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>> Commissioner Bit-Badal: Good evening. My name is Edisa Bit-Badal, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, July 25, 2012. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking ticket validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioners' questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all the commissioners are present. Deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on items for which deferral is being requested. If you want to change any of the deferral dates recommended or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, to continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Deferrals. Staff.

>> No items are recommended for deferral tonight.

>> Commissioner Bit-Badal: Thank you staff. Consent calendar. Consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of these ideas individually please come to the podium at this time. Item 2A. Staff.

>> Staff has no additional reports tonight.

>> Commissioner Bit-Badal: Thank you. Do we have any motion on this item?

>> Move adoption.

>> Second.

>> Commissioner Bit-Badal: All approving please say aye. [ ayes ]

>> Commissioner Bit-Badal: Public hearing items. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda, such as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. Item 3A. Staff.

>> Thank you, Madam Chair. This conditional use permit and determination of public convenience or necessity to allow the onsale and offsale of alcohol at a drinking establishment with outdoor seating area at a vacant commercial space in downtown. The state's Department of Alcohol and beverage control is asking for the

determination for only the onsale of alcohol because the site is located in a census tract over-concentrated with alcohol establishments and in that census tract with high crime. The offsale of alcohol is allowed only in conjunction with the drinking establishment. Staff is recommending approval of this project because one, late night uses are not proposed past midnight, the project conforms with city council policy 6.23, which are guidelines for the evaluation of night clubs and bars, and third, the project supports the general plan's vision for a viable downtown. The police department does not oppose this project. That concludes staff's report.

>> Commissioner Bit-Badal: Thank you. Staff is the applicant here? You may come forward and speak for up to five minutes. And please state your name.

>> Commissioners, Dave Yaki HMH, 1550 Oakland road San José. We are the consultant for the business owners for this application. We first off want to thank staff for their effort getting us to where we are today. We also agree with the recommendation for approval of this beer boutique establishment. We also put on the record that we submitted a letter yesterday from ourselves HMH as well as a support letter from the San José business association, downtown association recommending support for our project. We want to spend the next couple of minutes describing, having the business owners describe a little bit more about why they want to locate in San José and more what their operation is looking to do for this establishment so we're -- without further ado I'm going to introduce Jen, one of the business owners.

>> Good evening, thank you for let me speak, my name is Jen sandhu one of the co-owners of the ISO beers. We are looking to open our doors in downtown San José, we believe in the beer craft industry and in Downtown San José. Currently craft beer has a name in the Bay Area only in San Francisco and also in Oakland. This has to change. San José has to be on the map for craft beers as it is becoming a large phenomenon in our country. It is part of a microbrew organization, a setup that's taking not very long to get started and we're looking to increase its viability and capacity in the San José area in the next few years. We are looking to open in Downtown San José because we believe that the historic downtown area around City Hall here would really benefit from having a craft brew industry -- craft beer shop open so close as the craft beer industry also has very historic grounds in the United States. Craft beer is coming up once again, and we think that the industry can really benefit from being in a

historic area and also benefit from everything that downtown San José has to offer. ISO beers will also be providing San José with a clientele, a different adverse clientele that will continue to pay patronage to the many other businesses that are located in San José. ISO beers is -- most of our -- sorry I'm a little nervous -- most of our clients will be individuals were either in the range of 30 to 50, or somewhere where they're looking to go out in the -- in San José area, enjoy San José, go to the opera, go to a theater, enjoy really good craft beers. And micro beers you can compare them to fine French wines in that same arena. So we are a business that is looking to enhance what San José has currently built and we are looking to continue to build its reputation up as well and we would like to do that through craft beers because that is our passion. For us we really like the Downtown San José region for that reason. The other thing is we are a very unique business. We are more of a beer boutique than any malt liquor store or any other kind of beer or wine establishment. We are individuals that are looking to represent local breweries, local crafts, local businessmen to come and provide their interesting beers, provide their meats, cheeses and breads to our patrons and also to build that kind of relationship with the downtown businesses. We're not going to have any foods besides what I just mentioned. So individuals who are going to be looking to have beer at our establishment are going to go out and eat and enjoy food in our downtown area. And that's only going to better the business for Downtown San José. So if you have any questions I'm here to answer them. Thank you very much.

>> Commissioner Bit-Badal: Thank you. We do have one question from Commissioner O'Halloran.

>> Commissioner O'Halloran: Just a couple questions about clarification. Are you planning or clarifications. Are you planning any on-site brewing, is one question. And then, are you doing offsales, and then sit just beer tasting, or actual sales of like pints, and sit by the keg or bottles? So just a little bit more on the specifics.

>> Okay. So that was a three-part question. May I please repeat for you? The first part was if there's going to be any -- would you mind repeating for plea?

>> On-site brewing.

>> On-site brewing that's a no. There's not going to be any on-site brewing, we understand the three tier process and we are only on the sale process. Number 2 is if there's going to be any large sizes of pints or kegs or onsale premise --

>> Are you selling pints like you'd get at a brew pub or sit just tasting? And then sale of -- for offsite?

>> Okay. So our onsite, my husband's going to answer that a little bit more. He's a little bit more on the technical end of things, is that okay with you? Just a few things.

>> High guys, so our main pours are going to be eight, ten and 12 ounces. We're not serving any pints. We're not doing pitchers, we're not serving any large-size glasses. It's going to be small tastings. The -- some seller of beers, rare beers we might do less, five, six, seven, wherever we decide to go.

>> And the offsale part.

>> Offsale is going to be a small part of our operation. We allow customers to purchase beers to go home, that's part of our concept, on and off premises beer shop. It's on and off.

>> It sounds like pretty unique. Are there other places in the Bay Area that are similar to the concept you're proposing?

>> There is one in San Francisco, city beer store, they started roughly five, six years ago. Oakland, beer revolution, they started I think about two years ago.

>> Commissioner O'Halloran: Thank you.

>> Anything else?

>> Commissioner Bit-Badal: Yes, actually we have one more question from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I have two questions, also. One is regarding school and safety, second is a related question regarding hours of operation. I know the paperwork says 12:00 a.m., midnight. Is you know, what your -- you have to close your doors by. Do you have experience with retail in Downtown San José at night?

>> We have friends, and we used to be in the events and we've talked to a lot of the police officers so we know how everything goes, and how -- when to close the doors and when to get the folks out. And when not to serve beer to intoxicated people. So as far as the schools and the existing -- I'm sure you want to ask about the homeless population and what it has to do with ours. We're not serving any malt alcohol. We're in the serving bud, Coors, Miller, any of those products. The people coming to downtown to go partying and night clubbing, they won't go to our place.

>> Commissioner Kamkar: As far as sales would you sell any single or would you sell like in one of the bulk type of a -- I don't know if six-pack is appropriate in craft industry.

>> Majority of our beers are 22 ounces. Some once from Belgium usually come in 750s. Some are 11 ounces is what a typical bell January beer is and some American beers they don't come in six packs and 12 packs, they're just single bottles and most of the single bottles are double the price of a Budweiser six-pack.

>> Commissioner Kamkar: I'm pretty satisfied. I you know, highly suggest you know if you get your permit, that you start out slow, you know, and sort of work your way towards that 12 mid flight.

>> Definitely and during the weekdays we will be open only until 10 p.m. The weekend that will be for the 12 a.m. We will take that under advice the opening.

>> Commissioner Bit-Badal: Thank you, one more question from Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I apologize, I didn't hear what you said about the food. You said there was limited amount.

>> We're going to be working with local craft cheese and bread and meat individuals who are making these products here in the San José community and that's the only kind of food that we're going to pair with our wine -- with our beers. And the reason for that is, number 1, there's food in your stomach as you're drinking something with alcohol in it. But we don't want to take away business from our fellow restaurants and our downtown historic association committees. So we definitely have that, and again we want to emphasize that it's local meats, local cheeses, and local breads. But that's the extent of the food we have. There will be no kitchen, no preparation of anything. It will just be a matter service.

>> We're planning on working with the existing restaurants around the area. We want to kind of work something out carry the menus, have food back and forth if the customers want to go over there, feel free. We're in the process of working things out so --

>> Commissioner Cahan: I definitely recommend using food, not that I want to take any business away from the local area. But having been to the Denver brew fest and the samples are really, really small but it just takes a few before you start to feel the effects.

>> Exactly.

>> Commissioner Cahan: So it's good to have some food available to help in that tasting process.

>> Definitely.

>> Commissioner Cahan: I appreciate the unique tasting that you'll bring to the area.

>> If okay everything, we are hoping on keeping cold sandwiches, things like that if somebody is hungry and don't want to go across the street.

>> Commissioner Cahan: Appreciate that, thank you.

>> Commissioner Bit-Badal: One more question is from Commissioner Kline.

>> Commissioner Kline: Just a question from someone who knows absolutely nothing about beer. For a layperson, this sounds like a wine tasting room concept where you can go and get small tastings, small amounts or you can actually buy a glass of wine. And you can buy bottles, obviously take home with you. And sometimes you can buy cases that come with you. Is the concept pretty much the same?

>> Very similar but with craft beer.

>> Commissioner Kline: So it's the same concept as a J lore, on the Alameda, if you've been there?

>> I don't think we've been there.

>> Commissioner Kline: You have cheese and crackers and make sure that you're clearing your palate between each of the tastings and make sure there's something in your stomach. So that's kind of for a person who has never seen this, you can relate it to a wine-tasting room?

>> Definitely. We definitely are going to be the host for individuals to develop their on palates when it comes to developing interest in beer and we'll have meat cheeses and bread to clear their pallets and enjoy food.

>> Commissioner Kline: I'm really looking forward to it.

>> Commissioner Bit-Badal: We don't have any more questions. We have three speaker cards. First one is Kai sun and the second one is Dan Essep and third is Shane Campbell. Please come forward and state your name.

>> Hi, I'm Kai sun and I just wanted to express my approval and support of this project. I've been a huge craft beer fan for ten years now. And traditionally I had to travel up to Seattle once a year to gain access to what they'll be providing so it will be nice to have something at home. And I think it would drive more business in downtown. There's nothing like it in the South Bay that I've seen. That's it.

>> Commissioner Bit-Badal: Thank you. Shane Campbell.

>> Hi. I'm Shane Campbell. I'm also in support of ISO beers opening. And mainly because the way that I would go round getting craft beer myself is to go to a liquor store, peruse for a while try and figure out what I want and go home with something I've never tried before and see if I even like it. But being able to come down on public transportation to Downtown San José I can come and find a taste of beer, if I really like it, as you were saying I could buy a bottle, I could buy a case and I could be really satisfied, and know exactly what I'm getting. And that's something that San José needs, something we don't have to go all the way to San Francisco for or Oakland, in the crowded freeways, and it costs a lot of money to go up there and have a lot of fun. But here, I mean as I said I can take a light rail, come down here for an evening and just have a great time. And I'm in support, thank you.

>> Commissioner Bit-Badal: Thank you. And Dan Essef.

>> Hello, my name is Daniel Essef. I live on 9th and Julian downtown here. I'm in support of ISO beers. I was very excited when I first heard about this project and looking forward to moving through and becoming a reality. Currently if I wanted to do something like this, try a beer as well as bring one home, closest one I knew of was actually in Davis, California. So been doing that. I'm really looking forward to this one here. I think it's very good, I'm a beer fan and I think there are a lot of beer fans here in the South Bay in particular. So I think that this project will not only benefit San José, but also the entire South Bay. Think it will bring a lot of business into the

area. Lot of people are looking for this type of thing to be able to go and enjoy. And it is very -- it is a trend that's on the rise. And I think a lot of people will enjoy it. So thank you.

>> Commissioner Bit-Badal: Thank you for your time. And applicant has five more minutes. If he would like to come forward and respond to or add or -- to the comments. Again, it's up to five more minutes.

>> Dave Yaki again. I just want to say we're here to answer any questions you guys have and we look forward to the opportunity to bring this business into a vacant store front in Downtown San José so I'm here for any questions, thanks.

>> Commissioner Bit-Badal: Sir, we have one question now from Commissioner Kamkar.

>> Commissioner Kamkar: Sorry, thank you, Madam Chair. How about the music on the patio? Given that we got residents across the street, how are you handling the music?

>> I believe that there's going to be some low music, nothing with subwoofers or anything outside. Music to kind of pipe through to give an ambience, nothing too loud like you'd see in a bar or anything like that. Nothing remotely close to that. It's for patrons to sit outside and enjoy a beer, they don't want to cease an atmosphere that you can't talk about the beer if you're enjoying it. Nothing like that.

>> Commissioner Kamkar: The speakers would be faced maybe opposite to the residents just in case?

>> I'm sure they would be open to that if it was too loud or had issues.

>> Commissioner Kamkar: That's all, thank you.

>> Uh-huh.

>> At this time we have no plans for music or anything else. Music-wise. If our landlord permits and they're pretty on top of things we might do something maybe on it like annual basis maybe something, no loud music, so we have no plans for music at this time. It's going to be greenery in the front, a lot of greenery in the sides and we just want the folks to relax and enjoy what they're drinking.

>> Commissioner Bit-Badal: Thank you. Thank you, commissioner. Yes. Do we have a second? Thank you, all approving say aye. Thank you, staff.

>> Thank you, Madam Chair. Staff just wanted to point out that the draft resolution includes permit conditions that address noise and late-night issues and -- or I guess towards -- late-night issues heading towards midnight. The permit includes limiting -- includes a nuisance permit condition, and also, indicating that any neighborhood complaints regarding the noise can be addressed to code enforcement, and I've been looking through here. I could have sworn I included a permit condition addressing noise, audible past 10:00 as well or anything that is audible from interior of a residential unit as well. But there, like I set there are a few permit conditions to address some of those compatibility issues.

>> Commissioner Bit-Badal: Thank you. We have a question for you from Commissioner Cahan.

>> Commissioner Cahan: Madam Chair, it is not a question. It is a motion when staff is done with their summary.

>> Yes, that concludes staff's comments.

>> Commissioner Bit-Badal: Okay, great I will ask a couple of questions before you place your motion and second forward. Commissioner Cahan, with all due respect. I would like to know when we don't have P bid because the state right now, the P B.I.D is doing the cleaning of the downed. How long is that for or how long is the contract for? It is something the property owners vote for it. We put that in reports as conditions that they need to clean up if the P B.I.D goes away or is that something that we do?

>> Yes, the permit condition also includes, it's actually condition No. 14 regarding exterior cleanup indicates that the applicant would be responsible for removing any litter at the subject site or any adjacent properties within 300 feet of subject property by 8:00 a.m. on a daily basis.

>> Commissioner Bit-Badal: Thank you. And also as your report had stated, I was reading page 5, that's write was addressing it from. But also your report stated they can have their operation up until midnight even though they stated this evening that they want to have the business open till 10:00. So under our conditions in the future they can come back and actually, they don't have to come back to us, actually, they can extend the permit is that correct?

>> Yes, the permit allows hours of operation until 12:00 midnight seven days a week. Should they want to operate after 12:00 midnight they would have to come back for a conditional use permit amendment.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I would like to make a motion to approve per staff recommendation the conditional use permit and determination of public convenience or necessity to allow an onsale and offsale, of Alcohol at a drinking establishment with outdoor seating area on a .83 gross acre site in the D.C. downtown primary commercial zoning district.

>> Second.

>> Commissioner Bit-Badal: Do you wish to comment? Commissioner Cahan.

>> Commissioner Cahan: I think this will fill a void in the area. There are many great establishments for tasting wine, fine wines, and there are a great variety of beers out there and I appreciate the fact that you'll be bringing

those. There are some great flavors out there. So it's good that we'll have a place to be able to try the variety of good, high-quality beers.

>> Commissioner Bit-Badal: Thank you. And Commissioner Yob.

>> Commissioner Yob: Just want to thank you for the unique business idea and responsible application and assuming the motion passes we wish you the best of luck.

>> Commissioner Bit-Badal: Thank you. And now we will vote by light. And the motion passes unanimously. Welcome to the City of San José and Downtown San José. We wish you much luck. Now we're going to item 3B. PD 12-012 and ABC 12-002. Staff.

>> Thank you again Madam Chair. This planned development permit and determination of public convenience or necessity is to allow a drinking establishment at an existing hotel and again similar to the previous project, the state's Department of Alcohol and beverage control is requesting the determination of public convenience or necessity. Staff is recommending approval of this project because it conforms to the general plan and zoning designations. The drinking establishment is only accessible from the inside of the hotel. Late-night uses past midnight are not proposed and lastly the project is compatible with surrounding industrial and commercial uses. The site is located over 3300 feet away from the nearest residences public schools and parks. And again, the Planning Department does not object to the proposed use at this hotel. This concludes staff's report.

>> Commissioner Bit-Badal: Thank you staff. And is the applicant here? Would you please come forward, you have up to five minutes. Sir, since we don't have any speaker cards on this item, you may have up to five minutes but if not, you can also --

>> I don't think I'll take up five minutes but my name is Rupesh Patel. I'm one of the owners of the hotel. We're proposing a bar inside of the hotel for the simple fact of convenience with our guests. With San José growing with conventions we have tons of, wine or beer and with our location being a great location next to the airport we

actually don't have many restaurants or bars or anywhere where somebody can go and get a glass of wine go back to the hotel and go to bed for their work the next day. So our bar is strictly only for our guests, there is no marketing for the outside. You have to enter through the lobby and they wouldn't be open past midnight at the latest also for noise purposes within our hotel. So that's pretty much it.

>> Commissioner Bit-Badal: Thank you. We don't have any questions for you. Thank you. And at this point I will ask for a motion. And second do we have a second to close the public hearing, all those accepting say aye. And staff.

>> Staff has no additional comments at this time.

>> Commissioner Bit-Badal: Great, thank you. Do we have a motion? Commissioner Kline.

>> Commissioner Kline: Move to approve 3B as recommended by staff.

>> Commissioner Bit-Badal: And do we have a second? Second. All those approving please vote by lights. And the motion passes unanimously. Thank you. Item 3C. GC 12-009. Staff. I'm sorry. I just want to mention that Commissioner Yob needs to recuse herself from this item. Thank you.

>> Commissioner Yob: Yes, Doug Aikens and Joan Gallo of my law firm represent Mr. and Mrs. Phillip Cohen and the surrounding neighborhood association. And although I'm not personally involved in the representation of that matter I'm recusing myself to avoid any appearance of impropriety.

>> Commissioner Bit-Badal: Thank you, Commissioner Yob and at this point we will actually wait for to you leave the chambers. Staff.

>> Thank you. This is a planned development rezoning on the subject site commonly known as Santana Row to allow for the full buildout of the entire development site to include additional office square footage and to

reallocate from the pool of total commercial square footage more square feet to restaurant and drinking establishments. This zoning also is proposing to modify the development standards to allow for retail auto sales to be a permitted use and to change the parking requirement for commercial uses. Multiple letters regarding this project have recently been received. Most of these letters were e-mailed to each commissioner you but all of them have been provided to you in hard copy this evening. Additionally I have also provided to you a set of revised development standards as well as responses to comments on the mitigated negative declaration. The items revised in the development standards from what was attached to your staff report have been highlighted in yellow for you and the standards are being revised to remove reference to entertainment uses. This is being done since the site was last rezoned the city has deregulated entertainment as a use in the zoning ordinance and the city only regulates the underlying use of the site which would typically be the restaurant or the drinking establishment. Entertainment is regulated now strictly under title 6 of the municipal code and is done so by the issuance of an entertainment permit by the police department. A report to you on response to comments on the mitigated negative declaration will be provided to you shortly by the environmental and Public Works staff. So as discussed in the staff report, the subject rezoning is consistent with the goals and policies of the San José 2040 general plan, specifically, the uses contemplated under the zoning are consistent with the site's land use designation of regional commercial and urban village area. The general plan supports intensification and urbanization of regional commercial areas in order to promote increased commercial activity, more walkable urban environments in regional commercial districts. The site as I mentioned is also in an urban village area boundary which is an area of the general plan that is directing new employment and housing growth and these are areas that have potential to develop into vibrant walkable mixed use urban communities which Santana Row already exhibits. Therefore, planning staff recommends that the Planning Commission find that the project's consistent with the general plan and recommend approval and the California Environmental Quality Act and recommend approval of the proposed rezoning on the subject site. I will turn it over to environmental and Public Works staff to comment on the mitigated negative declaration. Thank you.

>> Thanks Leslye. John Davidson with the environmental review section of the planning division. We received three letters on the environmental review and they've been distributed look with written responses. Two letters are from the VTA and CalTrans, and they relate to traffic, and Karen Mack from Public Works is going to deal with

those. The third letter which was received after the end of the comment period was written on behalf of Mr. and Mrs. Philip Cohen who are residents of Santana Row. The two issues that are highlighted in that letter are that A, the negative declaration's conclusion of less than significant adverse land use compatibility impacts is factually unsupported and incorrect. And 2, B, the END omits any analysis of the project's operational noise impacts. And the important thing to note here with the environmental review is that this environmental review document tiers off of the general plan 2040 EIR. So there was lot of analysis that went into the general plan EIR that's incorporated into this environmental review. And both issues are disclosed and analyzed in the general plan update EIR. Specifically, page 160 talks about land use incompatibilities. And recognizes that high intensity development might be incompatible with adjacent low density residential neighborhoods. And in a similar fashion the noise section of that EIR talks about the fact that future operations, that office, commercial, retail or other noise-generating uses developed under the envision plan could substantially increase noise levels at noise-sensitive land uses or could expose receivers to noise levels that exceed the city's municipal code noise limits. So those issues are analyzed and the EIR finds that both of these impacts will be less than significant. Given that the general plan policies and existing regulations including noise attenuation for the interiors of all units at Santana Row have been and will be implemented to minimize to help minimize conflicts. So like I said, Karen Mack will discuss the letters from VTA and CalTrans. I'm available for questions. Thank you.

>> Good evening. This is Karen Mack from Public Works. Two letters were received regarding traffic. The traffic impact analysis was prepared by hexagon consultants. It conforms to both the City of San José's transportation policy and the Valley Transportation Agency congestion management program. The report identified level of service impacts at Stevens Creek and Monroe which is scheduled to be modified as part of the I-80 280 Stevens Creek Boulevard improvement plan. This project will be required to make a fair-share contribution to the project, to the larger project. The VTA's letter supports the proposed land use intensification due to its location along regional transportation network. They further state that the project provides opportunities for strong transit use, increasing walking trips, reduced parking spaces, all concepts that are consistent with the City's 2040 general plan goals and the VTA's goals relating to transportation. The CalTrans letter primarily expressed concern that this project was not considered in the growth projections for the general plan 2040 and the 880-280-Stevens Creek Boulevard improvement project. In fact both the GP 2040 and the interchange project relied on traffic

model projections that included growth in the Stevens Creek Winchester growth corridors including this Santana Row site. Thank you.

>> Commissioner Bit-Badal: Thank you staff. And at this point I will ask the applicant to come forward. You will have five minutes to make a presentation. And please state your name.

>> Good evening, commissioners, assistant director of planning and the City Attorney. Thank you for the opportunity to present on our proposed rezoning for our Santana Row project. My name is Jan Sweetnam. I'm the West Coast chief operating officer for Federal Realty, the developer of Santana Row, and I've been involved with the project for 11 years now. I'm also joined here today with the project staff that will be able to answer any questions as we go through the hearing process. Staff has done a great job laying out what we are asking for and what we're proposing. I thought I'd spend a couple of minutes talking about two of the bigger items that we are asking for and kind of give you an idea of why we're asking for them. What is it we're trying to get to and why are we doing I.T. The two are one, the increase in the commercial square footage by 108,200 square feet and the second is a reallocation of our existing entitlements by 30,000 square feet to allow us to do some additional restaurants. Let me start first with the 108,200 square feet of additional commercial space. What this increase allows us to do is build a 228,000 square foot office building. That size is very important. Our target customer for this product is the mid sized and larger size Silicon Valley company that truly values the product and the location that we have for their talented and well paid employees. We're not talking about building commodity product. These will be great jobs. These will be employees that may live in San José, they're going to dine in San José they're going to shop in San José. These companies, these mid size and larger Silicon Valley companies are looking for larger blocks of space to put their employees in so they may collaborate. At 228,000 -- and they want the opportunity to expand over time. At 228,000 square feet we can serve this customer. Under our existing entitlements we cannot. The second positive outcome is with the larger project we will be building some additional parking to help our peak demand period parking requirement that we have. We've got a great -- you've got a great mix between the shared parking between the retail and the office. You have the office users that are there generally Monday through Friday 9:00 to 5:00. They tend to clear out on the evenings and weekends which are our peak parking demands. By building a larger project we're able to build more parking. The current lot has 111

spaces on it now, the new project would have 660. Perhaps we will be as successful in this project as we were in our last office building 300 Santana Row that we recently completed and finished up leasing last year. There all of our office tenants, all of our employers came from outside of San José to our city. They came from Sunnyvale they came from Mountain View they came from San Mateo and they came from Santa Clara and these are great jobs. That is why we are asking for an additional 108,200 square feet. Now going to the restaurants. We have learned a lot operating Santana Row over the last nine years and restaurants are a key component of what we offer to the public. They provide energy, they provide vitality. They are a draw. They are an anchor that draws customers to our property to help serve and bring customers to our retailers. But it's not just our retailers. A key aspect if not the key aspect of why the hotel visitors, why our residents, why our offer receivers want to come to Santana Row and be at Santana Row is because of the vitality, because of the breadth of offering that we have at Santana Row. As we continue to build out Santana we believe it is critical to expand this offering so we can continue to grow with what we're providing and keep the vitality of Santana Row alive and moving forward. That is why we are asking for the reallocation of 30,000 square feet within our existing entitlements. We think this is great urban planning. Well executed mixed use projects like Santana Row do a great job putting together housing with office, with retail, with restaurants. And putting that all together in a pedestrian-friendly environment and this promotes pedestrian traffic. When we have pedestrian traffic we're reducing overall traffic throughout the city. Now we know this, for a couple of reasons. I know this because I office on site and I tell you I rarely go anywhere else. It's not a coincidence that our office tenant Cassidy Turro is LD stakes number 1 customer by far. Our number one apartment customer works at Santana Row. Just yesterday there was a comment on -- that was input into the trip advisor, and it was a typical comment that Hotel Valencia gets, it ended with the three words, "need no car." Now, the VTA's letter is not conjecture. These types of projects, and Santana Row in particular, creates a lot of pedestrian traffic. It reduces overall traffic throughout the city.

>> Commissioner Bit-Badal: Thank you sir, your time is up and we do have a question for you and you have five more minutes at the end to continue your presentation. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Do I read correctly that the parking you just discussed the increase in parking will only be available for office use during the business hours? Monday through Friday?

>> Monday through Friday 9:00 to 5:00, that's right.

>> Commissioner Cahan: So no outside people will be able to use that parking?

>> That's all for the office, that's correct.

>> Commissioner Cahan: Thank you.

>> Commissioner Bit-Badal: And Commissioner Kamkar has a question for you.

>> Commissioner Kamkar: Thank you, Madam Chair. I have a question regarding the vehicle related uses. I just want to be on the record if I heard you correctly. You may be looking like a showroom when it comes to vehicle type of uses, you're not looking at tires batteries oil change smog check station you know as it's listed in the I.S?

>> So the plan there is, would be for an auto showroom enclosed within four walls. Anything that we would have in there that would be incidental service requirements would be within those four walls. So no, we don't have a -- we don't have bays with cars outside as you're going to be able to see or anything like that, that's correct.

>> Commissioner Kamkar: I see but within that four walls they would be able to do service, maintenance?

>> Yeah.

>> Commissioner Kamkar: Oil change smog?

>> Yes possibly but inside the four walls.

>> Commissioner Kamkar: Okay. And then the next item was, I guess you have addressed it. The large destination main brand entertainment uses, it would no longer be entertainment, it would be more of a restaurant, type with the latest type of --

>> Any time we do entertainment in the restaurants they have to go get an entertainment permit, that's correct.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Bit-Badal: Thank you and thank you so much for your time. We're going to move forward with our other speakers. We have several speakers on this item. I'm going to call the first three and then I'm going to call the following three afterwards. But the first three please come forward and line up. First person is Ron canario. Douglas Aikens and Bill Ford. Would you please state your name.

>> My name is Ron canario and I live in the Santana Row area and I'd like to object to increased development at Santana Row. I think that the traffic and congestion in that area is more than uncomfortable with already. And a substantial increase to the density of that site, which is you know I can see it's a very large development. Has got to make the traffic and congestion much worse. I'm sure you can change the roadways around and move things around and add parking lots and what have you and partially mitigate the traffic situation and congestion situation. But it just stands to reason with an increase to density to that extent the congestion has to get a lot worse. And that's what I would not like to see. I think there's already plenty of restaurants in Santana Row. There's certainly in my opinion enough apartment and housing in Santana Row. And I would just not like to see the density get any larger than it is. I just want to take the opportunity to express my opinion. Thank you very much.

>> Commissioner Bit-Badal: Thank you. And the next speaker is. Douglas Aiken. Would you please state your name.

>> Good evening, commissioners. I'm Douglas Aikens from the law firm of Hopkins and Carly. I have distributed my comments in writing, so I won't repeat those. But I would like to add a comment or two regarding the staff's explanation of CEQA compliance. Yes, the topics of compatibility and noise were discussed in the 2040 general plan EIR, but at that time, they were mere predictions of what might happen. Actual experience on the ground since then has shown that there's a chronic noise problem disturbs crime problem all kinds of consequences of poor design and jamming together of incompatible uses that have been thoroughly documented and are in this record. What the flaw here is that there is no analysis, in this negative declaration, of the consequences of adding tens of thousands of square feet of additional entertainment uses. No analysis whatsoever. So while you were predicting in the general plan EIR, actual experience and predictions regarding the consequences of this new rezoning are utterly missing from the record. The staff says that well, we have noise ordinances and design elements that will prevent these problems. Therefore they have been and will be mitigated. The logic of that is like we have speed limits and so there will be no speeding. We have criminal laws and so there will be no crime. We have noise ordinances and so there will be no nuisance noise. That is patently fallacious. We ask that you not approve the negative declares until it can be augmented with a legitimate analysis of noise and incompatibility, land use incompatibility. This rezoning is inconsistent with all general plan policies that favor and support the habitability and residential qualities of residential areas. It is inconsistent with the general plan. I'd be happy to answer any questions you have.

>> Commissioner Bit-Badal: Thank you sir your time is up and we do not have any questions for you. Next speaker is would you please come but before you speak I'm going to call out the following three speakers. Roman Perkis, Douglas Lussard and Scott Ambrose. Would you also please come forward and line up. Please state your name.

>> My name is Syl Keone. I'm representing myself and the 22 members of Villa Cornae homeowners association. We respectfully request the following. One, restrict the increased square footage to just bona fide restaurants. Bars and entertainment venues should be prohibited. Two, deny the changes in land use and maintenance the current restrictions on the types of allowed uses. 3, develop a comprehensive traffic plan which addresses the nighttime and weekend congestion to that which already exists today. When we purchased our

homes, we did so based on zoning for mixed use development anchored by high-end lifestyle and new concept boutique retailers. Santana Row's vision was to be the ideal urban neighborhood. We were aware that there were restrictions in place that prohibit Santana Row from ever becoming an entertainment retail zone. Since 2005, there has been a steady shift away from that vision. Today we have restaurants such as blowfish Sushi who morph into nightclubs after 10:30 on Thursday through Saturday night. The result is that we are subject to blaring noise up to 1:30 a.m. three nights a week and have material as you see increase in traffic noise and crime. Additionally we have seen conscious land shift away from retail anchored tenants to restaurants and bar anchored tenants. If the current rezoning is approved the total square footage for restaurants and bars would increase by 82%. From the original approval level in 1998. The negative effect of this increase has not been addressed. The current use restrictions were put in place to ensure a proper balance, would always exist between the rights of the homeowners and the wants of the developer. Unbelievably the current proposal includes allowing as a matter of right previously prohibited uses such as cemeteries, amusement arcades, all vehicle-related uses and emergency residential shelters. These sweeping and harmful changes are fundamentally unfair to Santana Row residents. Please consider these concerns and ensure that Santana Row remains to be true to the original development vision. Thank you. If you have any questions.

>> Commissioner Bit-Badal: Thank you sir we actually have one question from Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Mr. Keone, are you representing the homeowners association?

>> Yes, I am.

>> Commissioner O'Halloran: I was just curious. Is there a forum or vehicle for the homeowners' association and the developer to talk about these enforcement issues? As you said you know, things have changed significantly since 2005. Is there some regular dialogue that goes on about these kind of things?

>> I really appreciate and thank you for that question. The answer is we have tried repeatedly to work with FRIT and their agent to address this. This has been well documented going back at least three or four years when original people like Blowfish Sushi asked for development permits, and to this date nothing has been substantively addressed. This is why we are standing in front of you. We have lived this every day. And it's unfortunate that we have to go through this, and if FRIT was really true to the word of trying to build, develop a first class urban neighborhood they would sit down in a constructive and thoughtful way and address these issues. These issues can be addressed but not when we're standing and being pushed back and not having an opportunity to have a thoughtful dialogue. It's unbelievable.

>> Commissioner O'Halloran: Thank you.

>> Any other questions?

>> Commissioner Cahan: No, no more questions. Thank you, sir. Next speaker would you please come forward and state your name.

>> Good evening, my name is Roman Perkus I'm a resident of San José. I would like to state my full and unequivocal support of this project. Santana Row is a great example of how dense mixed use development projects should be done, and I think this city should be doing the most it can to encourage more development like this. We should be celebrating this in a time of our bad economy and not enabling NIMBY behavior. Such obstacles only discourage further development and continue the problem of a shortage of living space in this area. We have an obvious problem of soaring rents in the City of San José. We should be doing the most we can to facilitate more residential development, specifically dense residential development such as this. I read through some of the complaint letters from neighbors and they were discouraging, particularly those who believe the fact that they bought into this area allows them to dictate what goes on and outside their property. And I believe that's short sighted. We obviously all pursue our self interest. But it is in bodies like this encourage this behavior the problems of soaring rents and lack of affordability occur. So I urge this commission to not just approve this project but set a precedent that this is exactly the type of project the city and the commission wants to see and everything

possible to facilitate this in the future and I not even mention the obvious increase in sales tax revenue boost to construction employment and just the overall boost to the region's economy this will create. Thank you.

>> Commissioner Bit-Badal: Thank you sir. Next speaker is Douglas Lassard.

>> Members of the council, city staff my name is Doug Lassard, I'm here with Belmont village, senior vice president of the company, been employed by the company for 14 years. I'm here to oppose the project. Our assisted living community, Belmont village, is right next to the proposed office building. We have been a member of this community for over 10 years. We have over 140 residents, senior citizens who live in that building who will be directly impacted by this project. The proposed project of 220,000 square feet is extremely massive for the size of the site. It's extremely tall building, it's very large. It will be situated where it's 87 feet from our building. 87 feet from the windows of all of our residents who live on that side of our building. And that is just too close. It's too massive. The current zoning allows 105,000 square feet. What's wrong with that? Sure, there are tenants for 220,000 square feet. But I'm sure there are tenants for 105,000 square feet as well. The other thing is, you know the safety of pedestrians, and particularly our residents. Our residents like to walk from our building and go to Santana Row. It's a great project. It's been a very successful project. But bringing over 800 employees to that site right next to my building, it's going to be very difficult for my 85-year-old residents to walk from Belmont village to Santana Row. I think what's being proposed is just too aggressive and I would ask that you go back to what the original master plan was. This project has been -- the zoning has been changed six times. This is the seventh time that the developer is back here. They also indicated in the community meeting that they'll be back another time after this is approved for asking for more square footage for what they're proposing for lots 9 and 10 on the back side of Santana Row. So again I urge you to think this through, think through how it impacts my 140 residents who live at my building. Thank you.

>> Commissioner Bit-Badal: Thank you, sir. We have a question for you from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. So the three concerns that I took down, the size, the I guess the just too massive of a building, it's too close. And it's too dense I think, I don't know if you said that or not but you probably meant it. How big is your building?

>> Our building is 95,000 square feet.

>> Commissioner Kamkar: Okay and how many stories is it?

>> It is seven stories.

>> Commissioner Kamkar: Do you know how many stories this building is this one that they're proposing?

>> They're proposing a six-story building. But it's pretty high floor to ceiling ratio. I think it's pretty tall building.

>> Commissioner Kamkar: I believe the paperwork said it was about 90 feet or so.

>> I think that's right.

>> Commissioner Kamkar: When you say too close if I'm not mistaken they're entirely within their lot. So is your building, it's entirely within your lot, right?

>> Uh-huh.

>> Commissioner Kamkar: And you know I mean I was part of the task force that came up with the 2040 general plan. And that's the future of San José. You know, we need to intensify the use, so we can accommodate the number of people that are supposedly going to be here 2040, you know. So it was a shock to me when I first realized that's where it's going to be going, okay. And the plan has been approved and so this project even though it might be one of the first ones it's not going to be an anomaly it's probably going to be the way things are

going to be. You know, especially with popular sites like Santana Row. And then the final thing about your 85-year-old resident having trouble, can you expand on that? How would this building prevent her from going to Santana Row please?

>> Well, currently as it's designed there's a back driveway behind their building which is right adjacent to our in and out driveway.

>> Commissioner Kamkar: I see.

>> I've been told that their driveway will be an enter-only. But you know, Winchester boulevard is a very busy street. People will cut through that back driveway to get to the parking garage, to get to Santana Row. And they're going to be cutting right in front of our residents, employees, family members, that would walk along Winchester boulevard to get into that. So I just think it creates an unsafe situation for pedestrians that are walking along Winchester boulevard.

>> Commissioner Kamkar: So if they were to make the sidewalks a little bit wider, would that take care of that concern, make it a little bit --

>> Or not allow cars to enter that back driveway.

>> Commissioner Kamkar: Okay, thank you very much.

>> Thank you.

>> Commissioner Bit-Badal: Thank you. And we actually have one more question for you from Commissioner Kline.

>> Commissioner Kline: I was also concerned with that driveway. Just clarification. On the north side of your building you have your own driveway that goes underground to your parking, is that correct?

>> Right.

>> Commissioner Kline: And you have a circular driveway right in front of your building?

>> We do.

>> Commissioner Kline: And then there's a little bit of setback for this new building which is six stories. To the South of you, you also have an office building a six story office building which is a modern office building. What is the distance between your building and the building on the south of you?

>> I don't know.

>> Commissioner Kline: It's about 41 feet.

>> 41 feet?

>> Commissioner Kline: I measured today.

>> That's pretty close.

>> Commissioner Kline: That's pretty close. I see major intact impact on your residents clearly but I don't see anything that's unusual.

>> Any more questions?

>> Commissioner Bit-Badal: No we do not have any more questions but before the next speaker comes forward I'm going to call out more names. Peggy Bolger and Jerry Strangess would you come forward and Scott address and would you restate your name.

>> My name is Scott Ambrose I'm the administrator of Belmont senior living located there on Winchester boulevard. I've been working with our residents council in the past couple of weeks informing them of the development that's proposed and they have a letter they wanted me to read, due to the kind of later hour of this meeting, they were unable to attend, but wanted me to do so for them. As residents of Belmont Village Senior Living, we are writing to voice our concerns about the proposed zoning changes for Santana Row development next to our building. The proposed zoning change would directly and negatively impact our quality of life in the following ways. First unsafe traffic and pedestrian conditions. The proposed development would add approximately 500 parking spots to the lot adjacent to our building. In addition a proposal would locate the -- one of the main parking lot entrances from Winchester boulevard in between our building and the Santana Row development. Many of us walk to Santana Row and would be forced to cross in front of a busy parking lot entrance each day. This poses a considerable safety interest to us as we walk to and from Santana Row. Second is building height and design. The proposed building is taller than many of the other buildings in Santana Row and the design style is modern as opposed to a more Tuscan style. We currently enjoy the views of the Tuscan Santana Row along with large mature trees that grow along the property line between our property and Santana Row. If this proposal, if approved this proposal would result in an ugly modern office building being the only view from our apartment windows. Third, poor air quality. The addition of 500 parking spaces adjacent to our building would bring with it the exhaust from hundreds of additional cars. Many of us enjoy opening our windows to enjoy the fresh air from outside. If hundreds of parking spaces are added we would no longer feel comfortable opening our windows to the fresh air that would be polluted from the additional cars as they come and go. The Santana Row development is a wonderful development that is convenient for both seniors and their families and friends however the proposed zoning changes and building designs create major safety risks in particular to the senior pedestrians and drastically alters the view from their apartments.

>> Commissioner Bit-Badal: Thank you, sir, your time is up but we do have a question from Commissioner Abelite.

>> Commissioner Abelite: Very quickly, the senior rent facility, this is a rent, facility. They can live on their own free will.

>> Yes, it is a rental property, correct.

>> Commissioner Abelite: Thank you.

>> Commissioner Bit-Badal: Thank you sir. Next speaker is Peggy would you please restate your name.

>> Hi, thank you, I'm Peggy Bolger. I've been director of community developments at Belmont village for almost five years. I just want to talk a little bit about the safety of the walking to and from Belmont village to Santana Row. Just tonight here, we have got one of our residents in a wheelchair being pushed by a caregiver two people in walkers and two folks in their 90s and walking kind of slowly and my immediate thought is how is it going to be for them if we have this driveway and this parking right there, are they going to be able to do that? Going to Santana Row is a very big deal for our residents on a daily basis. We have some that go on their own, one couple in wheelchair, the gentleman pushes his wife in the wheelchair every day, they go every day. And we do group outings once a week if not twice. The big draw to our building is the fact that we have Santana Row right next to us and our families can take mom and dad and grandma to Santana Row for dinner et cetera. I think that's my personal biggest concern is going to be their safety. Thank you.

>> Commissioner Bit-Badal: Thank you. Next speaker. Actually, we do have a question for you. Excuse me, just came up. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. How many other senior facilities are you aware of that are within walking distance to so many variety of retail and food, grocery store, you know, the different locations that all of your residents are able to walk to? Are you familiar with other areas that have that ability?

>> Not like we do, no, not that I'm aware of.

>> Commissioner Cahan: And are you familiar with any other senior living facility that has both entertainment and grocery, that seniors are able to walk to?

>> Not with the proximity we do.

>> Commissioner Cahan: Thank you.

>> Commissioner Bit-Badal: Thank you. No further questions? And next speaker, please.

>> Good evening, Madam Chair, members of the commission. My name is Jerry Strangess, and I'm here representing tonight Phil and Peggy Cohen, residents of Santana Row. So there's really one issue, and it's the issue of the restaurants becoming night clubs after 10, 10:30 at night. Santana Row is a world class development. It was, and has been, since 1998, when it was first approved. It's an asset in San José for San José and it's known all over the world. It's a great place and this application really is a good application. There's one serious problem. The compatibility between the residents that live there, and this aspect of these restaurants which the applicant has said is the anchor of Santana Row becoming night clubs. And the compatibility of these residents having to live with the night club atmosphere. Think bit. You wouldn't like it. They don't like it. And that's what their concern is. I would suggest, you can approve the project tonight, but don't allow these restaurants to become night clubs. It's incompatible. Thank you very much.

>> Commissioner Bit-Badal: Thank you so much. We do not have any questions at this point for you. So we're going to -- we don't have any more speaker cards. I'm going to ask the applicant to come back. And he can

expand on his earlier application or answer some of the questions that came up in the last 30 minutes. Please restate your name.

>> Jan sweetnam. I have no idea where I left off in my last presentation. So let me go into the rebuttal discussion. First let me say we heard a number of items that we look at design issues that we want to work through with the PD permit process and work with Belmont on safety issues. That's obviously a very big concern of ours. I do want to point out that in the planning for this building we have tried to be very sensitive to them. I think the distance skin to skin from the buildings is actually about 108 feet significantly more than the 42 or 41 feet they enjoy on the other side. And this site is actually being entitled to 120 feet and we chose to go to 90 and reduce that height because of that sensitivity. So we've tried to be very sensitive in design and we do look forward to working with them in the PD process if we're able to get this approved. We have through the building association that works with the homeowners association spoken with Mr. Keone on a number of times. We have spoken with -- he has spoken with our security staff. He has spoken with our management staff and we continue to look forward to trying to work with him to resolve issues and work through noise and other issues that we have at the property. We are -- we're an urban village and noise does happen. It's very important for us for a number of reasons to work on it and continue, that it's really important to us, first, it's the right thing for us to do. The second thing is we have obligations under our CC&Rs and all of our disclosures with the homeowners that we need to live up to. Third, we are forever reliant on future customers for Santana Row, we are forever reliant on future residents, we are always reliant on future hotel visitors and we are always reliant on future office customers coming to our property. And if noise is an issue then we've got a problem. So we're always committed to work on it and we look forward to working with them on that in the future. I do want to close that we 30, you know, bringing jobs to Santana Row is very important. We think it's good planning. We think Santana Row and valley fair are designated as regional commercial. This is the exact type of development that is called for in the envision San José 2040 general plan. We think this -- the office building is going to be a real asset to the city, and we really look forward to continuing to build on the vitality and the success of Santana Row so thank you.

>> Commissioner Bit-Badal: Thank you, sir. We have several commissioners who have several questions. We'll start with Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Would you discuss your design style, so there was concern that your style is modern, and Santana Row of course is not modern looking. Would you address that?

>> Yes, sure. The -- it's -- it is a modern design. And you know, the -- I'm going to take a step back and talk a little bit about the overall design of Santana Row is we don't want it to look like Disneyland. We want it to feel like a real urban village that is being built up over time. So we want some of the architecture to look differently. The most recent office building we completed 300 Santana Row looks nothing like the other buildings there, looks nothing like this particular building. This will be one of the first if not the first office building built in the area -- it's a concrete building. The market, the brokers were scratching their heads, saying how come you're not building a steel building? We are building a concrete building because we think it looks and feels really good. We think it's going to be very attractive to the tech companies and the employees that they want to have there. It is different. It is different for a reason. It's a different kind of product. We want Santana Row to continue to be fresh and continue to evolve as the world evolves around us. We don't want to be stuck in the mud.

>> Commissioner Cahan: Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I wanted to talk to you regarding the parking issue. Do I understand correctly that you have in and out from Winchester to the underground parking?

>> No, we don't have any access to the underground parking from Winchester. So the access on Winchester is simply behind the building and that really is a service entrance. The entrance to the parking is off of Olson. So you go on Winchester, you make a right on Olson, you make a right into the parking.

>> Commissioner Kamkar: Excellent. Then the other issue was regarding ventilation of the parking garage. Do you happen to know how you are ventilating that extra exhaust from the garage?

>> I do know we are ventilating it, I don't know where it is going, and we'll have to work on that in the design process.

>> Commissioner Kamkar: If you could somehow, you know, take it higher up --

>> We are going to be very conscious, and obviously we don't want to be spitting it out on Belmont for sure.

>> Commissioner Kamkar: Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Kline.

>> Commissioner Kline: Have you had any conversations with the senior living center to the south of you yet?

>> We have.

>> Commissioner Kline: Okay so there's some confusion about the service entrance being a drive-through for the office workers. Is there any objection maybe for the service drive through to have the blinking lights that you do now so well in Santana Row itself so as people walking on Winchester sidewalk can see if a car is approaching?

>> That's a great suggestion we should look into it absolutely.

>> Commissioner Kline: To ease some of the concerns of the seniors.

>> Safety can is our concern and we love the Belmont customer for sure.

>> Commissioner Bit-Badal: Thank you, Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Can you be more specific about the noise issue as you probably saw, there have been you know specific assertions that are in the record, about you know the restaurants becoming night clubs, the noise, after 10:00, et cetera. Can you be more specific about what you have been doing to address those kind of problems?

>> Yes, sure. So we have every Thursday, Friday and Saturday night, we hire I think it's three, might be four, San José police department officers, off-duty, to work the restaurants. And to work on safety issues and to work on noise. So tear there, they're looking at the restaurants. I mean and blowfish sushi to die for, is one of the restaurants they are working on, to make sure that they are safe, to make sure that the noise isn't getting out of control. We take it very seriously, those are some of the efforts that we've gone through and we're going to continue to watch it.

>> Commissioner O'Halloran: I'm just surprised, because from a city perspective, it is important that Santana Row be successful, it's the prime example of an urban village. And like you say, you need to attract new residents and customers. It seems like these noise issues should be addressed in some other forum. I'm just surprised that you know, it's come to this, that you know, the homeowners and you know your management haven't been successful in making some of these problems go away.

>> Well, we continue to work on it and we're going to continue to work on it. And you know we're out there we're monitoring the sound, and San José police is out there monitoring the sound. And you know, we sometimes does it get louder than some of the homeowners want? Sure. Do we have a lot of people that don't have issues with it? Absolutely.

>> Commissioner O'Halloran: Is it a basic disagreement that the problem isn't as significant as it's been presented?

>> Well you know each person has their own perspective. So for Mr. Keone it's real and for us we think we're managing it and we think we're doing everything that's right and we'll continue to listen to what's happening and we continue to respond to it. There might be some separation there, sure.

>> Commissioner O'Halloran: And finally would you characterize that it's administrator Keone and a small number of people that have in issue? How big an issue does this seem from your perspective?

>> I don't know a large number of people that have issues with it. We have you know in addition to the 21 homes over in that community, we have another 601 homes and we don't hear a lot of complaints at this point. Are there issues from time to time? Sure. It's certainly a heightened concern for Mr. Keone for sure.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Thank you. And we have a question from Commissioner Abelite.

>> Commissioner Abelite: Just to go right back to the number of for-sale units versus the number of rental units you have, is it 21 --

>> No, that's the particular Villa Cornay building. We have 219 condo units that were sold. We have 403 rental operating right now and we are building another 212 as we speak.

>> Commissioner Abelite: The 212 are rental?

>> Yes.

>> Commissioner Abelite: I live there in Santana Row. I live right across the straits restaurant. I remember quite clearly in your evenings your security guards are doing a very aggressive job attempting to keep people quiet. I

heard them at 2:30 in the morning as the place was emptying out and I could tell you that you were pretty aggressive about working on it. You know.

>> I appreciate that. And we were aggressive enough on straits that they did not renew their entertainment permit. So it's -- it is a real issue for us and we work on it every day.

>> Commissioner Bit-Badal: Thank you, do I have a couple of questions just because there were letters that came to us and I wanted to see if you can address those. Letter came from Tamera Harris stating there was a promise of a park. I don't know if you saw that letter.

>> Eventually we will build a park and that is part of our plan. There is no commitment to build it right now but before we finish absolutely we'll see another park at Santana Row.

>> Commissioner Bit-Badal: And one other question that came from Mr. Keone was the laundromat, mortuaries amusement arcades. Are you planning to have laundromats and amusement parks and arcades?

>> No, we're not.

>> Commissioner Bit-Badal: Just want to address those issues. They didn't come up -- thank you sir. We do not have any more questions.

>> Thank you.

>> Commissioner Bit-Badal: And at this point I will close the public hearing. Motion? And all approving please say aye. Staff.

>> Thank you, Madam Chair. Staff would just like to reiterate their position that the site is in an urban mixed use neighborhood, and it's proposing to intensify consistent with the general plan, it's in -- the site is in the regional

commercial land use designation as well as urban village area boundary and the intensification at this site as well as supports the general plan's focused growth major strategy. Intensification for a lot of reasons is exactly what the general plan is directing us to do and they're asking to do that. I would like to point out that for night club uses a planned development permit is required to have a night club use. And for Santana Row there's only a certain called the hotel block that is allowed to even have late-night uses and if they wanted to do so they would need to come in for a planned development permit for that as well as get entertainment permit from police. This concludes staff report.

>> Commissioner Bit-Badal: Thank you.

>> Just from an environmental perspective just to wrap up one or two things. The 2040 GP update EIR which was actually approved in 2011 does disclose the impacts of mixed use villages and urban villages on the City of San José. And to sort of put it in perspective, state CEQA guidelines encourage tiering off of larger program EIRs to help informed decision making on specific projects. The one other comment that we heard was regarding poor air quality, as a result of the office project. Just to note that the initial study did do site-specific air quality calculations and found that impacts from the proposed office development would be less than significant with regard to criteria pollutants and carbon monoxide. Thank you.

>> Commissioner Bit-Badal: Any more reports from staff? None. We have Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Before my fellow commissioners go into a lot of consideration on this, I would like to voice my concern for senior citizens in the City of San José and the lack of ability for them, once they're no longer as mobile, no longer able to drive as much, maybe they can't drive at all, they become trapped in their homes. And it is extremely important that, as a city, we create places where they can walk to the grocery store, they can walk to entertainment they can walk to places where they can meet up with friends, so that they can continue to have a high quality of life. And are not trapped in their existence inside the four walls of their home. This is a great location for seniors to be able to reside, and have a good, exciting, vibrant life just outside their door steps. And we need to make sure that as we're considering this that we keep

where they live, a place where they're not forced to move away because they no longer feel safe or that they feel that their quality of life has decreased so much that they have to leave. And so I please consider our senior citizens for San José when you're thinking about this project.

>> Commissioner Bit-Badal: Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Some questions for staff. First, on the development standards. It -- the use allowances number 2, there's specific prohibition on health, veterinary services, et cetera. I was just wondering about what staff's thinking in specifically prohibiting those, and not some of the other things that are included in the table 2090, things like bail bond establishments, mortuaries, et cetera. Is there some reason that that was specifically prohibited and not some of the other uses?

>> Thank you. That was a carryover from the original zoning on the site and unfortunately in my research I don't have a history on why they excluded veterinary services. I don't know if anyone else on staff can speak to that or maybe the applicant. But we just did carry over that permit condition that was in the original zoning.

>> Commissioner O'Halloran: Okay, thank you. And also to clarify, are there uses that are now permitted, as a matter of right? This will now allow certain uses as a matter of fact right. There are currently uses that are allowed, that this will replace? Or is it what's in table 2090? I'm just not clear how much is being changed from the existing, in these use allowances.

>> Laurel Prevetti: Well, staff is checking the record, Madam Chair if I may, I think what we're trying to do is anticipate that this zoning anticipates a broad range of uses that are allowed in our commercial zoning district known as CG. So that way every time there is a new idea and we are constantly modifying the zoning code as well trying to address things like farmers' markets that you're going to hear about later on tonight and other things that we can't even imagine. So rather than having Santana Row come back every time a newly enumerated use pops up that would be compatible with the business models we're trying to anticipate that possible evolution. So we're -- it is a little bit broad, perhaps. But again, we're really trying to make sure that we've got the flexibility and

use to anticipate things. And I think, as demonstrated by the experience with Santana Row, and the businesses that are there, you know, certainly we want to make sure that the whole zoning functions together, so there's an internal check-and-balance that would occur based on our experience working with this particular business. I don't know if Leslie has found any additional documentation for you.

>> Yes, I just wanted to add that the previous zoning also allowed the permitted use of the CG commercial district and listed some that were prohibited, which were the ones that have been mentioned tonight, laundromats, private clubs and lodges, amusements, games, bowling, those were specifically prohibited, which would have been allowed if you just gave the blanket CG statement so that is changed.

>> Commissioner O'Halloran: That is being changed, okay good thank you. On the next page on the architectural building, comments that have been made on the architectural style of the building, will there be -- has that modern style already been approved or will that be subject to further approvals in the permit process?

>> Thank you, Madam Chair. No, the architecture has not yet been approved. Once this zoning is approved, then they could move forward with the planned development permit, where we will review the architecture. And as you mentioned in the development standards there are three specific sort of design requirements for that and we will review their proposal against those requirements.

>> Commissioner O'Halloran: Okay, thank you. Turning to the environmental or to the initial study, I had some questions. From a policy standpoint, you know, some of the city regret that we've lost some of the general plan designated land for industrial. Does the city have a similar concern for the commercial and specifically the regional commercial? And I'm getting to those commercial, you know the square footage allocated to commercial versus restaurants. I'm just interested in the City's longer term perspective on that.

>> In the general plan I mean general commercial is defined as that general. Includes restaurants or offices or night clubs or anything that's commercial in nature.

>> Commissioner O'Halloran: Right, I'm sorry, I should be more specific. Retail versus restaurants. Is the city concerned that we may lose land that's designated for retail uses over time? Or is that sufficient as far as the general plan?

>> If I may, I'll weigh on that a little bit. As you noted, light industrial uses in particular were identified in the general plan as something that needs extra care in terms of its preservation. And then really, the general plan speaks to maintaining job base employment land and looks at retail and restaurants somewhat similar as both services that can add an activity and support the economic base of the city in general but there's not really a distinction made between retail versus restaurants in the general plan. That wasn't raised through that process as an important issue.

>> Commissioner O'Halloran: Okay, good, that's really a segue to my next question. From a city revenue standpoint is there a difference between retail and restaurants? In other words does the city get more revenue from either use? Or is it approximately the same? And then on the other side, are there additional costs that the city incurs in terms of law enforcement or whatever with restaurant versus retail? I don't want to put you on the spot. Has there been an analysis along those lines?

>> I'll introduce myself, I'm Andrew Crabtree also planning division. There are analyses of those. We are not prepared tonight with the specific data necessarily, but our experience has been that some types of retail in particular are high revenue generators for the city. Other types of retail not so much. As you know restaurants and other services such as like a hair salon or something like that that's not directly subject to sales tax may have a different type of revenue value to the city than something where there's a lot of goods transacted that pay sales tax. The current tax structure that could change over time as well. It is an issue much bigger than one that San José is just looking at, something that affects the entire state.

>> Commissioner O'Halloran: Is it fair to say that staff has assessed this issue, you know, the proposed change has less retail, more restaurant, and that from a land use standpoint, long term, it's not a significant concern?

>> That's correct. We see value in both. Right? So while there may be particular retailers that you'll see a discussion around the fiscal benefit they bring to the city, in a project like this or just in general as we look at creating mixed use environments, there is a lot of value that's attached to both restaurants and retail. And they also are both positives from a fiscal standpoint. So there's support for both types of activity, commercial activity in the general plan.

>> Commissioner O'Halloran: Okay. And then, in the initial study under public protection services, it concludes that the proposed project by itself would not preclude the San José PD from meeting its service goals. Are the service goals being met now? There was some I think not testimony but letters, assertions that they're not being met, or implications. Could staff address that?

>> Laurel Prevetti: Laurel Prevetti, assistant director. Our San José budget documents have metrics on an annual basis in terms of how we meet our service goals. And San José is meeting its goals with the staffing that we have currently. So for this particular project, we are able to meet the service delivery goals that the city has budgeted for. And therefore, there is not a significant impact. I do also want to piggyback, Andrew did a really nice job summarizing the general plan. I think the important take-away is that our new general plan is a jobs-first plan that also balances the need to protect neighborhoods and really create complete neighborhoods throughout the city. And so retail and restaurants and office uses are all critical job-generating uses. And this is particularly important to San José because we did go through a part of our land just history where we saw significant conversions, particularly of light and heavy industrial lands to housing. So this particular proposal actually enhances San José's economic development potential. And from a citywide perspective, we have ample land planned for both restaurant and retail. So on a citywide basis we'll be just type.

>> Commissioner O'Halloran: Okay thank you. And then finally on the issue of the noise impacts, specifically the operational impacts that were addressed in the testimony, can you -- can staff maybe address that in a little bit more detail in terms of the scope of this initial study? How some of the late-night noise, you know, was addressed and considered in this environmental documentation?

>> So as far as late-night noise goes, the thresholds for noise impacts, within environmental documents, really relate to, is a particular use hazardous to human health from a CEQA perspective? That's what's defined as a significant impact under CEQA. Which is 80 decibels over an extended period of time. In this case, you know, using the general plan EIR as coverage we didn't find that.

>> Commissioner O'Halloran: How was that assessed? I don't package that there were people actually taking noise measurements late at night.

>> Right. And this, like I said, this initial study basically tiers off of the general plan EIR and relies on information from that EIR disclosing the impacts of urban villages and mixed use neighborhoods putting what could be incompatible land uses close together. So it's really the information provided in the General Plan EIR, and the conclusion that using General Plan policies, there would be a less than significant impact from those uses.

>> Commissioner O'Halloran: But in the tiering of the document now we're talking specifically about 30,000 square feet additional of restaurants. And was that -- how was that addressed?

>> So if there are entertainment permits, that are going to be brought forward with a PD permit, additional environmental review will be done at that time to assess the particular impacts. Thank you.

>> Commissioner O'Halloran: Thank you. Thank you, Madam Chair.

>> Commissioner Bit-Badal: Thank you. Commissioner Kline.

>> Commissioner Kline: Make a motion to approve 3C as stated by staff.

>> Commissioner Abelite: Second.

>> Commissioner Bit-Badal: We have a motion and second. Would you please speak to your motion.

>> Commissioner Kline: Sure. This is a pretty big project. I remember when it was first proposed back when I was on city council, Planning Commission in City of Santa Clara. And it was one of the first vibrant, new, urban projects available. And because it was so new, a lot of the restrictions that was put in the PD was kind of a safety net kind of thing. We didn't know at that particular time what this new thing was going to be. I see this relaxing, more experience with it, we are relaxing some of the things that were put on because of unknown. And putting back in some of the things that are normally available in the commercial district such as was listed. So it's not that it had a lot of existing rights. It's that the rights that would normally apply in the commercial district were taken out. And that we're kind of putting them back in as we get more experience. So I see that as what's going on here. As far as the office design is, I think it would be sad if every single building in Santana Row would look the same or be European heritage. I travel to Europe quite a bit and we're probably going to see the London skyline more than we want to in the next month or so. If you go to Paris or you go to London, outside the core areas that were built hundreds of years ago, the office buildings are all modern. They are not European, traditional office buildings, they are modern buildings, and there is a reason why. In a modern office complex you need large floor plates and fairly large windows get light into office environments the way people work nowadays. So the more of a modern look is generally more accepting to office workers, also 300 is a modern office building which filled up quite quickly and the new units are modern in nature. So I kind of like the idea that you're mixing the styles up. That is not negative to me, that's really a positive thing. As far as parking is concerned, I think it's really great to have 600 new parking spaces. In the daytime parking is not really that much of a problem Santana Row. I go there quite a bit in the daytime and there's never any issue, today parking was great. It's just really at nighttime. And as the evening comes, the 600 units are then made available to the people coming at nighttime. So I think the parking is going to be greatly enhanced with this project which is really good and that's probably one of the biggest complaints I hear about Santana Row. Noise. Now noise is one of those things that is incredibly important to people whether you're next to an airport or next to mountain winery or montalvo or a concert. You getting waken up at 12:00, 1:00, 2:30 in the morning, you bet people are going to start calling and complaining, my experience in city councils and planning commissions is that this is the number one issue. If there was a noise problem in Santana Row, and I'm not alluding that there's not a noise issue in Santana Row. Any urban environment would have noise issues. But we would have 50, 100 people here tonight

complaining about noise. We would, if it was a real serious issue. I don't see 100 people here tonight, I don't see 50 people here tonight, I don't even see 25 people here tonight. So I'm not relying on there isn't noise issues there, there probably are some noise issues, but a dramatic ongoing noise problem that's keeping people up at night probably not going on. Otherwise we'd see them. That's my experience on these issues. I was really concerned with the senior citizens tower to the South actually, that's why I drove out there today. I just wanted to really check it out myself. I think it's quite of a buffer zone. When I actually got there and looked at their own driveway going into their underground parking and quite a bit of a setback next to that driveway, and then the service driveway that will be actually north of that, that's probably a lot more buffer twice or maybe more, which is on the South side, it's going to be an almost identical tower on that South side of that living tower, that is also 6 stories, 90 feet which is also modern. I think this building is pretty compatible with what's already going on there, I think the density is pretty compatible with what's going on there, the office buildings around the location. I'm actually kind of excited. Taking away that parking space and a lot more density and office people going to be arounds here and as I looked at this project more and more I think this is really compatible with where Santana Row is going and I'm looking forward to seeing it built and that's about it.

>> Commissioner Bit-Badal: Thank you, Commissioner Kline. Commissioner Kamkar would you like to speak to your second?

>> Commissioner Kamkar: Actually no I think Commissioner Kline did a great job capturing a lot of the concerns. The only problem I would elaborate on is also the noise. I don't go to Santana Row that often. When I do I go to Cocola right next to straits. I observed, as Commissioner Abelite said, officers stand right by the exit. And they made sure the few times I was there, that it closes on time and orderly, you know. So you know, I'm sure you know, noise violations happen and they need to be reported and dealt with accordingly. As far as the you know counsel from Hopkins Carly mentioned, just because you have noise ordinance that's not mitigation. You're correct but there is a process to deal with the noise, that's you report it, it gets logged in and you deal with the record you know that is established. So I'm in full support of what's being proposed by staff including their July 24th revised conditions, you know, and I urge my colleagues to support it. Thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner Abelite.

>> Commissioner Abelite: Just a few comments. I want to echo the other commissioners comments with respect to being in favor of the project. From my personal experience I lived across the street from straits, three stories up looking straight down on straits. The only time I would experience noise irritation is when the doors would open up maybe 1:00 or 2:00 in the morning when people were leaving. The door would open up, you would hear the sound come out, but the moment that door closes it's was dead silent. And that was a stark difference. I don't want to make this a condition of the PD or the zoning, but maybe a double set of doors one in one out and have maybe a staging foyer area but I don't want to impose that sort of condition and then preempt a good restaurant or entertainment design venue. I don't want to screw that up. But it's just my common observation. When the doors were closed 1:00 or 2:00 in the morning we slept fine throughout the night. There were guards that were active out there and they were proactive and I heard them often say, this is private property Turn off your stereos and leave the site. So I did come -- I thought very highly of the activity that I saw. On a final note I think we need to show the courage of our convictions as it relates to GP 2040 and our model towards making the city more urbanized and I liked what I heard with respect to the size of the platform or the building that's coming in and what it does in terms of job importation. That is the paramount leg of 2040. It's getting jobs into the city. So without any further comment, I support your motion fully. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I agree, that this is an appropriate area for our density plan. And that's already what's going on there. And to continue that, it seems to be a good model that we're working with here. There seems, however, to be a miscommunication or lack of thorough communication with the neighbors. And so I encourage the developer to continue that communication. And I urge you to, especially, work with the senior facility, in making sure that everything that goes on there provides the safest environment for our senior citizens so they can continue to be there. And thrive. I disagree with the actual appearance of the building. I don't think that San José is overrun with European style looking buildings, to where an extra modern looking building is necessary to help mix things up. I think part of the appeal of Santana Row is that European

style. I did question the building that recently went up and how modern it was. And so I'm sad that the plan is not for continuing that European style. I actually love Disneyland. So I also ask that staff be very conscious of the entertainment issues should it come up, make sure that that's appropriately taken care of and our residents there are not negatively affected by additional things that go in there. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I won't repeat what my fellow commissioners have said. But I can support the motion. I support the densification, the office building, the architecture. My concern has been the noise issue. But I'm persuaded by Commissioner Kline, if this really was a significant issue there would be a lot more people at tonight's meeting. As I said before, you know, this is the prototype for urban villages. By definition there's going to be conflicts. There's going to be noise issues. But we need to get it right. And I would just encourage staff, as they go through the subsequent parts of the process, to do whatever can be done to mitigate these conflicts to the extent they can. Thank you.

>> Commissioner Bit-Badal: Thank you. I will also encourage the developer to work with the senior community and also existing residents to mitigate some of the issues that came up this evening. This is a project that not only had visionaries from the development side and I wish we would see more developers like you before us. But we had visionary leaders and courageous leaders at Planning Commission and city council. Back in the late '90s my ex-boss was actually one of the leaders who voted on that. I will never forget it because we used to have a lot of opposition to Santana Row, a lot. And now Santana Row is seen as the envy in the region. All you have to do is talk to our counterparts in other cities to hear what they have to say. That's exactly what they want to see, another Santana Row. I kind of laugh, because they're not going to get it. It is really an envy because all the details, all the work that went into this project, it was labor of love. We saw the presentation on that some time ago, which is so true. Every detail of it matters so personally I will echo what Planning Commission Cahan said. I am saddened that future buildings are not going to have the detail that the current ones have. But I understand that not every block of that project needs to look the same. Also, this project, something that we don't really realize has taken a lot of tax revenues from other cities and I know, I've heard that from my economic development counterparts from

other cities, took tax revenues from some of the well-known cities around us. Again I'm really glad that again we had courageous leaders at that time who voted for this project. Because if they had listened to some neighborhood leaders, they probably would not have -- we would not see Santana Row in San José. At the same time, as a resident of San José, I truly, deeply care about what our residents say and think. This is a really mixed use project, it's an urban village, it's much like a downtown. So when you move into a downtown, you know that there's some noise that comes with it. Again I'm going to go back to my earlier comments. I will urge the developer to continue working with current residents and also with the neighboring residents such as the senior citizens. Because we want to make sure Santana Row is really a place that is not only attracting world class consumers and customers but also residents. With that, I'm extremely excited to see that we're going to get more jobs and more tax revenue with this. Not only permanent jobs but construction jobs. It's something that the city desperately needs. And lastly, I mean a lot of my fellow commissioners echoed so many of my comments I'm not going to repeat them. But I also want to say development is about evolution. It doesn't standstill forever. And with that needs to be thoughtful. I feel with all the comments we heard, with the project that's before us, it is a thoughtful evolution to this. Again, I am extremely excited. And excited to be a resident in San José and be able to say this and vote on this project today. It's something -- it's actually my stay-cation with my family. I don't get to go to Disneyland. I get to go to restaurant and retail store as well. I'm glad to be able to spend my money in San José. With this I will ask for voting by light. And the motion passes, Commissioner Dori Yob is not voting. Thank you and wishing you much success. Public hearing item 3D is TR 12-006. Staff.

>> Thank you, Madam Chair. This is an appeal of the planning director's decision To approve a tree removal permit to require tree replacement for the removal of two ordinance size trees which were previously located in the front and rear yards of a single family residence at 1460 Lupton avenue. The project is exempt from CEQA. The appellant identified several reasons for the appeal including defective notices, inadequate findings, and code enforcement's failure to act. Code enforcement did visit the site on December 6th, 2011 in response to complaints. The owner was instructed to apply for tree removal permit after the fact since the trees had already been removed. The owner filed an application on January 5th, 2012. The project was noticed for the March 21st, 2012 director's hearing. The notice was sent to adjacent property owners in accordance with the requirements of the San José municipal code. At the request of the appellant at the hearing at the director's hearing on March

21st, the public hearing notice was re-sent and the project was re-noticed for the -- for April, in April, and the notices were sent to a 300 foot radius. And the project description was revised because the original project description did not indicate that the trees had already been removed. So the appellant had requested that the project be -- the description be clarified to describe that the trees had already been removed. So the project when it was renoticed it was cleared, made clear that it was to determine tree replacement plan. Since the trees have already been removed, the primary issue is whether or not the tree replacement plan requirement is adequate. The typical tree replacement requirement for a single family house when they request to remove the tree is one 15-gallon tree per tree removed. In this instance the director was requiring the owner to replace the two trees that were removed with eight trees. And the eight trees include two 24-inch box trees and those two 24-inch box trees will be to a species that will grow to a substantial canopy, and also have the six 15-gallon trees. All trees per the director's direction were required to be of a species that will be able to be managed within its growing environment in which it's planted. So it wouldn't have to be removed at a later date because it ran out of room. One of the 24 inch box trees is required to be planted in the front yard and the other in the rear side yard. So as close to the location to the trees removed as possible. It is not possible to put the trees in the exact same location because since the project or since the trees have been removed a building permit was subsequent to the trees being removed a building permit was obtained which allowed them to build an addition where the tree was previously located. So this concludes staff report.

>> Commissioner Bit-Badal: Thank you staff. Is the appellant here, Mr. Nick petritas. Would you make your presentation.

>> My name is Nick petritas, I represent the appellant. Tonight we have the opportunity to show the community that the tree removal ordinance actually has some meaning in town. This is a de novo hearing. This is actually the third hearing on this issue. And Ms. Moniz is correct in the way she's characterized the issues for appeal. The three issues I raised on appeal I submit to you is completely valid because there is no other evidence in the record that supports any other interpretation. Let's go over them one at a time. Three, the defective notice, the code enforcement's failure to act, and in the findings you have to make tonight. On the defective notices, yes, it's true that we agreed to a second hearing. But the first point was, when this happened back on December 6th, we

were rather surprised to learn that first of all there hadn't been any application for a tree removal permit. And then when we did a investigation we realized that there was not any notice that was given, in the notice to us, or that my client hadn't received any notice. That's when we discovered that there's really a conflict between the ordinance and the application, and it's still unrectified to this date. If you -- somebody comes over to the counter and gets a tree removal permit application, the notice requirements on that go through the 300, 500, 1,000 foot criteria. In the ordinance it just says to adjacent property owners. That is something that needs to be rectified from administrative law standpoint, that is a concern that's going to happen to somebody else. As Ms. Moniz pointed out the first notice did not even describe the situation adequately that the trees were already gone. The second notice did say that, I think it could have been worded differently, but it did say that the trees were no longer there. I think we also disagree that this thing did warrant, this matter did warrant a wider degree, a wider radius for the notice because it did have a high degree of interest at the local level. Within our -- within our community. Turning to the inadequate findings though there are three findings under a tree removal ordinance that we have to do. The tree is a size type condition that would not in its removal not significantly frustrate the purpose of the chapter. Well the purpose of the chapter is to get a tree removal permit. They didn't get it. So what higher purpose is there for this ordinance except to actually get -- come before you, come before the planning and actually get permission to remove an ordinance size tree. The second part of the criteria is, does it unreasonably restrict development? This is a huge lot. Look at the size of that lot. The architect when he was designing this could easily work around these trees but he did not I submit to you in a cavalier manner. Because of disease or danger of falling then it warrants its removal. There is no arborist's report, there was nothing in the record to suggest that either tree were required to come out. So in the staff report, under the inadequate findings part where we say the primary issue to be addressed at this point is whether or not the tree replacement plan is adequate, that's not your primary concern tonight. Your primary concern is even a tree removal permit warranted? And you might sit back and say well, what are we supposed to do, it's gone. And actually staff told us that many times, and code enforcement told us that many times. That is not the point. You have the power tonight to say, no, no tree removal permit and then the owners would have to go back and start from the beginning. And the last issue is on code enforcement. If you think about this for a moment the real tragedy here is, citizens of the neighborhood actually got there in time. And one tree was already downed. And they called code enforcement. Code enforcement comes out, checks with someone. We were still unclear about that. Apparently

they checked with Amanda. We later discovered once the investigation had been closed and we got the report and that's submitted in my appeal pang. It really takes a suspension of belief to think that how would you think that somebody missed this? This is code enforcement. This is a basic function in planning. Why wouldn't you say show me the permit, show me the posting of the permit so it didn't happen. So there was one error after another that just led us to this point in time. And so yeah, we tried it with the planning director's hearing. We feel very strongly in this issue and that's why we're in front of you tonight, to try to ask for your decision that would appeal our -- uphold our appeal and show that the tree removal permit ordinance actually has some teeth.

>> Commissioner Bit-Badal: Thank you, sir. We actually have a couple of questions for you from different commissioners. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I just want to be clear, about the remedy that you're looking for in making this appeal. The trees are gone. A replacement plan has been made. Or has been proposed. And I think you just suggested that you'd like the applicants to go back to square 1. Is that away you're looking for?

>> Well, yes commissioner, because otherwise we're basically, I've been practicing land use since 1986 I hate to say. There's an old saying in development business it's better to say you're sorry than ask for permission. What do we have except a tree tax? You come in, decide to ask for a permit or you don't. But my position is yes. If you say there was -- there is no tree removal permit, then yes, they have to go back and alter their plans.

>> Commissioner O'Halloran: Okay, thank you.

>> Commissioner Bit-Badal: Commissioner Kamkar has a question.

>> Commissioner Kamkar: Thank you, Madam Chair. Still not clear. Alter their plans, is the addition built already? Alter their plan? Take it down and start from scratch?

>> I submit it's within your power to suggest that and if the owner it's an unfortunate result for them but they have a contractor, Barry Swenson builder they are still on first street as I recall, they have a local architect that advertises, they are completely familiar with San José ordinance. It is not our problem it is not their problem. They did not follow the rules. If there is a cost to doing that the lot is big enough to make that adjustment.

>> Commissioner Kamkar: You feel the 4for 1 ratio they have to replace is not enough of a persuasion or for other people watching?

>> Commissioner Kamkar that's not really for me to say, that is in your discretion at that point. We wouldn't know what the planning director would have required. I don't know if four is correct, if two is correct. I've gotten tree removal permits in San José, and two to one, three to one. Is this more than -- it's up to you.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Bit-Badal: Thank you. We do not have any more questions at this point. But you will have a chance to come back later on for another five minutes. And is the applicant here? Would you please come forward? You have up to five minutes to make a presentation. And please state your name.

>> I'm Renee Bartels and my husband David Bartels is here this evening. Good evening, Madam Chair and commission. I hope to show there has never been any ill intent on my behalf or that of my husband to go around city requirements for tree removal process in the process of building our new home. We've lived in Santa Cruz for 32 years. We came over here, with the intent to be next to my 82-year-old mother who lives in Willow Glen. And to be next to our grandchildren. And we purchased the house on Lupton and lived in it for a year as we worked with our architect to design a home that was going to be a family home for all of us. The lot, we wanted to keep the way that it already was, with the house in the front and the garage in the back, and try and keep uniformity in the neighborhood. And that was the reason why the architect designed the house that he did. We hired an architect that is -- has built dozens of homes in Willow Glen for the past 30 years. And he informed us that the tree removal would be processed during our building permit. The trees that were to be removed were placed on

our building permit. And October 27th when I went to pick up our permit and he stamped it, the tree removals that those trees were to be removed were there. And so we proceeded with Barry Swenson builder, and went through our demolition process. And moved our RV over to the elks lodge on Alma so we could be near the site and be there daily so that we could you know manage what was going on. And be there for our neighbors. If they had any problems. We received the call from our contractor in the morning on December 6th, that we had irate neighbors who were upset about the removal of our trees. They were in the process of removing the tree, they had done the one in the front and they hadn't yet started on the one in the back. I got to the property just as code enforcement did. And code enforcement informed us that there were discrepancies. The neighbors wanted to know what was happening with the tree removals, that they hadn't been noticed. And he said if you will please wait while I check into this, do not cut the tree in the rear. And we said no problem, and we held everyone off. I took our plans over to our neighbor who is the appellant here, and showed him our permitted plans and tried to explained to him that we had put that into the process of our building permit. I called the other neighbor and left a message on his cell phone that I understood he was upset. And he never called me back. And an hour later, code enforcement came over and informed our contractor that everything was okay. And to go ahead with the process. And so we cut down did rear tree because the crew was sitting there waiting for direction. We -- I got a call that afternoon from code enforcement saying Renee would you please put through the tree removal permit so that we will have record of it? And which I went down and did right after that. And then began the process with the staff in order to go through that building permit. We have at no time ever tried to go around, speed anything through. And we were hoping, really, that we were going to be building something that was going to be appealing to the entire neighborhood and we planned to live there through retirement. So --

>> Commissioner Bit-Badal: Thank you. I do not see any questions from commissioners. Thank you so much for being here. Actually, I do have a question to ask you. Personally because I've lived in the neighborhood in that area as well so I'm very familiar with it. Have you got any complaints about the design of your home? I know it's a craftsman, it looks like it matches the neighborhood. But --

>> No.

>> Commissioner Bit-Badal: Because it seems like it's more than a tree issue, looks like people are concerned maybe about something else.

>> No, in fact we haven't had any complaints other than the two neighbors who complained that day that the tree was coming down. Other than that, the rest of the neighbors have been very supportive. And we you know have been taking tours through the house actually through the last couple of weeks because we're at the point right now where it's you know getting ready to get flooring and we're about two months away from finish. So we're at the point now where we can show them what we're doing and they've been real pleased with it. We haven't had any complaints.

>> Commissioner Bit-Badal: Thank you.

>> I might also just state too that we've submitted after our last hearing, what our landscape architect has put in for the two 24-inch trees and the six 15-gallon trees so we've also submitted that to the Planning Commission.

>> Commissioner Bit-Badal: Great well thank you so much, we appreciate your time. And now, the appellant has five more minutes to continue the presentation. And respond to some of the comments.

>> Thank you, Madam Chair. No, I'll be brief. All the empathy in the world for the Bartels, I feel for them. But they had professionals, they had top professionals for this and they learning about the land use issue in this manner, well, sorry but it's not an excuse. Two points: Code enforcement made the decision to rely on planning. So even though there are fines for unlawful removal of trees, there are none in this case. There's been no penalty for this except whatever you may decide to do supporting the planning director's decision or not, again I don't know that that's a sufficient deterrent to people in the future. If they're going to decide whether or not they want to get a permit. I think that's all, unless you have any other questions.

>> Commissioner Bit-Badal: Thank you, there are no other questions. Thank you so much for your time. With this I'm going to ask to close the public hearing portion of the -- all those approving say aye. Thank you, staff.

>> Thank you, Madam Chair. The first point regarding the defective notice, the conflict between the ordinance and the application, the appellant is correct. The application did indicate a 300 foot radius whereas the municipal code indicated adjacent. Thanks to his bringing that to our attention, we have corrected that. The San José municipal code does take precedence, the application being correct doesn't mean that we should have done the 300 feet. However, in response to his request, we went ahead and noticed the 300 feet. The issue regarding the larger area, however, you know, if the controversial projects, project defined as large or having significant community interest does require a thousand foot radius but those are identified as applications for development that's more than 50 dwellings in it. 60,000 square feet of commercial uses or 100,000 square feet of office or industrial uses. So that's a large development proposal. A significant community interest proposal is defined as any application that has the potential to have a high degree of interest either at a local or citywide level. I don't want to minimize the concerns of the neighbors, however this does not rise to the level of being an interest you know a community wide interest proposal that needed to be noticed for a thousand feet. In regards to the inadequate findings, the purpose of the ordinance is to -- sorry, I'm going to find this -- the purpose of the ordinance requiring the tree removal permits, is to embody -- the goal is to embody the city's general plan, its green vision, and its partnership with our city forest. Through the tree replacement requirement, especially in this case, where we would require many more trees than we typically would have, the balance to the urban forest would not only be retained but enhanced. So in that sense, this permit does meet the intent of the ordinance. And by denying the tree removal permit, what you would be doing is denying a tree replacement plan. So if you deny the tree replacement plan then the applicant is just reply not required to plant any trees. So I'm happy to answer any questions. This concludes staff report.

>> Madam Chair. I also want to add that let's remember that this applicant did get building permits to do the building expansion. So at the time that this project came to the director of planning public hearing, the building had been in construction already based on a building permit they got from the City of San José. And the -- we feel that the tree replacement that we are asking is more than enough to compensate for the tree that was taken out. It's unfortunate that happened. The property owner honestly tried to do her best, I mean, she hired professional architects. One of the reasons the -- that the replacement went so high was, we felt that the

professional architect probably intentionally tried to circumvent our regulations. But it was missed in our permit center. It should have been caught. A building permit was issued. The tree was removed. And so we had no way of bringing the tree back. And we thought it was going to be grossly unfair, or even unthinkable as far as that is concerned, to request the property owner to demolish the building that they had built in reliance of a building permit that we approved. Thank you.

>> Commissioner Bit-Badal: Thank you. And counsel has several comments.

>> Thank you, Madam Chair. I just wanted to follow up on staff's comments regarding the notice requirement. The tree removal ordinance does specify a noticing requirement and it requires a notice only to the applicant and owners and occupants of adjacent properties and the property across the street. I also wanted to note that the municipal code does contemplate a tree removal permit being approved after a tree removal at a was completed without a permit. It provides that if a permit is obtained prior to the removal, that the replacement shall be roughly proportionate to the tree replacement needed to alleviate and address the burdens and impacts of the approval. If the permit is granted after the fact, there could be an increase, a renal increase in the number of the replacement trees to be provided, installed and maintained.

>> Commissioner Bit-Badal: Thank you counsel. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I would like to make a motion to uphold the planning director's decision to approve a tree removal permit as recommended by staff.

>> Commissioner Bit-Badal: Do we have a second?

>> Commissioner Kline: Second.

>> Commissioner Bit-Badal: Second. Would you like to speak to your motion?

>> Commissioner Cahan: Yes, thank you, Madam Chair. It appears as though there were a few errors on the City's side and perhaps with Barry Swenson the architect, the owners of the property clearly had no malicious intent. They seemed to have been trying to follow the letter of the law. And it would -- it would be bad on our end to make them suffer, because of it. And in a way we are, in fact, giving them a penalty because we are increasing the amount of trees significantly that they have to plant there. And I think that that shows to the public that we are not condoning illegal tree removals. And I think that the intent of the law is not to go after people who are really trying to follow the law, but to go after people who maliciously know that tree removals are, may or may not be allowed. And so they just cut down their tree to -- knowing that that's the law and to avoid that law. So although there were some errors and it sounds as though staff is working on correcting them and making sure they don't happen again, I believe that we should help our citizens who have been trying to follow the law to give them a slap on the wrist. But not make them demolish their building.

>> Commissioner Bit-Badal: Thank you. Commissioner Kline.

>> Commissioner Kline: I'll make this short because I think what brings out the most emotion in people and specifically neighbors are either fences or their trees. And again, with some experience in this, usually there's usually something else going on. So I do think that the penalty is enough in this particular case, given the particular findings, and the least said probably given the emotion involved, probably the better.

>> Commissioner Bit-Badal: Thank you, Commissioner Abelite.

>> Commissioner Abelite: I have a couple of comments and two questions for staff. In general when you do the tree replacement formulas, how often do we have tree replacement above 24 inch box trees, do we ever go to 36 inch boxes or 48s or is that kind of way away from the norm?

>> Thank you, Madam Chair. Typically, we go for 15-gallon. And then the 24-inch box tree would be the maximum we really ask for. There have been applicants who have wanted to plant the 36-inch but if you go above that they really don't grow well. The roots just can't handle the new environment in which it's planted and they

typically, they grow less quickly than a tree would be that was smaller. So to answer your question, we usually don't request anything more than 24-inch box.

>> Commissioner Abelite: Okay, got it. That has to do with the placement of eight replacement trees and the placement as it relates to going on the property. Do you pretty much leave that up to the discretion of the property owner to place them where they want them? I understand they are trying to place the tree as close as possible to the old location. But in general do you let these tree replacement just happen where they make sense for the owner?

>> Thank you, Madam Chair. Yes, typically the requirement for a tree removal replacement for a single family house is one 15 gallon tree per tree removed. We indicate that the tree could be -- could be planted on the property. It could also be planted in the public right-of-way, if a street tree doesn't currently exist and we encourage -- and in this case, we've also given that provision that they can plant it as a street tree because that benefits the neighborhood as well. Or typically we allow them to donate \$300 to our city forest in lieu of plant being a tree. We handle all tree removal permits on a case-by-case basis so if they are removing the only tree in the front yard we would want them to plant the tree onsite if they don't have many trees what have you. We leave it up to the homeowner what they want to do or the type of tree they want to for that matter.

>> Commissioner Abelite: Okay then a couple of comments and I'll go silent. I was a builder for 17 years and I've seen a lot of plans come through my tables as well and also as a broker later on, and I've often seen the comments on the drawings that say "trees to be removed" and I've run across many owners that I've had interfaces with, with those plans and they thought they had a permit to remove. And I said no no no no, let's not, make sure you get a TR do it right. So what I'm telling, what I'm just saying out loud is that this could easily have been an accident on the owner's part. I think in my mind I'm allowing that as being a very distinct possibility. So with that being said with eight trees on the replacement side I'm happy with that and also I want to tell you that I live in a fairly new house, eight years old, before that I lived in Santana Row. And that tree and I fed it with feeding tubes and my trees are hitting 35 feet in height. I give them a lot of love and a lot of fertilizer often and you can

make these canopies go high very quickly and I don't think it's going to impact the neighborhood in a couple of years if you treat them well. With that I'm happy to support the motion.

>> Commissioner Bit-Badal: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. With the evidence in front of us I too can't find the findings if you will to find this was ill intended or planned from the beginning. I actually have happened to work with this architect before and I have nothing but regards you know for his professionalism and integrity so that reaffirms my impression in this case. The issue I have or the question I have for counsel is the maintenance. What happens if these owners sell the property, next owner doesn't keep the trees? Is there any kind of recourse that people could have? If the maintenance is not done, if they are bought and planted and then ignored? Is that -- it's just you know I guess every homeowner can ignore, I wish they don't but I'm just wondering.

>> Thank you, commissioner. It's not clear, I'm not -- I don't have the permit in front of me so I don't know exactly how the permit reads in termination of the conditions. So I don't know if that's actually so it would help for me to see that. But I think replacement of it and maintenance during the term of ownership would be what is contemplated in the permit.

>> Commissioner Kamkar: Okay.

>> I don't know if staff has a copy of the permit handy.

>> Laurel Prevetti: It is attached in your packet. The tree removal permit, at least one of -- I believe this is the version that we're recommending this evening.

>> Yes, this one is the version.

>> Laurel Prevetti: So it's actually contained within the appellant's materials. It's after the permit appeal. It's about one or two pages in. And I just want to say that in terms of maintenance of landscaping, the city also has a citywide ordinance that essentially requires property owners -- all property owners to maintain their properties in good repair at all times. You know make sure all the weeds are down, et cetera. So we -- if it's not specifically addressed in this permit, the other provisions of the municipal code prevail.

>> Commissioner Kamkar: Thank you.

>> Commissioner Bit-Badal: Thank you. And I also would like to echo some of the comments I heard here. I believe that the property owner did not do this on purpose. There was some breakdown in communication it seems. And it's been ratified at this point by staff. But to me, it reminds me of a controversial issue we had in Willow Glen many years ago on Willow Street with a tree removal but to me also this is a little bit different than that. This is about two neighbors not getting along. And I feel bad for that because to me the most important thing is for you to have peace and tranquility in your only home, when you go home in the neighborhood. Much more important than number of trees that are being removed or replanted is having that peace and harmony in the neighborhood and I know that is not within our purview here. But as one human being to the other I would really suggest that whatever the decision is tonight to go home and restart this relationship. From new. My other comment's going to be about replanting. I'm glad to see that staff is recommending 24 inch box trees rather than just all 15-gallon. I personally have mentioned that in previous tree removal projects we've had. And I personally don't care for a 15 gallon, I'm going to mention that. You're going to probably hear from that in future. It takes five years for such trees to become beneficial in our community and 24-inch is going to be much more beneficial and add times I believe we can go and plant 36 inches, it's not going to hurt. What it does when we plant 15-gallon trees we really need -- and we require property owners to take care of them, they're just like babies, right, you need to take care of them a lot more than an older toddler. So trees are the same way. The first five years you really need to take care of them to make sure that they're growing right and they're being maintained and watered. So -- and not every property owner just not like every parent is the same. With that I hope the current property owners will take care of both the 24-inch trees and/or 15 gallons and as you know you have lot of neighbors who are watching you. And again, my last comments are going to be echoing what my colleagues

said. But beyond that, after this meeting, I hope that there will be peace and tranquility in your neighborhood and I wish nothing more than that. With this I'm going to ask for voting by light. And the motion passes unanimously. The last item on tonight's agenda is ordinance amendment number 3 E, this is the last public hearing item. Farmers markets. Staff.

>> Okay, thank you very much, Madam Chair. Rich Bucuma, senior planner, department of Planning, Building, and Code Enforcement. I'll be providing a brief overview to a proposed amendment to the zoning code to establish zoning and use regulations for streamlining the City's review of certified farmers markets. As discussed, in the staff report, the proposed ordinance directly implements the strategies goals and policies of the envision San José 2040 general plan adopted by the city council on November 1st, 2011. In particular the design for healthy community major strategy, a component of this major strategy is the goal of ensuring that all residents have sufficient access to healthful food and certified farmers markets are anticipated to playing a major role in achieving this goal. In addition, general plan policies encourage farmers' markets in neighborhoods with high concentrations of fast food outlets as well as in low income areas. General plan goals for urban agriculture calls for expanding the cultivation and sale of locally grown agriculture as an environmentally sustainable means of food production and as a source of healthy food for San José residents. In addition, the proposed ordinance responds to city council direction to make access to healthy food and streamlining the permit process, for farmers markets as one of the top priority ordinances. Okay, this proposed ordinance is specific to certified farmers markets. Within the area designated by the county agricultural commissioner, only fresh and processed agricultural products may be sold by the farmers that produce the products. In addition to being certified by the county ag commissioner they must also obtain a health permit from the county environmental health department. The county enforces state law that applies to certified farmers markets which there are many attached to the staff report for your information. Currently, certified farmers markets are not specifically addressed in the zoning code. They are considered to be in the category of temporary outdoor uses of private property. Currently special use permit is required for farmers markets that operate on 45 days, I mean, requires special use permit for farmers markets that operate for less than 45 days a year. And a conditional use permit is required for those that operate for more than 45 days a year. Because of the time and cost of these permitting requirements, these requirements have been portrayed as an obstacle to there being more farmers markets

locating in San José. As far as the proposed ordinance a copy of which is attached to the staff report it proposes to add a new specific use restriction of the code that deals with certified farmers markets. The process would be streamlined by eliminating the planning permit requirements for those markets meeting the small certified farmers market definition that includes a maximum number of 15 agricultural product vendors and 10,000 square foot size alignment. Small certified markets are proposed to be allowed by right subject to specific operational requirements that are in the ordinance and also described in the staff report. They would be allowed by right in all the residential zoning districts, at -- limited to at school sites, libraries, community centers, and church religious assembly sites. They'd be allowed by right in commercial zoning districts downtown district and within the IP industrial park districts. Larger markets that are not able to meet this definition or operational requirements for small certified farmers markets will still be required to obtain a special use permit. In no case would a conditional use permit be required for a certified farmers market as is the case today. So in conclusion, staff would like to thank the health trust and their partners including the Pacific coast farmers marks association for their cooperation and support in the development of this proposed ordinance and we recommend that the Planning Commission recommend approval of the proposed ordinance to the city council. This concludes our presentation.

>> Commissioner Bit-Badal: Thank you staff. Commissioner Kline.

>> Commissioner Kline: Yes, just a quick question. The 15 number, I'm sure that must have been a reason for that someplace. Why not eight, ten, 25? Was there -- was that something that the organization suggested or that that come from staff or just experience in the marketplace somehow?

>> Yes, we consulted with the farmers markets operators and so forth and they gave us an idea as to what they considered to be a small, medium and large farmers market. So we thought 15 was the size that would be reasonable enough to waive the permitting requirements.

>> Commissioner Kline: So the stakeholders suggested this the people actually involved in this?

>> I believe we have some stakeholders here tonight that might speak to that but that was the basis for that 15 figure.

>> Commissioner Kline: Great, thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner Kline. How much is going to be the cost of the permit? You do have a change in what it was recently but what would be the changes? Do you have an idea?

>> We're actually proposing to eliminate the permit requirement for the small certified farmers markets. They'd still be subject to obtaining sophistication from the county agricultural commissioner as well as county health permit. So that permitting requirement would still be remaining and for the ones that aren't able to meet the small definition they would be subject to the current special use permit, special use permit fees which I don't know off the top of my head. But I think I reference it in the staff report someplace.

>> Commissioner Bit-Badal: Thank you. And we do not have any more questions for staff. We do have speaker cards on this item. Laura Busso and Todd Hanson would you please come forward. Bow please state your name please.

>> Good evening commissioners thank you for your time. I know it's getting a little late. My name is Laura Busso, I'm with first five Santa Clara County. I'm representing not only our organization but the families we serve as well as myself as a resident of the City of San José. Just quickly, first five is a public agency and we serve thousands of families throughout Santa Clara County. For us, we recognize the importance of passing and approving the changes to this ordinance because we value the importance of providing families access to affordable healthy nutritious foods. We serve as I mentioned thousands of families throughout the county but in San José we serve thousands of families as well throughout the city. What we find with many of the low income and working poor families that we serve is that they live in food deserts, meaning they don't have access to healthy, nutritious foods. We know when families don't have access to these foods it often leads to unhealthy eating practices, children developing chronic disease diabetes and obesity and other chronic ailments. We wholeheartedly support

this ordinance in that it also includes an EBT element to it which would allow low income families who receive public aid and assistance to be able to use their EBT cards or what we would consider ATM cards to be able to make these purchases as well. Again many of the families that we serve have limited access because of lack of transportation or there aren't venues within their neighborhood that would allow them the opportunity to walk and get those healthy foods and vegetables. We know that there's considerable research that shows that when families eat healthy, their kids eat healthy and when you eat healthy you have long term success in the community. Thank you for your time.

>> Commissioner Bit-Badal: Thank you. And the next speaker is. Ms. Busso would you please come back. We just had a commissioner who -- we've had a lot of that tonight. Commissioner Abelite.

>> Commissioner Abelite: Ms. Busso I do have a question when I read this zoning code or ordinance I was concerned about the EBT requirement frankly. And you know I understand that we're trying to you know make sure we provide opportunity for everybody to the greatest possible extent.

>> Right.

>> Commissioner Abelite: But I'm also visualizing somebody that comes to a farmers market and sets up a truck, I don't see those retailers as being sophisticated that have EBT tools. I don't know that yet, maybe staff can tell me. But at the same time, I figure your EBT users they don't just rely on vegetables to survive. Right?

>> Right.

>> Commissioner Abelite: They still have to go to a normal grocery store and buy all the other items, the proteins, the milks, the -- everything that won't be in the organic store. So I guess do you feel strongly about the EBT requirement, and why should you?

>> We do. And actually, right now we are currently piloting a CSA box program which is a community service agriculture box and it provides family the opportunity to basically experience fresh produce. A box of produce is delivered in the community and it's a pilot project. And one of the things that we're finding is that we're asking families to pay out of pocket even at a reduced price. And what they're telling us is they wish they could use their EBT cards because they are having to pay cash, that eight, \$10 that they're spending on that produce box they could have used for electricity or their expenses. We have somebody here from Pacific coast farmers markets and I know he has some knowledge on the EBT system at some of the other farmers' markets. What we find in the communities that we serve is that you often find little markets that have you know the eggs and the milk you know the processed foods, the cereals and those kinds of things. But they often don't provide fruits and vegetables. And we're hearing that again and again in the communities that we identify as food deserts. Those were you know the vegetables and fruits aren't easily accessible to them where they can walk to which is again another challenge for the families.

>> Commissioner Bit-Badal: And the next speaker is Todd Hanson. Would you please come forward.

>> Thank you for this opportunity to speak in support of the certified farmers market ordinance. My name is Todd Hapson, I'm the chief operating officer of the health trust. The health trust worked very closely with the planning division staff and our community partners in the campaign for healthy food San José in the development of this ordinance that would simplify and reduce the cost of opening new farmers markets in San José. Our interest in this is that although San José has some great farmers markets and in fact there's some new ones and we totally support that, there are so many neighborhoods that in fact do lack access to fresh produce. And this will, in fact, we're convinced that this ordinance will lead to additional farmers markets in those neighborhoods. So that the underserved neighborhoods will have access to fresh produce. I'd just like to add one commendation to the planning division staff. They were thorough, flexible and very inclusive in the process of developing this ordinance and I really -- it was a pleasure to work with them. Thank you.

>> Commissioner Bit-Badal: Thank you. And the final speaker in this item is John silvera.

>> Good evening, Madam Chair, Planning Commissioners, city staff, members of the community. I'm John Silvera, director of the Pacific coast farmers market association. It's a pleasure to come before you and speak absolutely favorably for the ordinance. It's been a great pleasure to work with your staff throughout the 20 years that I've been with Pacific coast in developing and operating certified farmers markets for the community. I think this is a great step forward in meeting some of the City's challenges. Moving into the 2040 plan. And look forward to serving the community in the future. And I'm available to answer any questions that you may have.

>> Commissioner Bit-Badal: We do have questions for you. Commissioner Abelite.

>> Commissioner Abelite: I have a couple of questions. So let's continue along with the EBT commentary. So since you're part of this trade association, tell me what happens, do your participants in these farmers markets have that capacity?

>> Right. Well, not only are our -- you know, we working with our colleagues throughout the state, we'll back up a little bit to talk about the EBT. A couple of years ago we had an assembly bill that was introduced. So I'm pretty sure well I'm positive and maybe rich could also let you know that we did model that same language. Pacific coast's advocates of the EBT program and all of our markets do accept the EBT but maybe we have more resources that other organizations may have. So we're building in a component where a third party could come in and do that processing for the farmers should they not have a market management staff running the program. There are all sorts of grants available to make these machines available to certified farmers market at no cost. The processing, where a bank account may be added work as far as doing the monthly reconciliation, but those are things that just come with the cost of doing business.

>> Commissioner Abelite: That begs the question, who is that person when I go up to a table and buy ten stalks of corn, is that somebody really from a market, from a farm? Or is that an in-between person?

>> No, it is an employee of the farm. That is a state regulation that has to be followed. It can be the farmer, his or her direct line of children, or spouse or partner. Or an employee.

>> Commissioner Abelite: Okay and so while I've got you I want to ask you a few other questions. In the zoning ordinance they're talking about doing it for six hours a day. That includes you know assembly and take-down. And in my mind that seems a little short. I wonder what your opinion is on that?

>> I think we worked on it and really tried to streamline that so we could create a model that would be comfortable for the city and comfortable for the communities we're operating in and I feel confident that that time line is acceptable.

>> Commissioner Abelite: I thought it would be a little bit short. And then also I understand also that the theme is to try to streamline permits and make them easier. I think that substantially does that. But then I read that one other requirement, aside from county and county, state, but no more planning, you still have to go to building and fire. And again I'm visualizing just these blue tents that are pitched up and I've been through fire approvals before and building department and at times it's not fun to go there. I'm just wondering in your view is that a necessary set of groups that need to put their eyes on these permits?

>> I agree with the process. I do think they need to be involved in the process. I think we have different skill sets of folks that may operate farmers markets. And this would allow them to become familiar with state law. With fire codes and also local ordinances that would do nothing but enhance the safety for both the operator and the community.

>> Commissioner Abelite: Oh so you don't think building department, fire department, I'm not saying frustrate the process but it would be another two steps that they have to go through? I'm just wondering if it's really necessary? I want to ask that of staff later on but I just want to get your take on it. That's all I have for you. Thanks.

>> Commissioner Bit-Badal: Thank you. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. Do you have a sense of how many new farmers markets we might anticipate and how quickly that would happen as a result of these changes?

>> I really don't. I think there is a need out there. If we you know do a comparison with any other cities, you know San José is unique in every community is certainly unique but if we were to look at you know the demographics or the geographical location of San Francisco that currently has about 35 farmers markets within that city, you look at San José with a greater population and a lower number of certified farmers markets. So you know, when we talk about certified farmers markets I think that each of us may have a vision of what that is or we're familiar with the farmers market that we may frequent but a certified farmers market could be operated by one producer. So in spirit of what we're trying to do with providing access to healthy food for all residents of San José, we could open a lot of farmers markets with two or three producers. But they need to be serving a need. Otherwise you know they're not going to last. The producers do need to be successful that are coming and selling at these markets.

>> Commissioner O'Halloran: Can you just educate me a little bit on who then are the operators and initiators of these farmers markets and what is your role with them? I don't mean to take a lot of time but just briefly.

>> Typically the farmers markets were initiated by the community. We were contacted years ago, in 1992, by the San José downtown association and currently operate your market on San Pedro. The state law allows three entities to operate a certified farmers market. A farmer himself or herself, a nonprofit organization, which is the association that I work for, or a governmental agency. Those are the only three entities that can actually operate a certified farmers market. That checkpoint is with Santa Clara County Department of Agriculture and the issuance of the certified farmers market perm and they're also responsible to enforce the direct marketing regulations that are set forward by the secretary of agriculture through the state.

>> Commissioner O'Halloran: Okay, thank you.

>> Commissioner Bit-Badal: Thank you. We do not have any more questions. Thank you so much.

>> Thank you.

>> Commissioner Bit-Badal: And with this I will ask for closing of the public hearing. Do you have a motion? Second. And although agreeing say aye. Great. Staff.

>> Thank you, Madam Chair, members of the excision. First I'd like to make some general comments to just about the process. That this really began, we began working on this issue about nine or ten months ago. Very closely with the health trust and representatives of the farmers market association. And I remember I was at a meeting last fall and I said what can we do that would help facilitate farmers markets? That was our starting position. And it's really been an experience of working together with them, with our own attorneys, with officials in the county health department and so forth throughout this process to kind of weave together an approach that I think is pretty bold in a sense. If you look at the current ordinance today most farmers markets operate, want to operate more than 45 times a year, they would like to be open every week. And so they are in this C.U.P. process where really a case-by-case basis, there would be a lot of potentially a lot of attention given to different conditions that would be imposed upon their operation. So we approached this as let's look at the history of the permits that we've issued, what have been the concerns when there have been community concerns around the operations and how can we frame an opportunity that we can deregulate so we can get rid of the cost barrier that the planning permit represents but still address concerns. And the operators of the farmers markets were very interested in that as well. They want to operate in a way that the community is concerned about as well, we want to operate within regulations if there is concern by the community. I think this is a really good step. I'll have a little bit on the EBT issue and note that it's actually in our general plan, our new general plan, that we would look at ways to do that so we are directly implementing that. And as noted in the ordinance there's a provision that a third party, that the farmers market provide opportunity for a third party. So it's not a requirement that every farmer be able to deal with it but just within the market that there's the ability to take that in. Rich did you want to --

>> Yes, I just want to reiterate that there was still rhyiming need to obtain necessary building and fire clearance for any structures or tents that are used for health and safety reasons, that requirement will remain. And nothing to add beyond that.

>> Commissioner Bit-Badal: Thank you, we have questions for you from Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. To my question about potential new farmers markets based on all the work you've done on that have you got an lot of feedback from potential operators that this will make a real difference in terms of getting new markets up and running quickly?

>> I think it's hard to say how many influence farmers markets will arise as a result of these new regulations. But I think as a result of this ordinance, this will help the market determine the appropriate number of farmers markets. And eliminate the permitting requirements that may be an artificial deterrent to there being more farmers parks in San José. So we're kind of getting out of the way and let the market for farmers markets determine how many there ultimately are in San José.

>> And add to that they are growing we see more and more each week, I think. I notice more. And then different types of venues, too. We for example, this is an -- includes industrial park because we see that companies, large companies want them on their campuses. We see them in shopping centers and public streets and different locations as well. We anticipate that this would -- this is what we can do to encourage more farmers markets that would then help more to come along. It's a business that will grow as it can, I think, as there's demand. And this is just removing one barrier to that business meeting the demand.

>> Commissioner O'Halloran: I certainly applaud you know staff's being proactive to remove those kind of restrictions. Going forward does the city have any plans or is there anything the city can do to take advantage of this new opportunity and you know further facilitate outreach to potential operators, whatever? I mean is there any vehicle for doing that within the city?

>> Yes, it's our goal to do some outreach kind of a one-stop-shop for farmers markets operators to clarify you know what the permitting requirements are, you know, what farmers markets need permits what don't what county

approvals are. So sort of a coordinated effort to do outreach on these -- on these new regulations in close coordination with the county of Santa Clara.

>> Commissioner O'Halloran: Thank you.

>> Commissioner Bit-Badal: Thank you. And Commissioner Abelite.

>> Commissioner Abelite: I want to go back to the building permit question so again, if I'm an operator and I want to go ahead and set up shop what do you envision an operator having in his hand when he walks into the building permit looking for a building approval? In other words do you have a site plan and you draw a bunch of square boxes that show tents? I'm trying to make it easier on those -- the applicants when they come in. And you could almost describe what they're going to do you know in text. And so what are the thoughts about what that application looks like? When it comes in the building and fire?

>> Those requirements are already in existence. There's a one-stop application for farmers markets and outdoor events that is currently used by our department or office of cultural affairs who has responsibility for reviewing farmers markets on public property within the public right-of-way and that type of thing. So they already have some forms that are already filled out. The fire department has forms including permitting requirements that are necessary in order to obtain approval for a tent or canopy structure. So that's already in existence. I wish I'd brought it with me. I could have explained it. But there already are -- there exist permitting requirements already for those types of things.

>> And if I may add, I think we would engage our building division in any ways that are possible to streamline the processes as we go on. But for the benefit of the farmers market operators, the building division does -- it's possible to have a template of different kinds of tents. Maybe there are common tents that are used by farmers markets. It is possible to preapprove them in order to streamline the approval process. That when somebody shows up it's just a matter of quick review and them stamping it. Again we can engage our building division to figure out ways of streamlining the process as we go.

>> Commissioner Abelite: Yes I think just in the spirit of making it streamlined, anything you can do to make building or fire avoidable. I understand they have to put their hands on it for a couple of minutes to vet it but anyway that's my comment, thank you.

>> Commissioner Bit-Badal: Thank you. And do we have any motion? Commissioner Yob.

>> Commissioner Yob: Yes I would like to make a motion to recommend to city council the improvements as recommended by staff.

>> Commissioner Bit-Badal: Would I like to speak to your motion?

>> Commissioner Yob: I just would like to say one thing. Both the representatives of the health trust and Pacific coast complimented staff, I want to thank you for saying that, and thank you for the reminder. I also want to compliment staff, I think this represents a wonderful collaboration with the community and very knowledgeable stakeholders, and I don't think we do a good enough job of thanking you for your efforts. So we really appreciate what you've done here.

>> Commissioner Bit-Badal: Thank you, Commissioner Yob. I do not see anymore -- actually Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. A quick comment. It is so refreshing to see the efforts that the staff led in the general plan 2040 starting to take shape. We talked about all of these and I wondered yeah, you know it's nice talking but when are we going to make this happen? And now I see it before my eyes. Little by little, everything we're talking about is you know coming to fruition. And great job. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I'm glad we're going to have something to vote on that will provide more healthy fruits and vegetables in San José. To work so well with the community to provide an avenue that's going to be productive for everyone, I really appreciate that.

>> Commissioner Bit-Badal: Thank you, Commissioner Cahan. I would like to also echo comments from my colleagues. First of all I would like to thank staff, a matter of months bringing this forward, this is great. And it also speaks highly about the great work that you're doing while you're being -- while you're short staffed. In terms of the participants I thank you also for your contribution. Having affordable, health and nutritious food, it should be provided to every resident in our city. And whether they are in an affluent area or a low income area for that I'm a huge proponent of EBT. Actually it's interesting being a Planning Commission and staff. I did an RFP for a farmers market in another city, very much familiar with what it takes to not only bring in a certified farmers market but the guidelines. And EBT is a huge part of it, actually because you want to make sure you're able to provide the nutritious food to those who cannot afford it, those who are living in an area that has a lot more liquor stores than grocery stores. I know we had talked about that quite a bit in the past. And it's always provided or ratified by the provider, the provider could be Kiwanis club or rotary club and I'm hoping that my rotary club will take this on and I'm going to go back and tell them the permit fees are not as much as you think they are which is going to be great news. I think it is a great activity if you're a Rotarian. I know some of us are here. It's a great project to take on from a nonprofit point of view. Also, thankful that we are being competitive with other cities, because other cities don't charge fees, permit fees, but they do have the building permits fees and fire inspections because obviously, safety standpoint. And I'm glad that Commissioner Abelite talked about expediting it. As we're going through the process I want us to work with farmers market and make the process much more streamline because they are not really big developers with -- and they do need a lot more hand-holding. At times you would have farmers markets which are operated by nonprofits. And that's the first time they're operating a farmers market so they do need some assistance. With that again I'm appreciative of staff of those policy makers who have remind us of having healthy foods in our city and also of those who are here tonight speaking on behalf of it. So we will vote by light now. Thank you. And the motion passes unanimously. Thank you. Moving forward with petitions and communications. Public comments to the planning commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to

three minutes. The commission cannot take any formal action without the item being properly noticed and placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. Did we have any cards?

>> Laurel Prevetti: We have no cards.

>> Commissioner Bit-Badal: Thank you. Referrals from city council, boards, commissions or other agencies.

>> Laurel Prevetti: We have none.

>> Commissioner Bit-Badal: 6, good and welfare, report from city council.

>> Laurel Prevetti: The city council is still on its recess so there is no report.

>> Commissioner Bit-Badal: Thank you. Commissioners' report from committees. Norman Y. Mineta San José international airport noise advisory committee. The commissioner has just stepped out for a couple of minutes. We will resume to 6C. Review and approve synopsis from 7/11/12.

>> Laurel Prevetti: Thank you, Madam Chair. I just want to bring to your attention the yellow version of the action report. It is a replacement. We found an error on page 3, Item 6C. The commission reviewed and approved the synopsis from 6/20, so we made that revision for your consideration. Thank you.

>> Commissioner Bit-Badal: Great. Do we have a motion on this item? All those approving say aye. With the exception of Commissioner Cahan who stepped out of the room. 6 D, subcommittee formation reports and outstanding business. Do we have any reports?

>> Commissioner Kline: Nothing to report.

>> Commissioner Bit-Badal: Thank you. 6E, commission calendar and study session?

>> Laurel Prevetti: We have no modifications to the commission calendar.

>> Commissioner Bit-Badal: Actually I do have a question to ask you regarding the calendar. If we need to -- we actually are planning to make a presentation to former commissioner Platten. Can we put that on the agenda?

>> Laurel Prevetti: Certainly. Which date would you like that to occur?

>> Commissioner Bit-Badal: We will get back to you, but I just wanted to address that in a public meeting. Let's put it for now at the next meeting and we will talk to him. If there are any changes, we can defer it.

>> Laurel Prevetti: We'll put it at the beginning of our next meeting then.

>> Commissioner Bit-Badal: Great, thank you. Item 6B. Commissioner Cahan is in time.

>> Commissioner Cahan: No report.

>> Commissioner Bit-Badal: Okay. Thank you. With that I will adjourn this meeting. Have a great evening.