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>> Commissioner Jensen: Good evening. My name is Lisa Jensen, 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, December 15, 2010. Please remember to turn off your cell phones. Or put them on vibrate. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you would like to address the commission, please fill out a speaker card located on the table by the door on the parking 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, 4.A, 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 the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chamber. Each speaker will have up to two minutes. After 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 commissioner 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 has raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action 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 commissioners are present. with the exception of commissioners Kamkar and Platten. Next item, 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 the items for which deferral is being requested. If you wish 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 the remaining agendized items past 11:00 p.m, 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. We currently have two items on the list of deferrals. CP08-033 conditional use permit For a daycare center and CP00-009-01. conditional use permit for asphalt concrete crushing and recycling facility and the staff?

>> To January 12th, 2011.planning Commission meeting, and 1B is going to be dropped and renoticed once the applicants are prepared to move forward. That concludes deferrals from staff.

>> Commissioner Jensen: Thank you. I'll entertain a motion. Thank you. There is a motion to defer. Commissioner Kline. Okay. There's a motion and a second. All those in favor and that passes unanimously. With commissioners Platten and Kamkar absent. Consent. The 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 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 to one of these items individually, please come to the podium at this time. We currently have one item on consent. CP10-004. Conditional use permit to extend the height of an existing Monopole by 10 feet tonight IP industrial park ffs zoning district located on Qume drive. Staff?

>> No additional.

>> Commissioner Jensen: I will -- there's a motion and second to approve the consent calendar. All those in favor? Thank you. That passes unanimously. With commissioners Platten and Kamkar absent. 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. Our first item. 3A. CPA 09-054-01 and ABC 10-009. Conditional use permit amendment and determination of public convenience or necessity to allow drinking establishments offsale of alcoholic beverages full range of alcohol and after midnight use to a previously approved urban public market using on an approximately 1.09 gross acre site containing a public landmark and

historic site, Peralta Adobe, in the D.C. downtown core zoning district located on the South side of West St. John Street between North Almaden avenue and north San Pedro street. Staff.

>> Thank you, Madam Chair. As presented in the staff report this is a conditional use permit amendment to a previously previewed conditional use permit to the permit amendment that is before you tonight is specifically dealing with the on sale and offsale of alcohol. You know we are recommending approval of the request. Along with the recommendation of granting the determination of public convenience and necessity for the following reasons. That the project conforms to the San José 2020 general plan and that it really does contribute to that mix of uses that adds to the vitality of the downtown area. It also conforms to the requirements related to drinking establishments and the offsale of alcohol as detailed in the staff report. The request for offsale of alcohol establishments would, and this is more related to the granting of determination of public convenience or necessity, enhance the vitality of a commercial area more specifically the San Pedro square area without presenting a significant impact on the public's health or safety. We also analyzed it and feel that it conforms with the city council policy 6-27 related to evaluation of 24-hour uses. Again they are requesting to go past midnight. In our staff report, we are recommending that it does go past midnight. But currently our recommendation includes a restriction on both the onsale and offsale. I do understand that the applicants want to address that and staff is certainly open to hearing that because again our recommendation really was based on what was presented to us through their application. We also feel that the project conforms to the city council policy 623, the guidelines for the evaluation of what we've termed back then bars and night clubs and it really does not negate any of the findings that were made in the approval of the original conditional use permit 09-054. And again, this project conforms with the requirements of the California Environmental Quality Act. So that concludes staff report.

>> Commissioner Jensen: Thank you staff. I have three speaker cards the first being the applicant, John McEnergy. Please come forward and you have up to five minutes to discuss your item.

>> Good evening, commissioners, I'm John McEnergy. I'm joined by my partners, Martin Minney and Tom McEnergy. We wanted to address the commission for three reasons. Simply it is a unique and fairly complicated application, we wanted to be here to answer any questions. And secondly there was a slight misunderstanding

between the intent of our application and what ended up in the staff report. I explained in a brief letter that was handed out. You probably haven't had a chance to look at it but basically to summarize, we were asked to put down the market hours in our application. Our market hours are anticipated at this point to be between 10:00 a.m. and 12:00 a.m. We do -- we do want actually we think we're going to be competing with Los Gatos, Campbell, Santana Row and hotels downtown so we want the opportunity to be able to stay open and serve alcohol until 2:00 a.m. We believe this is going to be one of the most beautiful settings in the South Bay and we will be competing with those areas and projects for weddings, banquets and corporate parties. So having alcohol stop at 12:00 a.m. I think gives us a disadvantage in competitiveness. We've been working in downtown to try to kind of change the perception of it for four generations, the McEnery family and the Swenson and Menny families. We believe this is going to be a game changer. We believe this is going to be as compelling as anything in Northern California and rival any other market. To summarize the market is being changed and redefined as we go every day here. And the anticipation at this point is that it's going to close at 12:00 a.m. but to be competitive we respectfully request that our application carry the ability to serve until 2:00 a.m. Thank you.

>> Commissioner Jensen: We do have questions. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair we have good market closing procedures, in that it has that the loud noise will cease by 1:00 a.m., wait staff will cease by 12:00 and patrons will receive last call at 11:45 and then at 12:00 lights will be brought up so that we can get people out in about an hour's time so they can wind down. What is your proposal, now that you want to be able to serve alcohol later so what is your proposal for the time?

>> You know I hadn't seen that. I think what they did is took the 12:00 a.m. time and pulled back from there. Whatever the normal close for 2:00 that's what we would do, probably 1:30 that's when we would stop. We don't see entertainment going that late, winding down earlier in the evening. If there's a sharks game or a new years eve celebrations we would like to have the opportunity to stay open until with 2:00.

>> Commissioner Cahan: Okay.

>> Commissioner Jensen: I have a question myself. When the proposal came before us, this is sounding a lot less like a public market, on those lines and more like a small shopping center with a number of bars and restaurants. And is that correct?

>> Um -- yes, I mean it's really hard to define. We've struggled with it too. Because I don't want to be too grandiose here but it's unique from anything I've seen, I don't want to say the world, I mean the United States. We're realize trying to bring something completely different here and I think one of the unique aspects is the Peralta Adobe plaza. The milk market buildings surround this and it's going to be the most unique environment in the South Bay if not Northern California.

>> Commissioner Jensen: Do you expect that the shoppers that you're anticipating having since this is a public market space are going to be likely to be shopping until 2:00 in the morning or are you planning on closing the market portion significantly earlier?

>> It's in a flux right now. We're not really sure. Probably most of the hard goods would close earlier and most of the food and other uses would stay open later.

>> Commissioner Jensen: And do you have a feel for the amount of square footage you intend to dedicate to the meat market food market and nonflorist items?

>> Off the top of my head some vegetables and produce is probably about 700 square feet, there's between 1100 and 1500 square feet that's going to be the butcher, fishmonger and produce -- I'm sorry, poultry, we're going to have a baker that's about 900 feet, demonstration kitchen that's about 1500 feet, education cooking demonstrations, chef at the market and you asked a couple others.

>> Commissioner Jensen: The florist, nonfood items, all of the things that would make this the public market that it had been presented to us.

>> Coffee shop is going to be about 1100 square feet on store roasting, typical restaurants that probably will be -- that can survive independently, one is going to be about 3,000 square feet. In a couple of the exterior uses, I guess you'd call them strawngts, merchants will also be able to have their own hours if the market closes at 10:00 or 12:00 a.m., they'll be able to stay open because they'll have access w to the exterior.

>> Commissioner Jensen: If I understand, that's roughly 40,000 square feet in the 40,000 square foot proposal?

>> For kind of traditional market merchants share.

>> Commissioner Jensen: I'm just trying to understand because this is sounding different than what we had seen previously.

>> No, no, it's the same. It's the same. Maybe I am not explaining it properly. We will have a frozen yogurt, we have a Napolitano pizza, we have a shark store, very unique device, on NHL.com, you can't get it down at the shop at the arena.

>> Steve Borkenhagen market manager. 24,000 square feet indoors and of that only 50% of that will be leasable square footage. When you mention 40,000 square feet and you compare say 5,000 square feet of uses fish meat and produce, it sounded small. We square footage and of that those uses you talked about those classic market uses might be in the neighborhood of 50%. So you know we're not talking about 4,000 out of 40,000 feet. We're really talking about four or 5,000 out of 12,000 square feet just to be fair. The small food operations are something that really give texture to these other markets, where it's a ferry building, pike or other uses. Not public uses, virtually every square foot of our project would be something you would typically see in public markets. I just want to be real clear that we haven't shifted in some conceptual why from what we proved we are.

>> Commissioner Jensen: First I'd like to say welcome Mr. Borkenhagen.

>> Thank you.

>> You are requesting permission permits that you would provide as a blanket application for less than half the square footage of the project proposal and then there are approximately three other vendors that may want to get their own individual licenses. I went through and I did a calculation. It looks like it's roughly 2500 square feet of vendor sales that would be covered by your license and then approximately 4,000 additional square feet that may be among the three vendors, does that sound about right? That sounds like more than 50% of the total square footage.

>> You got to understand that we've got a couple of anchor spaces, one that's 3,000 up to 4,000 square feet, where we have tenants that have their own liquor license that are serving beer and wine only, incidental alcohol use. Like John is saying we're not talk about raging restaurants and bars and drunk people running around. These are families with incidental drinking of beer and wine. I want to be clear the vibe we're creating, it's not a place where hard liquor run rampant. It is 3,000 to 4,000 in addition to what we're serving our selves, family restaurants.

>> Commissioner Jensen: And that's fine, I'm trying to understand how this project is shifting over time, if this is going to continue to come back and request modifications over time and hue solid it is in its format. I understand the economic crisis right now had some role to play in changing the market but it sounds then like the staff report may not have been accurate and that there is actually going to be over 50% square footage dedicated to alcohol sales?

>> Tough to define. I mean I would say the best example is you know, outside of a hotel banquet room when people are waiting to sit down and there's a cocktail hour we have little service bar areas. That's kind of the model here. You don't have larnlings areas that are traditional sit down bars. That's kind of the difference. You'd have your alcohol and you'd sit under the lights and watch Shakespeare. The other thing I wanted to say was -- God, I just lost it -- oh, this really isn't a change. This was then the idea from the beginning. It's just we were in a timing

crunch to try to get the project going because the construction was going to take the longest. So it was kind of a group decision to not have the alcohol and market hours in the first C.U.P.

>> Commissioner Jensen: Okay, all right, thank you. I appreciate the discussion. And I look forward to hearing from you. You'll have up to five minutes -- oh I'm sorry, our attorney would like to weigh in.

>> Just to help frame the discussion. I just wanted to split a little bit of a legal hair here, which is that the City of San José doesn't regulate the hours that alcoholic beverages can be sold. That's governed by the California state business and professions code and the ABC can further limit those hours but what the city does regulate is the operational hours of the overall project. So to the extent that we're having this discussion it would be from the City's jurisdictional standpoint it would be the operational hours of your project and then again, with regard to the specific sale of alcohol that's not within our jurisdiction specifically. In other words I was looking at some of the documents and some of them say well we'd like to operate during these hours but you never know what can happen so we'd like the authority to sell alcohol during these hours and again the actual hours you sell alcohol is really within the jurisdiction of the ABC. So what we should be talking about what the Planning Commission should be discussing would be the operational hours of the project overall.

>> Good point. Jeannie, that's already in the application isn't it?

>> Yes the overall hours we're register for the market is 6:00 a.m. to 2:00 a.m. To the extent this has been kind of a nitty gritty how the larger public market space, the applicant is going to get a single license of what type and then individual kiosk vendors may latch onto that. So we did have some restrictions relative to the hours of offsale establishments because within the context of the larger market area, and I look to council to see whether or not what we recommended was okay. With the -- you know kind of there are going to be suboperators within this larger market and again you know the original C.U.P. was really done under the context that they're using public space and that most of these vendors or operators on the private property are permitted as of right so you know --

>> Again our regulations would be by use type as opposed to specifically regulating the hours of sale of alcohol. So just like other offsale establishments they obviously sell alcohol but we regulate the use and as part of that using there may be the offsale of alcohol as opposed regularly the offsale of alcohol which is the purview of ABC.

>> And we have had several meetings with ABC and the police department and they have been very supportive.

>> Commissioner Jensen: We also have a question from Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I have a question of your onsite manager, do you have an office for an onsite manager?

>> Presently.

>> Commissioner Bit-Badal: Or are you foreseeing?

>> Both. Yes.

>> Commissioner Bit-Badal: Thank you.

>> Commissioner Jensen: Again we have no further questions and you'll have as much as five minutes afterwards. We have two speakers, Martin Menny. I think most of the items that you had questions were covered by John and Steve but I wanted to point out just a couple of items that hearing your questions, I thought was important to understand. The projects as we conceived it certainly the mix of uses and the overall concept have been taken on different projects that are similar in the public market realm. Granville Island and Pike's market. Those kind of projects we've taken components that we feel are important for the downtown which involve the different market and normal market that you see. But the evening hour prepared food and sort of social aspect of it for all the housing that surrounds the project, as we've looked at this as Steve has mentioned it's start of

evolved. We've had piece that he we liked about projects and things that we could do better, things that we could bring to the downtown neighborhoods of the area. I also wanted to point out that we've done our community outreach. I want to share that we had real strong reports from homeowners association there. Most ail the drejts in the downtown neighborhoods are interested in getting the kind of uses and eating establishments that we're talking about. Certainly any questions you have we're open to answering any of those.

>> Commissioner Jensen: Mr. Eggers, would you introduce yourself.

>> I'm Darryl eggers. I'm really happy the imawrn market is going to go in I think it's going to be a strong addition but I'm strongly opposed to the alcohol. My understanding of offsale is you're loud to take it offsite, right? I don't think that -- sim happy that recently the Miami beach club moved away from this neighborhood and went to south first street and I'm atrade that some of the same unruly characters are going to come back to this place. Who is going to be drinking alcohol after midnight? People from the sharks gamings they all park on the side streets, Julian St. James San Pedro. They will be tempted to dwirchg another class of alcohol or whatever and get into their cars? I'm wondering if this is a Public Health hazard, plus, the trash, I'm worried there cont public bated room, until 2:00 a.m. We are worried with the homeless people using the bathroom right up against our building. This is going to be worse. Their saying this is going to happen the downtown, for us to come and use, but most of the people who can afford a condo in these high rises are in their '40s and '50s like myself whereas, someone building will feel the same way. That's all.

>> Commissioner Jensen: Thank you, Mr. Eggers. Around the applicant you may have up to fives minutes if you would like to address any of the concerns.

>> Yeah, just real quick. Professor eggers brought in some good points. I'm wondering when he he moved downtown, I've been here all my life. I'm in '50s and I occasional go out after midnight. There was a time lot of violence, there was a person killed in the very building that we purchased, that we're now turning into a public market. You know we do want other people besides people that are in their '40s and '50s. We want this ooms getting balloons from a clown, aside from the building that we bought the Miami beach we were very instrumental

in running that night club out of town. There was another night club that was an under 21 drinking establishment. Obviously they couldn't drink but they could be in there. That was a horrible mix. There was terrible violence coming from the club. We put pressure on the owner and they shut that one down. This is going to be nothing like what any of the problems were in the past. As far as the offsale goes, we're looking for offsale for wine only, this is not hard liquor offsale. I live in the area, we own property around there we have the same concerns of professor eggert. So I just want to point that out for him that we're there, we're going to be on site and I think his concerns are unfounded.

>> Commissioner Jensen: Thank you, we have a question for from you Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Will the onsite manager be onsite until 2:00 a.m. or until closing every evening?

>> You know if he's not there we'll have somebody there yeah. Our main manager is going to be Steve Borkenhagen. He he works 18 hour days as-is. He he loves this project, it's going to be him but after him we will have a manager there watching the whole market.

>> Commissioner Cahan: Any time you are open if there's an issue there will be someone there that can immediately answer to it?

>> Yes.

>> Commissioner Jensen: Thank you. Staff. I'm sorry Commissioner Kline. Okay. Motion to -- is there a motion to close public hearing? There's a motion and second. All those in favor? Thank you. Staff.

>> Thank you. You know, I again go back to the original C.U.P. That really, it was a conditional use permit primarily because of the use of the public space and that all the market areas are permitted uses. But in the context of coming back and requesting to have some of that area devoted to alcohol sales, be it onsale or offsale,

in order to really kind of keep this proposal true to what was presented, so that you know, the public benefits from them being able to utilize the public space, we do have the condition related to no more than 49% of the leasable tenant space shall be allowed for the total offsale of alcohol and onsale, drinking establishments. So there's one limitation that we put in and that's not to say that it's going to be a pure offsale establishment. It may be offsale in connection with a wine vendor who does wine in one of our industrial areas I mean that sort of thing. Again we do have that one limitation. I would look to counsel again to see whether or not again condition number 8, although we do have the urban public market, the larger use, being recommended to stay open until 2:00 a.m., similar to how we have shopping centers within the cop text of that larger shopping center and there are you know specific definable onsale and offsale establishments, originally we do have a limitation on the offsale establishments to only be allowed to operate until 2:00, I mean until midnight. So again, I would like it clarified, as to our ability to regulate within the larger market, similar to a shopping center, we can limit the hours of operation of an offsale establishment.

>> Right, that is correct. So just as we do with other offsale uses, we regulate the operation as a whole. So they may sell other items besides alcohol. So it's not that that operation can stay open and still sell the chewing gum or whatever that establishment may sell. They just can't sell alcohol. That would be the direct regulation of the sale of alcohol and we're not doing that but we do regulate generally the hours of operation of different businesses, and if you look at the code offsale of alcohol are an he enumerated use. He we are regulating the use not necessarily the items they sell within that use. Obviously, if it's a traditional liquor store the predominant item is probably alcohol but not solely alcohol. So the director is correct that we regulate the uses and the hours of operation of various uses so in a shopping center you may have a restaurant, you may have an offsale, you may have a general commercial and we regulate the various operational hours but not the items that are sold.

>> Okay so again, we would still day with a the restriction on those establishments that do have offsale. That the whole of that vendor or establishment would have to shut down at midnight. However those which have online sale again we don't have a problem. Like an individual vendor, or a store front within the larger market that wants to do offsale of alcohol, maybe solely or in conjunction with other things, that that vendor or that market space not be allowed to stay open past midnight. That's how we have it structured now.

>> So if I'm understanding you, it would be, we layer different types of uses within the zoning code so a particular site can have numerous use categories allowed on that site. So it may be general retail with a restaurant with an offsale. It sounds like what the director is noting is that for uses that have that layer of offsale or drinking establishment or whatever the use category is, maybe not drinking establishment if it's going to be part of a restaurant. But again if you say for uses that include that use category of offsale establishment, that those uses, that the hours of operation of those uses would be, then you set forth those hours, that would be consistent with how we have treated this operation.

>> That is how we have condition number 8. However staff is amenable to modifying that condition as requested by the applicant you know currently reads the urban public market including the plaza is allowed to operate between the hours of 6:00 a.m. and 2:00 a.m., six days a week, alcohol or drinking establishments we're okay just limiting that to operations that include the offsale of alcohol, that those be limited to 6:00 a.m. to 12:00 a.m. six days a week.

>> Commissioner Jensen: May I ask, I'd like counsel to clarify, if I understood correctly, counsel is saying if there's a market or a shop that has offsale alcohol a bottle of wine as part of its goods that it was selling that at midnight the shop itself would have to stop the sale of wine but it could continue to sell other things and what I'm hearing you say is that that would have to close.

>> No, no, if any part of their operation includes the offsale of alcohol that operation as a whole needs to shut down because within the context of the operation we can't say well you can sell maillot and fruit but you can't sell alcohol. That's the ABC's purview. So we have to limit the operation as a whole and we still want to suggest that any vendors or establishments within the larger market area that do have offsale as part of their operation, that those vendors or establishments, those uses within the larger market that include offsale, cease their whole operation at midnight.

>> So for example, if when you approve grocery stores, those have offsale of alcohol as a component. We never say to those grocery stores, you must sell alcohol during these hours, he we don't do that, it's the ABC, and the ABC license, as well as state law, the regulation is you can sell alcohol between 6:00 a.m. and 2:00 a.m. Just as we wouldn't do that for a grocery store, we wouldn't do that for any particular use in this market. However, where you have a shopping center we have said that if one of the pieces or one of the components is an offsale establishment, then the prairnl hours of the business as a whole would be, and then you would set forth those hours. Not what they can sell during those hours but as a whole the operational component of the use would be from, you know, X hour to Y hour.

>> Commissioner Jensen: And if I understood the applicant correctly, they were requesting -- and a nodding head will help here -- the ability to provide both restaurant sales of alcohol and offsale of comol between midnight and 2:00 a.m. Yes, no? Yes. So the applicant was asking for extended service, off-hour service.

>> Again I think staff is supportive of the allowance of on onsale or what we refer to as the drinking bliblight until 2:00 a.m., differing from our recommendation?

>> Commissioner Jensen: That's not what item condition number 9 says which is this item the hours of operation for offsale of alcohol --

>> We would have to amend the whole resolution as appropriate but the first operative conand 9 may come out altogether, it was kind of a way of reiterating things but condition numb 8. Between the hours of 6:00 a.m. and 2:00 a.m. seven days a week with the exception, and this is what we would propose, of operations that include the offsale of alcohol the use of which shall be allowed to occur between the hours of 6:00 a.m. and 12:00 a.m. This is the offsale.

>> Commissioner Jensen: Okay, director.

>> Laurel Prevetti: Thank you, if I could just clarify. So we provided to the applicant and to the commission the draft resolution that would limit both the offsale of alcohol and the public drinking pliments to midnight. The applicant has now revised their proposal or clarified their proposal that they would like the ability to have both of those activities go to 2:00 a.m. If I'm understanding. Or if we --

>> Commissioner Jensen: Can we reopen public hearing for the purpose of -- Mr. McEnery if you could come forward to help us better understand this and we are reopening public hearing just for purpose of clarifying this one issue.

>> One issue, the offsale we're okay with 12:00 a.m. Yes.

>> Commissioner Jensen: Thank you.

>> Laurel Prevetti: If I could just conclude, then, staff's revised recommendation, taking into effect the applicant's intent, the offsale uses involving that would cease at midnight and that the drinking establishments would be allowed to remain open until 2:00 a.m.

>> Commissioner Jensen: The staff report will have to be amended. The conditions will have to be amended. My understanding is that condition number 9 which is a reiteration of needs to state the drinking establishments may remain open, until 2:00 a.m. is that correct director? Because right now it says mid 6:00 a.m. to midnight.

>> Yes, we would modify that or let's put it this way. Whatever action the commission takes, the resolution would be modified accordingly.

>> Commissioner Jensen: Okay, okay thank you. My apologies Commissioner Kline for putting you on hold so long px Commissioner Kline.

>> Commissioner Kline: I'd like to make the motion limited to 12:00 onsale of alcohol would be to 2 a.m.

>> Commissioner Jensen: And is that striking number 9?

>> Commissioner Kline: 9 is duplicate to me. I'm not sure if staff would like to comment whether it's required or not.

>> No we can take it out.

>> Commissioner Kline: Then take it out.

>> It really is intended to say abide by whatever your ABC license is.

>> Commissioner Kline: 9 and 14 have to be adjusted so they can shut down properly.

>> Commissioner Jensen: Are those the provisions normally put in by applicant?

>> Commissioner Kline: I don't think they shut down --

>> Commissioner Jensen: To reflect the applicant's recommendations that 2:00 a.m. is their closing time and they would like to abide by normal state law with respect to closing as opposed to what is put here in the currently condition?

>> Commissioner Kline: Simple answer is yes.

>> Commissioner Jensen: Thank you. Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Can't find the exact location but I seem to remember that the idea was to have a one hour time frame where things could start shutting down where different gates were

closed to kind of filter everything and so I don't know, A, if that's correct and if it is, then how does that fit in to what the normal good neighbor market closing procedures are?

>> Well, we don't have normal good neighbor market closing procedures. I think this is the applicant's attempt to suggest that this is how they envision managing this sort of use. And again, we put it in there because it's something that they offer up. Anonymous clearly we'll need to modify the references to make it internally consistent now with what we're doing. Again, they're stating this but if they miss it by five minutes, again it's one of those things where it's really kinds of you know a little massagable. It's like a management plan. This is what they're looking to do and they hope to accomplish by it. If they find that they're not accomplishing the intended goals of kind of making this a good neighbor use, you know, we want to support the flexibility to allow them to modify it, so that it really I think reaches the intent of dealing with the noise and any boisterous activity and whatnot. Should they not be able to do that even through implementation of this good neighbor strategy and it is a nuisance there are some nuisance provisions in these permits that say hey we're going to give you a call and let's figure something out here.

>> Commissioner Cahan: So it sounds like the spirit is to make sure that it's set up in a way that will be conducive to things realize having an opportunity to wind down, a long opportunity to wind down, so thought neighborhood writ not be suddenly affected by people who had the opportunity to drink until the very last minute and didn't have anything to eat to soak up the alcohol. I hope that continues in your discussion as you're reformulating this good neighbor closing procedure that you continue to give a substantial time frame to that winding down time period.

>> Another thing we do have in the broader downtown, a couple of years ago there was a whole soft closing pilot program. And you know, whether it was a success or not, is up for debate. I think what has helped in some instances is the eatery that maybe don't sell the alcohol and whatnot, we have supported a lot of those to stay open past 2:00 but day open to 3:00 so they provide that more extended soft closing or places for people to land once they've left the drinking establishments or places that have entertainment. And they're dispersed throughout the downtown so they're not concentrated in one area. So there are areas for people to land. So within the context

of the individual I think it's laudable that they're looking to do this same sort of soft closing type thing to manage their larger population at the market.

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

>> Commissioner Bit-Badal: Thank you, Madam Chair. I'm supporting the motion because I think it's a great thing for our downtown. It's a great addition besides the current recommendation does support the guidelines for the closing of bars and night clubs, which is something the city council has been interested in the past years and important for the well-being of the downtown. This market what's so different about it is because the property Merry Christmas and the managers are always onsite. That's different ooms from applicants they're not on site all time. That's why I asked if there's someone who issues come up with customers from time to time and you just need to make sure that there's somebody out there to respond to issues if they arise as we all know. So at this point I am supporting the motion, I'm appreciative of the work and wish the applicant best.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. I'd also like to thank the applicant, this is going to be as you stated when you came before of originally, an interesting place. Percentagely I'm interested in if Granville market Pike place market genre, this face may transition during the day in its uses and in the morning hours be a public market area and then slowly transition into you some of the more entertaining uses that would allow both residents and visitors a place to land and have some fun. So I'm looking forward to that. Staff, San José PD has expressed loud objections to sidewalk cafes on the grounds that they're fearful that somebody may hand a drink to a passer by. Has PD weighed in on a cart where cocktails are served and then the person who receives it wanders off into the crowd? I think it's an exciting idea. I just wonder how PD feels about it.

>> Well, they haven't raised objection to this proposal. This proposal does not include sidewalk cafes on the public right-of-way. So it's a little more of a contained area in the plaza. So in that case, they have not raised an objection similar to how maybe someone in a restaurant can wander off, they haven't seen it as any different and he we are not dealing yet with any of the requests to put tables out on the public right-of-way yet.

>> Commissioner Jensen: Okay, well I think sidewalk cafes are a wonderful thing and I think the walls that separate the sidewalk cafe from the public right-of-way should be as low as the table top so it's not a problem for me. Then there seems to be still some discussion regarding the total square footage of alcohol sales. When I added up what was indicated as being applicable to this particular request, it was roughly 2500 square feet. And then the applicant has listed another four to 5,000 square feet of individuals who may want their own permits. When you state that it is less than 50% total of the leasable space, does that take into account the individual sales or is that aside from the individual locations?

>> Again, we didn't measure out their spaces because again this could be very dynamic out on the plaza. And the vendors and stuff like that. So we have put the limit so that it -- no more than 49%. And to the extent that the applicant feels that that's too restrictive I would expect them to speak up. So that's based on just what we feel is appropriate, regardless of what -- and again, it's really -- it can shift around because there might be some fixed posts out here but then there may be some places that will shift around or move from year to year based on any turnover or however they're going to -- market or lease the space. So at any given time we've said that you know, and they're going to have to balance that. So --

>> Commissioner Jensen: So if I understand you correctly, in answer to the question posed as just the space requested by the applicant for the vendors that they're accommodating, or it's the vendors they're accommodating in addition to the other vendors who may be requesting their own licenses, in I understand you correctly, it's all of those?

>> The total leasable area.

>> Commissioner Jensen: So the applicant may want to show up tomorrow at City Hall and request because I don't think you've got enough, 49%, if Mr. Borkenhagen is correct, I don't think 49% is going to cover what you think you're going to need. Okay, Commissioner Cahan.

>> Commissioner Cahan: Thank you, mayor. I didn't hear a second on the motion so I wanted to make a second, so there was an official.

>> Commissioner Jensen: There was a second, yes, thank you. There is a motion and second. May we vote by light? And that passes unanimously. With commissioners Platten and Kamkar absent. About move on to item 3B. RA 10-001. Appeal of the director of planning's decision to grant a request for reasonable accommodation to allow for the expansion of an existing residential service facility for up to 12 occupants including resident staff members in a single family detached residence on .17 gross acre in the R-1-8 single family residence zoning District on Ardis drive. Staff.

>> Thank you, Madam Chair. Planning staff is recommending that the Planning Commission uphold the director's decision, for up to 12 occupants including staff on the subject site. Because the nature of the proposed occupants, by the federal occupancy. He very limited ability to regulate or condition such request in a manner that might otherwise respond to perceived concerns of the neighborhood therefore, given that the perception on whose behalf this accommodation is being requested are considered disabled under the federal fair housing act and the exterior characteristics of the subject property will not change as a result of the request and based on zoning area rarmts, the provision of four parking spaces is required in the two car garage and the driveway will comment up to common areas provided are sufficient to promote the use for 12 total occupants which include a family room a dining room a kitchen as well as the rear yard area staff concludes that the subject site can reasonably accommodate the 12 occupants including staff. Once again the staff reasonable accommodation.

>> Commissioner Jensen: Thank you staff, is the appellant here? If you would come forward and introduce yourself and you may have up to five minutes and then the applicant will have up to five minutes after that.

>> Thank you and good evening commissioners. My name is Pat Nicholson and I've lived on Ardis drive for eight years. The long term residents of Ardis drive include my recovery for alcohol and drug addiction. We also want to make it clear that we wish the residents of 2102 Ardis drive success with their recovery programs. We can all understand and relate to what it's like to get some help at a time in life when you're struggling and we recognize

that intent. We're not here to dispute the dispute the occupancy level of ten residents and two staff members permitted by the planning director. He we respectfully on the footing grounds. First, the location of the property is not adequate to accommodate a high occupancy service facility wubt fundamentallial terek the character of this neighborhood. Location of the property including impacts to other disabled residents on Ardis drive including impacts to the 22 children that currently live on the street and impacts to the three law enforcement homes within 50 yards of this address. 2102 Ardis drive is located handout that you all hopefully received since you all have those can you see Ardis drive and you can see the location of 2102. This unique location cannot safely accommodate the increase in parking and traffic created by adding 12 licenses drivers at this narrow curve in the street. The second reason for appealing this permit is TLC residential's operating history on Ardis drive. Since occupying 2102 Ardis drive in February 2010, thrmpletS has knowingly violated the laws and code restrictions of San José. Said simply, TLS has not before applying for a permit. And before inspecting the home for fire and ADA safety. They operate 19 homes in five surrounding Bay Area counties including San José and they know they are restricted to six total residents prior to receiving a permit. In April Mike Hannon ordered TLC residential ordered without a permit. On the same visit Mike Hannon also informed TLC residential that they must apply for a permit in order to house more than six residents. TLC chose to ignore this order and continued to house 12 ow or more residents with an invaluate floor plan that depicted six bedrooms when only four bedrooms met valid egress and were up to code for egress. Within weeks of changed ownership. They didn't notify the Planning Department. They didn't notify the residents of Ardis drive. In fact we the residents found out about it days before the planning director's hearing and we were the ones that had to notify the Planning Department of this fact. Then in September Mike Hannon returned to the property and ordered a second after the first order. And finally since receiving a permits to house 12 licenses drivers, TLC has blatantly ignored condition in their permit they haven't observed it and we have speakers that are going to cover that issue. Each of these infractions is well documented and seen in its entirety profit than care. And a business that's focused more on quantity than quality. If they were focused on care and quality they would not somewhere rushed 15 people into the home without validating fire and ADA safety. If they were focused twice moved people into an illegally converted garage. Mr. Montero's excerpt from the written transcript from the meeting and I'm just going to cover a few sentences here and of course Mr. Montero money. They do it in San Francisco to be in that home and I can charge \$1500, I can take the people with psychiatric issues, lodges term Benzodia skip to the end, you know he he concludes by saying, I need pay

Mr. Ballard, the person who he's leasing the property from, which I have a three year lease from and I'm trying to do it in the friendliest way possible. It is our collective opinion that that is not a friendly statement that is a threat.

>> Commissioner Jensen: Thank you, your time is up. Is the applicant here? If you would like to come forward you will also have up to five minutes to speak and if you would introduce yourself. And if you have not previously submitted a speaker cards if you would do so before leaving. Thank you.

>> My name is Frank montero. I'm going to be very brief. It appears that I have never encountered any type of opposition like this in all the years that I've been in this field. We have never had 15 people in the house. We moved into the house when we closed down another house. We never converted a garage into anything. The garage was previously set up by the landlord, which is Mr. Ballard who is here with us. And if I could -- could I ask the commissioners' permission for him to speak?

>> Commissioner Jensen: If Mr. Ballard would like to submit a speaker's card, if you would like to have him take part of your time you are willing. If you if he would like to submit a speaker's card --

>> Could he he do that afterwards?

>> Commissioner Jensen: If he would like to submit a speaker's card, certainly.

>> I submitted a e-mail that I asked Ms. Xavier to send to you. Did you all get that?

>> Commissioner Jensen: If staff sent it we would have received it yes.

>> A brief little e-mail that I just want to say we would like to thank you in advance for upholding the director's decision to grant a reasonable accommodation. Did you get that? Doesn't sound -- request. In accordance with our good neighbor policy we continue to maintain a safe and quiet home and have addressed and met the concerns about the parking needs of our neighbors. We are keeping the number of cars down to no more than

nine and the number of staff and residents to under 11 incident in our neighborhood that has been caused by our residents recently. There was a couple issues at first. We were being harassed, people were being culled and ticketed. It was a chronic continuous situation that was going on with the neighbors. And we don't try to harm anybody. But they came during the hearing -- before with the meeting that we had here. Yes, I said, you know we have -- there's a lot of homes in San José that are DA certified. There are -- that they do have parolees. We don't go that route. All our people are private paid, we don't accept anybody with sexual offenses or violent offenses. We try to keep -- these are people that are going through recovery and they are disabled. So -- so fundamentally yes we have to pay our bills. We have to pay Mr. Ballard and we have -- when we have a certain number of people that we have to do drug tests on to make sure that the integrity of the home is safe, and it's not done cheaply as you all well know and Santa Clara County there's a lot of sober living homes. And a lot of them have gone out of business because there was just not the business for them in this huge economic crisis. So by -- we have in our group of homes and we have 22, over 230 clients right now out of which affect over a thousand people in a direct family nucleus that are being kept off the streets off drinking late at night, these people are trying to get better. And so anyhow in finishing the e-mail I said in order for us to maintain a viable and for the group a viable organization for the group home concept to work well we would respectfully request that you keep the allowed number of residents at 12 however for this home we will promise to voluntarily keep the allowed number of residents no more than nine people with cars including staff. We now have 22 homes in many different cities in the Bay Area and no other community has brought any concerns forward or denied reasonable accommodation. The City of San José and every other city has respected the federal law and our mission so far so please continue to support this important work. We change people and families every day and I am a alcoholic and I have 14 years clean and sober and I am here today because I went to a sober living home after treatment. Thank you.

>> Commissioner Jensen: Thank you, Mr. Montero, we do have a question for you from Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. My clarification, you say you haven't had any more than 11 people in your facility is that correct?

>> Since we had our hearing last -- in September okay we have kept the number of people to 11. Sometimes it transposes -- we have kept it to that number between 11 and 12. It's been averaging arounds 11 that we've had in the home and we have at this time presently, and within the last three or four months no more than nine cars.

>> Commissioner Cahan: And so but you're saying that September was when you began having more than --

>> Right because we talked to the people in the neighborhood and they came up to me and say Frank can we pay you to stay away --

>> Commissioner Cahan: I don't need the details. I just need the specific number. Before September you did not have more than how many people living there?

>> Than 12.

>> Commissioner Cahan: Before September?

>> Before September we had 12 people. One time we had -- did we have 13 there at one time or no? One.

>> Commissioner Cahan: Okay while you were permitted to have only six you had up to 12?

>> Before we were permitted to have the -- I'm sorry, while we were permitted to only have six?

>> Commissioner Cahan: How many people did you have?

>> We had over six. We always -- that is the usual and customary way that every home -- there is no permit that says you only have six.

>> Commissioner Cahan: Okay, thank you.

>> Commissioner Jensen: And Mr. Montero, may I ask you, the appellant stated that you had received two separate citations for the garage conversion. You indicated that the property owner had converted the garage prior to your leasing the location, and that apparently you corrected that, and then you got cited a second time for that?

>> The City of San José -- no I did not get cited again. That is not correct.

>> Commissioner Jensen: Okay, well perhaps staff can clarify, thank you that's all the question. I did want to ask you have two other facilities in San José.

>> I have one other facilities in San José.

>> Commissioner Jensen: On the thrmpletC site it lists two other locations in San José. One in south San José and one in Willow Glen.

>> We had one on Boynton and we had one on Nieman.

>> Commissioner Jensen: How many people do you have in residence in those locations?

>> In Boynton we have -- what we have 14. Which we do have a reasonable accommodation for.

>> Commissioner Jensen: And when did you get that reasonable accommodation?

>> I believe it was before I bought the company.

>> Commissioner Jensen: Which was when?

>> March 1st. 2010.

>> Commissioner Jensen: You are familiar with the reasonable accommodations that San José has?

>> I am now.

>> Commissioner Jensen: We also have a question for from you Commissioner Abelite.

>> Commissioner Abelite: Had you saying some occupants of your home were ticketed by the City of San José police department? Can you explain about that a little bit?

>> The neighbors were calling if a car was parked incorrectly or what -- I don't recall the specifics of it all but I understand that yes, that somebody had parked or that the neighbors were calling instead of saying hey could you guys move the car, it was like they would just call the cops with whenever there was --

>> Commissioner Abelite: Do you know how many tickets were issued?

>> I don't.

>> Commissioner Abelite: Do you have a range?

>> Two or three.

>> Commissioner Abelite: Okay.

>> Commissioner Jensen: Thank you Mr. Montero. If you would please fill out a speaker's card and give it to the clerk, he she has it there. The first three speakers, cop come up and line up at the stairs. Randy Kline. Poilings for how I pronounce your name. Rickey Gueda, somebody Weft.

>> My name is Randy clip, I have been a resident of Ardis drive, for 22 years. Ardis drive boasts many friendly supportive trustful cohesive honest and we communicate well always with good intentions. When over nine months go 15 people did move into a clean and sober living house next door I was shocked that our neighborhood was never informed about this impact of change, I have based on what I have experienced to date and with this proposal to have 12 or more residents reside fling this civilian household dwelling, one of my many concerns is around the subject of traffic and parking. There are currently 48 licensed drivers on our cul-de-sac light streak. By 25% from one residence alone. Not including any guests or other visitors to the property and yet another breach of agreement with honored the written conditions specifying that quote, residents will fully utilize all the adhered to in the nine months they have observed a multitude of cars on twurn 02 which line our street. There is never been a car in their two car garage, which for many months was utilized illegally as an extra living space until for the second time they were forced to convert it back to a garage as we have addressed earlier as well. My final point is that this corner of air disdrive I on that found it to be roughly 34 feet from curb to curb. Most cars I figure are about seven feet in width. If you were to figure that each car takes close to eight feet from the curb edge that leaves only about 18 feet of space for two cars to pass on this tight corner. In living here for 28 years parking has never been an issue in this particular location on the block. That is, until now. In the last nine months it's become a major concern for those of us who live permanently in this neighborhood. This cars that now frequently line both sides of the street at 2102 create significant blind spots which translate to numerous close calms, with drivers approaching in opposite directions. Our children's safety is also of huge concern here. Simply put the corner is not designed to accommodate the volume of cars that are projected here in the permit process. I'd also like to add that there is a fire hydrant right across the street and was where some of the viedgeses were occurring. This proposal does not --

>> Commissioner Jensen: Thank you your time is up. Ms. Goede.

>> My name is Ricki Goedi law enforcement families which is very unique thing. I want to be -- I am one of those law enforcement officers and I have lived in my home on Ardis drive for 15 years. I want to be perfectly clear as a law enforcement officer for 25 years I understand better than most the that drug and alcohol abuse create. As a

person who has logged hundreds of hours in drug alcohol prevention I do participate in that process I also am keenly aware that many of them are more focused on profits than recovery and I think that is the case here. To my earlier point of safety at least 25% of the individuals who resided in sober living environments are referred to the criminal justice system for the law enforcement when you consider that an individual residing at that time home could have been arrested or could have come in contact with one of the law enforcement neighbors. The likelihood of one of their guests or arresting officer in his or her family is at risk of being exposed. Weapons and equipment related to their profession inside. Living 100 feet from three of them allows the residents or friends to easily use no one there out of town. Of greater concern than the actual residents themselves are the residents who have been evicted for relapsing or even been arrested especially particularly in a neighborhood with narcotics capacity could be severely compromised by living in such close proximity as the officers are investigating. Again it's not only the residents of the SLA who posed the acquaintances as well as past evicted residences at the planning director hearing Mr. Montero's parole there is this is a problematic issue for the three neighboring law enforcement residents. We on Ardis.

>> Commissioner Jensen: Thank you, officer Goodrvention. Ms. West. As you are coming forward I'm going to call the next three speakers. Maria Montez, Janelle Nicholson, André Hawthorn. Thank you Ms. West.

>> My name is Virginia West. I live at 2115 Ardis drive having seizures and has never recovered. He's 54 years old and with the help of family friends and neighbors I've cared for him. Although he he is ambulatory most of the time he he will never be able to care for himself. I'm he very concerned that adding 12 compromise my ability to care for my disabled son. He has -- he has seizures and they have not stopped and he he often needs medical care and sometimes hospitalization. Emergency services needs to have easy access to my residence at all times, particularly at night. Most of his seizures occur then. To sniffed we he at night I need help with Eddie's seizures and I need help keeping the area clear to make it easy to get Eddie into the ambulance. On the street with owners that are not necessarily part of the neighborhood and typically to not stays more than 90 days I find that it is impossible for me a single woman in her 70s to approach eye Ron clig their cars are the ones I need assistance with. To ease this burden I am entitled to and have obtained permission for the curb inside of my house to be designated for heaped canned parking. This would cause the city additional resources as the disabled marking

space is only effective if kept clear by parking enforcement. Additionally as the residents of 2102 are also legally disabled I might inadvertently ardis drive is already crowded and narrow. I would like the Planning Commission to consider the needs of my disabled son by limiting the impact of additional parking and traffic created by the approval of this nonconforming land use.

>> Commissioner Jensen: Thank you Ms. West your time is up but we do have questions. Ms. West if you would stay here we have questions from the commission. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I wanted to ask you about the parking. Dhearns you have with emergency vehicles being able to get to your house. Have there been vehicles marked that block the access to your house?

>> Yes I've had problems. We have like our driveway and there's a tree in between my driveway and the driveway next door and one of of the participants of this residence parked her car there and it land over into my driveway and the driveway next door and then an ambulance came because one of them was drunk and in the car and one of our people was walking their dog and thought the person needed help and the ambulance came and the fire truck came and the fire truck was in the middle of the road because he they can't get in the side or get in anywhere and in the meantime the ambulance came in the other way. Because there are so many cars and it's a curve, there is oso many cars on each side of the street of theirs that the blafns had to actually back up until it found a clear driveway to pull into the driveway to back out and get out. And these are you know substances like that. Can save a life.

>> Commissioner Cahan: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Commissioner Abelite. Ms. West. You're a popular lady this evening. We have another question for from you Commissioner Abelite.

>> Commissioner Abelite: Hi miss West, I want to know where your house is roughly, I have an aerial here. Where is your house when you look at the subject house, how many houses, same site or opposite side?

>> I'm on the same side of the street.

>> Commissioner Abelite: To which direction?

>> That would be going South.

>> Commissioner Abelite: Roughly how many houses down the street?

>> I'm roughly the third or fourth house.

>> Commissioner Jensen: Now you can go sit down. Ms. Montez.

>> Hi my name is Maria Mar Tess. I'm a 11 year direct of Ardis drive. Site citing two specific cases, in March 2002 an and Redmond sought accommodation for 18 residents staff concluded. The placks approved 12 total residents with a maximum of seven adults five of whom cosh licensed driver. You can see in exhibit B this is a mixed zone neighborhood on Meridian avenue, which is a four lane road the location offers wide streets with frontage for parking in contrast to Ardis drive. This decision also took into account. Might require the meridian property is within 1-10th of a mile am in contrast to Ardis drive. Similarly, and also in March 2002, an RE application at Foxworthy, the Planning Commission approved the single 10 totals residents with a maximum of six adults five could be licensed drivers. This decision took into account traffic and pash being cling neighborhood haws mixed zoning the property is on the corporationer eves Foxworthy a busy street, and the took into the property is 3/10 of a mile from major grocery store strip mall in contrast to Ardis drive so these precedents suggest that Ardis drive is not suited for an slmpletE and serve, it is also noted that both the number of residents and the number of licensed drivers. So please consider this information review the decision regarding the REA obligation regarding the application on Ardis drive. Thank you.

>> Commissioner Jensen: Thank you Ms. Montez. Ms Nicholson.

>> Good evening. My name is Janelle Nichol森, is within a solely residential neighborhood that lacks adequate access to transportation and other services for the residents of the SLE. There is one bus line that runs on Curtner avenue. The nearest eastbound stop is a little less than half of the a mile. The VTA light rail to the is more than a mile away. The nearest full service grocery store is at pine and meridian, two miles away, the nearest pharmacy is one mile away, the nearest hospital is vale med, none of these locations are easily accessibility by bus or light remain. Strip mall, is one mile away. The other SLEs we've referentialed are all located fare mixed zoning with easy access to public transportation grocery stores and other shopping. It is upon that the residents of SLE on Ardis may be temporarily or permanent lids unable to drive a motor vehicle. Adequate access to basic transportation and shopping. Furthermore as a mother of two daughters ages 8 and 5 years old I'd like to point out that the City of San José has never granted documentation an SLE on a residential street where 22 children under the age of 15 reside. These are children who prior to February of 2009 had grown accustomed to riding their bikes scooters and skates in front of their houses and who used to flay safely in front of their houses as there was a limited amount of through traffic on our street.

>> Commissioner Jensen: Thank you, Ms. Nicholson, Ms. Paw, and as (saying names). Thank you.

>> Good evening, my name is Andrea Paw, does not impose on due financial or administrative burden on the City of San José. Exhibit A on page 10 of our presentation is a draft that shows what a significant negative impact the SLE has already had on the city. As you can see on this graph the total calls for police service on Ardis drive rose more than 400% translates to a 700% increase in the amount of time San José PD officers spent on our street. Incorporating the police officers time, the city just spent \$48 total to police Ardis drive. The city spent \$648 in total to police Ardis drive. During the time of these exponential will have on the city and crears to Mr. Montero's assertion, this was not organized drive on the part of the street. Post SLE include everything from parking complaints to a resident appearing unresponsive in the wheel of her vehicle. Neighborhood for the increased demand for police services. We are still the same tight knit family focused group he we always have

been. Delirious disregard for our neighborhood's core character. Undue financial and administrative impact on the city. With the demonstrated lack of structured oversight from the city we are likely to rely even more heavily on police services in the future so contrary to the droark's conclusion the SLE has had and will continue to have a documented financial and administrative burden on the city, thank you.

>> Commissioner Jensen: Thank you Ms. Paw. Mr. Callas, I'm sorry, Ms. Paw, I'm sorry we have a question for from you Commissioner Abelite.

>> Commissioner Abelite: Quick question regarding all the police calls to Ardis drive do you have knowledge were they mostly attributed to the subject site or were there other things happening in the community as well? You can characterize the amount.

>> I apologize I didn't mean to interrupt you. The data came from the City of San José police department Website and the way the Website is set up they ice lately calls based on the block as a whole. He they don't isolate it down to the individual address. They do talk, each call is described in terms of what the nature of the call for service was but it doesn't note the resolution of the call for service so for example if there was a parking complaint it doesn't necessarily note whether someone was cited for that or not but it does reflect the number minutes that was spent by officers at the scene. So to answer your question it doesn't specifically say which residence was associated with the particular call for service.

>> Commissioner Abelite: Okay thank you.

>> You're welcome.

>> Commissioner Jensen: Mr. Callas.

>> My name is John callas and I live at 2430 Ardis drive. The parking situation that residents should fully utilize all the availability onsite parking and recommended that the residents should initiate a program for moving

cars. Since that state we have considerable photographic evidence that this has not been done. There has been over multiple days over several weeks, vehicles parked in the street with several in the driveway. Building permit certificate of occupancy to accommodate the additional people on there. The residents of 2102 have been at a number above 6, before permits have been in place. We believe these things are related to each other. There are a number of people in the building there is necessarily going to be a lot of parking it's going to be very difficult for them to use their cars around to eight total residents will be in the best benefit of everyone. We believe it will be good for us we believe that it will be good for the people living at 2102 we believe it will be good for the City of San José. Thank you very much.

>> Commissioner Jensen: Thank you. Ms. Gallagher.

>> My name is Eileen Gallagher and I've lived on Ardis drive for six years. My purpose for talking to you today is remind my neighborhood requests that you take this disregard for the City of San José into consideration when you decide whether to allow the company to expand its practices within our city limits. Since thrmpletC clean and sober living houses, this Danville business claims oochtion sobriety but our experience on Ardis drive show otherwise. Asked the city for reasonable accommodation. They admit this. Second they have antagonized the neighborhood from day one depriving their clients of a potentially nurturing environment that would support the ideals of clean and sober living with coed house with multiple visitors of both sexes as well as a remarkable rate of monthly turnover. All of these characteristics are very well documented the city does not have to promote such a company. Finally TLC has continued to fail to comply specific request to use the garage and use the driveway and he thz he continue to provide an impressive traffic burden to the neighborhood. Perform well to monitor its residents and visitors and to enforce the pliments on residency, to know or follow the rules? We don't think so either and yet by ignoring the track record follow the rules I close by quoting another owner of a reputable clean and sober living facilities, askings themselves why TLC, rest of us unquote. It is clear that TLC cost not observe the industry standard, as a result we expect the city clear information as to how the city will assume responsibility for 2102 Ardis when the company does not thank you.

>> Commissioner Jensen: Thank you, perfect timing. Mr. Mastelock, and as you come forwards I'm going to call the final speakers. Frank montino, and I'm sorry, no, I have the wrong card. Tim Gallagher and Glen Ballard.

>> Hi, I'm Jack masstalock. I live at 2140 air digs drive. The twaition at 2102 Ardis drive state of California mandates that local governments provide recovery opportunities for people disabled by drug and alcohol addiction. I understand that these opportunities are mandated to occur outside a realm of state funded and court-supervised venues. I agree that recovery instead of incarceration and probation is more beneficial to our society as a whole. The language in the state health and saved code is clear as to the goals and objectives, desired results and implementation and mandates. The problem arises large numbers of residents are required for the site to be financially viable. State of California health and safety code section 11.832.20 to 11.AIDS 34.25 are quite clear that existing alongside -- I'm sorry are quite clear that these sites are to house six or fewer persons. At this level of occupancy these sites can exist alongside neighbors without causing unique impact which include increased parking and traffic, increased noise and higher turnover at the site. I understand that the residents at 2102 Ardis drive are provided with housing by a management company that originally sought to house 15 at this site. I'm also aware that the management company operates 19 other sites in four other Bay Area counties. The language in the health and safety code listed above cost not make any provision for this type of activity nor does the federal fair housing act. At levels of occupancy that double these allowed state law and City of San José zoning requirements the management company response --

>> Commissioner Jensen: Thank you Mr. Massalock your time is up. Mr. Gallagher.

>> My name is Tim Gallagher, I've lived on Ardis drive for six years. We do not wish to deprief the residents of 2102 Ardis drive of access to housing. We just wish to demonstrate that occupation of 12 is not appropriate for this site for the city or for the knobbed. The request for -- excuse me limiting occupation for reasons, got lost here. Limiting occupation for reasons based on code and safety is not discriminatory. In fact it serves the best interests of the disabled residents of 2102 Ardis. TLC residential is an unlicensed 22 locations now in fives Bay Area counties he they are not allowed to provide any other services such as drug testing or counseling as this would require licensing by the state. There is no way to verify that each location is clients has any say about who

or how many people live in any of those sites whether the sites are coed or same sex. They're charged a set fee for mom rent regardless of the population. These are the conditions that describes a boarding house not necessarily a clean and sober living home. They have throughout this process had little regard for city code and procedure. They willfully illegally altered the permits twice but ordered by code enforcement to discontinue the parking garage for a living space. Placed upon them. I feel based on past performance and given the financial constraint of the lease to which TLC is obligated, placed on site use or occupancy. I urge to placks to deny this application and set the occupancy limit prescribed in both the City of San José zoning is laws and the to 118 three.25 to six residents and two staff.

>> Commissioner Jensen: Thank you Mr. Gallagher. Mr. Ballard.

>> Hi thanks for letting me fill out a card and get in line here. My name is Glen Ballard, I'm the owner of 2102 lift in the property for five years. I have three young children, two of my young children were born at home in the property. I'm very protective of the property. I lease the property to other tenants before TLC and he I evicted tenants because I was concerned about their level of use of alcohol and that he they may be using illegal drugs. Your staff got it right. My neighbors got it wrong. These are good people. TLC is a professionally managed company. They've always dealt uprightly and honestly. They've been very responsive every time a city inspectors has come out, they've jumped on it whatever it was they worked to roux the issue quickly. The tenants are good people. They're there because they want to be there. They're not there because a court put them there. They're there because he they choose to live in clean and sober environment. None of them have been convicted or even accused of ever hurting a child or ever hurting anyone. I have young children and I look up to sex offenders within a radius of where I live and where 2102 Ardis is and there are no sex offenders living there. There are no people living there that hurt anybody. The neighbors are being bullies, they're ganging up against me against TLC and against the tenants who only want to have a nice place to live and are not causing harm to anybody. All the calls, the neighbors were so aggressive about organizing all these calls. They were successful at getting the city to tow my car out of my driveway. In my personal property. It wasn't even on the street but the makes didn't like the car and because of all the constant calls from this neighborhood, my private car was towed off of my private property.

>> Commissioner Jensen: Thank you Mr. Ballard your time is up but we do have a question for you from Commissioner Bit-Badal.

>> Sure.

>> Commissioner Bit-Badal: Thank you, Madam Chair. How long have they leased the property from you?

>> How long has TLC, February, last February.

>> Commissioner Bit-Badal: I understand that was in the document but I also want to you answer that. How often have you visited this property?

>> Often.

>> Commissioner Bit-Badal: How often?

>> At least monthly but more often than that. I show up unexpected. The house is clean the yard is well maintained. You know, these are good tenants. These are much better tenants than I had before.

>> Commissioner Bit-Badal: So did you see them converting garage into living space when you visited the site?

>> They didn't convert garage into living space. That was bad advice from a plumber. Who put in extra laundry, it was used for an extra washer and dryer. I was thinking about putting a pool table or ping pong table or something like that. It's a fung of functioning garage. My understanding is when they applied for the milks to have this clean and sober living home the inspectors came out and found some things that were amiss in the garage and it was all fixed. It was fixed within a matter of a day.

>> Commissioner Bit-Badal: Thank you.

>> Commissioner Jensen: Commissioner Abelite also has a question for you.

>> Sure.

>> Commissioner Abelite: I want to focus in on the garage. When you get a building permit to put, and wedded, copper piping?

>> I had a home built, I turned version over to a builder. I'm not knowledgeable about permits, I know nothing. Everything that was done I trusted my builder I trusted my plumbers and apparently there was within the garage itself there was room. And so the plumber put in aan extra washer and dryer for me. It was not a living space it was just an extra utility function. Apparently that was slightly out of code.

>> Commissioner Abelite: So was the washer and drierg part of your building plans or not when you applied for the permit?

>> I don't know. I don't know.

>> Commissioner Abelite: Okay, thank you.

>> Sure.

>> Commissioner Jensen: Mr. Ballard I have a question for you as well. There are in fact two code enforcement violations against the property. Both were filed prior to Mr. Montero's purchase of the business one of which is still open so apparently -- and the other of which was not closed until March, I'm sorry. I'm sorry. Staff is telling me there is one of those is in fact a duplicate. So -- but there appears that one ever them is still open.

>> I would -- okay, that's news to me. I thought everything was taken care of. I know that at TLC they actually have their own handyman so they've been helpful in responding, whenever these issues have come up they've responded. Jz and Commissioner Cahan has a were now are. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. There was the discussion about the windows and the two converted downstairs rooms and that they weren't to code for being a bedroom. Could you discuss this windows?

>> When I heard about this, I go to work every day right I'm snoot a carpenter and I don't know permits but I understand that-d it was a matter of about two inches that either the -- I don't know if its was the blinds or something had to be adjusted, anyway it was adjusted literally about two inches and from what I understand it solved the problem. Every time something like this has come up they've been completely responsive to adjust it.

>> Commissioner Cahan: The windows have been adjusted?

>> To my knowledge, if not certainly be happy to -- yes, it was done quickly and easily.

>> Commissioner Jensen: We have no further questions, thank you.

>> Okay, thank you.

>> Commissioner Jensen: And now we are going to call the applicant and the appellant. Mr. Montero if you would like to come up and speak in response to anything you've heard. You're not obligated to use this time but it's up to you.

>> Hi again commissioners. Just a couple of things. Yes, we can. There's just so many things that are are inaccurate. Yes we can drug test people. We send it to redwood lab and a professional who is licensed to do that, yes woo do that. The windows were corrected. We're an organization that when we moved into the house, and I wasn't the owner yet, it was structured before but I take complete responsibility for whatever might be. We never

get denied reasonable accommodation. That's just something that normally it doesn't happen. We kind of know the number of people that fit well. We're not like other sober living homes that put people in -- stack them in bunk beds. Everybody's got a single bed. So we kind of know what it is. So that's what the previous owner did, just came in and did that. It was an unfortunate situation because the home that we had over in Neiman the people had just moved out and they happened instead of bringing the people a little bit at a time they moved once. The perception was, everybody was brought in at once but that's not the case. After the meeting when we were here I mean the people were -- in the neighborhood were just -- it was like a witch hunt. It was like everybody -- I had never seen anything like this. They offered to pay us to go away. He they -- we just were told that we just weren't a affiliate for the people in the neighborhood. You know this reminds me of when I saw on Oprah's show the other day when they interviewed people in the '90s about HIV and there was this whole big people calling people names and they couldn't swim in a public swimming pool. We haven't done anything to anybody. This has been exaggerated, everybody taking things out of context. Thank you and I respectfully request that you do uphold this. Did you want to take a bit of my time, is that okay?

>> I also want to request that you uphold this according to the staff recommendation. There is a lot of fear and irrationality, and imagination coming from the people on my street. All this bad, this is not real, these people have not done anything to hurt anyone and there's no reason to .that they will. This is an unfair accusation that is being pointed out here.

>> I just wanted to point one thing out that was pointed to me. One of the things that was also asked of me the other day when we were here for the prehearing, Frank, do you know that if we at a point to when we're going to sell the house, so part of this perhaps is a perceived reduction in their property value, too. Which is -- it's all a matter of perception. So it's partly about money, you know. It's -- I don't know why there is this whole idea that we're doing any damage to these people. We're trying to do the best thing that we can. We have been very responsive like he says for everything. We're just trying to go about our business and tries to do the begs we can to help these people. These are people that live in good neighborhoods. They don't come from bad neighborhoods. They live in nice homes. That's part of the problem that we have in some of the younger clientele is some of the -- they're used to being spoiled, it is a generation -- we try to get them to get responsibility and we

have to go after them to a lot of times you know pick up a little bit about after themselves, the kind of same problems that you have with normal kids but they're good kids.

>> I just want to clarify the tenants are respectful, they're courteous, they're sensitive and they're respectful to people and they have not done one thing to offend or to harm anybody and there's no reason to suspect that they will and they've not done one thing wrong.

>> Commissioner Jensen: Thank you. Mr. Montero we have a question for you from Commissioner Abelite.

>> Commissioner Abelite: I still want to focus in on the cars a little bit. Tell me about your patient pool or the clients that live in the house. Are they -- what sort of asnriks do they have are they mostly is it people who want to recover off of drubbings and alcohol?

>> Alcohol. Here is what the new drugs of choice. It's kind of been interesting new components. Most of the younger crowd and we don't have anybody there. One of the things we did is we increased the age of the people in there. What's the -- Chris what's the youngest person you have? 25? 20. We have one person that's 21. So to answer your questions, mostly oxycontin which is an opiate. Younger people. Older people, what I when older is younger than me still but in the 30s and up mostly alcohol. He we rarely get people with cocaine or crack. It's probably 5% of our total clientele.

>> Commissioner Abelite: Okay and then are your patients typically brought into this system through court system or do they voluntarily do this?

>> No they're voluntary.

>> Commissioner Abelite: They don't have dwiezs or things like that?

>> They are not there there cube somebody with a D.U.I --

>> Commissioner Abelite: I'm sorry to interrupt I get your answer. I'm trying to figure out how many of your applicants typically have cars?

>> Normally about 60 to 70% depending on -- for example the ones in the city a whole lot less. Here there v has been a larger amount of clients that have cars. That's something like I said in my e-mail, he we've kept it to nine, nine or less. Which is basically that what they're requesting. For us to stay viable we have to have a certain number of clients. But it sounds like what I hear is that they need -- their real concern is the number of cars and I can seize that and that's something that we can do. We can say okay we'll keep it nine cars or less.

>> Commissioner Abelite: Thank you.

>> Commissioner Jensen: Mr. Montero, I'd like to ask, several times you indicated this is a younger crowd, the youngest is 21 and the older is in their mid thirties 30s, is that correct?

>> In that home we have people in their 50s.

>> Commissioner Jensen: Okay, and staff indicated it's also a coed situation?

>> Coed situations, one of the purposes of transitional is the person can acclimate to normal life. We have had all male homes, we have had all female they separate and put them apart. This is transitional, it's sober living environment. What he they need to do is live life on life's terms.

>> Commissioner Jensen: Thank you Mr. Montero. We don't have any further questions, Mr. Nicholson you've in up to five minutes to respond to anything you heard this afternoon.

>> Thank you. I voted for prop 36, I still support the intent of that law, however it was never the intent of prop 36 to provide an unregulated, highly profitable business model. I think that the numbers here are really what we are

talking about. We've never asked them to leave the street. There's a lot on public record here. We had a director's hearing, we made our statements and Mr. Montero had his. What we want is six residents and two staff. You know, really I think the rub there is that it's not very profitable to operate at that level. But you know and I don't know the cost models involved here, none of that is publicly disclosed but that seems to boil down to. What we're saying is the site is appropriate for eight residents. Eight residents would allow them to have two per bedroom. Nobody is ever isolated and lonely. You know unfortunately this is a case where you know I think the law is being abused to some degree and Mr. Montero probably doesn't see it this way and I'm sure he has probably the best of intentions. There is a profit at play here. Support the intent of the law but what we don't support is someone kind of moving in and being an entrepreneur on our street and having a lot of impacts. Now these impacts of having high occupancy not only impact the residents of Ardis drive, they impact the city. We've seen that in calls for service. We've seen that just in terms of you know, they haven't observed the rules that have better than handed to them. First they claimed ignorance of the rules but once they prime example since receiving their permit they haven't observed the condition of their permit to overall onsite parking. You have it's an every day thing. Is all the rights and benefits they're entitled to where eight total residents, six residents plus two staff as we circulate proposed. In limit govt to the city and the surrounding neighborhood. Anonymous our own recourse when we saw all these parks pa Planning Department and you know I really think if there was any intent to follow the rules they would have already been followed but I think part of the reasons they need to provide the structure and the rules for the site. I don't have any problems with the residents. I've never had any run ins never had a cross oocht we welcome them. What we request is a reduction in the numbers we think that that remedy will balance the needs of all residents on Ardis drive acknowledge including the actual residents of San José. The people like myself, my neighbors, the other residents of 2102 Ardis drive that live and work in San José and pay taxes in San José and the only clear benefit of granting occupancy is the profits come at too steep a cost to the city and the surrounding neighborhood so we ask you to revise the neighborhood to eight total residents and monitoring. Thank you.

>> Commissioner Jensen: Correction we do have a question from disability.

>> Commissioner Abelite: Be thank you chair. I want to get a in that little cone are area there's a lot of curb cuts very close driveways very dense which mean there is probably not a lot of parking opportunity in request up and down each depreciation that the before and after image, how would you character tries this em.

>> There were not cars crowded around that tight corner so there were no blind spots like there are today. There weren't people parking in front of the fire hydrant. You know we did call when people were, you know it's -- there are cars now lined up and down the street, you can he see -- that's the way it's been ever since we've moved in. Levels, you know we trust what they say if they say it's 11 but they have a lot of guests so there's many constantly people crocking in and walking in, so that is a lot of traffic and queening.

>> Commissioner Abelite: There are a good number of parking, seven --

>> It's a two car garage and it's a long driveway that widens towards the garage. The typical problem is K stheam somewhere frontage.

>> And you have sers seen cars in the garage?

>> Not that I know much.

>> Commissioner Jensen: Notion close public hearing? There's a motion and a second. All in favor, okay thank you.

>> Land use permit and really a granting to a class of individuals who don't feel that they can adequately access the housing that they need, and so I think on page 5 its kind of details out the therchtion that we need to consider as to whether or not we would support a request, and numbers 1 through 8, the special needs created by the disability, you know on down the list and again, you don't see these conditions in a reasonable accommodation request paws it's not a land use permit. But in the granting of it at the hearing it was clearly emphasized that because of the configuration of this site, they do have adequate, they should be having a program where they can

you know maneuver cars and stuff like that I mean large families do that all the time. So I know that with reference to there is a condition in the permit, this isn't a permit and there isn't a condition. But we rk the site design as well as internal recommendation, which supports our recommendation that this plot as configured, there is no need to alter it in order to support that's really what's been behind our register for grant technologically residents and two staff. Thank you.

>> Commissioner Jensen: Thank you staff. And the residents provided what they're referring to as exhibit C, other niche SLE sites each of which requested more residents than the Planning Commission congratulated. If -- assuming you -- can you talk about what happened.

>> Again my memory is thin, requests for a certain number whether that's basted on reasonable or, if a came in for 17 on the Kilo one the reality is if you know that area at all those are operate small homes so the same sort of parameters we look at relative to you know, square footage per person in a living area as well as parking, that's probably what guide the final decision on the granting of the accommodation. Because again if you know the house size is on Kilo they're pretty small. And the one on Mercedesian you know requests coming in for a certain number doesn't necessarily give me if parameters that would be that would guide what's prnl as far as that request.

>> Commissioner Jensen: And I hate to do this to you but do you han to know the total square footage of those homes?

>> Of course not. So we have the ability to compare apples to permanence.

>> Laurel Prevetti: Madam Chair, I recommend that the commission look at the site plan provided to you for this particular case. If later to the Planning Commission, needs to be considered on its own merits. I think you've got disommation you have a site plan while you know there's a lot-z there's a lot of different types of residential neighborhoods in San José, different lot sizes, different floor plans. I think you've got the data that's important to you, thank you.

>> Commissioner Jensen: Council, will you please clarify, the commission caps ability to raise some of the concerns that were raised this even.

>> Thank you Madam Chair. As alluded to you earlier, this is a little different than what you have received, you have received some testimony regard manner in which a governmental entity can discriminate gerntion persons who are discriminated against, so the San José about dpeeptd its reasonability process set forth in the zoning codes, to ensure that when a doesn't code private provision analytical tool to help you decide whether or not a reasonable accommodation should be granted. There are three ways in which a local governmental agency can district against a protected person, one is by terribling portions Recreation and Parks the other way that ocity can discriminate is by applying its neutral laws in a way that has a discriminatory impact and the third manner in which the city can discriminate is by fabling to reasonably accommodate needs of protected persons. So again this isn't a permit but rather an analysis that we do to as taken whether a request to deviate from and be accommodated from a zone code requirement is reasonable. So on page 5 of the staff report, it is a cut-and-paste from the zoning codes section that said forts the type of information that a person making determination about reasonable accommodation shall consider. And so I won't go through those there, put is that the sort of construct you were requesting?

>> Commissioner Jensen: Yes, thank you. And so if the commission would care to discuss this item? Thank you, Commissioner Kline.

>> Commissioner Kline: Well, this is a tough one. So I did some homework and I investigated not only appropriate law but what other cities and jurisdictions had done on it. And luckily it seems like we do do everything exactly the same as everyone else, just like Sacramento, it, so it really cox down to the numbers as I think about this today, in this fill property and this particular surrounding and that is not mat. Is a you have to go out to the plot which I did and spent around two hours walking around the naindz neighborhood and looking in shops, doing shopping. I can attest that there's not much publicly transport out there, nothing practical. If you are going to be there you're going to be in a car. The car an traffic is the limiting issue. The physical characteristics of

the property is interesting. It is a very narrow piece, the driveway is he very narrow, you can get cars in there but they're pretty pretty much stacked. I live in a pretty yeerk drive ways, circular driveway, four cars, stacking seven cars in drive ways, maybe one two, three, somewhat reasonable, after four or five it's not reasonable expectation no matter what you say to have someone stack four or five cars in a driveway. You can talk regulation and management routines, it's not going to happen. When you want your car out you're not going to drive out four or fives cars. Those cars are going to be out in the street, there's no way to do it. They will have street there, everyone so it's really the parking and the traffic. Now all the ordinance requirements basically say of the house and the street and the potential impact of the surrounding uses which includes makes ubl in the uses of their houses is it having a potential impact to the surrounding uses? I would have to say because of the parking and traffic this has a pretty significant impact to the surrounding uses because of the physical nature of that location. If this is at a different location I'd have probably different, completely different feel for this. But it's not. It's at this location. No public transit, narrow streets, no parking opportunities, narrow driveway. This all leaves to me my judgment that 12 is too high. I don't know what the number is, I would think that more eight would be a reasonable number. So I would be in favor of approving this with eight, I cannot seize approving it with 12. I think the house inside could probably handle that, not unreasonable, but going getting to and from this, have almost a mini motel, at this particular location, of me approving this with no more access to parking. So that's my impression. I'm not ready to make a motion but that's my thinking is at the moment.

>> Commissioner Jensen: Thank you, Commissioner Kline. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I'm ready to make a motion and I may need assistance in the proper wording. So I'd like to make a motion to --

>> If the thought of the commission is that you'll be granting a reasonable accommodation but the scope of that accommodation will be reduced from what the director had approved then it would be a motion to grant a reasonable accommodation but then to explain the scope and it would be helpful for the record if you would explain which of the items that are set forth, that you are supposed to be considering, that you shall consider, are the ones that persuaded or informed your decision or your motion.

>> Commissioner Cahan: Okay. So to uphold the director's decision to grant a request for reasonable accommodation to allow -- I don't want to say expansion. For up to 8 occupants which includes the resident staff members in a single family detached residence on .17 gross acres in the R-1-8 single family residence zoning district, and that's the proper way to --

>> I believe you're doing good.

>> Commissioner Cahan: So my reason for that --

>> Second.

>> Commissioner Jensen: There is a motion and second. Would you like to speak to your motion?

>> Commissioner Cahan: Thank you. My reason for that is based on the, as Commissioner Kline was stating, the parking and loading facilities. The way that the parking is said up, you could have two cars in the garage, two cars behind that and then three single cars stacked up behind that. And it's just -- it's not reasonable, it's not actual that that would be able to be followed. Anyone in the garage cannot get out without moving every single other car and it's not going to hatch. As Commissioner Kline stated in our own household with just three cars we never stack them all in the drive way because just with two people driving at this point it's not reasonable for us to get out and move two other cars to get the third car out. I'm very concerned about the issues with the fire trucks and the ambulance. Emergency services are not going to be provided there adequately, it is a detriment to the entire neighborhood. Absolutely against the best usage for the neighborhood for the parking issues and the emergency issues. And that's my reason. Certainly the accommodations of people that are living there absolutely support the program that you have there but the parking is just not working for this particular site.

>> Commissioner Jensen: Thank you, Commissioner Cahan. So I just want to clarify if I understand correct per the list that was delineated by council, you are calling out your motion with the restrictions based on item number 3

potential impact on surrounding uses, item number 4 physical attributes of the property and structure and item number 7 whether the requested composition would foese an undue burden on the city .

>> Commissioner Cahan: Yes, thank you.

>> Commissioner Jensen: Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I absolutely support the motion as well I think it's very much reasonable to provide eight residents to live in that site. One of the reasons is basically the street. I've read the report and visited the spiept the street really does not have enough room for more than eight, ten cars per household. And also, as Commissioner Cahan mentioned, the emergency vehicle is also a threat to the community as a whole. But another thing is also the proximity to public transportation has bacted my decision, as the neighborhoods brought forward and comparing it to the current applicant but more so than that is in combination of all is lack of responsiveness from the current property owner and applicant to the needs and the wants of the residents. I think from now on after we take this vote it's really important for the applicant and the current property owner to work with the neighbors. Because whether you're a landlord or a resident or business owner in that year which you are going to be a business owner perhaps it is good to work with the neighborhood to solve the problems. Thank you.

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

>> Commissioner Abelite: Thank you I'll be supporting the motion but for educational purposes the interior of the house and what I wanted to focus on is the communal living. We have X number of bedrooms and I think within the director of findings, he you would want the right kind of communal area. I know that the living room was converted which removes one community living area and what that leaves is one larntle kitchen/private areas so I just want to know -- understand what the prul of thumb is when the director reviews these RA tion with respect to that.

>> Well again, you know, this started out as -- some people may look at it as a great room. But clearly the proms of the down first floor area is common area. The dining area, the kitchen with the kitchen, it says kitchen nook but that's again where other dining may happen or something else and that large family area. So two smaller more isolated rooms are now being proposed for bedrooms, and you know I think the configuration of that common area is clearly you know in many cases more than what existing you know homes have. So it's not as prescribed as some other things but we tend to look for, you know, cohesive common area interior to the home that people can gather and not necessarily gather eat and do everything in that one place. So they've got two to there areas that they can gather in, it's you know pretty cohesive space.

>> Commissioner Jensen: Counsel, would you like to add a comment?

>> I just wanted clarification of the motion. Because if the motion was to allow eight total residential with six being the residents who are you know a protected class and two being staff, that is allowed as of right so they don't need aren't accommodation for that. That they're allowed to do as of right. But if it's to allow eight protected person, when I heard the motion and I heard eight, I thought I heard six residences and two staff, if that's the motion you're denying the reasonable accommodation because they're allowed to do that as of right.

>> Commissioner Jensen: If the maker of the motion is okay with this, add a friendly amendment which is to allow a total of 9 total residence, 7 in stand two staff members living on site. Would the maker of the motion accept that friendly amendment?

>> Commissioner Cahan: My only hesitation here is I'm still trying to calculate the amount of cars and what an additional person would -- what the impact of that additional person would be.

>> Commissioner Jensen: So the applicant indicated that generally 70% of the people onsite would have cars and if there were nine people onsite, that would be seven cars total.

>> Commissioner Cahan: May I ask what happens if we do not allow the reasonable accommodation?

>> Again, under state law we're required to treat residential care facility, residential service facility serving six or fewer, as a matter of right. So it is matter of right as other residential uses would be.

>> Commissioner Jensen: And if we did not accommodate, counsel's question?

>> Then he they would be Loued to have six or fewer.

>> What's the addition of staff?

>> Exaggerate, staff are not included.

>> Commissioner Cahan: The location is not within walking distance of grocery store, not within walking distance of a couple of other things, at the moment I'm not going up where I highlighted those but specifically, the grocery store tuck in my head as well as the fact that the public transportation is them lited in the area, and with the addition of parking, I don't think we should add an additional person pooches the people living at this particular site would be there without a vehicle. I think it would be extremely difficult for them to get anywhere so the people that would want to lived there wrote have to have their other than vehicle. So I understand the reason for adding this. But I think it's a burden to add one more car to this facility.

>> Commissioner Jensen: So then if I understand counsel's comment had in fact the motion should be, uphold the male and deny reasonable comes.

>> Commissioner Cahan: Yes.

>> Commissioner Jensen: Thank you. Commissioner Abelite.

>> Commissioner Abelite: Already answered, thank you.

>> Commissioner Jensen: Commissioner Kline.

>> Commissioner Kline: I'm not sure that's a second I want to support. I think what we're doing here is approving reasonable accommodation as stated by law which they have a right to do. But reaffirming something is really up to us, we're providing reasonable accommodation, they may have it by right but we're still having that right. I'm not going to say deny reasonable accommodation, we're actually giving law.

>> To recognize that there is some accommodation already embedded within the requirements of state law which is are that you must allow six or fewer as of right, even though you might not normally do so in the absence of state law. So if I heard Commissioner Kline correctly, he he is sayings that he we are granting reasonable accommodation by recognizing state law, they somewhere six or fewer residents and accommodation for this type of use in this residential neighborhood given the parking configuration and the long driveway and the narrow front an. Again the milk stress I fief, thousandth his deliberation this evening, is that that is an accommodation. Because there are quite a few cars already exacting the street, and that -- the tan deems parking situation while three or four might be reasonable, in his mind seven would be extremely unlikely.

>> Commissioner Jensen: And in the light of the fact that the state law that would still be considered reasonable accommodation?

>> I'm just looking at our definition of reasonable accommodate. So state law provides that six or fewer is an Loued busy right be required. Although technically I expansion of an existing ski the commissioner's residential service facility for point which is the accommodation has been enacted by legislative. But given the way our particular zoning code is drafted write recollection that we need to comply with state law, there would be no conscious needed from our zoning recollection.

>> Commissioner Jensen: Thank you, counsel. Does this answer your questions of every due?

>> Thing religion obviously, get that word submitting, you know, our intent is not to timing this plan pize.of of preases of property for this particular location. The fling location of the property limitation the number, that's all.

>> Commissioner Jensen: Thank you, comma.

>> Commissioner Cahan: That's what I want to do, I didn't want to deny upset and so I would like to go back to that original motion, of upholding the state law of six with two staffer. Thank you.

>> Commissioner Jensen: Thank you. So and I'm sorry I was a little distracted but before we move forward on the motion on the table, your motion is to grant reasonable accommodation to allow for the expansion or use of an existing service facility for up to eight occupants including resident staff members and the single family detached residents.

>> Correct.

>> Commissioner Jensen: And this is apples difficult, this is always he very difficult. I have a number of family members who are alcoholic themselves, some who took advantage of the sober living spierms William seasonal it is very difficult, when you have family members when you are in those situations it's, you know, people you grew up with, people who you lover and reason and care for, I heard your neighbors say they did not on to having people like my family member, ig trying to get their right and responsibility when there are code enforcement violations to call those into the City of San José. Within the City of San José we unfortunately don't have a sufficient number of code enforcement officers to be able to go out and be proactive. So it is the residents' responsibility to let the city know when there is an issue. So everybody has if right to live in a dmaid that is properly extended. The original occupant of the, each of them in more than six dremtle which means she understood that the need to an preliminary for prior to having more than six residence. And so I'm disappointed that apparently the rules and regulations werchlt schwa id prior to your purchase of the this facility. There is still an open code you need to go to code enforcement and make sure that it gets closed out. It is listed on the agenda which is public information, staff looked it up for me this evening while we were sitting here. So I will being

supporting the motion. I think that the residents and the TLC facility family have the opportunity to become good neighbors. And I hope that you will take advantage of what appears to be a very thoughtful community, and you have-d it's a great location for barbecues and neighborhood street closures and all kinds of fun things. So it has the opportunity to be a really wonderful environment and I hope you'll take advantage of that. Seeing no additional speaker lights, may we vote by light? And that motion passes unanimously. With commissioners Platten and Kamkar absent. 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 or 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 I see no speaker cards. Referrals from city council, boards commissions or other agencies.

>> Laurel Prevetti: There are none.

>> Commissioner Jensen: Reports from city council.

>> Laurel Prevetti: Thank you, the council has decided they did deny all of the old general plan amendments that came before you. In November. And December. He they did approve the Monroe general plan amended and rezoning, this is the property near Santana Row and they also approved the Mirassou village concept that you heard at your last meeting. This concludes staff's report.

>> Commissioner Jensen: May I ask, I happened to be in the audience, I didn't have any report with me and I wasn't quite clear what was going on.

>> Laurel Prevetti: To my recollection they liked the project for many of the same reasons the commission did. I can't recall any specific modification that the Planning Commission had on the zoning.

>> Commissioner Jensen: There was a significant discussion at the council about 30 single family residences. Or single family residences in general.

>> Laurel Prevetti: I think you are referring to the Brokaw road project.

>> Commissioner Jensen: I'm sorry.

>> Laurel Prevetti: This is a matter the council did approve yesterday and they did agree to more single family homes than were originally considered by the staff and there was some discussion about that.

>> Commissioner Jensen: Thank you. Commissioners' report from committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan.

>> Commissioner Cahan: The committee has not met.

>> Commissioner Jensen: Thank you. Envision San José 2040 general Plan update process, Commissioner Kamkar is not here yet. This was our last meeting of the year as well I think it went off very well. The residents from five wounds planning area came in full force, and presented the culmination of two years effort of their own interior village planning effort and requested that the task force adopt their vision, since that had not previously been agendaed am discussion about riparian corridors and I think we continue to look to the Planning Commission to have their committee moving forward with the migration of the study policy into a council policy. Did I -- oh good thank you. Review and approve synopsis from 12-01-10. Is there a motion? Thank you. Thank you. There's a motion and second. All those in favor? Thank you that passes unanimously. With commissioners Platten and Kamkar absent. Subcommittee formation reports and outstanding business. Have any of our subcommittees had the opportunity to meet since -- okay, okay, great. So no subcommittee meetings since the last time we have met. Commission calendar and study sessions. Is there any staff update to -- no, okay, great. It looks like we're -- almost done. Cowfnl.

>> I just wanted to seize if subcommittee formation was on there. I wanted to confirm that the Planning Commission is not subject to the directive to not form subcommittees. It was made pretty clear at the Rules Committee that in the proposals that the Planning Commission was not to be included.

>> Commissioner Jensen: Thank you. That's great news. Director. Thank you. All right well then folks happy holidays, enjoy yourselves, be safe and we look forward to see you next year.

>> And Commissioner Platten, e-mailed during the meeting,.wishing everyone a happy meeting, he he is stuck in Alameda.

>> Commissioner Jensen: We do not wish him a trip through traffic. The meeting is adjourned.