

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.

[Gavel] good evening. My name is Thang Do, and I'm 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, September 23, 2009. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, 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 cards in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, and not PD-06-et cetera. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearing on these items. The first order of business tonight is roll call. Let the record reflect that all commissioners are present. Except for Commissioner Platten and Commissioner Kamkar. I know Commissioner Kamkar is coming. The next item of business is deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agendized items past 11:00 p.m, continue this hearing to a later date, or To defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions to be heard by the Planning Commission no later than 11:00 p.m. Staff.

SPEAKER: Thank you, Mr. Chair. There is no staff recommended deferrals this evening.

COMMISSIONER DO: My understanding is there is a request for a deferral this evening. Please approach the podium. I suppose you do. If the light is on.

SPEAKER: Chairman, my name is Jim Dombrowski, this is in reference to item number 3D for which we've requested a deferral. I submitted a written request to the staff requesting the deferral, and I was informed that he gave the counsel -- the commission members copies of the request and the reasons that are contained therein. Has to do with the fact that there's been insufficient notice provided, and I've detailed the reasons, in an additional submission that I provided today, that's in writing, that's also there, but it comes down to the fact that there are

significant issues regarding this permit condition. And they have to do with illegal activities that the operation has been cited for by my client, that they're subject to pending litigation for violations of the unfair practices act that are -- they're civil violations, but also, there's criminal consequences. They're misdemeanors. And we haven't considered yet filing appropriate claims with the District Attorney's office but we probably will do so. And so that's one request we're willing to submit our evidence to the staff or the District Attorney's office for an evaluation of whether they've committed violations. Secondly, they've been exempted for compliance with CEQA, and this is a gas station, and we believe that further investigation has to be done. We've just been informed, literally a few hours ago that they were cited by the Santa Clara Department of Environmental Health Regulations regarding their failure to comply with demands regarding the monitoring of the property for gas leaks that are adversely affecting an elementary school that is located across the street from the project. And for that reason we request additional time to provide that information to the commission, and lastly, we believe that CEQA exemption is improper. And we'd like to be able to offer evidence on that. And we just haven't had sufficient time. My client didn't learn of this until two weeks ago. There was no notice provided, there's no notice published at the gas station as represented in the staff report. There was apparently a meeting on July 28th that my client wasn't privy to. And so for all those reasons we respectfully request a deferral of this hearing adequate record can be made regarding our objections to this permit, and the violations of the unfair practices act which I've stated already is not only a misdemeanor, and we submit that we'll be able to provide that information to the counsel. And I'd like the opportunity to do that. And we're requesting a deferral and you know a reasonable period of time could be anywhere from 30 days to 60 days to allow us to put this information together.

COMMISSIONER DO: Okay, great. Thank you sir. Are there questions from commissioners? So well, thank you, sir. Is there a motion to close public hearing? Okay. Oh, sorry. Please, sir, please approach the podium.

SPEAKER: Thank you Your Honor. My name is Gary Westley. I'm an attorney from Mountain View. I represent the applicant. Could I speak to this matter of a deferral?

COMMISSIONER DO: Yes.

SPEAKER: Unless you want to summarily deny it, I would like to be able to comment on it.

COMMISSIONER DO: yes, please proceed.

SPEAKER: Okay. The proposal is to rebuild the gas station. So if there is some problem with it, it's in the community interest to rebuild it, and there is a traffic problem at that corner, and the proposal is to reroute the traffic through an expanded gas station. I'm here because there was an e-mail from this attorney from Petaluma concerning this matter and how they knew nothing about this somehow. And even more time to look at it. And then made the allegation that there was this lawsuit pending since last year concerning their claims, that some statutes have been violated by my client's gas station. And let me tell you that a little -- just a little bit about the law if I could. There is -- there is a set of laws in California concerning unfair practices which provides that businesses are not to sell under cost if their purpose is to put their competitor out of

business. And so those allegations have been made by the Sabaris who pretty Andy's BP. And they operate a number of oil-related businesses around the state including Sabeck transportation incorporated which is being sued for tens of millions of dollars by the State of California and Alameda County for gross negligence in connection with the tanker truck that crashed on I-880 in April of 2006. The fact is that there isn't any basis for their claims, and in fact, my client is selling gas 7 cents less than they're selling gas. And my client has lower cost. So they may resort to anything to try to prevent my client from rebuilding this gas station. But we're not going to resolve the case promptly for you to know what the outcome of the case is. But it is in the community interest that you go forward, and allow this station to be rebuilt. Thank you very much.

COMMISSIONER DO: Okay, thank you. There's no question from commissioners, so no other speakers? Is there a motion to close public hearing? All in favor? Okay, so staff. Can you –

SPEAKER: Thank you, Mr. Chair and counsel may want to weigh in on this one as well. One option that you you might choose if you choose to defer this is go ahead and open the public hearing, under 3D scheduled under the agenda and go ahead and take testimony and you still reserve the right at that time should you so choose you could go ahead and grant a deferral then. Staff's not aware of whether or not there's other speakers here on the item this evening or not, Mr. Chair. But that would be another option. I think the other comment that staff would make is, generally the issues that are being talked about are not particularly land use issues, and that's really the matter before you, is really a land use permit matter. And so to the extent that these other issues are relevant, I think maybe counsel would want to weigh in on that aspect or not, but staff doesn't see these particular issues that have been cited as being particularly relevant to the land use issues. Thank you.

COMMISSIONER DO: Could you address the noticing or public outreach issue, please?

SPEAKER: If the applicant received a notice two weeks ago that would comport with the city's - - our municipal code requirements actually exceeds those and it complies with the city's public outreach policy. So certainly a two-week notice of this public hearing comports with our requirements. I can't speak, staff can't speak to the matter of the community meeting that was referenced, and who was noticed regarding that. But certainly for this public hearing, they've received the -- you know adequate notice. Thank you, Mr. Chair.

COMMISSIONER DO: Thank you, counsel.

SPEAKER: Thank you, Mr. Chair. As to the allegations that there is currently pending litigation between the two private parties, as staff has noted, that is a private litigation and does not -- the City's not a party to it. And this is a more general land use decision. So the fact that there is pending litigation of this nature doesn't preclude the Planning Commission from moving forward and hearing the items, should the Planning Commission decide that it wishes to do so. So, so long as there was sufficient notice which staff has addressed, the Planning Commission also is free to examine the CEQA analysis that has been performed for this item, and make a determination on whether or not the commission feels that CEQA has been adequately observed and complied with. So there is nothing that mandates that the commission defer this item.

COMMISSIONER DO: Thank you, counsel. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I agree with staff, that we only need to be concerned with land use issues. But there were two points that were brought up that I'd like a little clarification on and see if staff can weigh in. One is the concern that CEQA isn't adequate but more importantly what was brought up is the possibility that there are some environmental violations that are pending at that site. And just wondering if that were, in fact, true, not saying that it is but if that were, in fact, true would that at all affect the issuance of a C.U.P. or how we would take that into consideration in our deliberation.

SPEAKER: Thank you, Mr. Chair. I think precisely for those very questions, staff would recommend that you go ahead, hear the item as scheduled on the agenda, take the testimony so that we can respond to those items. It's really not prudent for us to get into those issues at this point where we're just considering the matter of deferral. So staff I think would recommend you go ahead, and not defer it at this time, but wait until you've opened up the public hearing under 3D and then we can respond to some of those questions.

COMMISSIONER DO: Okay, thank you.

SPEAKER: Thank you, Mr. Chair.

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

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I was just going to move that we go ahead and hear this item.

COMMISSIONER DO: You or –

COMMISSIONER CAMPOS: Or recommend that we hear this item as it appears on the agenda.

COMMISSIONER DO: Is there a second? There's a motion and second, all in favor, all opposed? So we will continue to hear this item as item 3D, as agenda item 3D in the public hearing portion of the meeting. So we still have the rest -- okay, there are no other deferral items so there is no need for another motion. The next item of business, actually do we need to go back to roll call to clear the record, that Commissioner Kamkar is here? The next item of business is consent calendar. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of these items individually, please come to the podium at this time. Staff.

SPEAKER: Thank you, Mr. Chair. No additional staff comments on any of the consent calendar items.

COMMISSIONER DO: Thank you. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I move the approval of the consent calendar as recommended by staff.

COMMISSIONER DO: I'm sorry, Commissioner Campos. There is a card on item 2A so we will need to pull that item. So counsel recommends that we go ahead and ask the speaker to come up to the podium. The speaker is Kathy Brandhorst. Would you please approach the podium as she requested to speak.

SPEAKER: My name is Kathy Brandhorst. Lisa Marie Presley Jonbenet Ramsey, John Steele and I'm also the United States president. I have a few concerns on -- it says the late-night use until 2:00 a.m. in the morning. This problem is existing, downtown. During commercial businesses, and also, there's the homeless that sleep out on the streets. We do not carry guns, we do not carry weapons, we're only sleeping. And we are cold, because we are not given any type of sleeping bags, either. But the people who drink all night long, who are all high on drugs, they are the ones that are carrying the guns and shooting us down. And we would like to have more protection in that purpose, because we do not drink, and we only have our soda pops. And I just wanted to also tell you the problem is, is that they can come by, and they can wake us up with machine guns. I was watching this early this morning. And they were actually shooting people down. And it's against the law to carry any type of a weapon, especially guns, when they're not even what is it, supposed to be. I thought it was only the police, the sheriffs. The authorities that are the only ones that are supposed to carry guns. Not the ones that are drinking or high or having dinner late at night. Thank you.

COMMISSIONER DO: Ma'am, thank you very much. As the comments -- okay, staff response, please, is there anything to respond?

SPEAKER: Thank you, Mr. Chair. I would respond that the project is consistent with the general plan goals and policies in that the proposed project would promote a diversity of uses that do not adversely impact existing or planned residential uses and that add to an active downtown which is the goal of the downtown core. And in addition, I would speak to the security which is the responsibility of the Chief of Police and note that the property manager is responsible for onsite security, provide security guard service 24 hours a day seven days a week throughout park center plaza with guard smart security. And that is made clear in the management plan for that business. Thank you.

COMMISSIONER DO: Thank you. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I move approval of the consent calendar as recommended by staff.

COMMISSIONER DO: Is there a second? Let's -- all in favor? All opposed? So the consent calendar is adopted. The next item on the agenda is the public hearing. Item 3A. U.S.-101 Oakland, Mabury transportation development policy. Modification of the U.S. 101/Oakland/Mabury transportation development policy to allow for the participation of the flea market site in the policy and to facilitate near-term retail and residential development at the flea

market site and establish a phasing plan for construction of the interchange improvements concurrent with development. Staff.

SPEAKER: Manuel Pineda with the Department of Transportation. This is a policy modification, the policies approved in December of by the city council, the anticipation of the flea market joining the policy. Sets up phasing and improvements that are concurrent with the development of the flea market, and allows the flea market to look forward with the conditions as stated in the policy. If you have any questions, let me know. Thank you.

COMMISSIONER DO: Thank you. No questions from commissioners. Is there public speakers? No public speaker cards. I would entertain a motion, then. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I recommend that the -- that we consider the reuse of the King and Dobbin transit village FEIR and forward a recommendation to the city council to amend the U.S. 101/Oakland/Mabury transportation development policy to include the flea market development as part of the TDP.

COMMISSIONER DO: Is there a second?

SPEAKER: Second.

COMMISSIONER DO: Let's vote by light. The motion is passed with all commissioners voting in favor with Commissioner Platten absent. Next item, item 3B. PDC 09-006. Planned development rezoning from A(PD) planned development zoning district to A(PD) planned development zoning district to allow modification to the previously approved general development plan which include the elimination of prohibited uses such as vehicle related uses and detached single family and two-family dwellings on a -- Mr. Tech support, could you re-set the screen, please? Thank you. On a 120.4 gross acre site located on Both sides of Berryessa road just West of Union Pacific railroad tracks. Of that.

SPEAKER: Thank you, Mr. Chair. The planned development rezoning before you tonight is focused on three specific changes. The staff nor the applicant is proposing to change anything else from the original planned development zoning for the flea market. Planning staff recommends approval of the addition of a gas station use with no incidental service or repair because it's consistent with the incident of the north village commercial area which is to provide for a full grocery retail center and compatible uses serving a community wide need. Planning staff also recommends approval of the project's participation in the amended U.S. 101 Oakland Mabury transportation development policy to satisfy the project's traffic impact mitigation, because it will allow this city the flexibility to prioritize interchange funding as a part of the development requirements. Planning staff is not recommending approval of the allowance of additional single family detached units within the project. The subject site is located within a BART station area noticed and within a proposed transit oriented village as incorporated under the Envision San José 2040 update process. Both of these areas are striving to maximize new growth at existing or planned transit stations and achieve a land use transportation fabric that promotes increased walking, bicycling, and public transit use and does not give priority to the automobiles. The allowance for high-density single-family detached residential project as proposed by the

applicant conflicts with the intent and spirit of these areas. A single family detached product will result in a lost opportunity to maximize the number of housing units in this dynamic high profile area of the city. In addition the planned development zoning already designates single family detached as a permitted use in the adjacent N-5 north village neighborhood area as shown on page 3 of your staff report on the map. This area was intentionally placed to provide a transition from the existing single family residences immediately adjacent to the site to the north and the high density residential development. This site is a prime opportunity for intensification of residential uses, allowing single family detached units in a location that will guarantee that the development will be at the low end of the minimum density range. For example, this is the Renaissance development that's located in North San José and it is a small lot single family detached project. Near light rail, the Tasman light rail station and offers complex development. What we do want is a higher density town home development such as the Cahill Park development near Downtown San Jose, which hopefully has the full focus, you can see. Okay, thank you. The Cahill park project located in Downtown San Jose is an attached town home project as you can see on the aerial on the screen. Its transit oriented development, its pedestrian oriented streetscapes, its site design is focused on pedestrian access and large common open spaces. Again, for the reasons stated, planning staff recommends that the Planning Commission forward a recommendation of approval to the city council, of the proposed planned development zoning with the staff alternative which includes number 1, adding the gas station as a permitted use in the North village commercial area and number 2, allowing the project to participate in the amended U.S.-101 Oakland Mabury transportation development policy, and number 3, not to allow additional single-family detached dwellings. This includes staff report.

COMMISSIONER DO: Thank you, staff. Are there speaker cards? Okay. Is the applicant here? Please approach the podium. You have up to five minutes.

SPEAKER: Good evening, Chair Do, members of the Commission. My name is Eric Shanehauer. I represent the flea market and the Berryessa-BART transit village project. Our city's economy is in tremendous distress. Last month our city issued building permits for a grand total of four residential units. You would hope that the city would be open to minor adjustments that would help make projects like ours feasible so we can get our project going and get get our city's economy moving forward. That is exactly what we are proposing. Small changes to the zoning which increase the viability of our project. These small changes can be accomplished with no sacrifice or compromise on housing density and no sacrifice or compromise on infrastructure funding. The allowance for the fueling station in the shopping center and the participation in the area development policy is supported by staff, so we hope that you will support those measures, as well. However I must note that if we can't make our project financially feasible, there will be no project, any time soon, and thus, there will be no area development policy funding needed to make the regional transportation improvements that support the BART project and our neighborhoods. So where we have a disagreement with the staff is with our request to put a small space between our town homes to create detached town homes. On the site plan that you see on the screen, we're proposing to have detached town homes on only two blocks, labeled 5 and 6 on the plan. These two blocks are a total of only 3.5 acres on a site of 120 acres. The overall village places these blocks over 2,000 feet from the future BART station platform. So it's not located right at the BART station. What would this kind of house look like? These are actual elevations of our proposed project. As can you see,

the picture on the top and the picture on the bottom, we have eight feet of space between our town home units, unlike the middle picture, where the homes are connected together. Although from an urban design standpoint, you can see the height, the architecture, the style with front door stoops and rear garage alley entries is identical to the attached town homes. Why are we proposing this? We are doing this because by making this minute change, we will generate 4 million additional dollars of revenue to help us fund our first phase infrastructure which costs a whopping \$22 million. Secondly, we're doing this because we want to introduce a third product type in the neighborhood so that we can more quickly sell and absorb units. Because retailers we're talking to for the shopping center are saying, we want to see new customers, new houses on the ground quickly, otherwise we will not commit to your shopping center. And lastly, we think that having additional product type will make the neighborhood more visually interesting, more diverse, and attract a more diverse population, instead of a monolithic wall of town home development. Our approved zoning looks like this. The area in orange is where we propose to put these detached town homes. The zoning requirement is 20 units to the acre. Our project, and this is the actual site plan, shows that the four blocks that we are proposing in the 20-plus transit corridor area, blocks 3, 4, 5 and 6, average a density of 30 to the acre. So our zoning requirement, and the general plan requirement, is 20 units to the acre. What we are proposing is, 30 units to the acre. Any way you slice it, what we're proposing in terms of housing meets the density requirement and the density expectations for our zoning. One second point that the staff makes in their staff report is that somehow, this product type creates more auto-oriented or auto-dominant area on the blocks. Well on this exhibit which you have a copy of on the dais, I've highlighted in orange the drive alleys for all the blocks. And you can see blocks 5 and 6 the drive alleys are identical to blocks 3 and 4. So whether the town homes are attached or whether the town homes are detached, the drive-alley space that serves them is identical in area. So there is no more car dominance with detached town homes than there is with attached town homes. So to sum up, it appears that the personal preference of the planning staff is what's being promoted, instead of implementing adopted city policy. So we would hope that you would consider this minor change, and allow us to get a project that will move forward and get our economy going again.

COMMISSIONER DO: Thank you, your time is up but there's a question from several commissioners. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Hello Mr. Shanehauer. A couple of questions for you. From a parking perspective, what would be the difference in what you're going to allocate for parking, i.e. single-car garages, double-car garages, tandem, whatever, with the stand-alone product versus the attached product?

SPEAKER: They in essence are the same. In the attached product, there are a few end units that interconnect, and maybe some tandem garages for those. But the detached town home, all of the units are side by side, two car garages. Even though the configuration of the unit is just like a town home, alley-loaded in the back, front door stoop, three stories tall. It's town home living.

COMMISSIONER ZITO: So it is not like you are going to have fewer garage spaces for the town homes than you would have for the standalone?

SPEAKER: The parking ratio's the same, I believe.

COMMISSIONER ZITO: So therefore, from that perspective, you won't be introducing any more cars?

SPEAKER: No.

COMMISSIONER ZITO: Second thing, for blocks 5 and 6, which are the ones I think you're considering to do the single-family product -- I mean the stand-alone product; right?

SPEAKER: Only blocks 5 and 6.

COMMISSIONER ZITO: What is the unit number difference if you do it as a stand alone product as you're proposing, or the what the staff is proposing, how many units difference are we talking about?

SPEAKER: Well, it's a small number. What we are proposing is 88 detached town homes, total, on both blocks. 44 on each block.

COMMISSIONER ZITO: On 5 and 6.

SPEAKER: On 5 and 6. So if you were to put the higher density town homes there would be about 30 more units total out of our 2800 that are in the flea market project. That's the most. And the fact is, we probably would never do that. Because it would not probably make sense to introduce the higher density town home on all four blocks. We would have about 240 of these kinds of town homes. It would take forever to sell them. So most likely we would introduce an attached town home of a lower density. Remember, the density is allowed to go down to 20 to the acre. So if you applied 20 units to the acre to these two blocks, you would yield 70 housing units. So in theory, we could do 70 units and we wouldn't even be here talking.

COMMISSIONER ZITO: As long as it were attached.

SPEAKER: As long as it were attached. But because we want to detach them and we're actually doing 18 more than the minimum we're here having this conversation.

COMMISSIONER DO: Thank you, Commissioner Zito. Are you through? Okay, Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. Mr. Shaneauer, Commissioner Zito asked quite of the few I was wondering what was the total number you were telling us end up being 30 or 24 or 44, you said?

SPEAKER: Sorry I interrupted.

COMMISSIONER KAMKAR: The unit difference between what was proposed and what is proposed now.

SPEAKER: That's 30 at the most. If we were to take the highest density attached town home and place it on those blocks the most would be 30.

COMMISSIONER KAMKAR: Okay.

SPEAKER: But what I indicated is in the marketplace, it probably would not make sense for us to do that much of one product type. So we may just as welcome in and do lower density town homes with a yield of only 70.

COMMISSIONER KAMKAR: I understand.

SPEAKER: And producing fewer town homes.

COMMISSIONER KAMKAR: The other question I had, if you were to make these same detached town homes, but eight feet apart, let's say leave 2 inch gap between them, then you get your detached single-family label, I guess on the product, yet have the look and feel of what the staff wants, is that a correct statement, or not quite?

SPEAKER: Well, not entirely. There's two significant benefits to having a space between the units. One is, you don't share a common wall. And home buyers, many of them strongly desire not to have common walls with their neighbors for noise purposes. But the second thing that makes a detached town home so attractive is you're allowed to place windows on the sides of the home. Think about an attached town home. It's basically a tunnel with windows in the front, windows in the back, no windows on the side. And so it really creates a much better living environment, because you can place windows, if you have the separation of five, six, seven or eight feet. It provides light. Obviously you're not going to get a view, you're going to look at your neighbor's house. But it lets in light and air and it just makes a nicer environment. That is why it is a very highly desirable product. This product has been built in a number of places throughout the city, it's extremely popular, extremely successful, and it is deemed the highest end of town home living. Because you have the basic same format of a town home, but you have this benefit of no shared wall and the light and air of the windows.

COMMISSIONER KAMKAR: Okay, the next question is, you said it's not quite 2000 feet, how many feet is it?

SPEAKER: Excuse me?

COMMISSIONER KAMKAR: In your presentation, you said –

SPEAKER: The distance from BART.

SPEAKER: Commissioner Kamkar: -- from BART. The reason I ask is in your previous presentation to the commission you had argued that 2500 feet is close to 2,000 so it's close enough. So how far are these units from the BART station?

SPEAKER: Unfortunately, the lines on here are hard to read. But one thing that just happened is, last month, the board of directors of the valley transportation authority moved the BART platform, 400 feet to the South. So 400 feet further away from these blocks. And this picture here depicts the approximate location of the BART, the revised location. So the distance as the crow flies from the BART platform to the front of this block is a full 2,000 feet as the crow flies. Obviously if you were to walk along a right-of-way to the station, it's going to be even more than 2,000 feet.

COMMISSIONER KAMKAR: I understand, okay, thank you.

SPEAKER: And just I'd like to acknowledge, I understand that a BART noticed is 3,000 feet from a policy perspective. But what we're talking about here, is these aren't at the station. They're the furthest distance away on our property.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Thank you very much. Thank you.

SPEAKER: No further questions?

COMMISSIONER DO: No further questions, right. There is a speaker but I'm not sure that this is the item that the speaker wishes to -- you're finished, thank you. There's a speaker, Gary Westley but you wish to speak on a C.U.P. which this item is not a C.U.P. So if you have mistakenly written the item number, could you let -- please let us know? Okay, thank you very much. Then there are no speaker cards. Is there a motion to close -- close public hear? All in favor? So staff, could you comment on any of those issues?

SPEAKER: Thank you, Mr. Chair. The applicant definitely has his position from the market point in wanting to sell units of his project. Staff's position is that this is a prime opportunity site for the intensification of residential uses for the future. If we allow single family detached or guarantee that the development will be that low density single family detached units on the site and we will not get a higher density product type. In addition, as the staff report states, in June the city council did change the general plan transit corridor residential designation for the minimum density to be 30-plus dwelling units per acre. While this project doesn't have to comply with that because their zoning has a minimum of 20, they're in essence grandfathered in with the 20 plus dwelling units per acre, the city is definitely going in a direction to increase density in the city for residential development. This concludes staff report.

COMMISSIONER DO: Thank you, there are several questions. Commissioner Jensen you no longer, you turned your lights off.

COMMISSIONER JENSEN: No, thank you. So if I understand correctly, even at the modified request from Mr. Shanehauer it would meet the minimum density on blocks 5 and 6?

SPEAKER: Thank you, Mr. Chair, yes, it would.

COMMISSIONER JENSEN: And the other blocks 3 and 4 are significantly higher than the minimum density some and overall, the overall average is still above the minimum density requirement?

SPEAKER: That is correct.

COMMISSIONER JENSEN: Okay. And just for the record, I did speak with Mr. Shanehauer about this.

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

COMMISSIONER KAMKAR: Thank you, Mr. Chair. My question is, do we have an opportunity to, let's say, approve this request, but also, in our motion, say this doesn't apply to the rest of the project? So the rest of the project if there was going to be any other changes they have to come by again and we may not approve that. Because one point that the applicant brought that, you know, sways me is, they need this to get the project started. So I don't see it as, they're trying to pull this for the whole project. And in essence, circumvent what the city would like to see. But you know, the project has been some time and it hasn't gotten started and it's been because of funding. This is one solution they have funding started. So do we have an opportunity to approve it just for these units and doesn't apply for just these units?

SPEAKER: Thank you, Mr. Chair. The applicant is only requesting to change it for these specific blocks, not for the whole project and there is nothing that would prevent the applicant from coming back later to request an additional change but that's not before us tonight.

COMMISSIONER KAMKAR: Sure but in your statement you state, if we approve it we don't want to see this happen throughout the site. And I just want to make sure that if we approve this it would not apply to the rest of the site on this, we approve again.

SPEAKER: If you approve the applicant's request it would only apply for those blocks and not on the rest of the site.

COMMISSIONER KAMKAR: Thank you, I just wanted to clarify that. Thank you.

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

COMMISSIONER ZITO: Thank you, Mr. Chair. There are quite a few developers who are going to make up this whole flea market project, correct?

SPEAKER: Thank you, Mr. Chair, that's correct.

COMMISSIONER ZITO: Are they only responsible at this point in time, are they only applying for blocks 3 through 6, is that the only units that they are set to develop?

SPEAKER: Thank you, Mr. Chair. The project tonight is a change to the planned development rezoning. The applicant does have planned development permits on file nor a master plan PD

perm for the north and south side of Berryessa as well as a planned development permit for the commercial and the residential blocks that we're speaking about tonight specifically.

COMMISSIONER ZITO: Is this particular project the one that's furthest along, that they have, you said they had them on file. But is this more or less the one that's furthest along?

SPEAKER: Thank you, Mr. Chair. As far as what's been submitted to planning, all four of the planned development permits came in approximately the same time and have been making revisions at the same time so they are at this point all on the same track.

COMMISSIONER ZITO: But any decision we make tonight is going to deal with these specific four blocks and any changes that are requested are for blocks 5 and 6?

SPEAKER: That's correct.

COMMISSIONER ZITO: So anything we do would not approve or prevent any further changes to happen, right? So it's specific to this, we just have to have good memories, that's all.

SPEAKER: Yes.

COMMISSIONER ZITO: Okay. Is there any other concerns that staff has in regard to design guidelines? Regarding the introduction of this kind of a product? Is there any concern for variances of design guidelines, or you know, any other reason, or is it strictly a density issue or an actual unit number issue?

SPEAKER: Thank you, Mr. Chair. It is a density issue, and it's a little bit a design issue in that higher density will result in a more urban development as opposed to the lower sort of density within single family.

COMMISSIONER ZITO: And would you say that -- I mean the way they have it here is they're going to meet the 30 units per acre even though they're grandfathered in for 20. They're even going to meet the current guidelines, if I understand correctly, right?

SPEAKER: That's correct.

COMMISSIONER ZITO: And then if we allow the -- if we don't allow the separate units, that they can still go ahead and build the number of units that they would have planned to build anyway coming in at 30.14 and you really wouldn't benefit as far as the number of units, is that a fair statement?

SPEAKER: Yes.

COMMISSIONER ZITO: Mr. Chair, if it pleases the commission I'm ready to make a motion.

COMMISSIONER DO: Please do Commissioner Zito.

COMMISSIONER ZITO: I move that we consider the reuse of the flea market final EIR and recommend the city council approve the planned development rezoning from A(PD) planned development rezoning district, file number PDC 03-08 to A(PD) planned development zoning district to allow modifications to the previously approved general development plan which includes, 1, adding a gas station as a permitted use in the North village commercial area and allowing the project to participate in the amended U.S. 101/Oakland/Mabury transportation development Policy and allowing additional single family detached dwellings on a 120.4 gross acre site as requested by the applicant.

COMMISSIONER DO: Okay, there is a motion, there is a second. Commissioner Campos, would you like to discuss the issue? Commissioner Campos.

COMMISSIONER ZITO: That's okay, let him go first..

COMMISSIONER CAMPOS: I was going to disclose, I also spoke with Eric Shanehauer. I'll go ahead and let the maker of the motion speak, and if you haven't covered what I wanted to say, then I'll speak up.

COMMISSIONER ZITO: I want to disclose that I spoke to Mr. Armstrong about the project. Basically the reason I'm making this motion is I do think that given the economic times that we are in right now we have to allow flexibility. If there was a real tradeoff of the number of units like there was definitely going to be 30 more units or there was some problems with design guidelines and that it would be difficult to meet those standards, if there was a big impact on traffic, I would probably be much more hesitant. I don't see that here. I see the number of units are probably going to be consistent whether they attach them or detach them. Having the flexibility of additional product types probably make sense. There are probably some of this zero lot line products in my neighborhood, as well. And while they're not my preference of purchase, they sold quite quickly. There are obviously people out there who like this type of product, small yards but they like the autonomy of their own house and probably painting all four sides of their house when the time comes. I don't know why but they probably would like to do that for that reason, he support the applicant's motion.

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

COMMISSIONER CAHAN: Thank you, Mr. Chair. I too am supporting the motion. I think having a little variety is going to be beneficial in this area, that it's nice to have a little bit of air flow through some of the buildings, and keeping with the high density, although not quite as high but still in the very high range. So I think that this is a good option.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner -- let's see -- Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I also am going to be supporting this. And I understand staff's concerns regarding decreasing density. But the proposal presented to us this evening, and the one we discussed last night, I discussed last night with Mr. Shanehauer is a highly urbanized design and style that is very much in keeping with an attached town home style.

And I'm assured by Mr. Shanehauer that the product that rolls out in the future is going to continue to reflect that that height and the highly urbanized town home style which is very different from a detached single family home as most people would recognize it, they're relatively tall and narrow and not the low-slung ranches that most of us are familiar with. I also think it's good to have an increase in the diversity of product, and while I disagree with Mr. Shanehauer's reflection of the attached single family homes as a wall of town houses, because I'm sure he won't allow a wall of town houses to be built, I think that it's nice to be able to have a variety of product. And hopefully, that will also increase both the diversity of the economic standing of the new residents, as well as if enjoyment of the neighborhood.

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

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I also agree with vice chair Jensen, in the sense that an attached product has its own advantages. One of the advantages that Mr. Shanehauer referred to was, with that alleyway in between, they can have windows and everything. That's 100% true. However, there are products such as sun tunnels that you can bring in from the roof and create that natural sunlight into even attached product. So please, you know, consider that in your list of items. And also, but you know, having, sharing a common wall, you could also build walls where there's a little gap in between them. So even though it's common to both you really won't hear the sound as much as if it was one stud. You could use two studs to make the walls. So with that, I also will be supporting the motion, thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. There are no other lights. I guess I will be the lone dissenter on the issue, even though I'm sympathetic to the argument that many commissioners have made. I, to me, I think that this is a one of the few major opportunities to do a major project that has a lot of impact on the city. And especially, with it being right where transit is, and so I support staff effort to insist on the highest density possible for the site. So with that, let's vote by light. The motion was approved by all commissioners present except for Commissioner Do and Commissioner Platten absent. The next item is item 3C, conditional use permit amendment to allow a privately run assembly and entertainment activities with occasional events until 1:00 a.m., an increase of capacity to 450 occupants, the demolition of an existing structure on an adjacent parcel to facilitate surface parking and to allow alternative parking arrangements Valet offsite parking, at an existing religious assembly use on a 2.0 gross acre site in the CPpedestrian commercial zoning district located at 650 and 680 Minnesota avenue. staff.

SPEAKER: Thank you, Mr. Chair. This conditional use permit amendment is for the Assyrian church on Minnesota avenue. The proposal is to expand on the hours of operation, allowed in their initial conditional use permit approved back in 1988, as well as to incorporate an adjacent lot into the church facility which is currently an abandoned gas station that they're proposing, to demo, gas station building, that would be an area for parking. They're also proposing to use the Tamien station VTA park lot for offsite parking as well to help expand the amount of use they could do on the property. I guess the church is made of two main parts. There's the main kind of sanctuary and they also have a larger roughly 7,000 square foot social hall. Staff is not supporting after-midnight uses on the site. The site is completely surrounded by residential uses, and staff cannot find it to conform to the 24-hour use policy. Staff is also not supporting the off-site parking at the VTA parking lot, which is probably about a 2500 or 3,000 foot walk from the

site, basically in order to make the findings for alternating parking, you need to make the finding that it's reasonable and convenient and that people would use it and staff believes it would probably be much more reasonable and convenient for someone to park somewhere in the adjacent neighborhood rather than to use the VTA parking lot, when it's at such a distance. Staff does recognize the fact that this church does have an existing conditional use permit, it is legal as a church, and also recognizes the opportunity to incorporate the adjacent site, and to be able to expand the parking lot to better serve the church. Parking has been identified as a major problem for the adjacent neighborhood, and basically, being able to provide more onsite parking on the site would be a bonus. Staff does believe that, is recommending a, I guess a conditional approval of this application. There's -- staff has kind of added some additional conditions that weren't in the original conditional use permit, to help clarify what type of uses would be allowed to use the social hall, mostly activities associated with the church, not things like not night clubbish type events such as dances, concerts, et cetera. So staff does believe that by recommending a conditional approval of this project, it does afford the opportunity to better manage the activities at this church. And staff would also like to point out that since the notice is sent out, a couple dozen e-mails reached staff after the staff report was sent out. So I stapled those all together and distributed them to the commission before the hearing so hopefully you've had a chance to at least glance through those. Thank you.

COMMISSIONER DO: Thank you. Is the applicant here? Please approach the podium. You have up to five minutes. Please state your name for the record.

SPEAKER: Thank you, Mr. Chair. Honorable members of the Planning Commission, good evening, my name is Ash Bryu. I'm a proud member of the Assyrian American Church of the East and serve as the church pro bono legal counsel on this matter. Let me begin by giving a little bit of a background of our church and our community. The roots of our church go back to the Apostle Paul -- excuse me -- St. Thomas, and our liturgy has been celebrated for over 2000 years, making our church one of the oldest in the world. Locally our membership has grown in the last 30 years from five humble families to over 300 families many of them who are here tonight mostly residing in the City of San José. Our services predominantly are for our community locally. We do significant amount of humanitarian aid for the diaspora of our community that are out of the country and leaving communities of Iraq and Iran and settling as refugees in countries as Jordan and Lebanon. We provide a significant amount of financial support to those communities. The assembly hall is quite frankly a vital part of our congregation and our church's finances. The history of the location and the C.U.P. amendment, the last 20 years we've been operating at this facility as an assembly hall and sanctuary, and we foresee continuing to operate at that facility. The purposes of our C.U.P. amendment were twofold. One was to clear up any ambiguity, you have some of the correspondence dating back between 2007 between me and the city attorney's office, regarding what was and was not allowed as part of the assembly hall usage, and the second opportunity that we saw was to see if we could expand the hours of operation. Let me take a moment to talk about the uses of the hall. Our goal is to quite simply have weddings, baptisms, church fund raising events, and other similar projects -- events, excuse me -- in our facility, as outlined by our applicant and my letter today. Incidental to these events are music, dancing and, yes, alcohol. Let me be very clear on a very important point: We do not, have not, will not be a night club or a place for concerts. That's not what our church is about. It has never been that. In the last 20 years, we have had one, let me repeat, one

unfortunate situation that led to the code enforcement matter in 2007. Tonight, I want to reiterate our membership's public apology for that one error in judgment. To not only the community but to the city staff. I believe strongly that the proposed conditions set forth in the planning staff, staff resolutions but to rest as to the intent of our church in terms of the of activities that we wish to have here. Let me now speak to the hours of operation. Our current C.U.P. allows uses of the assembly hall for up to 12:00 p.m. Many of our church celebrations, our weddings are parties that raise money for our church, are likely not over by then. We appreciate the concerns of the community. We want to be great neighbors. Let me just give one example of the illustration of how we want to be great neighbors. In 2005, when a proposed project was proposed behind our church for 19 single family residences, I appeared before this commission on behalf of the church raising significant concerns about the setbacks. We literally have three homes that abut the back of our sanctuary. We had serious concerns then but we understood the role that we played in the broader community. We understood that the community wanted the trail. We understood that the community needed the affordable housing. We worked very cooperatively with the developer, very cooperatively with the city, very cooperatively with the community, in fact hosting a community event in our facility. We also requested that they have disclosure notices in the church relating to our functions. What we are proposing simply tonight is that we do a pilot program for the next 12 months. We want 12 very specific as outlined in my letter dated September 23, events to let us in fact prove ourselves. Three of the 12 excuse me are our church Christmas party, our church Easter party, our church New Year's even party, the other nine are likely weddings of our congregation. These events would be allowed to go up to 1:00 on a parallel path as we have already started we will begin doing intensive outreach to the community in order to put forward effective practices and procedures to minimize the impact. Let me be clear. Our church has to succeed at this location. We have no other options for our 300 families. We take the concerns of the neighborhood very seriously. We will continue to have dialogue with them, we will continue through the process of the 12 months to work with them to see if we can create a win win win situation. Our proposed situation also requires that we return to the commission in the next 12 months and at that time –

COMMISSIONER DO: Your time is up. We appreciate your comment. There is a question from Commissioner Zito please.

COMMISSIONER ZITO: Thank you, Mr. Chair. One quick question. You had mentioned several activities that you want to have, you mentioned 12 of them. Aside from New Year's even do any of them have to go past midnight?

SPEAKER: Unfortunately for our community most of them do. We are late starters. Most of the weddings don't really get started until 9:00. It is an important part of the celebrations. And so we understand that there might be some hesitation as to why that might be. And I think that the only way that I can describe to you is, it's important enough for us to be here and to be requesting it and it's also very important to us that we attempt to make it work you know with the community.

COMMISSIONER ZITO: So that one hour, staff is recommending midnight, that one hour from midnight to 1:00 is a pretty big deal, is that what you're saying?

SPEAKER: That's correct.

COMMISSIONER ZITO: Mr. Chair, is there a fairly large stack of speaker cards on this?

COMMISSIONER DO: There is a fairly large stack of cards.

COMMISSIONER ZITO: I'll wait on additional questions.

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

COMMISSIONER KAMKAR: Thank you, Mr. Chair. Hello, Mr. Bryu, nice to see you again. Commissioner Zito, as a member of -- as someone who is familiar with the Assyrian community, I can vouch to that, that a lot of parties are after or end after midnight. It's not just them, it's probably the whole Middle East region. But question for you, those three homes that abut your property, were they there when you bought the church or were they there, or were they there after?

SPEAKER: All 19 units were built after we bought the church. They were entitled in 2005, I'm happy to supply staff with the agreement we did with the Pinn Brothers. We actually had the right of refusal to buy the first three. Regretably, with the economy, we weren't able to do that. But to answer your question, they all came after our sanctuary had been in existence.

COMMISSIONER KAMKAR: So I needed to be clear on that point and I'll hold my questions for after the public audience.

COMMISSIONER DO: Thank you very much. There are no other questions. Thank you very much for your testimony. There are many speaker cards. I will call three names at a time. Please come down to the bottom of the stairs, and you will each have two minutes. Father Lawrence Namado, Pat Pizzo and Nancy cops. Please come down and you have up to two minutes. Please approach the podium and state your name please.

SPEAKER: Good evening. My name is Father Lawrence Namado, I'm the parish priest at 680 Minnesota Avenue. I want to thank you for your consideration. With me I have members of our parish who live in the San José and rely on our social hold and its revenue to support their families and themselves. I would like them to stand up and demonstrate their support for our application. Thank you. I ask for your support for our application.

COMMISSIONER DO: Thank you very much. Next speaker, please. Yes, Mr. Pat Pizzo.

SPEAKER: Yes, my name is Patrick Pizzo. My father was Peter J. Pizzo. He owned 650 and 680 Minnesota for many years. My mother-in-law lives behind the Assyrian church. They are very good neighbors, I'm for what's being requested. The building removed at 650 was an old gas station and then it was a glass place, you know, small business. And it really is right in the middle of where their parking would be on that triangular lot so it makes all the sense in the world to remove that and let them park there. It would increase their parking tremendously. The reason I come this evening mostly is because in 1961 when my mother passed away we planted

two trees there, redwood and an oak tree. These are on the back near the SP line right by the houses that you were mentioning that were built. These feet are 8 foot in diameter, the redwood is about 120 feet tall. It's on private property, so I don't know what the rules are. But I think -- I would like to see those trees remain, as they are truly heritage trees. I helped plant the one, in '61. So I just wanted to see -- hope that those trees could be retained in the parking.

COMMISSIONER DO: Thank you very much. We'll clarify with staff later on, thank you. Next speaker, please. I will call the following three speakers, Bob and Melinda Kong, Bob and Linda Boston and Abby Duran. Please proceed.

SPEAKER: My name is Nancy cops. I live on the falcon place street and I moved there in August of 2008. So I've been there for 13 months and I'd like to first of all -- I'm speaking against granting the conditional use permit. As it's described. I would like to say that for both August Assyrian festivals, I attended them, I had a good time, the food was great, I heard the music, I enjoyed the music and I have good feelings for the people of the Assyrian church. But I am very much concerned about the proposal to increase the occupancy to 450 people. That's a very large number. And I'd like to just very briefly point out some of the commercial zoning district laws. I'm sure you're familiar with them but I would like to at least put it on the record. 20.40.010, commercial zoning district states that no building structure or land shall be used in the commercial districts except as set forth in this chapter. And under C-2 it says, which is the church is zoned as commercial pedestrian. The commercial pedestrian district is a district intended to support pedestrian oriented retail activity at a scale compatible with surrounding neighborhoods. And the request here is for a private business, as I understand it, to take over the scheduling the entertainment activities for 400 people, over 450 people. And the conditions that have been suggested don't diminish the maximum capacity. They don't solve the problem of alternative parking, which would probably be in the neighborhoods. And they don't deal with the entertainment component of the assembly sponsored activities.

COMMISSIONER DO: I'm sorry, your time is up, ma'am. Thank you very much for your comment.

SPEAKER: Okay, thank you.

COMMISSIONER DO: Thank you. Next speaker, please. Bob and Melinda Kong. Please state your name for the record. You have up to two minutes.

SPEAKER: My name is Bob Kong. My wife, Melinda Kong. We have some concerns about the church increasing capacity and the hours in the 1:00 in the morning. Noise issues, people we think that's just a little bit late. And with the festival, we were seeing quite a bit of traffic in the neighborhood, even though they did help out with the shuttle, and parking there. The people are just, they want to try to take the shortest route to the festival, and that's, you know, in our neighborhoods, you know, blocking streets and the parking is very limited in our neighborhoods, that the streets only allow parking on one side of the street. So there was occasions where, you know, cars would stick out two feet blocking neighbor driveways and things like that. So I just don't think that people are real opposed -- I mean that they would like to have -- be shuttled in. They just would just rather take the easy route and just the hours. Those are our main concerns

there. 12:00, you know, I don't know if that would make that large of a difference but I think it would on an hour sleep. So that's what I would like to say.

SPEAKER: Am I allowed to speak also?

COMMISSIONER DO: Yes, you have 24 seconds left.

SPEAKER: My name is Melinda Kong. I have to agree, the hours I get up are 6:00 in the morning. And if they're having activities until 1:00 a.m. it is going to impede my ability to get a restful night sleep for the job that I do. And that with the overflow I'm concerned about the public safety. We have a lot of kids in the neighborhood and with the activity with people driving down the streets there's potential risk to the pedestrians in the neighborhood which is a concern of mine also.

COMMISSIONER DO: Thank you. There's questions of commissioners. Commissioner Campos. Please stay at the podium. There are questions of commissioners, please. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Sir, I think you stated that you live in one of the units directly behind the church?

SPEAKER: No.

COMMISSIONER CAMPOS: Oh, you don't?

SPEAKER: I live -- but like in the festival, I know this might be a totally different thing than a wedding or something, but the festival, the music was very loud. You could hear it for blocks, you know, I mean --

COMMISSIONER CAMPOS: Okay but you don't live in one of the new houses that's -- the three houses --

SPEAKER: That directly back up dashes.

COMMISSIONER CAMPOS: There were 16 units developed. Do you live in one of those?

SPEAKER: Yes.

COMMISSIONER CAMPOS: Okay, thank you.

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

COMMISSIONER CAHAN: Thank you, Mr. Chair. Now, the church is offering to work with the community, and have many meetings with you, to try to solve problems. If, say, they are allowed to have their events until 1:00 and increase their capacity and you see that they are actually able to get people to park, and they're shuttling them, they're parking over in the parking

lot at both locations, and they keep the noise level low, is that going to satisfy your issues, if you see them working with you and actually producing those results?

SPEAKER: Could I add a comment to that? Yes, I think we would, and I'll let Bob talk in a minute. I think with the festival, when it was loud, they had amplified music outdoors. That was a concern. The other thing I wanted to add is that to date, the church has not put outreach to us in regards to what they're doing or not doing at all.

SPEAKER: I just found out from another person that they did pass out a flier which I didn't receive but just recently passed out a flier saying that they are -- they are -- they have heard our concerns and they're willing to try to work with us, and that's fine, I mean we're willing to work with them. We have those concerns. But yeah, we have nothing against the church or anything, and if they could, you know, come to some type of compromise or anything, I didn't know how many events they could have per month or anything like that. But, you know, if they could keep the events down to a reasonable amount and --

COMMISSIONER CAHAN: They're proposing 12 for an annual fiscal year as a trial period. So essentially it would be one a month if you average it out.

SPEAKER: Yeah, and I would think that would be reasonable. As long as they could keep the - you know the noise level you know to -- because I know, you know, even in the new homes, a lot of the neighbors, a lot of young kids, I mean the baby, you know like 2 and 3 and babies in the area. And I know the church was there, we bought it, we know, I mean before we even bought there we must have visited that site six times on various different times on weekends, even when the church was there and it's always very quiet. So I have no problem working with them as long as they could try to keep the noise level down a little bit.

COMMISSIONER CAHAN: Do you recall the event that you were talking about with the amplified music until midnight?

SPEAKER: No, no, that was the thing why we didn't --

SPEAKER: It was a weekend.

SPEAKER: It was a weekend, during normal business hours. It was loud and it's during the day, it's a festival. You have to be festive. We weren't -- I don't want to say we weren't complaining about it but if there was noise like that past you know eight or 9:00 at night then we would have some definite concerns. But they stopped at like 5:00 or 6:00.

COMMISSIONER CAHAN: So at this point you're not complaining about any activity that has been going on that the music has been too loud late at night?

SPEAKER: No.

COMMISSIONER CAHAN: Thank you.

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

COMMISSIONER ZITO: Thank you, Mr. Chair. You mention you get up at 6:00. Is that a typical weekday or do you work weekends?

SPEAKER: Most of the time it is during the weekday time. If they're having the activity on a Sunday night until 1:00 a.m., that would be very disruptive. My biggest concern if they have the festival, if there's a music event or event outside, it would be very cumbersome to speak because the music was so loud with the amplified music that it would shake our house. And we're seven houses in.

COMMISSIONER ZITO: We have some correspondence here that was handed to us tonight. It's been our experience that you've tried to work with the applicant to no avail?

SPEAKER: No, no, this is the first that we knew that they're willing to –

COMMISSIONER ZITO: So it's never been your experience in the past where you've approached them to maybe turn it down or whatever the case might be, and you've gotten no results? It's not been that case?

SPEAKER: No. I think that's what we liked about the community when we were deciding to buy there which we recently bought and moved in. Willow Glen is a quiet, tranquil neighborhood. And 802, that's what appealed to us, that's why we moved in. When we were visiting there we enjoyed the fact that it was quiet and it was exactly the kind of neighborhood that we wanted to move into. To get this notice was kind of a little shocking to us.

COMMISSIONER ZITO: Okay.

SPEAKER: But we're happy to work with them.

COMMISSIONER DO: Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. So I just want to confirm that you're talking about one incident since you've lived there that has gotten under your skin. You were familiar with the chump, you were familiar with the area so the activity as you testified was always good up to that point. At that point where they had the outdoor amplified music is when you know, got you upset, am I clear on that?

SPEAKER: Yes.

SPEAKER: Yes, but I mean I want to add, I mean, I'm really not complaining about the music. We're not saying that the music –

COMMISSIONER KAMKAR: No, I understand, I understand.

SPEAKER: Because it was during normal hours, a festival and --

COMMISSIONER KAMKAR: It's just too loud.

SPEAKER: You're saying if that is to continue later in the night, I know all these people here from the church there but you know –

COMMISSIONER KAMKAR: Good people.

SPEAKER: If they were in the same situation, then would they -- which side would they be on? If they had to if they were woken up at 1:00 in the morning by somebody, a wedding that was at the church, would they have the same view?

COMMISSIONER KAMKAR: They have to be more comfortable –

SPEAKER: To living by the facility.

COMMISSIONER KAMKAR: They have to be more considerate, that's absolutely right. But they would have to invite the neighbors, next time, enjoy it from the outside.

SPEAKER: I just saw the flyer on the things they were willing to work with. We're not trying to impede anybody's business or trying to restrain the church from doing anything.

COMMISSIONER DO: Thank you so much for your comments. Commissioner Kamkar, is that --

COMMISSIONER KAMKAR: That's it. Thank you.

COMMISSIONER DO: No more questions, I just want a general reminder of the commission, there are many speaker cards on here so please approach the podium and state your name. You have up to two minutes.

SPEAKER: My name is Linda Larson Boston and I live at 1375 Whitehurst Court. As a nearby neighbor of the Assyrian church we are opposed to the amendment they seek for the original conditional use permit granted in 1988. The church's membership has outgrown reasonable use of the building. The current noise, traffic and litter are already unmanageable. It appears that the congregation has made no effort to investigate alternatives such as locations elsewhere like warehouse districts north of the county fairgrounds. There they wouldn't be disturbing a residential area. We understand that the church is allowed to take advantage of the street parking, one weekend per year when they hold their annual festival which they recently did. However due to the larger congregation it is difficult for neighbors to find parking in front of their homes nearly every Sunday but especially during the holidays, Easter, Thanksgiving and Christmas times when the residents may want the street parking to accommodate their own guests. The noise, traffic and litter generated by the church decreases property values of the neighboring homes and we can't have peaceful enjoyment of our residences. If the city approves the proposed amendment to increase the occupancy level the problems generated by the church's use of the property would potentially double the noise litter and traffic. The city should be held financially accountable for the decrease in property values. Since currently no efforts have been expended by the church and its members to pick up litter, trim weeds and the like, what

assurances do we have that they will start performing such tasks after the amendment is granted? The only constructive activity they've done recently was to paint the former gas station that has plans to be torn down. We put up with the inconveniences of the church for over 20 years. Why should a reasonable person believe that they will become good neighbors once the amendment is approved? What recourse do the neighbors have?

COMMISSIONER DO: Ma'am, I'm sorry, your time is up. Thank you for your comment. Next speaker please, I will call the following three speakers, Thomas Lane, Katy Dick innson and Ken cockville. Please proceed.

SPEAKER: Now?

COMMISSIONER DO: Yes, please.

SPEAKER: Chairman and commission, I am not antichurch nor am I antibusiness. My name is Abby Duran and I own a business next to the church. I've done business there for 20 years as Duran product design. I have tried to maintain my property as a good neighbor and as my neighbors would like me to do so. Even after a small dispute with the Pinn brothers builders on a property line issue, when they came in and tore down my fence and also pulled out 23-year-old Oleanders, I have reinvested in new chain link fence which cost me about \$4,000 and have landscaped the property at \$4,000 as well. I'm not quite finished with the landscaping. On the issue of the old C.U.P. for the church, there have been many violations. On various occasions they have had more people than the current C.U.P. allows. Trash, parking and noise remain a problem. The church has not been good stewards of their C.U.P. Very few exterior improvements have been made on the church property for a very long time. On the issue of community meetings, that were supposed to take place, February, we had a true meeting, we had about 20-plus people. August, no meeting, no communication. September, we had a partial meeting, where we had four or five of the neighbors attend. And again, very -- a lot of lack of communication between the church and the neighbors. My recommendation is to postpone the new C.U.P. request, or give the church a partial, to go ahead and improve the property.

COMMISSIONER DO: Sir, your time is up. Thank you. Oh, I'm sorry, please return to the podium. Question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. Have you noticed a parking issue, or are you there mainly during business hours, and Sunday is not an issue for you?

SPEAKER: Could you repeat that again please?

COMMISSIONER KAMKAR: Parking issues, I want you to address parking issues. Have you noticed parking issues there?

SPEAKER: As I mentioned on my little speech, parking and noise and also, rubbish on the streets and on my property.

COMMISSIONER KAMKAR: Which day of the week is parking issue the worst, is it Sunday or –

SPEAKER: Usually when they have an event and sometimes on Sundays.

COMMISSIONER KAMKAR: Okay, thank you.

COMMISSIONER DO: Thank you. Mr. Thomas Lane, please.

SPEAKER: Good evening, my name is Thomas Lane. I've been living across the street from the Assyrian hall for about ten years now, during which time I've been subjected to countless noisy parties. I've had the drum beat from their music come right through my house even with my windows closed. My neighbors tell me they can hear it too. I've had to call the police at times to get the sound turned down. According to the existing C.U.P. under the heading concurrent conditions on page 8 item 15 states "all amplified sound shall be contained within the buildings and the buildings shall be adequately insulated to prevent sound from emanating outside." After having endured the noise coming from outside the building for hours another kind of disturbance happens after the parties end. As the patrons are leaving the building there is a lot of noise created by loud talking, yelling, whistling, car alarms, car horns and car stereos. Sometimes a few patrons will hang out in the parking lot long after everyone else have left and an after-party with no regard for the late hours or the disturbance they're creating. The following morning we homeowners often have to pick up bottles, cans and fast-food wrappers dumped in front of our houses from the overflow parking in front of the hall. This neighborhood facility has been a chronic nuisance and has almost never complied with the C.U.P. requirements. Therefore I would suggest it would be irresponsible on the part of city to allow any amendment to go forward until such time as the Assyrian hall management can bring the facility into compliance with their existing permit. Please don't allow this proposal. Thank you.

COMMISSIONER DO: Thank you. There are no questions, thank you. Ms. Dickenson.

SPEAKER: Chairman and all of you, I have been a neighbor there since 1989. And we've been to the church festival and they're very nice folks. It's not that there's any problem with them, it's the events. We have a neighborhood group, we send e-mail. There's about 15 houses that have been trading stories back and forth what's been going on with the church. It really depends where your house is, how much you can hear. We are at the end of Belmont. We can hear the boom boom boom from the events. Some of the neighbors down the street can't hear it all. Some of the neighbors closer to the church seem to have problems with trash and parking. My husband and I go for walks late at night and you know, dodging cars and the after-event parties are a problem. They have had a number of meetings. We did ask them at the February meeting to create an e-mail list and to tell the neighbors when there would be more meetings. They said they would. They didn't. They didn't show up for the meeting in August, although the neighbors did. And then they didn't send a notice from the people who showed up in August, we contacted them and we said here's our e-mails, please tell us when you're going to have another meeting. We would like to talk to you, we want to communicate, we want to make this thing good. And the meeting this month they didn't use those e-mails. So we gave them e-mails again. We would like -- we want to work with these folks, they're good folks, it's not that there's a problem with

the church being there, it's a problem of late events. I'd like to see the property kept up. There's a lot of weeds, there's a lot of trash, there's basically a lot of run-down stuff. And I would like to reduce the noise. In fact specifically we talked to ash and he said he was okay with sending e-mail in advance to the neighborhood's e-mail list and telling us the name of somebody we could contact. That thing would be great if they do it.

COMMISSIONER DO: Wonderful, thank you ma'am, your time is up. Please, next speaker, please. And the next three are Susan Stabold, excuse me if I mispronounce. Eric Stabold, must be Ms. Stabold, Tim Edwards. Please.

SPEAKER: Thank you chairman and committee, my name is Kevin Cogville, I live on Hervey lane, I'm about three properties up from the bottom of the map here. The two major issues that everybody keeps hitting on is parking and noise. Any time there is a major event, including Sunday services, which is okay, they're a church, they're going to have their Sunday services, and that's fantastic. There is a parking issue. You can only park on one side of these streets, when you have an event there's more parking, people knocking on your door, asking if they can block your driveway which is clearly not acceptable. I'm not against them having events. I'm against them expanding their ability to have events and would I ask this not be approved until they have the parking issue solved and if tearing down the garage putting in a parking lot, if tearing down the gas station and putting in a parking lot solves it, great. But they should do that first. Using the VTA lot solves it, great, but I'd they do that first. I'd like them to do the steps they're supposed to do, that will take care of the trash, that will also take care of the noise when the people leave the party. Noise would be the other one, you have noise itself, when they have events, amplified music, you can hear it from inside your house, outside your house. My point of view of being a residents, I want to limit the amount of times I hear music. They're going to have events, that's fine, 450 people, that sounds like a lot. Parties will end when you let it. If you let it go to 1:00, it will go to 1:00, if you let it go to 2:00, it will go to 2:00. When a party lets out, that's when there's a lot of noise in the neighborhood. There is a limit for peopling sleeping and living in the neighborhood –

COMMISSIONER DO: Your time is up but there is a question from Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. Currently the noise level, how late does that bother your household?

SPEAKER: The -- and I think a lot of people referencing this because the last big event they had was the aassyrian festival. I don't recall when it stopped. I don't recall if it was after 11:00, if it was after midnight. There were a huge number of people, it's a huge festival. A year later they're going to ask more, they want to make money off of this, they are very open and honest about that they want to maximize their potential. I would definitely be opposed to that.

COMMISSIONER CAHAN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Thank you. Please approach the podium.

SPEAKER: Good evening, chairman Do and members of the Planning Commission. My name is Susan Stabel and I live on Prevost street, one street over, but apparently it's right in the noise corridor. When the music's going it's amplified and you can hear a deep boom. You certainly couldn't enjoy being outside without hearing it. And when you're inside, you can still feel the vibration and the boom. And also, I am extremely opposed, to extending the hours to 1:00. I serve the community also. I'm a nurse. I start at 5:30 in the morning so I get up at 4:30 in the morning. I don't on the weekend, but I don't sleep very late. So for plea to hear boom boom boom is very disturbing. And it's a party. I don't -- I appreciate the church being there but for them, a wedding, there's amplified, hey, Charlie, now say something. I don't know if it's in that language but it's still a party and loud music. So I just completely disagree with extending the hours to 1:00. Because there is also revelry after the event, and it is loud and very disturbing. It is zoned residential and to extend the hours would create a permanent sanction noise nuisance and I believe decrease my property value. Also, the parking congestion, increasing the capacity of 450 people, just -- it's already quite a problem. So I am completely opposed to the use of the light rail parking, the flattening the old gas station to expand the parking seems reasonable. But my greatest opposition is for the extension of the hours.

COMMISSIONER DO: Thank you, thank you very much. Your time is up. Next speaker, please.

SPEAKER: Good evening, chairman and Planning Commission. My name is Eric Stabel, I own a home very close to the Assyrian church, our neighbors are across from the Assyrian church. Very loud noise from music, parties, loudspeakers have already been a problem in the past. It can be quite loud inside my home and extending it to early morning hours would be unacceptable to me and my neighbors. I would hope that their loudest events could be actually held indoors in the future as to not bring that loud sound level in across the residential neighborhoods that surround this church. Please consider the fact that residential properties are all around it, and many people want it quiet. And I would say especially after 9:00 p.m. and extending it later rather than earlier I think is a problem. Traffic and parking on our streets can also be a problem during these events. And I would hope that if anything changes, there would help reduce this problem rather than increase it. Thank you.

COMMISSIONER DO: Thank you, there's a question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Yes, thank you, Mr. Chair. How many times would you say, actually first of all how long you have lived there with the church being there?

SPEAKER: I just recently married my wife, who, she has owned that home for many years. So it's newer to me, just a couple of years. But there's a number of events during the year? And some of the weekend events that I've noticed have been quite loud, but I can't give you an exact number.

COMMISSIONER KAMKAR: Referring to the weekend events, are you referring to the church services or parties? I want to make sure.

SPEAKER: I haven't attended any of them. They sound basically like parties, I don't know exactly what the events are since I haven't attended but there's people speaking loudly on microphones as well as music and yelling and screaming and quite a bit of noise. It doesn't -- it sounds like quite a party going on there.

COMMISSIONER KAMKAR: Okay, so what times are these events that you're referring to, these weekend events?

SPEAKER: I haven't checked the clock on it specifically for a meeting like this but I would say at least until 10 or 11:00 at night is not uncommon.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Next speaker please, I will call the following three speakers, John from Belmont avenue in San José, Charlene Abelha, and Alyssa, sorry for the pronunciation.

SPEAKER: My name is Tim Edwards, I live with my family with two young children at 717 Minnesota which is almost directly across the street from the proposed location. And in the kindergarten form, I can hear the boom boom boom people are talking about. I've laid in bed tried to go to sleep at night with the boom boom boom. But other times it's not there. And I don't notice too much of a parking issue, because nobody parks directly on Minnesota right there. But I do get a lot of traffic when they have events there. And the empty alcohol bottles and increase in trash are a reality at some of these events. Unfortunately, I took the burden of cleaning them up. I've even witnessed church goers coming from events there -- not church goers, event visitors depositing trash in my front yard. To avoid confrontation, I just quietly picked it up. But I think those things should be taken care of first. And I think extending the hours to 1:00, with small kids and parties like that have showed me that they're definitely capable of partying late, I don't think we'd want to extend them to 1:00. I would feel let down if you guys let that happen. And that's it.

COMMISSIONER DO: Thank you very much. Next speaker please.

SPEAKER: Mr. Chairman, commissioners, my name is John Plougher.

COMMISSIONER DO: Thank you very much.

SPEAKER: It is hard for me to pronounce sometimes, too. I'd like to start off on a positive note. Unfortunately, I'm less optimistic about the rest. For all the reasons that have been raised tonight, with these other speakers, many of the congregation members live in San José, but they live in the Almaden part of San José, not Willow Glen part of San José. And so they're not neighborhood residents affected by these late-night parties. There are a lot of promises that have been made. They haven't had a lot of parties in the last year because of their own difficulties at the church, but in the years previous, they did have late-night parties, and the noise was loud even at our place up in the right corner of the map here. You could hear the boom boom late at night. But my concern is that we've got a lot of promises that haven't been met. Meetings that were cancelled with no notice, and neighborhood e-mail that wasn't sent and whatever. What

recourses do we have, if we go forward with this, and all these promises evaporate, that there is no valet parking, the streets are bad, the noise is bad, whatever. If we say yes to this, it just gets worse and it hasn't gotten better in the past. Thank you very much.

COMMISSIONER DO: Thank you. Next speaker, please.

SPEAKER: Mr. Chairman, commissioners, my name is Charlene mellow, I lived directly across the street from the banquet hall. I have lived there prior to the time the church existed, when there was a gas station, a glass company, various other businesses. I have found that the people at the church are very cooperative, very kindly and willing to cooperate. One thing must be kept in mind. The existing administration of the church was not one that was there before. The one that was there before is yes, guilty of some loud parties, trash and other things. However this is a new administration, a new group of people for the most part and I believe that they should be given a chance to prove themselves, to show that they can be unlike the previous administration. I believe they will keep things under control. They will make an attempt to develop parking facilities that will alleviate the problem in the neighborhood. I believe they will clean up the existing facilities and landscape, and I believe that the addition of 450 feet or excuse me 450 persons is not a bad idea. I think they should be given a chance, and furthermore, I believe that they have made an effort, this group has made an effort to prove themselves. I have witnessed the festival for years and my neighbors and I were just talking a few days ago and we noticed that the party, the festival ended much earlier this year and was much less noisy, much. So I ask you to think in terms of a new administration and new congregation here and not judge them in the past and give them 12 months to prove themselves. If they don't do well in 12 months then give us a chance to speak up and say they didn't live up to their promise. Thank you.

COMMISSIONER DO: Thank you, ma'am. Next speaker, please.

SPEAKER: Good evening, Mr. Chair and commissioners. I was a former president of the church council, and the current administration, of course, and long time member, I've been a member of this current church since I was a teenager and had my big fat Assyrian wedding at the hall in 2001. So I can attest with some of the activities and festivities that people attest to, and we do have good times just like Greek people and Mexicans and ethnic people do. I want to let you know that not allowing the church to operate 12 days per year as proposed by Mr. Bryu will be -- will accumulate losing business for the City of San José because a lot of people will be going to outside cities to other halls as far as Modesto and Turlock to have their Wednesdayings. We do believe in having our own ethnic food at our weddings. We try to be good neighbors to our community, 95% of our church goers are San José residents, they understand how it is to be living in San José. The church is on major thoroughfare which is Minnesota avenue. But also, being good neighbors, I want to backtrack, we have fixed the fence, we have removed a lot of debris as the previous speaker mentioned, we have reduced the noise of the festival and what we have done is close the festival earlier than before. Of course there's always room to improve, we want to continue to be good neighbors and we want to continue to work with the neighbors. I wouldn't say that's the end, it's really the beginning of it. It's really port to myself to continue having weddings at the hall. I can tell you sentimentally, it's very important to me. I remember with wedding day all Sunday. Which also solidifies my marriage and reminds me what a special place that location is.

COMMISSIONER DO: Thank you very much. Thank you, your time is up. I'm sorry, Commissioner Zito has a question for you.

COMMISSIONER ZITO: Thank you, Mr. Chair. I keep hearing this new administration. When would you say the new administration took over?

SPEAKER: It's in 2007, if I'm not correct. What happened is it's a long story, former beneficiary on, a different bishop took over and decided that he wanted to have a different kind of church. So for few years, many years actually, it was under that bishop's administration. So as of 2007, actually 2008, we moved in, back into our own hall, and it's absolutely under new bishop and news pastor, new father, new administration. So and we've been very cognizant of the neighbors' needs and wants. We tried to be good neighbors. Again as I mentioned there's always room for improvement. If I can just add one more thing, sorry about that, I know as a city we always look into the long term planning. If we don't tolerate churches within our neighborhoods, the only avenue for them is to go to our industrial areas. And I would hate to see that happen, because that's a major issue for us is, we're losing industrial lands.

COMMISSIONER ZITO: You mentioned you were former member of the administration?

SPEAKER: The current administration, one. Not the former one.

COMMISSIONER ZITO: Are you aware of what seems to be a significant number of complaints where residents have said that there were issues that they tried to get addressed and were not addressed?

SPEAKER: When I was the president unfortunately we were not at that location. We were under judgment, so we were renting a hall somewhere else. We were renting other churches. So during my administration we were not located at this church.

COMMISSIONER ZITO: So when did you move to this?

SPEAKER: My memory's not good. When did we move in? 2007, October or November of 2007. Yes.

COMMISSIONER ZITO: Okay from what you understand you may not have been seated at the time when they moved to the new -- to the current location, is that what you're saying? You were part of the new administration but at a different site?

SPEAKER: I'm sorry, what?

COMMISSIONER ZITO: I was trying to get this --

SPEAKER: Okay, it's a long story so what happened is --

COMMISSIONER ZITO: Let me see if I could just ask the question correctly. You were part of the administration but not at this particular site, is that correct?

SPEAKER: Yes because –

COMMISSIONER ZITO: Were you part of the administration when you moved to the site in 2007?

SPEAKER: 2007 through -- I was part of the administration through December of 2007, for two months.

COMMISSIONER ZITO: Are you aware of any of the complaints that some of the residents brought before us regarding noise, trash, whatever, and how your administration has dealt with those complaints?

SPEAKER: I will defer that, too, because I have not been part of the parish council since January of 2008 and I would be much more comfortable if Mr. Bryu answered that or the current president.

COMMISSIONER ZITO: Fair enough.

COMMISSIONER DO: Thank you. Commissioner Kamkar.

COMMISSIONER KAMKAR: Yes, following the questioning of Commissioner Zito, okay, you weren't part of the administration, but as a member of the church, did you hear instructions from the administration that we've have these complaints, we've had these issues, please when you leave, pick up the trash?

SPEAKER: Absolutely. We have actually had the pastor of the church, we have had parish president who is here as well, and also, other members always remind each other to be good neighbors.

COMMISSIONER KAMKAR: So at least the administration is I guess –

SPEAKER: Absolutely.

COMMISSIONER KAMKAR: Heeding the advice. It's a matter of getting the people to listen.

SPEAKER: As a teenager, I've been going to church to the Assyrian church up on Minnesota much more so during this administration than ever before. So been a member since 1989.

COMMISSIONER KAMKAR: Thank you.

SPEAKER: Or before that, actually, 85.

COMMISSIONER DO: Okay, thank you, ma'am. Thank you. The applicant you have up to five minutes for rebuttal. I do want to say to the members and supporters of the church that we recognize your presence here in support of the applicant's request, and we appreciate your restraint, in not each one of you speaking individually to the commission. But we do realize why

you are here. Please sir. Actually it would be good if you could address some of the issues that I'm sure are of great concern to the commission which has to do with alleged violations of the C.U.P. and other violations.

SPEAKER: Chairman Do, if I could have a little bit more than five minutes but I'll try to, let me start with a big big picture. I I want to commend your staff, I don't want to get into a he said, she said situation. Page 5 draft resolution to page, I believe it's 11, there are 28 new conditions. And to the issue of compliance, at any time, if this C.U.P. is proposed and the amendment is passed and it's in effect, there are code enforcement matters, there's the City Attorney enforcement, there's all sorts of way to do the enforcement. Let me just start by saying there are 28 new conditions. Many of them I again commend your staffer respond specifically to the conditions and the concerns that were raised by the community. We had a very robust, very thorough, I believe it was almost two and a half hours that I was on my feet community meeting publicly noticed with the city using the city policies in February where a lot of these issues were raised. And I think that's where the genesis of a lot of the conditions that being imposed on us by the city staff as recommended in their proposed resolution are covered. Let me hit a couple real quick. There are conditions imposed on not having outdoor activity and outdoor music. There are conditions imposed about alternative parking. We have a little bit of a chicken and the egg. The Falcon Place project that we supported, part of that project and the overall compromise that we reached is we were receiving some land from Pinn that would allow us to go from enough spaces from I think it's 60 to about 108 spaces with a new reconfiguration. That amount of parking capacity leads to the amount of the increase in occupancy which based upon the parking right now I believe we would have 432 people that would be allowed. That's per the city rules that we would like to be treated as just like any other church in the city. The valet parking provides a little bit more bump. We will be within those rules in terms of the occupancy. The VTA lot is not counted, the only way we would use the VTA lot is to make sure that we have no questions about parking because we heard them in February in the community we heard them tonight we don't want to park in the neighborhoods we take it very seriously. And in fact there is a parking management plan that is going to be conditioned upon us as part of the staff memorandum. The issue of total occupancy is addressed, the issue of security is addressed, the issue of noise. We paid for a comprehensive noise study that the staff thoroughly vetted and we would be within the compliance of the noise. Let me say this, and I try to rerate this to some of the community members. If there is a particular incident, if there is a plan where there is a problem, someone is cranking it out, this new administration, which I will talk about at the end, we are going to, unlike the previous administration, and I guarantee this and I promise you, because I will draft the language, we are going to have in our contracts a basically unilateral ability for our on-site manager that, if the music is made too loud, that we pull the plug on the event, period, no question. So that is a part of the changes that we would be implementing over the course of these 12 months. The issue of tree removal, excuse me antilitter, there is literally a whole section on page 7 that talks about how we would remove letter. There are issues how we operate, how we conduct ourselves. It's a very thorough staff report and as I said in my letter we are 100% willing and able to comply with these conditions. The only issues we're here on is those two main issues that I spoke about. On the issue of property values, as of November '07, and it's documented in the letters that I sent from the City Attorney, we engaged in this debate with the City Attorney, what is an assembly hall, what isn't. There is a tremendous amount of ambiguity. As part of the process of the City Attorney not taking litigation action against us, we

stopped events. The last 18 months the property values in this community have dropped not because of the church of the East but because of factors way beyond the church of the East. I want to make sure you understand that. We had no events because of the court -- excuse me the City Attorney enforcement matter. The issue of violations and nuisance, I understand there's a lot of emotion in this process. But let me reiterate simple facts. 20 years, and I believe to my knowledge we've had one code enforcement. Does that mean we have not had problems here and there? Absolutely not. Does that mean that those problems are not important? Absolutely not. We take them very seriously. We aim to be at this facility. You heard the little baby in the background. That's my little baby boy. I want this church to be here for him. I've told all the parishioners that we are going to have a new day. That is the thing that is important to us is we have a sanctuary at this facility. I've told our the leadership, that the city has the power to yank the conditional use permit, that has oh, the use of the sanctuary.

COMMISSIONER DO: Your time is up. There are questions of the commissioners which you will have a little time to address with commissioners. Commissioner Kamkar.

COMMISSIONER CAHAN: Thank you, Mr. Chair. You mentioned you had a very large meeting in February. There was discussion that there was another meeting set up that no one from the church attended. Can you addresses address that?

SPEAKER: Regrettably here is the sequence of events. We had an event that was very robust, the community meeting in February. We agree to have a follow-up meeting, once we got closer to the Planning Commission hearing. The staff can speak to this as well. A meeting was set up for the Commission, for our hearing. We noticed the community meeting prior to that and then the committee, the planning staff deferred the commission item. I will take it upon myself to not realize that we didn't tell the people that the meeting was cancelled so what we did is send up a follow-up meeting to all the people that signed up, and we had another meeting that discussed that I was present personally, at that meeting the discussion was about the pilot program that I had and the commission and the outreach and the great ideas and what was discussed there is that as we moved forward, that was the e-mail list that was referred if that was to be approved that we would start this road together to win win win, and that's the public notices, the follow-up meeting that came in is that some did get the notice and a few did not. That maybe a function of how you draw the circles and what have you, but in our perspective in, particular Falcon Place, they were supposed to have the disclosure notices in their agreements, and I have the agreement for that. But in terms of the community meeting, yes, we had a hiccup with the second one, we sent out another notice, we had the final notice that was attended by many of the most vocal crick its of our plan and at that meeting is where we laid out the understanding from the staff that we had that they weren't going to be supporting the 1:00 a.m. and we proposed the idea of this pilot project.

COMMISSIONER CAHAN: So am I hearing that you did create an e-mail list from everyone who requested to be on?

SPEAKER: Absolutely. We took the sign-up sheet from the one in February, the president is here to speak to it. We created an e-mail list, we e-mailed to that list that was cancelled in August and we basically sent out another one as well.

COMMISSIONER CAHAN: Thank you. And then if you would address the gentleman's concern about the two trees that he would like to see remain?

SPEAKER: They will remain. Our park diagram is based upon them remaining and sort of parking around them and the staff's been doing a great job with us in terms of our circulation.

COMMISSIONER CAHAN: Thank you.

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

COMMISSIONER KAMKAR: Thank you, Mr. Chair. If you could please address the trash issue, you know as far as you have a management plan to go around and pick up any trash that's left over, so in the morning when residents get up they won't see that or make the people who I guess rent the facility have some kind of a deposit with you so if they don't pick it up, you know, that it was gone, I'm you know, that's one item. And then the second item is the -- I guess the second item was the compliance with the old rules as far as the building being soundproof or something like that. You know, that item also came up. Can you ask us those two items please?

SPEAKER: Sure. Let me take the issue of the noise. We had a complete noise study. Per that noise study, if we had X amount of you know noise we would be within the city guidelines. One of the challenges we've had, and this is one of the good practices we're going to instill is there are apparently times when that door's open, or the front of the facility. Part of the conditions of the project is that's to remain closed, part of our contract language is to say we basically have a zero tolerance. I'm dead cold serious about some of this stuff, because as I have explained, this is a major facility that serves a much broader goal. We need the income from it, but as far as the litter goes, we have a youth group, we have a very active group of young people, we have a number of people, and we will literally, with me being with the tee shirt, you know, sweeping the streets. You know, litter's not going to be the reason this C.U.P. is not extended, not as long as I represent this church. So we will take that very seriously, and part of the 12 months we will have a zero tolerance. The best way I can describe it to you is the way I try to describe it to some of the most vocal community opponents. I said this 12 months is an attempt by us to get a grade. We either get an A and come back, and you'll be happy with us, or we'll get an F, in which case you'll be unhappy with us. But the idea is right now, I can't undo the sins of the past, all I can do is talk about the future. And I can tell you in the future, we will have a different administration, management, and if you don't believe me or you don't trust me, there's 28 conditions that your staff has imposed. And if you approve our amendment tonight with the two minor additions that I have had in my letter to you, you will be rest assured you will be taken care of in terms of some of those issues.

SPEAKER: Commissioner Kamkar: And then, I'm sorry, one last issue that came to my mind. Some of the residents have asked -- some of the names have asked that improvements be done first, you know, and then maybe the hour be extended on a trial basis. Would you be accepting to that? Would you be happy with that, if that were to be the case? case?

SPEAKER: Commissioner Kamkar, we are 300 families, like many people we've been impacted by the economy. I will just briefly talk about this new administration. Our church spent \$2

million of hard raised money to basically excommunicate the former bishop that was in charge of this parish. We don't have the funds. I promise you, if we had the funds, we would do as much as we can, I think Ms. Bedal mentioed some of those. As soon as I have some events, as soon as I provide some income, I will make those improvements, because ultimately if I don't make those improvements I have a chicken and the egg with the community. The answer to your question is we'll take all the revenue that we have within the budgets that we have and start making those improvements. Part of the unfortunate situation of this change of administration is as part of the construction of the falcon place, the pinn brothers were actually supposed to, basically, you know, take out the asphalt, remove the demolition of the building and you know, put in the asphalt in order for us to come in. Because that project was built after, and concluded and then we finally got the church back we're not able to come to a basic agreement with Pinn to do that after the fact. So approximately I'd say \$300,000 to \$400,000 that we were going to receive from Pinn as part of that project we have to make up. We intend to be good neighbors, we intend to make those changes, we intend to be there long term. As much as we have the revenue we will do that.

COMMISSIONER KAMKAR: Thank you, that's it.

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

COMMISSIONER ZITO: Thank you, Mr. Chair. Couple questions. First of all, I just want to understand the parking scenario. Is it your understanding that for specifically the parking issue, that you would not be able to increase attendance until the parking has been provided, is that your understanding?

SPEAKER: I think my understanding is we have a certain amount of time and that we would be allowed to have those you know events and at some point those improvements have to be made. The particular sequencing, it escapes me. But you know, we really do have chicken and the egg. If I can't do the events, if I can't fund-raise or have a Christmas party or fundraising for this event, then I can't do the improvements. And so I'm merely stuck in that -- I don't have funds right now -- this church does not have the funds to make \$500,000 worth of improvements.

COMMISSIONER ZITO: But you want to be able to increase your attendance beforehand which would probably exacerbate the parking scenario.

SPEAKER: Well the parking scenario to the extent that we would have to make sure there is no park issues, during that interim period of time, that is part of the risk for us if we are not managing that correctly and we have all sorts of problems with parking. That would answer it for you. To answer your question, there is a window that we have to make sure we are doing a great job of taking care of the parking situation.

COMMISSIONER ZITO: It is dependent on the economy in a sense –

COMMISSIONER DO: If I could interrupt, I think staff could clarify that issue, either part of the C.U.P. we could make it a condition of that.

COMMISSIONER ZITO: Right but I understand the applicant, his concern, how can I say, I guess what I'm trying to understand is my reading of the conditions do not put specifically a sequence of events. I believe what you had said, your understanding is that based on what I read, correct, in that there is no condition that says you have to have the parking in place, in order to increase the attendance. And we'll get staff to verify that.

SPEAKER: I think Commissioner Zito, if I might, I think that there is an interim period where if I -- you know if we need to figure out that there is that many parking spaces onsite, I can bring in this many and I can bring in the valet and I can have the VTA shuttle --

COMMISSIONER ZITO: That's what I was getting into it, is the way you are going to mitigate this issue the VTA shuttle?

SPEAKER: It's a spatial issue, we're going to do as much as we can to mitigate the issue and the parking management plan.

COMMISSIONER ZITO: Any concern, in this economic time raising \$500,000 is not trivial.

SPEAKER: That's for all the improvements that need to happen in the church. I don't know the line item of the demolition, can't believe it would be more than 25 -- I'm not a construction person, but 7,000, some of it could happen, the parking would be the issue initially and everything else would fall in afterwards.

COMMISSIONER ZITO: The other thing is, as far as your desire to have those events, what day of the week were you hoping to --

SPEAKER: Mostly all of the events are on Saturday nights. I mean, nobody gets married and has an event, you know, a wedding at Sunday nights. Without looking at the calendar, I don't know when the Easter, when the Christmas party and when New Year's fall. The other nine could easily be held to sat. We have never had, maybe one time on Sunday that went a little bit late. Most of the time the church finishes. Saturday nights are the key nights.

COMMISSIONER ZITO: For 2009-2010, Christmas and New Year's is on Friday, just so you know. Would the event occur on the day or the day after? Basically what I'm wondering is would you be amenable to restricting these events to Friday and Saturday nights only?

SPEAKER: Absolutely. Assuming that -- I'm sorry that the calendar dates of New Year's and Christmas are as you present them.

COMMISSIONER ZITO: I think I'm correct there. For this year at least, next year it will be Saturday. So you had addressed the tree issue, that's good. So would you be amenable to putting a community liaison, we used to call them disturbance coordinators, but people didn't like that term, so we now have community liaison, in charge for each and every event, and a phone number that any resident could use to call that community liaison?

SPEAKER: Absolutely, Ash Bryu, 408-568-1958.

SPEAKER: Commissioner Zito: Let me write that down.

SPEAKER: And I mean that.

COMMISSIONER ZITO: So having a condition that includes a community liaison would be okay with you?

SPEAKER: Yes.

COMMISSIONER ZITO: Also, the cleanup, the conditions say 200 feet from the property line, New Year's even -- okay, fair enough. The litter cleanup, it says 200 feet. Frankly from what I'm hearing, people have seen litter further out from that, fined feet, down the block. Maybe if it was specified within a few streets, I don't have any glasses with me, but just the number of 200 feet would you be amenable to working with staff in coming up with more how can I say comprehensive cleanup?

SPEAKER: Absolutely, we would be happy to do it within 1,000 feet of the area.

COMMISSIONER ZITO: Lot of cleanup, be mindful of what you --

SPEAKER: We want to clean up if there is a lot of litter. There is a lot of commercial use is around Minnesota and Belmont.

COMMISSIONER ZITO: Right right.

SPEAKER: Part of what I told the community is, I don't know if we're the problem for everything in that community and without joking, I did tell our church people that you know we have a camera person that we're literally going to tape these events because I want to know for sure what's happening. To the extent responsibly, the fault lies with our church we will clean it up.

COMMISSIONER ZITO: Quite frankly, we have had issues like this come before us before. Literally sitting here seven years on the commission, certainly not the first time that we've had a situation, and we don't expect you to go down and essentially wash down everybody's sidewalks. You know, we expect you to look after your own event's litter, if you will, right? So that's clear.

SPEAKER: We'd be happy to work with staff on some reasonable communication, more than 200.

COMMISSIONER ZITO: Okay, I think those are my main questions. Thank you very much.

COMMISSIONER DO: Thank you, Commissioner Zito. Thank you sir. Thank you. Is in a motion to close public hearing?

SPEAKER: So moved.

COMMISSIONER DO: Second?

SPEAKER: Second.

COMMISSIONER DO: All in favor, all opposed. Staff, could you clarify many of those issues?

SPEAKER: Sure, I guess touching on the last kind of issue that was discussed. Basically, staff based the parking on the zoning code standard which is basically for churches or religious assembly uses, it is one space for every four people. So that was basically where I think we got the 432 number was based on the build-out of the whole parking lot. So until, you know, the building's demolished and the actual parking lot is reconfigured and restriped, staff doesn't really think the occupancy should expand until the parking is actually available. I guess a couple of other issues, there is kind of a condition in the proposed draft resolution addressing basically saying there should be no outdoor uses except for the one weekend of the year, the Assyrian festival. We didn't add any condition in there regarding amplified noise, so I guess staff might suggestion to the commission that they could add an additional condition to limit it, amplified noise, to cut off at a certain time frame. Frying to look through some of the issues that were discussed. The litter cleanup was a fairly standard that we'd adopted for some other similar type of uses. You know, whether expanding beyond that is reasonable or not, I'm not sure. I think that concludes staff's response, thank you.

COMMISSIONER DO: Thank you. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Couple of things I brought up were the days, aside from New Year's Eve, which my esteemed colleagues mentioned is, Thursday night is New Year's Eve, so you typically party that night, and I would figure that most people would understand that. Was there any thought to limiting the events to Friday and Saturday nights, and if not, what were your thoughts on that?

SPEAKER: Mr. Chair, based on the comments we had from the February meeting, and I was at that one, there was such a pervasive concern about late night hours and issues with noise control already, we didn't feel entirely comfortable with doing that. We thought the better approach would be to go with the conditions we have in the permit now and provided that maybe there was some track record after a period of a year's time where the church could show that in fact they have been good neighbors and have been able to comply with the conditions. Perhaps a better approach would be for the church to come back in in a year's time perhaps and propose an amendment at that time to perhaps expand the hours for some limited number of events per year.

COMMISSIONER ZITO: That's the hour. I'm referring to the days of the events.

SPEAKER: I think all things considered certainly the applicant's proposal is better than having it wide open forker weekend. Staff would encourage that if the commission did want to consider allowing something, that it should be limited to Saturdays that that certainly does seem reasonable and maybe with the exception of the eastern New Year's even and Christmas.

COMMISSIONER ZITO: Okay. What's staff's feeling on possibly, maybe it's not a good time tonight to come up with the right number but given that litter was a very serious concern of working with the complicate to expand their area of cleanup, the applicant suggested 1,000 feet, I think that's might be excessive. But maybe 500 feet or something along those lines or something the director would feel comfortable with.

SPEAKER: Again, I think the issue is really the litter is probably really a function of folks that are perhaps parking in the neighborhood, because they can't park on the site, and because we think we have better conditions here now than we did with the original conditional use permit, to guarantee that there's going to be adequate parking on the site, we don't feel that if -- if the church complies with these conditions everyone should be parking on the site shouldn't be parking in the neighborhood and therefore litter in the neighborhood shouldn't be a problem. We didn't think it was necessary to go with a litter pickup resolution that would be typical for other type of late-night uses which is the 200 feet we have in there.

COMMISSIONER ZITO: The other thing was that I think you heard tonight that the applicant's understanding or hope was that the limit on attendance wouldn't be imposed before they built the additional parking. In other words, they were thinking that they'd possibly having a management plan in place to be able to accommodate 450 people until they can get the parking lot handled? Is that staff's understanding and what would staff recommend there?

SPEAKER: It's staff's understanding that the improvements need to be put in place before you can benefit from the, under this use permit, the occupancy would be raised from the previous number, 200 and something to the 432 plus a little more with valet parking. If those physical improvements are put in place to make sure that the parking works. There may be other elements to the proposal in term of things they can do but until those improvements are in place as Mr. Shriner had pointed out, it really isn't appropriate to allow the occupancy kick into place until those parking improvements are there.

SPEAKER: Commissioner Zito: Okay, and finally, I think I understand staff's intent with limiting the events to midnight. What would staff's feeling be if we limited the events 'til 1:00, those 12 events as they proposed but essentially shut off all amplified noise of any kind, microphones, music, of what, at midnight, would that be a compromise that staff would --

SPEAKER: Again I think, as some of the neighbors had pointed out, a lot of the problems begin when the activity actually shuts down and people leave the facility and go outside and noise created at that time. So while I think having some limitation in terms of shutting music off early might be a good idea, if later hours were to be considered, staff's biggest concern was, is that people spilling out into the parking lot create noise in the parking lot, given the close proximity of residential uses on all sides, it's going to be problematic. That is really the primary reason that we thought the 12:00 ending time was important.

SPEAKER: Mr. Chair, if I could add onto that a little bit more, I think this is a case where there are soful issues that we need to address, if the parking you know impacts to the aenabled, warrant a big issue, then I think staff would certainly be, 1:00 but in this particular case where we've got a significant number of issues to try to get our arms around and deal with, staff just

thinks it's more prudent, at this point in time, getting the parking situations in place and then take the next step rather than dealing with all the same issues at the same time and then perhaps not being able to succeed, so that's part of staff's rationale, I think. Thank you.

COMMISSIONER ZITO: So staff's proposal does not include any limitation on the number of events. It was the applicant tonight that introduced that 12 over the next year; is that correct?

SPEAKER: To go to 1:00, yeah.

SPEAKER: Commissioner Zito: To go to 1:00, correct. The way the current conditions are written, it is essentially an unlimited number of events until midnight.

SPEAKER: Because typically, in a commercial zoning district, businesses are allowed to run until midnight by right. So that's why there is no limit on the number of events.

SPEAKER: Commissioner Zito: And the way the current conditions are written, there is no limit to the number -- the evenings that these would occurring as well, is that correct? So they can go Monday through Sunday, 'til midnight, unlimited events, the way it's currently written.

SPEAKER: The way the conditions are currently written that could occur but that's no different how conditions are written by past CD.

COMMISSIONER ZITO: I'm not suggesting otherwise. Given the history of this site, if we asked them to introduce a community liaison, if there were complaints during this trial period, what would be the interest to educate the community and the commission here, what would be the events that would occur, a person has a problem with the noise or the parking, whatever, they call up planning, code enforcement, what others, what would be the events?

SPEAKER: Mr. Mayor, we have included one last, but whereby some evidence was presented to the director that there was a media problem that we could immediately schedule a compliance hearing upon receiving such evidence. So in other words, we wouldn't have to have it automatically, you wouldn't have to use up staff time, the commission's time, to hear something that may be a nonissue a year from now, but rather only hear it if in fact we have evidence that there in fact an issue.

SPEAKER: Mr. Chair, if I understand the commissioner's question I think it had more to do with if there was a community liaison, person identified, their number was made available to the neighborhood that the expectation would be in real time, as the event's occurring and as the impact is occurring, that the neighborhood people would be able to call up ash, I guess since he gave us his phone number and hopefully the issue could be addressed right away in real time as opposed to waiting and needing to get -- let the church work it out with the neighborhood rather than bringing in code enforcement on a notice of noncompliance or something like that. That was certainly the intent I heard being expressed by the church leadership.

COMMISSIONER ZITO: And that is certainly our hope that they would be able to deal with it real time and it would be quelled and for whatever reason it wasn't dealt with satisfactorily, one

of the concerns I see is the neighborhood is saying, in the past we recognize there was a different administration, in the past there were issues that were not addressed and they were ongoing. They -- it happened time after time and they weren't able to get any kind of relief. So --

SPEAKER: Correct, then Mr. Enderby's response is in order, in terms of we would talk to code enforcement, we would get code enforcement involved, if we were not able to deal with the issue via code enforcement, the ultimate penance would be that the C.U.P. would be brought before this commission on an order to show cause and you would have the ability to change the conditions as you deemed appropriate, that is really the ultimate.

COMMISSIONER ZITO: How does the staff feel about the applicant's proposal of the trial period with a limited number of events and an actual essentially a report card as the statement was made after one year?

SPEAKER: I'll let you go first.

SPEAKER: Well, again I think we could do that. Staff feels that's probably not a good source of action. We would rather see a course of action that shows a good level of compliance with the permit first then at some point in time certainly we would be open to more favorable consideration for proposal that would allow something similar to the pilot program that the church is suggesting, and maybe even on a slightly more permanent basis.

SPEAKER: Mr. Chair, just to provide the other side of the argument a little bit and not that staff is feeling any different than what Mr. Enderby expressed, but again, you heard from the church leadership that there is a new administration and that they are -- you know that they are committed to try to do that. So I think -- I guess what I'm trying to say is that I think from a staff's point of view again, typically we would be willing to provide them the benefit of the doubt and be willing to support it but in this case where we've got the park issues and so forth it just seems like now is not perhaps the best time to do that.

COMMISSIONER ZITO: And that's a conundrum that I'm experiencing. You want to give the benefit of the doubt. I did hear what was what I felt a sincere plea and how best can we accommodate that. Thank you.

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

COMMISSIONER CAHAN: Thank you, Mr. Chair. Am I correct there's another lodge, an elks lodge nearby?

SPEAKER: Thank you, Mr. Chair. The elks lodge is located on Minnesota just before you get to highway 87.

COMMISSIONER CAHAN: Do they have evening events?

SPEAKER: I'm sorry, I believe it's on elm. I don't know what restrictions that event has with regard to late hours.

COMMISSIONER CAHAN: You don't know if they're adding to park and litter problems?

SPEAKER: If I were to -- I haven't done a permit research history on that site or anything. But based on what I would guess, that a site may actually kind of predate our requirements for conditional use permit for those type of uses, I know that that place has been there for a long time. So there may not actually be a conditional use permit on that. But I have to admit I don't know that with a 100% certainty.

COMMISSIONER CAHAN: Thank you.

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

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I think I might have a compromise and I wanted to present that. When it comes to the events, currently they can have events up to 12:00 every day of the week. Well, that seems a little excessive, and it seems like that's not what they could really be using. Is it possible to go back to, let's say, four, five days out of the week, Monday, Tuesday, Wednesday, Thursday and Sunday, all the -- all amplified music has to shut off by 10:00 then the other two days of the week, Saturday, Sunday, I'm sorry, Friday and Saturday, thank you, they could have until 1:00 on the trial basis that they ask for, so that they both are -- have the opportunity to generate funds, while meeting the needs of the residents, number 1. As far as trash pickup, you know, I think 500 feet would be a fair compromise. As far as parking lot, if currently they can fit ten more cars out of the total of 30 or 35 cars, then for those ten extra cars they get 40 extra people. If they were able to improve that to 20 extra parking lots, without removing the building in the middle, as long as they can legally fit 20 cars, they get four times that many parking spaces more. This way, it's not like an all or nothing type of a deal. As they make the improvements, they reap the benefits of having larger and larger. Meanwhile, they're on the clock. They have to perform so that you know, their grade stays an A. Is that something that staff or maybe the commission is support? Okay. That was a motion. Did you want me to repeat the motion?

COMMISSIONER ZITO: Mr. Chair, could I ask that he repeat the motion?

COMMISSIONER DO: Yes, actually it would be helpful if you could reiterate the motion so that we're all clear.

COMMISSIONER KAMKAR: Okay, so I'll repeat the conditions. Condition number 1 would be to limit the amplified sound on five days out of the week, that would be Sunday night, Monday night, Tuesday night, Wednesday night and Thursday night, to 10:00 p.m. The other two nights, Friday and Saturday nights, to 1:00 a.m. That's when the music has to shut off. And limit those to no more than 12 events per year, for the first year, while they're in the trial period. The second condition would be the trash pickup. It would be 500 foot radius from their boundary. And the third item would be the parking. They have to arrange for additional parking, if it's the next door, the side next door, however number of park they're able to generate, then they can increase their, I guess, maximum capacity by that, increase the number of parking times 4, I guess that's the formula staff is using. And if they can show agreement with VTA or

additional lots for parking, we also give them credit for that. But basically the first three conditions is the main one that I'm proposing for the motion.

COMMISSIONER DO: Commissioner Campos, you're still okay with that?

COMMISSIONER CAMPOS: Yes, although I did want to see if we can take into consideration, given that New Year's Eve does land on a Thursday, that that would be one of the days that they would be able to have activity until 1:00 a.m.

COMMISSIONER KAMKAR: Absolutely.

COMMISSIONER CAMPOS: And that would certainly fit within the one-year time period and that would come back for review.

COMMISSIONER KAMKAR: That's correct, thank you for remembering that. I would add new Year's Eve, Easter and I believe Christmas. Christmas falls on Friday anyway so -- those are the fourth condition.

COMMISSIONER DO: Thank you. There's a motion and there is a second. Commissioner Zito do you want to speak on the motion?

COMMISSIONER ZITO: Yes, I'd like to ask the maker if they would also include the community liaison?

COMMISSIONER KAMKAR: Absolutely.

COMMISSIONER ZITO: With the same number?

COMMISSIONER KAMKAR: Yes.

COMMISSIONER ZITO: And I'd also like to include, if it's possible a parking management plan, suitable to the director, that allows them any increase over the existing number. In other words they would have to, how can I say, confirm, justify, somehow the additional parking saying we're going to have a 350 person event, here is where we'll get the other 25 spots. A parking management plan that would include any justification of parking over the current unit.

COMMISSIONER KAMKAR: Absolutely, including shuttling people, valet or whatever.

COMMISSIONER ZITO: Whatever they recommend to the satisfaction of the director.

COMMISSIONER KAMKAR: I'm okay with that.

COMMISSIONER DO: Actually I want to ask a question to clarify the motion. Do the conditions of the motion prevents them from having a, for example, Christmas was, Christmas is on a Friday. Reflection if there's an event on Christmas eve would that prevent them from doing that? Alternative rather than specifying New Year's day, we could signify.

COMMISSIONER KAMKAR: That's okay with me too. The intent is clear, we're giving them the opportunity to show they're good neighbors.

COMMISSIONER DO: Staff.

SPEAKER: It comes back to the point that they can only do it 12 times a year, that's what I heard.

COMMISSIONER KAMKAR: This is a trial period. I guess by the end, they come back to our commission and we say yes or no.

SPEAKER: Mr. Chair, should this particular motion pass, I think in this case the staff will want to bring a revised motion, since there's no meeting on October 14th, it will be the 28th but we won't be able to revise this resolution, we'll want to bring it back to the commission to act on.

SPEAKER: Counsel.

SPEAKER: So I just wanted to clarify. So staff is correct that the events that would go past midnight until 1:00 a.m., would be the 12 events per year. But I hear the commission say those 12 events generally should occur on a Friday or a Saturday with respect to New Year's Eve, Easter and did the chair add Christmas eve? So if those events don't fall on the Friday or sat, although they fall within the total 12, those are the exception to the Friday-Saturday restriction.

COMMISSIONER KAMKAR: I don't agree with you –

SPEAKER: That's why I'm asking for classification.

COMMISSIONER KAMKAR: Christmas some Easter, and major holidays do not count out of the 12. 12 events on Saturday or Sunday, 12 total for the purpose of generating funds I guess to make those improvements.

COMMISSIONER ZITO: So point of clarification, that would mean 12 plus those other events.

COMMISSIONER KAMKAR: They're Assyrian events. Assyrian festival. That was part of the original motion.

SPEAKER: That's different. Just for clarification, I think the Assyrian festival is -- that's different.

COMMISSIONER DO: If I, may jump in a little bit. Just to remind Commissioner Kamkar, the applicant only asked for 12 events, including the religions events. That's my understanding.

COMMISSIONER KAMKAR: Okay, that was not my understanding. But if that's what it is, then that's what I will modify my motion to.

SPEAKER: Okay, so again, it's 12 events per year, and your motion was that they should occur on Fridays or Saturdays. But with the exception of New Year's Eve, Easter, Christmas and Christmas Eve, if I heard Chair Do correctly.

SPEAKER: Commissioner Kamkar: Thank you.

SPEAKER: Commissioner Zito: So that would include those events. 12 would include those events. With those four exceptions for the week.

SPEAKER: So with regard to the assembly hall use, because I heard the applicant testify that there's been considerable confusion around what is allowed in the assembly hall. If staff could clarify exactly what is allowed in the assembly hall, I assume if it's entertainment then a title 6 entertainment permit from the police would be required.

SPEAKER: Yeah, that's staff understanding.

SPEAKER: Yeah, they would need from the police, and there would be any alcohol sales or anything like that, they would need an ABC permit from the state as well.

SPEAKER: The applicant has clarified, they are not intending to operate as a private night club, a private concert hall. This is purely related to the main use on the site which is church use.

SPEAKER: Yes, thank you, Mr. Chair, staff is supportive of revised condition number 11 which is, clarification on exaggerate what types of use. I think that staff is okay with that language. I know I was when I read it, thank you.

SPEAKER: Thank you. And did staff receive police input on the application?

SPEAKER: I'm sorry?

SPEAKER: Did staff receive any type of memorandum from the police department on the application?

SPEAKER: I mean staff had acquired with police, we didn't get an informal memorandum, but the police are had actually thought that that was dead but they did seem to be somewhat negative to it though I didn't again get an official memorandum e-memorandum from them.

COMMISSIONER DO: Thank you some Commissioner Cahan Commissioner Cahan did you want to speak?

COMMISSIONER CAMPOS: I lost my appetite, one of the speakers talked about the importance of preserving industrial property. A lot of the property that we've seen over the past years with churches that have seen no other alternative but to go in there. And when you think with it, you're weighing well, do we give up that site for potential job activities, on do we not allow a community to you know, have the right to congregate for religious purposes. I think what they've demonstrated tonight is a willingness to basically really compromise what they

could already do. What, from the staff recommendation. They could, you know, if we took the staff recommendation you could see 365 days where they would be allowed to operate 'til midnight. And I think that -- I commend them for offering, you know away, judges for the next 12 months, to operate until 1:00 a.m. on you know, 12 nights out of the year, and you know, we will do our best to show you that we're more than good neighbors but we're also members of the community. Because I think that we always need to remember is that we are a community of San José, whether we live in Almaden valley and congregate as a religious community in Willow Glen. We're still neighbors, we're all Mayor's Budget Message. I have confidence that you will make it work. The leadership at the church is strong and committed and I think that the youth that have better than drafted into helping keep up the property are going to participate, as well, so good luck.

COMMISSIONER DO: Thank you, Commissioner Campos. I have a question of staff, with the dashes is there a how would staff know that they are adhering to the 12 events, or if not, more or less and so on, so forth. Or should they be required to presubmit some kind of a calendar calendar or seasoning like that?

SPEAKER: Thank you, Mr. Chair. I think that does bring up an interesting challenge, because obviously we can't monitor from that level. I would anticipate the best way to resolve this is as we're nearing the 12-month period of time. That allows us to go in there and gather the testimony, and at that time we could ask for the church to provide a calendar of the events that they've had, for verification, but then it provides the opportunity for us to get input from the community at that time, whether or not this system has worked or not.

SPEAKER: Mr. Chair, another option might be that they're supposed to be providing advance notice to the neighborhood. They could send one more to the director of planning, and that would be another easy way for us to just track it, and that way we would also know whether or not the neighborhood's being advised of the events, as well. So that would be in other ways that they provide advance notice of the events to the director of planning at the same time that they notify the neighborhood.

COMMISSIONER DO: So is that something we need to add to the motion or is that something that can be handled in the preparation of the C.U.P.?

SPEAKER: We could add that the to the resolution, Mr. Chair, if that's the will of the commission.

SPEAKER: Councilmember Constant: So let me go back to Commissioner Kamkar.

COMMISSIONER KAMKAR: I think that would be fine.

SPEAKER: Would you repeat that?

COMMISSIONER DO: The issue is to -- the issue was -- require the applicant notify, in addition to the neighbors, notify the director, before the event, so the city knows how many events and when the events are being held.

SPEAKER: Commissioner Campos: Yes.

COMMISSIONER DO: Commissioner Zito.

SPEAKER: Commissioner Zito: I also like what Mr. Enderby mentioned, as well as we are specifying proactively that there will be a one-year community meeting that the applicant will set up, that staff will be present and they'll have the opportunity to get first-hand feedback from the community. I would like to see that in the conditions as well if it pleases the maker and the second.

COMMISSIONER DO: Commissioner Kamkar.

SPEAKER: Commissioner Kamkar: Yes, yes, I think that's a great idea.

COMMISSIONER DO: It's a very long resolution. Commissioner Campos? Okay, thank you. So there's no further comments. Let's vote by light. The motion passes, with all commissioners present voting, Commissioner Platten absent. Thank you. Next item is Item 3D. CP09-015. Conditional use permit to allow the demolition of an existing single family detached residence and the expansion of an existing gas and service station, three additional gas pumps and a canopy for the new pumping facility will be constructed, to the CP pedestrian commercial zoning district located on the southeast corner of McKee road and North 33rd Street. Staff.

SPEAKER: Thank you, Mr. Chair. Again, this is a conditional use permit to demo one existing single family residence, that is already been rezoned for commercial use, and expand an existing gas station, the MO stop gas station at the corner of McKee and 33rd. As part of this expansion, they would add three new pumps to the station, as well as to reconfigure some of the driveways, as well as limiting some driveway cuts onto 33rd, which would help improve circulation on the site. I guess one thing to note that based on some of the comments we heard early in the hearing, some of the correspondence that we've received just today, staff did a little further research into the site. I believe I had actually looked into this probably the last five or six months ago, that this site is listed on the Cortese list, which is basically a list of areas where there is basically issue of soil contamination, this is on the, quote, LUSS list, which is leaking underground storage tanks. At the time I noted there was an action taken in 1991. I briefly asked the applicant about whether that had been resolved or not, since that was about 18 years ago, and he had stated that it was. However, tonight I did some further investigation into it and it appears that there's still kind of issues going on with that. So basically, as an active leaking underground storage tank site, while development of the property can still proceed, it is true, that we cannot find this to be exempt from CEQA, so that we -- the staff, the applicant would need to do some kind of environmental clearance, either a, you know, a negative declaration or if required in the EIR. So staff has concerns that we can't proceed with with this project just through use of an environmental exemption and this concludes the staff report, thank you.

COMMISSIONER DO: So thank you, staff. So it's pretty clear that the item really has to be deferred and there's no reason to open public testimony and defer it at this point. We could have deferred it earlier in the meeting as well. But is there a motion to defer the issue? Commissioner Zito?

COMMISSIONER ZITO: Thank you, Mr. Chair. So let me understand before I make the motion, let me understand from staff, this is something that you've just essentially come up with in the last hour or so give or take?

SPEAKER: Yeah, again, I -- this was an issue identified early on. And I had gotten the impression from the applicant that it had been resolved. So I didn't do any further research into it. You know based on some of the testimony we heard during the -- talk during the deferral, I went back to my desk upstairs, got on the computer, did a little research and I found a trail, I guess he discussed correspondence from the Santa Clara County, around I believe I found the same correspondence that he did that was dated from June of this year. So clearly there is still activity on the site with regard to the leaking underground storage tanks so again, it's not an issue that this development can't happen. It's just that the exemption will not cover it.

COMMISSIONER ZITO: So not only does the exemption not cover it, there has to be an investigation on what the degree of environmental clearance is, whether it's a negative dec or --

SPEAKER: The investigation would have to proceed through a different route, probably a negative dec, yes.

SPEAKER: Mr. Chair if we would have tried to answer it at that point, we wouldn't have known the answer.

COMMISSIONER ZITO: Mr. Chair, how many cards do we have here?

COMMISSIONER DO: We have one, two, three, we have four cards.

COMMISSIONER ZITO: I would say that because we didn't know, then, I think we should open public testimony, with the understanding that we are going defer it on technical grounds, and then we'll continue it until next meeting.

COMMISSIONER DO: Okay, so.

COMMISSIONER ZITO: One of my fellow commissioners asked, why should we even hear it? Basically because people did stay, they waited to make their statements, and I think we want to give them the opportunity to say what they have to say, and not have to come to the next meeting, or they may not be able to come to the next meeting. So give that opportunity considering they've waited anyway.

SPEAKER: Mayor Reed: Commissioner Campos.

COMMISSIONER CAMPOS: Do we go through the full public hearing? We'll hear the applicant, the appellant, and -- so again, if we can't take action tonight, why can't we just take -- and I could be completely wrong but why can't we just hear the public comments, though, so that they don't have to come back and this gets deferred? Because I don't see the point of hearing from the applicant who is going to try to make the case, well, you request get an exemption when we're hearing that we can't and then the appellant is going to tell us what staff just told us.

COMMISSIONER DO: So I'm not sure I'm following your point. Are you arguing for the public hearing or against?

COMMISSIONER CAMPOS: I see Commissioner Zito's point, hearing the four speaker cards just in case they can't come back and if they choose to come back that's their choice, as well. But that's it.

COMMISSIONER DO: I guess, I suppose it will be a forgone conclusion that it is going to be heard. So people who want to speak on it will have to come back when it's on for public hearing --

SPEAKER: Mr. Chair, you're right. I move that we defer this item.

COMMISSIONER DO: Thank you, is there a second?

COMMISSIONER ZITO: It wasn't an official motion.

COMMISSIONER DO: Okay, I didn't think it was but I apologize if it were.

COMMISSIONER CAHAN: I second his motion.

COMMISSIONER DO: Okay, there's a motion, there's a second, there's going to be discussion. Counsel.

SPEAKER: I'm sorry, I had my light on earlier to straighten United States out. But the motion is fine so I don't have a comment on that.

COMMISSIONER DO: Commissioner Zito you still had the light on.

COMMISSIONER ZITO: I wanted to further comment on the motion. I understand where Commissioner Campos is going, I just think that closing off all the discussion tonight may submit some people from coming back and making a point. I think a continuance gives, having the four speaker cards come up and then having staff respond but we will be that much further ahead. We don't have to open up public hearing on the continuance unless there are additional speaking cards, if I'm not mistaken. And --

COMMISSIONER DO: I think just to stay with the procedure, there's a motion, there's a second, we could stick with the motion either that or vote.

COMMISSIONER ZITO: My comments on the motion is I will not support that motion because people are here and it gives you an opportunity to speak and I believe we could be ahead of the game by getting this comment now. It also gives later on instead of starting from scratch.

COMMISSIONER DO: I see your point. Thank you very much, Commissioner Zito, Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I will also not be able to support the motion. I think the information that's come before us as come within the last is hour. I think for those, we should continue this of course it wouldn't be deferred, it would be what was continued until the next available time you know to be able to cot to a resolution. I believe since they're here ready for presentation we should hear them out, so that's just you in what I think is the right thing to do.

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

COMMISSIONER CAMPOS: So then my question would be to counsel: Can we hear an item when we don't have a CEQA determination?

SPEAKER: That was going to be my comment earlier, but then I saw the motion going in the direction where it made my comment moot, which is typically the commission doesn't hear items unless it has CEQA clearance, and the reason for that is because some of the people who want to comment, may want to comment on the environmental clearance, and going to Commissioner Zito's point, do we have to hear the same testimony over. Well again, you'll have a new CEQA clearance so that would be grounds for people having to make comment. Clearly the CEQA analysis may inform the testimony that you hear, so the concern you would have about hearing testimony that's not fully informed by a full and complete staff report on all the issues is that the comments may become irrelevant.

COMMISSIONER DO: Thank you, counsel. So, let's vote on the motion. Let's vote by light. The motion is passed, with Commissioner Kamkar opposed, and Commissioner Platten absent.

SPEAKER: Mr. Chair, just to be clear for the record, there is no Planning Commission hearing on October 14th, so this is deferred to October 28th.

SPEAKER: Laurel Prevetti: At the earliest.

SPEAKER: At the earliest, yes.

COMMISSIONER DO: Thank you.

COMMISSIONER ZITO: Mr. Chair. Can I make a clarifying comment especially so my colleague Mr. Kamkar didn't abandon him. Given explanation that really the environmental clearance really needs to be before us before we can give a solid hearing, that's the reason why I backed down from my objection.

COMMISSIONER DO: Thank you, Commissioner Zito. That was the end of the public hearing section. Next item is item 4, petitions and communications. 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 may not take any formal action without the item being properly noticed or placed on the agenda. But in response the commission is limited to the following options, responding to statements made of 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 an

item on a future agenda. We have one speaker card from Kathy Brandhorst. Please approach the podium and you have up to three minutes.

SPEAKER: Lisa Marie Presley, Jonbenet Ramsey, John Steele and I'm also the United States president. I am concerned about the homeless. Little orchard especially. We have dismantlers in little orchard and they need help. Death row is in little orchard. And they were charged with embezzlement and they cannot get jobs. I have an apartment, and they were executed, but -- and they were also charged with death row, of course. But they are put back together, and back into my apartment. They are stealing it, and they never pay rent. I own a house, they are stealing my house. They are all on death row, and then, there was a court order, after the execution, to put them all back together. Or revived. And we have a problem in little orchard, also. There has been hangings, guns, bows and arrows, and also, cannons filled with cannon balls. We have a victim, his name is Scott Brandhorst. They put him through torture. They torture this man, until there's nothing left of his body. Every bone has been broken. They also have dismantled his skull. And also, he's been tortured so badly, that they still will not leave him alone. So most of us at little orchard are victims. They throw us off the property, to keep our mouth shut. But we are still homeless. We are looking for places to live. And, this is our priority. Jobs are not what we need. It's a place to live, affordable. Because most of us are low-income. We are on disability. We are also retirement. And those checks do not cover for your rent.

COMMISSIONER DO: That is the end of public comment.

SPEAKER: For rent in San José.

COMMISSIONER DO: Your time is up, ma'am.

SPEAKER: Thank you.

COMMISSIONER DO: Next item of business is referrals from city council, boards or commissions or other agencies.

SPEAKER: Laurel Prevetti: No referrals.

COMMISSIONER DO: Thank you. Good and welfare, report of city council.

SPEAKER: Laurel Prevetti: Of interest would be the rezoning of the Sunol court project which effectively was denied yesterday by the city council when there was not a two-thirds vote to override the zoning protest. So in its place, the rezoning of the conventional zoning districts that this commission heard a couple of weeks ago did -- was approved by the city council with one slide modification, that the multiple family residential which is where the SRO was proposed, council approved that location to go to combined industrial-commercial. So there was a lot of discussion and if you're interested, you might be interested to watch the video of that council meeting. That concludes staff's report.

SPEAKER: Commissioner Do: Thank you, director.

COMMISSIONER ZITO: Please?

COMMISSIONER DO: Commissioner Zito.

COMMISSIONER ZITO: I had heard a comment, given the zoning protest, the prior approval, that slight modification that you mentioned, almost allows what the applicant was proposing for that site, is that not true?

SPEAKER: Laurel Prevetti: With the rezoning that the council actually approved, the SRO project would not be allowed.

COMMISSIONER ZITO: Would not be allowed?

SPEAKER: Laurel Prevetti: Staff recommendation was the option that would have facilitated an SRO but council did not agree with that particular parcel.

COMMISSIONER ZITO: Okay, thank you.

SPEAKER: Laurel Prevetti: Thank you.

COMMISSIONER DO: Commissioners report from committee, Norman Y. Mineta international airport. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. We are meeting on Monday. That might be our last meeting. I believe we've satisfied everything in regards to the noise issues.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Kamkar, envision 2040.

COMMISSIONER KAMKAR: We did not have a meeting since our last meeting. I believe we'll have a meeting this next Monday. I would report that meeting and the meeting after that on October 28th meeting.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Review synopsis from September ninth. Any comments? None. Motion to approve synopsis?

COMMISSIONER CAMPOS: So moved.

COMMISSIONER DO: Second? All in favor? All opposed? Consider proposed study session dates, and/or topics. We know the retreat is tomorrow. And is there -- staff is there anything to add?

SPEAKER: No, Mr. Chair.

COMMISSIONER DO: Thank you. Subcommittee report on outstanding business, any business? So meeting adjourned. Thank you.