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>> Commissioner Do: Good evening. The commission has received quite a bit of additional documentation on various issues, and for this reason, we are starting the meeting a little bit later than usual in order for the staff to sort this documentation out and for commissioners to review them. So my apologies. [ Pause ]

>> Commissioner Do: Good evening. My name is Thang Do, 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 Wednesdays, August 26th of 2009. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the Commission, please fill out a speaker card located on the table by the door on the park validation table at the back and at the bottom of the stairs near the audiovisual technician. Deposit the completed cards in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, and not PD 06-et cetera. 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 cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to 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 the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearing on these items. The first order of business tonight is roll call. Let the record reflect that all commissioners are present. Except for Commissioner Kamkar. Okay, I'd like to make an announcement. Those who are here for the retirement board you need to go to a different room, the wing room, in the same building down the hall. The next item of business is 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 want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agenda items Past 11:00 p.m, to continue this hearing to a later date, or defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions to be heard by the Planning Commission no later than 11:00 p.m. staff.

>> Thank you, Mr. Chair. As indicated on the overhead projector, there's one deferral for this evening, CPA, 08-05A-01. This is a conditional use permit amended of amendment to allow an entertainment establishment in an existing public eating, drinking establishment after midnight operation until 2:00 a.m. Staff is recommending deferral to September 9, 2009, and that is at applicant's request. Thank you, Mr. Chair.

>> Commissioner Do: Is there a motion? Second? The motion for deferral is passed. Next item of business, consent calendar. 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 the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of these items individually, please come to the podium at this time. Staff.

>> Thank you, Mr. Chair. Staff would like to review for brief comments, 2 E. That's CP09-017.

>> Commissioner Do: There are no public comment cards, on that item, I would like to pull 2 B as in boy. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Mr. Chair. I would like to pull 2 C.

>> Commissioner Do: Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. If there are any other items not left to be pulled I would like to move approval of the consent calendar.

>> Commissioner Do: Commissioner Zito.

>> Commissioner Zito: 2D, we got a --

>> Mr. Chair, is this 2 E?

>> Commissioner Do: D.

>> As in dog.

>> Commissioner Zito: CPA 08-'01 101. Regarding lighting. I just wondered if we could have staff ensure that lighting remains within the project and not focusing outward.

>> Mr. Chair, that's pretty standard condition for staff and so we'll make sure that that project is appropriately conditioned so we will make sure there are conditions in the resolution for that one.

>> Councilmember Constant: Appreciate that, Mr. Chair.

>> Commissioner Do: Let's vote by light on remaining items, 2A and 2 D, that's it, just 2A and 2D. The motion is approved, unanimously, with all commissioners present, with Commissioner Kamkar absent. So now is the public hearing item. 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 agenda for public hearing time management purposes. So the first item is item 2 B of the consent calendar. CP07-070. Conditional use permit to construct three buildings for a total of approximately 148,000 square feet for a large format commercial establishment with associated commercial uses on a 14.1 gross acre site in the IP industrial park zoning district located at Northeast corner of Holger way and north 1st street. Staff.

>> Thank you, Mr. Chair. This conditional use permit is for a large format commercial establishment with incidental associated commercial uses. Staff recommends approval of this project for the following reasons: It conforms to the general plan designation of industrial park with mixed industrial overlay as large scale commercial uses can be found in conformance with this designation. The project conforms to the regulations of the San José municipal code title 20. The project conforms to the North San Jose development area policy. The proposed project is compatible with the surrounding land uses and the project conforms to the requirements of CEQA. Thank you.

>> Commissioner Do: Thank you. The reason I pulled this item is because I assume this item came about as a result of the recent revisions of the North San José development plans that allows this kind of development to occur. My concern is simply the vision of the typical big box kind of development. And in looking at the design, the plans and all of that, there are very, very few amenities that are provided for things like -- like bicycling or pedestrians, bicycle racks, for example, bicycle path or anything like that. So I'd like to hear more from the other commissioners as to whether they have an input into this and whether there's a motion to add those things as conditions. Actually, is the applicant here? Thank you, commissioner Jensen. Thank you. Please come down to the podium and state your name for the record. You have up to five minutes.

>> My name is Deke Hunter. I'm the applicant. I'm the managing member of hunter-storm which is the other than of this property. This application is a component of a approximately 40 acre development called an at-first project which is commercial use of office and retail. This is one piece of that project. The portion of the project that's under construction now includes an office campus which is about two-thirds completed. The retail designation has been there since the time we acquired it over five years ago -- excuse me over three years ago and is consistent with every planning and every zoning ordinance that's appropriate to the site. And with regard to your question about bicycle routes, that includes bicycle routes through Holger way, as far as the requirement of

this piece as well as the adjacent sites for bicycle racks. Everything is 100% code compliant to the zoning ordinance specific to this piece of property. So there's no variance, there's no exceptions. It's a site development permit which means that we're developing strictly within the boundary of the zoning, so unlike a planned development, in which there is leeway between the planning staff and the applicant, this site meets 100% of the City of San José's planning requirements for the zoning.

>> Commissioner Do: Thank you, sir.

>> Thank you.

>> Commissioner Do: Staff, could you respond to this item?

>> Thank you, Mr. Chair. This project does conform to --

>> Commissioner Do: I'm sorry, motion to close public hearing? All in favor? [ ayes ]

>> Commissioner Do: Thank you. Sorry.

>> That's okay. Thank you, Mr. Chair. This project is required to conformity to the zoning ordinance, the zoning ordinance does have park requirements for regular automotive vehicles, as well as for motorcycles and for bicycles. And so on the site plan, on the second page of the plan set that's included in the packet, there's a table showing the overall bicycle and motorcycle parking that is required per the municipal code. In addition to that, there is, along Holger way to the southeast, along the project site, is a private road and they are being required to provide bike lanes on Holger way and north 1st Street is part of the overall city's master bike program and John Brazil with D.O.T. who is the bike and pedestrian program manager said that along north 1st street there are existing bike lanes that run from highway 237 past South to Brokaw and that there are long term plans for extending these bike lanes south to the Interstate 880 area. So there are bike paths in the area and so alternative modes of transportation along with being near a light rail station is also being provided for.

>> Commissioner Do: Are there any onsite amenities like bicycle racks and that type thing?

>> Yes, that's required as part of this permit. It's within the resolution, the motorcycle parking and the bicycle parking.

>> Commissioner Do: Thank you. Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. Mr. Hunter, thank you very much, wherever you disappeared to. Oh. For conforming to all of the requirements. And I think what Chair do is getting at is, we have an opportunity here. There's a beautiful blank slate here, and there's an opportunity to do things a little bit differently. And this is more of a request of staff and moving forward, as things move forward, to look at going top-down, multi-story, for big box retail which has been done in various places across the country and around the world, parking garages instead of surface park lots, and you're not terribly far from the Guadalupe river trail, so connectivity to the trail and those sorts of things. And this is something that is my request of staff, to work with this applicant and others, as these sorts of opportunities present themselves. I think we have an opportunity to be different than other cities that have big-box retail and to do something that's really interesting. So that would be my comment.

>> Commissioner Do: Thank you, Commissioner Jensen. And I would concur with Commissioner Jensen's comments. Thank you. There are no other speaker cards so is there a motion to -- on the issue? Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. I move that we approve a conditional use permit to construct three buildings for a total of approximately 148,000 square feet for a large format commercial establishment with associated commercial use for a 14.1 gross acre site in the IP industrial park zoning district as recommended by staff.

>> Commissioner Do: Is there a second? Let's vote by light. Motion is passed with all commissioners present voting for, Commissioner Kamkar being absent. The next item CP 09-010. Conditional use permit to legalize a private school for up to 20 students at an existing 2100 square foot building on a .22 gross acre site in the CPpedestrian commercial zoning district, located on east side of Bascom avenue approximately 150 southerly of Curtner avenue. Staff.

>> Thank you, Mr. Chair. This school currently provides educational opportunities for students with moderate developmental disabilities, such as autism. This conforms to the city's policy of conversion of residential to nonresidential structures. Thank you.

>> Commissioner Do: Commissioner Cahan, would you like to make your comment now or wait until after the public hearing? Is the applicant here? Yes, would you like to speak? You have up to five minutes to speak. Oh, actually, Commissioner Cahan, since you pulled the agenda item, it would be good for you to state what your comment is. Thank you.

>> Commissioner Cahan: Thank you, Mr. Chair. I had two questions on this issue. One is the fact that it appears that the school has been in operation since 2004. But without being legally so. Is that correct? And why? And then, when the applicant comes up, I have additional questions for the applicant.

>> Commissioner Do: Please state your name for the record. You have up to five minutes.

>> My name is Billy Gonzales and I'm a teacher at S. chrysler hatton school. Your question might be better answered for the --

>> The property other than, when we purchased the property, we were told by the real estate agent it was previously run as a schooling. We purchased the property assuming it was zoned for schooling. That was our understanding. So they were new tenants --

>> Yes, we took it on that word, and then we found out later that it wasn't true. So we're not saying we're not completely responsible, but we started with like six students, and we -- there was actually licenses and scenes framed on the wall, so we did take it at face value from the Realtor, Jim and I both did but it wasn't true. When the fire marshal came we are doing what we can to make it legal.

>> Commissioner Cahan: Thank you.

>> Also we were told by the previous tenant, that if we were opening up our school there, that they were -- we were told that we were -- we didn't have to reapply because it's already a school. We should have checked that ourselves and we made that mistake and we continue to work under that pretense. And that's our mistake.

>> Commissioner Do: Commissioner Cahan, do you have other questions? Okay.

>> Since you pulled it from consent calendar, it would be great if you could articulate your concerns, so that we can make sure that in the public hearing portion, that the applicants can then gear their comments towards the concerns.

>> Commissioner Cahan: So I'm wondering if the school is currently in session.

>> No.

>> Commissioner Cahan: Okay. Because I went by the school today and the front yard is --

>> We had all the floors redone. Everything's up.

>> We're preparing it for being in session because school's supposed to start once we get approval.

>> We're waiting until after Labor Day.

>> Waiting for our permit before we can do anything but we still have to prepare the school for, you know, cleaning it and rearranging and stuff like that. That's why everything is kinds of outside.

>> We're not moving in right now.

>> Commissioner Cahan: That is not the condition that your front yard is usually in had?

>> No, all the floors were resurfaced so everything had to come out of the classrooms.

>> Commissioner Cahan: I also didn't notice any greenery in the front play area. And I'm not sure if perhaps your particular students, that there's some concern arounds that. But it did occur to me that there wasn't much in the way of plant life in your front yard.

>> No, it was existing kind of that way when we got it. We intend with the other than's permission to replant some areas with a little bit more greenery in front of the school planting area but we're still in the process of doing that right now.

>> However, these kids also are kind of hard on -- they're not physically challenged, they're the more impulsive mostly boys so they're not particularly easy on the property.

>> I don't know what that has to do with the planting.

>> I'm not going to plant any flowers. But we'll put shade --

>> Are you asking whether or not we'll put planting? I'm not sure of the question.

>> Commissioner Cahan: I've worked with autistic children before and I understand there are different issues than your regular school system.

>> Right.

>> Commissioner Cahan: But I did notice that there wasn't -- there wouldn't be any plant life which I think would be beneficial in some instruction and the natural beauty where you could incorporate it.

>> I believe Mr. Gardner would be able to answer that.

>> I'm okay with additional plants or whatever it takes. It's mostly, I don't know what is the proper environment for students. If it would improve it it's all right with me.

>> I believe that the school can be made better looking with just a small amount of planting that can be done in the front of the fencing area. I think that it's very plain, and right now, we have a plan to landscape the little bit of area that's available. We're having to, if you look at that time plan, there's a trash construction area that has to be built that's put in and once the construction's done then we're going to come in and do some planting. But that -- I didn't have a -- I wasn't told that it was required, otherwise I would have submitted a planting plan.

>> Commissioner Cahan: I just think any beautification would be beneficial. Especially in that area.

>> I agree, no, I believe that any planting for students is a great idea.

>> Commissioner Cahan: Okay. Thank you. No further questions.

>> Commissioner Do: Thank you Commissioner Cahan. Are there any additional statements would you like to make? Because you used your five minutes to answer commissioner's questions so is there anything else would you like to say?

>> I didn't get --

>> Commissioner Do: Is there anything else would you like to say?

>> No, thank you for listening to us and hearing our request.

>> Commissioner Do: Thank you very much. Is there a motion to close public hearing? All in favor? Staff?

>> Thank you, Mr. Chair. Just wanted to also note that since this was previously a single family home there's also considerable yard area for the children in the rear but planning staff can work with the applicant to provide additional landscaping in the front of the property. Thank you.

>> Commissioner Do: There are no additional speaker light so let's vote by light. Is there a motion? Commissioner Zito.

>> Commissioner Zito: Move this along. Approve a conditional use permit to legalize a private school for up to 20 students for an existing 2100 square foot building on a .22 gross acre site in the CPpedestrian commercial zoning district as recommended by staff.

>> Second.

>> Commissioner Do: There's a motion and there's a second. Let's vote by light. The motion is passed with all commissioners present voting in favor. Next item is CP09-017, conditional use permit to legalize 37,000 square feet of warehouse retail sales in an existing 50,300 square foot warehouse building on a 1.8 gross acre site in the H 1 heavy industrial zoning district located at the Northwest corner of Senter road and Burke street. Staff.

>> Thank you, Mr. Chair. It's come to staff's attention that there are a tremendous number of illegal signs existing on the property. Staff informed the applicant to that circumstance and I don't know if the applicant would want to speak to that issue but wanted the commission to realize that we had recognized that circumstance and take steps to make sure it is rectified. That was the only comment. Thank you, Mr. Chair.

>> Commissioner Do: Is the applicant here? Thank you you have five minutes to speak.

>> Hashimoto HMH. I had conversation with my client and he committed to within 60 days removal of all the illegal signs and banners. If you notice in the plans that we are reducing sign size to be compliant with the city's sign ordinance. But everything up there is temporary, as some of these types of uses tend to have. We will make sure those are cleared out within 60 days.

>> Commissioner Do: Thank you. There's a question for you from Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. I know oftentimes, we see approvals come by us and the buildings are compliant, and getting to compliant at this point. But then after we start seeing temporary signs come up for a new business, which if I'm correct, they can have them for a short period of time, this is grand opening, but they tend to stay up for years. So is there any -- is there a commitment to make sure that, you know, you're policing yourself so that you don't be out of compliance with the sign ordinance?

>> What can I tell you is that I will communicate with my client who is the landlord and I will request that he be committed to enforcing that. And Commissioner Campos, you're right, there does have a tendency to some of those commercial uses to have those things pop up. But I'll make sure my client is aware of that and that he's policing that.

>> Commissioner Campos: Thank you.

>> Commissioner Do: Thank you, Commissioner Zito.

>> Commissioner Zito: I'm just curious, is there a regulation that requires a full 60 days to do that?

>> I think he was also trying to include the new sign painting, things we were doing to reduce the sign painting. Including painting new signs on the building to reduce the size of it. So he committed to that. Commissioner Zito, if you said 45 days or something, I would have to push a little bit, but I can make that request of him.

>> Commissioner Zito: I'm thinking more, you know, get the ones that are clearly out of code, down and out, and then you know, anything to upgrade, could take 60 days. But any other stuff that they can do in the short term, get rid of the eyesore element first. Maybe within 30 days. But that would be something we can discuss with staff.

>> I'll communicate that with my client, appreciate that.

>> Commissioner Do: Thank you, Commissioner Zito. Motion to close public hearing? All in favor? Thank you. Staff, is the applicant's response adequate for staff's purposes?

>> Thank you, Mr. Chair. Staff will continue to work with the applicant and see what we can work out. I mean, again, staff's intent would be to get it resolved as quickly as we can and we'll work with the applicant to see what we can do.

>> Commissioner Do: Commissioner Campos.

>> Commissioner Campos: The thank you, Mr. Chair. I'll make the motion.

>> Commissioner Do: Please.

>> Commissioner Campos: That we approve a conditional use permit to legalize 37,000 square foot of warehouse retail sales in an existing 50,300 square foot warehouse building on a 1.5 gross acre site in the H I heavy industrial zoning district as recommended by staff and additionally, what Commissioner Zito requested of the applicant.

>> Commissioner Do: There are additional speaker lights. Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. Staff could you elaborate on what follow-up plans are in place to ensure that in fact the illegal signage has been removed and the out-of-compliant sign that is too large has been made an appropriate size?

>> Thank you, Mr. Chair. Prior to this evening's meeting and hearing from the applicant the game plan this afternoon was that we were going to have code enforcement go out like on Monday morning and actually start to you know, engage in the official code enforcement action. And so that option still -- is still available and open to staff. So if it's not dealt with soon, then that would be, I guess, the big-stick that planning staff, that the department would use in terms of proceeding with code enforcement action, Mr. Chair, thank you.

>> Commissioner Jensen: Thank you. And as Commissioner Campos pointed out, sometimes these things get corrected in advance of a code enforcement visit, and then they seem to slide back out of compliance after that. So are there any financial repercussions, or anything so the applicant will be aware coming down the pike if it falls out of compliance again?

>> Thank you, Mr. Chair. Applicant might want to speak to this also, but I think it's important to reiterate that because of zoning conditions on the site that there are fairly rigorous conditions that are included in the resolution before you this evening and I'll let counsel address the issue of financial.

>> Thank you, Mr. Chair. I think first of all I'd like to note that the Planning Commission and the item that it has before it is the approval of the C.U.P. And if there is illegal signage out there that's really an issue for code enforcement to deal with. So one of the concerns I would have has been alluded to by Commissioner Zito is really the Planning Commission shouldn't be given the amount of days that illegal signage can remain up. That's something for the code enforcement persons to go out. Really, I understand Commissioner Zito's point that you

know, why are we giving 60 days? But again, I think I'd like to highlight for the commission that that's a code enforcement issue and that really the issue before the commission is whether or not to approve the C.U.P. And then, to get to Commissioner Jensen's inquiry, there are a variety of code enforcement tools that are available. And one of them that code enforcement tends to use in in type of situation is an administrative compliance order process. And under the municipal code, the maximum fine that can be recommended is a \$2500 per day fine. So again, that's something that the applicant could be subject to. But it is of course subject to the administrative -- what is recommended by the code enforcement officer. And then if there's no compliance it would go to the city's appeals hearing boards. So that's the typical enforcement tool that's used in this instance. If it is something that is of a more permanent nature, so it's more of a structural sign. If it was simply a banner on the building, taken down put up, taken down put up, then those would be governed by the administrative enforcement resolutions.

>> Commissioner Do: This was part of the motion.

>> Well, the way commissioner Campos framed the motion, that the commission comments be taken into account. I think that's appropriate to pass along to code enforcement that the commission had these concerns. So I think his motion still works because he did not phrase his motion in a way that said, give them 60 days to violate the code or to remedy the code violation. So the way heard Commissioner Campos' motion, its was that he wanted the commission's comments considered and I think planning staff could forward those comments to code enforcement for consideration if they begin any code enforcement action.

>> Commissioner Do: Thank you, counsel. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. I appreciate counsel's guidance always. Would it be appropriate for a commissioner to withhold an affirmative vote on this in lieu of getting these things into compliance?

>> Again, I think the reason staff pulled it is because they wanted you to know that while they support the legalization of the warehouse retail sales, they did want the commission to be aware, that there are some illegal signage issues out there. The C.U.P. in no way you know legalizes illegal sign issues. And again I believe that would be a code enforcement issue.

>> Commissioner Zito: I'm not sure if I got an answer on that question. Would it be appropriate for a commissioner to withhold their vote, in other words, to vote against approving this, due fact that they are out of compliance?

>> Would I say no. To go ahead and look at the C.U.P. and leave it to the code enforcement process to deal with the illegal signage issues.

>> Commissioner Zito: Okay.

>> That said, it is within the purview of the commission to defer it, I wouldn't say 60 days, but to defer the issue to have a report back if the commission feels they wants a little more comfort that the conditional use permit which is to legalize some enforcement issues that are already out there, if you want to see some good-faith movement, that when you approve the C.U.P. that the applicant will be following the C.U.P. and the legalization activities that are enumerated under that, the Commission could defer it for a report on the outstanding violations and activities taken by the applicant to remedy the ones that can be remedied more quickly.

>> Mr. Chair, if I could just add, staff could just add, that again, as we said, this conditional use permit does include very explicit signage conditions that would be allowed to be put into effect if you chose to go ahead and approve the C.U.P. at this time. Thank you.

>> Commissioner Zito: And I just want to state for clarity, that I have no intention of holding up this permit for that reason. I just wanted to clarify what the purview of the commission is. Many times, we hear objections to applicants, and applications, due to the fact that they are out of compliance for X or Y or Z and I want to clarify what our remedies are in that regard. I always try to be careful not to specify we want 30 days or 60 days or 45 days or whatever. But I did want to enunciate to the staff that we would love to see as much get done as quickly

as possible as the maker of the motion mentioned. That was the purpose of my statement. I appreciate the guidance and the clarity, and I do ask staff if it's possible to work with the applicant, as you said, to get as much done as quickly as possible.

>> Commissioner Do: Thank you, Commissioner Zito. There are no other speaker lights so let's vote by light. The motion is passed with all commissioners present voting in favor. The next item of the public hearing is item 3A. PD 08-051, appeal of the planning director's decision to approve a planned development permit for the installation of a slim line monopole with ancillary outdoor equipment at an existing retail shopping center on a .75 gross acre site, in the A(PD) planned development zoning district located on the southeast corner of Ocala avenue and King Road. Staff.

>> Thank you, Mr. Chair. This is for a new monopole that replaces an existing monopole and allows for two carriers to co-locate on one pole along with new landscaping at an existing shopping center. You've received correspondence from the appellant. That's along with some pictures of the shopping center. Again, this permit, staff feels, addresses at least some of the existing conditions onsite in that it provides new landscaping. The permit itself includes conditions requiring removal of graffiti in a speedy way, puts in a condition that requires landscape maintenance by the property other than, puts in a condition that allows for the permit to be revoked, which is something that is not present in the existing PD permit, and it really puts another tenant on the site with an interest in seeing the property maintained. With that, staff has no further comments, thank you.

>> Commissioner Do: Thank you, staff. Is the applicant here? Or is the appellant here? It would be you, I assume. Is the appellant here? Okay. Would you like to speak? Please approach the podium to speak, if you would like. Please approach the podium. Please state your name for the record and you have up to five minutes, thank you.

>> Mary Ann Ruiz. My mother and I would be sharing the five minutes. We were a little confused, we heard "applicants" and then "appellants."

>> Thank you, commissioners, for your precious time. My name is Viney Ruiz. I've been a resident for 50 years. Please vote no on the monopole. I have breathing problems and I take care of Julita. Safety is what I expect from AT&T who is my phone carrier. Ther of pop's market, City of San José will be responsible, if any of this radiation leaks out to the communities, maybe through an attack, a plane crash, an earthquake and et cetera, not because they will be responsible for the earthquake or the plane. But because it is in a residential neighborhood, next to people and families. Pop's shopping center and AT&T should not be allowed to erect the pole in a residential neighborhood. We do not want to see -- we do not want to be like Guinea pigs, because when I had talked to the people when I came here they had said that there was no proof that it could cause health problems. Although there is no proof that it doesn't. And so I ask you to vote no to AT&T's 50 foot module pole. And I'm sure you're familiar with pop's market. It's a very hot spot, and there are already many things going on there, thank you.

>> Good evening, chair Do and vice chair Jensen and commissioners. My name is Mary Ann Ruiz, I got to know you spending six years on the parks and rec commission and I'm currently on the county Planning Commission. I'm a resident and I live on King road very near to this property. So I have an idea of some of the issues that you're dealing with and I would just like to respectfully urge to you vote no for this project, to not approve the 50 foot monopole. First of all the community is against it. We have over a hundred signatures on a petition, and residents surrounding the area as well as PAC members here, as well as the K.O.N.A. SNI voted unanimously to not approve, to oppose this project. The reason why they voted to not approve this project is because the applicant went to K.O.N.A. in April, and the K.O.N.A. had many concerns, and the K.O.N.A. was very surprised to learn that it was approved April 28th by the planning director. And there was never a response to the K.O.N.A. concerns. Secondly, it's an eyesore. 25-foot is very different than a 50-foot pole. So it's not replacing an existing size or height. And in addition to that, it is expanding the facility, and the cabinet of the -- of the -- for project. It's a single-story residential in the neighborhood, as well as the businesses are single-story. So I do not believe that this meets the intent nor the criteria of the council policy 620 for compatibility, as well as minimizing the visual impact. Lastly, we distributed some pictures to you. There are ongoing problems on this property. There are -- there is significant crime, violence, gang activity. If you look at one of your pictures, on the Ocala side, it's clearly marked as gang territory. It says, EHP and Norte. And this has been going on for years. So we believe that

approving this 50-foot monopole will worsen the conditions and contribute to blight as well as contribute to increased clutter. I will wrap up by saying, I talked with 100 of my neighbors, I heard from many others that they would not put a 50 foot monopole in a residential area of Willow Glen. I would ask you to approve this and we are here to answer any questions.

>> Commissioner Do: There is a question from Commissioner Jensen.

>> Commissioner Jensen: Thank you, Commissioner Do. Commissioner Ruiz, it is always nice to see a colleague here albeit outside your responsibilities on the county commission. In addition there is a significant number of photos showing graffiti and markings and stuff. The City of San José currently has a policy in place requiring that all graffiti be removed within 48 hours. Do you know whether this graffiti that's in here has been in existence for longer than 48 hours?

>> Unfortunately I can confirm, because I see this on a daily basis, that I cannot recall a day that there was not graffiti.

>> Commissioner Jensen: Okay. So the property owner has had since April to try and meet some of the City's existing policies and apparently hasn't made it if I understand you correctly?

>> That is absolutely correct, Commissioner Jensen. Judge thank you very much.

>> Thank you.

>> Commissioner Do: Thank you. Applicant. If you would like to speak, you have up to five minutes to speak, as well. Please approach the podium, please state your name for the record. Thank you.

>> Good evening, Mr. Chairman, commissioner my name is Phillip Thomas, I represent AT&T mobility. I know that you have a full agenda da tonight so I will be brief. We have submitted an RF report which is standard with these applications that document that the site will be less than 3% of the federal standard, so well below what anybody would consider to be anywhere near the standard. We constructed this facility to be as minimal as possible. The equipment space is about two-thirds of the size of what we normally would ask for. But because this is such a small site, we basically made it as small as possible again, to just minimize the impacts. The tower itself, will be roughly 50 feet or 50 feet tall. And does this overhead work? Thank you. As you can see, the tower will be roughly as tall as the existing utility poles and will be a slim line design with a ray dome at the top, which is I believe consistent with the other designs you have already approved throughout the city. This type of pole you know obviously minimizes the impact because the antennas themselves, the coax, et cetera, will not be visible from the street. We -- at the King-Ocala neighborhood meeting, the only comments we received were in reference to the landscaping on the side. As we stated to the staff we will be basically relandscaping the entire property as part of the project. And also at the director's hearing we received no comments. I would like to defer to staff to ask to -- just to concur that the community meeting the only comments received were regarding landscaping. And also have you received any sort of petition that has been circulated? Thank you. I'd be happy to answer any questions.

>> Commissioner Do: There is a question from Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. I understand on the site facility you are moving the equipment from the side of the building to I guess right next to where the proposed tower would go. Is there a reason for that?

>> Actually, the one that's on the side of the building is for the existing carrier.

>> Commissioner Campos: Okay.

>> We'll be adding a second one next to the tower.

>> Commissioner Campos: So is there a reason you couldn't coordinate with the existing carrier to put your equipment next to the building? Again I don't think you were hearing. I could be wrong. That one of the issues is, you know, the site tends to attract crime, graffiti, et cetera.

>> Sure.

>> Commissioner Campos: And if you put a building, another structure, the size that you're proposing, that's going to further block view onto the site from Orlando, which basically removing the shrubs as you're proposing to increase sight lines or get better visibility, it's going to be cancelled out by a new structure. Have you taken that into construction? Good actually it's somewhat the opposite. We've actually sunk the equipment space into the side of the hill so that there will be only just a foot or so of the block wall that's above the ground. So we'll actually prevent people from adding graffiti to it.

>> Commissioner Campos: So would you prevent -- so that would prevent -- so there will be part of the hill up against your structure?

>> Absolutely.

>> Commissioner Campos: As well?

>> If you look at this little podium here our equipment will be sunk down into the ground so only a portion will stick up above the grade.

>> Commissioner Campos: Is there a reason why you couldn't design your structure to go next to the building? I mean it seems to be more room next to the building as well.

>> I mean, we could certainly do that.

>> Commissioner Campos: You could dedicate what you're proposing for more landscaping which would improve the site of the property. I think one of the issues that I'm hearing and for the record, I live probably about a mile from there, went to that high school, I remember when that was an empty field. So that, when you have the community telling you that it is an eyesore, and it's been an eyesore, it's been an eyesore since the '80s.

>> Right.

>> Commissioner Campos: I've never seen a property deteriorate that fast, you know, in all my life, growing up there. So this isn't just NIMBYism. You do have some legitimate concerns coming from the community. Wait a minute, what is the community getting from an absent landlord, a deteriorated and dilapidated strip mall, benefiting from this. Again take that into consideration.

>> Sure. Adding another facility on the side of the building, like the one that's there, to us, we just looked at it as, you know, building another wall, a six foot wall giving more space to put graffiti on. By sinking it into the ground we kind of take that away. You know, it's obviously going to reduce the visual obstruction, it will be basically sunk into the ground. We looked at it as a less visual impact. That's kind of how we considered it.

>> Commissioner Campos: Would you consider it?

>> Oh, absolutely.

>> Commissioner Do: There are follow-up questions. Let me ask you a follow-up to Commissioner Campos's question. The utility structure the one you're sinking with a foot of wall exposed above the ground, is it open to the sky or does it have a roof over that?

>> We would put basically anything you deem appropriate. When we have open sites like this, that are below ground we like to put something as a top on it just so people can't stumble into it or climb into it, et cetera, et cetera. We would put some kind of a top on it but it would be only visible by the general public.

>> Commissioner Do: Thank you. Commissioner Zito has a question for you.

>> Commissioner Zito: Thank you, Mr. Chair. I'm going to take the comments we've heard so far and go one step further and wondered if you have considered another location on the site for that pole. And maybe, as the current pole is incorporated into the lighting system there, is it at all possible to do a similar configuration, from the light pole at King and Ocala, away from the residential homes, instead of being 60 feet across the street, it could possibly be in the corner, which would certainly not impede the residents in the area and maybe get incorporated into that light pole so as to you know blends in a little bit more and it wouldn't be a separate pole?

>> We could certainly do that the problem is if you put something on that light pole there is no way to camouflage it like we have now. And we would also obviously lose some height. And I'm sure you've heard many times that when we lose height we end up building more sites. You know, if we lose ten, 15 feet here or there we end up having to put up two sites to take up for that one, so --

>> Commissioner Zito: Well, you know how to design these things. I certainly don't. I was just thinking that you could keep the height, keep the lights somewhere they need to be somewhere up this pole. What I was looking at on these plans, your antenna are well above that. You would have your lights 25 feet, whatever they are, halfway up the pole, and then you'd have your microwave antenna up at the 45 to 50 foot level, right?

>> It would look fairly strange. If you can look at the picture and take the top portion of that tower, and put it on the light pole, it would look rather odd.

>> Commissioner Zito: Would it look any odder than having a straight 50-foot pole aside from residences? I mean a 50-foot pole is a 50-foot pole. [applause]

>> Commissioner Zito: Please, I didn't do that for effect, I promise you.

>> This is the standard way to camouflage and we see these throughout the city that have obviously been approved. So that's the way we're going.

>> Commissioner Zito: I understand. What I'm trying to understand, I mean this sincerely, I don't understand how this is more camouflaged being a slim line pole 50 foot high, nothing's changing there, on one side of the property than a 50-foot pole on another side of the property. You're not doing anything to the pole to make it less visible, right?

>> Are you suggesting move it to the other side of the property?

>> Commissioner Zito: Maybe you know more than me, maybe you can incorporate it with the light fixture that is on the opposite side there.

>> Certainly that's an option. I don't know what space we would use to locate the pole on that side of the property. I mean, we tried to put it or keep it away from the main street, as much as possible. If you want to think of it that way. So putting it on that side of the property would actually put it right on King which is the heavily traveled portion of the road. So --

>> Commissioner Zito: I understand. It just -- how many inches of speaker cards do we have on this?

>> Quite a few.

>> Commissioner Zito: My concern is we've seen quite a few of these over a bunch of years. And it's rare to have this much opposition. It seems one of the main concerns is its proximity to residential homes.

>> Sure.

>> Commissioner Zito: Who things, there's the typical radio frequency issues which as a commission we understand those. But there's the conformance with the nature of the neighborhood. To the extent you could alleviate that issue you would solve more than 50% of your problem, I believe. I want to know the feasibility of moving that, it is something you could investigate.

>> Certainly we try to keep those things from the heavily traveled thoroughfare. I understand what you're saying.

>> Commissioner Zito: I appreciate the work you've done on this and thank you very much for your candid answers.

>> Commissioner Do: Thank you, Commissioner Zito. There are several other questions from the other commissioners. I just wondered if those questions could wait until the commission's deliberation. Okay. Then Commissioner Jensen.

>> Commissioner Jensen: Thank you, chair Do. I'm looking at the elevation plan, northeast elevation, sheet A-3 and Northeast elevation sheet A-2. I have to start by saying I concur with Commissioner Campos on the challenges of line of sight, these are big challenges. And I think one of the problems I'm having, when I hear you say that you've sunk it into the hillside is, in looking at the elevation on sheet A-3, looking at diamond A-4, I see a very tall brick wall that is almost as high as the roof line and it says that it is a proposed eight-foot-high enclosure, that has been sunk so that only two foot of it is showing. But the drawing we're looking at shows an eight foot wall sticking up out of the ground extremely high. And so it's incongruous to me that there's only two foot of wall showing. And the same thing on sheet A-2, where item number 4 states that it is also a proposed eight foot high wall with only two foot at highest grade. But it also extends up almost to the height of the roof line. So perhaps you can help explain that.

>> Yeah. My understanding was that we were going to be sinking this into the ground much more than what was shown. I think if you look at A-4, I actually think the -- if you look at A-4, that is actually what it's going to look like. The other sheet is actually incorrect.

>> Commissioner Jensen: A-4, diamond number 9, pointing to a dotted line, proposed eight-foot enclosure.

>> That's from the base.

>> Commissioner Jensen: The diamond is up exceptionally high and up just below the roof line. So it's implying through the use of that dotted line, there's going to be some significant amount of visible, very inviting material.

>> Yeah. My understanding is, that the enclosure will be -- the wall will be eight feet tall but because it is going to be stuck into the ground, only a portion of it will be above-grade. I would be more than happy to adds a condition that only a portion of it would be above grade, just to clarify that. That was the intent was to sink into the ground.

>> Commissioner Jensen: Thank you, I appreciate that and I'm sure staff appreciates that, and that staff can get the drawings revised to show that there's no more than two foot of the wall exposed at any point, as it states in the documentation. Staff.

>> Sorry, Mr. Chair, could you repeat the question, please?

>> Commissioner Jensen: The applicant has indicated that sheets A-2, A-3 and A-4, which all clearly indicate an exceptionally tall wall, that the intent was to have that wall sunk so that no more than two foot of it was exposed, at any given point, but the drawings appear to indicate that the wall is in fact an eight-foot-tall wall. And the applicant has indicated that they would be open to a condition that the wall had no more than two foot of exposure.

>> Thank you, Mr. Chair. Staff would definitely be receptive to a condition like that. At least as the way that the plans are shown, it does look like the wall is significantly taller, and diamond number 9 says, proposed AT&T eight foot high CMU wall to be recessed into grade approximately two feet at highest grade point. So what we're

understanding from that diamond is that the wall will be recessed a two feet, not six feet and stick out two feet. So if the applicant wants to propose a condition that recesses it further, that's great. Thank you.

>> Commissioner Jensen: So your reading of it would be that two foot would be recessed into the grade and six foot would be above the hillside?

>> That's correct.

>> Commissioner Jensen: Thank you.

>> Commissioner Do: Thank you, Commissioner Jensen. Counsel.

>> In regard to the request to have the applicant revise the pictures, I just wanted to note for the commission that I believe we have standard provisions that provide that the conditions in the permit and the development standards, which is a document that planning staff has control over, govern over any pictures generated by the applicant. So as long as the condition is actually in the permit or on the development standards it doesn't really matter what the pretty pictures show, that it is actually the conditions you place into the permit or that staff reflects on the development standards that will control.

>> Commissioner Do: Thank you, counsel. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Mr. Chair. Commissioner Jensen asked a lot of what I was going to ask bit additionally, if there happens to be two feet showing, that is still a large amount of space for graffiti to exist. And what are you planning on doing to assure that people are not able to access that for graffiti?

>> Well, certainly anybody can access any portion of the property obviously they please. But there will be landscaping around the facility. So I guess my answer to that would be, any graffiti that was done on the wall that you really wouldn't be able to see it because the landscaping will stick up above that portion of the wall so it will basically cover it.

>> Commissioner Cahan: Is it your intent to use landscaping that people are not able to get behind so, you know, something with thorns or rosemary some something that is hard to get through?

>> One of the issues that was brought up at the K.O.N.A. meeting, they didn't want landscaping that was too tall, actually where someone could hide in, so all the landscaping will be low to the ground. I hope that answers your question.

>> Commissioner Cahan: But it's at this point not your intent to use lands scaping that would deter people from going through it because of the type of plants?

>> It wasn't our intent to do that. But if something -- we would certainly be open to if that is something you think is feasible or realistic for this location.

>> Commissioner Cahan: Thank you.

>> Commissioner Do: Thank you, Commissioner Cahan. Do I want to make a comment to both the applicant and staff in that the -- I think that the depressing is enclosure creates other problems, primarily access. The way the plan shows with the stairs coming down to that wouldn't work if you depressed that six feet or something like that because can't get -- you would have to dig it out much further, and it -- then it creates a situation where people can hide in the pit that -- that is used to access the press enclosure. I'm not looking for a response, it relates to the issues that the other commissioners have brought up. In regards to this it triggers other problems that in termination of places where people can hide and sight line and all of those things. Thank you.

>> Thank you.

>> Commissioner Do: Commissioner Jensen.

>> Commissioner Jensen: Just to follow up on depressing the enclosure, I appreciate Chair Do's description of creating a valley that people could high in. Is this intended to be an open pit or does this have a roof over to protect the equipment from the activities alluded to by Commissioner Campos?

>> Absolutely we would put something on top of it, that would become a safety issue as well.

>> Commissioner Jensen: So that would not be an open pit. Thank you.

>> Commissioner Do: Thank you. Let's see, there are quite a few speaker cards. There are quite a few number of public cards, public speaker cards. I will call three names at a time and as I call them please line up at the bottom of the stairs. Sandra steele, Gloria rivera, Felipe Juarez. Please come down to the bottom of the stairs. Each person will have up to two minutes to address the commission. Are the speakers here? Is Mr. Felipe Juarez here? So Gloria rivera is not here, then? Okay. Please approach the podium. Please state your name for the record and again, you have up to two minutes.

>> Yes, good evening, my name is Gloria rivera and I am a resident from K.O.N.A. SNI and member for the action team committee for several years. And we had a community meeting last Monday, and at the moment, we have a lot of concerns with this project. This corner, there is a lot of issues with blight and crime. And this monopole really is not attractive. It's not on line with our goals, our mission of eradicating crime and blight. So SNI K.O.N.A. NAC voted please vote no on this project at this time. Thank you.

>> Commissioner Do: Thank you, Mr. Juarez, please state your name for the record.

>> My name is Felipe Juarez, I'm a resident of East San José for about 50 years now. I do not want the commission to get confused. We do not want this pole. If you look at the picture that was up a few minutes ago, the thing that was more profound for me is adding more poles. This is an older neighborhood, and so the old style of having telephone poles has been modified in newer neighborhoods where there are no poles. I have never seen a monopole like this stuck in the middle of a neighborhood, mostly it's out in the field or in the hills or somewhere you know remote. I did -- we just barely found out about this a few months ago. And I would also want to ask the commission if they can go ahead and give Ms. Ruiz her money back for having to do this appeal. We didn't even have a chance to address this thing. We gave the AT&T representative who was there in June, didn't get back to this gentleman over here. We had many concerns. One of them was the existing antenna poles that they have there are sitting on top of lights that have never worked, and so that's a severe safety issue that has added to the problems. And now they want to go ahead and put this ugly pole out by itself. In addition we did ask the AT&T representative if they would consider the pine tree model and she indicated that would be more expensive. So I get the feeling that they were just kind of presenting this, and going ahead and saying they were going to do it anyways without any comment. That's not a good way to communicate with our community. I did try to communicate with Mr. Davidson which was the lead on this project here. I did have a lot of trouble getting to him. It was explained to me that there were -- you know personnel cuts and -- okay. So I just want to say, in short, we don't want the pole, okay, thank you.

>> Commissioner Do: Thank you. I'm sorry. I'm sorry, sir, please come back to the podium. There's a question from the commissioner, Commissioner Zito.

>> Commissioner Zito: Just going to ask you sir, just generally, I realize the ideal situation would be that it goes away. Fine, that's -- we understand that I think, that would be your first priority. But given that that might not be the case, would you find that it would be acceptable to move it over to a different portion of the property, so as to not be directly in line with the residences?

>> One of the concerns is that it is a safety hazard, that it may fall during a crash. A lot of pedestrians going to G.O. through here. I just think it should not be approved at this time. Because we've not had a discussion on it. The discussion points we had on it were not addressed and I think let's not do it.

>> Commissioner Do: Thank you very much. I will call the three next names. Carlos Da Silva, José Arranda, Robert Sandoval. Please come down to the bottom of the stairs. Mr. Da Silva. Please approach the podium. Please state your name for record. And you have two minutes.

>> My name is Carlos Da Silva. I'm a member of the K.O.N.A. NAC. I attended the meeting, the issue was brought up earlier this month. Nobody support they had project. Everybody was really upset that they found out at the last minute and didn't have a chance to review it. The thing, Commissioner Campos said it, this is one of the ugliest sites in the Eastside. This strip mall is really embarrassing to the neighborhood. Only people going to benefit from this pole, AT&T and the property owner. That's it. The neighborhood gets the hit. They have a 50 foot pole now. They had one that's half the size. Now they get a 50-foot pole. As far as landscaping, can you pave it with gold and about a week, it will look like garbage again. That's what happens. If the landowner cannot be made to assure this property is kept clean, I don't care what you do on a short term basis. He hasn't done anything up until now and what he will do in the future nobody can be assured of.

>> Commissioner Do: Good evening.

>> I'm José Arranda, West valley SNI NAC member. There are so many things involve safety, I'd like to add a few more on those issues. As of what I would also like to adds is, please refund Ms. Ruiz's appeal fee. Because I think the objection in the first place was the outrage that it was not thoroughly, the information is not communicated too well, that nobody not many in the neighborhood, as a matter of fact we did learn about this one, we do go to the other SNI to support their issues so this is where we come in that we like to support them. And I hope Mr. Cesar's comment as far as this pole should go somewhere in the neighborhood, and other big establishment area, not an open also at the same time. Just in case there's some kinds of just like what the light says, to something that might hit the pedestrians and also, the homeowners there. So that's all I have to say. And I believe that you need to do more discussion on this one, and maybe they could come back again to the community, and get some approval. Thank you.

>> Commissioner Do: Thank you. I will call the next three names after this current speaker. Aurora Solis, (saying names).

>> My name is Robert Sandoval. I'm with the West Evergreen NAC. And we are close by this area that is being discussed tonight. The erection of that monopole. And I believe that that pole will create more blight to our community areas. We're supposed to beautify our areas, not bring them down. I believe also that anywhere else, if AT&T still wants to move this pole, put it over there by hillview airport. What's wrong with that, over there? Very little homes over there. It will be out of the way. And it will be useful for them. That's all that has to be done. I believe that you, as commissioners, hopefully, that you will deny this permit and vote against it. Thank you.

>> Commissioner Do: Thank you. Please state your name for the record.

>> Yes, my name is Aurora Solis, and I definitely oppose this monopole at Ocala and King Road. Ocala and King Road is an area where there is a high number of low income families. This is least needed in this area. We need incentives and programs that are noncostly and that could be more beneficial to our neighbors. My involvement with PAC, from most holy trinity organize committee, has been able to learn that the 95122 zip code, is highly foreclosure, has been lots of families in that area have lost their homes in that area. And so our neighborhoods is devastated, if anything we need something positive to our neighbors! And definitely, we do not want this monopole in our neighborhood! Thank you.

>> Commissioner Do: Thank you. Please state your name for the record.

>> Hello, my name is Manny Rocha, Jr. and I'm a neighbor of the pool. My address is 1818 Orlando. The project is not going to benefit the view that I have from my window. I have lived there for like nine years and since then I have not seen any good benefit to the view that I have which is pop's or the community there. So by doing that it's not going to do anything to the residents. So thank you.

>> Commissioner Do: Thank you. Next speaker is Celia Bani Ruiz. I will call the next three speakers. Margie Marquez, Ed Rast, Ruben. Please state your name for the record.

>> Thank you. You get to hear me again. Yes, I wanted to say again that the pole, inside of it, even though it might be slender, even if it was very small, when hi had gone in to talk to John Davidson, he had said it had very little radiation. Even just a little radiation could cause a lot of damage. And like everybody is saying, I think that part of concern of all this is not only the module pole, that goes up, but, you know, the activity, I mean there was a woman that was beat up that I'm 62 and she was like 59 years old and I go, oh my gosh, we're talking in the middle of the day, ambulance, there's so much neglect there. There's absolutely nothing. The owner doesn't seem to have very much compassion and love for the people in the neighborhood. But I know people there, they're very, very good and they really love one another. And there's a lot of people you know, when I was going door to door they were saying oh my gosh those kids all hang out from high school right there. I mean there was sox things. I was talking about the module pole and they didn't want that there and they said no, what if it falls. And I know John said if it falls that they have a clearance that it could fall 50 feet on the street. But I say who knows it could fall on the people or the building and someone had said, it is constantly and outer there, there is people and teens and a lot of people there. So is that my time? Thank you.

>> Commissioner Do: Thank you very much.

>> Thank you.

>> Commissioner Do: Please state your name for the record.

>> My name is Margie Marquez. And I'm at the organizing committee at most holy trinity at PAC. I'm against this pole for many reasons. The concerns and the health issue. We don't know what's going to come out of that. Being a cancer survivor, I'm very cautious of things that are dangerous to our health. That's one thing. I heard tonight that they would prefer to move it to the airport. To me, that makes sense. Why put it in the middle of a residential area? You're talking about the strip mall like it's a big shopping center. It's not. It's very small. The rest of it is all houses around there. The strip mall would probable fill up about half of this area here. There's pop's market, there's a couple of other small shops. But it's a big attraction to the students at Overfelt high school. We've talked to the principal there and he said it's hard to keep the kids in school when they have pop's market there. They go on breaks, all day long, before school, after school, this place is packed with teenagers and we're concerned for their safety, too. There is a lot of graffiti going on. And I know because of the cutbacks with the city, that the graffiti is not being cleaned up the way it used to be. It is -- I drive around the neighborhood, and I have seen it. As soon as something new goes up it's marked. So that's the smaller concern. The other ones I mentioned are larger and I hope you considered them. Thank you.

>> Commissioner Do: Thank you.

>> Ed Rast: Hi, Ed Rast, speaking for myself. I was on the strong neighborhoods initiative committee for about eight years. I work with the K.O.N.A. neighborhood as well as all the other neighbors that happen to be in the area where working families are. And they in the last six or eight years cleaned up their neighborhoods and addressed the blight issue because they had public participation. We felt the situation how the public process does not work. You do notify the people ahead of time. They didn't have a public meeting. You basically made the decision in the middle part of a day when most of the working people could not go to the meeting. You waited until, and what you -- so you didn't have any public participation. And what happened, why does that happen? It happens in working neighborhoods because they can't go to the meetings. In places like Willow Glen where he I live, we go to the meetings or we finds people that can go to the meetings during the day. But most, when you have a neighborhood like this and there is a lot of them within District 5, 3, 6 and -- I'm sorry, 7, and some areas of 6, they participate because they get a decent notification and, in turn, they then come out. So what happened is, they had to get their public participation by paying a \$100 fee by appealing the process. That is not fair, it really isn't. Something like this the location of a pole would not happen on willow street because the people would pack this room but because you've got work families and people have been working on this process for a long time, didn't get notified weren't able to attend the meeting, the comment was nobody attended and nobody objected, they didn't know it. This is not a good location for a pole. The process was flawed to begin with. These are the people who cleaned up that neighborhood over the years and now you're going against their advice and their recommendation that this is a bad location. They know their neighbors better than you and I. And I would recommend that you, one, either disapprove it or move it to a better location. And also take a look every time you

have a situation like this you ought to go through the process and find out, did you really follow outreach policies? Thank you very much.

>> Commissioner Do: Thank you. [applause] Please state your name for the record. The next speaker is Art Calderon. Please come down to the bottom of the stairs. Please sir.

>> Yes, my name is Ruben Dominguez. I would like to thank the commissioner for setting this up as the conditional use permit for the landlord. I'll make you a bet, six months after this deal's gone through and it's already been built he's going to turn off the water. He did that the last time. And not take care of the plants and vegetation he had around there. And this will happen again. Because this landlord has shown that he's an absent landlord and he's more of a slumlord. We have had too many problems in this particular community. I also attend the mayor's gang task force the tech meeting and this is considered a hot spot. We've actually had meetings in regards to that, we actually had a program at the Boys and Girls Club this summer and we brought in kids who were part of the hot spot area. I'm sorry, director, I did not receive my invitation to your planning meeting, maybe it's in the mail. I used to live on 1810 Orlando for two years. I used to see the fights, the graffiti, the drug use and the number of arrests that they did there. The landlord does not care to clean up his area, he's more concerned to collect the money. This is what's going to happen once this is built. That's all it's going to be. I'm opposed to this project if you haven't guessed it by now. Thank you.

>> Commissioner Do: Thank you sir. Mr. Calderon, please approach the podium. The next speaker is Alofa Taliva, hope I didn't mispronounce it. Please state your name sir.

>> My name is Art Calderon. I am a concerned neighbor. I'm an active member of the K.O.N.A. King Ocala neighborhood association. It is a question that I have. Where else do we spend our time, our life, if it's not planet earth? We're supposed to take care of our planet. We're supposed to beautify the planet, as a concerned neighbor, I am against this antenna tower. I think a better place would be Hillview airport. But again, I want to bring it to the attention of the property owner. We, the neighborhoods, would sure appreciate if you concentrate in improving the property. Me, myself, as a merchant and a property owner, am putting millions of dollars in my own property. Why? Because we live here in San José. And it's to the best interest of the community, the people that live in it, I work, play, and live here in San José. So this is -- this is what it's about. The community is getting together to give this message, and everybody, you know, take part in it. Do what you have to, commissioners, and let's do the best thing for San José. Thank you, and have a good day.

>> Commissioner Do: Thank you. And you are the last speaker. Please state your name for record.

>> Good evening commissioners. My name is Alofa Taliva and I'm here representing the Sierra neighborhood association, I'm the chair there, and also I'm a past chair for the East Valley 680 SNI NAC. And I'm here supporting my brothers and sisters at the K.O.N.A. NAC. We do support each other. Learning about this issue, about the monopole that they're going to install there, it's going to become an eyesore. It's already deteriorated this shopping center and what more can we put in there to become an eyesore more blighted and all that. Hearing the graffiti and stuff, this is a continuation of blight in the neighborhood. We as leaders, we volunteer to clean the graffiti. I mean it is an ongoing problem and for the absent landlords, why don't we have to pick up the phone and give them a call, hey, there's graffiti there in your area. Come out and clean it up! And it takes a while you know for them to come out and clean. But it's filthy and dirty. The community have spoken. They do not want to see this humongous ball in their neighborhood. Please put it somewhere over there by the hill. Talk about the Green Vision, can they install these underground somewhere where the airport and all that stuff don't go around and hurting the people in the neighborhood? Especially the little ones. We care about our safety issue here. And I'm here to urge you commissioner, please vote no for this. Thank you and have a good evening.

>> Commissioner Do: Thank you, ma'am. [applause]

>> Commissioner Do: The applicant and appellant each have five minutes to respond, or to make additional statements. So the applicant, you are first.

>> Obviously, one of the suggestions from the public was to move this site over to Reed-hillview airport. AT&T has a side at Reed-hillview airport. These sites cover a certain amount of space. Obviously when we have an

area that has low coverage and low capacity, we add another site. I'm sure you've heard that in the past. So there has been some talk about the style of the pole itself. Certainly, to us, a -- the style of the pole is sort of immaterial. Santo to us, what we call a stealth site is a stealth site. A tree, a slim line monopole, a flag pole, that doesn't matter to us. If you feel this site has a tree, or a flag pole or a slim line monopole, we have absolutely no concern with that. Having this site as close, is certainly something that's taxicab place before just on the block down on King there is an existing site at the fire station. It is a flag pole, it is a similar size lot and it's basically just as far away from residential as this site would. Certainly there is precedent here. And part of the issue of what we're trying to address here is relands scaping the entire site. I mean, I know that there's an issue here with this site. And that certainly would address that -- help address that issue of relandscaping the site, beautifying the site, also, you know, putting the equipment into the hillside to sort of prevent graffiti from taking place on the equipment itself. Something like a tree pole will also protect graffiti because it has a texture on it. I shouldn't say prevent but deter graffiti. Because it has a texture. Even if did you do graffiti it would certainly be more difficult to see. I'll certainly answer any questions you have.

>> Commissioner Do: There are questions. Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. You know even the planning sign, the notice got tagged and that was only up for a month. So tagging's the least of the issues, as you've been able to hear. I have some additional questions regarding -- and this goes beyond landscaping. As you know, there's a fence that it's a small, looks like a wrought iron fence that goes standards property. That contributes to blight because all you need to do is look at it. You know, to landscaping it without doing some of the other fixes of the property, again, one of the residents said, okay, so you do that? In a month, it gets -- you know, it deteriorates back. So are there any intentions to propose in your plans either removing the fence, replacing the fence? In addition to the park strips next to the street, those are disgusting, you know. There's no difference between the -- what you have in your landscape area, which is dirt, to the park strips. There is actually a fence -- I mean a tree on the park strip, on Ocala, that is actually -- it's bent towards the public right-of-way on the sidewalk. So again, that creates a safety issue. Now, I don't know if there's a nexus on whether or not the property owner is responsible for the park strip. But if you get where the community is coming from, part of being a member of the community is taking care of your property, all of your property. The same expectation is begin to the people who own their homes there, we have to take care of park strips as well. I'm actually at a point where you know, I think that it is the responsibility of you, because you're here representing the property owner. I don't see the property owner you know in the audience. But it's your responsibility as well as the property owner to give more than take. Because you guys have taken a lot for the past, you know, 30 years. Or 28 years, however long the property was built. As soon as deliberation is done, I know I cannot support a motion that would approve your cell tower, without you going above and beyond to actually transform that corner. To me that would be a win-win for everyone. Unless something is included in that, I would not support any motion that would require that. And I still have more to go. One, in 2001 or 2002, the SNIs were developed. The city empowered the neighbors to take their neighborhoods, and improve them. And if you look at all of the top-10 lists in the SNI, they all center arounds public safety, elimination of blight. These are all redevelopment neighborhoods. And for a property to remain in an SNI and to never improve is a crime! So right now, those are my comments to you. I don't need you to -- well, I would like you to answer some of them. But those are my comments. And you know, it's -- it's more than just improving the site. It's regaining public trust. Thank you. [applause]

>> Sure. Part of -- part of relandscaping the site would be fixing the fencing. I know that the fencing on the Ocala side is down. It's been down. So part of that would be also to replace the existing fencing, certainly. And I believe the fencing is in place to keep people from walking across the landscaping, which is what deteriorated in the first place. That's what I've been told. So, you know, removing the fence, I think, would actually deteriorate the landscaping even further. You suggested some ideas to help -- you know, to help sort of beautify that corner. I was just curious as to what to suggest to sort of handle that. I know that on the side of the building where the existing site is, that there has been some murals peanuted by some local artists. And from what I understand is, that when you have a mural on a building, that that sort of prevents graffiti artists from sort of tagging, things like that. So I don't know if that is sort of -- one of the issues that has been taking place here, that maybe that art, if you want to call it art, if that art is part of the problem, as well.

>> Commissioner Campos: No. The murals are not part of the problem. I mean that's just the beginning. I mean you can walk in front of any of the businesses and you even look at the support beams for the overhangs, that's

all dry rot. It's -- you know, I mean, that's deteriorated beyond repair. I mean, there are some very major cosmetic and structural problems with the soot. I'm surprised it's not a bigger code enforcement project for the city. To answer your question, I don't consider murals as part of the problem. As a matter of fact I guarantee those walls would be tagged up if there were no murals on that.

>> I would agree. From my understanding they have actually been keeping some of the graffiti off of the building so I actually would agree.

>> Commissioner Do: Commissioner Campos. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Just a question. What other sites have you considered for this monopole?

>> We did approach the fire department just down the street. That's one of the other sites we looked at. The only two sites in the area that had existed sites was this site and the fire department. Per existing ordinance we have to look at those. There weren't any sites in the area that had areas anywhere near this that would provide areas. We talked to the fire department, it's an existing pole there. It's a fairly small site. They didn't have enough space or didn't want to give up any more space I should say. I understand they were going to be using the remaining space that they had for another project so they didn't want to give up the space for it. That was conversation we had with them also.

>> Commissioner Zito: What conversations have you had with the property other than in regard to upkeep of that site besides the fact that you said you'd do some landscaping?

>> Very little, actually. I mean, it's not something that we normally talk about in our normal business I guess you would say.

>> Commissioner Zito: Fair enough.

>> Landscaping from staff's point of view landscaping was the major issue. From what we understood at the King-Ocala meeting, that was the major issue. And the items that were addressed came on me for the landscaping, we incorporated those into the plan that you see in front of you.

>> Commissioner Zito: I appreciate your situation, the landlord's issues aren't your issues, although we believe that there could have been more ownership, certainly from the landowner and maybe from encouragement from AT&T in that regard. I've got questions of staff when that time comes.

>> Commissioner Do: Thank you, Commissioner Zito. There are no other questions from the commission. Thank you.

>> Thank you.

>> Commissioner Do: Appellant, you have five additional minutes to make comments or respond. Would you like to do that?

>> Good evening, commissioners. First of all, thank you for hearing all of our concerns. We are very passionate about it. Our community cares. We have not a lot of money, there are a lot of hardworking people. But we generally want to do what's right and we genuinely want to beautify our area. As silly as it may sound, we still have vision and we still care about our community. That's why so many people are here and that's why we feel so disrespected in this process. AT&T said they went to the K.O.N.A. meeting in April. I think it was April 14th. At April 28th, and they raised significant concerns at the K.O.N.A. SNI. April 28th at 9:30 a.m. Wednesday this went before the planning director and this was approved. What happened with the dialogue with the community? What happened to the community input in process? I think it was ignored. I think they gave a presentation because they checked the box, there was no public meeting, there was enough concerns raised that they should have at least said, "Let's come back to them and reach some resolutions." That never happened, unfortunately. I see the benefit to AT&T, I clearly see the benefit for owner who is not here. I was clearly shocked that AT&T has had little

discussion with the owner about the issues that were raised at K.O.N.A. That really shocked me and I don't think that this commission should reward AT&T or the owner when the community is the one who is suffering. So with that, I would just really like to respectfully ask that you do not approve this and that you go back to council policy, which says that the applicant needs to do their due diligence. It's on them, it's not on us. It's on them to do the research and look at that time alternatives in a very thoughtful way, not in a cursory way where they ask the fire station, let's talk about co-locating, let's talk about different alternate sites. Let's talk about solutions that will bring benefit to the community. If there's any way the commission can review the use permit or look at the valuate to this community we would greatly appreciate that. I think the applicant needs to do due diligence, I think the other than needs to, before we proceed. And I would urge and respectfully request the commission to deny this application. Thank you very much.

>> Commissioner Do: There is one other speaker card that was just submitted, Aaron Rerendez. The portion for public testimony is ended but we are still in the applicants. Please come down. Please state your name for the record, you have up to two minutes.

>> Thank you for allowing me to speak. My name is Arond Racindez. And I'm part of the community. And I just knew about this yesterday. And I'm coming late today, like many other members of the community that couldn't come. But please, have more respect for the community. On the outreach, and thank you, Mr. Campos for your comments. All of you that don't know, or know this, and I won't understand this, and send these guys back to the process and have more respect for our community. That's all I'm asking you, to reject this proposal right now, tell them to go back and redo it on a proper manner, and with much respect to the community. Thank you.

>> Commissioner Do: Thank you. Motion to close public hearing. All in favor? [ ayes ]

>> Commissioner Do: So staff, could you respond to many of those comments?

>> Thank you. With regard to alternative sites, AT&T submitted a letter to us detailing that they looked at fire station 16, holy trinity church, Slonaker school, none of them met their search criteria. So they did look at alternate sites in the community. This was taken to the NAC in April. The feedback that staff got from that was consider a tree pole instead of a slim line pole. Re-do landscaping so that it specifically keeps landscaping low. Get rid of the stairway at the back of the center. Get the parking -- get the owner to finally use the parking lights. A lot of these things are actually outside of the purview of the planned development permit. But one of the things that staff felt was really appropriate was to redo the landscaping and to really make it something that was appropriate, in terms of creating better site lines ton site. And that was something that the applicant was willing, and did incorporate, into their plans. Typically, projects are not taken back for multiple reviews before a NAC. And in this case, there were concerns that we thought were legitimate and we included in the staff approval. In regard to outreach, we did not get a sign up at the site, and that was our mistake. We tried to get a sign up to rectify that. We did allow extra time after this meeting for people to get here. Regarding the size of the monopole, it's ten feet lower than the 60 feet that would normally be allowed for slim line pole. It meets staff's design direction which is typically to make something as plain as possible, to really make it part of the infrastructure so that nobody notices. In terms of location on the site, the actual putting it closer to Ocala still meets the intent of 620, the council policy on the siting of wireless facilities, in that it's more than a foot away for every foot of the monopole. It's away from the busy street of King Road, in that sense it has relatively fewer impacts on passers by at least visually. Regarding health impacts. The applicant has provided RF analysis. If they're below federally mandated levels as you well know, the commission's preempted from considering health effects as part of their analysis in their approval or disapproval. If I've missed anything let me know.

>> Mr. Chair, let me add a couple of other comments as well. Again, obviously the purpose of the public hearing process is to be able to hear from the public. And it would certainly never be staff's intent to disrespect any neighborhood. Because the participation of the neighborhoods is vitally important, in the process. I think that perhaps one of the things that's happened in this case is that over time, since the permit was originally taken to the director's hearing and approved That there's been additional neighborhood interest, and certainly greater passion expressed at this hearing this evening, than what staff had ever had an inclination previously. Because if there had been the same A passion expressed previously, we certainly would have taken a different tack at the director's hearing and paid more attention to the credence of the neighborhoods. But going into the director's hearing, again there were comments received from the neighborhood, staff thought that by addressing the

landscaping concerns, putting a new permit in place, the existing permit that's there is from 1979. It has about half a dozen conditions on the permit. So staff's thought, staff's thinking in this particular case was that by getting again a new permit in place that we would have stronger conditions in place that would allow us, then, to bring more pressure to bear, as it were, on the property owner to bring them into compliance. But I just think it's very important from a staff perspective that all parties concerned understand that staff would never intentionally disrespect any neighborhood, because again, they're a vitally important part of the process. That's why they're called public hearings, is so that we can hear from the public. So thank you, Mr. Chair.

>> Commissioner Do: Just a quick item to clarify something you just said. You mentioned the possibility of moving the pole toward Ocala avenue. But what about South King Road? I think Commissioner Zito may have offered a possibility. You mentioned that moving toward King Road would have a higher impact on passer bys basically, on driver, is that correct? Good that's correct.

>> Commissioner Do: Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. This is the first I saw in the staff packet and I may have overlooked it but as far as there being an ultimate analysis I didn't see it in the staff packet. So are you saying there was a formal as it states in the policy, a staff analysis that would identify all potential sites reasonable to meet the service provider's needs?

>> That's correct, they submitted it with as part of their resubmittal in October of 2008, it was not included in their plans.

>> Commissioner Zito: Okay. So is the only reasons that they that it wasn't feasible is that none of the locations would allow it, is that what it was? Or did they not approach some of those sites?

>> The three that they mentioned, fire station 16 determined that there was no or the fire department determined there was no additional space for a second carrier at this location. Holy trinity church, AT&T RF engineers are too close to provide necessary coverage and that it was close to -- it was overlapping with an existing school. And then Slonaker school, determined to be too far West to provide necessary coverage.

>> Commissioner Zito: Okay. The second thing is that again, policy states that any monopole should be time conditioned to allow periodic evaluation for opportunities for co-location. Is there any time consideration in this application at all? Again, I didn't see it, I might have overlooked it.

>> Thank you, Mr. Chair. If there isn't, we would include it. We would include a time condition.

>> Commissioner Zito: What would be the time condition on this?

>> Five years, ten years. We could certainly do less. Typically we would do ten because of the investments involved but in this particular case, five you know would certainly not be inappropriate. While I have the power of the mic, Mr. Chair, one other alternative that the commission may wish to consider that hasn't actually been talked about yet, would be an alternative that would require the -- some architectural revisions to the center itself so that you could create say an architectural element like a tower or something like that and then put the monopoles inside the tower. That's another option that's been used quite frequently and is one that you haven't talked about so staff just wanted to highlight that as another option, Mr. Chair, thanks.

>> Commissioner Zito: Thank you. Haven't gotten to the landowner aspect yet, just going over the issues that the policy requires. I guess the other question I have, has staff had any conversation at all with the lands owner, with the landlord or has it just been with AT&T?

>> Since AT&T is the applicant, we've only been contacting and working with AT&T.

>> Commissioner Zito: Is it true, I guess this is just a question of clarity, on the staff report it says that the Edward Campbell is the owner-applicant. When these things come forward, is it the lands owner that's technically the applicant, or is the service provider the applicant?

>> The -- under the zoning code, the property owner is typically the applicant, unless there's a long term lease in excess of five years that's been recorded. But typically the applicant is the lands other than.

>> Commissioner Zito: A lot more has come to light with regard to the concerns of the neighborhoods.

>> Thank you, Mr. Chair. We realized certainly after the appeal that a lot of the issues are much bigger than the monopole itself. So had staff appreciated that earlier we certainly would have had conversations with the property owner. Thank you.

>> Commissioner Zito: If it pleases the chair, I have a motion for consideration.

>> Commissioner Do: Please.

>> Commissioner Zito: Okay. I'm going to move that we uphold the appeal, and deny the C.U.P. for the monopole. And the reasons being is that I believe that there hasn't been enough dialogue with the owner-applicant, to explore all the possibilities available for make this application much less impact on the neighborhood. I also believe that, while there probably was the standard outreach, I don't see any evidence that there wasn't the standard outreach, that once things started to -- how can I say -- show themselves, that there should have been more due diligence in getting the impact or the feedback from the neighborhood to understand the impacts. And finally, if there were a C.U.P. approved, that it would have to have a time condition which I don't see here as well. So -- so my motion is to uphold the appeal and to deny the permit.

>> Commissioner Do: There is a motion and there is a second. Now we need to hold the discussion to the motion that is on the table.

>> Commissioner Zito: Mr. Chair, now that it's been seconded, I just want to say that some of the points made by the speakers, and by the appellant, in that you know, usually, when we see these, there's not this kinds of outpouring of concern. The sites are usually very well kept, and there are, how can I say, respectfully, what's the words I'm looking for, considered, especially of the neighbors' concerns but also of their own site. It's difficult to approve something like this for not only an absent landlord but an absent applicant who's not willing to come here and speak on their own behalf and also answer some questions about why the condition of that site is as it is. I do not believe that locating this service at this site will improve the area, as a matter of fact, there's probably all indication it would probably add to the blight, add to the visual detractions and so on. And again, until the landlord can show responsibility and being able to show how they can mitigate the impacts of this kind of a land use, I can see that there's no way I can approve this kinds of an application.

>> Commissioner Do: Thank you, Commissioner Zito. Commissioner Jensen, do you want to speak on the motion? Yes, yes, I did.

>> Commissioner Jensen: Thank you. I'd like to thank Commissioner Zito. I'd also like to express my appreciation and congratulations to Mrs. Ruiz, commissioner Ruiz, the K.O.N.A. neighborhood, the West Evergreen neighborhood, and PAC, for working together. This is what SNI is all about. You guys have done an amazing job of coordinating and working together and really turning people out all the way from Willow Glen, thank you Mr. Rast, to West Evergreen. You've done an amazing, amazing job. I'm sure the gentleman from AT&T is a little surprised by what happened here this evening. I know staff relies on a health and safety report that is more than a dozen years olds. But as I have previously, I would like to ask again that staff continue to do due diligence and look at new information that may be arising over the years and remind staff and everybody else that we used to think cigarettes didn't cause any harm until somebody proved otherwise. Some years ago, there was a similar proposal in my neighborhood to put a cell tower. And my neighborhood also faces some challenges although not nearly to the extent as the K.O.N.A. neighborhood. In my case the tower was inside a church steeple. It is completely invisible to the neighborhoods. It was a win win for our neighborhoods. It was invisible to the neighborhoods and provided some income for a very impoverished church. It is all good. The existing owner has had six months roughly, since April of this year, to do good faith, in cleaning up the graffiti, making promises, I was very distressed to hear the property other than makes promises, turns off the water and kills the landscape. I would be very concerned about the applicant's I am very sympathetic for the applicant. Clearly this is a

responsible business owner who is attempting to deal in good faith. And has taken on faith that the property owner is also a responsible business other than, and unfortunately, it doesn't appear that that is the case. We've had numerous amounts of testimony this evening that the property owner allows inappropriate activity and does not comply with San José's regulation of removing graffiti and vandalism within 24 or 48 hours. City of San José approves monopoles all over the city. We are clearly not opposed to the installation of cell phone towers. We've supported and approved many of them. And in this particular instance, this is a very unique case. Council policy 6-20 states new free standing monopoles should be located and designed to minimize public visibility. This does not do either of those. Ancillary equipment should be adequately screened and landscaped to minimize graffiti and vandalism. That clearly is not going to be the case. You know I'm deeply sympathetic but I cannot support the director's decision in this case. Thank you.

>> Commissioner Do: Thank you, Commissioner Jensen. Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. With all due respect to the previous comments of Commissioner Jensen, I mean to disrespect to you. But the property owner has had longer than six months. They've had 28 years. This property has deteriorated from the moment it was built. That is a crime. That should never have happened. I definitely support the motion. I do want to give advice to the community out there, the K.O.N.A. community. This will probably get appealed, it will probably get heard at the city council, I think, and so I think you need to be -- this is it.

>> No, you are the decision maker.

>> Commissioner Campos: So good. But pay attention, that this doesn't mean they should come back and do this again. Maybe they'd come back with a better strategy. But I if I were them I'd come back with a strategy to redo that whole site . Thank you.

>> Commissioner Do: Thank you, Commissioner Campos. There are no additional speaker lights. So let's vote forby light.

>> Let's Claire, the motion is to uphold the appeal and deny the project.

>> Commissioner Do: That's correct. The vote has passed with all commissioners voting for, so the appeal is upheld, thank you. [applause]

>> Commissioner Do: The mention item on the agenda is 3B, HO 9-009. Appeal of the planning director's decision to approve a site development permit to construct a canopy approximately 10,000 square feet to cover an existing outdoor storage area in a corporation yard on a 4.4 gross acre site in the LI light industrial HI heavy industrial and CG general commercial zoning district located on the west side of Little Orchard Street, approximately 300 feet northerly of San José Avenue. I just want to say that this item has a significant amount of public interest and there's a thick stack of speaker cards. So the commission, we should be mindful of that. And if there are speakers who may be -- may be presenting the same information, you may consider paring down your remark, as well.

>> Thank you, Mr. Chair. I want to bring that to your attention, and secondly, with regard to the environmental review for this project I just wanted to provide an update in that although it was mentioned in the staff report but I also wanted to call out that the site development permit was initially found exempt per environmental review however per title 21 of the San José municipal code, the director is the CEQA director for the city and the director has reconsidered and exempted the matter from environmental review, negatively adopted, CP 07-020 which was the conditional use permit that allowed the existing corporation yard uses at that time subject property, and lastly with regards to the site development permit, planning staff is recommending that the Planning Commission uphold the planning director's decision to approve a site development permit to construct a 10,000 square foot canopy, with the existing Stucco Supply company, and that site development permit and the proposed project is consistent with the general plan, the zoning ordinance as well as CEQA, and while planning staff supports the future implementation of a public trail in the vicinity of the subject property, one of the key issues here is that the -- is that of private property rights, because there is not a nexus between the proposed construction of the canopy for the existing Stucco Supply company and public trail and that users of the trail are not likely to carry drywall or

other industrial products on bicycle or by foot by using that trail and vice versa, customers of the Stucco Supply company are unlikely to use the trail for the same purposes. That concludes staff report.

>> Commissioner Do: Thank you. Is the appellant here? Please approach the podium. You have five minutes to address commission and an additional five minutes to respond to whatever the public may have. Please state your name for the record.

>> Good evening, my name is Bruce Tithenan. As you know, I'm the attorney for the appellant, Cecilia Martinez, and her supporter, Save Our Trails. Mr. Chair, may I request you give me notice when I have 30 seconds of my five minutes left? Will that be possible?

>> Commissioner Do: I will do that.

>> Thank you very much. Honorable commissioners, it is not my want to speak to you as bluntly as I have today but my experience at a settlement conference that we requested with the Stucco Supply representative and his attorney attorney on Monday, it pursued with us. If he does, this strategy will be to, number one, trivialize this appeal, and number two, attempt to scare you with the threat of a \$20 million inverse condemnation judgment if you uphold the appeal and deny the permit. History ofialization strategy will be to tell that you this flimsy structure to be erected with pipe purchased at the dollar store and held together with model airplane glue is so insignificant that it cannot constitute a meaningful violation of the general plan. Viewed in isolation, that is an arguable position. But your decision on this appeal viewed as a precedent for what will happen along the whole corridor, is likely to be permanent and huge. Union Pacific is watching you. Other potential purchasers along its right-of-way are watching you. For example, in February of this year, Asaki Real Estate presented to the public plans to develop 14 single family residence between Lonus avenue and Broadway their northern portion, seven detached sing family homes, their trail was merely nine feet or ten feet wide, barely a third what's required by the general plan. There's the other portion. They withdrew their plans when I submitted to them on behalf of save our trails a letter raising the points I've raised before -- excuse me, they withdrew their plans and cancelled their plans, when I submitted a letter to Asanti Real Estate, stating the general plan that I've cited to you for this project tonight. Now, the bluntness. City staff and Stucco Supply, either by design, culpable design or culpable ignorance, have set the City of San José on a policy of violating the general plan, on this portion of the corridor. You will tonight decide either to continue that violation, or to end it, and uphold the law. On this appeal, as well, as you know, you are the final voice for the City of San José on what its policy is going to be. Stucco Supply, if it is indeed a \$20 million company, could have spent the several thousand dollars necessary, prepurchase of this site, to do its due diligence to determine what the general plan said was to happen on that site. It took me only an afternoon to find, on page 269 of the general plan, map oh boy --

>> Commissioner Do: Sir, this is a 30-second notice.

>> 30 second notice? Whoa, there's a lot I didn't get to say. If you could help me put that up there. The most amazing thing to me about Stucco Supply's refusal to even consider a settlement with us is that there's every reason to believe that this project is compatible with the trail easement. The green here is a 30 foot easement required by the general plan. The orange is the 10,000 square feet of canopy. This is prepared by our technical advisor, rocket scientist, Dr. Larry Aimes. All of this fits on, oh, most important, a 25 foot wide right-of-way or driveway for the trucks, which is three feet wider than San José avenue.

>> Commissioner Do: Actually, your five minutes are up, perhaps can you continue your comment when you come back to respond.

>> You bet, sure.

>> Commissioner Do: Is the applicant here, please? Would you like to approach the podium, please? Please state your name for the record, and you have up to five minutes.

>> Good morning, Mr. Chair, commissioners, my name is Jim Eller, an attorney on behalf of Stucco Supply. I'm here to introduce two speakers, will continue when they're finished. Ray hashimoto and Dan Smith an other than of Stucco Supply.

>> Playerman, members of the commission, under au over two years ago with several of the commissioners that are still on the commission right now. So what we're looking at is a project that we believe is completely in compliance with the use permit that we've been issued before. It's a minor development and anything that with this project does not preclude, this cap by does not preclude something happening in the future where if the moneys were available and the public will was there to purchase and develop a trail, so we're not going to stop anything from happening in the future. And now we find ourselves in the eye of controversy, what's happening with save our trails, and we have a business other than who cannot use the property in which they've already got entitled. We're concerned with that. We're talking about a general plan plan level, we don't know about how we're going to deem with this trail system. Our client invested a tremendous A money cleaning up this site and improving this site, including storm water quality measures that have been put in place on the site. In our letter that I included back on August 18th, 2009, we outlined several alternatives that we think are viable, including in particular the willow street Keyes street connection. There are other streets that connect Guadalupe with the trails there are other viable connections East-West to these trail systems. We have to look at ourselves as an urban city and look at urban solutions to provide that connectivity throughout our city. We support the staff's findings and we hope that you will not uphold the appeal but certainly uphold staff's and the director's approval of this small project that we're requesting.

>> Good evening, commissioners, I'm Daniel Smith, I'm the other than of Stucco Supply. It's a company that's been there for 57 years. We support all the things going on all the safety conditions and everything. We purchased this property because it's viable to the Stucco Supply. Everybody knows there's a residential area that abuts right up against it. We need this to keep the trucks off the road. We've got a good pathway through San José area. We come down through our property, now instead of using little orchard to Alma we can go out Alma express basis point I don't know that I have to express to you all the things that happen on the spur. You talk about a other than who is concerned about the community. All of our properties are up to 100% standards. I go through them daily, I know what's going on I care. And the spur is an industrial piece of property. It's a piece of property that's very viable to industry in that area. And it needs to be -- have owners like me that does care about it. You talk about graffiti, there's not graffiti that's written on the walls that's not off the next day. We don't tolerate anything like that. This spur is a thousand-foot piece of property from Almaden to little orchard. There's no way you can put a bicycle trail or a walking trail on a thousand-foot, between industrial buildings, some of them's natural gas, that has its vapors going out there, and there's supposed to be something enjoyable about that? I don't think so. There's safety issues there. There's every crime imaginable that happened on that spur, and we keep it viable and tend to keep it that way and thank you for listening to me .

>> I want to close by noting that the applicant has met all their criteria for its application. The staff has approved and recommended approval of this application. This application involves simply a canopy. It is not a major structure as some would portray it. This canopy is nothing but a roof, 25 feet in the air, held up by a few pieces of steel. That's it. If it ever had to be torn down, it wouldn't cost very much to do that. It would not be in the way in the long term of any kind of planning should the city which it has not yet done, choose to do with regard to trails in that area.

>> Commissioner Do: Thank you, sir, your time is up. Thank you. Oh, I'm sorry, there's a question from Commissioner Cahan. Excuse me.

>> Commissioner Cahan: Thank you, Mr. Chair. It is my understanding that you also want to construct a concrete wall, is that correct?

>> That's correct. A wall along the property line which will provide a barrier between the two industrial sites.

>> Commissioner Cahan: So I'm sorry, this wall would then also be something that wrote have to be deconstructed should a bicycle path --

>> I think both sides agree that the wall is not an impediment, in any instance, even the advocates for the trail have noted that there will be at least a 20 foot wall to protect anybody walking on it from the industrial uses on both sides, which are very heavy and somewhat dangerous. In fact yesterday in a meeting it was noted by one of the trail advocates that there would have to be built in escape gates. Because you would create this concrete

corridor through a heavy industrial area, and you wouldn't want long stretches a mile long to have no way to get out.

>> Commissioner Cahan: I'm sorry, the wall you want to build, you want to build that between -- I'm visualizing your site in my mind. You want to build that between --

>> Between the two property lines on the site, not on the residential side of the site but on the industrial side where there's a natural gas site along with various type of auto repair type facilities. This would be built to make sure the property was safe from one another for a number of reasons.

>> Commissioner Cahan: The wall would be already existing and the canopy over that?

>> I believe in your packet is a drawing and it's slightly offset, is it's relatively close, there's room for movement between the wall and the canopy. But it is fairly close to the wall.

>> Commissioner Cahan: Okay, thank you. I'm an auditory learner. It's better for me to hear it. Thank you.

>> Commissioner Do: Thank you, Commissioner Cahan. Been there are many speakers. Please come down to the bottom of the stairs. I'm sure I'll mispronounce many names. I apologize in advance. First one is Taja McMann. Next one is Martin Nelson, Shirley Nakamio. Please come down to the bottom of the stairs. Each of you will have up to two minutes to address the commission. Thank you please state your name for the record.

>> Good afternoon, chairman Do, and honorable commissioners. My name is I'm Taissia McMann and I'm the chair of Save Our Trails, a community organization with over 150 members. Our primary goal is to provide for the defense, construction and maintenance of the interconnected trail system in Santa Clara County as set forth in the general plan. I'm here tonight to defend the three creeks against the construction of the canopy by Stucco Supply which will sever this portion of the trail midway to its connection point. My letter to the commission included in the packet in front of you addressed a vision for the future and how the loves of this parcel will be an irrevocable loss to our community. Tonight I would like to address the impact of Stucco Supply's proposed development. Stucco Supply's position is that this is a trail problem. The trail needs to pick up and move perhaps to willow street. The city in its wisdom in 2000 created a general plan with the exact location of the three creeks trail. This included the little orchard or Stucco Supply site. This location was chosen by the council, green print members and experts at the time of the adoption of the 2000 general plan. If willow street or any of the other proposed locations, by Stucco Supply as an alternative to this trail were adequate for the vision, they would have been carefully studied, examined at length, and used as a trail route. They are not. In my opinion, Stucco Supply's gross variance from the general plan. And minimize the significance of the total effect it will have on the entire Santa Clara County interconnected trail system. Please listen to what the community is telling you here tonight. Uphold the general plan, preserve our trail, have a vision for the future, require an EIR for this proposal and grant the appeal. Please do not allow a large canopy used to store sheetrock to destroy the future of the entire Santa Clara County interconnected trail system. "would like to respectfully request that those in favor of the appeal tonight quietly raise your hands.

>> Commissioner Do: Thank you very much.

>> Thank you for your time. With [applause]

>> Commissioner Do: Sorry, please come back. Commissioner Zito has questions for you.

>> Commissioner Zito: Thank you, thank you very much for that and your service as chair on the save our trails. I appreciate that.

>> Thank you.

>> Commissioner Zito: Sitting up here, trying to be impartial, the dilemma that I have is going to be a question of private property rights.

>> Uh-huh.

>> Commissioner Zito: Okay? So my question to you is this: Regardless of what they build on that piece of property, whether it be a canopy, or, you know, a brick wall, you know, ten feet thick and 100 feet wide, if they don't allow the use of that property for a trail, what option do we have? That's what I'm trying to understand, what are our options up here, you know, what could we offer?

>> Well so I mean there are a few options. We've met with Stucco Supply and their attorney or you know representatives for Stucco Supply. They're unwilling to even review the sort of presentation we gave in terms of the picture here with the green -- that was not even considered in fact we met with them I don't think for negotiation but just to continue to argue the point that either one of us had. Their only alternative is other streets. And that is not a dedicated trail. We're talking about a corridor an off-street location. I don't know if you know the Alma and Monterey street intersection. It's one of the most dangerous intersections in all of San José. What they're proposing is a bike lane as a route to happy hollow that connects this intersection. Willow Glen may get their portion of the trail. But the industrial section will not get that. There are huge apartments with families and children who have counted on this as access to their community.

>> Commissioner Zito: I'm sorry to cut you off.

>> I think that the alternative on the property allowing for the space for trail, I don't think that those have been appropriately considered. I see what you're saying about the private property rights. I think the problem came about when the city allowed and the railroad began to sell off portions of the trail piecemeal in disregard to the general plan and you know how do you get around that? That's -- you know, that's a very difficult question. I think it's a legal question, you know.

>> Commissioner Zito: And that's a concern that I have and I'm sure that counsel -- we'll get to the point of asking counsel what are our options at this point. As you know with the city situation as it is being cash strapped and so on the last thing we need is a law --

>> The thing to point out quickly to address this, no one knew this was happening. Save our trails came up six months ago, we have 150 members, all of us came this is a shock to the community, it's like a dirty little secret. Nobody knows this was happening. We had the friends of the Guadalupe park and gardens coming here and say, give us the time to find the money. Actually it was offered and then that was not on the table any longer and they approved it but give us three months to find the money. There are people who are \$4 million in the City's account to acquire the trail .

>> Commissioner Zito: I think I got the answer to my question.

>> Sorry I apologize.

>> Commissioner Zito: Again, I appreciate -- you did help me, I appreciate your stand on this. For any of the speakers coming up, I think what would help the commission is to help provide a solution. I think we understand in general where people stand on this, but the complexity that I have, the challenge that I have is, suggest to us some alternatives. You know, what will work and of course like I said we'll talk to -- I'll ask counsel for their feedback I'll ask staff for their feedback and what we have here is it is a lands rights issue. And we're not the Supreme Court.

>> Yes. I understand.

>> Commissioner Zito: So I appreciate your feedback and I thank you for your answer.

>> That's the only alternative, having Stucco Supply at least look at compromise.

>> Commissioner Do: Thank you very much. The next speaker is Martin Delson. Please state your name for the record.

>> May I address that last question first? This wasn't something I had prepared. But I know that the attorney had a map that he didn't have time to show you. We're asking for possible solutions, perhaps he could use two minutes of public time to present that. I think that there is a very plausible compromise that had been proposed, and I'd like the commission to have a chance to see that.

>> Commissioner Do: Well, actually he will have an opportunity to come back to address the commission. He has an additional five minutes to do that.

>> I think that would be very worth your while then. Thank you. My name is Martin Delson and I'd like to address just one point and it's a point that parks and recreation made when the permit was first made, they had a response and that may have been influential, I think the response was really wrong. They said that city staff feels this section of the trail should only be purchased if substantial land use changes provide the opportunity for recreational land use along the corridor. That is the comment made about this being an industrial area. This opinion is first of all it is not current city policy and second it's very short sighted. The illustration of it not being current city policy, this is 237 highway bike way, this is on city property. There were no substantial land use changes here. This is not recreational trail and yet this trail was built. Highway 87 bike way, very simply this is not your example of a recreational trail experience. Out these trails were built and they were built because they provided essential connectivity. There is no alternatives. I ask that be applied to three creeks trail. This is very short sighted because the industrial areas themselves change when the trail is put through. My experience is Los Gatos creek trail. Several companies opened their land to make use of that trail. Here is an example, the white picnic table, here is another company also opened their land. And this trail then will not just benefit the residences in this area, there are very many, apartment houses on the other side of Almaden will not just benefit the residences but will also benefit the industry that's around there. Thank you.

>> Commissioner Do: Thank you. [applause] I will call the next three speakers after this one. Julie groves, Elizabeth handler and Craig Keith. Please come down to the bottom of the stairs, please ma'am you have up to two minutes. Please state your name for the record.

>> My name is surely Nakamio, I actually live on Almaden road. I actually walked from Alma to Curtner on Almaden road, I walked down San José avenue, I walked down Pomona, all the way to Kelly park zoo, to scope out where this trail could be. In my -- my eyes I actually could feel that I'm excited not only for the park that's going to be built on Almaden road but the trail as well. It should not interfere with the canopy. And I actually have gotten some signatures on a petition if you like that, sir.

>> Commissioner Do: Please hand it to staff and they will distribute it. Thank you.

>> My name is Julie groves. I live in Los Gatos but I also work along the Los Gatos creek trail and want to support the idea that it is beneficial to companies that work along the trail. You had mentioned that the people on bicycles don't tend to carry sheetrock. But people on bicycles do buy sheetrock and look favorably on companies that support recreational trails. And although I live outside Los Gatos I don't have a way now to get into San José for a variety of reasons that I would do if I could travel that route. And inviting friends in who want to ride bicycles for longer distances than shortly. I see that positive -- continuous trail is very positive for San José long term. I understand what you need is solutions, and I'm not coming with that information. I don't know what the options are for adjusting his land use. But I'm hoping that we can reframe the argument, that it's not just an unfair use of his property to put this through, but rather, a benefit. You know, I think that is one of the solutions is reframing the argument in his favor. I understand where he's coming from. But contiguous trails are also important. Thank you.

>> Commissioner Do: Thank you.

>> My name's Elizabeth handler. And honorable commissioners and chair. I live very close to the intersection of Coe and bird, sort of at the upper end of where the Willow Glen spur goes. And am an avid walker and biker and would really appreciate a trail that cuts across from east to west and links up the three creeks and the trails that run along them. I've heard you tonight being extremely responsive to the needs of neighbors, employees, the people in this community. You are concerned about greenery. You're concerned about ugly signs. You're concerned about towers that are a blight. And that's terrific. And I think what you're hearing tonight from our save our trails group, and the communities that this trail would link, is another appeal. Let's make this city livable. And

let's make it better, not just for residents or people who like parks or people who like to ride their bikes, but let's make it better for the businesses, as well. The most successful cities in this country are not the ones that only have businesses in them. I used to live near one of those. It's called North Hollywood. And believe me, you want no part of that. The best cities are the ones that actually have wonderful residential areas. Businesses like to be near wonderful residential areas. That means the people who own the businesses can live where they work. So we're looking to find a way that we can work with Stucco Supply. There has to be a compromise. We don't want to take away their profitable business. We just want a trail that goes from A to B.

>> Commissioner Do: I'm sorry, your time is up. Thank you. Thank you, Mr. Keith, and the three next speakers are Richard Zepelli, Fady Saba and Jean America. Please come down to the bottom of the stairs. Please sir.

>> Hi, my name is Craig Keith, I'm a late comer to this movement, after the editorial I saw last week. But I'm very passionate about walking, biking and running. And to me, having more places to do that in San José really adds to the quality of life in San José. And so I would like to not see this, construction of this canopy, block the completion of this, to me, lifestyle of San José. Thank you.

>> Commissioner Do: Thank you. Mr. Zepelli.

>> Good evening, commissioners. My name is Richard Zepelli, I'm a member of the board of the Willow Glen association and also an officer. I'm here to represent Willow Glen neighborhood association and let you know the Willow Glen neighborhood association supports the appeal and requests denial to Stucco Supply to this map trail which is part of the general plan. It seems like tonight we are here with the residents up against the exception to the general plan. So we're fighting for what we thought was policy. The San José general plan establishes a long range vision that reflects the aspirations of the community and outlines steps to achieve this vision. The general plan provides a basis for judging whether specific development proposals and specific projects were in harmony with the community's projects. The Union Pacific railroad company has a right to sell this designated property to the general plan and the general plan designated for trails. The buyer of this small piece of property designated in the general plan, as San José trail property, has the right to purchase this land. But more importantly the buyer and his attorney has the chance to find out if this land is developable. And our Planning Department has responsibility to the residents of San José to protect the general plan. Thank you.

>> Commissioner Do: Thank you. Next speaker, please.

>> Good evening, Mr. Chair, members of the commission. [applause]

>> My name is Thady Sava, and I'm a teacher of 8th graders in San José. I was also a member of the commission, part of the city parks commission. When the city came to the parks commission requesting \$2 million we said okay, for this three creeks project, we said sure, however we have a stipulation. Stipulation is that not only will it be just a Willow Glenn section, but the other side of 87. They understood that. The county board of supervisors, headed by Supervisor Blanca Alvarado, made sure that they understood that. The City came back and said, we will spend \$3 for every \$1 you give us. We gave them, we, the county parks, county of Santa Clara, gave the city parks department \$2 million. That makes \$8 million for this section. The City of San José voted, I voted, many of us voted for the Green Print. It passed overwhelmingly. The Green Print says we need to have this connection. Connect east, west, north, south. Access is critical. And some people have said, well, when this -- the developer said, oh, when the city has money, we'll talk about it then. But no, we have to think about it now. We have to plan for the long range and then when we have the funds we could then get the trail going. We can't just wait for the last minute. That's how we destroyed much of the city, the connections interconnectivity. As a teacher, I know that make sure that kids have elbow room is really important. I teach over at banks school. There is 1/8 block long, Buena park. When kids enter in there's a fork in the road. They can go in the negative side, they can go in the positive side. I'm always trying to push them to the positive side, that's --

>> Commissioner Do: Your time is up. You mentioned there was some kind of discussion or commitment between the city and the county in terms of making the connection along this spur. Did that commitment specify exactly the alignment of such a connection or was that just a general conceptual identification, without any identification of exactly how this trail would be configured?

>> When the city came before the county parks commission let me just say that they proposed they asked for the \$2 million for this specific project, both sides of 87. It was for the three creeks project, specifically. We said, we will give you \$2 million so long as you work on the other side, not just the Willow Glen side. Accessibility is crucial my kids what I was about to tell you is, I told them about using Los Gatos creek and that it's not far away from you. They now go up Lexington lake. These are kids in inner city who are actually accessing parks, kids need the elbow room.

>> Commissioner Do: Thank you very much.

>> And I just wanted to mention, you are now the 8th graders at the fork, you can decide one way or the other. Thank you. (Applause)

>> Commissioner Do: Next speaker, please, Miss Gina America. The three speakers to follow are are John Kelly, Nancy Cobbs, and Kathy Brandhorst. Please come down to the bottom of the stairs. (inaudible).

>> Commissioner Do: Mr. John Kelly. Please.

>> Good evening, Honorable commissioners my name is John Kelly. I'm actually not a community activist, but a community volunteer. I'm the member of the Willow Glen lions, a member of the save our trails. I'm actually here as a resident, a person whose property blacks up to part of the Willow Glen three creeks trail and I'm going to turn in some remarks to the staff over here but I'll summarize. I think that people talked enough about the green print and what this trail means. But it comes down to what it means to me as a resident. It means -- what it means to people who want to go to the San José giants games, to the San José state events at spartan stadium, to visit Kelly creek and connect to Coyote creek trail. For example, my wife will not bicycle alma is such a busy street. It is not something she could bike down but she would go along this trail. The issue here is not one of whether we have money for the trail but whether we sever the possibility of making this trail. And we don't want you to do that. Othere's one other thing. Well, I don't remember that other thing. So -- anyway, oh, I know what it was. I was going to mention Commissioner Zito had talked about a solution. I think the solution we had been proposing is simply an easement that would be paid for that would allow us to put the trail through the property so I think that's a reasonable solution. Thank you very much.

>> Commissioner Do: Thank you.

>> Good evening, honorable commissioners, my name is Nancy Copps, I am a resident of San José. I have also attended save our trails meetings but I'm here primarily also as a resident. I can't offer a legal solution at this time but I would ask you to uphold the appeal against Stucco Supply and I'd like to talk briefly about the impact on jobs. As stated by Stucco Supply what they propose to erect is just a canopy, not a structure that would house manufacturing of equipment if an easement is acquired for a trail, it would not impact access oto their facility. It would only modestly reduce their parking space as well as their storage area and they would still be larger than they were in the past. When build the trail will promote job creation by enabling adjacent structures to develop to a higher density, the trail would run very close if not right through the Tamien light rail station, CalTrain station, as well as extending to Kelly Park. So rather than building warehouses strictly in the area, the trail because it would have -- strictly in the areas it would enable higher quality facilities such as offices or industrial campuses . Please uphold the appeal. It will have minimal potential impact on Stucco Supply, but it would enable a brighter future with more and better jobs for a larger region. Thank you.

>> Commissioner Do: Thank you. Next speaker, please. The next three speakers are Roy F, I cannot pronounce his last name, Kahart or Kahees and then Brenda McEnery and Joan bonnet. Please you have two minutes.

>> My name is Kathy brandhorst, Lisa Maria Presley, Jon Benet Ramsey and John steel and I'm also the U.S. president. I just wanted to say, there is the homeless shelter, no one has ever mentioned it tonight. It's located on little orchard. I just wanted to, you know, tell that you they are the low-income people that are homeless there. And I just wanted to also let you know, there's tremendous people, you know, that go through there, all the time. Like 275 people or more. And I also wanted to mention, you also have a mobile home park already there and you also have the shopping center there. And the Home Depot, you have the railroad tracks there, too. and you are planning to put a concrete wall, a bicycle path, and it just doesn't make any sense to construct a canopy,

also. And I don't see any part of trails at all in this facility. You know, in this area. So I just wanted to, you know, tell you how I felt. Thank you.

>> Commissioner Do: Thank you. Next speaker, please.

>> Good evening. My name is Roy Kahey. I'm an employee of environmental services, City of San José. One of the recent activity of my department is, planning the green initiative for the City of San José, and the general plan statement that the area abandoned by the southern Pacific should be used should be used for a trail, or that uses should not impact the primary use as a trail, is consistent with the green plan. It provides the transportation alternative that reduces production of greenhouse gases, and provides the opportunity for greening that area and perhaps some areas having trees. Our city forests is another initiative that's assisted by the ESD. So I should like you to please go forward with an action that does not impede the use of this particular stretch for that purpose. Because if one area is such in that way is impacted, others will follow. Thank you very much and have a good evening.

>> Commissioner Do: Thank you.

>> My name is Brenda McHenry. I'm here on behalf of the league of women voters. You have a letter in your packets which addresses the issues. I'm here to stress some of those issues. We believe the general plan should be the plan for decision making. Our current general plan is aimed to connect the trails in and around the city and indeed around the bay. We should resist attempts to break that connection. EIR, carefully considered and perhaps one of the solutions is to actually do one for this project. Before significant decisions like this are made, the public must have input, like tonight, and in fact, this case, the public's been working on the issue for a long time. Perhaps this project was approved inadvertently, but that alone speaks for the need of communication among city departments. We hope this wrong might be righted tonight. Thank you.

>> Commissioner Do: Thank you. I will call the next speaker please and I will call the following three speakers, Mary Ellen Patrick, gar netta Anabla and Jack Nadow. Please come down to the bottom of the stairs. Please ma'am.

>> Hi, chairman Do and commissioners, my name is Joan bonnette. And I'd like to right some comments from former supervisor Blanca Alvarado. She had hoped to be here tonight but was unable to do so and sent me some comments. Blanca has been very supportive of an interconnecting trail system for our county for at least 20 years. She was instrumental in establishing parts of the Los Gatos creek trail and with supervisor Yeager, obtained funding which I think was talked about earlier from the county for the three creeks trail. Blanca voiced her dismay over the action proposed this evening and supports the goals of save our trails. She states, "to allow this permit is unconscionable. A win-win solution is possible, if the commission directs the applicant to change the plan to allow future consideration of a trail. Why would the commission allow this roadblock when a compromise is possible? Committed citizens, all of us here tonight, and more, are asking for a chance to make this trail happen. The commission must not stand in their way." May I use the time I have left to speak for myself?

>> Commissioner Do: Please.

>> I have a historical perspective on this. This spur rail was built around World War II to serve the canneries and some manufacturing plants in shipping their goods to market. It was industrial in nature. It -- our agriculture history is embodied this this trail. And we have this one opportunity to create a historic path along the old western Pacific right-of-way that would connect the trails from the West of our city to the South -- I mean to the East, excuse me, and specifically to History San Jose. Giving us a safe path for our families to travel and to live with their history, and pass it on to future generations. I have a map I'd like to give you that's taken out of San José city's directory in 1934 and shows you the canneries and the manufacturing plants and the rails.

>> Commissioner Do: Ma'am, if you would give that to staff and they would hand that to us. Commissioner Zito has some questions for you.

>> Commissioner Zito: Thank you, Mr. Chair. Can I ask you to repeat the section of your letter from then supervisor Alvarado which she considers the alternative?

>> She says a win win solution?

>> Commissioner Zito: Yeah.

>> A win win solution is possible if the commission directs the applicant to change the plan to allow future consideration of a trail. And I believe Bruce has an example of how to do that.

>> Commissioner Zito: I'd be interested to see that. Thank you very much.

>> Uh-huh. Thank you.

>> Commissioner Zito: Thank you.

>> Hello, my name is Mary Ellen Hutrich. Thank you for this opportunity to speak. I heard that staff believe that people on bicycles don't buy sheetrock. Which I thought was pretty amusing. But people on bicycles do go to work in San José. People on bicycles go to work, I assume, at Stucco Supply, I don't know. People on bicycles do go to work at businesses in that area. I ride my bike early in the morning in Willow Glen and I see people going to work from District 7 in Willow Glen. They go to work in Willow Glen. They go to work at the other ends of the proposed three creeks trail. So I think there's economic benefit to this trail. The options that I've heard is an easement for the trail. I've also heard that there's required fire access required to this property, and that possibly they could be combined, the trail and the fire access. If we lose this trail now, it's gone forever, it can't come back. It's a continuous piece of property. Thank you.

>> Commissioner Do: Thank you very much. Next speaker, please.

>> Carnetta Edibo, director of district 9. I represent portions of Willow Glen, West San José and the Cambrian area. I've had the pleasure to serve as a city appointed to the Coyote creek task force back in the early '80s. And part of those plans was a discussion of the trail that would connect the west to the east at Kelly park. The plans that the city council had dismissed as conceptual and not important, they were designed by community groups that represented all stakeholders. We depend on you as commissioners to support these concepts. Hold where you can, use your power to send applicants back to be reasonable. Maybe today you can't slap some money down for him. We want him to have equity. But by preserving and use are your power, so that future action can be taken, is absolutely critical. In my community, three times the city didn't act when it had its right of first refusal, its first opportunities. In some instances, we lost our open space. The Cambrian elementary site was an example of that. The Camden high school site, the city lost its opportunity. But you know, time and a couple of years, we got it finally. We were able to preserve a portion of it. So we're asking you to support the appeal. Send the message back to go back to the drawing boards. This lands owner and also to others that will get out of the city, saying this Willow Glen spur is important to us. We have plan for it, we'll use our power legally north to make it become a reality. In due course.

>> Commissioner Do: I'm sorry your time is up. Thank you, thank you. The next speaker please and following three speakers are Linda Larson Boston, Terrence Ternan and Allen Williams. (inaudible) good evening, thank you very much commissioners for hearing this appeal. My name is Jack Nadeau founding member of save our trails. The -- my primary point here will be to mention that Mayor Reed's Green Vision goal number 10 is to create 100 miles of interconnected trails. And that word, "interconnected" is the primary feature of the Willow Glen spur three creeks trail. Unfortunately, back in the early 2000s, when San José had the opportunity to purchase the entire right-of-way, when Union Pacific sent a letter giving San José the first right of refusal for entire stretch, from here all the way, here is the east here is the west. I live right on the western section, in fact it's right in my backyards from the trestle bridge and Coe. When the roads were actively used, Ken Yeager walked back there with me. At the time he said don't worry about it Jack, this will be a trail. I worried about that from that point to today. It's kind of late now but it's possible to take care of the situation. I'd like to read what I wrote in the packet to you. The Union Pacific Willow Glen spur alignment was wisely included in San José's green print and general plan because this ready made corridor is a potentially wonderful green linear park and trail. As the City of San José gross there is an increasing needs for interconnected trails for both recreation and transportation. For the

sake of future generations, please consider and support this appeal. For with easements and purchases San José's green vision can be demonstrated proudly along the three creeks trail.

>> Commissioner Do: Sir your time is up.

>> How much time do I have? Is that it? Thank you.

>> Commissioner Do: Thank you.

>> Good evening, my name is Linda Larson Boston and I live and work in San José. I believe that the appeal should be upheld and the permit should be denied. scenic routes and trails diagram and the construction of the proposed canopy would severely damage due to the location San José's general plan requires a 30-foot trail corridor across the site. The proposed canopy violates the provisions of the general plan because it fails to provide the trail corridor. Stucco Supply company is required to provide a 20 foot wide emergency services access, and the way they have the plan now, that would run right through the middle of their property, by creating a compromise and putting the trail at the South end of this property and co-using the trail as the emergency access, that would provide the trail access as well as emergency vehicle access and the breakouts that the applicant mentioned would be needed for that emergency access. The trail users would not interfere with Stucco Supply's day-to-day business because the trail would be separated from the storage and access uses for which Stucco Supply acquired the property. Other nonrelated businesses own the parcels south of the Union Pacific railway property so the three creeks property also would not interfere with any of the adjoining businesses. For more than a decade, people have worked to build the Santa Clara County master trail network and the three creeks trail is essential to the success of the entire neighborhood because it joins the Willow Glen trail, Guadalupe creek trail and the subject permit would cut three creeks trail in half.

>> Commissioner Do: I'm sorry, your time is up ma'am.

>> Please uphold the appeal and deny the permit. Thank you.

>> Commissioner Do: Thank you.

>> I'm Terrence Terman and I'd like to speak in favor of upholding the appeal. Just in general terms, this nation faces an epidemic of obesity. There is a great need for people to get out, walk more, exercise more. And California faces the closure of many of its state parks at this time. Which is going exactly in the opposite direction. So action that would promote, permit the future of a connected trails in San José would be very valuable from these general considerations, and it would be -- have impact, not just on San José but in adjacent cities, too, that connect to these trails. Property rights do not allow the ignoring of environmental impacts. And here we have an environmental impact would be not just local, not just people seeing something or the local traffic, but this would be a citywide and even area wide impact. Now, the thing I have heard, that makes a lot of sense, is combining this trail with fire and emergency access. Those are compatible uses and I think that is the direction of where a compromise should go. And the whole situation needs to be reviewed further, particularly in the light of possibly combining, as I say, emergency access and the trail, and so no hasty decision or commitment should be made tonight. And that means the appeal needs to be upheld and the matter given further consideration. So I thank you for my time.

>> Commissioner Do: Thank you very much. And Mr. Williams, after Mr. Williams, the next three speakers are Richard Hernandez, Rosalee Aguilar.

>> My name is Allen Williams, I'm a 30 year resident of San José. I'm a bicycle rider, bicycle commuter, bicycle racer. I've served on the San José bicycle and pedestrian advisory committee. This region has a comprehensive network of bicycle trails, that will be wonderful for transportation and recreational use. To put a gap in the trail forcing people out on roads where they feel will damage the recreational opportunities of this community. Please support the amendment. Thank you.

>> Commissioner Do: Thank you. Mr. Hernandez.

>> Hi, my name is Rick Hernandez. I'm a resident of San José and yes, I'm a bike rider. I bike probably 150 to 160 miles per week, to and from work. There's been a couple of jokes about bike riders and stucco, I've ridden my bike from San José to Stucco Supply, to get samples for my home. They got some business out of me. [applause]

>> I'm here to ask you to uphold the appeal. Because the issue is connection. And connecting the different trails together. It's so important for our county, and our neighborhood, and everyone that lives in this area. So please uphold the appeal.

>> Commissioner Do: Thank you. Is Ms. Rosalee Aguilar here? Then you, please sir. I will call the next three names. Scott Sims, Jim Ebert and Robert Almos. Please.

>> Good evening, chairman Do and commissioners. My name is Mike Flaher, and I'm here representing the Bay Area ridge trail council, I'm a member of their board, and also the chair of the Santa Clara County committee. In your packet is a letter which is up on the screen, and it's a memo from Vern Smith, who is our South Bay director. And I want to read you a couple of things out of here. The Stucco Supply project, insofar as it connects to the Union Pacific railroad right-of-way could enhancement per the future development unless a recreational easement is secured. That's what we're here looking for tonight. We believe the proposed development should be reasonably asked to grant an easement, also to allow for a right-of-way right in this vicinity would be impractical for trail use and recommended installing bike lanes along Alma, you've heard speakers tonight also talk about that proposal along Alma. We think that should be done in addition to the actual right-of-way here. We need more connectivity and recommend installing bike lanes on Allen, isn't that a really good the alternative.

>> Willow Glen spur trail alignment, but a trail route in the Union Pacific right-of-way could significantly be more attractive to trail users. Thank you for your consideration of these comments. The Bay Area ridge trail council remains committed to partnering with the City of San José in development of ridge trail and supporting connectors.

>> Commissioner Do: Mr. Sims.

>> Good evening, my name is Scott Sims. I'm a 20 year resident of San José. I also work for Stucco Supply company, I'm their plant manager. I've been with them for ten years. And if you could have seen this corridor prior to my boss buying this and transforming it, and I've seen a couple of you in the last week come into our facility, thank you. What we had, we had an overrun spur which had not been used since I've been there, since 1999. Full of graffiti, overgrown in trees and weeds, eight abandoned cars, and graffiti tags all over the place. Homeless were down at the end and they had their own encampment. We had to get them out many times. We have taken that property, turned it around, and made a real nice area out of it. We're not saying that we don't need trails in San José. We do. But all I'm asking for is for a canopy I had my material outside that are subjectable to the winter conditions, the weather, and wet sheetrock does not sell very well. The fire wall that she was asking about is per the fire department. It's up against the neighboring building, cannot be seen. And then in front of that would be our canopy, just to house our sheetrocking materials. So with that, please defeat this appeal, and please process, go ahead with our permit, thank you very much.

>> Commissioner Do: Thank you very much. Mr. Ebert.

>> My name is Robert Amos. I'm the original applicant in this. We put in streets, we put in sidewalks, we put in storm drains. We put in landscaping. We put in bioswales. We were given permission to store and stack goods outside. Now all we're asking for is to cover them. It doesn't require any electricity, it couldn't take any plumbing. It's just a profitable. Our trucks that just used to supply stucco are trying to put sheetrock on also. The reason that an access road cannot be put behind the Stucco Supply canopy is that it doesn't permit loading of the trucks in front of the open spaces. We have cement and stucco products going into warehouses on one side, we have sheetrock and sheetrock mud and fasteners going on the other side. The fire trail, the fire access runs between the middle of the property, it will be able to access all of the buildings and get through. If you have any questions, I'd be happy to answer them.

>> Commissioner Do: Yes, there is a question from Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Thank you for coming up and speaking to us. I'm glad we have you here to answer a question. That is, do you see any possibility of a joint use or some sort of a use, where it can be used as a trail, and also, meet your purpose? Because, from what I'm hearing, the use you're proposing regardless of the canopy, is not conducive to people running around or walk around or riding a bicycle, am I wrong in that conclusion?

>> The city was very clear on the zoning of this property being heavy industrial. The fire department are the ones that are requiring us to put up these masonry walls. And to assume that bicycles could travel through there is had just not realistic. We have large trucks, we'll have forklifts, we have skip-steer loaders for sand and other things. It is a heavy industrial zone not a pedestrian or bicycle corridor area. It is not a residential area. It's zoned heavy industrial.

>> Commissioner Zito: No, I understand. There's no way to squeeze off enough width to have an adjacent to use of some sort?

>> There are businesses that carry compressed gas that are are directly open to tall masonry walls to protect the walls, the children would, from these industrial uses. There are people who have welders and compressed gases and auto paint shops dismantling and are not conducive to bike paths.

>> Commissioner Zito: I appreciate that and that's something to take into consideration. when we go into staff discussion I'm going to address that as well. I'm looking strictly at your application however, from away your use is --

>> One of the big, access onto the Alma expressway, 15 foot on the other side that is landscaped to separate us from the apartment mouse housed on that side. Trucks could not make that corner onto the Almaden expressway, on the right. The trucks can't cheat that corner. There's not enough room on the right-of-way to accommodate both the bicycle trails and the two corrections of the trucks.

>> Commissioner Zito: So really that is really the issue the truck route is part of the incompatibility, would you say that's a fair station William.

>> Very definitely yes. We're dealing with other trucks that load and unload in the street. We were told we couldn't load or unload in the street nor do we wish to. The products are put away, we need covered shelter to put those products away in.

>> Commissioner Zito: Thank you very much for your -- your --

>> My name is Jim ebert, I have property adjacent to the corridor. And just hearing all of this is really an eye-opener for me. You know I just have to say in fairness with that I think until you're ready to build this path and make it complete, that you owe the property owner the right to use the property, you know, to make a living and to better the community. And that's what he's doing right now. When it becomes a bike path, when it they can hook it together, a still building is not too tired to move. At that point, when the city is ready to buy this house, they can pay for it and take it eminent domain. Five years before it's done and gives him a chance to earn money on his investment so that's my opinion. Thank you much.

>> Commissioner Do: Thank you, the 3 additional, three other speakers are Ed Rast, Mary Ann Ruiz, and Richard Silva, please.

>> Ed Rast: Ed Rast. First is, I'd like to speak -- I am the president of the Willow Glen neighborhood association, you received a copy of my letter in your packet. Back in 2000, when the general plan was adopted, the city avoted to have a start down there. San José scenic routes and is vicinity in the project site. It wasn't on the general vicinity, it was on the trail, it was on the railway site it civil the proposed project informs the general plan, glad to hear that or it calls for the implementation of time where trail vision. It precludes it basically if you don't work through the process. What happened is, the city dropped the ball on this thing from the very beginning. It didn't buy the railway property and then when the city granted the permit to the property in June of 2006, they didn't ask

for an easement. The similar thing that happened on Harvey Lane from where they didn't ask for an easement at that point in time. what happens to these cities that happen in any city, San José or anyplace, you should know ahead of time it's designated as a trail and you get easements when you go for the development permits that's when the easements are granted. The city dropped the ball for a whole bunch of times. What they're trying to do is work things out. I think it's only appropriate for the property owner to work with somebody on that, grant the easement on property itself.

>> Commissioner Do: Sorry, your time is up.

>> Ed Rast: Thank you very much.

>> Good evening. I'd like to take the opportunity to thank the commission for your compassion, care and wisdom. As I mentioned, I had the great opportunity to serve as a parks and recreation commissioner for the City of San José for six years and during those six years I heard hours and hours of testimony from the community, for pleading for parks, pleading for trails. Trails is one of our key goals in the greenprint and interconnected this is a key strategy. And unfortunately we do not meet our city goal of 3.5 acres per thousand and district 7 is one of the worst underserved in terms of parks and trails. So when I hear this opportunity, I'm excited. Because what I've learned is once the land is gone and the opportunities are gone, it's gone. So I've heard that there could be options in terms of funding with more time and creativity. So I support, to uphold the appeal or to look at the option to continue the item to allow more time for the applicant and the appellant to find solutions. Can I take a couple of seconds on the next item for McDonald's?

>> Commissioner Do: No.

>> I didn't know if I had a little bit of time left.

>> Commissioner Do: You do but let's save that for the next item.

>> I'll be leaving but thank you.

>> Commissioner Do: Thank you. Mr. Richard and there's one additional speaker, it's David Dearborne.

>> My name's Richard Silva. I don't represent anybody but me you say you remember 28 years ago, that seems like yesterdays ato me. I was born in San José in Willow Glen, moved to the Eastside. And why I'm up here I really don't know. Except that the experience that I have had in this valley, I went on the general -- you guys had the general plan 2040 and I went on the bus tour that you did and I came home and I was pissed. I told my significant other, this is the first time I wanted to leave Santa Clara valley. And after your last decision with the Eastside, hey, I lived up on the East side.town, I know. I think you guys did the right thing, and I think you did the right thing, you had the opportunity to do the right thing for the West Side, also. And property rights I was a property owner in San José. I know. And I think you people have a big opportunity now, and I hope you don't blow it. Thank you for listening to my emotions.

>> Commissioner Do: Thank you. Mr. Dearborne.

>> My name is David dear \$borne. I live in Willow Glen. I lived in San José all my life. Chairman Do, commission, with the Willow Glen neighborhood association, I helped author the support letter for the bicycle lanes on willow and Alma. I hope they come. I also helped author and support this appeal. I've cycled this valley. I don't cycle downtown very much. I will cycle to the Eastside parks and through San José. But I will not take my children or my grandchildren or their children, if I live long enough, on the city streets, until they are safe. This trail can do that. Property rights are a big issue. And I respect them. But then blending them with the needs and the 400,000 that will come to San José. I hope you find out how to do that justly. Time is on your side. Thank you sir.

>> Commissioner Do: Thank you. There are no other speaker cards. The applicant and the appellee have up to five minutes to make any statement. I will ask the applicant first.

>> Good evening. There was a lot of talking that just went on. Trails are good. We like trails. We like property rights, also. And property rights are in the constitution. And they should be protected. Unfortunately, we have, as was characterized earlier, a bit of a setoff between property rights and trails in this instance. The good news is there really are a number of alternatives to connections between the Coyote creek trail and the Guadalupe trail and the Los Gatos trail already connect. That's not even an issue. And the general plan has designations in it with regard to connections between Coyote and Guadalupe, already in it. A little bit further north. And as HMM and Ray hashimoto have already demonstrated, with a small number of resources there are a number of alternative pathways that can be created that will provide good access, good connectivity with minimal resources and without taking private property rights. There is no trail requirement in the general plan for this side. Does not exist. Stucco is not the bad guy here. It's the victim. Stucco is caught in the middle. It's caught in a cross fire. There's an issue going on here with regard to the bigger public need for trails, and the desire to use them, and the expansion of a local business, hiring people, creating jobs, creating revenue, and making life better, because it sells materials that builds all the homes in this valley. Stucco Supply has owned this right-of-way for over four years. It's already developed this right-of-way. It's paved it. It's created gates. It's added lighting. It's added bioswales. this canopy, more of a symbol than a problem, this canopy can be removed with little expense. The relative expense of this removal is minuscule, compared to the overall expense that would be expended by this community to implement the three and a half mile Willow Glen trail that's being discussed. It's tens of millions of dollars versus a few thousand dollars. It's not significant. Even the advocates for trails have acknowledged and expressed sympathy in writing in some of the correspondence in your package, with regard to their feeling poorly that Stucco Supply is stuck in the middle of this. They didn't ask to be here, they didn't intend to be here. It's a policy issue. The canopy that's being requested is a simple structural item that will not impact that policy decision. So we ask that you approve the canopy and the wall and you allow the policy decision and all of the discussions that will go on with that to go on over time. That's being discussed now. It's been discussed as some of you sit on the general plan task force that meets generally and you know over the past couple of months this decision will come up and that's where this ought to be discussed at both the task review and ultimately at the city council. If the city decides to take the aland, that's fine. That's a whole separate issue that some day can be addressed but the decision involves several miles of possible trails and many millions of dollars. It's not just this side. And it's probably years away given the budget and the economic conditions that we exist in today. I ask that you approve property owner rights, allow for the creation of more jobs and tamp revenue, and allow the city policy to be discussed as it should be in the future. The trail would greatly impede operations as they currently exist. Especially along the access onto Almaden road. The access of the right-of-way created a second access which was critical to the growth of Stucco Supply. As you can see on the map above you and at your desk, that access is very narrow. To take a portion of it away with heavy tractor trailers and we're talking big tractor trailers, 16-wheelers, heavily loaded, moving in or out in a very narrow way with people walking by, it does not work, it's not feasible. It would make it harder in these economic times to do business in San José if you continue to -- if you consider approving the appeal and thereby taking certain property rights from Stucco Supply.

>> Commissioner Do: Sir, I'm sorry, your time is up. There are questions for you, though, Commissioner Platten.

>> Commissioner Platten: Thank you, Mr. Chair and Mr. Aller, over here, I understand your point with respect to deprivation. I've got a question to put to you and to counsel for the appellants and also to city staff counsel. Simply this, how do you respond to the issue of nexus and the claim that the city staff does not have sufficient nexus to require you to dedicate a right-of-way.

>> There is no nexus we've explained the that to staff.

>> Commissioner Platten: Could you explain that your position for the benefit of the commission and the audience?

>> The concept of them us comes into this situation when you consider the possibility of taking property from an applicant as a result of improvement of their property. In this case the concept would be that you would require Stucco Supply to donate some of the land for a trail. Very expensive, require substantial changes on the site, probably would require Stucco Supply to move. And possibly relocate out of this area. So the idea that there's some rational basis for the government to require the taking means that there has to be something that exists that allows this connection between the requirement to give land, some public benefits, some good, something that

the government is giving to Stucco Supply as a result of this application, and in return, you receive this value of this lands. But that doesn't exist here. It doesn't exist under any of the case law. It doesn't exist under policy and staff I'm sure will talk to you more because we've discussed that with them, staff agrees, there is no nexus here. Your City Attorney has reviewed that and determined there is no nexus here.

>> Commissioner Do: Thank you, Commissioner Platten. Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. Thank you for relating that there are multiple alternatives that could be put into place. My fellow commissioner indicated one alternative might be a tunnel and then another alternative might actually be air rights and going aboveground, over Stucco Supply. Now, Stucco Supply may not be as cool and sexy as jelly belly. But there are many businesses that allow people to go traversing through and observing the business as it executes. And we have multiple instances of air bridges for bikes and trails that traverse the city. We just put one over 280 and that would actually help with Almaden which is an extremely challenging road for bicycles or pedestrians. Would Stucco Supply be open to other alternatives such as those?

>> Well, I'm going to turn to my client, ask him to come down here for a moment, because that is an interpret that has not been discussed to my knowledge. Obviously, either alternative would be terrifically expensive. It wouldn't be Stucco Supply's expense as I'm understanding your question. In part because it hasn't been discussed, so it is a thousand foot right-of-way. A tunnel or a bridge would be pretty significant. That being said I don't have the ability or the authority to respond to yes or no on that and I don't know if you're prepared to answer that at all.

>> I'm not saying that something couldn't be worked out. I realize the need for trails in the valley, scenic trails. I don't know how scenic that one would be. But I wouldn't say no, definitely no, at this time that's all I could say.

>> Commissioner Jensen: Thank you.

>> Commissioner Do: Thank you, Commissioner Jensen. There are other questions. Commissioner Zito.

>> Commissioner Zito: Commissioner Jensen essentially took the idea and actually brought it to fruition, and that is, what are the options and what I had heard from the owner was that the current use precludes the co-existence of a trail, and the essentially operation of the Stucco Supply as it happens today. But I guess in general, what I would suggest, I'll make it more of a suggestion than a question, is that other alternative be explored. I think the idea of an easement that allows both uses to coexist is really what we're looking for and anything along those lines where we can get some sort of a glimmer of hope that something can happen is what we're trying to accomplish tonight.

>> Well, you know, ideally, rather than go through this ordeal, we would like to work out a resolution as well. We have discussed the possibility. The problem really is that onsite we have not been able to come up with any kind of safe or operationally appropriate methodology to have pedestrians and bicycles and whatever else on the trail along with these heavy tractors. It just suspect going to work. Either the radius will be cut in such a way that the tractors won't have the access to get in and out, and these are big machines. So the radius won't be enough or the pedestrians you know, won't be safe or have the access they need. We don't see how it's functionally able to be done. If we had been able to figure that out it would have been something we'd be looking at to try and move this forward but again, it's just a canopy. It's not the kind of things that some day, the city wants to put the trail through there and commit the resources to do it, this canopy is going to be the stopper. It's not.

>> Commissioner Zito: I respect your position at least on the surface, appreciate your candor.

>> Commissioner Do: Thank you, Commissioner Zito. Thank you sir.

>> Thank you.

>> Commissioner Do: The appellant, please. You have up to five minutes, sir.

>> Sorry?

>> Commissioner Do: Up to five minutes.

>> Commissioner Zito, Commissioner Jensen, thank you for your probing. The question raised here is, is there an alternative that doesn't involve violating private property rights? The first step to a really in-depth and objectively and successful conclusion of that is the preparation of an environmental impact report. Its purpose is to study alternatives not verbally in one evening but in writing, with a traffic engineering experts take a look at the situation and apply their expertise to it. Maybe as Stucco Supply is currently configured they can't figure out a solution. Maybe the EIR experts can, maybe the public can help through a public process And EIR subjects the peer review, public comment, response to public comments, a really rigorous approach. And that's what you need. EIR is the first step. It's easily done, it's often done, it requires only a significant effect ton environment. This is an alternative transportation route. A green commute route in the future for bicycles to get people from one point in the future, from their houses to their employment and back, for example. The official environmental checklist form for ADR guidelines for G-lifts, has a potential significant effect that requires the preparation of an EIR, conflict with adopted plans, policies or programs supporting alternative transportation. That's what this proposal would stop the use of this trail as a green commute route of the future, poses as a conflict with that alternative route. If in the end, there is no other solution, private property rights can yield to the exercise of eminent domain, we're particularly used to exercising eminent domain in our society, but for the establishment of necessary transportation routes for freeways. The provision of the public resources code that I cited in my letter, specifically allows that for things like trails. Any city could acquire and hold lands for public parks or public boulevards or both, by purchase or by condemnation. The alternatives proposed bicy San José avenue, it's own 22 feet wides, accord tot general plan, has to be at least 30 feet wide, without even leaving it as a vehicle street, to get the 30 feed, all of these businesses would have to be interfered with. That's many more than Stucco Supply. This is a complicated issue. It needs to be studied in depth, in an environmental impact report. Do the justice to the community's interest here of requiring that to be done. Here again, I'm not an expert. But this looks to us a solution. Study it, comprehensively in an EIR. This is the 10,000 square foot canopy. This is the 30-foot right-of-way to the easement. This is the 25-foot roadway for the trucks if they need more room for turn around, it makes sense to me, but let's study it rigorously and meaningfully and legally in an environmental impact report. Too much is at stake to just proceed on a verbal EIR for alternatives like you've had tonight. Please uphold the peel pale, please require aan environmental impact report. Thank you very much.

>> Commissioner Do: Thank you, there are questions from the commissioners. Commissioner Platten.

>> Commissioner Platten: Thank you, Mr. Chairman. Again, Mr. Teachen, I understand your argments with respect to the EIR and CEQA. I'd like you to address if you would sir the issue of the nexus.

>> Nexus, yeah, nexus is only an issue only if it's absolutely necessary to get a dedication for the corridor, for the trail, rather than purchase it. You don't have to show nexus to exercise eminent domain. You only need to say nexus to get an uncomplicated solution. I showed you the memo from Pierluigi Oliverio siting the existence of \$44 million to buy certain parts of the mime. That by the exercise of eminent domain. Use it.

>> Commissioner Do: Commissioner Platten, does that answer your question?

>> Commissioner Platten: Thank you.

>> Commissioner Do: Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Mr. Current application and that is specifically, for the canopy, okay? I have in front of me attached to the staff report, a resolution that this Planning Commission passed back in May of '07. Which essentially gave, because of the way if volt came out, gave the right for Stucco Supply use that area, that piece of land, for their truck route. Okay? And I have to ask your client, and I mean this sincerely, because I completely symphathize with the trail's argument, and I've been look at every way possible to say we need to grant this. But at that time there wasn't that big crying and outpouring. And frankly, it would have been a heck of a lot easier then to deny this trucking route than to try to simply hang, as Mr. Eller stated, the symbol of a canopy, and hinge a denial on that. My question to you how can we justify an EIR simply on a canopy, which is the only thing before us today?

>> The canopy, and the use underneath it that it serves, will sever that trail at its midpoint, ruining its connectivity.

>> Commissioner Zito: But the trail has been ruined already by the use of the truck route. That's my --

>> Well, you know, had the community been informed of that proposal, you certainly would want to get this outcry. But they didn't learn of it. Had city staff not disserved you by failing to point out that this is where the trail corridor is, page 269 of the general plan and that the general plan text page 273 requires that the Department of Neighborhood services to adopt trail standards for the width and that's according to Yves Zsutty, jurisdictional guideline in my letter. you wonder have approved it.

>> Commissioner Zito: I agree with you, water under the bridge.

>> You are assuming that a vested light that's not so.

>> Commissioner Zito: Just so you know, I'm gig to go ask staff and ask our counsel where the vested right is from the general plan perspective, frankly, I don't see that either, but I'm sorry to say it will thank you for your answer.

>> You're welcome.

>> Commissioner Do: Thank you, sir, no other questions. No other questions, so is there a motion to close public hearing?

>> So moved.

>> Commissioner Do: All in favor? So staff, could you just help us with some direction? In particular, I'm actually interested in what the general plan calls for, if you can clarify on that, among the other issues that were brought up. Thank you.

>> Thank you Madam Chair. First thing to start with, is that the general plan includes many things. It's not just the trails diagram. It includes the land use transportation, what sort of uses are allowed on any property. It includes a wide variety of goals and policies dealing with economic development as well as travel and so forth. To say that the general plan is only about what is showing on the trails diagram is actually not correct. There is many things, many considerations in the general plan which is why, so far, I mean, the staff has been saying or continue to say, the proposed project does comply with the general plan because it does conform with the allowed uses under the land use transportation diagram, it comports with many of the goals and policies with regard to industrial land use and economic development and so forth. I think another consideration with regard to this particular case goes back to the fact that yes, there was a prior permit that was approved, that at that time, allowed for the paving of the railroad right-of-way, that use was determined to be in conformance with the general plan. So to now say that for some reason, the canopy, the construction of a canopy is not in conformance with the general plan, is a major issue. And whether or not the trail alignment exists precisely over the railroad right-of-way or not is really not the issue. Even if -- which staff has done, to date, concede that point, it still goes down to the fact that how do you make the connection between the construction of a canopy, and requiring the property owner to either dedicate land or a 30-foot easement for a trail? It's -- so -- that's kinds of a long winded answer, Mr. Chair, but I think essentially staff's saying that the proposed project does comply with the general plan. Even if there is a trail alignment that's designated across that former railroad right-of-way. And I think that's also an important point, is that there's current -- with regard to the requirement of an environmental impact report is the trail does not exist. The trail is only there on a plan, and CEQA is dealing with impacts to the physical environment. So if there was a trail that existed there, we would be talking about it differently. But at this point, the proposed project cannot have a significant physical environmental impact on that which does not exist on the property.

>> Commissioner Do: If I may just ask to you clarify on that issue, are you saying that the general plan can contain conflicts or discrepancies?

>> We are saying the city should develop in the long term. And that at the present time, no funding has been identified, to start implementing that particular segment of the trail. And so staff has been analyzing whether the addition of a canopy over an existing use, existing paving, existing storage, is going to preclude and somehow make it impossible to implement the long range vision of the city and you have the staff report that indicates that the staff's belief is that's that no, at such time as the city council either finds the funds or desires to implement that vision which is contained in the long range vision of thity, that having a canopy there would not preclude the implementation of that vision.

>> Commissioner Do: Thank you. You have additional comments I believe. Mr. Boyd.

>> No, no, not at this time, Mr. Chair.

>> Commissioner Do: Questions, Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. When we heard the previous proposal, over two years ago, the vast presentation and that, truck circulation safer for the community, and it did not indicate as far as I recall, and perhaps one of my fellow commissioners can correct me. We heard no discussion about a rails-to-trails proposal at that time. There was no discussion about this being part of the greenprint or part of the general plan or having been identified as part of the UP rails to trails alignment. And honestly, I'm feeling -- and I had just come on as a commissioner, but I'm feeling a little taken advantage of now, to hear that because we made a decision two, two-plus years ago, that we are now precluded from making a decision regarding an EIR, that we missed our opportunity.

>> Mr. Chair, if staff could respond to that.

>> Commissioner Jensen: Yes, please.

>> I think that certainly I wasn't here two years ago so I can't speak to what -- you know, what staff's position or thinking was at that time or what we did. But certainly I think it's fair to say that had that issue come up at that time that we would be having a very similar discussion. It would still be a discussion of even with the truck circulation proposed, which I do understand the truck circulation was of primarily to help leave truck impacts on the residential neighborhoods to north of the project site up little orchard, you would still be having a very similar conversation, what is the nexus between truck circulation and requiring the property owner to dedicate land for a trail? So yes, it's true that there was a prior decision that was made. But even with that prior decision had it come up we would still be having a very similar discussion, about what's the nexus of the property owner dedicate a trail even without the truck circulation.

>> Commissioner Jensen: I'm sorry, I left out the conversation at that time may have included the requirement of an EIR. Which we're told this evening is -- has no bearing on the discussion, because we're not considering any modifications to a trail or a trail potential. All we're considering is a canvas tent.

>> Mr. Chair, there is no potential significant impact for which, in staff's position, an EIR is required. Particularly given the fact that with the mitigated negative declaration that was found complete, and in compliance with CEQA on the prior approval that an addendum to that mitigated ND is still valid from a CEQA standpoint. Staff doesn't see the grounds for inquiring a environmental impact on this case. Mr. Chair.

>> Commissioner Jensen: I appreciate that, I'm looking at the site development permit, where it indicates that unders of 1501 of CEQA this project is exempt, et cetera, in that why residential structure which is not more than 10,000 square feet and I saw that the attorney for the appellant had raised the issue that this is clearly not who this project is. This is not 277 square feet attached to a residential structure. So if you can help me understand is why that particular sentence has any bearing whatsoever on this particular project I'd be grateful.

>> Thank you, Mr. Chair. As staff explained in the staff report, that in fact was in error. Doesn't mean that the project, in staff's Point opinion, when we did that approval, wasn't exempt. Unfortunately, we cited the wrong categorical exemption criteria. And I as the signer of the permit should have realized that there was this other information there that clearly was not related to this project. But as we indicated in the staff report, upon realizing

there was a mitigated ND that was done without the conditional use permit this director of planning then has rescinded the determination that the project is exempt and instead we're using the mitigated ND for the prior conditional use permit.

>> Commissioner Jensen: I think that goes back to the decision that was made in 2007 where that would have been our opportunity to raise the question of an EIR. So it seems to me some circular logic is being used to justify what it is that we're talking about here.-

>> Commissioner Do: Commissioner Jensen sorry to interrupt you. It is now 10:45. There are still two other items in the public hearing after this one and a number of other agenda items as well. I think we need to make a decision as to whether we continue those items or whether we defer them to a future meeting. So is there --

>> Commissioner Jensen: I believe it's our normal practice to wait until we have completed one item before we make the decision about the other item.

>> Commissioner Do: I believe it will pass 11:00 and that's why I raise the issue.

>> Commissioner Jensen: I'll hold the rest of my questions.

>> Commissioner Do: Is there a motion one way or the other? Commissioner Zito.

>> Commissioner Zito: Mr. Chair, I move that with the assumption that we will not conclude this item before 11:00, that items 3,C and 3D that CP 07-100 and PDC 08-066 be deferred.

>> Laurel Prevetti: Player, we have a number of speaker cards for 3C.

>> Commissioner Zito: What about 3D?

>> Laurel Prevetti: We have no speaker cards on that item.

>> Commissioner Zito: I can say I amend my motion and make that for 3D.

>> Laurel Prevetti: If I may, the applicant is also waiting in the audience.

>> Commissioner Zito: To make a informed well weighted decision on these items. And we have in the past deferred items, especially since if we do do 3C, given the number of cards, it may be closer to midnight. I'll let my motion stand, see if we get a second and a vote on that and we'll go from there but I appreciate the input from the director.

>> Second.

>> Commissioner Do: There's a motion and a second. All in favor, say aye. So it looks like the motion is passed and we will defer item 3D to the next meeting. And I'm sorry to the applicant of 3D. But the 3C may go on well past midnight, but -- Commissioner Jensen please.

>> Commissioner Jensen: Thank you, Mr. Chair. as was pointed out regarding the financing, I can see Mr. Cano is in the audience and perhaps he has the expertise and can add to this. There is a memo of Councilmember Oliverio as of September two years ago, indicating that money was available for the Willow Glen spur. And we heard this evening that the city had made at least a verbal if not a written promise to put dollars 3 to 1 for the money provided by the county which would indicate that there'd be \$8 million available for this portion of the Willow Glen spur.

>> Thank you, Matt cano division manager Parks, Recreation, and Neighborhood Services. Currently have \$6 million identified for the Willow Glen project. \$5 million is grants and \$1 million is donations. However, \$2 million is the county funding and since there is the 20% matching requirement, we don't have enough money to fully utilize

that money so that's a technicality there. Based on council direction from late 2007 I think it was, we're currently focusing on money to purchase lands from the Union Pacific railroad .

>> Commissioner Jensen: Thank you. And if staff had indicated earlier that the director had a change of heart with regard to exemption from CEQA, and it's been a very long evening, and if you could please clarify what the director's change of heart was in that regard?

>> Certainly, Mr. Chair. Realizing, I think, once we were into the appeal process, because I wasn't aware of it previously, that we had done a mitigated negative declaration, that allowed for the outdoor storage on the site and a stronger CEQA clearance is actually to essentially reuse that prior mitigated negative declaration, because the canopy could otherwise be considered to be exempt, it's obvious to staff that there is not significantly potential environmental impacts from the construction of the canopy. And so using that mitigated ND is stronger from a CEQA standpoint because then we are relying -- our determination is relying upon the previous initial study and the various technical analysis that was done in conjunction with the uses and so forth that were previously considered. So there's more technical information on which to rely, and base a determination on. Thank you.

>> Commissioner Jensen: Thank you. And so in the interest of time I'm just going to go through all the rest of my comments starting with, I'm going to be supporting the appeal, whatever the motion is. My supports will be for the appeal. And I want to say that when we had our general plan task force meeting on Monday I had not reviewed this item prior to the task force meeting. We were talking about parks and trails and I had made a comment that San José is seriously in need of some east-west corridor. To be honest I was very surprised by the applause and the surprise and how joyful everybody was and everybody else at the task force saying, yeah, yeah, East-West corridors it surprised me until we got to this item and we were actually hearing something on it. A task force member who is also a cycling advocate and extremely busy doing that, commutes to work, et cetera, discussed her recent vacation where she went out of her way to go visit very unusual and creative trails including trails of areas abandoned under free ways. And I think that speaks to us taking on a little bit more creative approach in what we're trying to do here and not just always see a trail in the normal way. I have been struggling with this item. I'd like to thank the Stucco Supply company, because two-plus years ago when I went out to the site and looked at it, it was nasty. And it was not difficult to find, you know, driving down little orchard. It was very easy to find. And to be honest when I did my site visit for this one I drove by it twice because it has been so transformed. I appreciate the work you have done in making it not such a horrible looking site. You did a really, really nice job and I want to appreciate you for that. And it doesn't look like a pleasant place to put a trail in. And after hearing the testimony this evening, because I -- honestly, I was fully ready to support Stucco and say, forget the trail; this is a silly place to put a trail. But after hearing tonight's testimony, I was looking in a very old fashioned not out of the box creative way and I think there are significant ways of doing something here creative and imaginative and move forward and that's why I changed my mind. The trail has been proposed from the green print and in the 2020. And if we drop it we are doing ourselves a disservice by nibbling away at our ability to connect trails along our east-west corridors, and it encourages us to nibble away at trail connections in other areas, as well. And we have been struggling with this for such a long time. And I don't want to see another 30 years go by before we have more trails. Mr. Hernandez indicated he is an avid cyclist and a customer of Stucco Supply. And while I do both bike for fun and buy stucco supplies and sheetrock, I'm not as brave as you and I would never do it on my bicycle but I commend you for that. And as Mr. Elle-r indicated, there are multiple other alternatives. I agree with the audience who said, Alma is there is no way Alma is going to be safe and to put it up willow, does this southern community, a huge disservice. This is a vastly underserved community that is desperately in need of parks and trail and the connective tissue that this kind of thing allows us to do. So I don't think any of those other alternatives while they might look pretty for stucco, they don't have any bearing whatsoever on being able to create the three creeks trail. And I think it's very sad that we're expecting that something in the 2020 general plan and the green print is a vague vague, without a fill plan for where to put it. So that's why I'll be supporting the appeal.

>> Commissioner Do: Thank you, Commissioner Jensen. Commissioner Platten.

>> Commissioner Platten: Thank you, Mr. Chairman. I'd like the counsel to speak.

>> Under California law that there be a relationship between the impacts that a project creates and the exactions on that project by government and the approval process. So in this case you need to make a link between the

impacts of a canopy and the wall on a project and the need for a -- the project to dedicate a recreation trail. Dedication would mean a fee interest in property and easement and what you would say. Then you need to purchase. and that is an alternative that would keep the city from having, you know, a claim that there is a taking of this property owner's property, potentially, and I've given you the standards for that. What I also wanted to comment on however is that the general plan and the greenprint which is not part of the general plan, it's a development document for parks in the city, doesn't really impact specific funding for any of this trail system. It can come after private property, exactions, is what I'm hearing from what others would like from this project. It can come from city or other agency payment for trails. But it is a print a blueprint or in this case a green print for what we would like trails to be in parks and open spaces. We've heard funding sources here today. One is purchase of which there is no funds. There is a paragraph that comes before the appeal portion and looking at this Mr. Boyd maids the question, the permit for the outdoor storage and the access to the property, would have been a very similar argument as we have tonight. It is true. Because in the -- with the city's inability or anybody's inability what do you let them do prior to purchase? And that's a consideration that the commission needs to make. I wanted to also point to no matter what your determination is, you need to take a look at the findings on pages 8 and 9 of your staff report and go through each of those findings and no matter what the motion is you need to distinguish whether or not you agree with the staff recommendation and if you don't agree with the staff recommendation for each of those findings you need to establish your own finding either in support or denial of this appeal. But those are the findings that you need to look to in order to make your determination tonight.

>> Commissioner Platten: And so that we're clear, counsel, am I to understand and is the commission to understand that in the judgment of the legal counsel to the city, in the absence of a nexus we would be exposing the city to a considerable potential liability if we were to put this property owner in limbo in the absence of money to purchase the property?

>> Essentially yes.

>> Commissioner Platten: If we were to deny the claim?

>> Essentially yes. It just depends on what your decision is, what the parameters are. There is a current use of this property that speaks against this a bit because they are not being denied all use of this property but that is a determination. We were told we might be threatened by a lawsuit, absolutely open both sides. Mr. Chichinen's client is thinking about that Mr. Eller's client as well. My advice, can you you need to determine whether or not you know there is not a trail there right now. So the CEQA argument is, you know, that would attempt to focus on a CEQA analysis that acts as though there is a trail there is flawed. Currently the project is the project before you, a canopy and a wall. Not a trail that doesn't exist.

>> Commissioner Platten: Thank you, commissioner.

>> Commissioner Do: Commissioner Zito.

>> Commissioner Zito: Thank you a question for park staff, what alternative do you see given what we're up against here? Let's say this particular piece of the trail is not available. What other alternatives are there? And then the second question will be let's assume that it is available to us who alternatives do you think we have to sort of coexist? So those are two very, very difficult questions and I'm going do ask you to do your best you can on that.

>> Thank you. The bottom line is, we do need -- and a lot of the speakers have alluded to and the commission has alluded to, we need East-West connection, not just through north city or downtown, bit through south and central, abase there is what the city is, we need safe is East-West connections that are compatible with the existing land uses and is this the -- ask this Stucco Supply, is this corridor we're talking about today ultimately going to be one of those east-west connections? Could be, I don't know. There's other options that have been discussed today. I honestly can't tell you which is the best option, as you said it is a complicated question.

>> Commissioner Zito: Would you say it would be equivalent, and I use this word very lightly, because they were talking about using Alma. And Alma as it stands is probably not a safe alternative. However, a protected bike and pedestrian lane might be. Given the cost of what it might take to put, for instance, and I really appreciate

Commissioner Jensen's creative thinking. Certainly is a possibility. Given cost, let's say cost is not an issue, which is never the case, right? Could a protected right-of-way be granted let's say along Alma to achieve a similar goal?

>> Yeah, I would want to reiterate that you know, part of tonight's decision we're not precluding the trail from moving forward at the current location we're talking about tonight. Regarding Alma, I know changes could be made to Alma regarding whether it could be a protected bike lane that has been talked about. We would have to defer that to the Department of Transportation. Sorry, can't answer that.

>> Commissioner Zito: Fair enough. My whole concern is what are the alternatives? As Commissioner Platten focused, that's the challenge we have before us, a covered canopy area and a wall and that's all before us. I think we could have made a much better argument two years ago, we could have discussed that the mitigated negative dec, even though there wasn't the trail before us, we could have expanded. I don't think we have nearly the ledge to hinge that on tonight as we even did then. I completely agree, in principle, with what Commissioner Jensen has said. I think that a creative alternative has to be reached, that allowing an easement that allows creative easement, or a fly over is possibly the way to do it. My concern is that a vote to uphold the appeal would only be symbolic, that we really don't have the grounds to grant the appeal. And I'm really, really concerned about that. And I'll put myself out there and walk the plank on this one. So if the chair is ready, I'll make a motion.

>> Commissioner Do: Please, please do so. Are.

>> Commissioner Zito: And let the commission make their decision. I'll move that we -- I think we have to mention the CEQA in this, right, and basically acknowledge the addendum to the mitigated negative dec. And uphold the planning director's decision to approve a site development permit to construct the canopy approximately 10,000 square feet to cover an existing outdoor storage area in a corporation yard on a 4.47 gross acre site in the LI light industrial HI heavy industrial and CG general commercial zoning district. And I make that decision very reluctantly. Fully support trails and parks. I just don't see any way we have to prevent this going forward given what is before us tonight. We are talking about a canopy and a wall and that's really all we can vote on and I strongly urge and I trust that Stucco Supply has been a great citizen for San José and that they will continue to work with the community to try to come to some solution one way or another.

>> Commissioner Do: Thank you, Commissioner Zito. Thank you for making that difficult motion. Commissioner Cahan, would you like to speak on the motion?

>> Commissioner Cahan: Thank you, Mr. Chair. I am incredibly saddened that we lost the opportunity to purchase this property initially, when it was offered to us years ago. I think that there is a lot of room for discussion, still, on this matter. And I will not be supporting the motion, because I just think that all of the options have not been thoroughly vetted at this point. There was discussion of being able to raise funds to purchase the easement from alternative sources. And I do believe that the construction of a canopy and a wall is a building block to us not being able to have that property for the bike path. So I do believe that that impedes the general plan's item of having these trails that interconnect. So I do think that the stucco property has -- I was there today, and it's a very clean, it's -- I'd say it's the best property in that area. So clearly, you have -- you care about your property and your community. And I hope that with that care of your property, and your community, that you also work to help make this bike path possible, as well as making your business thrive.

>> Commissioner Do: Thank you, Commissioner Cahan. Commissioner Campos.

>> Commissioner Campos: Thank you, Mr. Chair. You know, I really believe that we missed the opportunity two years ago. And as, you know, we were trying to remember, what the deliberation and the conversation was two years ago, flipped to the back of the staff report and I was the only no vote. I was trying to remember, okay, two years worth of Planning Commission meetings and I was trying to remember, well, why would I vote no on that? And I jog around the San Jose State area, so I'm familiar of the rail spurs because I've gone on some of the rail spurs near the stadium. And that had to have been why I voted no on that. Because I saw, maybe it wasn't in the staff report, but I saw, okay, these spurs meet. I believe that was the opportunity. They have the right now to have the right to use on that property. My concern is the mixture of pedestrians with the heavy industrial use that they have the right to do now. And I cannot see being able to have the two compatible right now. Now, that doesn't preclude the opportunity to have a trail there in the future. But again, what we have in front of us is, it's a

canopy that can be dismantled as quickly as it gets put up. So therefore, I will be supporting the motion to deny the appeal. Thank you.

>> Commissioner Do: Thank you, Commissioner Campos. I think I'll just speak a little bit for myself as well. I also support the expansion of trails and creating connection and all of that. But generally thinking, I think that after careful consideration, I have to agree with Commissioner Zito which is that it's hard on me to see the nexus between requiring the lands owner to provide something in this regard, and also, I also don't see that the canopy itself is an impediment to any future development. So for that reason I would support the motion. So there are no other speakers. So we'll vote by light. Voting yes would basically uphold the director's decision. Thank you.

>> So Commissioner Kamkar came in late on this, he had the opportunity to review the record, he could have vote but since he doesn't have the opportunity he won't be this evening.

>> Commissioner Do: So you're recusing on his behalf. Okay, let's vote by light. So the motion to uphold the director's decision is passed with commissioners Do, Campos, Zito and Platten in favor, and Commissioners Jensen and Cahan opposed, and Commissioner Kamkar abstained. That brings us to 3C. CP07-100. Conditional use permit to replace an existing fast food restaurant with construction of a 5374 square foot fast food restaurant including drive-through use and operation after midnight on a .88 gross acre site in the CPpedestrian commercial zoning district located in the Northwest corner of Tully road and Kenesta Way. Staff.

>> This is a drive through plus operation past midnight. Staff has been working with the applicant for a while on this project, on the existing sites, the building is located right out at the street corner which is generally what we look for in our commercial design guidelines. Staff does acknowledge that the existing configuration of the drive-through on the site is very poor and definitely not in conformance with our commercial design guidance. The new buildings that's being proposed at this site however, moves the building to what staff feels is a much less favorable location on the site, putting it away from the street corner, and emphasizing having the park lot right out at the street corner. Which is contrary to the commercial design guidelines. There was a document distributed quite a while ago at the beginning of this hearing that contains a fair amount of information. The very first page of it is another alternative staff layout for the proposed site, taking into account the, I guess the latest building permit that McDonald's has proposed, staff would actually like to point out that the buildings could actually be shifted even a little further to the East on the site plan, which would allow a little more room for the two drive-through lanes which McDonald's has expressed some concerns about, also in that handout are comments from the West Evergreen NAC, in support of the project, as well as the McDonald's corporate response to staff's -- staff report, and a, I guess the latest version of the plan set, I think the plan set that was provided in the -- to be circulated with the staff report a week and a half ago, was a little incomplete, so what should be provided in there is a complete plan set. Again, what staff is recommending is that the Planning Commission conditionally approve this project with the condition being that McDonald's relocate the restaurant to a, I guess, roughly the same configuration as being proposed in the staff recommendation, with the building brought out to the -- much closer to the street and more to the corner locating the park behind it. This does provide a little more parking for the restaurant. The program has it basically right at the minimum parking requirement. McDonald's has expressed a lot of concerns about the loss of direct access to Tully road. Staff has numerous times, that the adjacent commercial property has a driveway that runs right along the border of the McDonald's site and they could work out a shared access agreement for that driveway to give them a direct link back to Tully road. Basically connectivity between commercial properties is another important aspect of the commercial design guidelines, and we would certainly like to see that. At the same time, Kenesta drive is really a small street connecting Tully to Clarice drive behind it and functions much as a driveway would for the McDonald's. So staff doesn't understand, staff believes there's still pretty much a direct link to Tully road for the McDonald's. I guess in the discussion, there's also been concerns about the staff proposal at one point showing connection to Clarice drive which is a more residential street, though there's a park located directly behind the McDonald's. Staff probably never intended that to be a main access driveway but just more of a -- some kinds of EVA type access, in case, you know, for some reason the Kenesta way driveway were blocked. But again, staff is recommending is, approval. Thank you.

>> Commissioner Do: Is the applicant here? Please come to the podium. Please state your name for the record and you have up to five minutes to address the commission.

>> Good evening, Planning Commissioners, staff and community. First I'd like to thank everyone, commissioners, staff and the community members here for your dedication to serve us by staying and allowing us to present this project this evening. I really appreciate it. My name is Margaret Trujillo, I'm an area construction manager for McDonald's. I'm here tonight to present our project to the commission. Also present this evening to address any questions that you have is McDonald's owner-operator Rudy Leemas, and Mark McElvane and regional construction manager . I'm here tonight to present to the Planning Commission my presentation and details for the proposed rebuild for McDonald's. This project has been under development for about three years now, and I've been work very closely with planning staff to try and find the best design for the site. We believe that there are -- while we don't agree with the planning staff's proposed alternative design, we believe that there is unique site conditions and neighborhoods factors that the commissioners should consider in support of the project, as I present here tonight. While the commercial design guidelines say that they prefer a building should generally be placed at the front setback, exceptions could occur in an area of planned wide setbacks as our project does. In addition our project is consistent with the commercial design guidelines in the following elements. Our site organization provides for efficient and safe vehicular and pedestrians circulation. The high activity dining areas of the building are oriented towards the main street. The proposed play place is located logically and safely. Our proposed site provides logical drive through unobtrusive areas of this specific site. The project has -- respects if established setbacks of the areas site and landscape setbacks and will continue with the setback pattern all along Tully. Myself and other than operator Rody leemas presented the project to the K.O.N.A. and West Evergreen organizations on two occasions. In our presentation today. Our projects support both SNI's top 10 priorities by adding wider sidewalks on Clarice, Kenesta and Tully, installing new street trees and our proposed design is consistent with our traffic calming goals by maintaining sight access and maintain on Tully. we've also support their goals of improving building lighting and landscape. As well as importantly providing an opportunity for other than-operator Ray Leemas for growing jobs for his aesthetic considerations that they've asked us to, we've redesigned the play place, reducing the square footage of the building and aligning it more with the main building. We've added an overhang, a trellis and canopy columns to the drive sides of the building. We've also added stone veneer to accent the building and columns and provide a visual contrast in a more warm natural texture to the project. Let's see, what else do we have here? The site plan as we propose is consistent with McDonald's commercial guidelines and city policy 610, driveway guidelines, the primary egress and ingress is from Tully, our main through-street.

>> Commissioner Do: We lost the --

>> I'll continue. So the -- we have considered the staff's layout recommendation very closely and thought a lot about what they have proposed. But simply, and honestly, the resulting layout would not fit within the site limits, and it doesn't fit the neighborhood character, nor meet the operational requirements, to make in a viable rebuild for us. Losing our access to Tully unreasonably removes our site access off the main arterial. Something that not many people know is a majority McDonald's customers decide to eat here at our restaurant on an impulse basis. The traffic patterns of typical McDonald's customers require easy in and out access and our proposed seat design allows for commerce enough time for customer vehicles to slow down and turn into the parking lot. Maintaining the existing driveway curb cuts on Tully allows customers the time to see the restaurant, slow down and make the decision to enter the driveway without passing the restaurant. Okay, I'm going to -- this other picture shows prevailing setback patterns all along the streets. The main problems we have with the design by staff it doesn't meet our traffic patterns of typical customers --

>> Commissioner Do: I believe your time is up. We have technical problems and we lost the time but the last time I looked, you were well over the time limit already. So you -- there are public comments and you have five more minutes to respond to public comments so perhaps you can save your comments until afterwards. There are questions though from Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. So maybe there needs to be a three day waiting period before can you eat at McDonald's, instead of the impulse. I have a five-year-old so I know what that means. Your marketing works very well. Would it be safe to say that one of your main concerns is the loss of the curb cuts on Tully, is that really the majority of the issue?

>> That's the majority of the issue, as well as work with the neighborhood groups and the community Many they really don't want more traffic on Clarice or the side street. I think our design is consistent with our goals.

>> Commissioner Zito: So if you could put your picture up, your site diagram a bit I have a question about one of the curb cuts and trying to understand it a little bit better. If you could move it up a little bit so I can understand Tully better. There is a curb cut on I think would be the west sides, looks like almost a half a curb cut.

>> Our project is proposing one-way curb cut, exiting the drive through on Tully allowing cars to turn right and then entering the existing curb cut and entering parking and going into the main restaurant area.

>> Commissioner Zito: What would be the drive path?

>> Customers would come along actually, see the McDonald's, either make the decision to enter the restaurant and enjoy the play place or go through the drive through and pay and pick up their food and leave the side.

>> Commissioner Zito: So that's not an escape hatch there that's --

>> This here is an escape hatch. In the event that very likely, their order is incomplete or incorrect, they have the chance to escape and park and allow for --

>> Commissioner Zito: But I mean the foods service occurs before that second secondary there? .

>> This will pay here pick up here they can turn this way and park and eat in their car or pull straight out and go on their way.

>> Commissioner Zito: How can you ensure that you would have one-way in that exit? Iny in the outy?

>> We would have signage and the width of the driveway would.

>> Commissioner Zito: If you have a five-year-old you go anywhere you can. To actually ensure that people cannot go in the alley. That would be something -- you could address that later, but that's just something that I would like to explore a little bit more.

>> You would have concern and we would --

>> Commissioner Zito: I appreciate those answers. Excuse my light hearted comments from before, it's getting late.

>> Commissioner Do: Thank you, Commissioner Zito. Part of the reasons you're having difficulty with the site layout is the building footprint is fixed based on a corporate standard, is that correct?

>> Yes.

>> Commissioner Do: The building couldn't be made square less long and wider and so on?

>> The -- oh, good. There are certain critical dimensions that we find it necessary for our drive-through. And one of the key elements is stacking of the drive-through lanes. The reason we can't you know shorten the drive-through or adjust any of those lanes is, we need to achieve proper stacking of cars, from the pay window and our menu boards.

>> Commissioner Do: I understand.

>> There has to be a certain amount of cars in between.

>> Commissioner Do: I understand. I think the city, the staff proposed plan I think has some -- is not a perfect plan but the one thing I like about it is it has a north-south orientation. So from a heat loss, heat gain point of view, it is superior is it an option in your view to have the same configuration as you have but move the building over to Kenesta way more, moving it over to the Kenesta way site, so that buildings doesn't -- while it doesn't

have more public presence on Tully, it nonetheless have more public presence on public streets that the proposed layout by your company.

>> I have our operator here, Rudy Levas, he owns this restaurant.

>> Hi, Chairman Do. Right now we have a backwards drive through. To come into the store you have to walk through the drive-in lane. If we're going to leave 30th we're just going to leave it there. I have an issue of safety on that building. That building's been hit twice on that corner. The street sign that we have to announce that we're going to do a project was hit, on a Sunday morning at 9:00? And I go chump on suns and they don't usual call on Sundays, as a car just hit our sign. Less than a year. If you ask that building to be on that corner --

>> Commissioner Do: But that's something that I don't think-let me clarify the question. What if you moved the building in the existing location but put the drive-through lane on the street side, would that work for you?

>> Put it in the same location as it exists now?

>> Commissioner Do: Yes, or generally in the same location, it could be farther away from the street to allow it but the drive through lane would be in the street side, unsafe crossing of car traffic?

>> Then if I'm hearing you right you are asking the person to reach crease and bay on the wrong side of the building.

>> Commissioner Do: They could drive in -- depends on how you conconfigure the driveway, that is if they -- you could have them a loop around and -- but anyway, I don't want to belabor the point. So that's fine. Thank you. There are no other questions. So thank you very much. You have up to five minutes to respond later on.

>> Thank you for your time. North Dakota so let's see, there are many public speaker cards. I'll call them three cards at a time. Domico Curry, Mark Delgado and Jerry N. Soriano. Please come down Mr. Curry first. Please state your name and you have up to two minutes.

>> Damico Curry. Thank you for allowing us to be here tonight. It's been a long day, I'm pushing a 16 hour day. I'm charged with taking care of the children in that particular community. I run the Boys and Girls Club at 2195 Cunningham. We serve about 225 kids in the community. One of the thing that we do on the back side, on the park side, on Clarice, is we do a safe walk from K.R. Smith elementary. On the early-out days, the kids get out at 7:00. Several times you have 7:00 in the morning 12:00 in the afternoon and runs to 2:00, and when the kids get out of school at 3:00 you have another congestion that's starting, and then the final at 5:00. If you allow the nonentrance from Tully Road, and you use the back streets, you'll then have cars backed up in and out of McDonald's. School buses, parents line that street because it is a two-way street, to pick their kids up. You have tons of congestion coming out thereof which systematically. Just to stay with commissioner Zito to get straight to the point, the best possible solution is the one that's offered by McDonald's. Because you have easy access coming off Tully, an exit that will then take you even on the side street, on Quimby, looks like, and then back to Tully Road. So this way you're not addressing any of the school issues and the park issues, as well.

>> Commissioner Do: Thank you, there's a question for you from Commissioner Zito.

>> Commissioner Zito: Ask you essentially the same question, is your main point then is the access to and from Clarice, is that your concern?

>> Correct.

>> Commissioner Zito: Yours is the access on Clarice, McDonald's is the access on Tully.

>> Yes.

>> Commissioner Zito: Thank you.

>> Commissioner Do: Thank you. Mr. Delgado.

>> Hello, I'm Mark Delgado, I'm an athletic director at the high school. I liked the McDonald's plan. I'm concerned that Tully road, they do need an access through there. Putting access through Clarice is not a good idea, as mentioned before because there's a school that's back there, the park. It's heavily traveled through the Mac. You're also going to impact Coran, if you do miss McDonald's you would have to loop around, have a stop sign on Clarice and Horan. You could have backups on Tully road cars that are turning there. Base go to work every day and I make a right on Horan there's sometimes when I'm sitting waiting just to go because of the stop sign. Adding the McDonald's there, the entrance on Clarice or Kenesta is going to have that problem. Mr. Leemas, he is a supporter of the community. The school he gives a lot to the school, he comes to us. He is current trying to help our Eastside union high school district, I believe in this plan I believe in Mr. Leemas and hopefully we can go through that route and use the McDonald's proposal, thank you.

>> Commissioner Do: Thank you very much. And I will call the three next speakers. Felipe Juarez, Rudy and Carmen and rivera. Please state your name.

>> I'm Jerry Soriano, I occasionally, I frequent the McDonald's there because of my grandchildren. I like the McDonald's plan, because the traffic that the staff's plan would create, would involve a lot of congestion on Clarice. A lot of people who go to that Welch park there park along Clarice. And you have an activity that's right across the street involving children, there's a playground. So you have a lot of movement in that area. About a hundred yards along the way you have the elementary school, I forget name right now, KR Smith, and again, you're inviting congestion, because on very busy days, when they rely on buses to get out of there and parents are picking up their children, again you're going to have something of a minor disturbance with traffic. So I basically go along with their plan because of that concern. The Leemas family has given to the community, in terms of providing for either a resource, resources or materials or moneys for our Eastridge little league organization. They have also provided Overfelt for things they need in their sports program and they're involved with scholarship programs for kids who wants to continue their education after they graduate. So you're working with a very good family who I think has provided you with a very good plan. I hope you accept it.

>> Commissioner Do: Thank you.

>> My name is Felipe Juarez. I'm glad to be up here to speak to you on a positive note. I am also speaking for Mary Ann who had to leave and Gloria rivera who had to leave. They're not quite used to the marathons. We do support the Rudy and Carmen and Margaret design and McDonald's design. It's not a unique design if you go to Santa Clara 101, take the Santa Clara exit about the same you watch how it flows as opposed to a McDonald's say on the capitol expressway on the gold shopping center and doesn't flow and you've got people bumping into each other and sharing the parking lot, doesn't work. If you go to the supertaqueria, if you've got a broken down car you're stuck. Just makes a very logical entry way, and want to express that we are in support of the McDonald's design. Thank you.

>> Commissioner Do: Who do you speak for?

>> Gloria rivera was up here speaking a little while ago. She is in our neighborhood and also Mary Ann Ruiz as well.

>> Commissioner Do: Thank you.

>> Hi, my name is Ruben Dominguez. I'm a community member. Actually, I believe it was June or July of last year we had the McDonald's and the city come to us at the K.O.N.A. meeting. At the time I was the president of K.O.N.A. They made a presentation saying how they were going to be doing this particular project and we voted overwhelmingly in favor of what they were going to do. We're hearing now just the last week without the city staff being at our meeting last week they were there, the McDonald's people were there saying the city has decided to go a different direction and they wanted to propose a different way of doing things. Actually, I'm here in favor of the McDonald's proposal. Because I've seen what they have done, on the -- in the Santa Clara McDonald's store. It's something similar to what we're doing there. They have a very nice flow unlike the one they currently have. It's called instead of dodge ball it's called dodge cars. When you are in the parking lot you want to go in the

store there are people driving through the drive through and it's really a mess but this new setup is actually going to be much better. I don't want to see when we are at K.O.N.A. we have actually made changes to the streetscapes and around K.R. Smith, we have actually made some changes to Welch park, making sure that the park was more usable for family and people in the neighborhood not so much for strangers coming out from other locations. If you go with the city plan what we are going to end up seeing is we're going to have more people coming from different locations going through our neighborhood. And I would like to not see that happen. Thank you.

>> Commissioner Do: There is a question for Commissioner Zito.

>> Commissioner Zito: Good evening, Reuben, good to see you. Now again, did K.O.N.A. specifically comment on the openings at Clarice and Kenesta?

>> Yes, they did, at the last meeting they mentioned they didn't like the idea.

>> Commissioner Zito: I don't believe anyone would deny this is an improvement but the K.O.N.A. meeting, the Clarice and Kenesta opening was a problem?

>> Yes.

>> Commissioner Zito: But what about the Clarice?

>> Where the structure is going to be located, further West of the site that they're actually doing that and again, this is something that is not uncommon for McDonald's. The the McDonald's I forget the name of the cross street, it's on Lawrence in Santa Clara, it's a similar building, not going to be a similar type of building but something similar to that. And that I've gone in there a few times on my way to work and seen the flow and see how people actually walk in and using the drive through and how they're separated and actually have no problem. They actually it's homestead. They dump onto homestead or they can go off to the side, okay? But that is the only two access they have to that particular location.

>> Commissioner Zito: Okay, appreciate your answers. Thank you.

>> Commissioner Do: Are Rudy and Carmen Leemas here?

>> Good evening, I appreciate your time and patience. My name is Carmen leemas, my husband and I own the franchise. We are here, we are part of the community. My children play in little league, we had a very successful event at Overfelt high school. The purpose of me saying this is we want this plan to thrive. The proposed plan by McDonald's is probably our best plan. As parents we have three children, the oldest is 14, eight and five. The Clarice issue is a real issue for us too as parents, not just as business owners.

>> I started in 1979 as a crew person. I was born on Regeletto, that's when I came home, my parents got divorced and moved to Orlando which is right down the school. I ended under going to Powell middle school. Six years we lived on south side because I couldn't afford to live on eats when we came back. I still live in the Evergreen area, we still support this group. I do have a concern, I told you that building has been hit twice already. To put a play place in that corner is to me not right. We have a time capsule. We have a proposed wall we can put there to have a corner presence. There is a time capsule in '76 with mayor Gray Hayes there, incorporate in that wall. We have been 12 revisions already. I can -- we go to 13 and we move it this way I might as well stay where I am and then basically put lipstick on a pig, I guess, and then with fix-it there. I do have a business that's finctioning now. I'm not asking for city money, I'm making 12 foot sidewalks on the front ten foot on the side ten foot on the back.

>> Commissioner Do: Thank you. There's a question for Commissioner Zito.

>> Commissioner Zito: Thank you, I'll ask the applicant as well but seeing you're the applicant I'll ask you. How important is that small curb cut on Tully versus the large one? I call it the escape --

>> We really want to have that. The one in front or the one coming off Tully road? Straight off Tully road?

>> Commissioner Zito: The one you could exit Tully after picking up your --

>> That's very important, you don't go back into the rest of them. You're fighting crowds out there. This way it's an exit only and they go straight out Tully road. Tully road is a six-lane highway.

>> Commissioner Zito: I travel it often, six lane you don't go fast. My question is specifically that one current cut and my concern there and I'll address it with staff --

>> You mean exit-only?

>> Commissioner Zito: Exit-only to me --

>> Currently we have an exit-only on the left side, so it's actually better to be on the ride e-right side because it would be smaller, it won't -- we have signs now saying this is not -- exit-only, exit-only.

>> Commissioner Zito: If I had a nickel for every time I went into an exit-only --

>> I'm sorry?

>> Commissioner Zito: If I had a nickel for every time that I drove into an exit-only curb cut.

>> I think Rudy could address that concern. Has there ever been a conflict with that exit only?

>> Every once in a while I have a car come in backwards. It's pretty obvious, one way, I think one cutout is very obvious it could be one way coming the other way.

>> Commissioner Zito: I'll address the question to staff later. But I wanted to know how important is that one curb cut? Assuming that everything else left the same, if that particular curb cut had to be, would that make that much difference assuming the rest of the project could stay as you propose?

>> The reason we need that cutout there, in case your order not ready, we don't want to back all the cars out, we want to pull you off to the side. Your next 12 cookies will come out in three minutes. You can't pull out onto actual road and try to park right there so I that to get out so the other car can go.

>> Commissioner Zito: We may not be connecting on that but --

>> I think part of the goal, too, is to keep the traffic moving modestly through the site so that exit-only driveway is important to keep that flow going. Is a cut-away across the front is either just in case access, it wouldn't be met with a consistency flow of drive-through traffic having to navigate around the corner and then out the side again. The most logical flow for the drive through customers would be to go straight on out typical of many of the other McDonald's we've designed.

>> Commissioner Do: Thank you, Commissioner Zito. Thank you. The next three speakers are Carlos José and Robert.

>> My name is Carlos de Silva with the West Evergreen NAC. They came to our meeting and we had a presentation twice. And it basically carried unanimously. We think they got a good plan. It looks -- you know it's something that's going to stand out and look great in the community. That cutout that Mr. Zito just brought up, if you eliminate that cutout, I see chaos. Because people will be coming right back around into the other way that the traffic is running and to put that restaurant in the corner where it's located now with a play lands on Tully road, I'm sorry, it's not my granddaughter that's going to be inside that play land, if we go with staff's report. I'm not going to put her life in jeopardy just so we can have a building on the corner. That's stupidity to me. Right now people are cutting across the driveway to get again you're doing the service to the neighborhood. You got a park back there, you got a school back there, how are you going to ask this traffic to go back through that area and

congest this made. I think staff mentioned shared driveway, Jack in the box, you go in there and the flow of traffic, it's a joke. It's a joke getting into the decorative way, to go to jack-in-the-box and I think they lost business because of it. Just a share of that driveway, you try to go in there and you got people coming out that have no clue what they're doing yet they're trying to cut across and go to a gas station. I saw that with the pizza place, if you share that driveway you're going to have congestion.

>> Commissioner Do: Thank you very much.

>> Okay, I'm José Arranda again with Evergreen SNI NAC and really, it's past my bedtime. And I miss --

>> Mine too.

>> I just want to show you how important this issue for us, that's why we're here. I have missed, I brief you know that Ted Kennedy died and there's a lot of important news about it information, but I have to discards that or ignore it just to come down here and to show you that we want to support the people because of the design. There's only one thing that I like to tell you that the reason I support this design is that we're going to look at the planners, suggestion or recommendation, you will see the back sides of McDonald's at Tully road. Do you want to see the back side instead of the front design of the McDonald's? I doubt it! I just want to give you an example, it's a woman that you're looking at. Do you want to see the back side right away of the woman? No. You want to see the first --

>> Commissioner Do: I think we should not go there. [ Laughter ]

>> No, I just want to show you that is unreal that you have the design that you see the back side. No way, that there's something that you want -- and of course there's some back side to a woman that's nice, you know, especially if the spouse is around with you. But --

>> Commissioner Do: I think you made your point, sir.

>> I just wanted to give you an example that's what it is right now, we just don't want to see this kind of thing, back side of a building in front of us first, okay? Thank you so much.

>> Commissioner Do: Thank you. [ Laughter ]

>> Sorry, Robert Sandoval, West Evergreen NAC. I support the plan of Rudy, Carmen and of course Margaret, and I believe that this will enhance their business. The building that they have proposed in our neighborhood areas will enhance our community. It's a beautiful building they're proposing. And my friend, I don't know where he came up with that. But anyway, we are totally supportive of them. And they have -- we have met with them on two different occasions in our NAC meetings. And their proposals are very realistic to us. Hopefully that you as Planning Commissioners will listen to the neighborhood areas, the residents that live there and believe me, I also have to say, sharing that driveway with a jack-in-the-box and the gas station, it is a bad situation there. I almost got broadsided going into the jack-in-the-box and picking up an orders and this guy just zipped right out of the gas station area and it is bad, believe me it is. Consider the fact of the plan of McDonald's, and also, of Rudy and Esther. And as you heard, the residents here support them very strongly.

>> Commissioner Do: Thank you. There's a question from Commissioner Kamkar.

>> Councilmember Chu: Thank you, Mr. Chair. Thank you for bringing the issue of broadsiding up. That's one of my concerns, even though, you know, I like the McDonald's plans much better and most probably will support it. But I'm a little concerned about that half driver way and the issue of getting broadsided when you turn out onto Tully. My question is do you feel that it's just too small and it looks like the cars will all of a sudden sneak out not realizing Tully traffic might not see them? Would you be concerned about that if you were exiting that driveway, turning right on Tully?

>> If you're talking about the driveway of the jack-in-the-box?

>> Councilmember Chu: No, I'm talking about this project.

>> I don't see a problem with that because of the fact their business generates certain traffic at certain hours of the day or sometimes morning or lunch time, I was there today and all I seen was senior people, a lot of them were just walking into the store, not driving. And they do get a lot of seniors, commerce there, clients, a lot of them were just walking in. I really believe that what they're requesting will enhance their business, too.

>> Commissioner Do: If you could just stick to the question. If you were driving out of that half-driveway, you would not be concerned about getting broadsided on Tully right?

>> Well, no. Because I was a professional driver for 40 years. I know conditions and distances and everything else. No, I would not be. What concerned me from jack in the box is I was going into the driveway, and this crazy dude, excuse reply language, was is trying to jet out of there on Tully road and Alban avenue.

>> Okay, thank you very much.

>> Commissioner Do: Thank you very much. All right, the applicant has up to five minutes to respond.

>> Hello again, I just wanted to bring up a couple of additional points that I wasn't able to make before. And one of them is to consider some brainstorming ideas that we've had. You know, we understand that the corner presence of the property is important. So what we're proposing is to do a low wall, some lands scape berms, you know, possibly a neighborhood sign or a gateway sign. We really want to work with planning staff to achieve their goals for a presence on the corner, as well as our goals for a logical and safe site. So I just wanted to point out to the commissioners that we're thinking to that ends, willing to compromise and work with staff to achieve a corner presence that will add beauty and interest to the corner.

>> Can I address what she said about being broads swipe? She doesn't realize what's happening. So people are going across like this and trying to go in. The issue is not with Tully road. The issue is that crossing, making them share the same easement. Jack-in-the-box has a one-way out now. It's only quarter of the mime down the street and then the KFC has a one-way out, that's another comment, but he's a procedural driver so --

>> And I just wanted to take a moment to close by saying, that in recent months I've had some great projects that I've worked with planning staff in collaborating on, we were able to achieve mutual design goals. Really, for this project site if it was physically possible to do what staff was proposing we would have done it a year ago. We really want to work within the community and work with staff on redeveloping these old buildings. But for this specific site, with this unique neighborhood characteristics, with the operational requirements to grow Rudy's business, we just couldn't do it. So it's not because we didn't want to, but we were physically limited by the site and the neighborhood goal. I appreciate Planning staff's help and the Planning commissioners's time. Thank you very much.

>> Commissioner Do: Thank you. There is a question from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Chair. I apologize, when you were explaining, I was trying to convince my fellow commissioners to join me in voting for you. But if you could please explain the part, my question is, I just want you to address the safety issue of your exit. Being such a small driveway concerns me. So either I would like less landscaping around it so people know a car is exiting or even a widesser driveway, so it's not so small and hidden.

>> We are committed to make sure that one way exit is safe.

>>> That's look like nor beings but the site is from the gas station.

>> Commissioner Do: Well, as a transportation engineer, I like the way you have designed it. I like your flow, I think it's much safer the way you designed it, but I just want you to know that, thank you.

>> I know it's late, and I just want to thank all the people that stood behind me. We lost a few, but I do thank the one that stood.

>> Commissioner Do: Thank you, Commissioner Kamkar. Commissioner Campos? There are no other questions from the commission so thank you. Motion to close public hearing, all in favor ? Okay, staff could you classify clarify those points?

>> Sure, I mean it seemed like there was a lot of concern about the result of staff proposal creating more traffic in residential seats. Staff is 100% in support of closing that Drive way cut on Clarice so that really isn't be an issue. And I mean, I think either way most of the traffic's going to head torts Tully rather than back towards Clarice, unless it's somebody coming from those neighborhoods to the McDonald's. I guess there's some issue raised about the fact that the cross-access between the adjacent site would create more congestion on the site. And it was compared to jack-in-the-box and a gas station, which I probably don't think is a very valid comparison. The adjacent site is a commercial center with offices dry cleaners stuff like that which has people coming in parking staying for a little while, pulling out while the gas station has cars scandal circulating. While at the same time, the fact that congestion being on the commercial lots is in a way a good thing because that mean that the congestion is not on Tully road. There is some statement about the traffic safety is better on Tully road, and I don't agree to it. Generally, the way to, Tully road, with the McDonald's proposal of two curb cuts on Tully road, there is also a comment that kind of the impulse shoppers to McDonald's, that the -- if they only have the Kenesta road access they'll miss a lot of customers there, again that's another thing I didn't quite follow since the driveway entrance to McDonald's is almost right after the intersection between Tully and Kenesta so I think traffic on Tully road is either traveling about 50 miles an hour or five miles an hour. And in either situation, you're going to have a second motor reaction, if you're traveling 50 miles per hour, and if you are traveling five miles an hour you will have five minutes to think about going to McDonald's. That is an argument I don't quite fully understand. That said, whichever way the Planning Commission decides to go, staff will work with the applicant so make sure we get the best possible project. There are concerns, showing the McDonald's plan encroaching into the front setback along Clarice way. As well as a few other things that need to be followed by the storm water plan. condition in the resolution requiring a subsequent adjustment being filed satisfactory to the director of planning to resolve any outstanding issues. I think that's all.

>> Commissioner Do: Thank you, Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. The in and out the major concern there is the safety issue i'm guessing. I'd just like your feedback on the possibility -- sorry I'm not, exacerbate, let's say having that one major opening on Tully as opposed to the two openings?

>> Thank you, Mr. Chair. Ryan Doller Public Works department. With regards to the exit only driveway staff doesn't believe that it is necessary for the site, given that there is two other full access points. However with that said, that also doesn't believe there is any visibility issue or access issue. It appears that there is some landscaping, lowland scaping that wouldn't block visibility of car exiting, even though it is a narrow driveway. It is still still, you know, rules of road says, look both ways when there's oncoming traffic. We drive 12 foot wide, we don't build the driveway wider for the purpose it actually creates confusion thinking it's a full access. That's why we would want to keep it narrow if we were to move in order with an exit-only. But again, there are sufficient access points other than this driveway, and staff doesn't believe there is also a visibility issue, thank you.

>> Commissioner Zito: Well, just for the record I'll date that I agree that having the drive-through facing Tully is probably not the best aesthetic solution in my opinion, just my opinion. I also agree completely, it seems that staff and the applicant are in agreement here with Clarice being closed off and I think that probably makes a whole lot of sense. Both agree with the Kenesta entrance, getting there, getting there, and then it's the Tully entrance. Personally I don't see any problem with the McDonald's configuration and I do understand that staff is going to speak with the applicants, regarding drainage and all that good stuff. At this late hour, I don't think any of us want to deal with that anyway. So again, to move things along if it pleases the chair I'll make a motion.

>> Commissioner Do: Please do so.

>> Commissioner Zito: I will move that we approve a conditional use permit, To replace an existing fast food restaurant with construction of a 5374 square foot fast food restaurant including drive-through use and operation after midnight on a .88 gross acre site in the CPpedestrian commercial zoning district, with preference for the McDonald's configuration, and to continue to explore the safety aspects of the Tully road entrances, specifically the exit-only was my main concern. If staff seems to think that that's safe, then I'm not against it. I just think that it just needs a little bit more attention. Certainly closing off Clarice, and going with the McDonald's configuration and my main purpose of that is, the frontage issue. I think that having the drive through configuration is not as pleasing. That is the reason for my motion.

>> Commissioner Do: Commissioner Kamkar. I'm sorry, Commissioner Cahan on the motion.

>> Commissioner Cahan: Thank you, Mr. Chair. I will be supporting this motion. And this is what happens when you have a meeting until 12:00, you start revealing things about yourself. I was a vegetarian until I got pregnant, and then I had to have a hamburger every day on my pregnancy. I frequented a Wendy's on Bascom, never seeped to be a problem. no one tried to come in as I was coming out the one-way.

>> Commissioner Zito: Wasn't in my neighborhood.

>> Commissioner Cahan: I didn't have any fear of anyone side swiping me. I support the one way, because I appreciated being able to exit so quickly, I was a little embarrassed being there so frequently. [ Laughter ]

>> Commissioner Do: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Mr. Chair. If the issue of the corner lot and the corner occupant, if that wasn't the issue, would this project have been on the quite a few other things you know match you know and so if that was not an issue -- any other major item? Go ahead.

>> In an ideal world, this prompt would have been on the oops side of Kenesta way and everything would have worked out perfect. So I mean I think if this exact same project was actually proposed on the other side of the street we would have been fully supportive of it. But the fact that they had a building that was on the corner and they moved it away from the corner, I mean that was pretty much flying in the face of one of the major strategies in the commercial design guidelines. Which is why I and my staff made this proposal with conditional approval, relocating the restaurant.

>> Commissioner Kamkar: When I heard this almost everyone who came out supported the applicant. Which speaks a lot to me. They're telling us what they want which I think takes a lot of weight. I will support the proposal. .

>> Commissioner Do: thank you, Commissioner Kamkar. Commissioner Jensen.

>> Commissioner Jensen: Just congratulations to all y'all for being here for the first item, and then sitting through all the other items and still being here. And we appreciate very much your being here, and being awake. It's -- thank you. And your joke about back sides of buildings, I'm not going the other direction. But the back sides of buildings, I totally agree with you, on the back sides of buildings and you know couple don't want to be staring at a building's back side. Let me see if I can pull myself together. I won't be supporting this because it's poor urban design. We're putting a giant surface parking lot in between a building and a street. And my colleagues here on the commission know I am not a fan of surface park lots. And especially not a fan of putting a surface parking lot smack in the middle where you can actually see it. It's a very suburban design that's being proposed with landscaping and a giant parking lot and then a building at the back. So there are many, many models of drive-through restaurants with -- that are in good compliance with good urban design, and commercial design, as staff has pointed out. As I can think, I have been sitting here walk through my head of your competitors whose buildings are in good urban design and on small lots and in difficult positions and have the challenges of driveways and so forth. My colleague the traffic engineer made, while we were sitting here made a couple of proposals on the staff design of alternate driveways that could help to improve traffic access by moving the Kenesta entrance a little further up the street and friending a jump-out point on Kenesta right after the staff proposed drive-through point which would put traffic back onto Kenesta facing Tully which would allow them to get

out on Tully safely and not interfere with people going through the parking lot and touch. My apologies for not being able to support it, but it's poor urban design and I just can't go there, thank you.

>> Commissioner Do: Thank you, Commissioner Jensen. Let's see, there is a motion. There is a motion and second. So it's all the comments about back side and so on, so forth that distract me. But so there are no other speaker light so let's vote by light. The motion is passed with all commissioners present, voting in favor commissioner Jensen opposing and Commissioner Platten not voting. Absent, yes. So it's now 12:18. So and so we'll try to breeze through the rest of the agenda. The next item is petitions and communications. I don't believe there are any. There are none. Okay. If I may ask, if Kathy Brandhorst is still here. So there's nothing under item number 4. And item 5, referrals from city council, boards, commissions or other agencies.

>> There are none.

>> Commissioner Do: Thank you. 6, good and welfare, report from city council.

>> Laurel Prevetti: Nothing of substance to report this evening.

>> Commissioner Do: Thank you. Commissioners report from committees, Norman Y. Mineta international airport.

>> Commissioner Campos: Thank you, Mr. Chair, nothing to report.

>> Commissioner Do: Thank you, Commissioner Campos. Envision 2040. Commissioner Kamkar.

>> Commissioner Kamkar: I actually missed the meeting. I was wondering if one of my fellow colleagues can make the report.

>> Commissioner Zito: Parks, parks and more parks. Lots of discussion on park lands. Park dedication. Trails. Lots of public comments on what is important. Again, you heard some of that earlier today about the trails. And planning -- I'm sorry, task force will be considering again subsequent motions, if you will, or proposals by the parks department and presenting the green -- the parks -- the Green Vision -- parks greenprint, getting late. And the next meeting is the end of September, 24th, I think. Oh, yes, there is, there's a workshop like on a Saturday, isn't there? Oh, it's a Monday night meeting? I think I remember seeing something -- yeah, the 2nd or something, the 3rd. I don't know.

>> Commissioner Do: Thank you, Commissioner Zito.

>> Commissioner Zito: You shouldn't be asking me this late at night.

>> Commissioner Do: Next item, review of synopsis from last meeting. Is in a motion to approve?

>> So moved.

>> Commissioner Do: All in favor? [ ayes ]

>> Commissioner Do: So it's approved. And the proposal session dates, annual retreat topics, is it critical that we review that today?

>> No, Mr. Chair, absolutely not.

>> Commissioner Do: And any additional business, none, so the meeting is adjourned. Thank you.