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>> Commissioner Cahan: Good evening. I'm Hope Cahan. I'm Vice chair of the Planning Commission. Sitting in for Lisa Jensen, care of the meeting. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, January 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. 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: 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair or vice chair as it is this evening, will call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chamber. Each speaker will have up to two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else has raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. this evening we have commissioners Bit-Badal, Abelite and Kamkar present along with vice president Cahan. There are no deferrals for this evening. Consent calendar. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, Or the public, to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of These items individually, please come to the podium at this time. Okay, I will entertain a motion. Commissioner Abelite.

>> Commissioner Abelite: Yes I would like to make a motion to approve the consent calendar item 2A. Do I need to read the entire -- yes I would like to make a motion to approve.

>> Second.

>> Commissioner Cahan: All those in favor? Any opposed, okay consent calendar passes. Public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. Our first item this evening is PDC 10-007. okay, this is a planned development rezoning from unincorporated to A(PD) planned development to allow for the development of up to 86 single family detached residences on an 8.4 gross acre site located on the north side of Blossom Hill road, approximately 250 feet easterly of Cahalan avenue. the staff recommendation is to Consider the mitigated negative declaration in accordance with CEQA. Recommend approval to the city council of a planned development rezoning from unincorporated to A planned development -- sorry, PD, planned development to Allow for the development of up to 86 single family detached residences on an 8.4 gross acre Site. Does staff have a verbal report on this item?

>> Thank you. Again, as you presented this is a planned development rezoning, and includes a rezoning on a portion of property, so there is some land area that is being rezoned, some that's existing in the city that's being rezoned all to a planned development zoning district to allow for up to 86 single family detached residences configured in the standard streetscape configuration, as well as court home configurations. This project was the subject of a general plan amendment that came before the commission recently to change the land use transportation diagram designation from public part and open space to medium density residential which is a density of 8 to 16. That general plan amendment was adopted by the council, in December, so this is a zoning request to implement that general plan designation. The staff has analyzed it against the general plan, and has done environmental review and has found that there's no substantial evidence that the project will have a significant effect on the environment. And for those reasons a mitigated negative declaration was prepared in

conformance with CEQA and adopted by the city council in December 7th, 2010 as part of their general plan amendment. Additionally staff is recommending approval of this in that we found that the request is consistent with the goals and policies of the San José 2020 general plan specifically, this zoning will comply with the site's land use transportation diagram designation of medium density residential, again eight to 16 units per acre, it is also consistent with urban design policy number 3 as the project will include new streets with sidewalk and park strip. Additionally, neighborhood identity -- policy number 3, this project will improve the character of existing neighborhoods by removing an urban barrier and connecting to existing neighborhoods with a development that is compatible in character to those existing neighborhoods. We've also found that this rezoning request is consistent with the residential design guidelines as appropriate for court homes and single family detached and for those reasons, again, staff is recommending that the Planning Commission forward a recommendation of approval to the city council for this rezoning and rezoning. That concludes staff report.

>> Commissioner Cahan: Thank you. Is the applicant here? Okay. Please come down. You will have five minutes to speak before us. Please state your name first.

>> Yes. Madam Chair, members of the commission my name is Bob Hankin, senior vice president for Summerhill homes. I want to thank the commission for the recommendation of rezoning tonight, and general plan amendment request that came before you on the commission November 4th, 2010 and was unanimously approved by the council in December of 2010. Also want to thank staff for their significant New Hampshire put and effort on this project proposal. We fully concur with their detailed evaluation and appreciate the recommendation of approval in their staff report. As part of the process we considered a number of alternatives and feel confident that the project proposal before you tonight is superior and it allows for more affordable single family detached product that will be compatible with the existing neighborhood. Further the court home concept with its common drives offers an efficient use of space which ultimately gets reallocated to rear yard private open space for each unit. Finally, the public street network being proposed promotes good pedestrian connectivity and provides evenly distributed vehicular access to freeway shopping light rail and a number of nearby parks to the Northeast west and south of the site. Overall we believe this proposal is perfect fit and generally completes the neighborhood. Before I conclude I wish to apologize for some of the confusion that surfaced last GPA hearing

with you relative to the past and present ownership of the site. This is the site that is owned by Walter Lester. It remains in his ownership. We entered into an agreement with him to purchase it. It was never contemplated recently as part of the Marshall Cottle park to the north. It never changed hands, it was never dedicated, the 300 acres to the north was dedicated two three four years ago. As part of our prompt we are currently in discussion with the parks department VTA CalTrans to incorporate a county park trail through the site that will connect ultimately with Cahalan and or Chezboro or something like that. So we're in the process and will be through the PD permit and tentative map working with them to identify a corridor that it can go through, there's already an existing easement that was granted by Mr. Lester on the 8.5 acre parcel. That will be quitclaimed back and will come with a new easement down the corridor that will we'll be purchasing. It is a 1.2 acre parcel we're purchasing from the City of San José that is old street right-of-way, vacant property. With that said again I wish to thank you and we'll be available to answer any questions the commission may have. Thank you.

>> Commissioner Cahan: Thank you for that clarification on some of the confusion we had at that time. We do have a question from one of our commissioners, Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Thank you for your presentation. I have a couple of general questions first of all. As I'm looking through the plans I just want to clarify what you're proposing is what you are going to be building or is this just a scheme attic as to how 86 units can fit on this site.

>> This is -- I mean we have more detailed, probably design work to do but what you see in terms of the concept before you is what we're proposing to be building.

>> Commissioner Kamkar: The layout?

>> The street layout home configurations and such.

>> Commissioner Kamkar: As I am looking through I don't see any tandem parking, that is one of my pet peeves.

>> All two car garages.

>> Commissioner Kamkar: Perfect perfect.

>> One of the beauties behind the court home concept, if you will when you have a common driveway that leaves more room on the street for the common public parking. Over 130 on street spaces as well within the project because of that ability.

>> Commissioner Kamkar: Excellent. Is that both sides of the street?

>> Both sides of the street, all public streets as well.

>> Commissioner Kamkar: The other question is this is probably an architectural question, on some of your plans I'm looking at you labeled the garages as one big garage on some of them you call them two big garages. Is that one double door versus two single doors is that?

>> Most likely. Again the architecture is really conceptual at this point. What we would be seeing typically is one garage door coming up with I don't want to say exception since the time we came from general plan to now, we changed the configuration on the back unit to driving in it's not separated garage doors anymore. That is maybe what you had seen in a previous stuff. Now we have all of them two car garages.

>> Commissioner Kamkar: They are all shown as two car garages it's some of them are labeled as a two bay garage and some of them are labeled as a one bay garage. That's why I wasn't sure.

>> They are all two car garages, I apologize for anything in there.

>> Commissioner Kamkar: Then you mentioned there would be trail connectivity. Would that be through the -- I guess that would be through the public streets, right?

>> Right, correct.

>> Commissioner Kamkar: Okay, thank you. That answers my questions.

>> Commissioner Cahan: Seeing no other requests, thank you, Mr. Hankin. At this point we don't have any speaker cards, would anyone in the audience like to speak on this matter? Okay if not I'll entertain a motion to close public comment. Oh, excuse me I forgot to allow Mr. Hankins. If you would like to come up for another five minutes you may do so. Thank you. Is there a motion? Okay, motion, is there a second? Okay all in favor? Thank you. Okay, any -- staff would you -- do you have follow-up to that? Okay, any questions, comments, motions from the commission? Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair I do have one question to ask to follow up on the developer's comments. The City of San José had no intentions of turning into a park, this parcel into a park right? I mean we never asked that a couple of months ago but I just want to bring that up in the open.

>> There is a neighborhood park within a couple of blocks of this so I think the original public park and open space was reflective of the larger Lester property and it had been that preyou know final construction of 85 so it was not planned as a city park.

>> Commissioner Bit-Badal: Okay great I do have a comment and then I will go into a motion right after that. I actually am very appreciative of the developer. I ran into him a couple of days ago, had a conversation, nothing that was not new here. I will mention today is the connectivity of that neighborhood which I'm really always concerned about connecting neighborhoods to parks and open spaces in other neighborhoods and this is really not geared towards the developer as much as the entities are going to be owners of that walkway, as a woman and as a mother of kids, three kids I would like to see lighting and well-maintained and one government entity

taking care of that right-of-way which is the underpass. Because when you have one government entity taking care of it or one entity taking ownership of it then you know there is one person who is responsible so in the future neighbors can call and complain if there's an issue they can at least call one person, call to complain rather than several people. With that I would like to put a motion forward to approve and recommend approval to the city council of the planned development rezoning from unincorporated to A(PD) and consider a mitigated negative declaration in accordance with CEQA.

>> Second.

>> Commissioner Cahan: Okay we have a motion and second. Is there any discussion?

>> Commissioner Bit-Badal: Actually I would like to speak.

>> Commissioner Cahan: Yes, absolutely.

>> Commissioner Bit-Badal: Again from -- this project came as a GP amendment the developer said last time a couple of months ago. From what I understand in reading the memo, the staff report, and making a couple of site visits, I can see that they have really taken some of our comments to heart, and moved forward with connecting the neighborhoods. One of the reasons I really appreciate their work, is because it's infill project and I'm in support of in-fill projects it is also compatible with surrounding uses which are housing and connects to other neighborhoods to this neighborhood and also ultimately to the park because I can see the other neighborhoods also walking to the development. And through the streets. Public streets and walking to the park. Which I think is really positive for our community. Because of all those, I am very strongly supportive of the project. Thank you.

>> Commissioner Cahan: Thank you, Commissioner Bit-Badal. Any other comments? Okay, seeing none we'll vote on the matter. So the motion passes. I'm showing as our chair Lisa Jensen even though I'm Hope Cahan so that's a little confusing but the two commissioners who did not vote on this are Lisa Jensen and Commissioner Kline because they are not here. Thank you. Okay, moving on to our next item on public hearing. We have CP 09-

0440. Conditional use permit to legalize the conversion of a public elementary school to a private elementary school and the previous addition of four modular classrooms and a new driveway. The staff recommendation for this is Approve a conditional use permit to legalize the conversion of a public elementary school to a private elementary school and the previous addition of four modular classrooms and a new Driveway. Staff.

>> Thank you, Madam Chair. As you said, this project is a conditional use permit to legalize the conversion of a public elementary school to a private elementary school. Associated daycare center and the addition of two modular buildings, a new driveway on a 5.5 gross acre portion of a 10.8 gross acre site. The proposal also includes development variance to allow a reduced setback, front set back from 25 feet to ten feet in two instances on two of the frontages. Under this proposal the school will have a maximum capacity of up to 707 students preschool through 8th grade and 54 employees. Of this student body approximately 191 students participate in morning and after school care. On December 2nd, 2010 a community meeting was held onsite at which 22 area residents, area neighbors were present. The neighbors expressed concerns related to traffic, parking and noise. With respect to parking, per the zoning ordinance the parking requirements for an elementary school are one vehicle parking space for each teacher and staff person, one bicycle parking space per ten full time employees plus six bicycle parking spaces per classroom. No vehicle parking is required for student or parent parking unless the school includes a secondary school grades 9 through 12 which this school does not. The parking requirement is 54 parking spaces which is consistent with the amount provided on site. It should be noted however prior to January 2011 challenger school was not taking full advantage of their vehicular parking spaces. A row of the parking in the Camina Escuela lot was being used as a drive-through lane to drop off and pick up children. As of the new year, Challenger has resolved this issue, and teachers are now parking in these spaces. Bicycle parking requirement for this project is 6 long term and 180 short term bicycle parking spaces. School currently has 94 shortly term bicycle parking spaces. And because currently that does not meet the requirement, staff has added a condition to this permit that the applicant return within 30 days to obtain a permit adjustment to install the necessary short term and long term bicycle parking spaces to meet the zoning code requirement and if you recall, we adopted some new bicycle parking regulations more recently so trying to bring all of the applications that were on file in compliance with those. With respect to traffic and circulation, a traffic impact analysis was prepared by hexagon traffic consultants and reviewed by Public Works. It was concluded that

the proposal conforms to the City's transportation level of service policy. As traffic and circulation are of great concern to the neighborhoods and was expressed at the community meeting staff has included several conditions related to this. Staff is requiring that all vehicles waiting to access the school site shall not block the two lanes, allowing local traffic to proceed and at no time shall vehicles block neighborhood driveways preventing them from entering the street. Currently all after school care students are picked up from the Camina Escuela parking lot which involves parents and guardians parking this area to reach students. To alleviate this, the neighborhood's concern related to traffic during the peak 5:00 to 6:00 p.m. hour school has committed to arranging to two pickup locations kind of splitting that operation for after school students. In the next few weeks challenger will have parents of students in grades preschool through 3 pick up on the Camina Escuela parking lot while students in grades 4 through 8 picked up on the Oak Grove parking lot. This will immediately reduce traffic on Camina Escuela by approximately 50%, and with these -- these are also being conditions in the permit. Staff has concluded that the traffic circulation and efficient student dropoff and pickup areas will be provided and appropriately managed to minimize effects in the neighborhood during peak hours. With respect to noise there were several neighbors who expressed concern over noise generated from the HVAC equipment. From recently - their recently installed modular buildings. City zoning code states that sound levels at the residential property line be 55 DBA. We have received information from the project consultant that shows that the equipment operates at approximately 62 DBAs. Therefore, applicant return within 30 days, should this permit be approved to install the necessary noise attenuation devices or different equipment to reduce the noise level to maximum 55 DBA at the residential property line. With respect to the setbacks and the development variance, staff would like to note that most of the buildings on the site were built for the public school in 1956, however, since challenger has occupied the site beginning in 2001, there have been two portable buildings containing four classrooms installed on the site. Challenger has originally -- had originally obtained approval from the office of the state architect for these structures unaware that the city had updated its zoning ordinance in February 2001 requiring a conditional use permit. As these portable buildings were constructed within the 25 foot front setback as required by the R-1-8 zoning if they're to remain it would necessity the approval of a development variance from that 25 foot front setback and again as we pointed out in the staff report, this site, as it's configured actually is considered to have three front property lines. So therefore has three front setbacks, and as a result of that is forced to push buildings all to the interior. The limited intrusion of these buildings into the setback, given the larger open area, staff felt that

it would not impact the other residents in the area and not really lessen the intent of that setback requirement. What staff has done to lessen any impact of this encroachment of these two portable buildings into two different front set backs, we've added a condition requiring challenger to remove the additional concrete that's between the sidewalk and fence line along Oak Grove drive and replace it with landscaping to again soften any impact there might be. Let's see. And again, the granting of this variance doesn't grant them a variance on the entirety. We're only recommending the variance in these two specific instances. So based on the above analysis staff really has concluded that the private school use on the site of a former public school use is in substantial conformance with the general plan land use policies and the zoning ordinance in that the existing facility in its configuration and construction is a suitable location to continue as a school albeit private and the morning and after school daycare use with special conditions which address peak period dropoff would minimize neighborhood impact from those uses. Staff has further concluded that new landscaping in the area of the permit in the small area of the encroachment of the setbacks for the two modular buildings would lessen that impact and that these minor intrusions into the setback really would not dominate the streetscape and not have a negative impact on the character or the surrounding residential neighborhood. So once again we are recommending that the Planning Commission approve the proposed conditional use permit, for use as a private school, and associated preschool and before and after school care, as well as the development variance for reduction of the front setback in two instances from 25 to ten feet, as this is an existing school facility and will continue to provide a convenient needed service to families residing or working in the area or larger city. Again, well, thank you. This concludes staff's report.

>> Commissioner Cahan: Thank you. We do have a few speaker cards on this. Is the applicant here? Great, you have five minutes to present and then you'll have another five minutes after the speakers have had their chance. If you please introduce yourself before you begin.

>> Madam chairman, members of the council, my name is Frank Healy. I'm director of development for Challenger School. We've been at this location for approximately 10 years we've operated the school. We lease the facility from the Moreland school district. We have an additional ten years with an option for an additional five beyond that. To operate the school. We tried to be a good neighbor and I think have substantially improved the

existing buildings, and facilitates, to make it more acceptable. I think if you look at surrounding public schools and I'm not criticizing -- I realize they have their challenges. We have done a superior job of maintaining the buildings and the grounds. In fact, Moreland school district has responsibility to maintain -- this school is divided, the area is divided, it's just under 11 acres. Half of it is playground and half of it is where the school is located. We only lease the school but we maintain the playground because often Moreland can't afford to do that. And the playground area is open. We have use of it during the day, but then in the evening we make it available to soccer and everything else by trying to be a good neighbor. We appreciate very much the help that staff has given us in addressing some of the needs. What brought this up in the first place is, we made a new driveway loop to divide the traffic so it was not all in front of the school, some of it was in the back of the school, some of it was in the front. We took as much traffic as possible off the street by adding the loop and additional parking for our staff. In doing that we complied with DSA requirements but found out later that the City's were slightly different and that's why we're doing the variance. I think overall we've been as responsive as we can be. Staff when they've pointed out from the community meeting we've made a number of changes including we used to have dropoff and pickup in the morning and evening hours only in the front entrance. Now we divide that. I wish we had the site plan so you could see. But we now split that, so that the traffic is not all in one place and I think that's significantly helped. We've also already ordered and installed one sound barrier which we will test tomorrow to make sure the HVAC equipment is not too noisy. We have not tested that and we will be back within 30 days to verify that we have solved that sound problem. We appreciate very much the assistance of staff but also the community. The community has been very open in sharing with us their concerns and we've tried to be responsive to those things. I think that's a quick summary of where we're at. Any questions?

>> Commissioner Cahan: Thank you. Okay, there are no questions at the moment but you will have a chance to come back.

>> Thank you.

>> Commissioner Cahan: Thank you. Okay I'm going to read the two names, the speaker cards that I have. If you'll please come and line up. Allen Yadagai and Chen Wai hung. You will each have two minutes only. Okay and if we'll have Mr. Yadagai come up first and please introduce yourself first.

>> Thank you for this opportunity to present before you. My name is Allen Yatagai. I'm a resident that -- and I live on Camina Escuela right across on the parking lot. I've been living there for over 20 years. Over the years the traffic has been growing, especially after challenger started. I have concerns due to traffic safety as well as parking. And we have noticed that the some of the concerns that I have, is challenger taking full responsibility over their public nuisance as well as adverse public impact due to their operations. When we brought various parking and traffic issues to challenger, they basically told the residents that our remedy was to call the cops. And I would like to have conditional resolutions to resolve adverse public conditions, given that a lot of these adverse public impact as well as nuisances are being generated through their operation. My other concern has to do with challenger anticipating some of these public -- public adverse public impact, that is rather than waiting until these situations occur, and the negative impact that is occurred to the neighborhood, I would like to find some way that challenger would take the initiative or some way to anticipate some of these breakdowns and find solutions before they actually have a negative impact on the community or on the neighborhood. And my third point has to do with the actual solutions. I'm concerned about challenger not striving for comprehensive solutions but rather opting for suboptimal Band-Aid quick fixes in order to progress --

>> Commissioner Cahan: Thank you Mr. Yatikai your two minutes are up but we do have questions from the commissioner. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. What would you do if your roles were reversed?

>> Rather than saying to the community your remedy is to call the cops, I would as challenger assign staff locally to be vigilant in terms of assessing some of the issues. And taking corrective action.

>> Commissioner Kamkar: Managing the traffic when you say --

>> Manage the traffic manage the parking as being --

>> Commissioner Cahan: Excuse me Commissioner Kamkar, it would help the commission if you would answer with specific concerns if we have an idea of what the actual issues are at hand.

>> There's parking issues. Parking in the residence driveway, blocking the driveway, parking in front of the fire hydrant making what I consider illegal U turns in large newspapers on Camina Escuela in large numbers.

>> Commissioner Kamkar: You believe with engagement they could alleviate concerns?

>> Yes anticipating problems. One of the big problems we have as residents there challenger has major events which occur. And when these events occur, there is no park to be had.

>> Commissioner Kamkar: Right but I mean okay. So let me ask you a question about on that. When you purchased your property, that school was there.

>> Yes. But it was a public school.

>> Commissioner Kamkar: But public school can also hold you know special events.

>> Yes.

>> Commissioner Kamkar: Did you experience certain of those events during the public school?

>> During that period population was dwindling, the school wasn't that active. And fads, that school was a neighborhood school. So the students weren't bussed in or driven in.

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

>> Commissioner Cahan: Okay I see no other questions. Thank you very much. Okay and Chen Wai hung you may introduce yourself.

>> Thank you, I think the proposal to --

>> Commissioner Cahan: If you would introduce yourself please.

>> My name is Chen Wai hung. For the variance, I think once you keep the 25 feet, the setback, as a rule, because of current exceeding and to causing noise and causing a lot of traffic right now. And because the recommendation from the staff does not carry about the time of operation of or the hour of operations but do not include any regular review like area review to allow all the community or the neighbors to seeking with about the noise. So I think this should be to add in this one. And the other thing I have a doubt about the technology about how to reducing the sun significantly, the sun can go anywhere. Especially to the street. The building is very ugly, doesn't look good. Whole things like very, very not a good comply with the residential view. So I think it impact how the value of my property and the value of my house significantly. Okay, the third thinking that the way the challenger communicate with the neighborhood is not very, what I say very positive because the way I thinking when I receive letter from them to talk about the December 2nd meetings, the way the community is not very, very communicate because it's very easy to be misunderstood as marketing for sure or just like greetings that kind of stuff. So me and my neighbor all misunderstood this letter from them and we do not attend the meeting on December the 2nd. So for this I don't think really that --

>> Commissioner Cahan: Thank you, Mr. Hung your time is up. We do have a question for you from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I'd like to ask a question regarding one of the items you mentioned, you say your property values are going down I guess because of the traffic and the noise and the you

know how the building looks. You know but considering everything wouldn't you agree challenger is probably better academic school than our average public schools?

>> That's true.

>> Commissioner Kamkar: Wouldn't your property value sort of you know maybe not make up for the whole thing but you know I think it's a very good school.

>> That is true but not everybody will need school will need a kid go to the school. So the value of that school adding to area is not a guarantee a better value and as a buyer do think about sending their kids kids to challenger, that would be a plus.

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

>> Commissioner Cahan: Okay there are no further questions from the commission. There are also no speaker cards so if the applicant would like to come back you have five more minutes.

>> Thank you. We appreciate very much the sentiments of those who have spoken and I would point out we just spent over a million dollars to add before we were asked to before anyone suggested it we spent over a million dollars to add a driver's loop to improve the property and to generally improve the enabled. No one asked us to do that. We did it because we believed it would help eliminate some of the problems we could see. We are trying to be anticipatory of what's happening in the neighborhood and we also have what we call three strikes you're out policy. If we find a parent for example is speeding and it's noted, we warn them once, the second time we warn them in writing. The third time we expel the student from the school and we have done that for students and parents who are noncompliant. It is not usually the students who are noncompliant it is usually the parents who are noncompliant. We're very concerned that our parents park in the right place. Over and over we stress that with the parent, we go through that. Annually we have four events that are nighttime events, they are monitored buy traffic guard. We also have a full time traffic guard on in the morning and in the evening being anticipatory

on those items. A lot of what we implement are because of comments we receive at the community meeting. That's why we split our evening and day pickup. We've never done that. We don't do it at any other school but because they suggested it we want to be helpful to the community and show them that we're responsive. Appreciate again your time and appreciate the time of both of the speakers who had concerns and we will do all we can to make them happy. I guarantee you, the property values in that area have not gone down because challenger is there.

>> Commissioner Cahan: Thank you, Mr. Healy, we do have some questions from the commission. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Thank you for addressing some of those concerns. Speaking of traffic guards, my kids went to public schools and whenever I went to pick them up there was traffic management plans to make sure no illegal U turns. Sometimes San José police were there to give you a ticket right there and then and that was the quickest way for the parents to know not to do that. Do you have -- how many people do you have youto for your traffic?

>> Whenever we have dropoff or pickup we have a number of our staff who wear vests and they're out in the parking. No child is dropped off that isn't personally escorted from the car to the school. We do that because of the traffic but we don't have anyone out in the neighborhoods circulating to see if people are speeding or things like that and maybe that's something we have to do.

>> Commissioner Kamkar: If they're visible, not necessarily in the middle of the street but the sidewalk, that may have an impact and it shows your good faith, you know, to the neighborhood. And then you know the point about this not being a neighborhood school is well taken. You are a draw, you know, you draw you know quite a bit you know and so that makes sense. And then your four public, your four events are they during weekends or are they during weekdays, basically?

>> Let me defer to Mr. Montier. They are weekday, week evening events.

>> Commissioner Kamkar: Okay, those are all my questions, thank you.

>> Commissioner Cahan: Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. Do you have a point of contact for neighborhood could contact your office? Because one of the comments in the letter was that there's no point of contact, with one person.

>> Yes, we -- pardon me, let me finish your question.

>> Commissioner Bit-Badal: I'm just saying one person would be on charge.

>> Onsite we have a principal equivalent, he is the one that all contacts should go through.

>> Commissioner Bit-Badal: And my next question is, how many complaints have you received over the last ten years that you've been there from the neighborhood?

>> I wish I could give you an exact number.

>> Commissioner Bit-Badal: Ten, 20, 200?

>> Easily there's 20 or 30. Over the last two years people who have combined -- some of the neighbors complain every day and we take note of what their concerns are and try and address them. But no matter what we do we're not going to please everyone, every day. And we've been told they wish the school would go away. Well it's just not going to go away and whether we operate it or someone else operates it, I believe we operate it as effectively and as efficiently as anyone in the market.

>> Commissioner Bit-Badal: Thank you for your time.

>> Commissioner Cahan: Mr. Healy would you be willing to commit to meeting with the neighborhood once a year, have an annual meeting or second meeting?

>> Absolutely or more often.

>> Commissioner Cahan: I want to thank you for helping maintain the area, especially the area you're not even in charge of. The public schools need your help so I appreciate you taking on that role.

>> We're part of the neighborhood. We want the neighborhood to be better because we're there.

>> Commissioner Cahan: That's good. Thank you very much.

>> Thank you.

>> Commissioner Cahan: Okay there's a motion and second. All in favor? Okay, thank you. Public hearing is closed. Staff. Do you have follow-up?

>> Thank you. Couple issues that I've noticed that perhaps we could do a better job in addressing, through our recommended permit. We do address some of the questions that came up. There is a condition which requires a neighborhood liaison. We've identified it as the head master of challenger school. I think that's what he referred to as the equivalent principal. And that they're responsible for ensuring compliance with the hours of operation dropoff procedures and other nuisance conditions. What I'm not seeing is we have failed to include these hours of operation. With schools they're kind of implied but I think it may be worth saying student dropoff shall occur no sooner than a time we think and pickup shall occur no later than one of the kind of standard times, might be -- and I'd have to ask them what the earliest dropoff for the before and after school care. We don't have that in here. So - - and I don't know whether it's 6:30, 7:00. So staff would recommend including a condition, that references

student dropoff no earlier than 7:00 a.m. and student pickup no later than 6:00 p.m. Which would correlate to before and after school care here. We do have a condition which relates to a limitation of evening and weekend activities, special events whatnot and they're limited to three back to school nights, generally in September. We have reference Christmas concert in December, two spring season programs in May, 8th grade graduation in June and maybe a Saturday daytime open house and a Saturday morning testing day. So again, we didn't put specific dates, and whatnot, because those change from year to year. But it's really limited -- limits it to the three back-to-school nights, the Christmas concert, two spring programs and the 8th grade graduation as well as the two. So there is a condition in there limiting those special events. So again if people are finding that they're going beyond that, you know, we can be notified of that and take appropriate action.

>> Commissioner Cahan: Staff, counsel had a question for you.

>> Thank you. If you are going to include typical hours of operation, the 6:30 to I didn't hear the end time, I assume the evening activities aren't going to fall within those hours.

>> That would be the daily standard hours of operation.

>> Okay, so the hours will be just for the typical average --

>> Daily Monday through Friday and then the existing condition that's in there is separate from that.

>> Thank you.

>> The -- again, there clearly is an opportunity should the commission feel compelled, to add another requirement to you know meet on an annual basis with the neighborhood, kind of goes along with that neighborhood liaison and creates that connection. We also in that condition for the neighborhood liaison require that the name and phone number be displayed on a sign on the project site, and be legible from the public right-of-way. So again it's available for the public and the neighborhood, and it's not hard to search it out. Again, you know, with respect to

the development variance, as I think we've pointed out in our staff report and you can see from the exhibits, the predominance of the frontages really are open and have a much deeper setback than even the 25. So the two minor instances of the ten-foot we felt would not have that impact on the surrounding neighborhood. And still, really fulfill the intent of having that 25-foot setback, and the fact that they're required to have it on three sides was a little excessive. But still they're two minor encroachments. Additionally, this is a school facility which clearly lends itself to continue to be used as a school facility, whether it be public or private. So staff, again, is supportive of the use permit for the use of it for a private school. That's all I have.

>> Commissioner Cahan: Thank you staff. Commissioner Platten.

>> Commissioner Platten: I'm going to move separately on each issue since they're separately agendized. With respect to CP 09-040, I move that we approve a conditional use permit to legalize the conversion of a public elementary school to a private elementary school and the previous addition of four modular classrooms and a new driveway as recommended by staff.

>> Commissioner Cahan: Do we have a second? And we have a light from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I was wondering if the maker of the motion would consider a friendly amendment of adding a uniform security guard. It doesn't have to be a San José police officer, to further help with the traffic, you know, on the street to make sure. Because -- let me explain you know why I'm asking for this. If this were a neighborhood school, a lot of people would be walking or biking to school. But this is a private school. Its draw is farther. You actually get more traffic, I think. That's why I think a little bit higher level is warranted.

>> Commissioner Cahan: Commissioner Kamkar we have legal, our counsel has an answer to that for us.

>> Oh, just in connection with requiring them to hire off-duty police officers we could not do that. We can't tell them who to hire.

>> Commissioner Kamkar: Sure.

>> So you can request that they have traffic control persons. I think they indicated they have some but if you wanted additional, then you could put that in there. But we couldn't tell them who to hire.

>> Commissioner Kamkar: Right, thank you, I understand. From what I understand they have inside the parking lot where the students are dropped off in the loop. I think some on the side next to the public street would also be warranted.

>> Commissioner Cahan: Commissioner Platten, I apologize, I forgot to ask you if you want to speak on your motion. Before I move on to the other commissioner.

>> Commissioner Platten: That's quite all right. I'm not disposed to accept this amendment. Happily or not, this is a school site. Schools are in neighborhoods. They're not separate from the residential areas that staff has explained like retail areas, like industry, like businesses. That's just the fact of life in America with respect to schools. I think the applicant and the overwhelming evidence in this case supports the conclusion that the school has taken extraordinary steps to ease traffic flow. They've created a second dropoff and pickup site, four days out of the year they have -- four days out of the year, four days they have an event that requires additional compliance with traffic. Over a ten year period the response was they've had 20 to 30 complaints. I mean I've sat on this commission for eight years. Every time we have a conditional use permit from a school, we get one or two people who complain who just basically don't want the school to be there. School's there. Schools are integrated in our communities. They should be integrated in our communities. If people can't obey the traffic laws then the police department needs to deal with that. The school deals with it as best it can. The evidence in this matter if you don't comply three times, your child is expelled from the school. That's to me, frankly, probably grossly unfair to the kid for the parent's negligence, but the school has adopted that policy, so be it. So I don't think we have any evidence here that suggests there's any high technical bar that exists that requires some onerous conditions. So I'm not prone to accept that amendment.

>> Commissioner Cahan: Commissioner Platten, staff was discussing having set hours for drop off and pickup from 7:00 a.m. to 6:00 p.m. and then also we discussed the annual review with the community. Are those included in your recommendation?

>> Commissioner Platten: My motion is to accept staff recommendation. If that's part of the staff's recommendation, that's included.

>> Commissioner Cahan: Was that also the understanding of the second? Are there any other comments? Seeing none we will vote on the matter. Okay, the motion passes, and again, I am showing as Commissioner Jensen, she is not actually voting this evening and also Commissioner Kline is also not voting this evening. So we can move on to the second part. I will entertain a motion on V-10-002.

>> Commissioner Platten: Madam Chair, I move we approve a development variance to allow a reduction in the front setback from 25 feet to ten feet for the above-noted modular classrooms as recommended by staff.

>> Commissioner Bit-Badal: Second.

>> Commissioner Cahan: Okay we have a motion and second. Do we have any further discussion? Seeing none, we will vote on the matter. Okay, the second motion also passes 5-2 with commissioners Jensen and Kline not voting. Thank you very much. Okay, do I -- okay 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 and placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. Are there any communications or petitions from the public?

>> Laurel Prevetti: There are none.

>> Commissioner Cahan: Okay seeing none we will move on. Referrals from City Council, boards, commissions or other agencies.

>> Laurel Prevetti: There are none.

>> Commissioner Cahan: Okay moving on to good and welfare. Report from city council.

>> Laurel Prevetti: Thank you, Madam Chair. Yesterday the city council considered a status report for the general plan update. They considered whether or not the project should consider some of our pending general plan amendments. One is for the rancho Del Pueblo golf course which the council itself had initiated to consider residential use of up to 600 units. The second pending amendment has to do with the Istar property down in the Edenvale area, again a residential proposal. Council discussed that quite a bit and they decided that they would in fact like the EIR, the environmental impact report for the update, to provide analysis of those proposals, as well as the task force-recommended land use plan. There was some expression of concern regarding those proposals but they wanted to have the analysis done so they could make the future decisions in the fall or at some later time. This does mean that the EIR will be taking a little bit longer to prepare because we have additional analysis to do. We now anticipate that the environmental impact report will be publicly available in April for the public involvement. And then to this Planning Commission for action probably in the August-September time frame. There was a lot of good discussion with the council also regarding the urban growth boundary and I think what it prompted for staff was really a recognition that we need to do a study session on the general plan update so while we do have two of our commissioners on the task force, we felt that since there are a couple of policy issues pending it's probably a great opportunity to engage all of you, so that way, you can, especially our newer commissioners can be very comfortable and fluid with where the new general plan is going, and then we can -- that way you'll be better prepared for the fall when you'll be making actual recommendations. That concludes staff's report.

>> Commissioner Cahan: Thank you. Commissioners report from committee. The Norman Y. Mineta San José international airport noise advisory committee. has not had a meeting so I have no report for that. For the Envision San José 2040 general plan update process, Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. We had a meeting that was cancelled two days ago and so next meeting is set for February 28th, I believe. And so other than that, no other updates.

>> Commissioner Cahan: Thank you. Review and approve synopsis from January 12, 2011. Do I have a motion? Okay.

>> Second.

>> Commissioner Cahan: Motion and second. All in favor? All right. Subcommittee formation reports and outstanding business. Seeing none, we'll move on to commission calendar and study sessions. Staff.

>> Thank you. At this time, we do not have any items for the February 9th Planning Commission. And since you took action on all the items tonight, we don't have anything to carry over. So staff would recommend commission consider cancelling that meeting. Additionally, there has been set by the city council a June 21st meeting for them to hear any pending general plan amendments. So we recommend that the Planning Commission set, on one of their existing calendared days, a side date to hear any pending general plan amendments. And staff would recommend May 25th to the commission to hear any pending general plan amendments. So those are two actions staff would recommend the commission take this evening related to their calendar.

>> Councilmember Campos: We have a motion and second. Okay we'll take a vote on those. All in favor of cancelling the February 9th meeting, and making the May 25th meeting a general plan amendment update meeting. Any opposed? Those motions pass for those two dates.

>> Laurel Prevetti: Madam Chair, the staff feels they could be prepared for a study session on March 9th. If the commission is ready to set that study session that would be staff's recommendation. Thank you.

>> Commissioner Cahan: Okay, is there a motion to -- okay, I have a motion for that. Do I have a second? Okay, all in favor of making a general plan study session on March 9th. Okay, any opposed? And staff will that begin at 5:00 p.m?

>> Laurel Prevetti: Yes, thank you.

>> Commissioner Cahan: Okay, seeing no further items we are adjourned. Thank you.