- Stated that although the EIR states that the queue is adequately sized, that conclusion could be right or wrong.
- Pointed out that when the queue fills up, traffic will end up on neighboring streets as people go around the block to try again to enter In-N-Out's queue.
- Declared that none of these neighbors bought a home on a commercial street.

Marina Lemas, Resident on Hurst Avenue, Campbell:

- Stated that there is an invisible traffic domino/ripple effect.
- Said that she lives on Hurst that is at the far border of Campbell to the east, where traffic from San Jose/Willow Glen comes west to get to Highway 17.

Peter MacDonald, Attorney representing property owners of project site:

- Said that he is here this evening for the project site owners, J.G Dutra & Son.
- Pointed out that this property provides retirement revenue and has been vacant for years now.
- Stated that they are trying to be as good a neighbor as possible with a vacant property.
- Pointed out that In-N-Out is known for keeping their properties up. It is a non-alcohol business and no queue line backing into the street. They enforce their lines.
- Cautioned that regional traffic problems require regional solutions.

Chris Bracher, Resident on Lovell Avenue, Campbell:

- Said that he is a third-generation resident of Campbell.
- Reported that he has watched traffic increase over the last 50 years.
- Stated he is a member of the GPAC but missed the last meeting.
- Said that traffic will continue to increase whether we like it or not.
- Admitted that he is a fan of In-N-Out and will go there with his father.

Rosalind Bene, Resident on Almarida Drive, Campbell:

- Said she considers herself an Almarida Drive traffic expert.
- Scoffed at the staff comment that traffic might impact Almarida "a little bit."
- Reported that Kohl's does not allow right turns from their parking lots. She patronizes both Kohl's and Panera's but cannot turn right to go back home from there.

Angela Hashiko, Resident on Monica Drive, Campbell:

- Said that crime reports indicate more common occurrences of auto burglaries.
- Stated that In-N-Out's proposed business hours to 1 and 1:30 a.m. is of concern.
- Reminded that bars closed between 10 p.m. and 2 a.m. so this location could draw those patrons here.
- Opined that this is not really a family-friendly business.

David Maxwell, Resident on Monica Lane, Campbell:

- Stated that Grant Road is no Almarida. There is no comparison.

Russ Pfferrman, Resident on California Street, Campbell:

- Suggested that the Commission can deny this proposal.
- Stated that the reports haven't covered all areas of concern.
- Recommended that the Commissioners vote against it and kill it.

Charles Drew, Resident on N. Central Avenue, Campbell:

- Pointed out that there are tons of numbers being provided in reports and supporting documents.
- Opined that there has been a failure to respond to residents' questions.
- Added that there has been a lack of proper analysis.
- Asked the Commission not to trust the numbers in the EIR as they don't appear consistent.
- Said that the only beneficiary is In-N-Out.
- Stated, "Please vote no."

Mary Ellen Duell, Resident on S. Second Street, Campbell:

- Stated that she is in support of In-N-Out. They've played by the rules and have done everything they've been asked to do.

Jada Polk:

- Challenged the revenue estimate of \$40,000.
- Pointed out the traffic implications.
- Stated that Bascom to Almarida is like an hourglass that will only get worse with a high- traffic restaurant.

Greg Salerno, Resident on Almarida:

- Stated that he is an In-N-Out fan although he doesn't eat there anymore.
- Added that they will make a ton of money.
- Pointed out that the other In-N-Out Burgers nearby are in larger commercial areas. No one lives around those.
- Said that Campbell is a wonderful town. Everyone loves its Downtown especially the young.

Lisa Hellerman, Resident on Monica Lane, Campbell:

- Reported that there is gang activity in her neighborhood as well as a litter problem.
- Questioned whether the EIR considered the pending additions to Santana Row.
- Suggested the Commission listen to the residents who are here tonight against this proposal.

Matt Zinchelli:

- Said that he was here five years ago because of a great concern about the density of fast-foot restaurants.
- Recommended that the Commission consider something other than fast food for this location.

Charles Benjamin:

- Said that the Commission has spent a lot of time talking about the Highway 17 exit and the cost and timing for improvements that would include another turn lane onto Hamilton Avenue.
- Said the question remains how to mitigate the gridlock occurring to the right.

Brandon Rasotto:

- Expressed concerns about the traffic situation in this area including around Castlemont School where there are speeders and gang problems.
- Added that Almarida is being used as a cut-through to get to Highway 17 as well as to the Home Depot.

Jean Lund:

- Said that she is on NextDoor and recently read a lady's experience of nearly being hit by a car on Payne Avenue.

Chair Rivlin closed the Public Hearing for Agenda Item No. 4.

Chair Rivlin asked staff if it were possible to have signs put up to restrict traffic from turning into residential neighborhoods.

Director Paul Kermoyan deferred that question to the Public Works staff.

Todd Capurso, Public Works Director, said that while such signs might be posted they are not enforceable by the Police Department.

Chair Rivlin asked if any of the residential streets could be closed off or dead ended to prevent use for cut-through traffic?

Todd Capurso, Public Works Director:

- Said that is a pretty extreme measure.
- Added that the City's Traffic Calming Policy can be reviewed on the City's website (www.cityofcampbell.com). Typical traffic calming measures include things such as speed humps to slow traffic.
- Said that there is no existing policy on when or how to close off a street.

Commissioner Hines asked about the potential for the Almarida exit from the project site to be right turn only.

Planner Daniel Fama said that the Planning Commission could require that the Almarida driveway be configured with some form of porkchop-shaped median to restrict the direction of entrance into and departure from the site.

Commissioner Hines asked about left-turns from Almarida onto Hamilton.

Planner Daniel Fama said that the Hamilton entrance would be a full use entrance with the street marked to prevent queuing stacking offsite and onto the public street.

Chair Rivlin asked if Campbell has any fast-food policies. If so, what is and is not allowed?

Planner Daniel Fama said that some cities have such policies, but Campbell does not. Drive-thru lanes are encouraged not to be visible from public streets.

Commissioner Hines asked if a queue from In-N-Out should overflow back onto Hamilton Avenue, what “teeth” does the City have included within its proposed conditions to address that problem?

Planner Daniel Fama said the condition that allows the Community Development Director to impose additional requirements to prevent that from occurring. If the condition fails to achieve compliance, that would be cause to proceed with a revocation and/or modification hearing for the use.

Commissioner Krey asked if there is room for a slow-down lane leading down Hamilton and into the In-N-Out location from Hamilton.

Planner Daniel Fama replied no.

Commissioner Krey:

- Thanked everyone for coming this evening.
- Said that great input was provided, and everyone remained polite.
- Reported that we have heard from many who support this proposal a couple tonight.
- Stated that In-N-Out is a high-quality company.
- Agreed that traffic is the main issue and other issues can be managed.
- Said we all drive the area and know the traffic is really bad in this area.
- Reminded that this area is zoned for higher-density commercial uses.
- Said that a Traffic Report and EIR were prepared for this proposal.
- Stated that we can do better than a drive-thru restaurant in this location. Without a drive-thru this use would not be as bad.
- Advised that he cannot support a drive-thru from this location or any drive-thru on Hamilton at all.
- Concluded that this is where he’s leaning.

Commissioner Hines:

- Stated his appreciation for the comments of Commissioner Krey and members of the public who spoke this evening.
- Explained that the Commission’s role is to review projects for consistency with the General Plan as well as Zoning requirements to ensure a use is not an undue load on community services. This is a good fit for Campbell and will contribute to the community.
- Pointed out that even no project at this location doesn’t improve this property and/or area.
- Said that the Commission needs to be able to rely on the materials provided to review a project. In this case, it is an EIR with Traffic Study that gives traffic increase at 1.65 percent. We must rely on the experts’ conclusions.

- Stated that a decision must be based on facts we've been presented with.

Commissioner Ostrowski:

- Said that this project is mostly consistent with the General Plan.
- Added that she has one area of concern, which is that uses located near public transportation should serve as a draw between that use itself and users of public transport. In this case, a Light Rail station is just a 10-minute walk away.
- Stated her second concern is the traffic.
- Agreed that extensive traffic surveys have been done but don't seem to quite pinpoint what we will see with In-N-Out in place.
- Pointed out that In-N-Out's peak hour is between 5:30 and 6:30 p.m. weekdays, which would equate to between 120 and 150 trips per hour. She has concerns about that.
- Said that it is the Commission's responsibility to make good decisions for our planet and community.
- Calculated that getting just 25 cars through the drive-thru lane(s) would equate to about 40 minutes.

Chair Rivlin:

- Explained that the members of this Commission are just regular citizens and residents of Campbell. We're volunteers. Yes, we want to be here.
- Added that he is happy and proud to live in Campbell. All of us want to make a positive impact. This is our home.
- Stressed the need to follow the right process.
- Stated that this proposal meets our Codes. It is compatible with the General Plan. Perhaps the General Plan doesn't meet 2019 sensibilities, but we must interpret from this General Plan.
- Said that there has been investment in this process and the applicant has worked with staff at its pace.
- Advised that at one point he challenged In-N-Out to consider something different from a drive-thru. They didn't meet that challenge. It simply might not pencil out for them to do so. It's not their model and they chose not to pursue it.
- Admitted he had hope for more innovation.
- Stated that it might sound like he's on the fence. That's true. He has made no final decision but rather needs more deliberation with his fellow Commissioners.

Commissioner Krey:

- Said that there are tough issues to take into consideration.
- Stated there is no question that this project meets our Zoning Code and General Plan standards. However, it is located on a road that is going toward a rating of "F".
- Suggested that perhaps a dine-in restaurant or a hotel might be preferred uses for this property.
- Concluded that drive-thru restaurants are not a good idea here.

Commissioner Ostrowski said the road rating is already approaching "F". She reiterated her preference for use on site that would support use of Light Rail.

Chair Rivlin reminded that the proposed use meets Code. He asked about the parking that served Elephant Bar.

Planner Daniel Fama said he didn't have that number available this evening.

Chair Rivlin said there would always be parking and traffic associated with this site. There is no use that does not have traffic.

Commissioner Hines asked about conditions around the project relative to traffic backing out of the property as the queue line becomes full. How can we limit the impacts outside of the site itself? How do we manage traffic off-site?

Commissioner Ostrowski:

- Admitted that she has concerns.
- Said that In-N-Out may be a victim of their own success.
- Stated that her concerns are about this business at this location and not this business itself.

Chair Rivlin said he commuted to work via Light Rail for several years. It is a difficult walk to this site from Light Rail. It is not a fun experience.

Commissioner Hines:

- Said the Commission must look at this as a project.
- Added that while he can appreciate the concept of focusing on connecting uses to Light Rail, he does not see how we can do that with this particular project given its zoning.

Commissioner Krey said he is not sure what uses are allowed. How about a hotel or residential use?

Director Paul Kermoyan:

- Said the General Plan discussion is for another day.
- Agreed that the General Plan is open to interpretation.
- Explained that building near mass transit is what the City has planned. Use of mass transit works where there is a concentration of jobs. For example, E-Bay is located really close to the Hamilton Light Rail Station.
- Pointed out that Campbell has areas designated for higher density residential where projects have already gone in. That includes along Bascom and Creekside. The west side of Hamilton is not currently zoned for residential. There are sites that are so zoned for higher density residential in the future but currently are in use by a tire shop, Citti's flower shop and others.

Commissioner Hines reiterated his question of whether there are ways to prevent the drive-thru queue from going out into the roadway.

Planner Daniel Fama said that there are measures in place. If imposed conditions are not working, the project would come back to the Commission for modifications. How it would be addressed would be based on real-world information.

Chair Rivlin asked if there is any consensus on any issue relating to this project? Late hours? Traffic?

Ostrowski said it is not our role to decide what else should go on this site. The question that remains, "Is this what we want to put there?"

Chair Rivlin suggested a straw poll.

Commissioner Krey said he would probably vote against this proposal.

Chair Rivlin said the project meets Code so he leans toward approval with conditions.

Commissioner Ostrowski said she is leaning to not supporting.

Commissioner Hines said he would want a condition in place to manage the drive-thru queue is kept on the property and not into the roadway. He pointed out that for Steak-N-Shake no drive-thru was allowed.

Chair Rivlin said that rather than not at all, let them come without a drive-thru.

Commissioner Ostrowski said the straw pole indicates a tie vote. What happens?

Director Paul Kermoyan said a tie is a non-decision or a de facto denial.

Commissioner Hines:

- Said that is not the most optimal result. This project is a part of the revitalization of this vacant property.
- A rejection or no vote could go to Council as well.
- Reiterated that this a good business that will bring jobs.

Commissioner Krey said that a sit-down restaurant would be better than a drive-thru.

Chair Rivlin said that the conditions around the use at late hours doesn't seem to have consensus.

Planner Daniel Fama explained that a denial requires a continuance to give staff the time to draft a resolution for denial.

City Attorney William Seligmann said that no action is required on the EIR if the motion is for denial.

Director Paul Kermoyan said that a resolution for denial would serve to set the record and clearly articulate why this project does not comply with the General Plan. It reflects the record.

Chair Rivlin said the current tie vote represents non-action.

Planner Daniel Fama said this result could be appealed to the City Council.

Chair Rivlin cautioned that the Commission cannot reject based on mass transit proximity.

Commissioner Krey said that the existing traffic impacts exceed what is claimed in the traffic report.

Chair Rivlin asked the City Attorney if he would be able to second a motion while serving as Chair of the meeting.

City Attorney William Seligmann replied that he could but would need to hand off the gavel to the Vice Chair during that action.

Motion: Upon motion of Commissioner Ostrowski, seconded by Commissioner Krey, the Planning Commission moved to deny the In-N-Out Burger project based on traffic LUT-A-B.

AYES: Krey and Ostrowski

NOES: Hines and Rivlin

ABSENT: None

ABSTAIN: Buchbinder and Ching

The motion failed.

Motion: Upon motion of Commissioner Hines, seconded by Commissioner Krey, the Planning Commission recommended the following:

- Adoption of a resolution certifying a Final Environmental Impact Report (FEIR) (PLN2017-120), including the Mitigation Monitoring Program; for property located at 499 E. Hamilton Avenue,
- Adoption of a resolution approving a Conditional Use Permit with Site and Architectural Review (PLN2017-117) to allow construction of a 3,812 square-foot 97-seat fast-food restaurant with a 28-vehicle double drive-through lane with outdoor activities (drive-up window), a 48-seat outdoor dining area, late-night hours, and associated site, lighting, parking, refuse collection, and landscaping improvements, including a Minor Alteration to the Hamilton Avenue Streetscape Standards and an adjustment to the landscape requirements, and an increase to the allowable fence height, with a six-month review of hours and traffic by the Community Development Director to ensure no problems and/or a return to the Planning Commission for modifications if there are concerns;
- Adoption of a resolution approving a Tree Removal Permit (PLN2017-118) to allow removal of protected on-site trees; and
- Adoption of resolution approving a Sign Permit (PLN2017-119) to allow a greater number of signs and an increased sign area to permit installation of new directional, informational/menu, "running neon," and building wall signs;

by the following roll call vote:

AYES: Hines and Rivlin
NOES: Krey and Ostrowski
ABSENT: None
ABSTAIN: Buchbinder and Ching

This motion failed.

Chair Rivlin advised that this results in a deadlock. He asked the Commissioners if they would approve In-N-Out without drive-thru. Would that change any minds?

Commissioner Ostrowski said that she would consider a restaurant without a drive-thru but is not sure if she'd approve it.

Planner Daniel Fama reminded that this is a request for a fast-food restaurant. Even if In-N-Out doesn't go forward this property owner would still have the entitlement in place to allow fast food on site without a drive-thru.

Chair Rivlin:

- Asked if there is anything the Commission can do to bridge the gap.
- Said that tying this site to mass transit would not be line at this location.
- Reiterated his proposal for approval without drive-thru service.

Commissioner Krey asked staff for their input on removing the drive-thru component.

Mark Spencer, W-Trans, Traffic Consultant:

- Said that even without inclusion of drive-thru service, this use would result in a similar set of impacts than if there is the drive-thru service. A similar set of impacts either way.
- Stated that, "It is virtually the same."
- Added that there might be a slight reduction but in essence it is the same.

Item 4 does not pass.

Commissioner Hines thanked the public for their participation.

Chair Rivlin advised that this action is final unless appealed in writing to the City Clerk within 10 calendar days.

REPORT OF THE COMMUNITY DEVELOPMENT DIRECTOR

Director Paul Kermoyan had no additions to his written report.

ADJOURNMENT

The Planning Commission meeting adjourned at 11:51 p.m. to the next Regular Planning Commission Meeting of **September 24, 2019**.

SUBMITTED BY: _____
Corinne Shinn, Recording Secretary

APPROVED BY: _____
Andrew Rivlin, Chair

ATTEST: _____
Paul Kermoyan, Secretary