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>> Commissioner Cahan: Good evening. My name is Hope Cahan, 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, October 26, 2011. 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. There was a little difficulty a few moments ago with that. Hopefully, if it's not fixed it will be soon. If you want to address the commission, fill out a speaker card located on the table by the door at the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. Each speaker will have two minutes. After 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 the commissioners' questions will not reduce the speakers' allotted time. 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 has raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to the city council. The City Council will hold public hearings on these items. Let the record show that all commissioners are present, including our new commissioner, welcome. We are missing Commissioner Kamkar and Commissioner Bit-Badal. Deferrals. Any items scheduled for hearing this evening for which deferral is being requested, will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you wish to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. Currently we have no deferrals. Staff any additions?

>> There are currently no deferrals at this time.

>> Commissioner Cahan: We'll move on to consent calendar. Staff.

>> Staff has one comment on Item 2A, CP11-030. We did want to make a clarification in one of the conditions that was in the draft resolution and it's related to refuse. The current condition reads that it's required for them to connect to the sanitary sewer. However, dependent on how they manage that trash, and the manner in which it's disposed of, will determine whether or not in fact they do have to connect or not. So we modified the wording to say, connect to the sanitary sewer as appropriate, at the discretion of Planning. And that's all our comments on that.

>> Commissioner Cahan: Thank you. Commissioner Platten.

>> Commissioner Platten: Yes, move adoption of the consent calendar as amended by the staff report.

>> Commissioner Cahan: I have a motion do I have a second? I have a second and Commissioner Bit-Badal has just joined us. And we will take a vote on consent. All in favor? Any opposed or abstaining, okay motion passes. Moving on to public hearing. Our first item is CP11-040 and ABC 11-008. Conditional use permit and determination of public convenience or necessity, staff.

>> Thank you, this is a determination of public convenience or necessity at an existing site just east of City Hall here. It's for a full service grocery store. As we presented in the staff report, unfortunately we are not able to make three of the mandatory findings related to the determination of public convenience or necessity. So we do need to recommend that the Planning Commission deny, as mandated by Title 6, as well as deny the C.U.P. because one can't be any good without the other. One thing that we did want to update you on, is the police department did transmit a revised memo. So it did take out one of the findings that can now be made. They are neutral now and have stated that it would not be detrimental to the Public Health or safety or further degrade an area. They did recommend certain conditions are put in an approval. We don't have that here because there's not an ability of

the Planning Commission. Their conditions are pretty standard, should this go to council on appeal, staff will include in our staff report reference to these, and help the decision-making body know which ones are appropriate for land use permit and which ones would be taken care of through the ABC licensing process. They are things such as just allowing beer and wine, restricting beer to be sold in six packs. That's the sort of thing that again, ABC does. So we'll include that. But help the decision makers what is appropriate and what is not. So with that, again, you know, our recommendation is still as mandated by title 6 that the Planning Commission deny the request both for determination of public convenience and necessity as well as the conditional use permit. That concludes staff comments.

>> Commissioner Cahan: Thank you. Excuse me. We do have one speaker card from Steve Cran, representing the applicant or you are the applicant. And you'll have five minutes. There are no other speaker cards.

>> Wonderful, thank you. Well good evening, my name is Steve Cran I do represent fresh & easy market. We do understand the requirements. Keep it short, say a few words. I'm sure you are all familiar with fresh & easy neighborhood market. They have two operating stores in the City of San José. The Planning Commission recently approved another one at first and Holger about a couple of months ago. So we're really looking forward to taking this to the next step and going to city council and getting a hopefully positive outcome there. I want to say that fresh & easy is very excited to move into this neighborhood in particular not only because it's right across the street from here but also it's an underserved neighborhood. And traditionally neighborhood stores don't address areas like this and this building has been vacant for a while. Fresh & easy have done this in the L.A. area, they've gone in areas such as Compton and certain areas of Hollywood where traditionally grocery stores do not move in. They've been quite successful, and so we are looking forward to going to that next step. We've spoken with the councilman's office, also with the Horace Mann neighborhood association. So that's really it. You know, very excited, very positive we want to definitely move forward and I'm available for any questions you may have. Thank you.

>> Commissioner Cahan: We do have a question from Commissioner Platten.

>> Commissioner Platten: Not a question really a comment. Number one I just want to thank you for understanding the process, understanding that we are going to be required to deny this. Wish you every luck in front of the city council. I happen to be a member of this extended neighborhood. I look forward to your operation coming in and filling a real desperate need for this part of the city. So we appreciate the fact that you're being very timely and speedy on this and best of luck in the future and I'm glad you understand the process we have to face.

>> Absolutely. Thank you.

>> Commissioner Cahan: Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. Also would like to thank you for coming into downtown and also the service you have provided to other cities in inner cities. I also read an article about you going into Richmond and other areas in San Francisco, which I thought was very brave. Thank you, and thank you for taking a chance as well.

>> Commissioner Cahan: No other comments, thank you very much. Commissioner Platten.

>> Commissioner Platten: Move to close public hearing.

>> Second.

>> Commissioner Cahan: Motion and second. All in favor? Okay. So public hearing is closed on this item. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I do have a question to ask staff on page 5 out of 9. The way you calculated distance, you do the walking distance rather than property line to property line. And I wanted you to explain why you did that in distance and is this something you're going to be practicing or doing in the future?

>> Page 5. We actually calculate it from -- two ways, we talk about the closest residential parcel being 70 feet from the building, which is really the way we need to calculate it from the findings standpoint. But then we do include that may be the -- at the crow flies distance. But then you know, if you were to walk to it, this is really the path of travel. So in the case of the findings that are being made, it's the 70-foot commendation that's the operative one. Is that what you're asking?

>> Commissioner Bit-Badal: Yes, because I don't recall seeing that in terms of findings in the past. And I know we've had discussions about distance, walking is distance from a specific site from another site as we were talking about that a couple of weeks ago or months ago really. Again as I read all of our reports I don't recall that for a C.U.P. Is that a specific practice or specifically for this applicant?

>> No, it's actually if you look on page 4.

>> Commissioner Cahan: We do have legal advice here.

>> Just the exact recitation of the zoning code findings starts on page 4 so we typically include the recitation of the finding from the zoning ordinance which talks about 500 feet from a childcare center or 150 feet from a residentially zoned property.

>> Renee Gurza: Thank you, Madam Chair. The reason that this additional information is provided in this particular instance is because this finding also includes an analysis of the manner in which the use is oriented. So in order to give you some information, with regard to how the building is proposed to be oriented, and would it be oriented in such a manner that it facilitates access to the sensitive uses, planning staff also, in addition to the boundary to boundary, which you're correct is the typical analysis, will also then do the walking distance, for example. If it's across from the school as it is in this instance. And that's why they also like to give you that information. Because it goes more towards is the orientation of the building such that it is going to create problems, or is it oriented in such a way that you know the door you actually have to go -- you'll see in one of the

other reports you actually have to walk quite a distance. So it's that particular element that that piece of information goes to.

>> Commissioner Bit-Badal: Thank you. With that I would like to put forward a motion. As mandated by title 6 to deny the C.U.P. permit as recommended by staff.

>> Commissioner Cahan: Okay, we have a motion and second. Staff did you have any follow-up? Okay, all right, any other discussion? Seeing none we'll take a vote. Okay and the motion passes with all present commissioners voting in favor. In favor of a denial. Okay, moving on to 3B, a conditional use permit and determination of public convenience or necessity. Staff.

>> Thank you. Again, this is another one of those dual applications for offsale of alcohol and associated determination of public convenience and necessity for a full service grocery store. This is located in an existing shopping center and actually sharing tenant space with a previously approved beverages and more outlet. Again unfortunately, we're unable to make two of the mandatory findings under title 6, the one that states, the subject site is located within 150 feet of a residence and then also with the inclusion of this offsale alcohol establishment, it would lead to there being six offsale alcohol establishments within 500 feet, that grouping of more than four and proximity to residential does not position us to be able to move on to even consider a determination of public convenience or necessity. So therefore again as mandated by the Municipal Code we recommend that the Planning Commission deny both the determination of public convenience and necessity and associated conditional use permit. That concludes staff comment.

>> Commissioner Cahan: Thank you, Mr. Corian, you're getting a lot of exposure to our process.

>> Good evening again. I also represent sunflower farmers market. This will be the second sunflower farmers market in San José. We went through same process for the one at the corner of Almaden and Branham, maybe a couple of months ago, about that. We were approved at city council so we're very happy about that so we understand as I mentioned before the process. For those of you who are not familiar, just a few words about

sunflower farmers markets. They are a growing chain of organic and natural foods market. They have 34 -- 35 stores actually in a number of the sun belts states. They have two open stores in California. Their format is typically 25,000 square feet. This one is actually a little larger at 32,000. They sell -- about 35% of their floor area is dedicated to fresh produce only. The majority of what they have is organic healthy natural foods. They have a Deli, they have a bakery, and their big claim to fame or their tag line is: Serious food, silly prices. And what they basically aim for, is to provide the kind of quality and healthy food such as a whole foods but do it at a price that's actually reachable to most. So that's kind of the exciting play. Ancillary to that is the sale of alcohol, beer and wine only and hopefully we can move forward to the next step and get that approved and make this store a reality so it can be the second sunflower in town and thank you, again, any questions please feel free to ask.

>> Commissioner Cahan: Thank you, we have no questions.

>> Great, thank you.

>> Commissioner Cahan: Okay do I have a motion? Okay. Motion to close public hearing and a second. All in favor? Okay any opposed? Or abstaining? All right, motion passes. Staff.

>> Staff has no additional comments.

>> Commissioner Cahan: Thank you. Commissioner Kline.

>> Commissioner Kline: Move to deny 3B as recommended by staff. And title 6.

>> Commissioner Cahan: Okay I have a motion and second. Commissioner Abelite.

>> Commissioner Abelite: I know we're going to -- the denial is likely imminent. I do want to extend my comments to city council. I would be supportive of this going forward and being approved anyway. Particularly in light of we had a study session about four weeks ago and federal realty testified to us that there was

approximately \$11 billion of household income within a three mile radius of this particular location. Therefore there's plenty of income, in perspective that's a big level of income and discretionary spending so I don't think six locations within such a small concentrated area would be bad, and it wouldn't cannibalize stores from each other. I would like comments like that passed on to city council. Thanks.

>> Commissioner Cahan: Sound like good comments, thank you. No other discussion? Okay we'll take a vote. Okay and the motion passes, to deny. And all vote in favor of the denial except Commissioner Kamkar who is not present. That concludes our public hearing and we'll move on to petitions and communications. Public comments to the planning commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. Seeing none, referrals from the city council, boards, commissions or other agencies?

>> Laurel Prevetti: We have none.

>> Commissioner Cahan: Okay, good and welfare. Report from city council.

>> Laurel Prevetti: Thank you, Madam Chair. I'd like to report to the Planning Commission that last week, on October 18th, the city council had an extensive discussion about the City's economic development strategy. And they talked about the priorities for implementing the City's strategy. This strategy essentially is full of great action items that essentially nest within our City's general plan. And the city council identified priorities such as updating the sign code, moving forward with streamlining ordinances, doing everything we could in terms of encouraging stadium development within our community. So I bring this to your attention because as our Planning Commission, to the extent there are ordinances affecting streamlining, those will be coming to you as part of the title 20 review. So we are packaging together some of those streamlining items and you may see them even

before the end of this calendar year. So just so you know that the items that you discuss here, all of these use permits, feed directly to those council ambitions, in terms of economic development, so I just wanted you to have that broader perspective as you consider your work. Thank you.

>> Commissioner Cahan: Thank you. Commissioners report from committees. Norman Y. Mineta San José international airport noise advisory committee, I have no report. Review and approve synopsis from 10-12-11. I have a motion and second for approval. All in favor? Okay, any opposed? And abstaining? Did you have a chance to review it? Okay. So we have one abstention. Okay subcommittee formation reports and outstanding business.

>> Laurel Prevetti: Last time the commission requested a little bit of a discussion about one of our subcommittee reports. Pertaining to recommendations relating to the consultant work associated with environmental impact reports. Some of the testimony that the council heard at that same August -- excuse me -- October 18th meeting was also related to that. So for example, Brian Schmidt of the committee for green foothills came forward and he testified that he was hopeful that the city council would be considering of allowing members of the public to view administrative drafts much environmental impact reports, et cetera. This is commentary that he's made publicly before. And so the council now is very much aware of the recommendation that came from the subcommittee. And I wanted to provide you a little bit of feedback in terms of where we are with this item. First of all, one of the pieces that staff is working on is to really clarify for you what our practice is in terms of the working relationship between the consultants and the applicants and staff and really document for you the fire wall that we put in place to ensure that the applicant is not influencing the work of the consultant. As you know, San José does -- takes CEQA incredibly seriously, and we have a very strong record of performance. And so when we bring to you something where we have stated legally that this is the independent work of the city, it is the independent work of the city. So we are working on some of that documentation. Because I know that is of interest to you. And perhaps one of the items, the reasons that motivated this. We are also exploring some options related to the observations, we are not prepared for that but there may be other ways to achieve the same goal of making sure there are appropriate separations. I think the subcommittee certainly identified some concerns but there maybe other practices out there beyond what was in the sample survey. So I just -- out of respect for the work that the

subcommittee did, did want to give you that brief update. And to the extent that it's appropriate, you know, we certainly welcome your comments. Thank you.

>> Commissioner Cahan: Thank you. There are no comments at the moment. Okay. Commission calendar and study sessions?

>> Laurel Prevetti: We have a meeting next week, on November 2nd, so your packet is actually at your place. So please take that with you. And then because of the Thanksgiving holiday we'll be meeting again on the 16th. And we're very close to the end of the calendar year so we will be coming forward with a 2012 calendar probably on the November 16th meeting for your consideration. But typically the pattern of our meetings being the second and fourth Wednesday will likely continue. Thank you.

>> Commissioner Cahan: Commissioner Abelite.

>> Commissioner Abelite: Just two things. I won't be here next week, so for quorum purposes, for what it's worth, I won't be at next week's meeting. And number 2, for study sessions maybe in the future, I presume staff is working on changing the ABC processing as it relates to C.U.Ps, and maybe we might want to create a study session so that I'd like to get a better handle on what city council deliberates, you know when they sometimes go against what our recommendations must be. So I think maybe in the next six months a study session on C.U.P. and ABC would be nice, just a suggestion.

>> Laurel Prevetti: It is an excellent suggestion. It is one of the streamlining ordinances we are working on, so maybe sooner than later. I think we may put it actually under your good and welfare agenda, as an actual topic, because it may even have action this fall, and I think you'd be interested in the direction that might be taking, so it will potentially change your role.

>> Commissioner Cahan: Okay, thank you. And there are no other lights. So it appears as though we are adjourned.

>> So moved.

>> Commissioner Cahan: Motion and second and all in favor? Okay.