

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

City of San José Planning Commission Meeting
February 24, 2010

[Gavel]

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 Wednesday, February 24, 2010. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. 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 amendments is only advisory to the City Council. The City Council will hold public hearing on these items. The first order of business is roll call. Let the record reflect that all commissioners are present. Next item, deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you 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 to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff.

ORATER: Staff have no recommended deferrals at this time.

COMMISSIONER DO: All right. Consent calendar, there are no consent calendar items at this time. We will move on to the public hearing items. Generally, the public hearing

items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. 3A. PDA 88-068-04. Appeal of the planning director's decision to approve a planned development permit amendment to allow offsale of alcoholic beverages at an existing retail store on a 1.72 gross acre site in the A(PD) planned development zoning district located on the Northwest corner of capitol avenue and capitol expressway. Staff.

ORATER: Thank you, Mr. Chair. This afternoon staff distributed a supplemental memorandum to the Planning Commission as well as a copy to the applicant and appellant, to identify more recent developments since this project was deferred. This item was heard at the February 10th hearing. Planning Commission did receive several speaker cards however did not hear all the speakers that had wanted to provide testimony that evening, Monday the conclusion of the applicant's comments, there were some questions raised as to whether or not Maria Diaz, the noted appellant, was actually -- questions as to whether or not she actually signed the appeal form. And so the Planning Commission decided to close the public hearing and continue it to today, to afford staff an opportunity to check with Maria Diaz to verify that she did in fact sign the appeal application. Subsequent to the hearing, staff with the help of a Spanish translator on our staff did talk to her and did confirm that she did in fact sign the appeal form and we do have in fact a valid appeal. She did indicate however that she had some reservations about the appeal and at the time we originally contacted her she indicated she was interested in possibly withdrawing her appeal request. And so the following day, staff had called her back, to ask whether or not she'd be willing to provide some type of written statement to that effect. But she had indicated hesitancy to do so. And also, reluctance to show up at the public hearing to identify that particular concern. And so staff -- she asked that staff give her the weekend to discuss that with her husband, decide whether or not she was willing to put something together in writing. Staff did call her back on Monday morning. And she had indicated to us that she was not interested in putting anything in writing. So staff thought it was important to prepare this supplemental memo. So we did that. We, with the help, again with the help of our Spanish translator prior to distributing the memo to the Planning Commission, we had called Maria Diaz back again and we read her the draft memorandum to get her concurrence as to whether or not this accurately reflected her opinion and her statements. And she indicated that in fact yes, it did. So with that, that doesn't change planning -- the planning staff's recommendation on the project. The project is not in an area that is overconcentrated or in high crime. There's not an offsale of alcohol establishment within a thousand feet of the site and the fact that this is in conjunction with a market that serves fresh produce and meat staff feels this is an appropriate location for offsale of alcohol and recommends that you uphold the director's original decision to uphold this permit. Thank you.

COMMISSIONER DO: Thank you. So basically staff has more or less concluded that this is a valid appeal that the appeal does in fact exist and so then we -- the fact that the intent may be ambiguous because the person did sign the appeal form.

ORATER: That is correct. We are not trying to make a determination as to what her request really ultimately was but based on what you had charged us to do at the end of the last meeting was to determine whether or not she had signed the appeal and whether or not that was a valid appeal and we did conclude that in fact it was.

COMMISSIONER DO: With that we need to open the public hearing that we suspended at the last meeting. And so is the appellant here? The appellant is not here. So is the applicant here? Please come to the podium. You have up to five minutes to address the commission. Please Thank you, Mr. Chair for the record.

ORATER: Good evening my name is Greg Kays and I'm here on behalf of the applicant. I spoke to you two weeks ago. And I would like to again address this issue of the validity of the appeal. Because we disagree that you have a valid appeal in front of you. In the memo that has just been referred to two things were also indicated which would I like to highlight. Ms. Diaz has indicated that she does not read English. And it is contained in the memo, a statement that Ms. Diaz did not really understand what she signed. And I think it's important that that be noted. The appeal form is filled out entirely in English. And I question how Ms. Diaz could have filled it out if she indeed filled it out. The second point and I think this is of crucial importance is that Ms. Diaz has now stated that she neither opposes nor supports the applicant. That, to me, is a withdrawal of the application. This is our third appearance before the Commission. At no meeting has the appellant been present. And now, she has stated to staff that she takes no position in this appeal. Therefore, if she takes no position, how can she protest? And I believe that procedurally, under your rules, while she may not have signed an affirmative withdrawal, by her conduct she has abandoned the appeal and there is no need for a public hearing. The appeal should be dismissed and the permit should issue. Now, in the event that you don't agree with that, I will make a few more remarks that are relevant to this particular applicant. Everyone who knows anything about this location, everyone who has visited this store, would have to agree with this statement: Today this is a grocery store. It is a grocery store. You can go into that store, you can buy whatever meat and fresh produce you want. You can prepare a full and complete meal for your family. With everything that you can buy in that store. And you can go home and you can have that meal. But you cannot buy any beer or wine. The people who are opposing this applicant call this a liquor store. It is not a liquor store. You've read the documents. They're limited to 10% square footage. If ever the phrase incidental, incidental to the sale of other items in a grocery context, applied, it applies to this store. And what is particularly troublesome to this applicant is, the history that this particular application has followed. We are coming up on our one-year anniversary. One year. The first community meeting in this matter was held May 21. First community meeting. We were directed by planning to do a 500 foot mailer, we did. We held a community meeting on May 21. On August 26th the planning director held a hearing. One person opposed, it. Ms. Talivaa. The planning director approved this on August 26th. Ms. Talivaa then went and complained to someone else in the city. A few days later we were informed by telephone that the approval had been withdrawn. We would have to start over again and now we had to do a new mailer, this time at a thousand feet. At significant additional cost to this applicant.

We held a second community meeting on October 20th. We then appeared in front of the planning director on November 4 and were deferred at staff's request to November 18. We appeared again. We were deferred again on November 18. And on December 2 we were heard again, and then the approval was issued. We have now, on our third meeting in front of this commission. The time has long past, the costs that are significantly overburdened on this applicant needs to stop. This needs to stop and we need these comments from city officials. We need to promote small business. We need to do what we can do to help. We have had nothing but trouble getting this far. Please deny the appeal.

COMMISSIONER DO: Thank you. There are a number of speaker cards. I will call three names at a time. Please as your names are called -- I'm sorry, the applicant will come back to the podium. Commissioner Kamkar.

ORATER: Yes.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I just wanted to confirm something with you. The application you're requesting the -- you're requesting we deny the appeal and allow the store to start selling beer and wine, no hard liquor, is that my understanding?

ORATER: Yes, the applicant desires to use a type 20 alcohol license which allows for the sale of beer and wine only.

COMMISSIONER KAMKAR: Would these be in bundles or singles too, could you describe that a little bit to me?

ORATER: Well, I think in terms of the beer I think you're speaking as opposed, to wine, the beer I believe is typically sold in six packs. I would have to review the conditions to see if there's anything specific in the conditions, either from the ABC.

COMMISSIONER KAMKAR: Right.

ORATER: Or from the city about that.

COMMISSIONER KAMKAR: But they would be coolers and you know you could pick some whether you know it's six pack or singles, singles would be allowed too?

ORATER: I don't know that there's a restriction on that and I'd have to refer to the documents. As you step into the store there's a cashier area into your left and as you go further into the store there is a set of coolers. And it's the applicant's intention to devote one of those cooler doors to the sale of the beer and wine.

COMMISSIONER KAMKAR: Okay. On your -- I believe you get five minutes back after the public hearing. Would you have time to review, and --

ORATER: Sure. And I'd be happy to confer with the applicant about, even if there's nothing in there, what their intention is.

COMMISSIONER KAMKAR: I appreciate that, thank you.

ORATER: Sure.

COMMISSIONER DO: Thank you, sir, thank you. Okay so I will call three names at a time and as your names are called please come down to the bottom of the stairs. Art Almos. Mono Altifaselli or something similar to that. Antonioespinosa. Please state your name.

ORATER: Laurel Prevetti: We do have Spanish translation available. Juan, do you want to make the announcement please?

ORATER: Sure.

[In Spanish]

COMMISSIONER DO: You have up to two minutes.

ORATER: Good evening, commissioners, my name is Arthur Almos. First of all I'd like to see a show of hands. How many of you live on the Eastside? Eastside San José. Got one. Ladies and gentlemen that might not make any difference okay? But in the Eastside, there -- we don't need another place to sell liquor. Whether we want to call it a liquor store, whatever we want to call it. You know we have a lot of young folks over there and one of the greatest problems, you know the Eastside is where most of your Hispanic population lives. You know we have a lot of problem with -- our community has a lot of problems with alcohol. We do not need one other place to sell alcohol. Please, you know, think about the future. You know, I know that you guys aren't going to make much money from the permit that this gentleman, may not or may get, but again, you know, I would ask you to consider the future. I mean we've got so many problems right now with, you know, with things having to do with people out of control, and alcohol is just one other vice. It's one other problem that happens, that is not going to make things better. The gentleman that just spoke before me said it's taken a year. You know what? Sometimes to get it right, it takes more than a year. If we're here two years from now still debating this because maybe the right decision hasn't been made. So again, you know, I just ask you that you know to consider in your heart, you know, if you lived in this neighborhood or around this neighborhood would you need another liquor store? I think not ladies and gentlemen because again I was a school teacher for 37 years and I know one of the biggest things that we had problems -- and I don't care what community you were in, whether you were in the Los Altos community, Palo Alto, or Mountain View, you know, liquor was a problem. Kids once in a while would come to the school under the influence. We don't need that. And this place is near a high school that has got a significant number of a lot of minority students so they don't need this kind of influence you know in our part of San José. Eastside does not need one more place to

sell liquor. Please think about that. I know you ladies and gentlemen are very intelligent people and take that to heart. Take that to heart.

COMMISSIONER DO: Thank you sir.

ORATER: Because -- thank you very much.

COMMISSIONER DO: Thank you. Next speaker please.

[applause]

COMMISSIONER DO: Please, please proceed.

ORATER: I'm not sure you call my name or not. My name is Faseli.

COMMISSIONER DO: Yes, I did, yes.

ORATER: Regarding to the grocery store, I'm close by, for 20 years. And to me, it's very convenient because when -- on the weekend when I go by meat, vegetable, and I got beer from the store, too. There is hard liquor, many hard liquor, I'm not walking in the store. I go to the convenience store to get my meat my vegetable and my groceries and walk home. That's why I'm here. That person is right too but the person handling the beer and wine you have to be confident on the business, you have to see what kind of people walk in. He have to be like 21 years old. You cannot sell to underage people. So that's what I'm saying to some people are very convenient to go to the grocer, buy beer, meat and vegetables together and walk in and go home, and instead you walk five mile and go another item.

COMMISSIONER DO: Thank you, is that all? There is a question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you. How long you have been visiting the store?

ORATER: Five years.

COMMISSIONER KAMKAR: You are confident with the owner?

ORATER: He he's a nice guy running the business.

COMMISSIONER KAMKAR: If I understand your testimony you approve of this gentleman having the place?

ORATER: Yes.

COMMISSIONER KAMKAR: Thank you very much.

COMMISSIONER DO: Next speaker please, I will call three additional names. Guadalupe Perez, Martin Moira, and Geraldine Gonzales. Please continue please.

ORATER: My name is Antonio espinosa. I'm wondering why you guys can't give him the permit because you know you have a lot of stores that are like in different areas of San José, Eastside San José. This store is not close to any school like any around schools, you know? You got at least like four schools at least like ten blocks away or other seconds of zip codes around the different areas. This is a store that is you know, it's a grocery store not a liquor store. You don't see no homeless there at night or anything around that area that makes it seem like a bad store. You know my family goes and buys their groceries every day. You know, why drive like five blocks away go to a different store just when you have like a store like across the street from a light just to go buy your groceries that you need? Why waste gas, why -- you even could walk do that store. You know, I have families that, you know, they're nice you know, they -- I go shop, at that store also. First time I went to the store, they didn't sell me no beer or they didn't sell me no beer or tobacco to me. They always check I.D.s. The owners are not going to sell anything to young persons you know just to get whatever they want to do to mess up their lives. I don't see this area like in a bad way. It's in a nice community, you have a restaurant across from the grocery store. You have a pizza, you know, where you have a hairstylist even across, even a wash -- a laundry mat. Me pueblo, like King Road, they sell a lot of beer over there. What's wrong with that? There's nothing wrong with selling beer. You've got to be smart just to give it to the --

COMMISSIONER DO: Your time is up so thank you. Next speaker please, Mr. Perez.

ORATER: Good evening, I try to do my best on my English. I don't understand what is the problem for this guy to try to sell beer or try to growing up his store, it's a nice store. It's close to my office too because I have a space rented in there too. Me and my wife we happy with these guys and everything we don't have any problem they sell the beer or try to you know make extra money because with the groceries and everything it's a nice place clean place and everything. His -- the wife and him he's nice people. A lot of people like the service he's providing and he's providing extra service, we no have any problem about that. I don't understand. And the same that Mr. Espinosa say, the school is so far, there is nothing close to that shopping center there's nothing, I don't understand there's too much problem, he bringing more people to the shopping center, the shopping center is nice, all the people working there is very nice because they actually, I work in there too and I have more than three years, we never have any problems. This is something I can say, and well, we no have any problems. He try to sell I don't know why the around the neighborhood say too much drama with that because anyplace sell beer or whatever, have more big problems. Right here no nothing, is good. And there be good things he check ideas because sometimes I know him in the store he check when he have you know thing you minor, let me check I.D., I see that and everything. I don't know, I have agreement to approve to him, I don't know why the appeal to deny the service. I don't know this is all I have to do and him and his wife, is good person, good customer service this is all can I say, thank you.

COMMISSIONER DO: Thank you, thank you. Martin Monica.

ORATER: Hello, Martin Monica here. I don't live in the area but I work there as a police officer for 18 years so I have a different perspective than what all your studies show, and also we look at the word NIMBY, not in my backyard right? So we have a lot of individuals that the gentleman here yeah put it there, it's going to be good, it is not good. As an officer in that particular area I was involved in murders, domestic violence, rapes, fights, gang fights, if not all the activity was attributed to alcohol. If you put more alcohol in those areas it's going to create the violence. A lot of violence is not reported so you don't get those facts. As an officer I respond out there and I see the devastation of the alcohol and the amount of alcohol establishments compared to when I would work Willow Glen which was different you go to yourself why is that happening? I think if you look at the packet I gave you it also showed some studies that it affects the children, the education. And there's an increase in violence. So the gentleman here that wants to get this in with his -- the people over the store, again I have to go back to the NIMBY, he wouldn't want it in his backyard and I think that's what we have to start to look at for our community, instead of saying why not look at our community protect our children education and look at the violence that it's creating because as an officer out there I'm sure none of you have been identity there where someone has been shot and killed you go to the domestic violence due to the alcohol, it's easy to get to because as the gentleman said I only have to walk a couple of feet, instead of going way over here, that is the problems. I get my six pack, get all drunk and then I beat on my wife. That's what I saw a lot of. Most of these people have not seen it. That's why I bring this to you, we need to slow down and stop this permitting of allowing alcohol to be sold. You might want to go on a ride-along and I remember that stuff out there.

COMMISSIONER DO: Your time is up but there are questions from commissioners, Commissioner Zito.

ORATER: Excuse me?

COMMISSIONER DO: There are questions from the commission.

COMMISSIONER ZITO: Thank you, Mr. Chair. Thank you for your years of service, I appreciate it very much. Let me ask you a general question. I hear what you're saying, alcohol contributes to bad behavior. I went to college, I can attest to that perfectly. Thank God I don't have an autobiography. This is a grocery store, there's been no problems with this particular grocery store. We're focusing on this particular -- tonight our focus is on this particular application, right? If this grocery store doesn't get its liquor license, and somebody doesn't get liquor, they only have to walk a few blocks, feet yards to get the liquor that they want.

ORATER: Exactly.

COMMISSIONER ZITO: What is from your perspective, and I go to shop, I decide I'm Italian, I want a bottle of wine with my dinner, I can't buy it in this store, I'm going to go

to a liquor store, and be enticed by rows and rows and columns and columns of beer and wine when I could just pick a simple bottle of wine? You understand what I'm saying?

ORATER: I am.

COMMISSIONER ZITO: You're putting me from out of the pot into the fire, in my opinion. When all's I wanted was a simple bottle. So from your perspective as a police officer, what's the difference?

ORATER: To answer that I wouldn't have all those liquor stores there that's the problem. In the areas that we're looking at there's a lot more liquor stores in let's say Willow Glen where you have to go a little distance. So I think the analogy is flawed in that the liquor stores there are they shouldn't be there we have too many. And if you put more liquor there he yeah it's a little store they go in and get liquor. The bottom line is it permits them to be able to purchase without having to walk a couple feet. Those other ones are like 100 feet away from each other, to me I would close those down.

COMMISSIONER ZITO: I don't disagree in that sense, right?

ORATER: Right.

COMMISSIONER ZITO: I haven't been to everywhere grocery store in Willow Glen but I would venture a guess that probably everybody would want it probably has a class 20 license. My point is that in Willow Glen my guess is that pretty much every grocery store has a class 20 license and we don't see a problem.

ORATER: But if you look at the amount of locations with the alcohol, if you go to Willow Glen and do the spot map, pin map, do you it over here in the Eastside you're going to see a tremendous difference. That's the issue. If we keep putting more and more and making excuses, it's a nice little grocery store they're going to have food and this and that. Then what you do is permit the sales of it, again, NIMBY, not in my backyard, but over there they can, because we can get the revenue for the city, and really we don't care about the children, because they are affected. That's what I'm saying, there's too much over there, and as you keep giving more and more with the analogies that well, it's a nice little store it's clean like the other gentleman said. Yeah, I've been in clean stores where there's been a lot of violence because of in that area with the alcohol. What I'm looking at is in the studies that I presented to you and there's a lot I could give you a thousand pages but we have to look at what alcohol is doing to our community. It affects us where we have to rehabilitate people. If you've ever been like I say when I go to domestic violence and before they had domestic violence laws it was horrible. Now we can go with what we call 273-5, we can go in and you have gentlemen, I call them gentlemen because I'm being nice. They will attack women, because they have been drinking. I had a woman that was stabbed in her butt, because she was talking to the husband's brother and he didn't get permission. And it was all because they were drinking. And the other one right down the street, he cut all the fingers off a friend, because he was mad at him.

So the more alcohol is put there, the more of the gas going on the fire, that's what I look at.

COMMISSIONER DO: Has your question been answered?

COMMISSIONER ZITO: More than.

ORATER: Sorry.

COMMISSIONER DO: Additional questions, Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. Like Commissioner Zito, I understand your point of view. And I agree with it. The part that I'm having trouble with is, how do you connect that to operators? You know, I mean you could get the same liquor from 7Eleven from Safeway from lucky, you know you haven't connected it to them in my mind.

ORATER: No but it's that --

COMMISSIONER KAMKAR: So I understand what you're getting at and you know, I just -- to be honest with you not convinced, not giving it to them will make such a big difference. Especially in our packet, I assume that's correct, when they do the study as to how close and the overconcentration, the San José police department opinion is it's not overconcentrated and they are neutral, which to us means, they're in support of them getting the permit.

ORATER: And I agree --

COMMISSIONER DO: Excuse me sir, I'm not sure that's necessarily a question. You're making a statement.

COMMISSIONER KAMKAR: I'm asking for his opinion.

COMMISSIONER DO: I just want to remind the commission we do have quite a few cards.

COMMISSIONER KAMKAR: I would like the question answered please.

COMMISSIONER DO: Yes, go ahead Mr. Monica.

ORATER: On the police being neutral I am concerned about their lack of responding. When I read the report by the junior officer that he doesn't work or has not worked to the extent that I did out here. He did not respond to calls that I have. And that's why they're being neutral, they're going on recommendation from what I see a junior officer and the chief's going along with that report. I know the chief, I meet with him once a month. And he can't do everything. That's why he gives it out like the committee members here

do. As far as him being neutral, I was pretty upset that they should take either yes, no, because as a police officer we respond in that area to a lot of calls and even if it's not you know given to us we see stuff happen and then we respond and put it out, drunk drivers, fights, all this stuff that goes on. It happens later on in the evening. I usually work swings or midnights and on weekends and I work the Eastside probably 15 years out of my 18 that I was here. So as far as them being neutral I was concerned about that and I was going to even talk to the chief but he had some meetings and couldn't get with me. But I'll see him Friday at another meeting and I'll bring that up to them of why they didn't take a stand when they should. Because they see the violence.

COMMISSIONER DO: Thank you for your questions, thank you for your answer. Commissioner Kamkar is that all? Okay Commissioner Jensen.

COMMISSIONER JENSEN: Thank you chief Monica I'd also like to thank you for your years of service.

ORATER: Thank you.

COMMISSIONER JENSEN: And I'm really struggling with this one because I completely understand what you're talking about with respect to density and how alcohol sales are targeted particularly in low income communities and communities of color so I understand exactly what you're saying. My challenge is that the guidelines that we're provided with, which have changed significantly since we fought, not a grocery store but a liquor store in my neighborhood when the guidelines were strictly by precincts. And with precincts of course you can have liquor stores directly across from each other. And they've changed within a geographic radius. There is no concentration within that radius it's a thousand feet. There are no alcohol sales outlets within a thousand feet of here. So how do we justify having different rules for different communities if this were in some other community and there were no alcohol sales within a thousand feet, and it had an SNI, and it didn't have the violence, as is stated in the staff report? We would automatically give a grocery store the ability to have 10% of their floor space dedicated to the sale of alcohol. So I'm really struggling with this one. And I'd like some guidance from you on how we can justify making that decision.

ORATER: Well, you know I look at it in this respect. We make these policies and rules, and they -- and that's what they are and they can't be changed. You have to look at really what is going on. If we say a thousand and I'm a thousand and one feet away you kind of look at it and go is that going to be a proper policy to support the families? I think what we need to look at and I'm going to talk to some of the council people they need to readdress the policy and make it more of a community type of support. I think that they - - we need to stop just throwing the things out and using the idea that it's just a little grocery store. Where I live for example in Santa Clara, I have to drive like four miles, five miles to the grocery store. I don't have to walk across the street and get the alcohol and I don't mind driving. And that's what a majority of the people here would see is where we have something that's not all these different ones around you know a thousand feet or a thousand five hundred but ones that are further away from our children. Again,

we need to look at revamping the policy. I know the gentleman from the other side will read the information from the policy and use that as a way just like attorneys do to get their point across and win it. But on the other hand, when we have to look at families' lives we need to start looking at do we change things and also for other communities. For anyone in San José we have to look at those type of issues. If you have so many liquor stores right there, you're not going to have it in other areas and if you try to do that like in your own area you're going to fight it. So it's like this. There was a gentleman that did some research on butterflies and just by the fluttering of the butterflies, it changed the environment. So little things can affect the environment tremendously. And that's the same type of thing. We put one here, okay, it's all right. You go to the next one and then what you do is you create, you'll see later on when you have, let's say, a child murdered, where did it all go, oops, sorry, but how about the family and the community, all over for the sale of alcohol. I think we need to start looking more impassionately.

COMMISSIONER JENSEN: Thank you, chief.

COMMISSIONER DO: Thank you sir. Next speaker, Veronese Gonzales. I'll call the next three speakers, Iris Powell, Alofa Talivaa, and Christina Duarte. Please proceed.

ORATER: My name is Veronese Gonzales and I'm here in hopes that you would deny the offsale of alcohol and especially in the Latino community. Two blocks away, where the site of the convenience store is they have two liquor stores so like the gentleman said you know if you can walk two blocks you know to get some alcohol how come not walk two more blocks to get some alcohol so I think you should deny it because you already have two more less than the end of the cross street at Alum Rock. Thank you.

COMMISSIONER DO: Thank you. Next speaker, please. Iris Powell.

ORATER: Thank you. And thank you councilmen for all listening to us today. This is generally costing us time and money and city resources just to hear you'll these arguments pro and con for this alcohol license. And having another store, grocery, it's a grocery store, it should be a community, it's giving a lot of help to the community by giving us fresh vegetables and food for our families. And I think they're just worried about the psychological impact of seeing a visible, yet another alcoholic beverage easily accessible to the community. It's more just -- everybody's worried about yet another way for alcohol advertisement to be incorporated in our day-to-day lives if we just go into a grocery store and we just see next to Kellogg's you can see Budweiser. Next to our Vitas we can get a malt beer or something. And if this grocery store really needs the revenue, it really needs money from alcohol, the sales to keep their doors open, if they're that desperate for this money then as a community member I'll be happy to go in that store and purchase more often any of their goods. And nonalcoholic goods in order to keep their business going. I'm happy to do that. And I just want to support our community, to bring up their community image, and reducing the amount of availability that the alcohol sales would kind of lead to. You can't directly correlate that this Budweiser in the freezer will automatically regard this to crime but it's just physically -- that's it.

COMMISSIONER DO: Ma'am your time is up. Thank you. Next speaker, please?

ORATER: Good evening, Planning Commissioners, Alofa Talivaa, representing the Sierra neighborhood association. And we are here time and time again because of this alcohol issue. We are here because we are taking it very, very serious. You know, the business of alcohol, we are so saturated with alcohol, on the Eastside. Last night, at the councilmembers meeting, they denied two offsale alcohol, because why? Because we're so saturated with alcohol. We have a councilmember that out of his mouth he said, we have a 1668 liquor stores here in San José. It's way too much. And Commissioner Zito, you are asking one of the persons here for the wine and beer. Right across the store there is a taqueria that is purchasing beer and wine. I can go to the taqueria and purchase wine and beer. I have picture here of Wino and people homeless, they pass out right by the store. Me and the person who help me clean the graffiti, we go there and clean the graffiti and they pass out right here. I have the pictures here to prove it. The first time, last time I give the picture, I missing many of them please if you do, I need the picture back I'm missing. She's been intimidated, harassed and trespassing to her house. That's she is very afraid to be here because of the harassment from the applicant. The applicant was never shown up in those community meetings. It was just the representatives that he show up in those meetings. The applicant was never there. And the second meeting we have here, he stand over here and not telling the truth, he was never here.

COMMISSIONER DO: Ma'am –

ORATER: It was only me and a couple of my members were here the applicant was never here.

COMMISSIONER DO: Thank you, your time is up. Next applicant Christina Duarte. I'll call the next numbers. (saying names) please come down to the bottom of the stairs. Please proceed.

ORATER: Hi, my name is Christina. Please vote no for offsale of alcohol. We are the future of this great city. If you don't listen to us, who are you going to listen to? Please do not allow this to happen. No more alcohol in my neighborhood. Vote no, please, more after-school programs for us, thank you.

COMMISSIONER DO: Thank you.

[applause]

COMMISSIONER DO: Next speaker, please, Lita Bereras.

ORATER: I'm Lita Bereras good evening everybody. I live in the Sierra neighborhood association. I'm just scared where are they going to put the liquor to sell? I've been there for almost 30 years in that place and I love that place. And Alofa is the president of the association. They have been so good to help us to clean up that community. And what I object to have is to -- not to have any more liquor in our place, because we have already

three liquor store that has been standing up there. We need a neat and clean-up community in our association. Thank you.

COMMISSIONER DO: Thank you.

ORATER: Good evening, my name is Alma Redondo and I'm a resident of District 5. Current formulas that are being used to determine alcohol licensing are having detrimental effects on our racial, ethnic minority communities in District 5. Research has been noted here by other speakers, and by some of the commissioners, and I also have some research that I would like to speak about, and also, probably hand over to you, so you'll have a chance to look at it also. Research shows that low income minority communities have a disproportionate concentration of alcohol outlets. One research study entitled alcohol availability and target advertisement -- advertising in racial ethnic minority communities, points out that the violent arrest rate for Latino youth ages 15 to 24 is significantly and positively linked to the number of alcohol outlets. Alcohol availability affects the level of violence in a community. A second research entitled racial ethnic composition social disorganization and offsite availability determines that socioeconomic status, that is, being poor and residential instability predicts alcohol availability. Some of the public policy being made in regards to alcohol licensing is harming our community. We should not be making public policy using 500 feet, thousand feet measures when the decisions affect the whole racial, ethnic community. As residents and homeowners in District 5 we are constantly working against an onslaught of businesses with liquor licenses. We are also dealing with gangs youth violence high dropout rates our community is in a constant battle against crime, blight and violence. We need public policies that support our neighborhood and our communities. And we need these public policies to do no harm. Thank you.

COMMISSIONER DO: Thank you, ma'am. There are questions. Ma'am, please stay. Please stay. Commissioner Platten has questions for you.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. Ma'am if you don't know I'll ask staff. Do you have any concept how many liquor stores as a percentage exist in District 5 compared to the rest of the city?

ORATER: I don't know the percentages. All I know is every time I drive every block I find one.

COMMISSIONER PLATTEN: We'll pose that question to staff, thank you ma'am.

ORATER: Thank you.

COMMISSIONER DO: Next speaker please Mr. Juarez, I'll call two more names, Art Calderon and Arthur Reuben.

ORATER: Good evening, commissioners, I'm a member of the K.O.N.A. NAC, the SNI group and we are part of the Tropicana area which had a number of problems with

alcohol related licenses being issued and we're still fighting that. I just want to be here as a support person for the District 5, we are all the Eastside. I want you consider exactly what the previous speaker has said. I've been in this valley for 55 years now and have watched much heartache and sadness, including my own self. My father was a alcoholic, died of cirrhosis, it is a horrible thing. In relationship to this particular store, I don't think anybody is really in contention with this store making money. But if you look at the one-mile radius of anyplace that adds to the number of places that sell alcohol, and if you check your census information, Mr. Platten, you will see that the concentration of alcohol is high. If you break it down separately, it really doesn't give a good picture. In our district, in district 7 we had over 120, 130 licenses within a one mile radius. So I'm just here in support of the -- the east valley 680 SNI. We say enough is enough. It's not about the particular store not make enough money. It's a matter of if you let another one then another one then another one come then it never stops. Thank you.

COMMISSIONER DO: Thank you. Art Calderon. Please come down and the next speaker, the following this speaker is Eric Reuben. Please come down as well. Please proceed.

ORATER: Wow.

COMMISSIONER DO: Please Thank you, Mr. Chair.

ORATER: Yes, good evening. My name is Art Calderon. I'm here to address my concerns. I am a board of director for the Mayfair NAC and also the Sierra NAC and also for the K.O.N.A. I'm very concerned about what is happening in our neighborhoods East of 101. We generate over 60% of the tax revenues for our government. We pay taxes. We pay taxes for our government to function. And we are the hardworking people. I also want to tell you we're over saturated with liquor stores. Last night I did attend the meeting. There are over 1,000 stores that provide liquor for our city. Now, compare liquor to a weapon at home. A gun. Why would you have a gun at home? A kid can consume it, it's accessible to kids. We just don't need any more alcohol. Now alcohol just creates more violence, a lot of dropouts in school. A lot of problems. Now, you know, we don't say no to the applicants, to continue functioning the way he is, the idea here, he should turn his ideas around and try to grow with the neighborhood. You know, we have most families are over 4 in the family. And I am very concerned. I invest my kids to go to school in this area. Why? Because this is San José. We should not say East San José is oversaturated, that is a down side, that's the bad side. This is home. We are parents. I was a son, I am a parent, I still am a son and I hope to be a grand parent.

COMMISSIONER DO: Sir, your time is up.

ORATER: Any questions?

COMMISSIONER DO: There are no questions.

ORATER: I got my point over good? Very good.

COMMISSIONER DO: Last speaker, Eric Reuben. You have up to two minutes. Please Thank you, Mr. Chair.

ORATER: Buenos tardes.

[Spanish]

ORATER: Good evening, my name is Eric. On the 2nd of February a paper came to the store owners, and he's been an employee at the store for nine years. The paper had Mrs. Diaz's name on it. They asked her to come to the store. She came to the store, she said that's my name, that's not my handwriting, not my signature, that this is not real. The next day we went to her house and she showed us her I.D. At that point, Alofa talked to Mrs. Diaz and screamed at her not to talk to these people. And that is all. Thank you.

COMMISSIONER DO: Thank you, thank you very much.

ORATER: Thank you.

COMMISSIONER DO: Is the -- the appellant is still not here, I take it. Is the applicant here? The applicant, you have up to five minutes to rebut any point. And to provide Commissioner Kamkar with information, if you have found that.

ORATER: Yes, thank you. Commissioner Kamkar, I've read through both the ABC conditions, and the San José documentation with respect to the permit. There is no specific restriction upon the size or quantity of the beverages to be sold. The store owner, I spoke with the applicant. And he will be selling in terms of cans, no -- nothing less than a six-pack. 12-packs, those sorts of things. He does intend to be selling 24 ounce bottles. But in terms of -- I think you're referring to the 12 ounce or 16 ounce single cans, those will not be sold. But again, there is nothing in the permit nor in the ABC conditions as proposed that restricts that. And I would like to address a few of the points. Ms. Talivaa made reference to last night's city council meeting. I watched that with interest myself. One thing that she neglected to tell you though was that at least two councilpeople did say, to the applicant who was trying to put a 21 license in over off of Branham and Camden, that if you were a store, a grocery store, selling fresh meats and produce, we would give you different consideration. Those remarks were made last night. And so there is a different attitude, and there is a different perspective to be considered here. Commissioner Jensen, you made reference to these thousand-foot guidelines. Many of the people in opposition really are inviting you to ignore those guidelines. Those guidelines exist because of a lot of study, a lot of thought, have gone into that. Staff deals with this all the time. I work with liquor license services. We deal with this all the time whether this is San José or San Mateo or San Francisco we deal with these issues. San José is very restrictive, I'll tell you that, very restrictive. And for the gentleman who said it's another one and another one and another one, those times are gone. Last night, the city council rejected every applicant who came before it wanting a liquor license. Every applicant was rejected. As this commission well knows many applicants come

before you and what do you have to do? Mandatory denial. Mandatory denial. You couldn't give it to them if you wanted to. Those rules did not use to exist. So do not discard the rules that exist. Businesses evaluate those rules. They come to us for consultation. We tell them, this is what you're faced with. This particular store meets every guideline. No offsale retail within a thousand feet. People are up here talking about a block or two. I really don't know where those stores are. They're certainly not within a thousand feet. That's already been reviewed and established. So I think what's important here, and I respect every person who opposes this applicant tonight, I respect their opinion. It is an emotional issue, emotion enters into it. But for this commission, there are guidelines, there are facts. A lot of people are talking about this study and that study. And someone was here from district 7 and having gone to the community meetings and having experienced a back and forth unfortunately the community meetings here were either one way or the other. There's no room for compromise with the opponents here. They have only one request. No more liquor licenses anywhere. Whether it's 999 feet or 9,999 feet, no more licenses. That is contrary to what the city has done through its study, through its deliberations. I invite the opponents if you want that changed, speak to the councilmember. Go to the appropriate body of the city, and try and get those things reevaluated. But that's not our function tonight. Our function tonight is to evaluate this applicant under the guidelines. The final comment, the police are neutral. I don't know if they were disparaging remarks or not to the, quote, junior officer. I don't know how that can speak to that particular officer's experience whether he did it on a whim, I doubt it, again I doubt it and I bet think there is a bit of hyperbole or exaggeration going on here. I don't think the city or the police department just says, let's send those two out neutral and the last two were opposed.

COMMISSIONER DO: Your time is up, so thank you very much for your comment. Is there a motion to close public? All in favor? So public hearing is closed. Commissioner Cahan. Actually, let staff have an opportunity to respond to any of the points made and particularly, to clarify the issue of how many liquor stores are there around in that neighborhood and whether you know some of the comments were -- counsel, please.

ORATER: Well, just one particular clarification that you do not have a public convenience or necessity determination in front of you which is what you would have if there was an overconcentration of venues in the area or high crime index. So I believe you have in your packet the memorandum from the police department that neither one of those factors is present. So while I do hear the testimony in District 5 generally I do want to note for the commission that you do not have an overconcentration determination to make here.

COMMISSIONER DO: Thank you, counsel. Thank you, staff.

ORATER: Thank you, Mr. Chair. In response to Commissioner Platten's comments about alcohol establishments in District 5 as compared to other areas, we don't have that information here tonight. I'm sure that information probably could be obtained but it's not really relevant to the policies that have been put forth to us in terms of how we are to evaluate offsale proposals. The proposals have -- the manner in which we provide our

analysis has changed over the years. And the policies have changed from time to time and currently the policy is to evaluate the proposal based on overconcentration with respect to other such establishments within the same census tract and whether or not those are overconcentrated or whether or not there is high crime. This commission has seen many proposals over the years, almost on just about every agenda in different parts of town and a lot of them that come through some of overconcentrated some are not. And in this particular case the criteria that we have to evaluate this on is that it is not overconcentrated, it is not high crime, and while there maybe and there certainly are census tract districts within district 5, that don't meet that qualification, staff doesn't feel that it's really appropriate to try to change the criteria in which we base this proposal on. That said, we do take into consideration the type of business this is, and from staff's perspective the fact is that this is a grocery store that sells fresh produce and meat does make a difference. It's not a liquor store and we want to make sure that this particular business is given the same opportunities that other grocery stores are that are able to provide similar types of products and also have the ability to sell alcohol.

COMMISSIONER DO: Thank you. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I wanted to take the opportunity to speak to the audience and you thank you all for coming out on both sides and especially those of you who we consider young and being involved in the process is really important. And bringing your children out here to speak, we have children who spoke for, and against, and only one side will prevail but I want you all to know that this is extremely important to be involved in the process. And we have lots of public members who come out and comment on things. And we don't always have as many young people involved. And I thank you all for bringing your youth out here, to know how to be involved in the process, how to make a difference in your community. And I enjoy hearing the young children in the audience, so thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Question to staff. One of the criteria that I read in the staff report, and these are part of the findings that I believe we have to make, is that you cannot have a resident within 150 feet of the venue that is applying for license. Did you take into account the duplex on -- or the set of duplexes that are on South capitol avenue and did you measure -- or how did you measure that? Did you measure from door to door or from property line to property line?

ORATER: We typically measure from the use itself in other words the building that contains the tenant space that has the proposed offsale establishment from the business. And I do want to point out that a number of projects that come forth will have both as most conditions a conditional use permit, this happened to be a planned development amendment. A lot of times this will be a conditional use permit and a determination of public convenience and necessity. There are two sets of findings that are different for both. Both identify a number of 150 feet, but the context of which that finding is presented is different. In the context of the general alcohol findings which are required as

part of the conditional use permit, and also part of the planned development permit amendment talk about if the use is within 150 feet of a residence, is the use that's proposing to do the offsale situated or oriented in such a way that it's not going to have a direct impact. Which is arguably subjective. In the case of a situation where we have findings related to a public convenience or necessity there's also a 150 foot number in there too but in that case there provides no flexibility at all to taking into consideration whether or not that use is, you know, backing up to the site and or directly across the street or along the side and so the findings are much more absolute and in that case, if a residence is within 150 feet doesn't matter how the orientation is it could be a mile and a half walking around a sound wall to get to it it would still not qualify. So in this case that's not the relevant find that is we need to make. So the fact that it is directly within 150 feet really isn't the issue. The issue tonight is is it oriented in such a way where it would cause a negative impact or not.

COMMISSIONER CAMPOS: So how did you make the determination that it was not oriented in such a way?

ORATER: We made the determination such the fact that the front doors do not orient directly towards capitol avenue they orient actually to the small restaurant that's within the shopping center. There aren't doors directly facing capitol avenue. Even though duplex next door has direct access to capitol avenue, it's not facing it, it's faced sort of 90 degrees different direction, albeit it, it is on the end of the shopping center. But we felt that its orientation was really more towards the shopping center and not the capitol avenue, and that the difference from our perspective.

COMMISSIONER CAMPOS: So then we can come up with our own perspective that it is just as easy to walk out the front door of this duplex, walk down the block, and actually there is a picture that shows the duplex and I believe the store is probably right here that you can walk out that door, walk into the market and you can make the argument that's pretty convenient. We are free to make that conclusion, is that correct counsel?

ORATER: Thank you. Yes, I mean you have the testimony before you. And that's one of the findings you need to make. So as long as you can connect the dots and have your analysis set forth.

COMMISSIONER CAMPOS: Okay, thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I wonder if we have any record at all that this particular market or purveyor has got any code enforcement violations, any complaints specifically regarding graffiti or illicit behavior around their site or anything along those lines?

ORATER: Staff found that there was no active code enforcement cases on this when the application was filed and we conducted our analysis.

COMMISSIONER ZITO: Do we know how long this applicant, if you don't have the answer maybe the applicant could give us a very quick answer, how long the applicant has owned and operate they had facility?

ORATER: I don't have that information.

COMMISSIONER ZITO: Maybe two years? Two years is what I'm hearing from the applicant. Okay. I want to make a couple of statements to the community as well. I want to thank you all for coming out here. And I absolutely understand what the community is trying to say here. I agree that we need to protect our community, we need to look out for our neighbors and our friends, and try to essentially mitigate any of the temptations that exist. However I've got to weigh that against what's being asked of us tonight. This is a specific application for a specific business. And they're asking to be competitive and to allow the convenience for their customers to buy beer and wine. Not hard liquor. And what I'm also hearing from the community is, and I could understand why they're saying this but they're saying we don't want any more alcohol outlets in district 5 and probably in any other district that has got similar problems. And that would basically say to me that for every other business that comes before us, that we need to say no to them. And I just can't sit here and do that. It's just not possible for me to say that. We have specific guidelines we have to follow. And to me, I can't see how I could single out this particular applicant and tell them that they can't run their business in a legal manner and be competitive. I do believe that there are issues that district 5 may have. However I think if anybody came before us and said, you know, we don't want district 5 to have a particular business because that will contribute to bad behavior in District 5, people would be up in arms and say that's discriminatory. Why are you saying that we can't have that business because you think that we have a problem. And so the reverse has to be taken in consideration as well. What I see here is a business that's trying to make a go in this hard economic time of making a dollar. And what I see is a community that has a very legitimate and serious concern. I think that the concern needs to be addressed. And I do agree that if it's so bad in the city that there's too much alcohol available, that we all need to and I'd be there with you, to come and petition city council to change the rules, to change the amount of outlets that can be available within specific radiuses and so on. But that's not, we don't have those rules today. And for that reason, Mr. Chair, I'm ready to make a motion.

COMMISSIONER DO: Please do.

COMMISSIONER ZITO: And my motion is that we do Uphold the director's decision to approve a planned development permit amendment to allow offsale of alcoholic beverages at an existing retail store on a 1.72 gross acre site in the A(PD) planned development zoning district as recommended by staff.

COMMISSIONER DO: There's a motion. Is there a second? There's a motion and there's a second. Would you like to speak additionally on the motion?

COMMISSIONER ZITO: Again, my concern is I've read the police report, and we've read many police reports especially for downtown businesses and we've seen where there's been overconcentration and excessive crime and so on. Here I read the police report, and it says that not only is it not 20% above average it's actually below the city average in crime. I also see that in 19 -- in 2005, they're onsale was seven sites and offsale was four sites. Now in 2008 onsale is five sites and offsale is three sites so it actually has dropped so we're not seeing an increase in availability we're seeing a decrease in availability and I think that's great. But in this particular case I can't see how we can deny it given the criteria that we have to use.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I also would like to thank the community who all came out and especially the young lady who came out and spoke in opposition. Yes, you. I know it takes a lot of courage to get up and speak and you did a very, very nice job doing it and I expect we will see you up here before too long. I think we also need to take into account the health of the community. And as Mrs. Arrendez and Chief Monica pointed out, low income communities and communities of color are specifically targeted for the sale of alcohol and other addictive substances. Having these facilities within a two-block area is a challenge for the community. And I heard very clearly, if the community had come out and had said, you know, we love this full-service grocery store, we all want to shop there all the time, and that's where we want to pick up, you know, the bottle of wine or a six-pack you know for dinner, that would be one thing. But the community was very clear that they have plenty of places to purchase alcohol and they're still very happy to go grocery shopping at the store. So for those reasons I will not be able to support the motion.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I too will not be supporting the motion. For a number of reasons. But I do want to point out that I don't believe we can make the findings. You know, and I just you know, I was through my line of questioning with staff, you know, it's my opinion that the property on capitol avenue is not situated in a way where it's going to deter someone from walking out and making it that much more easy to get to this store. Now, with that said, we empowered our SNIs for a very specific reason. And it's for the SNIs to give us feedback. I think there's a reason why the Sierra neighborhood has a lower -- has lower instances of crime. It's because they've been working hard to make sure that that's happened. I think that the fact that we not only have the Sierra neighborhood association but other NACs and SNI groups coming out here supporting each other and giving their opinion that, you know, maybe in other areas, we might come up with the different opinion, and there are instances where that's happened, and I'll point to the Region market. You had the Mayfair market that actually got NAC members to come out and say, you know what, this is a need in our community. Although the commission had to do an automatic denial, they actually said you know what, we want this. That's good feedback because we rely on you to give us that kind of feedback. And so I think that if we're going to be able to -- if we're going to ask for you

to get involved, take care of your neighborhood, support your community and support your neighborhood businesses then we should also be able to take the information that you give us, so we can make good, responsible decisions. And I think that we should be sending you away tonight feeling that you've made a difference. And so I've got a number of reasons why, also, I don't support the motion, but I'll stop there so thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I agree with my fellow Commissioner Campos that the findings are not there. Looking at the map of the residential location, and additionally a photograph supplied to us. There's the house, there's a residence right there. So I cannot support the staff's recommendation. And also, hearing the community coming out and asking us not to allow this to occur, sometimes communities members come out and they ask us not to support something. And I have voted the other way because I believe that it is a betterment for our city as a whole. This is not one of those cases. An additional alcoholic beverage sale in a community that's asking us not to put it there is not going to improve our city as a whole.

COMMISSIONER DO: Thank you, Commissioner Cahan. Just a brief remark from me. Which is that I also -- this is a big struggle for me. I -- it's a difficult decision to make one way or the other. But I think that in the end I think that a neighborhood grocery store is basically a community service. And it should provide the kind of services that is welcomed in the community rather than something that we can force onto a community. So I think that, you know, I am sympathetic to the argument on both sides but at the end of the day, I think it's like what Commissioner Cahan said, it's an issue that comes down to the community. And it's not about the larger city or any larger planning issues or anything like that. And so for that reason, I cannot support the motion also. So there are no further comments, so let's vote by light. So the motion is defeated with Commissioner Zito and Kamkar voting in favor, and Do, Jensen, Campos and Platten opposed. So we're back to is there an alternate motion? Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I move that we deny the director's recommendation and support the appeal to deny this application.

COMMISSIONER CAHAN: Second.

COMMISSIONER DO: There's a motion, there's a second. Would you wish to speak on your motion?

COMMISSIONER CAMPOS: No, I think I spoke already.

COMMISSIONER DO: There are no -- counsel.

ORATER: For purposes of drafting the resolution to memorialize the decisions of the council, put that in the motion for commission to vote on it so it can be reflected in the resolution.

COMMISSIONER CAMPOS: Thank you, counsel. I don't think we can make the findings. I see the parcel map here and the nearest property I believe is within 150 feet of the property. So with that, I don't think we can make that finding with -- for the C.U.P. In addition, just from the testimony, that we have received from the community, the neighborhood association and also the other SNI groups, that they are giving us a lot of feedback as to how to support them in their efforts. I think when you look at some of the top ten list of our SNIs, they're talking about public safety, they talk about supporting our kids getting out of gangs, along with the bricks and mortar type issues that they want to see addressed in their top tens, I think this fits right in there and I think we need to listen to our SNI group. But mostly it's I don't think we can make the findings.

ORATER: And again in connection with the finding that you're discussing as noted I believe it was by Mr. Enderby, in this particular instance, it's really the orientation of the building as opposed to the strict 150 feet. You did note the residential properties within 150 feet but it would be helpful if you also addressed the orientation issue.

COMMISSIONER CAMPOS: Yes, given that the orientation of the duplex faces East on capitol avenue, I believe that it creates an unnecessary convenience, just to walk out from that front door, and just walk a few feet down the sidewalk, and walk into this market which is facing, would that be south of the property. I think that's enough for me to believe that the orientation of the two properties is -- doesn't fit in terms of being able to make those findings -- the findings to override a decision. If that makes sense.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Zito. Do you have remarks?

COMMISSIONER ZITO: Yeah. I was also trying to figure out what findings that we couldn't find. And unfortunately I with all due respect I can't connect the dots on that particular finding. Staff makes it very clear that this is -- this particular site is within 150 feet of a residentially zoned property and that is allowed within the guidelines. So I'm struggling with it as well and again, this is a grocery store. That's only allowing 10% or less of its square footage that's going to be selling just beer and wine. So for that reason I can't see how the findings can't be made and I don't understand how we could oppose it.

COMMISSIONER DO: Counsel, there's a motion and it's been passed already. Is the finding adequate or is there room, should we be debating on the findings?

ORATER: Well, what I'm hearing again, if the motion ends up passing, is that there is a commissioner who is saying as a part of the motion to uphold the appeal and to overturn the director's decision that he believes the proposed use is oriented not away from the residential uses but oriented in a way that is convenient to the residential uses and is not adequately separated from the residential uses. And explained why he felt that way.

COMMISSIONER CAMPOS: That is correct.

COMMISSIONER DO: This is a finding it's a subjective finding. I mean Mr. Enderby says there's a greatly measurement of subjectivity to the finding so staff makes one -- staff has one opinion and some different commissioners have a different funny. Anyway, there's a motion and it's been passed. Commissioner Jensen would you like to --

COMMISSIONER JENSEN: Yes, thank you, Mr. Chair. To add to Commissioner Campos's findings since we are taking into consideration the top ten of the NAC and the health and welfare of the community, although finding 2, A, B and C are stated to be irrelevant in this case due to the proximity of other alcohol related sales facilities. I believe they are actually relevant to this particular issue in that an overconcentration within a larger community would adversely affect the peace, health, safety morals or welfare of persons residing or working in the surrounding area and impair the ability or value of property of other persons located in the vicinity of the area and be detrimental to the Public Health, safety and welfare. And we were presented with information both by chief Monica and Mrs. Arrendez this evening that documents that very information that has been presented in studies that are nationally recognized studies.

COMMISSIONER DO: Director.

ORATER: And so I'm believing that the staff will need to go back and revise the resolution. The commission would take its action this evening but staff would need to go back and memorialize the commission's decision on a new resolution that would be brought back on the consent calendar, not to open the public hearing again but just for the commission to confirm that the memorialization of the commission's action is accurate.

COMMISSIONER DO: Thank you, counsel. So moving on to --

ORATER: Right, there's only a motion, and I don't know if it's been seconded but the reason the motion became so lengthy was because to embed within the motion how the commission is linking the dots in terms of not believing it cannot make the findings.

COMMISSIONER DO: Okay.

ORATER: I don't know if there was a second.

COMMISSIONER DO: There was a second.

ORATER: I did hear the motion.

COMMISSIONER DO: I apologize, I was confused between the first motion and the second motion. Commissioner Campos --

ORATER: So commissioner Campos made the initial motion and began explaining the rationale. Commissioner Jensen I believe is making a friendly amendment to add additional rationale.

COMMISSIONER DO: So -- okay, so let's vote by lights. So the motion is passed with commissioners Do, Jensen, Campos, Platten, and Cahan in support and Commissioners Zito and Kamkar opposed.

ORATER: So if I can just clarify, probably, you know, for the persons who may be interested, again, the actual resolution to be adopted would be drafted by the planning division staff, in light of the decision of the Commission, and will be brought back for actual adoption by the commission. But again, that hearing is not a public hearing on the item. That decision has just been made. Those are typically on consent calendar to be honest, they're not a separate public hearing, will only be did staff accurately memorialize what just occurred.

COMMISSIONER DO: Thank you counsel. Moving on to item 3B. CP07-053. Conditional use permit to legalize an expansion of a legal nonconforming guest house to include up to 27 guest rooms on a .29 gross acre site in the R-M multiple residence zoning district located at the southeast corner of East St. John street and north fifth street. Staff.

ORATER: Thank you, Mr. Chair. This is a conditional use permit to legalize an expansion of two legal nonconforming guest houses to include up to 27 guest rooms on a 2.9 acre site. Project is exempt from environmental review. Staff recommends approval of the project with standard conditions as discussed in the staff report, in addition to special conditions which have been identified, but staff would like to make one addition to that which is identified in the draft resolution that you include, that has been provided with the packet. Under -- on page 5 of the draft resolution, there's a condition for a permit adjustment to be provided within 60 days of the issuance of this permit should the Planning Commission approve this conditional use permit and that would include some clarifications to the plans to fix the room numbering to also make sure that the number ever guest rooms in building 1 is properly identified also to make sure that each guest room has no more than one doorway entrance. Some of them have two and may be too easily to convert back into two different units. But staff would actually like to add one additional item to that list that's not in the staff resolution. That would be to include front and side exterior elevation shall be photodocumented on the plans and appropriate covered windows should be compatibly repaired or replaced to the satisfaction of the director of planning. There are no elevations in the plan set and staff feels it is important to have at least photographs in plan form to identify memorialize what the existing elevations are with respect to windows, sizes and shapes and locations and so forth. This concludes the staff report.

COMMISSIONER DO: Thank you. Is the applicant here? Please come to the podium and you have up to five minutes. Please state your name.

ORATER: Thank you chairman and members of the staff and commission. My name is Jeffrey Hair and I'm here on behalf of the applicant tonight and I'll hopefully be able to answer any questions you may have. Staff report does an excellent job of summarizing the history. Property has been involved with this particular land use since 1929. Guest

house the city has determined that the guest house use here actually predates the city's zoning ordinance. And the owners currently purchased it 18 years ago in 1992 and at that time, it had 33 rooms when they purchased it. Since that time, they've been working with code enforcement on and off with various issues. These are very old buildings. They have always cooperated with the code enforcement. At one point the city redevelopment agency sent them a letter said they were going to acquire the properties. That process halted. They continued on with the issues. This is probably one of the most inspected buildings in the city. I've accompanied city staff, fire officials, planning officials, planning staff redevelopment agency staff through this building on personally several times. In 2007, the city made a determination, a letter that -- as to the legal nonconforming status of that building and the recommendation following that letter was to come here and apply for the conditional use permit. So that is why we are here tonight on this land use matter to get the conditional use permit. Actually, in this point from the time they purchased the property reducing the number of rooms from 33 down to 27, and with respect to all the conditions that were in the staff report, the applicant is in full agreement with all of those conditions and will continue to strive to meet every single one of them. Any questions?

COMMISSIONER DO: Yes, there are questions from Commissioner Jensen, please.

COMMISSIONER JENSEN: Thank you, thank you, Mr. Hair. Can you tell me, in the staff report, in calculating the parking needs, it makes reference to in the existing use there are 16 guest rooms plus one three bedroom apartment and in the proposed use it lists 27 guest rooms but no three bedroom apartment. Is the applicant planning on eliminating the use of the three bedroom apartment or converting it?

ORATER: As you know one of the things in the staff report as a condition is that the apartment as it were, is eliminated. The rooms, as they are drawn on the plans that are before you, there is no apartment there, there really hasn't been an apartment use in there for some time. But the -- there is the apartment elimination as a paper condition will be eliminated as part of the C.U.P. process. It was authorized by the city back in 1996 and was listed as an apartment in there. Frankly I'm not sure what that is. It's really just a number of rooms.

COMMISSIONER JENSEN: Okay, great, thank you and then I have one other question. The 20 required parking spaces that are allotted, from the staff report and perhaps I misunderstood it but it looked like there was a two-car garage and a decorative way apron. Is that where the 20 required spaces are provided? I also saw reference to offstreet parking that is, I assume when it says paid that means you are paying for the Horace Mann parking permits. ORATER: Basically we have the in addition to the Horace Mann, there is the garage across the street. There is actually more parking spaces on the street. There are the two apron parking plus the two in the garage and actually on the side there for the onsite parking and there is ample park in the side. The reality is that virtually none of the residents there maybe one probably two in total have a vehicle at all. Most of them do not own cars and do not drive, and so there is none. But the issue here

is that we met according to staff, and staff can clarify better than I can the actual park requirements at this location. We understand that we meet them.

COMMISSIONER JENSEN: Thank you.

COMMISSIONER DO: Thank you. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I'm trying to understand and address the concepts we're trying to accomplish here. My understanding is, it's room rentals of 30 days or more, is that –

ORATER: Correct. Some of these residents have been here for probably many, many years.

COMMISSIONER ZITO: And they rent a single room with no kitchen facilities, they share a kitchen essentially?

ORATER: Right, the kitchen facility is in one building and meals are provided there.

COMMISSIONER ZITO: Meals are provided, but typically they don't cook for themselves, although they might be able to?

ORATER: Usually meals are provided in the kitchen and they cannot cook in their rooms and they are not allowed to have any meals in their rooms and that is the way it has functioned for many, many years.

COMMISSIONER ZITO: And is that essentially the overwhelming majority of people there are there for long term period?

ORATER: Yes.

COMMISSIONER ZITO: It is not a bed and breakfast of sorts?

ORATER: Not at all.

COMMISSIONER ZITO: Okay. And so what I'm hearing here is obviously there is a need to expand it to 27 rooms? The demand is such that you would fill 27 or come close to filling 27 rooms?

ORATER: They're full, they have been for a number of years. There is an overwhelming demand for this type of housing in the city and they have never lacked unfortunately for the ability to keep the rooms full, in fact, this provides a much needed element of your housing structure, you're close to -- it was there before this building we are sitting here, was there, predates all of that 81 years of providing the use and most recently the current use, current population has been there for several decades.

COMMISSIONER ZITO: And this is essentially market rate rental?

ORATER: It is mostly SSI, individuals there that qualify for SSI.

COMMISSIONER ZITO: Okay, thank you.

COMMISSIONER DO: Thank you, thank you, there are no more questions.

ORATER: If there are any more I will be available.

COMMISSIONER DO: There are several speakers. I will call three names, please come down to the bottom of the stairs. Patty Phillips, Michael McGelgen and Jonathan Miller. Please come down to the bottom of the stairs. Ms. Phillips, please approach the podium and please state your name and you have up to two minutes.

ORATER: Good evening, my name is Patty Phillips and I'm president of the Horace Mann neighborhood association. We have been in existence for more than 15 years and I think that probably the word that you could describe our neighborhood association best would be responsibility. We started out with fighting a lot of crime, a lot of drug dealing, and we've really done a fantastic job of cleaning things up. We put pressure on the police department, we put pressure on the city. And they've worked really well with us. We don't think that the owners of this property have been responsible, either to our neighborhood or to the people that live there. There's stuff going on that, in that house that I don't even want to know about. I mean the things that happen I'm sure are horrible. This house was owned at one time by some friends of mine and I used to go to parties there and it was a wonderful place. The city has told me that if they give them this conditional use permit, that then there will be inspections regularly. And some of these problems will be solved. I don't know why they can't make those -- have those inspections happen right now, rather than increasing the size of their units. I've talked to some other property owners, one today who said that they are inspected a minimum of every four years. And these people are incredibly responsible property owners. I just -- these people need special -- have special needs. I'm not a NIMBY. I care for these people. I think it's wrong. I have some pictures here of the house where, at the upper floor, you may have these, did you guys do this? Yes, okay. Where the upper windows or doors, I don't even know what they were, are blocked by some other doors. Now heaven help us if there were a fire and those people couldn't get out because of those doors.

COMMISSIONER DO: Ma'am, thank you for your comment. Your time is up.

ORATER: Thank you.

COMMISSIONER DO: Thank you. Next speaker, please. Staff, we actually don't have the photos that the previous speaker was talking about. Or actually is this --

ORATER: In the packet that was distributed on the dais is --

COMMISSIONER DO: I think she -- but she was referring to photos of the interior, right? We have one photo of the exterior of the building. Ms. Phillips, were you referring to pictures of the interior of the structure?

(inaudible).

COMMISSIONER DO: Okay, so it's the same picture we're talking about, then. Okay, so if you don't mind passing it on to staff. Thank you. Sir please proceed.

ORATER: Thank you, my name is Michael Madigan, I live on the 200 block of north 5th street, fairly heavily impacted by these types of residences. The board and care facilities and the boarding facilities along this street apart from 96 and 98 north fifth street which are the buildings in question here, there's also another one at 106 north 6th street, there's another building at the corner of north fifth and East saint john across from 106 East sixth, there's no number on that one that is another board and care facility. There is at 156 north fifth street and there's also a proposed low income housing going in at north fourth and east St. John street where the old Donner house was there before it burned down. We're very heavily impacted with all of these facilities along north fifth street. Get a lot of panhandling over time, I can't walk out my door without mostly getting panhandled, and I've even had people knocking on my door at night asking for money. I have seen the lot in the 100 block of north fifth street belonging to the petite Trianon, going to the petite Trianon and getting hassled. You cannot go down that street without getting hassled for money. I came to the neighborhood about ten years ago and we were told the rules had changed that these type of facilities would not be indiscriminately improved anymore, that conditions would be improved down in this area, but it seems like we're regressing back to the bad old days where we're -- people are trying to convert these large places into living places, I think it's very unfair that we should be adding another 27 rooms in this area. Two blocks --

COMMISSIONER DO: Sir, thank you, your time is up.

ORATER: Thank you.

COMMISSIONER DO: Thank you very much. Next speaker, Jonathan Miller and I will call one additional name, Don Galiardi. Mr. Miller please proceed.

ORATER: Yes, thank you, my name is Jonathan Miller, I live on north sixth Street and I'm co-president of the Hensley historic district. We oppose granting this conditional use permit. In our view, besides the fact that illegal modifications were made to this house many years ago, it's an historic house, without the benefit of historic preservation permits, the house is dilapidated, it's pretty run down. You can walk over here in a few minutes and see for yourself. And the residents are crammed into a house that really despite its relatively large size is never meant to house that many people and now they want to put more in there. The house currently does not have adequate parking at least we don't think it has adequate parking for the number of residents that they want to put in

there and in our view the fact that the residents primarily do not drive is irrelevant because we don't know what could happen in the future so you may need more park. Also, we have a lot of housing, this particular type of housing in our community already. And we are sympathetic, to the need for such housing. We have a lot of it. But I'd also remind the commission that on the evening of November 27th, 2007, a duplex that was operating illegally as a guest house in Japantown on fifth street burned to the ground. This was an historic building in which midwives served the Japanese American community and tragically a member of our community, lost his life in that fire. As our Horace Mann neighbors have made clear, they have asked for code to investigate this house repeatedly. And so we would concur with Patty Phillips that we think you shouldn't grant this conditional use permit, what should happen is that code should get in there and investigate what's going on in the house. So granting this C.U.P. in effect gives legal cover in our view to another accident waiting to happen. And so I don't think that this should be granted. So we oppose and ask that you deny this conditional use permit. Thanks.

COMMISSIONER DO: Thank you very much. Mr. Galiardi.

ORATER: Good evening, I'm Don Galiardi, I'm president of 13th street NAC which is the SNI area which encompasses Horace Mann and this particular property. Jonathan said it very eloquently and I'll second everything he had to say. I'm here in solidarity with my Horace Mann neighbors. This is very much analogous to the question of alcohol sales on the Eastside in SNI areas there. Part of the reason that they have SNI areas in the Eastside is because of the overabundance of alcohol sales which are an indicia of blight. With respect to the residents in 13th street SNI we know and I've been here before in front of you dealing with group homes and issues related to them, we consider those an indicia of blight as well. I have to say I know Jeff Hair, I consider him an honorable man, I've dealt with him previously, but I'm here in solidarity and support of the Horace Mann residents who have great concerns about this facility. And frankly, I don't understand all the issues related to it I don't pretend to. I'm here in solidarity but from what I understand and what I can gather and have been told and have read in e-mails we have a situation where there are a number of issues related to code right now, and what it appears to me as a resident in this area is that the applicants are being rewarded from -- for their past violations. And saying you're doing something that may be illegal, well, let's declare you now to be legal. And that's what the gibberish I read on the agenda seems to suggest. We're going to legalize what's going on for decades that wasn't legal all those decades. And I don't think that's the proper way to deal with the issue. I'll make one more comment. I'm looking at your map up there. We're a block here as we sit here and stand here today and it doesn't appear to be reflected by your map and I would suggest that that also although that's a trivial matter does not lead to confidence in all the other findings or determinations that come out of planning staff. So I would suggest that greater attention be given to the details. Thank you.

COMMISSIONER DO: Thank you, thank you sir, thank you. Is the applicant, would you like to make rebuttal comments? You have up to five minutes.

ORATER: Yes, thank you, chairman. First of all, let me start with Mr. Galiardi's comments. I think I understand the neighborhood associations and the role they play. I'm a member myself and we do work very hard in the downtown area for years to do what we can to protect the neighborhoods. It's also a fact of life that we have in the downtown area an accumulation of individuals less fortunate than us who suffer from certain illness that are of no cause of their own, that have nothing to do with alcohol. In fact one of the things I'll react to is the classification of this as being analogous to alcohol sales. These individuals suffer largely from mental illness. They are not allowed to drink alcohol. They cannot drink alcohol. If they are on medication, they cannot do it. In fact, if they show up with alcohol they are sent off to detox. So let me just make that absolutely clear. These individuals do not, are not allowed to drink and are monitored for that. And second of all, to classify individuals as mentally disabled as blight, we're going down a very slippery slope there. So I'd rather not do that. With respect to the code enforcement and the fire issues, nobody is more concerned about the care, the feeding, watching out for these individuals than the owners of this building. This is not a labor of love -- I mean it is a labor of love. It is not a for-profit entity in the sense that if you were to go over there and you're all welcome to come in and stay and watch these individuals, you will see it is one of the toughest jobs on the planet is to take care of persons who are mentally disabled. Their families usually have abandoned them. They have no other place to go. This is the only housing that they can go to. I happen to have a niece who is mentally disabled, it is very, very hard for her to find a place where she can be with others like themselves. The others look after each other because they care about each other. They know you're a stranger, I remember taking an RDA official highly placed on the property. They all came up, can we help you, what are you doing here? And then they gave a tour. As far as the fire codes, absolutely this is one of the most heavily inspected buildings. A letter from the code enforcement said they've received no complaints, no record of it. They've been out there before they can come back any time. They're welcome to -- we are going to deal with the fire code issues constantly. We have dealt with it, we continue to, and we'll always meet them. As far as the last piece, and I want to wrap up on this is that you know the unfortunate circumstances that are -- that occur of fires is disastrous. We can't stop anything from going on because something happened elsewhere. But we are mindful of these and that's why care is taken to make sure that the residents have a safe environment, they themselves are more often the victims of the crimes to which you were mentioned here, the panhandling, the drug dealing, the others, they are often the victims. In fact, there are lots of drugs down there that the residents come back and report and the San José police department actually used this facility as an observation platform for a neighboring property across the street where there was a number of deals going on. So the cooperation with police with fire with code enforcement with planning with everything has been the rift of these owners, they have done everything they can, they continue to and if you have any questions I'm happy to answer them.

COMMISSIONER DO: Yes, thank you, there are questions. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. Mr. Hair, could you just comment I might have missed in the summary, can you comment to the issue that well it

appears you've been doing things incorrectly for so long now we're just going to give you the license to make it right?

ORATER: Now, again there's a lot of confusion. Ms. Hamilton did a very detailed legal nonconforming letter to show that the use and what we call a guest house had evolved over time and what we're calling it multifamily residence, this use has been here forever. Somewhere along the line in another department of the city they classified it something else, residency permits were paid for every single year that the owners were there, they met the requirements paid their bills. When it was later determined that they had to get a C.U.P. because they were -- had more rooms than the previous classification allowed then technically it was an expansion from the number of rooms that they were able to calculate. In fact we are reducing the number of rooms that were there from 33 down to 27 but it was a technical expansion in the fact that the previous although perhaps erroneous calculation of rooms was not what was there. We are bringing that in conformance with the current rules and that's what the C.U.P. is about.

COMMISSIONER PLATTEN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Platten. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. First of all let me understand what I'm hearing. There are already 27 rooms available for occupancy?

ORATER: Yes.

COMMISSIONER ZITO: Well, 33. So you're not making any interior modifications that is going to increase capacity?

ORATER: Actually the modifications were done, they've all but finished them, to bring them into compliance with the application with Planning Commission and building in there.

COMMISSIONER ZITO: So as I understand it they were done without permit is that it?

ORATER: What we're doing, we got the residents in there, we're basically trying structure it, it currently is sitting there with 27 rooms. The code enforcement process as we started the C.U.P. we immediately got to work with it and the interior modifications were relatively minor they didn't require much. But we still invited building and fire to come through there to make sure we were doing them in conformance. By the way, we never saw this picture that was distributed to you. So we have no way of knowing --

COMMISSIONER ZITO: I was going to ask you the next question regarding those pictures. It seems that from those pictures at least I haven't in a close-up view of the property. I have driven by it several times but not a close-up view, that it's again according to those pictures from the way I see it, it's somewhat dilapidated looking from

the outside. Are there any plans for improvements in make it a more aesthetically pleasing site?

ORATER: You know, the -- you know, it was painted about, I remember about six years ago. When the Donner house was painted they spruced it up, put a fresh coat of paint. I think the one bid they got in was \$64,000 literally the exterior painting on this. It is due for an upgrade, it is due for painting, no question about it. Like any home in the downtown they want to keep it up.

COMMISSIONER ZITO: Maybe I'm misintending this but there are doors where there should be -- it almost looks like windows.

ORATER: There are no boarded up doors, it is an architectural thing on that balcony. I'm told there is none. I actually looked for the boarded up, there is nothing to that effect. Some of this stuff is original panels that were in the building when they acquired it. But cosmetic issues aside they will be taken care of. They do care about the upkeep of the building. It is an old building, perhaps one of the oldest in San José.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. My concern is, the crux of the issue is you want to increase occupation, I mean increase residents and from what I'm hearing is let's make sure it's safe enough that we can allow that. And, you know, so why couldn't we have the code enforcement and upgrades be done first and then say okay, now lets -- if we are address that ire please because I I'm still a little confused as to the --

ORATER: All right. I have a stack on my desk approximately this thick of our work with code enforcement, with building, with fire over the period of 18 years, okay? Because every time code enforcement called out a balcony issue or another one they've done it and responded to every matter and is closed. Now in front of you as part of this record is there are no complaints of any outstanding violations. The only violation that we are here to fix is the conditional use permit that they determined was necessary technically for correcting the classification of the use, that it actually had been for a number of years. It predating the City's ordinance. Now, as far as that of course they could come out. There is no violations currently on the property in terms of fire or life safety issues, okay, there are none. And we have an open door to the code enforcement, they have been out there multiple times and usually what they come out is finding you know if there are a couple of things that need to be corrected they usually can't be corrected on the spot, they are usually corrected within 24 hours. There is not an issue of a fire life safety problem on the property, a misperception that perhaps you're getting. You have a letter from the acting director of code enforcement, Mike Hannon, saying he has no current complaints, but that they will inspect, and we expect to hear from him shortly, and we will definitely let him come through and see if he finds anything.

COMMISSIONER DO: Thank you, sir. Does that answer your question?

COMMISSIONER KAMKAR: No. I heard from, I guess our staff, saying that, you know, if this request is granted there would be a 60 -- there could be a 60-day I guess not delay, or 60 day period before which the C.U.P. will be officially granted and during that 60 days, things will be finalized. Did I understand that, is that the same as your understanding too or --

ORATER: I think what you're hearing is, as a condition in the permit, to address some of the outstanding issues albeit minor, is that should this conditional use permit be granted there is a condition in there that requires a permit adjustment to be submitted, and certain issues dealt with. Which is what Mike Enderby identified and is in the amended resolution that was handed out in front of you. Should they not do that I think within 60 or 90 days they're basically going to be basically in violation of the conditional use permit and we can issue a notice of noncompliance.

ORATER: We understand that and that 60 day rule we'll be meeting that without any difficulty.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Is there a motion to close milk hearing? Thank you sir. All in favor? Thank you sir. Staff could you respond to some of those issues?

ORATER: Thank you, Mr. Chair. I'd like to maybe just provide a little bit of clarification with respect to the parking. I sense that maybe there was some questions as to how the calculations apply and how the code requirements apply to this site. And so for starters, the use is legal nonconforming, it's only requirements for the existing legal facility which is 16 guest rooms and a three bedroom apartment, is to provide the parking that's there now which is a garage and the two open spaces. So in determining whether or not an expansion can occur what we do is we take the existing legal nonconforming use and we apply what would be the code requirements if we applied the current code requirements to that existing legal nonconforming use and so the first part of the table in the staff report identifies that if we applied, if we applied the current code requirements, that use would be required to provide 20 spaces under today's code requirements. Now in determining whether or not that expansion goes beyond 40%, that's where we -- if it goes beyond 40% then they're obliged to provide parking to meet today's current standards so in other words this use has been tapered back from 33 units to 27 frankly in mind to stay within that 40% threshold so if you apply the proposed use and today's current standards you'll find that the code requirements would identify a theoretical requirement of 28. And so a 40% addition to the theoretical 20 will come to 28. So if they were providing 28 park -- or excuse me 28 guest units, that would trigger a more than 40% increase in their intensity of their use and thereby require a full upgrade to meet the current code requirements so by not exceeding that 40% they're not obliged to add any parking whatsoever.

COMMISSIONER DO: Could you also clarify what the applicant mentioned is that this conditional use permit is necessitated because of a technical issue, because it is a classification issue, when you read the report and it talks about a code enforcement

violation, it sounds very serious, some of the commissioners including maybe myself might have formed the opinion that there are safety issues involved et cetera, et cetera.

ORATER: I think the staff would approach it without the use of the word technical. Basically they have as presented in the letter from the city, which I composed did the research on and made a determination, they have legal nonconforming status of a guest house of a certain number of rooms. They've gone beyond that so they have in essence expanded their legal nonconforming use. Per our zoning code if you want to do that you need to come in for, at the minimum, a special use permit. However in instances where that use is identified as a conditional use in the zoning district in which they're in they are in an RM and the use is a conditional use, in essence taking out of the legal nonconforming status and into a legal conforming status. We really want to not perpetuate legal nonconforming uses if we don't have to. So you know back in 2001 we created a system so that if they can become conforming we would want them rather to do that. So that's why you're seeing the C.U.P. required. In essence they're wanting to expand their legal nonconforming or in essence establish a legal guest house of 27 rooms.

COMMISSIONER DO: Okay, thank you. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman I'm prepared with the motion. I move that we Approve a conditional use permit As amended by staff, to legalize an expansion of a legal nonconforming guest house to include up to 27 guest rooms.

COMMISSIONER DO: Did you say second? There's a motion and a second. Any further comments Commissioner Platten?

COMMISSIONER PLATTEN: No, as Ms. Hamilton has pointed out this has been a legal nonconforming use as the applicant has pointed out for decades. I believe the conditions of the C.U.P. as amended tonight will adequately address any other issues that arise prior to the final implementation of the C.U.P. We have testimony from other neighborhood individuals whom I respect but none of them have been inside the facility not one person. So I don't think there is any basis factually not to approval the C.U.P. as are proposed.

COMMISSIONER DO: Thank you, Commissioner Platten. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. First I'd like to thank the community members for coming out. This has been a challenge for you and your neighborhood is collar to mine very challenged with difficult neighbors. I'd also like to thank Mr. Hair whom I also have a great deal of respect for and I'd like to appreciate all of the hard work you have done in your own neighborhood to eradicate the use of poor neighbors and migrate poor neighbors from being bad neighbors into either moving out of the neighborhood or becoming good neighbors. And an example would be a home that is on the creek where a gentleman lives that used to be a bad neighbor and has been converted from a board and care facility to a single family residence. This single family residence has been in the neighborhood quite a long time. It wasn't clear to me, Ms.

Phillips indicated that it used to belong single family home, no? A sorority house, those are wonderful, too. And so yeah, it has been a multifamily home for a while. But I'm very familiar with this building. You know I see it all the time. And it is dilapidated. The property owner doesn't respect the community that he's trying to care for. And the paint that was put on a few years ago at the same time as the Donner house, my understanding was that when the Donner house was painted there was leftover paint so it was donated over to them so they were the beneficiary of overcalculations. What I heard was, that, and perhaps staff can correct me, is that the existing calculations for 16 guest rooms and a three bedroom apartment are about the limits of what the existing facility is allowed under its legal nonconforming use. And what I heard Mr. Hair say is that it's actually at 33 guest rooms, and that the 40% is likely a calculation provided to ensure that it came down within the 40%, so that it didn't trigger any additional need. Parking is a challenge in this neighborhood. It's as has been stated several times a block away from City Hall, two blocks away from San José State, which makes parking a challenge. I don't think offstreet parking adequate the vast majorities of people living there or visiting there try to attempt to find parking on the street. Mr. Galliardi and the other speakers did not refer to the residents as blight. They referred to the facility as blight. And I have to concur with that assessment. The residents deserve to live in a clean, well cared for facility, from looking at the photos that were submitted to us, it appears that there is some fence like material that has been nailed to the walls, over what appears to be two doors. Now, they may be doors, they may be windows, but that's what the photographs appear to show. And I'm concerned that this facility is actually -- has 33 separate rooms, and is being -- that's what you said Mr. Hair is that there were 33 different rooms and it was brought down to 27. I'm sorry, public hearing has been closed and I'm not asking you a question. So for those reasons I will not be able to support the motion.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Zito.

COMMISSIONER ZITO: So let me ask staff to clarify. Was going to be my question anyway. So what I understand here, I'm sorry that I'm confused on this and it's really not that late so I have no excuse. But my understanding is that the legal nonconforming was for 16 and if they were -- that if they'd stayed like that there would not be an issue and this would not be before us. They were already exceeding that amount and they were housing more than that number, I did hear the number 33 and my understanding is they have the capacity to hold 33, not legally, but they have the capacity to hold 33, they are only asking for 27 and they slip under the wire and not trigger that 40% change. Is that an accurate statement?

ORATER: I'm going to step in and say I know staff might have said that but again I don't know what is the necessary -- I mean the rationale. I think housing code comes into play relative to the room size so from meeting a number of different codes they may be choosing and you may have to ask the applicant their reasoning behind why they are making some modifications. Again these are two separate facilities so the interior floor plan again, we would look at them having to meet the housing code which is a minimum room size.

COMMISSIONER ZITO: Sure.

ORATER: So what we felt comfortable recommending was a total of 27, is it 27 rooms in total? And I don't know what the room split is because they are two different homes. So –

COMMISSIONER ZITO: So this is a combined number of 27 across two homes.

ORATER: There are two structures involved so you have 96 and 98. So –

COMMISSIONER ZITO: And they're adjacent to each other.

ORATER: Yes.

COMMISSIONER ZITO: So if I could Mr. Chair ask a single question with a single answer to the applicant?

COMMISSIONER DO: Pleas, I guess we need to reopen the public hearing, basically.

COMMISSIONER ZITO: Okay I move we reopen the public hearing for the answer to this specific question.

COMMISSIONER DO: All in favor. All right.

COMMISSIONER ZITO: So sir, answer this question, 16 was the number it was allowed to have under the legal nonconforming. My question is what is your occupancy?

ORATER: 27 rooms, that's what we have.

COMMISSIONER ZITO: What is the total number?

ORATER: 27, some are single, some are double. There's a approximate little over 40.

COMMISSIONER ZITO: You could have more than one person in a room?

ORATER: Oh, absolutely yes.

COMMISSIONER ZITO: I'm not sure if this is a appropriate question so I'm going to ask counsel to step on it if it's not appropriate. My question is, the people who are sharing the room is that a family of sorts or are they two people who are just sharing a room? In other words is it rented -- the way I understand it these are month to month leases on individual rooms. Right? Is that correct?

ORATER: Are you directing it to me or counsel?

COMMISSIONER ZITO: I'm sorry I'm asking more than one question but I'm trying to get to the occupancy answer here, to understand what the impact is. Are these month to month leases for each room or are these month to month leases for individual?

ORATER: This is the classification of guest house is a common one that's been around for a while. The particular use that has been here for a number of years, it as a sorority for many years. When they bought it it was 33 rooms, they reduced it to 27. Double occupancy or single occupancy is the choice of the individuals who come in. They choose that when they enter. They are elderly SSI. Some request to one to a room .

COMMISSIONER ZITO: Two to a room is an individual I'll use the word lease, I don't know the financial arrangement i'm not asking that question but are they individual --

ORATER: Some are under rental agreements some are under admission agreements, some of under other types of agreements but each are under agreement.

COMMISSIONER ZITO: Some 40 or so have their own agreement?

ORATER: That's correct.

COMMISSIONER ZITO: The fact that there's 27 rooms that you're requesting -- I'm assuming --

ORATER: 27 rooms.

COMMISSIONER ZITO: Right, I'm assuming by state code you're allowed to have more than one person in the room because of the size of the room.

ORATER: Absolutely.

COMMISSIONER ZITO: I'm assuming the rooms are the same size? Not necessarily?

ORATER: You have the diagrams in front of you.

COMMISSIONER ZITO: Okay. Beginning the 27 rooms what is the total maximum occupancy you can have given the size of the rooms?

ORATER: Again only one is uniquely suited for one person, per room, some are two persons per room. There are no rooms that I know of that are more than two persons per room. That would be unworkable but we're getting into the micromanaging of the process if I could say so. This is fairly common for a lot of rooms in the downtown area for all types of users. This one has been this way for like I said two decades under the current ownership.

COMMISSIONER ZITO: I'm trying to understand the impact on the neighborhood, based on the occupants in the room based on the number of rooms. That's why I asked the commission to open up public –

ORATER: None of them drive.

COMMISSIONER ZITO: That's not the question. I asked to you answer specific questions and I appreciate that.

ORATER: I wanted to clarify, it is 27 rooms, now, some are single some are double occupancy and I can't tell you at the moment what that would be.

COMMISSIONER ZITO: It was 33 rooms.

ORATER: Right, that has been reduced.

COMMISSIONER DO: Public testimony is closed. Thank you.

COMMISSIONER ZITO: What I'm hearing, staff, I don't know if it's basic for you. They have 27 rooms not 32 rooms and this permit essentially is saying, we're going to legitimize the number of rooms,.

ORATER: I want to point out too we've done a number ever reasonable accommodations over the years. What I can tell you from my memory on that is that the housing code allows for up to two persons per room up to 120 square feet and up to 3 for 180 square feet, then the scale becomes a little bit different but I think most of them are under that threshold probably anyway. We don't have actual square footages identified in each room but those are the requirements that would come into play.

COMMISSIONER ZITO: So the statement before about reducing it to 27 to try to not trigger the 40% we're supposed to not that take that into consideration is that what I'm hearing as well?

ORATER: Well, one of the things that we have in terms of the changes are being fixed to get from that 33 to the 27 were basically taking two adjacent bedrooms and removing the common wall to create one larger room which is fine. That gets us down to 27. But the concerns that staff had was is that you know once they're -- the fact there was a wall here and code issues in the past staff is a little bit concerned that perhaps an other than or an operator in the future might be attempted to change that back. That's why we have a condition in the permit that there would be one door to the hallway rather than two. Unless there is a fire code requirement that would trump that to avoid the temptation to change that and just include another wall.

ORATER: John Stufflebean: And staff is I'm getting not guessing but staff feels comfortable with the fact that the changes that are being suggested in the plans and so on

are going to bring this site up to code, and safety and so on and that they will be able to function completely as a -- you know within the parameters necessary.

ORATER: Yeah, what we would add that we wouldn't have is with this, we would have a conditional use permit that would more precisely tie down what the room count is once and for all and it would provide probably better tool for code enforcement in the long run to build a better monitor and ensure the compliance with the housing code and occupancy requirements.

ORATER: This facility has been in that program and it was actually through the City's inspection of it through the multiple housing program which identified the additional rooms beyond what people's memory of it because we actually had Cote code enforcement officers who when they did go to San José State actually did live at that facility. So there was historical memories. So that's, again, the city has really been the avenue for bring this facility into compliance. And we do regret that it has taken so long. I was part of the 2005 inspection and interaction with code enforcement on it which is why I eventually did take on the legal nonconforming review and letter so that we could really just get this into a conforming status.

COMMISSIONER ZITO: Okay. So my comments, and I have to be honest with you I'm still very conflicted about this because just a minute ago, the commission had upheld an appeal based on what the community wanted. And said that you know the project did not-the project would have adversely affected the peace health safety or morals, of people working around that particular facility. Now we have community members, SNI members coming to us again making a similar request and we've got a motion on the floor saying that oh, it's okay this time, and so I'm a little bit conflicted. There's probably a ways to go to improve its interface with the community and probably reach out for the community. Make some more how request I say positive interactions and communications to win over the hearts and souls if you notice of their neighbor. I'd like to see that happen. I do understand that there's a need for this particular site. I'm very empathetic and sympathetic to the occupants of this facility. It is a needed service that this city needs to have given its size, given its makeup. I would like to -- I would like somebody to help me in that there's some sort of insurance that their perspective they don't feel that they have been good neighbors. So I'd like to hear more dialogue from the commissioner here and one way or the other.

ORATER: Mayor Reed: Several commissioners with lights so I think there will be a dialogue. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Can I ask, is there any requirement on the ratio of bed rooms to bathrooms? And the reason I ask is, when staff mentioned that some walls were being removed to create a single room, and that doors would be placed in the drawings I see where apparently it looks like walls being removed but I don't see that doors are being removed and I noted on the second floor of building number 2, drawing A-1, there are five bedrooms and two bathrooms. And on the first floor there are four bedrooms and two bathrooms and on the other building, it's similarly

significantly more bedrooms than bathrooms. And I know that just sharing a bathroom with one person is a challenge, much less sharing with perhaps as many as two times the number of people in bedrooms. So is there a ratio there?

ORATER: I don't know. I think one of the challenges with this is you know once we really get into the building permitting process we may very well see some significant changes to these facilities. We did have building do a review of this. But if you see in the permit there may be a condition that says they might have to do a lot line adjustment. You know because again with the finishing up of one of those structures, whether that needs building, buildings would for these facilities and should there be some sort of code requirements relative bath rooms or even on a per floor basis. No things I think will surface throughout that process. It may be worth it should that building permitting process significantly alter or alter the number of rooms that we could very well, you know, be suggested that we come back and amend that and basically memorialize what that find result is many should it only law 26 rears or you know so many you rooms in this house. It really weighs the building division's call that this really wanted to see you know the detailed construction type are drawings that think would be looking at through the building permit process. This would not be sufficient for a building permit application. So I hear what you're saying and I would guess there may be, not being in that Asia, I can't say yes or no but what I think could happen as of the result of the building permitting, you could see some reconfiguration of rooms also. So it might be worth us you know coming back, should this be approved and should they go through a building perm process which results in lesser rooms cause this to maybe come back and you know the final approval to authored. So building permit process.

ORATER: Councilmember Constant: Thank you, I have one other question for you, I understand wanting to move them from legal nonconforming to conforming, so there are guidelines as to what is exactly expected and the size and whatnot, is the building precluded from becoming -- going into conformance under the -- as it's stated existing usage of 16 guest rooms and a three-bedroom apartment? Is there any reason why they couldn't apply for a permit and become legal conforming under that use?

ORATER: There is no need to. They have legal nonconforming status of that. They could but you know, they don't -- there is nothing we would require them to do that.

COMMISSIONER JENSEN: But they would still, and if they were legal nonconforming, they would still, at 16 bedrooms, 16 guest rooms and a three-bedroom apartment, still be required to undergo code enforcement?

ORATER: Local housing.

COMMISSIONER JENSEN: Right.

ORATER: They'd are in multiple housing program.

COMMISSIONER JENSEN: Okay, great, thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman I'd just for Commissioner Zito's benefit, I don't think the vote here is analogous at all to the other issue we dealt with, other than to say that we're confronted with advocates on both sides of the issue. In this conveys we're confronted with a preexisting by virtue of decades, legal nonconforming use. By extending the C.U.P., we are as staff has indicated giving ourselves a greater opportunity to conform that use consistent with all of the codes the city enforces. Previous case we talked about a brand-new use at a facility that did not before operate that use, operate that retail action. So that's completely nonanalogous situation as I view it. We could disagree about that last vote we obviously did but I think the generation here is demonstrably different.

COMMISSIONER DO: Thank you, Commissioner Platten. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. My question is to staff. First of all I concur with your insistence that these plans are not adequate for building. I'd like to go on the floor and say, they're not really adequate for Planning Commission use either. It's very difficult to understand what they're asking, illegible and to me that was an understatement. The second question is I heard the testimony that they already have 27 rooms. They're just here trying to justify it. No longer 16 anymore, so my question is if we say no to this permit, what does this mean? Do they need to go back to being 16 rooms and then go through this process properly and convert to 27? What is going to happen if they say no to this request?

ORATER: Say no to this request, that this goes back to 16 units plus a three bedroom apartment.

COMMISSIONER KAMKAR: That means they need to remove more walls and make the current 27 rooms back into 16?

ORATER: Well, and they'll need to go back and recreate that three bedroom apartment which was probably broken up to create three guest rooms at some point.

COMMISSIONER KAMKAR: And that brings up any other concern I understand they predate zoning and everything but that doesn't give them a license to do whatever they want and then finally come back and say oh, you know we better make this legal, you know. So, you know, I know there is a motion on the table and I cannot support it you know because of what I've heard, you know, I appreciate Mr. Hair, I find him very credible and I understand he's doing a good job for his client. I feel the circumstances I can't support the motion. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. There are a couple of speaker lights still but I just wanted to throw in my comment which is it seems to me that relating to Commissioner Kamkar's last comment, Commissioner Zito's encouragement

for a dialogue and so on so fort. It seems to me that's a fairly straightforward issue like Commissioner Platten said, which is that the current zoning laws, zoning regulations allow them this use if they went through the proper process. And which is what the city is trying to get them to do by applying for conditional use permit. So they have a legal nonconforming use for up to 16 units. And but by going through the proper process they can -- they can increase this up to 27 units. That is what they're doing. As far as concerns about dilapidated conditions they are ought legitimate concerns but those things will be handled through many avenues, building permit process, code enforcement, housing guidelines, et cetera, et cetera. So it seems to me that it's a fairly easy, not easy but fairly straightforward issue in terms of that -- anyway, that's my take on it. I don't know whether it helps Commissioner Zito or not. So Commissioner Zito.

COMMISSIONER ZITO: Yes, thank you. So Commissioner Kamkar asked a question I was going to ask but I just want a little bit further clarification. If this does not pass, okay, then they'll be restricted to 16 units, 16 rooms, right? Would that require them to evict anyone?

ORATER: Would you have to ask that of the applicant.

COMMISSIONER ZITO: Okay. I'll defer there. So the difference here, than the other prior application is that this site will still be able to run a 16-room guest house. And so they will still be able to provide that service as they're providing today, whereas the prior one, it's either a yes or no, it's all or nothing. Here, if they're not conforming to the needs of the community Thayer not totally yanked. They're not losing the permit, they're just scaled back to what they should be under the legal nonconforming status, okay? The other concern that I have is that if it were brought to us today and again staff correct me if I'm wrong, they would be required to provide what is it 28 parking spaces, if it were brought to us today, as a new use.

ORATER: If they were constructing is a new facility, okay, so but whether through this process now or let's say you don't support it and then a year later they come back and they apply C.U.P., the C.U.P., whether you call it legal nonconforming or park requirements relative to the expansion of a use, based on structures that were built prior to the park requirements, that's where the whole parking is. It has really no relationship to --

COMMISSIONER ZITO: Right but a statement was made to the fact that it was a new use and what it would be allowed if it came to us today.

ORATER: Brand-new construction.

COMMISSIONER ZITO: And if they came to us for 28 rooms they would be required to provide 28 or more parking spaces because it would be more than the 40%.

ORATER: Looking at the whole of it.

COMMISSIONER ZITO: Right, right. So there's a couple of things that are going on here in my opinion that are, you know, I understand that they're somewhat legal. My concern again goes out to the community and its impact on the community and so, you know, I wish like I said I still don't see where there's enough safeguard here to ensure that the community and this site are going to be able to get together and ensure a harmonious co-existence.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Staff so if I understand correctly so the legal nonconformance was for 16 guest rooms and a three bedroom apartment, there were significant adjustments made to the building that were made without the benefit of permits, is that correct?

ORATER: At least without the benefit of planning approval.

COMMISSIONER JENSEN: Does that mean that there are permits on file?

ORATER: I mean, I would guess in there were interior alterations that would have required building permits, I don't know whether or not that's been done.

COMMISSIONER JENSEN: Okay, and I heard you say that during the potentially subsequent process with building, that there may be some lot line changes due to some of the modifications that were made in the basement?

ORATER: Again, it's -- you know, you've got these structures on two separate lots and again, they've imposed new living environments where once there weren't. So they don't enjoy legal nonconforming status relative to the building code requirement so they may in fact cause the need to get rid of a lot line. Existing living environment that was in, you know, certain proximity to a lot line that hasn't changed over the years retains that nonconforming status relative to the building code. You put in a new living environment even though the structure was there it may not enjoy that same right. And therefore, may either not be able to go in or if they did want it to go in, that lot line would need to go away. And we're really looking at the lot line that separates the two.

COMMISSIONER JENSEN: Okay, thank you and then by virtue of the language used in the -- virtue of the language used alterations made without the benefit of the permit and it is no longer operating within the construct of a 16 guest room it has been operating anywhere from 27 to 33 guest rooms it is currently an illegal use and that is the reason the language says here to legalize the expansion because they are out of compliance with what they had been allowed under legal nonconforming?

ORATER: Exactly. They have a legal status of in one structure eight guest rooms and in the other structure eight guest rooms and a three bedroom apartment.

COMMISSIONER JENSEN: Thank you, so with all due respect to Commissioner Platten they are not operating legally at this point in time. Thank you. North Dakota thank you, Commissioner Jensen. Commissioner Cahan.

COMMISSIONER CAHAN: If Commissioner Platten wants to respond to that I'll defer.

COMMISSIONER DO: Commissioner Platten.

COMMISSIONER PLATTEN: It is a difference in vocabulary here between legal use and legal operation. The C.U.P. permits the legal operation. It's the zoning use which is legal though nonconforming at this point in time. Is that not correct staff? ORATER: In RM zoning a guest house is a use that could be considered through the C.U.P. process. There is no reference to how many rooms a guest house is as defined in the zoning code, just it rents rooms.

COMMISSIONER PLATTEN: Thank you, thank you.

COMMISSIONER DO: Thank you, Commissioner Platten. Commissioner Cahan. Back to you.

COMMISSIONER CAHAN: Thank you, Mr. Chair. May I get additional clarification on the difference that would be permitted for code enforcement to go in, the difference in the way it's existing now, versus if we pass this motion what their ability would be?

ORATER: You know, the way it's operating now, is if it's not operating in conformance with its legal nonconforming status it's illegal or what's beyond that. So our direction was you either come into conformance with your legal nonconforming status or you can apply to go beyond that, which that I may or may not be, you know clearly they've stated that they are through this process. So they are in a conditional use permit process so establish a guest house or guest houses, of up to 27 rooms.

COMMISSIONER CAHAN: So it sounds like they are operating illegally?

ORATER: I don't think anybody at least from the city's standpoint has suggested that they're operating legally. You know it's clear in our staff report that they have a legal nonconforming status of, you know, total of 16 guest rooms and one three bedroom apartment. They're proposing to operating a guest house, guest houses of up to 27 rooms. They've clearly stated that they have, you know, rooms beyond what their legal nonconforming status is that are currently being occupied.

COMMISSIONER CAHAN: So for code enforcement so the request has been, we need some people in there to find out what's going on if the conditions are appropriate for the people who are living there. And that has been discussed amongst the members and the community. Now I'm trying to get an understanding. If it remains as it is, and it's nonconforming, legal nonconforming status operating illegally, what can code enforcement do that is or not do that is different if they then are granted to be at 27?

ORATER: This is -- this is really the culmination of what code enforcement has been doing, has been looking to cause this facility to come into conformance. And as you know many of our actions through code enforcement is, they -- if the applicant is going to their -- through their good faith effort and doing what needs to be done rather than kick people out on the street only to come back seven months later or a year later, you know there is this somewhat position that the city is not going to take a hard line. I mean clearly when code enforcement went in and inspected they just don't stand outside and say, oh it looks like there's 27 rooms or 28 rooms or 38 rooms, they physically go inside those rooms and inspect those rooms for life safety issues. So again if those were present at those times they would have been cited and would have been taken care of. The outstanding issue is the conformance with the land use regulation of the size of the guest houses or the number of the guest rooms.

COMMISSIONER CAHAN: Okay so there's no issue with life -- with the safety of the current residents there?

ORATER: I'm not aware that there's an open code enforcement case relative to life safety. And I think that I don't know if -- well, Ms.—

COMMISSIONER DO: The director?

ORATER: -- Smith indicated from her e-mails that she had transmitted to Mike Hannon and that's really his first complaint and they will follow up with a code enforcement investigation on that allocation.

ORATER: Laurel Prevetti: If I may just had, Mike Hannon did submit an e-mail that is in your packet. He did acknowledge that there are no open code compliance cases right now. Because this is part of our ongoing multiple housing program, they get an inspection every couple of years to ensure all life safety is protected, this is something that the city does do. If there was life safety the owner would have to deal with this. The issue is the delta between the number of units or rooms that are allowed, the eight guest rooms in the one building, the 8 guess rooms versus a three bedroom apartment, and the combined difference of 27. That delta of about 27 is the illegal piece of this. I'm sensing that the commission is very concerned about the illegality of this. But remember, the question of the number of rooms that's really before you. So if you were to deny the permit it goes back to the 16 rooms and the one apartment and it's remained legal nonconforming and it stays in our multiple housing program. We continue to do the inspections every couple of years.

COMMISSIONER CAHAN: The reason I'm asking code enforcement questions is Commissioner Platten part of the reason for the motion he made, would be providing the city with more of an ability to enforce code enforcement issues. And I'm trying to gig out what that additional ability is to then help me decide if that is actually a factor in my vote.

ORATER: Laurel Prevetti: Well, as staff has mentioned, we've given considerable thought to the conditions that should be included in this permit in terms of the documentation, replacement, et cetera, so that does give us more tools to use, and if the owner or operator is not in compliance then we have additional hammers beyond what we have today. So by having that clarification and these additional conditions we're able to handle those issues more directly. If it remains legal nonconforming, then we would do our very best within the parameters that we have, but it would then be up to our building division to be making those determinations of, are the window replacement appropriate, et cetera. So this just gives additional clarity for all the staff who would be busy implementing those permits.

COMMISSIONER CAHAN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. I just wanted to throw in another comment which is if we view the situation slightly differently, I'm not sure that it would help anybody making up their mind but perhaps it will. Which is if we assume for a moment that they have been operating legally, there's been no -- pardon me -- no no, but I'm trying to paint a different scenario, I'm trying to make -- trying to whatever the term is to create another scenario where we clarify our thinking a little bit. But assuming for a moment that there's been no illegal use of the property, and now they're coming in and they're asking through a fully legal process for the ability to expand the use of this facility from 16 units to 27 units, and through staff analysis, staff has determined that zoning regulations will allow such an expansion then it's up to this body to decide to grant or not grant the conditional use permit. I think that's another way to look at it. We do focus on the illegal activity and I think we should but at the same time, it's the -- I don't think the crux of the issue is there. So hopefully it helps. Not so sure but -- D.C., which sparks additional discussion. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. So the fact is they're not operating legally. They have had from 27 to 33 guest rooms available completely out of compliance. They have done remodeling including building out bedrooms in a basement without benefit of a permit. There is a possibility of potential lot line changes and potentially needing to alter the total number of rooms, should this project move forward. According to Mr. Hair the current owner has been there for decades and one of my concerns is that, if a property owner who has been operating illegally potentially for decades and out of compliance with code enforcement, what reasonable expectation do we have that they would begin now to be a good neighbor to operate within the boundaries of the law and to not simply pop that wall back in, or open a door again in spite of the need for code enforcement? Code enforcement has the ability to go in and inspect it anyway. It continues to operate under the multifamily dwelling facility regardless whether we approve this permit or not. And I'm not sure that the extra tools that are being referred to are in fact that much bigger and better than what code enforcement and multifamily currently have in their tool box at this point in time.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Zito.

COMMISSIONER ZITO: Commissioner Jensen basically said it exactly. You know I was listening to one of the applicants and the thing that stuck in my head is, why would we reward illegal activity? And that's always been an issue that's come to me and I'd always felt concerned about that. When they had come to us and they were operating under the standard legal nonconforming activity at 16 as the share had mentioned I would probably be much more amenable to their concerns. But as Commissioner Jensen said my concern is they kind of went ahead and did what they want to do and now I'll use an analogy my grandmother would say, when she was making a comment to one of my cousins who was living with his girlfriend, she said huh-uh, either you don't live together or you get married. And that's what this situation is, either you go back to the way you should be, which is 16 units, or you get a C.U.P. and that's what I'm seek here and in a sense, by doing that we're saying, you know, it's okay that you were -- I mean, that you were nonconforming the way we fix that is we just give you a permit to do it. And I can't live with that, I mean that to me goes against what we're here there. I realize --

COMMISSIONER DO: Morality to you.

COMMISSIONER ZITO: If you get caught then you just come get your permit you know? I realize they can probably come back in seven months if they scale it back to 17 come back in six months a year whatever it is then get your allowance to whatever, 27. That's kind of a technicality in my book but one I think needs to happen.

COMMISSIONER DO: Thank you, Commissioner Zito, Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I too do not want to support illegal activity or activity that negatively affects the city. On the flip side, I want to support greater enforcement of what's happening. And the neighbors are concerned that the living conditions inside are not adequate and if we can improve that, above and beyond our current ability, then I see that as a positive. Additionally, I don't want to see us put these poor residents out on the street because they might have to do that going back to 16 and then they would come back in a year and apply and go back to 27. But those people who lost their home would be out of a home for at least a year or would have to go into some other conditions which might be worse. In my good conscience I can't put people on the street in this situation.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. I concur with Commissioner Cahan. We have in my eight years on this commission been confronted with this kind of scenario at least a dozen times, and it has never reached a moment of morality for us before. I'm not sure why it is now. But clearly, options have been made plain by staff. If we deny this conditional use permit, we will effectively reduce the housing stock for people in this community. That is a mistake. I urge you to support the motion.

COMMISSIONER DO: Thank you, Commissioner Platten. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I have to disagree with that assessment. I believe I heard staff explain when the size of the room gets larger you can have more occupancy. So I'm not convinced by removing walls making the rooms bigger you cannot accommodate the same people inside the room. So we are not decreasing the total square footage we're just decreasing the number of availability rooms. And I too will be very concerned if these residents are displaced, and I don't believe the business that's operating for profit and I understand the good nature of their service but it is a for-profit business after all. We'll you know send people away if you know they can get paid by them being there. So I'm not convinced that that scenario of Commissioner Kamkar and Commissioner Platten explain would actually materialize. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. There are no additional lights so let's vote by light. So the motion is passed with commissioners Do, Campos, Platten and Cahan voting in favor, commissioners Jensen and death, opposed. This takes us to petitions and communications, public comment of the planning commission on nonagendized items, there are none

ORATER: Laurel Prevetti: None.

COMMISSIONER DO: and moving on to referrals from city council, boards and commissions or other agencies, Director?

ORATER: Laurel Prevetti: There are none.

COMMISSIONER DO: Thank you. Good and welfare. Report from city council.

ORATER: Laurel Prevetti: Just briefly, as you heard earlier this evening, the council did consider the denial of two proposals for alcohol use. Last night they also voted to continue processing the general plan amendment proposed on 10th street the commission heard last month, that was a close vote 6 to 5, so staff will be working with the applicant to complete that application and bring it before you shortly, thank you.

COMMISSIONER DO: Thank you director. Commissioners report from committees Norman Y. Mineta San José airport noise advisory committee, Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair, haven't met yet.

COMMISSIONER DO: Envision 2040 general plan update, Commissioner Kamkar.

COMMISSIONER KAMKAR: Yes, Mr. Chair. We had a meeting last Monday, two days ago, and the crux of the meeting was we talked about several alternatives that were proposed, the four or five alternatives that were proposed by the task force. We had an expert who came and tried to do some analysis on the numbers that was provided to him by our staff, in regarding how much jobs, how many jobs, you know, retail jobs I should say, will those alternatives provide. And so we're beginning to narrow down the choice,

you know, even more. Two of the choices were pretty close to each other in terms of increasing the number of jobs. We also have a -- I guess a community meeting this sad that, you know, task force members are invited as well as the public. And we also received an e-mail today that the staff is willing to meet with the individual task force members if necessary to make sure there's no confusion or any questions that are not asked. That's basically what I got. If the director wants to fill in more I would appreciate it.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Review and approve synopsis from the last meeting, February 10th. Is there a motion to approve?

COMMISSIONER ZITO: Move.

COMMISSIONER DO: All in favor. Next item set Aprilsen, 2010 as a general plan hearing. Does this require a vote? It does. So motion to approve this date. All in favor? Last item, subcommittee report on outstanding business. Any subcommittee reports? There is one item that I would like to solicit input on which is I received a call from the chair of the parks commission to, one, to get together to discuss the agenda for such a meeting. And so to -- I'd like to solicit input from the commission in terms of if there are particular issues that any commissioner would like to be brought forth. Commissioner Zito.

COMMISSIONER ZITO: I'd like to understand if they have any change in their positions on land granting for the types of projects that come before us. In other words right now there's for -- depending on the number of units they would have to give money or land that sort of thing. Have they changed their overall position on that regard?

COMMISSIONER DO: Kind of the entitlement idea?

COMMISSIONER ZITO: The entitlement. My understanding affordable housing is being considered for having to pony up as well to parks and so I want to get their opinions on that and their feeling on that as well.

COMMISSIONER DO: Thank you, Commissioner Zito. Any other input? Okay, great. Then that the meeting is adjourned.

ORATER: Laurel Prevetti: I have one announcement, and --

COMMISSIONER DO: Sorry.

ORATER: Laurel Prevetti: More for the audience than for our seated commission. There is a deadline for Friday, February 26th, to apply for the vacant positions on the Planning Commission. Thank you.

COMMISSIONER DO: Thank you, director. Meeting is adjourned.