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>> Commissioner Do: Okay, we'll go ahead and start. Good evening. My name is Thang Do, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, April 21, 2010. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, and not PD 06-et cetera. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. The first order of business is roll call. Let the record reflect that four commissioners are present, commissioners Jensen, Do, Zito and Cahan. Next item, deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the Press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agenda items past 11:00 p.m, to continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff.

>> Thank you. Staff has two recommended deferrals. Conditional use permit CP 09-050 for the operation of a private school. We are recommending that be deferred to the May 5th, 2010, Planning Commission and that is staff's request. We also have a recommended deferral of an ordinance amendment, PP 10-059 to deal with some parking for business destination areas. Again, per staff request, we are recommending that be deferred to May 5th, 2010 Planning Commission.

>> Commissioner Do: Thank you, staff. Is there a motion to approve deferrals? All in favor? So the matter of deferral has been approved. Next item is consent calendar. We keep missing the section on reading. The consent calendar items are Items that the commission will consider as the single motion and will vote. -- vote as a single -- as a single vote. Members of the public or the commission or staff can pull any of the consent calendar items. There are several -- there are several speaker cards on item -- on 2A so we will pull 2A.

>> Yeah and that's consistent with staff's recommendation of pulling that off consent and being heard under public hearing item.

>> Commissioner Do: Okay, so that's the only item under consent and therefore no consent calendar. So therefore we move on to the next matter which is public hearing. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. First item of public hearing is items 2A. CP 09-015. Conditional use permit to allow the demolition of an existing single family detached residence and the expansion of an existing gas and service station including construction of three additional gas pumps and a cap by for the new pumping facility in the CP pedestrian commercial zoning district located at 280 north 33rd street and 1604 McKee road. Staff.

>> Thank you, Mr. Chair. The proposed project is for expansion of an existing gas station and was noticed and heard by the Planning Commission on September 23rd, 2009. Staff had reported at the hearing that new information had been received on that day that identified there may have been an issue with a leaky underground fuel tank which was not originally identified by the fire department. As a result, the item was deferred so that staff could review this issue, identify appropriate mitigation, and provide appropriate environmental clearance, since the proposal could no longer be deemed to be exempt from CEQA. Subsequently an initial study was prepared for the project which concluded or which included a soils report to address the fact that the site was listed as having a leaky underground storage tank, subsequently the county of Santa Clara Department of Environmental health and the City's Department of environmental services both stated that the site is now in full compliance. The staff has received timely comments from James Dombrowsky, an attorney representing Andy's BP, located across the street from the subject site dated April 16th, 2010, objecting to the conclusions of the initial study and the draft mitigated negative declaration with respect to underground tanks as well as traffic impacts. Mr. Dombrowsky alleges that the city ignored substantial evidence in the record that supports fair argument for significant impacts. The City's response to the comments is in the supplemental memo that was provided prior to this meeting dated April 21st, 2010. It was concluded that no additional mitigation is necessary and that environmental impact report is not required. Staff continues to recommend approval of this project. Thank you.

>> Commissioner Do: Thank you, is the applicant here? Is the applicant for the Project here? Are you the applicant sir? Would you like to address the commission? Do you have anything to say to the commission? Okay, please come down to the podium. Please state your name for the record and you have up to five minutes.

>> My name is Gary Wesley and I'm an attorney, we represent the applicant. We agree with the city that you should approve this project. Staff recommends it. The oaks really stem from competition and animosity across the street. And it appears that the traffic will be improved if you approve this project. That's it, thanks.

>> Commissioner Do: Thank you. You will have up to another five minutes to redress any issues that the public members speak about. So thank you. There are two speaker cards. The first one is Jim Dombrowsky and the second one is Jeff Sobrany. Mr. Dombrowsky please be the first speaker. Please state your name and you have up to two minutes.

>> Thank you. My name is Jim Dombrowsky. I'm an attorney and I represent Andy's BP Inc. and also the land owner, Andy Sobari, and Sabek Inc. And basically the objections that we have submitted are in the objections that were served on the planning department, Mr. Bailey, on Friday, April 16th. And to summarize briefly, the key points that we would like to make is that this traffic study was done by the traffic data service, TDS, and the opinions that were made in that report, we believe, are strong evidence that there is a serious issue here. And that the council and the commission should take those opinions seriously. And if I could just briefly read them. This is by Keith manley who has been commissioned in the past by the City of San José to do traffic reports like this, the generation study. And he says, and this is in my objection letter attached as exhibit B. He states that these numbers are more than double the average factors show in the ITE trip and tables for land use 944, gasoline station. These are the highest gas station numbers TDS has recorded in more than 35 years doing such studies in the Bay Area. The question is, why such heavy usage? The station has the lowest price gas in the area, as a result it becomes an origin/destination in itself. In doing TIAs TDD has argued that a small portion of trips involving new gas stations are not any trips but instead trips captured by drive-by traffic. That is not the case at this station. People were observed waiting 15 minutes in line to get to a pump. People just driving by don't do that. The vast majority of existing trips are people making special trips --

>> Commissioner Do: Sir your time is up.

>> My time is up? Okay.

>> Commissioner Do: Thank you.

>> I'd also like to make a record with the photographs.

>> Commissioner Do: Sure, please pass along to staff. Thank you. Mr. Saberi, please.

>> Thank you, commissioner. My name is Tom Saberi, I'm an attorney also representing Andy's BP and Sabek, Inc. And I wanted to address the issue relating to the geology and soils and hazardous and hazardous materials that were spoken about by staff. He made a statement tonight that he believes the hazardous materials and everything and the underground storage tanks are all the compliance. But on geotracker and in reviewing any of the county of Santa Clara's files there is no writing in the county of Santa Clara saying that they are in compliance. I'm not sure what staff is relying on. Maybe it's a phone conversation. But the reality is, on geotracker which is a public Website, that tracks all the correspondence between the city as well as all the reports that were done for the geology, there is no public record anywhere that this site is in compliance in writing. So I think that's a fault in the record and I think the commission should order an EIR in this particular case based on the traffic as well as the hazardous materials and geology and soils impact that this project will have.

>> Commissioner Do: Thank you. The applicant, you can -- you have another five minutes to rebut.

>> Gary Wesley again. I don't want to take up too much of your time. We would expect these folks to file a lawsuit. That's what they do. I don't think that should discourage you to do your job. There is a provision in the code of civil procedure for dealing with frivolous suits. And I would hope that your attorney will look into using that when you get sued, because they've got in-family attorney and you should expect it. But this is a good project. Thanks a lot.

>> Commissioner Do: Thank you very much. Staff anything to clarify?

>> No additional comments at this time.

>> Commissioner Do: Thank you. I'm sorry, motion to close public hearing?

>> So moved.

>> Commissioner Do: All in favor? Okay, so staff has no further comments. Commissioner any other -- let's see, Commissioner Platten. Let's see, first of all counsel.

>> Thank you, Mr. Chair. In connection with the discussion that you're having on the mitigated neg dec and whether it is adequate and whether an EIR is required under CEQA, I just wanted to note for the commission that the standard you should be thinking about as you're considering this item is do you feel you have been presented with a fair argument that the project may have a significant effect on the environment based on the evidence in the record. So the standard is, is there a fair argument of an environmental impact posed by this project. I know you have a supplemental memo, I think it's from -- I don't know if it's from Public Works or from Planning. I think it's from Planning that goes through additional analysis that was formed and you should definitely take a moment to read that supplemental memo.

>> Commissioner Do: Thank you counsel. Commissioner Platten.

>> Commissioner Platten: Yes, thank you, Mr. Chairman. I have read the supplemental memo and am prepared to move that we have considered the negative declaration and find it in accordance with CEQA and that we approve a conditional use permit to allow the demolition of the existing single-family detached residence and the expansion of an existing gas and service station including construction of three additional gas pumps and a canopy for the new pumping facility in the CP pedestrian zoning district as recommended by staff in its initial and supplemental memo.

>> Commissioner Do: Thank you, commissioners Platten and Jensen. So there is a motion and second. Commissioner Zito.

>> Commissioner Zito: Just a quick question of staff. What I always wrestle with on these in the EIRs or the initial studies is when you do the traffic impact study, does it take into consideration the actual scenario at that particular location as it exists today or is it on generalized numbers?

>> Mr. Chair, I'll defer to Public Works to provide that comment.

>> Thank you, Mr. Chair, Rian Do with the Public Works department. We did do the analysis for the actual count that was provided, and it does show there's no impact to the intersections of McKee and 33rd as stated in the supplemental memo.

>> Commissioner Zito: Am we have' that scenario was essentially taking into consideration when this traffic study was done?

>> Correct, the traffic study analyzes the level of service at the intersections. The thinking is with the additional pump it would actually reduce the wait time clearing people through and actually would improve the situation.

>> Commissioner Zito: Okay, thank you.

>> Commissioner Do: Thank you, Commissioner Zito. There are no further lights so let's vote by light. Let's see if the computer voting system works. It doesn't appear to be working. Oh, it does, okay. The motion was -- is approved unanimously by all commissioners present with commissioners Campos and Kamkar absent. Moving on to item 3A, major amendment to airport master plan for Mineta international airport. To update demand projections and the facility development program. Staff.

>> Good evening, I'm Carey Green, with the city airport department, and I'll make a very brief presentation. The commission has a memo from the city's director of aviation on this, I'll just quickly summarize. This is the type of item that comes before the commission once every three, four years, sort of like a lunar eclipse. The city municipal code has an ordinance that covers the airport master plan and the airport master plan is pretty much like a specific plan for the airport site. It's a long range development program based on forecasts of aviation demand at San José international. The city municipal code sets forth how the master plan is updated overtime through what we call amendments, amendments are what we call major amendments are referred to the Planning Commission as well as the city airport commission for review before it goes on to council. So what's before you tonight is what's called a major amendment to the airport master plan. And next slide please. And essentially what's being proposed is to shift the horizon year of the plan out another ten years from 2017 to 2027. We've updated all the aviation demand forecast, we've updated the facility requirements based on those forecasts, and essentially, the changes are that air cargo demand we do not project to be as large in the future as we previously projected and therefore, that means that there's less facility development that's needed to serve air cargo. And in terms of general aviation, which is all the small private owned aircraft, although we're also projecting less demand than we previously projected we've redone the analysis that shows we actually need more space to handle that segment of aviation. Because the small private owned aircraft are actually getting a lot larger than we previously assumed they would be. So even though the demand we're projecting is less than what's in the current master plan, the facility requirements are actually greater. So essentially what we're proposing in this master plan is to reallocate some space on the airport, and at the Northwest corner of the airport where there's currently a temporary parking lot, is when that parking lot gets relocated, whereas the existing master plan called for a cargo development on that side of the airport, we're now proposing that that be for a general aviation development. So that essentially the whole west side of the airport would be for general aviation, other than the federal aviation administration facilities. And air cargo in turn which is currently on the East side, we propose to keep it on the east side and we feel it's compatible with the passenger airlines facilities that are on the east side and cargo demand can be satisfied in that location. This has the environmental analysis of this proposed analysis was attached to the staff report, a representative of the consulting firm that worked on that is here, if there are any questions on that. In terms of public outreach, we've had four community meetings on this, and it's been to the county airport land use commission for review, and they have found it consistent with their land use plan and the city airport commission reviewed this item, this earlier this month, and they are recommending council approval, and staff is recommending Planning Commission approval as well. So if there are any questions I'd be happy to answer them now or I can come back after you take any public comment on this. And thank you very much.

>> Commissioner Do: Thank you. There are no public -- there are no public speaker cards so Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. I just wonder, I didn't see anything in here addressing the inclusion of numbers as they relate to high speed rail, or if any connectivity was being planned to address that.

>> Yes, thank you. That question came up at airport commission as well. Our projections do not account for high speed rail, number one, because it's still not a sure thing that there will be a high speed rail network. And clearly, if high speed rail is implemented, it will have an effect on commercial aviation activity. And so once more information is known about high speed rail, we will likely come back with an amendment to the master plan, a few years from now, which -- and do another amendment.

>> Commissioner Jensen: So what kind of a trigger are you waiting for since there's already been a ballot measure passed and high speed rail is on track and they're planning on opening 2020 all the way to L.A.?

>> Well, there's no announcement that's been done to date on how many air passengers might be diverted to high speed rail. Certainly, there will be some diversion. That's one of the purposes of high speed rail. So everything that's in our master plan in terms of facility improvements, we don't build them until we see that the demand is there. So when -- when more information is available, on high speed rail, we will at that time evaluate whether we need to change the master plan, and modify some of the improvement projects.

>> Commissioner Jensen: And is there any plan for connectivity to Diridon so that high speed rail passengers can get to or from the airport if that's what they need to do?

>> At this time the connection that's being planned by both the city and VTA is to have a peplemover connection to the Santa Clara station. And that's primarily for BART and CalTrain. Connectivity for high speed rail is something that has not been studied by anyone yet. And you could argue that it may not be necessary to connect high speed remain to the airport. It essentially high speed rail will be a competing form of transportation between Northern California and Southern California. So the -- so the transit connection to the airport is primarily anticipated to be for the BART project, and for the existing CalTrain service through the Santa Clara station.

>> Commissioner Jensen: Thank you.

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

>> Commissioner Zito: Thank you, Mr. Chair. Just a couple of questions. I'm trying to understand, you're anticipating pretty much the same passengers, 17.6 million?

>> Yes, the approach we have taken, instead of identifying some horizon year and then determining what the passenger level is, we took the approach, we're anticipating 17.6 million passengers, and we are anticipating a lot of projects based on that level of activity. To approach we took is to say okay, what year in the future are we now likely to see that level of demand. And that was calculated by our consultants to be the year 2027.

>> Commissioner Zito: Okay. But I guess what confused me about it maybe I don't understand the correlation. You've got base aircraft dropping from 366 to 209. About 40% reduction. Still carrying the same number of --

>> Yeah, the number you're citing is for general aviation based aircraft, those are the small aircraft that are based at the field.

>> Commissioner Zito: Okay, and how about aircraft operations themselves, going from 330 down to 264?

>> That's based on our demand projections, and the type of aircraft we have projected to serve that demand.

>> Commissioner Zito: Is that the general or is that commercial?

>> That's everything. That would be commercial and noncommercial.

>> Commissioner Zito: So if I read that correctly to carry the same number of passengers you're expecting larger jets?

>> Yes, uh-huh. As part of our forecasting effort we also project what kinds of aircraft are going to serve that demand, how many what we call Kohl the load factor or how many seats would be occupied so we come up with less number of operations to handle the same demand.

>> Commissioner Zito: Okay. I -- okay. Thank you.

>> Commissioner Do: Thank you, Commissioner Zito. I just have one quick question. Which is that it seems that the demand is dropping quite a bit, I mean at least the projected demand is dropping quite a bit. As far as the master plan is there anything in the master plan that tries to reattract passengers from perhaps from competing airports like Oakland or SFO or anything like that, to make this airport a more attractive destination or is it simply the demand that is generated by the local economy?

>> That's a very good question. The demand that we have projected is -- makes some assumptions about regional demand and the fact that San Francisco airport is always going to be the primary airport in the region and will dominate the international airline service. But certainly, a lot of the demand in the Bay Area is in the South Bay, a lot of the economic activities are in the South Bay. And so we're still projecting substantial growth in demand here at San José. What's happened is with the economic problems we've had since 2001, which has affect most airports in the country, our passenger levels actually dropped as airlines eliminate service and passengers don't fly as frequently as they once did. But as the economy turns around, so will the demand. And so we're just sort of -- so we're still anticipating growth, it's just being pushed out several more years than we previously anticipated.

>> Commissioner Do: Thank you very much. I would entertain a motion from a commissioner. There are no other public, there are no speaker lights.

>> Move to close public hearing.

>> Second.

>> Commissioner Do: Okay, all in favor? Okay. That was actually not part -- that was actually staff. Okay. Commissioner Jensen.

>> Commissioner Jensen: Did you want to hear from staff?

>> Commissioner Do: I think that was staff already. Staff addressed the commission.

>> Commissioner Jensen: Okay, all right then I would like to make a motion that we consider resolution 67380 and 71451, I've been advised by council that that's actually incorrect. Okay. That we -- the Planning Commission make a recommendation to city council approval of a major amendment to the airport master plan for Norman Y. Mineta San José international airport to (a) shift the plan horizon from 2017 to 2027, (b) update projected demand and facility requirements and (c) modify specific components of the facility development program.

>> Commissioner Do: Is there a second?

>> Second.

>> Commissioner Do: There is a motion and there's a second. Let's see, there are a couple of other speaker lights. Commissioner Jensen have you finished? Would you like to comment?

>> Commissioner Jensen: No.

>> Commissioner Do: Commissioner Platten.

>> Commissioner Platten: Thank you, Mr. Chairman. This is not necessary to comment, I don't think, on the motion, but I do want to say that having been on the commission now eight years, when I first arrived the commission was presented with an analysis from the business community, identifying the three major things that

were antibusiness generally for the City of San José. Number one on that list was the cost of list number 2 was the quality of education number 3 was our airport. And the complaint was you can't get anywhere from here. So I trust staff even in these difficult fiscal times are looking carefully at the connectivity that Commissioner Jensen raises with high speed rail a number one and number two although it's going to be a expensive proposition to talk about expansion and widening of the runways, so we can have landings and takeoffs simultaneously, which is not possible under FAA rules and of course continue to deal with the issue of noise abatement and green and environmental impacts. I know staff has work diligently in this area, I commend them for it, I know we're all aware of those issues, I think this is one small step in what will be a larger process so I'm clearly supportive of the motion.

>> Commissioner Do: Thank you, Commissioner Platten, and I appreciate that comment. I want to add on, on that, in saying that I think that San José -- the San José airport is unique in that it's very close to downtown. I mean usually that's a disadvantage, but it seems to me that it could be turned into an advantage by making it very convenient for business to commute from the to the airport from the city from public transit through the peplemover and so on, so forth, if we can move in that direction I think it can make the airport a much more attractive venue. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Yes, I underscore all those points. I think they're very well thought out points. The other two that I would consider and a little bit cautious about is our aggressive goal to build a downtown, downtown. And to make sure that there's compatibility between the airport and the ability to develop the kind of densities and venues that we need downtown, and to minimize the conflict there. Secondly is, I'm a little bit concerned about the -- how can I say -- the scaling back of the activities that are happening at the airport, again, it's not part of our purview but just on a personal note I guess can you call it, a little bit more concerned about the financial viability and the ability to maintain and operate the airport given these scaled back projections. So I'm sure that the people who analyze those things are doing their job. It's just something that raised an eyebrow here but I do support the motion. Thank you.

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

>> Commissioner Jensen: Thank you, Mr. Chair. I would also like to ask the airport folks to please take into consideration connectivity between the airport and the downtown area. Ready and easy access to the Diridon station. I think that having a train station nearby, a major airport, is a huge benefit, as can be seen throughout most of the major airports in Europe. And around the world. And also, to take into account the high speed rail is coming. I know it looks a little bit of a challenge now but high speed rail is coming. And I agree, I'm a little concerned with, as Commissioner Zito pointed out, the scaled back projections for numbers. Noting that, in 2000 and 2001, we saw a peak of just over 13 million passengers through the airport. And today, we're down to roughly 8 million passengers. And so we're only projecting in the next, what, 17 years to go up almost double that. And hopefully, I'd love to see our airport be a lot more vibrant than just double where we are today. But it is a challenging time. And so I hope that we can push the airport and be there. I live downtown, I love having the airport ten minutes away.

>> Commissioner Do: Thank you, Commissioner Jensen. There are no other speaker lights. Let's vote by light. The motion is passed unanimously with all commissioners present. Commissioners Campos and Kamkar absent. So moving on to the next item, 3B. CPA 03-05501. Conditional use permit amendment to convert two existing single family residences to school office uses on a .40 gross acre site in the R-1-8 single family residence zoning district located at 2276 Plummer avenue. And 1547 Jenvey avenue. Presentation high school is the site. Staff.

>> Thank you, chairman Do. This is a conditional use permit application to legally expand the private school use across Plummer for presentation high school to occupy two existing residential structures with office uses and occasional student group uses. We did want to reiterate that this application does not include any increase in the number of students. So we want to try to avoid, you know, getting into any discussion on that. It's really just to move some office uses, and occasional student group uses, across the street. We are recommending denial of this application primarily because this proposal does not further the urban conservation and land use goals and policies of the San José 2020 general plan. In that we do have policies, goals and policies that really encourage new development that enhances desirable qualities and -- of the community and neighborhood, and discourage

the expansion of institutional uses or encroachment of these uses into the real fabric of the neighborhoods, we do recognize that a few years back we did support a use permit that did take two duplex -- I believe it was two duplexes along bookson for the expansion of their sports fields. At that time that was within basically the parameters of the existing campus and kind of event that out, and stayed within the confines of Plummer and bookson. Again this proposal is to jump across the street on Plummer. We did hold a community meeting on -- oh, when was it? In February -- in March, yes, beginning of March. There were approximately 85 people there with a mix of sentiment regarding the proposal. I think you'll probably hear that tonight with the speakers. So again, you know, and we also did pass out correspondence from Berliner and Cohn. I'll let the applicant speak to that, and then maybe respond to some of that after all the public testimony. But again, you know, primarily we are not in support of this permanent expansion of the private school uses across the street. You will read in the staff report that we did try to work with the applicant to support an alternative that would cause them to come in and really propose it on a very interim basis within the context of them having a plan to construct that additional square footage within the confines of their existing campus. They were not able to do that for us, so therefore, we're compelled to recommend denial of the proposal as presented in the application. Thank you.

>> Commissioner Do: Thank you. We have a Mr. Andrew favor who is the applicant. Would you like to address the commission? Please approach the podium. Great, please, both come down. As the applicant you have up to five minutes to address the commission and you have a further five minutes at that time end.

>> Yes, thank you, my name is David La Bell, representing presentation high school. I do appreciate Commissioner Platten pointing out that education is the number two concern for businesses, for whatever effect that might have supporting it. That is what presentation is all about. We've got before you a straightforward request to utilize two homes as office and administrative space pointing out and in addition, we will maintain both properties as single family residences with fully functioning kitchens, bedrooms and bathrooms. So visibly from inside and out they will still be residential properties. Since it opened in 1962, presentation has been a good neighbor in the Plummer avenue neighborhood. And have educated thousands of young women. Over the years, our duty to improve our education has had the change to keep up with changing times. Colleges are impacted now, young women have to make decisions earlier in their careers, what they even want to go into in college. I know my daughter's a prenursing student and she had to know right away that she wanted to do that. So we're trying to expand the horizons of our young students and give them more opportunity to go into math and science. Coming into that we've added many new after school programs and changed our curriculum. We have dozens and dozens of after school programs but recent have included speech and debate, film and media club, robotics, math and science academy and the learning center. The learning center is where we take the kids that maybe have attention issues or need a little more organizational skills and we need a place set up for them after school. What has happened is, we have added these different activities to a 1962 campus. Our space needs have kind of crunched us a little bit. So we're finding that we need some more space, especially for robotics, and the film and media club. They need a place where their equipment is set up where they don't have tear it down and reset it up all the time. Film and media needs a quiet room, and it's very difficult to provide that on the campus. But we're able to provide that as a very passive activity in one of the residential houses. What we've done is taken our most passive activities, our development group which does not interface with the students much. That's the group that puts on special events with us, helps with our fundraising. We're going to put them into the house on Plummer avenue. And our alumni coordinator and two part-time staff in the Jenvey avenue house. So that again we haven't taken any teaching activity or teachers' interaction with a lot of the students, just the two after-school activities we want to put over there as well as administrative staff, these are staff that doesn't interface with the students very much. They would come there and park there and be there for most of the day. The first slide I had, this is the Jenvey house. Just wanted to point out this house was is in some disrepair. Excuse me, the Plummer house is in some disrepair. Presentation is in the process of renovation of that house, making it a near new house. We've pulled a permit and working on that. The second house is the Jenvey house, it's been maintained, we've owned this house for two years, maintained exactly as it was when we got it except now it's had a fresh coat of paint and now it's professionally maintained as far as landscape is concerned. The next picture I have is the rendering of the Plummer house, all code requirements and working with the city. One added benefit of the two houses is they will provide us with ten additional parking stalls. Parking is at a premium at the high school. One of the issues that we all have is dealing with that. So this will add an additional ten stalls for our staff, without us adding any staff so that means they will be freeing up some parking spaces on our campus. So one of the things we wanted to point out is the findings that you would have to make in order to approve our application. No adverse affects to peace, health, safety, morals and welfare. Presentation

has been a good neighbor for 48 years in the neighborhood and as a faith based girls high school you can imagine we are all about peace, welfare, morals, and those sort of things. Will not impair the utility or value of the other properties, in fact we believe that the enhancements we've made will increase the values or at least certainly maintain values in the neighborhood. And we provided our most benign uses there. Detrimental public safety or general welfare, there's no additional risk in this location. We haven't added anything that would change the risk factors there. Title 20 for finding number 2, would not require any additional facilities be constructed here so again, we believe that those findings are easy for you to make. We're not adding any cars or traffic so the existing street systems that have been operating as they have for so long will remain in place and will be perfectly functional. And we do not need any additional public or private facilities for part of this application. So to address a couple questions --

>> Commissioner Do: Mr. La Bell your time is up. You will have an additional five minutes at the end. Thank you very much.

>> We just really appreciate your time and believe that you can approve our C.U.P. based on the findings that you need to make.

>> Commissioner Do: Thank you very much. We have a thick stack of speaker cards. Before calling the names I want to say that the commission appreciates brevity, and if points have been made by previous speakers, if you feel that you could refrain from making them that's great also. But each speaker has up to two minutes. So I will call three names at a time. And please, come, please, all three people, please come down to the bottom of the stairs. Lauren Nash, Randy Blair, and Vicky Pope. Okay, please proceed.

>> I'm Lauren Nash. I'm a neighbor. I live on Maxine avenue. I've lived there for 20 years. I'm in favor of presentation expanding. I feel that they've done an excellent job. I have two daughters that have gone to presentation, and it's been a positive influence. One of the things that has come out of it, we have neighbors that are alumni that talked us into going there. Had no intention originally. So it's a great school, I think it supports the neighborhood. They're involved in and have offered programs to the neighbors as well to go to theater and other structures within the school's school, so I think it's a positive influence all around. Thank you.

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

>> My name is Vicky Pope. I'm a parent of an alumni and I also am a neighbor. The additional space will as Dave mentioned will help evolve the needs of the students and as they mentioned moving the staff which I think is very important point of moving staff over there, it will provide new programs, a study hall, a counseling center for students with academic needs, and also, increase the programs that he mentioned, the math and science academy, the leadership academy, and also, the speech and debate program, which have had very positive impact and have also increased in terms of number. As he mentioned we need to be competitive. We need to continue to be that way, so that we educate for the 21st century and also, to increase our enrollment to what we have a full enrollment is what I meant, which is allowed by city code. We did not seek out these additional properties. They were -- we were approached by neighbors, on both cases. And we felt it made financial sense, and it helped our space, and over the past ten years we've continued to keep up the property, improve it for the needs of the students. Thank you.

>> Commissioner Do: Thank you very much. I will call the next three names. Andrew favor, who was the applicant at the beginning. Angelique Bardeliago, pardon my pronunciation, and Frank Bortano. Please, mr. Blair.

>> Hi, my name is Randy Blair, I'm a neighbor in the presentation area there, live at 2460 Plummer Avenue. Have done so for the last 25 years, and have two daughters that graduated from presentation over that period of time. When I first came or when our family first came into presentation it was pretty much the same as it had been when it was originally built. There were a few structures there and a lot of unused property. And over the years, in accordance with the city directives, it's been allowed to expand to a point now where it's providing a wonderful education for the girls that go there. However, there is need for some extra room. And that's the, hence, this meeting here tonight to try to convince you all, for the use of the two properties that are across the street from the high school. You saw in the picture how that one house on Plummer avenue looked and it was quite an eyesore along there. It was one of the few, I'd say one of two only that looked that way. And you can see what the

outcome has been, and the commitment of presentation to update the neighborhood, and being a good neighbor to the regulation of the people that live in that area there. The Jenvey avenue property has been painted as it was mentioned before, landscaped and meticulously taken care of over that period of time. And I'm sure that both properties will continue to do that. The granting of the conditional use permit would be advantageous to the education of the young women in this neighborhood. Also, it would fulfill the commitment of presentation to the neighborhood, in updating and keeping their property in the state that it should be. I thank the council.

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

>> Good evening, Andrew favor, 10 Almaden boulevard representing presentation. They've asked me to respond to a couple of points raised in the staff report and raised by staff. Staff says the application's not consistent with the general plan but it really is and their conclusion is not based on any facts or evidence related to this application. Public quasipublic uses if that's what this is are allowed in any land use designation in the general plan, they're obviously compatible with residential neighborhoods, that's where schools are typically located.

Under the zoning, they are allowed, they used to be allowed as a matter of right, now they require a use permit, but even that is a determination of compatibility. One would expect that the staff report would have evidence based on this application and use that would somehow constitute facts, arguing the other way. But there really aren't any. The staff report contains some speculative comments about the neighborhood but the fact is that presentation high school as you've heard has been a good neighbor for 48 years, it is compatible, there's nothing about these uses that are in any way incompatible with all the other residential uses. The goals that staff cites are very general, improve the existing quality of life and create a stable mature community. That's one of them. The other is, provide a high quality living environment in residential neighborhoods. These are extremely general general plan goals and we comply. Secondly, the findings as Dave Labell indicated you can make the findings staff say you can't but they don't base that on any substantial evidence. There's lots of evidence in the record. I've tried to summarize it in the letter that I wrote, to explain finding by finding what evidence supports the finding. I think you'll find lots of evidence tonight making the appropriate conditional use permit findings. I will submit to you that you can determine it's within your purview that the school application is consistent with the general plan and you can make the findings supported by substantial evidence. Thank you.

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

>> Hello, my name is Angelique Badeliaco and you did a much better job than most people do with my name. I'm here to speak on the benefits that presentation offers our community, and how they are a good neighbor to us. At our neighborhood meeting in March a few local neighbors criticized presentation over the use of their pool. Many others in the neighborhood myself included feel privileged to participate in the programs that are offered to the community. The school runs programs that are a public service providing a safe clean and healthy environment where our children can learn to swim and participate in year round water sports. Adults can sign up for master swim and neighborhood families are invited to participate in family swim nights during the summer. My two youngest children who are six and three learned to swim at the school with presentation students guiding them.

And my oldest has participated in diving lessons and swim team where she, too, was coached by adults and high school students. The programs that presentation have produced have made my children strong and confident swimmers and provide them great role models of responsible teenagers. I recently read in the newspaper that City Hall is looking to closing all the pools in the city due to budget constraints and I feel grateful that presentation provides those for our family. Also as a neighbor I appreciate the wonderful job they have done in remodeling the home on Plummer. I feel that it actually adds to my neighborhood and as a future parent I appreciate how they're investing in girls education or hopefully as a future parent. Thank you.

>> Commissioner Do: Thank you so much. I will call the next three names. Lou Basile, Paul Bertoldo and Jocelyn tanner. Please sir proceed.

>> Good evening, my name is Frank Boytano. As a lifelong born and raised Santa Clara Valley resident and former Maxine property owner, I support the project and the approval of the project. Presentation has been very careful and mindful of the neighborhood impact on planning the use of the properties on Jenvey and Plummer. Their goal is to preserve the character of the neighborhood and to preserve the integrity of the campus. They want student activities to remain centralized on the campus. Moving some of the clerical staff will help them achieve that goal. Only adult clerical staff will be located in the houses. Students will not be crossing

the street during school hours. Only two small school clubs robotics and broadcast, will meet in the Jenvey house on a very regulated basis. The plan use of the houses will be far more quiet and limited than that of an average family. They have enhanced the appearance of the neighborhood while carefully planning to be a silent presence and good neighbor. Their restoration of the properties is one of the best things that has happened in the neighborhood, I want to support the plans, and thank presentation for improving the neighborhood.

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

>> Good evening, my name is Lou Basil and you'll have to excuse me for a moment, the voice is going. I'm the builder of the house on Plummer and I've had the opportunity to work with the contiguous neighbors both of whom are in their 80s two ladies and they've written a letter and asked me to read it to you so this is from Dolores Hattow and she lives next to the Jenvey house, 1939 dated yesterday, to whom it may concern I'm a neighbor of the presentation high school and I'm writing this letter on behalf of my relation with the school. I have lived several years in Willow Glen and during this time I have had no problems and have a good relationship with the school. Sincerely, Dolores Hattow. The other neighbor, Betty Vanderside is in the second row right here. She wanted me to read it, because of her accent but tonight I think she could have done a better job. Dated yesterday. Dear commissioners, my name is Betty Vanderside. Last year when I heard the rumors that the house was being sold and presentation had bought it I was a bit concerned because I did not know what the school had in mind and all the rumors made it sound awful. The house needed a lot of cleanup and when that began the contractor met with me to explain what the school's plans were. Later he met with me and my neighbors Gary and Marsha to show us the plans and how this had designed the house and added parking in the backyard to make more room so cars could park off-street. The cleanup and the construction is almost complete now. The house is a very nice addition to the neighborhood, and DOS doesn't look anything like an office building that all the rumors said it would. I'm very happy that presentation is using the two houses for schoolhouses. I don't see anything wrong with that. The way they have cleaned up the house on Jenvey and the whole new look they gave the house on Plummer are a good thing for our neighborhood. I would like for to you give presentation to presentation high school to give the perms to presentation high school to sincerely, Betty vanderside.

>> Commissioner Do: Thank you. Next please.

>> Hi I'm Paul Vertoldo, I'm neighbor. Provide exemplary application for many young women. 3200 of them are still in the neighborhood and in the areas as taxpayers and leaders in the community and workplaces and parishes. We also found presentation to be a valuable community asset. Most recent we've benefited from the pools they put in. My wife and I has a special needs child who needs special education in regards to swimming and they've done excellent scaring and patient education with a lot of the students that are there and they provide a huge benefit of having that so close in our neighborhood. I'm proud to be associated with this fine institution and encourage you to approve this amendment. Thanks.

>> Commissioner Do: Thank you sir. I will call the next three names, Jillian Harrington, Talia Caballero. Ma'am fleece proceed.

>> I'm Jocelyn penner and I'm a reading specialist at presentation. special academic needs an learning challenges to achieve and thrive in school. Students who struggle academically need consistent and comprehensive remediation. Presentation is committed to helping our students with academic difficulties, and we can best accomplish this by centralizing a study and tutoring area for them. Relocating some clerical staff to the Plummer property will free up campus space to centralize services for students with special needs and learning disabilities. We will be able to support them in an efficient and effective manner, by moving academic counseling staff and the study hall space to a centralized location. This will provide a great benefit to the students at presentation while having no impact on the neighborhood. Thank you.

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

>> My name is Jillian Harrington and I'm also a neighbor on Marsha two blocks away which I've been a neighbor about ten years now. Aesthetically the two homes that have been well one rebuilt fits right into our neighborhood. As many of us have upgraded over the years our homes, this also has benefited us, I think, as a whole neighborhood, because of its value, from what it was as you saw from the pictures. Also, the increase of

parking, the added spaces will hopefully get some of the cars off of the streets on Plummer and hopefully lessen the traffic issues that we have in the area. Thank you.

>> Commissioner Do: Thank you, ma'am. Next speaker, please.

>> My name is Dana cabalaro. I am the director of film after school and summer program teaching students about broadcast journalism, recently in 2009 our pioneering students entered their first film festival, took first prizes, they won \$10,000 for their nonprofit for the school and a scholarship for themselves. Of my ten broadcasting students, eight are majoring in film entry in the SI Doc fest. We are only there after school. The girls come in they spend a lot of time filming and editing in our room and it is essential that we have a nice creel it's very difficult to get quality sound and we really do require a controlled environment, which we get by being across the street. We other classes and into higher education. So we would really, really love it if you would approve this so that we can continue to teach this and continue to get our students involved in the community and in broadcast journalism.

>> Commissioner Do: Thank you very much. Next speaker, please. I will call the next three names. Neil carpusic, Paul marsher and Dr. Charles barker. Please proceed.

>> Hi, I'm Sara Watanabe, I am experiences have been the best hands on introduction to stem, science, technology acknowledge and mathematics field, and biomedical engineering in college. The robotics team has given me much more than technical experience. It's provided me with leadership opportunities and responsibilities. I was given the chance to assume a leadership role in a traditionally male discipline without being overshadowed by my male counterparts. This opportunity has really enhanced my self confidence as well as my scientific know how. Robotics is not just about engineering scientific and we don't just build the robots. We build a network of skills that will benefit our futures and the futures others. Through robotics I've learned to be comfortably with adults in a professional setting. As my mother will attest I've become more of a people person and now enjoy working closely with students and mentors. The most important aspects of robotics to me has been the opportunity to give back to the community. Women today are still a minority in math and science fields so the group like our robotics team is essentially to introducing the stem fields at a younger age. By such as robotics they can see firsthand that they can compete and succeed in the stem field while having a great time. Working in the Jenvey house abstract to the concrete and practical. It gives us a safe place to develop and build our robot and store our tools and equipment. Having access to the Jenvey house is giving us the feeling of permanence, we work very hard to be respectful of the neighborhood and are really grateful for the opportunities which robotics has provided us. Thank you.

>> Commissioner Do: Thank you very much. Next speaker please. I'm sorry, Ms. Watanabe, please come back to the podium. There are questions from Commissioner Zito.

>> Hi.

>> Commissioner Zito: Ms. Watanabe, I just want to say besides math and science it sound like you accelerate in more than math and science. Your ability to articulate is commendable.

>> Thank you. [applause]

>> My name is Neil carpusic. I have two students at presentation high school. Both of them have been active in the math and science academy, which is under the directorship of Dr. Howe. Dr. Howe has been a great asset to the school, great mentor for both of my daughters. I have a concern that if this permit is not allowed, Dr. Howe may end up leaving the school. He has his office in the Jenvey house today, that is where he operates out of. Both of my daughters have been very robotics team used to have to store all of their equipment and their robot and everything in a closet and then haul it all out into a hallway to do their work before the Jenvey house became available. My oldest daughter graduated last year and she was accepted into a small engineering private school on the East Coast. This particular school gave -- every student that was accepted received a full tuition scholarship. They accepted only 84 students in her class. It is my belief and everyone in my family believes that without the extracurricular activities of the math and science community and the assistance of Dr. Howe that she would not have been accepted into that school so we would like to see other students be able to take advantage

of this opportunity that it's available and has been available to both my daughters, I think it would be a real shame if things change because of this particular permit. Thank you.

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

>> Good evening. My name is Dr. Charles barker. I'm a member of the presentation high school science and math board. A parent of an alum and an inbound student. I ask that you approve the presentation high school's request for a conditional use permit for the Plummer and Jenvey avenue properties because I believe the use of these properties by the school provides great value to the community with no additional impact to the neighborhood. The Jenvey house is home to the standard curriculum in science technology engineering and mathematics the stem fields. The academy administers a wide range of engineers and scientists, a program allowing students interested in medical feeds to shadow local physicians and dentists, sponsorship of award-winning science fair projects both locally and at the state level, and a first robotics program. These programs that ignited the interest of young women at presentation high school in the stem field careers. For example all about two of the graduates participated in robotics have pursued stem field community, I think that the value of stem field education is very well understood. The Jenvey house has not been modified to accommodate these activities. It has offices and a garage and workshop used by the robotics team in very much the same way as a resident pursuing a hobby such as wood work, radio controlled cars and ultralight construction as was the case for the previous other than. Operation in the garage are restricted to the use of hand tools and very carefully selected power tools, no different than those six week build period beginning in January. Presentation robotics team out of deference to their neighbors spends far less. Last year's time spent was about 40 hours per week, this year's schedule was reduced to 28 hours. In conclusion I would ask you to affirm presentation's stem field efforts by approving this permit.

>> Commissioner Do: Thank you. I will go ahead and call the next three names, Jim Reilly, and and Katie Martin.

>> My name is Paul Mosier and I live directly across the street from 1547 Jenvey. I recommend that -- I would like the committee to consider the fact that this is a residential neighborhood. I have no problem with a conditional use permit that allows for school use, excuse me, office use during the week. The problem that I have as a resident, you value the time off you have on the weekends, the robotics which is a great program I'm all for it, they work there on the weekends, they disrupt our service, our time off on Saturdays on Sundays, the day of the sabbath, they're out there work at 10 in the omorning. The former other than had a beautiful workshop, he built an airplane in his workshop, I never heard him. The robotics, I hear all the time. Any type of a permit that would be recommended it's restricted that home is not used on the weekend for activity like robotics. Thank you.

>> Commissioner Do: Pleas stay. Commissioner Zito has questions for you.

>> Commissioner Zito: Pleas expand. Thank you, Mr. Chair. Please expand on the hours that you're hearing the disruptions.

>> Primarily Commissioner Zito on Sunday mornings they will work from 10 to 6, 7 at night. They have classes in the home, meetings I would imagine for the robotics at night. I don't have a problem with that. It's the working on the weekends. That's the issue.

>> Commissioner Zito: So you're hearing noise coming out of the garage?

>> You're hearing the noise the disruption the traffic. It ruins a Sunday. Imagine if I came in your neighborhood on a Sunday morning and started building something.

>> Commissioner Zito: From what you can tell and I'll ask this of the applicant as well, what do you feel is the attendance on -- you're only concerned about Sunday, Saturday doesn't bother you?

>> I'm concerned about the weekends, Saturday and Sunday. Jess so what do you see has been the -- how can I see, the attendance on Saturdays and Sundays?

>> You'd have to check with the school. They probably have 20, 30 people.

>> Commissioner Zito: It's bothering you so you're keeping, you have some cognizance of that?

>> Absolutely.

>> Commissioner Zito: Again 20 or 30 people coming and going?

>> You'll have to ask, the weekends are the weekends.

>> Commissioner Zito: I'm asking how it differs. You say your neighbor build a plane without you even nothing it. That's great. I have a neighbor, two people, I hear them all the time on the weekends. Depends on where you live, right? I'm just trying to figure out compared to a normal residential use how dogs it differ and I'm trying to get a idea of the --

>> The amount of traffic, work in the garage in the driveway of the garage traffic congestion is bad enough during the week with the school but we live with that. Presentation tries to help us with that. On the weekends we don't need it.

>> Commissioner Zito: Thank you.

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

>> Commissioner Cahan: Thank you, Mr. Chair. Are the hours you hear this noise early hours or really late hours or are they regular?

>> 10:00 on a Sunday morning I mean it's --

>> Commissioner Cahan: Do your other neighbors not make noise?

>> Not the noise that they make.

>> Commissioner Cahan: Okay. And I don't know if you're aware or not but do they allow activities open the school grounds on the weekend that you think are somehow --

>> If they do have it it doesn't even bother me.

>> Commissioner Cahan: Thank you.

>> With that in mind the school is a big property, if you haven't seen it, they can build on the school, there's plenty of room.

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

>> Good evening, my name's Roger Martin. I'm a 33 year resident of Plummer avenue. As I understand the public hearing notice, the two properties are owned by presentation high school and St. Claire custom homes. I also understand that the Planning Commission has recommended denial of the conditional use permit for the two properties. So far I've heard no compelling reasons that the Planning Commission's decision to deny the application should be reversed. However, if it is, I have a few points of concerns. The first being a lack of trust. I feel I cannot trust what the school says. In the past they have said one thing and done another. Because of my lack of trust, I would want to clearly stated in the conditional use permit exactly what the school's intent use is for the two properties in question that they stick to their intent. I propose that a conditional use permit be limited to five-year term, at which time it could be reviewed and renewed for an additional five years if in fact the school has stuck to its provisions as declared in the permit. I think there should also be some wording in the permit that limits the hours and days that the two buildings in question can be used. If the school actually needs additional classroom and office space I propose that instead of moving into residential homes to accommodate their needs

they could add a second story in the back portion of some of the existing school buildings. Also, to help mitigate the worsening traffic and congestion problems I propose a drive through dropoff zone in front of the school where there appears to be plenty of space. To have students alumni and parents get up here and talk about the school's attributes is inconsequently to approving a conditional use permit. For the most part they are not neighborhood residents and therefore only have emotional connections to the day-to-day and the long term use of the neighborhood -- that the neighborhood residents must deal with. In summary, if a conditional use permit is issued, I want the exact use of the two properties in question as defined in the permit --

>> Commissioner Do: Sir --

>> I would like to see a five year review.

>> Commissioner Do: -- your time is up, sorry. Thank you. Excuse me sir, there are -- Commissioner Zito has questions for you.

>> Commissioner Zito: Actually, Mr. Chair, it sounds like the speaker has some interesting proposals. If he could leave that with us I'd appreciate that.

>> Commissioner Do: Sure, the -- yes, yes.

>> Commissioner Zito: Your list of --

>> Commissioner Do: Of conditions, basically.

>> Commissioner Zito: Thank you, Mr. Chair.

>> Commissioner Do: Thank you. Commissioner Cahan? Okay, thank you. Next speaker, please.

>> Hi, I'm Jim Reilly and I've been a neighbor for 32 years. I'm going to go in a different direction here. I'm appreciative of the fact that a number of years ago, presentation adopted a closed school campus policy. When students arrive for the day, they are not allowed to leave. That has eliminated noise and litter problems that can be associated with an open campus. The decision to close the campus shows consideration for safety concerns and a desire to be a good neighbor. Neighborhood is calm and quiet during the school day. Presentation students are nice and respectful. Student several times a year and I think the school is very proactive in maintaining a positive presence in the neighborhood. And I'm happy to support their project. Thank you.

>> Commissioner Do: Thank you very much. Next speaker, please. I will call the three next names. Ron Peziali, Dr. Arlene Fukawa, Mark Collins. Ma'am please proceed.

>> Hi my name is Katy Morton and I'm a resident on Plummer avenue. In fact I have two homes on Plummer avenue. I'd like to extend my support to presentation their proposal tonight. As a person directly affected by this proposed change and as a parent of a student at presentation I think that safety is very important and I wouldn't be here tonight if I didn't think that this proposal was going to lead to a safe use of the property. With respect to the actions sought by presentation tonight there would be no impact on safety. In a recent traffic study conducted by the City of San José, it concluded that Plummer avenue has no more traffic than any other street that has a high school on it. In addition, according to the City of San José, there have been no reportable incidents on the street occurring surrounding presentation, in the past two years. Past findings by the City of San José incurred that Plummer avenue is a safe and does not warrant even a stop sign which was both sought by presentation and the residents of Plummer avenue. The subject presentation by presentation does not change the conclusion that the area is safe. Some residents have even argued that because presentation is in the neighborhood, Public Safety is actually enhanced. The speed limit is restricted to 25 miles per hour, and most neighbors drive very carefully around that high school. It should be noted that traffic monitored by the city was done very recently and the traffic verified is around 29 miles per hour. In conclusion as a resident of Plummer avenue I support the presentation proposal and I believe this would have no impact to the safety of the residents or students as a result of this proposed change. Thank you for your attention.

>> Commissioner Do: Thank you, ma'am. Next speaker, please.

>> Good evening, my name is Ron Piziali. I come as an alumni parent. My daughter graduated in 1988. I've been a member of the board of trustees since 2002. During this time I've been able to observe the quality and content of presentation high school. These changes as you might well expect have put tremendous pressure on the use of the campus. The board continuously at every meeting figure out ways to find additional space. However, it's unreasonable to think that these can be done easily and effectively. In the interest of time, finance, and the quality of education for our girls, we needed a space now. The two highways on Jenvey and Plummer have afforded us this opportunity and you've heard all the reasons. And I just wanted you to know that the board carefully considered the acquisition of these properties, carefully considered the impact on the neighborhood and concluded that there would be no incremental disruption to the neighborhood and I strongly urge that you approve this.

>> Commissioner Do: Thank you, sir.

>> Good evening, I'm Dr. Arlene Fukawa, I'm here to speak on behalf of presentation, the local resident community, the robotics team and also on behalf of education. For the past two years my daughter Stephanie has participated in the row boycotts system at presentation as well as the math and science academy. Many of the planning sessions and build of the robot have been held at 1547 Jenvey, also known as the Jenvey I have house. During the preparation for the robotics competition there. The Jenvey house which is one of the residents being discussed has been the primary location where the robotics team has been held always with safety in mind. The operating hours are 28 hours per week, these are limited hours. Also, the construction occurs for only a period of about six weeks. That should be noted. All under mentor supervision. Throughout my observations I have seen nothing but the utmost of professionalism and respect for this location. I see an important value in keeping this building an integrated part of our educational institution. Yet also keeping with the upkeep and look of the residential neighborhood. The inherent and greater good of this location -- that this location provides far outweigh the few unfortunate criticisms of the area. My children have benefited from this location because it provides a location where they could collaborate with their mentor John Howe and further their education in science technology, engineering and math. We live in Silicon Valley. We need to encourage and foster our youth and continue to provide them with areas to grow. These students know that this is an area of learning. Presentation high school's motto is not words but deeds. Not only in high school but also in life. So we as a community need to model that. We need to model this as a neighborhood. And not be tainted by isolated incidences or disagreements of permits. I only hope that we can focus on two things. The importance of working together as neighbors, to provide a community that fosters education. North Dakota.

>> Commissioner Do: Dr. Fukawa --

>> And to be model citizens.

>> Commissioner Do: I'm sorry your time is up but Commissioner Cahan has questions for you.

>> Commissioner Cahan: Thank you, Mr. Chair. The 28 hours that they spend in robotics, is that consolidated or spread out?

>> Monday, Wednesday, and Friday, we work from 10 -- no, 4:00 to 7:30 p.m. and then on Sunday, from 4:00 to 6:00.

>> Commissioner Do: Thank you. Next speaker, please. I will call the following three speakers: Phil Yetomasi, Marisa Waff Kozart, and Robert Howard.

>> Hi, I'm Mark Collins, I'm a neighbor. I've come down here, I have no children that have gone there but I've become very concerned about this school because as I've lived in the neighborhood my appreciation for what that school represents has just gone sky-high, okay? I mean I know, and I think that you know, this community, you know that that's one of the premier high schools in this area, in the Bay Area. And I know that it's doing a lot for the neighborhood, I'm aware of the people that come and use the facilities there. And those are people that are a lot more than the students that are being taught. I'm talking about the neighbors such as myself that could come if

I wanted to learn to swim or I can go and use their other facilities which they allow did people to do. I came here tonight because I heard something I couldn't believe. I mean, today when we have the economy that we have, and we have the problems that we have and when you -- and when everyone sitting here knows that education is of the utmost importance, when I heard that the staff recommendation was against this, it insensed me. I've so far heard two people speak that were -- lets say contrary or against presentation's position. One of them addressed the 10:00 in the morning on Sunday, and we can -- you know in our life it's a system of compromises and if you can't wake up by 10:00, you know, go to bed a little earlier. Because I don't think that's unreasonable. You know if he was coming in say at 5:00, I mean five in the morning maybe you'd say hey let's way a few little bit. But by 10:00 I think most people are doing what they're doing. And I would -- as a neighbor there I'm going to flat out disagree when people say that there's this traffic on the weekend because that doesn't exist. And I will invite you over to my house, I'll host it, you can all come over. I'll take you through the campus if you haven't been there. Because I've been excited to be there. I've gone through that campus, what I'm not excited about is, it's a 50-year-old campus. It is so congested, of course they have to grow bigger because --

>> Commissioner Do: Mr. Collins, your time is up.

>> Already, oh my God.

>> Commissioner Do: Thank you very much.

>> I want to thank you as a neighbor. Will you grant me 30 seconds?

>> Commissioner Do: Sure, sure.

>> I heard another comment that concerned me said he's been a homeowner for 33 years. This school started almost 50 years ago, if you are going to move across the street from the school you should be cognizant that they have kids there.

>> Commissioner Do: Thank you. [applause] Next speaker please.

>> Good evening, I'm a 50 year resident of San José.

>> Commissioner Do: Could you state your name please.

>> My name is Phil Iadomase. I'm a 50 year resident of San José and I've lived in Willow Glen for 26 of those 50 years. My daughter is a senior at presentation high school, my daughter also happens to be a member of the robotics team . Presentation sponsors a 30-year-old Willow Glen transition, the holiday food drive in support of sacred heart community services. The school should be commended for its service to this important agency and the community in which it serves. Annually presentation donates over \$100,000 in food, toys and cash making it the largest nonprofit support of sacred heart. As a neighbor, I am honored to work with presentation in this endeavor and believe it well represents the character, and the mission of the school, and more importantly, its students. Through presentation's community involvement program, my senior daughter volunteers at sacred heart, tutoring at-risk youth. Clearly, the school serves as a very important ally in the war against poverty and homelessness and promoting education. This is a mission that the city and our neighborhoods should well be in support of. Especially now with budgets being so tight, and the economy in such bad shape. Thank you.

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

>> Hello. My name is Robert Howell. My father and I started a business nearly 40 years ago, to build electronic test equipment. Exetron builds machines that are basically robots. Exetron then machines, mechanical parts, Exetron then assembles those machines, then, and then we ship those products all across the world. These are all the very same skills the students are learning while they're building a robot. We are going to learn how to do that today? All started in high school. When I went to high school we had a metal shop and a wood shop and an auto shop and an electronics club drafting class and TV studio, we had slide rules not computers. Other than auto shop I was involved in all of these classes. Somehow, we could afford them then. Sadly, not anymore. There are thousands of robot teams all over the United States. Robot competitions are listed on the sports page right next to

the softball scores. My business and many suppliers donate materials components advice and access to very high end machine equipment. We even let the students use our facilities on the weekends with proper supervision. Yes, both of my daughters went to presentation but it's also true over the years that Exetron has given far more support to Leland's robot team, a public school because Leland has a place to build their robot america is losing their position around the world far faster than anyone in here realizes. Please do what you can to help these students get the very best education they can. Thank you.

>> Commissioner Do: Thank you. [applause]

>> Commissioner Do: Next speaker please. Call the following three names, Gary pad inklla, Patrick Leahy and Kathleen Carallas. Please proceed ma'am.

>> My name is Marisa Watts Kozort. I'm a PE teacher at presentation a swim coach and a proud alum as well. I'm proud to offer the classes we have for our students and for the neighborhood community. We offer swimming lessons for children ages six months to adults, for anybody who would like to enroll in our program, it's nice to know that we have a pool that can stay open, when there are other constraints in the city where pools have to be closed and we're just happy that we're able to offer a lifesaving skill to all the people that choose to swim in our program. If you have any questions about any of the swimming program, let me know.

>> Commissioner Do: Thank you. There are no questions at this point. Thank you. Next speaker, please.

>> My name is Gary padilla. I live right next door to the house on Plummer, next to Betty. 35 years ago, we bought our house, I never thought I'd be here down in the courtroom defending presentation. I would like the say that in that 35-year time I've never walked across the street with a complaint of any kind, which is kind of weird. You'd think after 35 years there'd be something that you'd want to complain about but there isn't. I would like to say that when Herman moved out of the house, with his 20 stray cats, feral, we were really happy to find out that presentation bought the house. [Laughter]

>> It's a beautiful house, that they're building, raising the value of our house. I just want to say I've never had a problem with presentation. I think that they're really a great school, I'd like to commend them. I would like to thank Roger my neighbor of 33 years for not taking his avocado tree down until 10:00 on Saturday and Sunday, when he pruned it two weeks ago. So thank you, Roger, for that. [applause]

>> Anyway. Thank you very much. I think the right thing to do would be side with presentation, really. They're good people. Thank you.

>> Commissioner Do: Thank you, thank you. [applause]

>> Commissioner Do: Thank you. I'd like to address the audience. As much as we appreciate the expression of emotion, please refrain from the applause, until the end. This is a public hearing. Thank you.

>> My name is Kathy Carabag, I'm a neighbor that lives around the corner from presentation high school. I've only lived there seven years. Yes I knew I was moving in close to a school. I support the staff apples recommendation of denial of this permit because through the past few years I feel like I have been misled by comments that were made at public meetings, primarily the swimming pool use. We were told it was primarily only for the students and school meets. It has turned into more than that. That has caused me to have a distrust for when they say, typically, most of the time, occasionally, that this will not be used by students. It is a very nonmeasurable statement. And my recommendation would be, that if this is passed, there would be some more solid measurements put onto the ordinance so they can be measured so we can control these miss use of words in my opinion. It is a benign use. It started off by just saying it's going to be used by staff. And through everybody's comments it keeps growing. Now we're going to have this school, this study class, this robotics team. So already I feel like the application has expanded and it concerns me that we can't get something more solidified into the use permit that can be measured by the neighbors. If we are relocating clerical staff over there, because there is a need to have rooms set up that don't have to be torn down and storage space is an issue, then the clerical staff that's being moved can we not use those spaces that they are using currently on this campus for that purpose? And that would be my recommendation.

>> Commissioner Do: Thank you very much. We have questions for you. Please stay. Commissioner Jensen, no. Okay okay, thank you very much. Next speaker, please and the next three speakers are Richard Kelsey, Linda Weraro and Ray mendiosa or Mendosa, please proceed.

>> Hi good evening my name is Patrick Leahy. I'm a neighbor in the presentation neighborhood. I'm for the conditional use for these two properties. I have a daughter who is part of the science academy who uses this property. This is a tremendous opportunity. I'm a senior executive at a technology company here in the Bay Area. And right now, this is a tremendous opportunity for her learning, and learning and going into math and sciences, to try to build up the economy here in the Bay Area. Right now what we're struggling with is loss of money jobs to global competitors that are out there. And this will enrich their education, give them many, many opportunities to pursue math and science as a career. So I finds presentation is a very courteous neighbor. I mean, they constantly communicate to us of activities that are happening on campus. And they're also very, you know, it's like on days of, you know, when it's very busy, you know, like trash service and so forth, they control the traffic in the neighborhood very well. And so I would like to reiterate that I'm for the conditional use for these properties, thank you.

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

>> My name is Richard Calfey. I'm a resident and neighbor of the year for 48 years. Property owner on Jenvey. And I support the project wholeheartedly. About six months ago, there was an incident where I had a question about the Jenvey address. Rumor was circulating that the school owned it and was using it. In communication with the school I found it to be very well used, and the school is a very good neighbor. And we my family and I support the project wholeheartedly. There are some talked about conditions. I understand they're willing to restrict Sunday to certain hours, to limit the number of staff in one house and the hours for one club project. With that I will superly and wholeheartedly support the project.

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

>> Hello, my name is Linda Guerrero, I'm a 27 year resident on the same side of the street as the school. I wanted to touch again on the issue of trust of what the school is telling us they are going to use the project for and what they actually do. The pool is a prime example. We were told the community meetings back in 2000, excuse me, not 2000, but before the pool was put in, only for the students, only for meets. And it has evolved into more than just that. I sent an e-mail to Avril after the community meeting on March 1st. And I had a couple of points I wanted to bring up again about the trust issue with the school and it was highly emotional meeting that night and I think the trust is a big issue. Just asking the school to, you know, say what you mean and mean what you say. We were told back in 1990 -- or excuse me -- the construction started in '94 when they added the chapel, and we were told we're not going to add to our enrollment, we're only enhancing our program. The chapel was added. In 2000 we had a community meeting and the principal stated that back in 1990, before any construction started, the enrollment of the school was approximately 450 students. In 2000, when we were at this community meeting the principal stated at that time that the student body was 713. And we were told, we're at maximum capacity. They wouldn't be adding students because they didn't have any room. They only wanted to enhance their program. In 2000, the theater was built, in 2003, the soccer field, the pool and the coaches' buildings were built. Each time we were told we are not adding to enrollment, just enhancing our program. On March you 1st when asked what the current enrollment was, the principal stated it's currently 748. That's a long way from the 450 back in 1990 before any construction was started.

>> Commissioner Do: Ma'am, excuse me your time is up but we have questions for you. Commissioner Cahan please.

>> Commissioner Cahan: Thank you, Mr. Chair. About the swimming pool when it was presented to you as for the students, how long was the time frame before it became open to the community for lessons? If you know?

>> I don't know that specifically.

>> Commissioner Cahan: Was it a quick transition or was it --

>> I think it evolved over time.

>> Commissioner Cahan: Does that as a member of the community does that seem unrealistic to you that a pool would eventually evolve into something that they hadn't originally planned it to be?

>> Well, when they stated it was only for students, and we took them at their word, that's the issue. Is they're saying one thing and then a few years later well, we're just going to change it a little. We don't tell them beforehand, we'll tell them after the fact when somebody complains, but not beforehand. That's where the trust lies. The school is a greatly school, that's not the issue. It's just tell us what you really mean and what you're really going to do.

>> Commissioner Do: Thank you ma'am. I will call the next three additional speakers. Pancho Guivara, please sir proceed.

>> Good evening, my name is Ray Mendoza, a resident since 1961. My family has lived in the area since 1951. I can tell you since the assumption of the presentation high school it's been a valuable addition to our community. Every school gets weekend use. Willow Glen is being used 12 hours a day seven days a week, and part of the things that when you live near a school you assume the risk that it's going to get weekend use in the evenings. So for some of the residents to come here and say well I didn't know or I didn't expect that, I've lived there longer than most of the people in this room and I can tell you since I was a kid we all knew about presentation. We expected it to be used by everyone almost at any time. Be it in the evening for presentations at the theater or other issues in the community. Eye think it's tremendous that they have extended their pool hours for nonstudents to use it which is a valuable asset in the community. In addition having lived in that area for a very long time I can tell you that the parking situation and the traffic is actually less since they closed it during the '70s and the '80s, you had an awful lot of traffic during all hours of the day. By adding some offices across the street is not going to increase the traffic. It's going to be the same that it always has been for the last decade or so. So I believe as a long term resident I believe that this is a good plan, that's reasonable, and it should go forward. If you have any questions I will answer them, thank you.

>> Commissioner Do: Thank you. There are no questions. Thank you. Next speaker, please.

>> Hi, good evening, my name is Pancho Guivara I'm the executive director of sacred heart community service. You've already had a parent explain about the tremendous relationship that presentation has with sacred heart and the other continue that point other than just saying that these are incredible young women, and in.

>> Councilmember Constant: Ible faculty and incredible institution that really does a tremendous amount for this community in so many different ways and being able to support them is an honor here. But I want to bring up a couple of other points that may not have been brought up here before. One of them have to do with the remediations which may have been considered in the staff presentation, let's expand on the campus including the 50,000 some odd folks that I have served last year that have been impacted by this economy, organization like presentation has not been immune by the impact on this. The impact on the families and the prioritization of resources rather than doing a major capital kind of reconstruction, that would affect the growth of the campus and being able to prioritize the needs of the factor being able to look at let's just build another building there, let's just make something happen, I know that the board had to go through a really serious you know consideration of whether or not they could handle San José like that, opportunity approached itself in terms of having to be able to do something that would have minimal impact on the community and trying to look at that. The third thing I wanted to come up is this is not unprecedented by other types of institutions, other bellarmine college prep, without taking away from the zoning uses of that particularly neighborhood, most holy trinity, responsible conditions Arnold what's happening with that and they are preserving the residential quality of the neighborhood consistent with the general plan purpose and being able to do so is probably something four to consider.

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

>> Hello my name is Jeff Meyers, I live on Plummer avenue two doors down from the school. I'd like to start out which saying point out one, the students are very nice and courteous, two they did use that home for almost two

years without a single permit or asking of a neighbor. When the last meeting took place here for the pool, they said that wasn't to be rented out. And on the Website of swim South Bay it said we are not affiliated with presentation. We rent the pool from the school. I turned that into Oliverio's office the next -- to Danell his assistant. The next day it was removed. We have a parking issue. With the use of the pool now, it's -- was supposed to have been because they didn't want the students having to transfer to use, you know, the pool at other places. And now, after as soon as school gets out it's a ton of traffic in and out of the school up until 8:00 at night Monday through Saturday. So there's a major trust issue with the two homes. Okay? Another thing with the park, they are in compliance are according to local government. But well, when we were trying figure out how many staff members there were, you could look it up on their Website at presentation. When I turned that in to Danell, we found out that, well, the next day it was only listed by department heads because you could count them you know on how many park spots, they're supposed to have one for every teacher and staff and employee one for every five students. So they don't keep their word and you can never get a you know first there were, you know, that was removed and then they said then Mary Miller had told the code enforcement that they had a verbal agreement with swim South Bay that they weren't renting the pool although swim South Bay was renting a pool from a health club in Los Gatos prior to going there. The overwhelm thing is a trust issue and our neighborhood is flooded with cars --

>> Commissioner Do: Sir your time is up. Thank you very much.

>> You're welcome.

>> Commissioner Do: Next speaker Mr. Garcia and following Mr. Garcia is Keith Meyer. Please come down to the bottom of the stairs. Mr. Meyer here?

>> My name is Julio Garcia, I live on Plummer avenue. I only have three issues. I'm about street park, have to park two blocks away. Secondly, amount of traffic that's taking place up and down the street. And thirdly I'm concerned about the depreciation of values of the property. I think I've talked to a few Realtors that would like to say yeah you can probably put it on the market as compared to other properties that I think we have to go a little less than what the market would be by virtue of the amount of traffic and the amount of traffic issue. That's all I have to say about that.

>> Commissioner Do: Thank you. Mr. Meyer, please proceed.

>> Good evening, Keith Meyer, 2950 Lancered avenue, San José. About three blocks from the high school. I'm a member of the board of trustees and an alumni parent. I was also seven years ago the project manager for the school for the pool, and the field facilities, presenting to you about the conditional use permit for those activities. I'd like to read from that conditional use permit, the facility will be used for water polo, swim practice, and competition, and for summer recreational swimming. Also at that time, the state enrollment of the school was 730 students. Last year, 2009, a review by code enforcement and school enrollment had increased to 750. Code enforcement requested that the school add some additional parking spaces, so that the park capacity could be consistent with the code requirements, which was done in 2009. So currently, based on the conditional use permit application, and the use of the school, it was found by code enforcement that the school's fully in compliance with all of its past applications. I believe that you will find that going forward, the school is most reasonable in accommodating the approval of this particular use, and being the consistent good neighbor it has been. Thank you.

>> Commissioner Do: Thank you very much. Mr. La Bell, you have up to five minutes to make a statement of rebuttal, if you so choose.

>> Well, I'd like to specifically address two issues. One is the trust issue. As you can imagine, if you have any teenagers at home, I know I have a couple, that it sometimes is difficult to manage 740, 750 teenagers. So occasionally, things happen that we haven't plan for. When those things happen, the school has always been responsive. Presentation put a program into place to register every car that every student drives to school. If somebody is parked somewhere and we get a call, we know who that is immediately, we go and tell the kid go out there move your car. Presentation has made adjustments throughout their history there to make sure that they are good neighbors. The issue about the hours on the weekends, we had some concern about that. You know we're

willing to agree to 10 to 6 on Sundays if those seem like reasonable hours. Saturdays and Sundays you know as well. And keep in mind the robotics program is just a six to seven week program each year in the springtime, January and February. So it's a fairly limited exposure. But we're certainly willing to work with the neighbors on that. The pool, I think, is a separate issue. We went through with code compliance, we worked with the city last year to make sure that we were in compliance with our use permit. And it is a pool facility, kids get excited. I know my kids used to swim and you know they like to yell on the weekends but we start at reasonable hours and we manage that again. So in terms of the project we're bringing them some additional parking. We worked hard to keep on top of those issues. We do make adjustments when the neighbors have concerns. We worked with the neighborhood liaison. And even the neighbors that have concerns you heard their concerns are not extreme concerns. They're just you know issues that they each have individually and somewhat different between the different individuals. So we've done a really good job and I'm really proud of the effort the school's put forward to make sure they make those adjustments when they hear about them. With that we do believe that we have a passive use that's compatible with the neighborhood. We've proven to be good neighbors we adjust and make recommendations so that we can have these facilities there for the girls help us going forward. We need the space now. As the one gentleman did mention, we have been in the one building for about a year and a half using it. We thought you just -- we could buy the house and go in and use the rooms. It wasn't until we bought the second house and we were approached by the city about a building permit that we were informed you really need to amend your conditional use permit to be able to use that building and that's why we are here also.

>> Commissioner Do: And we have questions for you.

>> And Andy, did you have any additional -- I think Andy covered it so I think we're in good shape.

>> Commissioner Do: Commissioner Platten.

>> Commissioner Platten: Thank you, Mr. Chairman. Three questions. One, can you additional five years?

>> One of the difficulties is that the last building projects that we did took seven years to plan and fund because we have to privately raise the money for this primarily donations. So that was done in better economic times so a five year horizon is really short for us.

>> Commissioner Platten: I'm just talking simply about a use permit that would be in place for five years and then subject to renewal at the end of that five year period.

>> I guess we would be more comfortable with subject to review at the end of five years.

>> Commissioner Platten: Fine, all right. Question 2 as you indicated on weekends, Saturday and Sunday 10 to 6 use hours would be acceptable to you?

>> Absolutely.

>> Commissioner Platten: And question 3 is precisely what will the use of the buildings be for?

>> The building on Plummer avenue -- well let me make a distinction. The building on Jenvey which is the most proximate, we would be comfortable with four having the ability to use that for four staff and we use that for our broadcast an filming activity which you've heard with the testimony, nobody has had any issues or complaints with them, very passive activity inside the house and then we also use the house for the meetings of our science and math academy all inside and very quiet. And lastly is the robotics which is a compressed time period. Because it is a compressed time period they work on the weekends, in order to be competitive and we would want to have time restraints on that building alone. The other building would be for our development staff, which could range anywhere from six to eight staff members. They primarily organize our outside events, special events, fund raisers, so when we have a fund raiser on a Saturday night at school that finishes at nine owe 10:00, they might be coming over to the residence, the house there to bring some materials back or some supplies, because they keep their -- would want to keep their supplies there. But I think that building in particular, again, is pretty quiet and those are you know four or five special events a year so fairly limited -- fairly limited events when that was going to be happening.

>> Commissioner Platten: And as indicated in Mr. Favor's letter there's both off and on street parking in both those location, correct?

>> Correct.

>> Commissioner Platten: Let me say Mr. Chairman that I'd be prepared to make a favor's letter to be one of the best articulated and substantially presented letters and I'll make a motion in that accord.

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

>> Commissioner Zito: Thank you, Mr. Chair. I think the issue of trust had more to do with initially stated uses of the facility, not necessarily where people parked or noise or something like that had more to do with specific uses of the facility and where the neighbors felt rightfully or wrongfully that they were not being used accordingly. So I think to Commissioner Platten's point of being able to actually specify uses for each building, you had made a distinction between the two buildings and that's fair in my opinion. But to actually specify uses for each building and the times that those buildings would be used is critical and holding to that use is also critical in regaining the community's trust for those who felt that they'd lost trust. And from what I'm hearing that is something you're willing to do.

>> Yes.

>> Commissioner Zito: The other question --

>> Excuse me to the extent we just discussed it those kind of hours.

>> Commissioner Zito: Right. What I don't have in front of me and what I'll be asking staff is if there ever was an application with specific uses for the buildings and times and if not that needs to be drawn up. If we go forward with an approval. Okay?

>> I think the application probably was more general.

>> Commissioner Zito: Okay.

>> As is stated in the staff report, administrative staff, and some after school uses I think was about as described as it was.

>> Commissioner Zito: I'm not trying to put words in Commissioner Platten's mouth but I think we want to be more specific than that if we go forward. The other question was would you be open to some sort of safe crosswalks, to facilitate traffic between -- pedestrian traffic between --

>> We do have existing crosswalks on both the leg from Jenvey straight across to the school and also across Jenview parallel with Plummer.

>> Commissioner Zito: And you have no problem with those?

>> No, those work great for us.

>> Commissioner Zito: How about pickup and leave off at the school sites, after school and weekend use?

>> Can you clarify how that would work? In other words you want the students dropped off at the school site and walk across?

>> Commissioner Zito: At the school site, as opposed to dropped off in the neighborhood on the residential streets.

>> I'm thinking that that would be generally acceptable, yes.

>> Commissioner Zito: Again, it routes the traffic specifically to the school and from what I understand it's just a walk across the street, right? So those are the kinds of things that sound like they would help go a long way in mitigating the -- the other one is keeping a complaint log. You said you had a neighborhood liaison, is that correct?

>> Yes.

>> Commissioner Zito: Okay, so also keeping a complaint log, so that at the five year review would be reviewable, okay? And so other than that, I think Commissioner Platten kind of nailed a lot of the other ones that I was concerned with. You are amenable to those possible suggestions?

>> Yes.

>> Commissioner Do: Thank you, Commissioner Zito. Thank you sir. Thank you. Motion to close public hearing.

>> So moved.

>> Commissioner Do: All in favor? Okay, staff. Thank you sir. No more questions. Okay, staff, please, anything to clarify?

>> Thank you. Yeah many I feel compelled to respond to at least one of the statements in Mr. Favor's letter which I think raises a big concern on staff's part. And it's the statement that says that a nonresidential use is going to have less of an impact in residential neighborhood than the use of that as an actual residence. If we were to believe that in all cases, we're really going down a slippery slope. And that's on page 2, under item 1. So it's a concern. Because again, where lies the protection for our neighborhood residents? Better than the neighborhood than the actual use of it as a residence. We come before you many times finding ourselves in this position where these institutional uses, whether it be a private school, whether it be a hospital, whether it be a you know assembly use has actually gob through our permitting process before. So I think is very aware of what is needed. But does find themselves going out, purchasing properties, putting uses in, and then lo and behold, are forced in to one means or another to come through the process. It puts us in a very emotional situation. We recognize that. Which is why staff did try to work with the applicant. As we have done with all these sorts of uses, and we find ourselves in these situations. We really see the value of these institutions forward planning, forward thinking. So that they can really continue to provide that valuable use or that valuable service to the community. And really, trying to help them do that short term mid term long term planning. We didn't find that a response to that in this case, which is, again, why I said in my initial report, that we find ourselves having to recommend denial. There has been no real presentation to staff suggesting that they have gone through an extensive review of their onsite facilities and have tried to reprogram the use so that they could accommodate onsite as well as look at opportunities to add this, what they're actually presenting is a minor expansion on a pretty large physical campus. Again, was not presented with any information telling us factually why they could not do that. Again, when they did come to us early on asking what our feedback was before they got into a formal application process we did tell them of our concerns. And as I said before we have supported some expansions. But they are in rare cases and where they do make sense and where it was identified as a public quasipublic use. Again we feel strongly that Plummer and bookson are well defined boundaries for that and there are opportunities to expand onsite. And if there was some presentation of some you know forward-planning that there could be an opportunity to be supportive of this in a constrained planner. But as of yet we've not been presented with that. So I still would point you to our recommendation of denial because it really does not preserve the urban conservation policies which are for the protection of the residential neighborhood and does not necessarily mean there to degrade existing institutional uses that do serve a valuable purpose. To the city as a whole. Thank you.

>> Commissioner Do: Thank you. I want to ask you a quick question which is that so in the past applications, there was never a presentation of a master plan of some sort that shows how this institution would grow, or what their long term vision would be or anything like that? So the City's never seen anything that shows the strategic physical facility thinking by the institution?

>> Not -- not formally with presentation. Again we have a number of institutions citywide which as they've come through incrementally we've finally you know got them to, you know, bite the bullet and do the longer term master planning. So that we can bring the community into the discussions early on and so that they can all understand what the future is. We, many instances, had to use existing, when they finally come in for a permit, use that opportunity to make that process happen. And again, it's been with private schools, across the city, not just ones that were mentioned tonight, with medical facilities, with assembly uses, private community uses. We recognize that a lot of them are within existing neighborhoods and on constrained sites so all the more reason to do that longer term planning.

>> Commissioner Do: All right, thank you. Any questions from other commissioners? Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. I understand what staff is saying, and it is a delicate balance we have to make so that we don't allow just willy-nilly changes of uses. But it seems that there is a precedent here, I think one of the speakers mentioned, I remember being on the commission when this came up, is holy trinity came up and asked us to convert two homes near their school. I remember the safety issue. It's a grammar school, my concern was for the safety, crosswalks and crossing guards and et cetera. If I remember correctly, we approved that and it was an all-out use for two homes, if I'm not mistaken, two homes as well right across the street. It was hard to say no. You know, when we went through the whole thing it was approved. Now we have a similar situation, it is not necessarily a classroom use, it's not like there's going to be classes all day long here, it seems to be extracurricular use, and so I find myself in the same situation. If we allow it for holy trinity why can't we allow it here? That's my concern. My other point here is in the analysis, one of the points on the general plan, second Paragraph is that the urban conservation goal of 2020 general plan is to improve the existing quality of life and create a stable, mature community. In order to do so the urban conservation policy states that the city should encourage new development that enhances the desirable qualities of the community, in existing neighborhoods. As far as I can tell, we are improving the existing quality of life and creating a stability and mature community in that presentation is part of this community. It's been there for 50 years, it contributes greatly to the community and it's a stable foundation for the community. Same thing with the new development. Okay, it's not like we're creating housing units there which I know the urban conservation goal was mainly focused on that but it does enhance the desirable qualities of the community. I think anybody moving into that neighborhood would say that presentation is a jewel in the crown because they are such an active and positive force in that community. If it were a different circumstance I can completely agree that it would bring the community down. But in this case I don't see that. So from the perspective of the urban conservation goal I think it absolutely meets that goal and for that reason if Commissioner Platten is going to make a motion I'd be happy to second it. And put a couple of -- I mean I also think that preserving the community trust is very important. And in doing so we have to make sure that the specifics are down in writing so that everybody knows what that site's going to be used for, how many people are going to use it, what times of day, et cetera and so that it can be, you know, whoever goes in there goes in there with eyes open and knows what they're getting so I think that's very important. With that -- for the motion.

>> Commissioner Do: Thank you, Commissioner Zito. Commissioner Platten would you care to make a motion?

>> Commissioner Platten: I would Mr. Chairman. First of all let me indicate that making this motion I express and do not imply any bad faith on the behalf of staff and that analysis. This is first rate work by staff and I want to acknowledge that. I am persuaded by the reasons set forth in Mr. Favor's letter and therefore make the following motion. Move that we grant the conditional use permit amendment to convert two existing single family residences to school offices, on a .40 gross acre site in the R-1-8 single family residence zoning district located at 2276 Plummer avenue and 1547 Jenvey high school presentation high school council district 6 and further, I want noted, on the C.U.P., the following conditions that it be for a five year term reviewable for the after the five years for an additional term that the days and times for use be Monday and Friday normal school hours Saturday and Sunday 10:00 a.m. to 6:00 p.m. and the use be in accordance with the uses and in Mr. Favor's letter. If there's anything additional Commissioner Zito would like to add I'm open to hearing that.

>> Commissioner Do: Thank you, Commissioner Platten.

>> Commissioner Zito: I'd second that Mr. Chair.

>> Commissioner Do: There is a motion there's a second. Commissioner Zito please.

>> Commissioner Zito: I have a couple of additional matters. Commissioner Platten had mentioned Monday through Friday during normal school hours. I had heard the applicant and some of the speakers state that they do the extracurricular after hours, 4:00 to 7:30. I wonder if Commissioner Platten would be okay to 7:30?

>> Commissioner Platten: That's fine, let's make it 8 o'clock, a nice round number at the top of the hour works well for me.

>> Commissioner Zito: Okay, so until 8 p.m. Monday through Friday and 10 to 6 on Saturday, Sunday, is what I understand?

>> Commissioner Platten: Accepted.

>> Commissioner Zito: I'm sorry to nitpick but certain activities require administration to go over to one of the houses and they may have an activity that goes past the 6:00 p.m. on the weekends and they might do administrative work. So with the exception of administrative work past that 6:00 p.m?

>> Commissioner Platten: Acceptable.

>> Commissioner Zito: Let's limit that to 10:00 p.m. administrative in door work only. The other would be dropoff and pickup at the school and not at the actual sites. The other would be to maintain the safe crosswalks. The other would be to keep a complaint log for review.

>> Commissioner Platten: All acceptable.

>> Commissioner Zito: Okay, and I think that limits what I'm -- and that specific uses, that specific uses would be demonstrated in the C.U.P. Okay? Thank you.

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

>> Commissioner Jensen: Thank you, Mr. Chair. I'd like to thank Commissioner Platten and Commissioner Zito for their very thoughtful motion. And I'd like to -- I'm not going to address it, I'm going to support it but I'd like to point out some of the things that I heard here that I believe support Commissioner Zito's recommendation that in fact this does support the general plan. Congratulations on having a documentary film team receiving first place on the challenging issues of domestic violence. This has been an extremely challenging issue for women and for young women to tackle such an issue is a remarkable remarkable event and to get first place in an acclaimed film competition is just wonderful. Ms. Watanabe, I would like to thank you for your service to, as the president of the robotics and your goal to become a biomedical engineer. I have a friend who does that and it is an exciting field and congratulations on that. My own background is math and science and I am very impressed by the strong and aggressive effort that presentation makes to push young women into math and sciences. We do not have nearly enough young women in and I'm grateful for the work you're doing to legality young women know that this is a fun and exciting field and one they can accomplish with great success as your programs have demonstrated. I think the use of a garage for your robotics team is a wonderful symbol of this valley in particular. And a reminder that HP started in a garage. And that garage is now memorialized in Palo Alto. So I think that it's wonderful that that's where you are doing your work. I'm delighted with the five year review. It's not uncommon to have a permitted review periodically. I think that's great. I think feature-creep, you know, addressing the issues of trust and transparency with this organization with the neighborhood, feature-creep is not an unknown aspect of the field and keeping in mind that your neighbors are some of them having challenges with trust and transparency and working really hard to make sure that they're informed and to keep track of any feature-creep and keep it under control. I also know that it was very clearly stated that the buildings will not be converted to strict office use, that they are being retained in their original single family residential form, so that when presentation is in a financial position to expand on campus, that those can be returned to residential use. And I think that's remarkable. We have a lot of applications where the insides of buildings are gutted and cannot be returned to residential use. So thank you very much for that. And I think that's it. Thank you very much.

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

>> Commissioner Cahan: Thank you, Mr. Chair. I'd like to touch on the point that some of the neighbors had of their concerns with the pool and how it was originally brought as being for the school, and I would like to say, I think that it is a natural transition for such a pool to potentially become of community use. We have our own community pool in our neighborhood that was originally just for members' use. And we then transitioned to lessons for outside of the membership. So I hope that the neighbors see that as perhaps just something that grew, and not an intended falsity on behalf of the school. Additionally, I'd like to commend you for using this opportunity to provide a learning experience for all of the young women who are here today, to become involved in the political process. It's very important and I'm really happy to see all of you here.

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

>> Commissioner Zito: Just one final item, the director leaned over, and based on Commissioner Jensen's point about the residential uses of the two facilities, and that he suggested that maybe we make that a condition, that the two sites actually retain their residential use capability as a condition.

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

>> Commissioner Zito: So that will be a condition.

>> Commissioner Do: As for me at the end of the day, I guess I will support the motion as well. Even though I'm sympathetic acknowledge even though I share staff's key concern, which is a concern against unorganized creeping or encroaching into another -- into a piece of -- into properties that are designated for other uses. I think that the -- I am somewhat concerned about the lack of a proper -- of a formal master plan, as staff had alluded to. If there is such a master plan, I think that it should be shared with staff. If there isn't then I think an institution as important as presentation high school should have a real formal professionally done master plan, that looks at the long term strategic needs, and with a community involved in the process, and so on, that spells out the, you know, the long road ahead, in terms of what -- how the school would grow or not grow or how the needs may change and how facilities ought to be -- ought to be amended to accommodate the need. So staff -- I do support staff's point on that although I do support the motion.

>> Staff does have one point to clarify so we can get it right. With respect to the addition about retaining the structures in their residential character, sometimes what we've also done is to make it very clear that these uses are to be contained wholly within the building, and that they not occur in the outdoor yard areas. I don't know if that was intended for yours or -- because again, what is the use of the outdoor areas? It was presented here so it was all within the buildings. And I just wanted to make sure we clarify where these uses can occur on the sites.

>> Commissioner Do: Commissioner Zito. Mr. La Bell, I just want to point out public hearing has been closed.

>> The hours and everything were kind of worked out quickly so we wanted to make sure we heard --

>> Commissioner Zito: We'll restate.

>> Commissioner Do: We'll restate, thank you sir. Commissioner Zito.

>> Commissioner Zito: My feeling is if they're doing for instance robotics use chances are during the day they may spill out into the driveway running one of their robots or something like that but it's not intended that they are going to do any kind of major work in the yards that would impede or encroach upon the general use of the neighborhoods, noise impacts and is a on. I think it would be impossible to say that everything has to stay within the four walls. They may have a robot that goes around in the back yard or something along those lines, and I think that's totally acceptable but noise and other impacts to the neighbors has to be in complete compliance. Okay?

>> And then the -- it's been a long time since Commissioner Platten made his first motion talking about office uses but then the specific uses, are they uses that have beneficiary stated here or are they uses that we're going to state or --

>> Commissioner Zito: They need to be stated and to the satisfaction of the director.

>> Well, I think they need to be stated here because it they need to be contained when the --

>> Joe Horwedel: It was the items that Mr. La Bell had -- for specific uses. For staff doing the development work in the second building.

>> Commissioner Do: Six to eight staff.

>> Which is more the office use.

>> Joe Horwedel: Correct.

>> So the nonoffice type uses would be robotics, flick and broadcasting, and science and math.

>> Joe Horwedel: Academy after school academy.

>> Commissioner Zito: And as far as the hours are concerned my understanding was is that for the building that's housing the robotics and extracurricular activities, it's up in the 8:00 p.m. weekdays and 10:00 to 6:00 on weekends, and the office administrative uses on that specific building, let me get the street right on that, that's the one on Plummer, that would be allowable administrative indoor uses only until 10:00 p.m.

>> Commissioner Do: Counsel.

>> And then the start times would be the same start times that are in the C.U.P. right now for the pool?

>> Commissioner Zito: That's correct.

>> Okay.

>> Commissioner Jensen: If I may, I believe that one of the amendments to the motion is that administrative uses outside the stated uses would be acceptable as long as they were indoor administrative uses and not the student uses if I understood one of the amendments.

>> Commissioner Zito: Are we not putting -- I thought we put a time limit on that we did --

>> Commissioner Jensen: Students.

>> Commissioner Zito: We did cap it. If the maker of the motion is okay with 11 I'm good with 11.

>> Commissioner Platten: I'm a happy man.

>> Commissioner Zito: Okay then we'll do 11 p.m. We had stated a return in five years.

>> Commissioner Do: Okay some so without any further light we will vote by light. [applause]

>> Commissioner Do: Thank you. The motion is approved unanimously, with all commissioners present in support. Commissioners Campos and Kamkar absent. Counsel.

>> Just to clarify, obviously the resolution will need to be brought back on consent calendar. It won't be a public hearing. The only reason for that is to have the Commission confirm that the final resolution was memorialized accurately and everything was appropriate.

>> Commissioner Do: Without a public hearing.

>> Without a public hearing. It will be on consent calendar.

>> Commissioner Do: Thank you, counsel. Moving on to the next item. PD 09-023. This is item 3B. Appeal of the director's decision to approve a planned development permit to demolish an existing commercial building and construct a new 17,000 pad building for retail commercial uses reconfiguration of 13,090 Square feet -- if I could ask the audience to keep quiet, please. Please, stay quiet until you leave the room. We have a public hearing going on. Okay, I will reread the item. Appeal of the director's decision to approve a planned development permit to demolish an existing commercial building and construct a new 17,000 square feet pad building for retail commercial uses reconfiguration of 13,090 square feet of previously approved in line retail space and allow the offsale of alcohol on an 8.96 gross acre site in the A(PD) planned development zoning district located on the Northwest corner of Meridian avenue and Hillsdale avenue. This project also allows the relocation of a retail use that includes the offsale of alcohol into an existing pad building temporary location, while the proposed building is under construction. staff.

>> Thank you, Mr. Chair. This project was approved by the planning director and subsequently appealed by a representative of the neighborhood on the basis of the project's lack of a provision for a cross access with the adjoining commercial property owned by a different entity that's not part of Hacienda gardens shopping center. No other issues were cited as part of the appeal. Staff had initially considered a permit condition to require cross-access easement so the customers could conveniently circulate between the two commercial properties without having to exit and re-enter the sites via public streets. This concept of cross-access is encouraged by the city's commercial design guidelines and is quite common in shopping centers made up of parcels owned by different entities. The adjacent property owner Barry Murkin had indicated his willingness to pay for all the costs associated with site modifications to implement cross-access between the sites. The developer of the subject site had expressed strong opposition to cross-access and had asked the city to reevaluate the imposition of this permit condition based on a reasonable relationship of this requirement or nexus given the scope of the proposed project. Given that the construction work on the project is at the opposite end of the shopping center. Although staff believes that there would be benefits for cross access, based on traffic impacts, and operational safety issues on the adjacent public streets we are not comfortable that there is the nexus to for that unwilling property other than. For that reason staff has planning Commission uphold the director's decision to approve this planned development permit as originally issued. Thank you.

>> Commissioner Do: Thank you. Is the appellant here? Rhonda Hanson is the appellant. Please approach the mode yum. You have up to five minutes to address the commission. Please state your name.

>> Hi, I'm Rhonda Hanson, I'm a founding member of the ninth district neighborhood action committee which was established in 2002 when this project first started and I'm also a neighbor. The appeal for the cross access was actually filed for two reasons. One operational and one safety issues. And although the city has determined that safety is not a nexus for the cross access between the two adjacent parcels, at the Hacienda gardens shopping center, the City of San José's own commercial design guidelines do in fact support and identify the operational nexus for this very cross access. On page 46, and I've highlight it but I'm sure you're aware, on page 46, section 7B item 7 under site organization of the commercial design guidelines it states and I quote, park lots should be coordinated with any adjacent park lots through the use of cross access easements. I'm sure that this precisely the justification that was utilized by staff when they originally recommended in the original permit to, quote, reduce operational traffic conflicts from driveways of two adjoining commercial developments, this project shall offer an easement to allow cross access with the adjoining new retail building site. To further substantiate the operational access, on page 31 section 5 item 4 on to parking and circulation it states a park lot needs to allow customers and deliveries to reach the site, circulate through the parking lot and exit the site clearly. Clear and easy to understand circulation should be designed into the project, development of land in cooperation with adjoining properties is encouraged where driveways can be shared. Once again, the city guidelines clearly shopping center having two adjacent driveways, makes no sense, when we can have a cross access that's supported by our own city guidelines. The proposed crass access would eliminate the need for these two adjacent driveways on Meridian as well as the relocation of the existing VTA bus stop on Meridian come a very unnecessary expense and a ridiculous thing to have move, because we can't put a cross access that once existed back where it existed. This

cross access did exist at the time the original permit between the former Chevron station which is the site now owned by Mr. Merken and Mr. Tessini's property and it was admittedly an oversight by staff due to the scope and the magnitude of the original PD permit which was a complete redesign of that park lot. And if I can quote the staff report it says, "there was adequate justification to require a cross access pursuant to conforms there was however no specific condition to address this cross access at that time, are since staff did not anticipate there would be a problem securing this with a subsequent planned development permit. " unfortunately that is not the case and that is why we are all here now. So I am respectfully requesting that based on the the City's own commercial design guidelines on page 31, page 46, and page 52, and based on the fact that the that this cross access existed in the shopping center before and was only owe milted because nobody expected it to be a problem, that it be implemented and proved as part of this PD zoning zoning rather than later. Because this will allow things to move forward at a quicker pace because the way it was originally written by staff certain time guidelines needed to be done. And at this point eight years later this project needs to be done. Thank you.

>> Commissioner Do: Thank you.

>> Commissioner Zito: I have a question.

>> Commissioner Do: Actually ma'am, please return. Commissioner Zito has a question for you.

>> Commissioner Zito: Yes, thank you, Mr. Chair. Just a quick question. To me this sounds like and I'm going to have to defer to our counsel for clarification and an answer. But if it's a little issue one way or another, other than that do you have any problem with this application going forward? That's my question for you. Other than the easement and I'm assuming that's a legal action going forward, do you have any problem with this application going forward?

>> Absolutely not. The neighborhood has been totally in favor of this moving.

>> Commissioner Zito: So you have today?

>> For the simple reason that the applicant has been hesitant about it. There are feelings between the two developers that are not positive. And our feeling is that if it gets done now and it's required it will happen. If it's done later, you're going to cause an expense for Mr. Tessini that he is going to have to then tear down and do letter. Yes, we're in toll favor of this permit, it's just the cross-access that we're asking for.

>> Commissioner Zito: Thank you.

>> Commissioner Do: Is the Cross-applicant here? Mr. Ruby.

>> My name is Tom Ruby. I'm with the law firm of Morrison and Foerster and I'm representing the applicant. I submitted a letter today which I hope you have which reiterated our support for staff's position in the staff report which is to uphold the denial of the appeal and it's really based on one simple issue that there's no legal nexus to require this condition, and as such, it's not a permissible condition for the city to impose. Really, the issue here is whether or not there's an impact created by this project, as staff has indicated in their staff report there is no impact which requires mitigation so therefore, it's not permissible to impose the condition. Thank you.

>> Commissioner Do: Thank you, thank you. Let's see, we have several speaker cards. I will read three names at a time. Please all come down to the bottom of the stairs. Robert Hansen, Larry Goldstein, Manny Minken. Please approach the podium state your name and you have two minutes.

>> Hi my name is Robert Hansen and I'm related to the lady that just spoke here earlier, my favorite wife. The proposed access between the two adjoining parcels owned by Barry Murkin and Mark Tessini at the Hacienda Gardens shopping center would minimize the number of driveway cuts onto Meridian avenue as specified in the city of San José guidelines on page 4 section 7B item number 8. Driveways should be shared with adjacent uses and the number of driveways to a major street should be limited. Clearly it is the intent of the commercial design guidelines to minimize the number of driveway curb cuts on adjoining streets. Clearly the proposed cross access achieves this criteria and once again proves that the operational nexus for the cross access exists in the City's

own commercial guidelines. Based on this I hope you will approve the cross access now as part of the PD permit rather than at a later date. Thank you.

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

>> Good evening. My name is Larry Goldstein and I'm also a neighbor and co-founder of the ninth district neighborhood action committee. Which we -- you heard it previously was started eight years ago when this Hacienda gardens project was started. As you are all probably well aware, we -- this has been going on way too long and I'm just going to kind of break it down into the facts. The reason we are here right now is because of this planned development permit. Rhonda filed an appeal, based you know, for the neighborhood. And for the ninth district neighborhood action committee. Basically there was a staff report that came out that was recommended, now I just want to point out that in the appeal, it states operational and traffic safety issues. Operational and traffic safety issues. The recommendation from the Planning Commission was the project substantially conforms to the commercial design guidelines, with respect to the guidelines that have been put together by you folks. And in conclusion, I want to quote, staff given the scope of the specific planning development permit for a new building at the opposite end of the shopping center that said while the city may not be in position to force this issue there should still be benefits in providing cross access for reasons unrelated to the specific matter of traffic safety. And then he goes on to talk about avoidance of confusing traffic elements. I know that then there was legally the applicant, they went and, you know, are saying it's not a traffic issue and we're all aware of that we all agree it's not a traffic issue at this point. We could have brought 73 people here tonight. I've got 73 signatures here from a petition that was signed from all the neighborhood folks. Basically the bottom line is that on page 31 under parking and circulation, the --

>> Commissioner Do: Sir, excuse me your time is up.

>> I'm sorry.

>> Commissioner Do: Thank you. You have a list of petitioners? You can pass them to staff.

>> I just wanted to show that this is being requested and did other one is what -- the other --

>> Commissioner Do: Okay, you don't mind leaving a copy with staff that would be great. Thank you very much. Next speaker please and then the following two speakers. Mr. Murkin and the following two speakers are Kevin Flannagan and Mary Flannagan. Please proceed. You have up to two minutes. Please state your name.

>> My name is Barry murkin and I'm the other than of the old Chevron station located at the intersection of Meridian and foxworthy. I'm here to support I started to design the building for the site planning asked me to do several things. The first was design the building to be street friendly. And place the building close to the sidewalk. Planning also asked plea to dedicate the land for the future driveway, future turning lain on Foxworthy. I looked up and followed your design guidelines or the parking and relationship to other properties. to all of these items I readily agreed, I felt that these items would enhance the project, improve circulation and prevent confusion, from someone entering either site from Meridian. I also met with the neighborhood. And they asked me amongst other things to provide cross access to the adjacent shopping center. I met with planning on this issue, and I designed the circulation on my lot to accommodate this request. Two design criteria were approved by the original planning process. One, for the driveway on Meridian, the other sent an intermediary to discuss the cross access. In this case I felt it would be better to send someone else than myself. My representative came back with a resounding no. By supporting this appeal, you will add to the landscaping on the Meridian corridor, make the center pedestrian friendly and support the many people that have signed the petition for cross access between the lots. Thank you very much.

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

>> Good evening, my name is Kevin Flannagan, as a homeowner who is directly affected by the outcome of the decision you are about to make I respectfully ask that you honor these guidelines and require that the developers of the two adjacent projects work together to provide a solution that works best for the city its residents and in the end the developers as well. I understand that the city has determined that this is not a safety issue, but legal

technicalities aside, having two separate driveways for the two projects right next to one another with no way to get from one parking lot to the other without going out onto an extremely busy street is a real safety issue. You can choose to follow this access now by following your commercial guidelines or you can ignore the guidelines and let the city the residents and the other than developers suffer the consequences of this decision when someone unfamiliar with the area gets momentarily confused, trying to switch at the last second leading to an accident or someone could get part way into the driveway for the corner development realize they have turned into the wrong driveway and stop suddenly. Clearly what they are doing is not legal but it is what can happen when a driver is momentarily confused. Most drivers have become crows access within parking lots in San José largely due to your adherence to these very guidelines that we are asking you to honor in these developments. I respectfully ask that you follow your own design guidelines and reverse the earlier ruling. Requiring the developers to use a single shared driveway with cross access between the two parking lots is an easy solution that totally eliminates any confusion about which driveway to use. Furthermore it eliminates any potential liability associated with these safety issues for both the city and the developers down the road. It's truly a win win solution. Thank you.

>> Commissioner Do: Thank you. Next speaker, please. You have up to two minutes.

>> Pardon?

>> Commissioner Do: You have two minutes.

>> Oh, okay, thank you.

>> Commissioner Do: Please state your name ma'am.

>> Good evening, my name is Mary Flannagan and I live in the neighborhood of the Hacienda gardens shopping center. I'm here tonight to make a statement about the cross access in the shopping center that I feel should be available to the tenants of both parcels as well as their customers. The cross access being requested by the neighborhood and suggested by the Planning Department in response to the PD permit for the Rite Aid building would eliminate confusing circulation issues and excessive driveway cuts that also Net the moving of the existing VTA bus stop to a new location. For the park lot strip organization site on page 52 it states, park lots should be integrate with adjacent parking lots where improved circulation can be achieved or excessive driveway cuts avoided. Denying the cross access contradicts these compliance. It does knot allow for integrated park lots and it forces additional driveway cuts. I respectfully request that you find proper nexus based on your own commercial guidelines to approve the cross access now as a part of the Rite Aid planning department permit. Thank you.

>> Commissioner Do: Thank you very much. Ms. Lona Hanson the appellant, would you like to make a closing statement? You have up to another five minutes.

>> I do want to state in response to the applicant that we are not approaching this as a safety issue. It's been made very clear to us that there is not a legal nexus for safety. But per the City's own guidelines it appears that there is an operational nexus that does definitely need to be addressed. Hacienda gardens is district 9's largest and most controversial commercial project. It's been under construction since 2002. I've been with Joe since 2002. It's just -- it is a project that the neighborhood wants to see done. We have worked closely with Toll brothers to get a fabulous project that's over there. We have been attempting to work for years with Mr. Tessini, not as easily but we are all trying. It is a project that the neighborhood is anxious to see completed but completed in a manner that is beneficial to the neighborhood that's going to benefit the center, that's going to benefit the commercial tenants the developers and the city. We believe that the cross access is really all part of that and unfortunately in we felt that the cross access would happen at a later date none of us would be here. We do not believe that the applicant is willing to do this between the other applicant and a gentlemanly manner and we do feel that the City's guidelines specifically state that there is an operational nexus. If you look at page 31, parking and circulation, the intro, and item 4, if you look at page 46, site organization, item 7 and 8, if you look at page 52, parking lot strip site organization section 8B item 4, these are not neighborhood requests. These are your own city guidelines that we're asking you to adhere to. I understand it makes probably no sense to ask a man to have to put a cross access on a different piece of his parcel. It seems to be the only way that this is going to get done. And the cross access would eliminate confusing vehicular circulation, it would allow driver and pedestrians

to move through site without confusion, it would eliminate the need for two adjacent driveways, it would eliminate and parking lots, it would avoid excessive driveway cuts. These are all points in your guidelines. I didn't make these up. Each of these points are the nexus for operational need to this. The cross access as part of the PD permit also would necessitate that some of this construction get done in an accelerated manner. You force Mr. Murkin to take the expense of what is needed for this cross-access. I don't understand the problem that Mr. Tessini has with this happen I'm not here to cast anything on Mr. Tessini, please don't take this in any way, shape or form but I truly believe that this operational nexus exists in the City's guidelines, it's identified there it's supported there it existed before there's no reason to not have it now. And I think you need to find a legal operational nexus for this. Not as a safety issue, I understand you can't do that. But as part of your own guidelines. Thank you.

>> Commissioner Do: Thank you, ma'am. Mr. Ruby would you like to make another rebut comment? You have another five minutes up to five minutes.

>> Thank you. I'd just like to clarify one issue on the nexus issue which as probably most of this commission is aware nexus is a legal principle, it's a constitutional law principle and really the issue here is whether the city has the legal ability to require a property other than to dedicate a part of his property to the use of another property owner. And that can only happen if that request is being made in order to address a specific impact being raised or occurring because of the particular project at hand. In this case that's not the case. The proposal before you is to actually reduce the approved project, it reduces the size, and reduces the Trask impacts so all the impacts associated with the permit that's before you tonight are actually reduced from the existing permit. And while I do agree that the city does have its design guidelines, the City's ability to implement its design guidelines are subject to the legal requirement of nexus. So I'm here if you have any other questions.

>> Commissioner Do: Thank you, Mr. Ruby. We have questions for you. Commissioner Zito.

>> Commissioner Zito: Thank you, Mr. Chair. Mr. Ruby, the diagram that's showing now, my understanding is you are representing for lack of a better way of saying, the south side, the hacienda property.

>> Right.

>> Commissioner Zito: So you're talking about dedicating part of property right to this opening? To this cross --

>> Basically a cross access easement would give the adjoining other than the right to use this portion of the property, yes.

>> Commissioner Zito: But apparently, the murkin property is opening up the wall and that's all it really is opening up the wall, realistically, that's all it is it allows cars to go back and forth, that's the purpose of opening up the wall but as far as anyway, right? I mean they're going in that driveway and they're driving over that piece of land right?

>> Yes, I'd have to ask the applicant if this is an actual correct depiction of what might be going, the real issue is not whether or not this is a very good idea.

>> Commissioner Zito: I'm asking you a very specific question. The question is will the use of that particular property as far as having cars driving over it be any different whether they drive in it from the east side or north side, still cars are --

>> From a legal perspective is yes there is a difference.

>> Commissioner Zito: The other question is I just don't get it. You might be right. I'm going to defer to our counsel to really nail it down. I just don't get it. What is the problem? If I could ask.

>> Well the issue here is whether or not the city has the legal ability to mandate that a property owner does something. Whether or not the two property owners agree in a private situation, that's a totally separate issue.

>> Commissioner Zito: Okay. It seems from all common sense perspective it makes sense to do it. Okay? It seems that it benefits both property owners it seems that again my sitting on this board for the last eight years, everything that we've done basically says that this benefits the city it benefits the property owners it benefits the users which is really what you're trying to do. You're trying to make your customers happy right? The fact that they go into a driveway and find out oh I'm at a dead end I need to turn around. That pisses them off, I shouldn't have said that, it makes them annoyed. What's the problem here? I'm sorry if I'm bringing it down to a human level, but I'd really like to understand that so I could empathize better.

>> Commissioner Do: Commissioner Zito do you mind if I chime in? I fully support what you're saying. I just wanted to empathize. Please Mr. Ruby.

>> Thank you and I think it goes back to again what the legal principle here is is whether or not the city has the ability to legally require this as a condition. Really we're not here today to address whether or not this ultimately might be something that the property owners should discuss between themselves. The issue is does the city have the legal ability to impose this condition.

>> Commissioner Zito: So this is just to prove a technical point?

>> No, I do think it's more than that. As the condition was originally imposed if you required this property owner to grant a cross access easements are negotiated between property owners there's payment for that. So the ability to say provide a cross access easement because we think it's a good idea that is a taking. Under the law that is a taking of somebody's property without compensation.

>> Commissioner Zito: So you feel so again try better understand the human side of this you feel that there needs to be more negotiation to reach an equilibrium, is that what I kind of hear you say?

>> I believe there has been negotiation, whether or not a property owner decides they believe it's in their best interest do negotiate or not, that's ultimately their business decision and it's not the purview of the city in this situation to impose that as a requirement.

>> Commissioner Zito: I'm not a lawyer and I can't judge on that but thank you very much, I appreciate your frankness.

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

>> Commissioner Cahan: Thank you, Mr. Chair. I'd like to make a motion to close public comment.

>> Commissioner Do: No, no, there isn't, thank you. All in favor? Okay, thank you. Commissioner Cahan would you like to make further comment?

>> Commissioner Cahan: Yes, Mr. Chair. I am a neighbor of this area. I am in full support of having access from one portion to another. I visited another commercial location down Meridian, Meridian and Hamilton that has a very similar setup, where there is a portion that is cut off from the rest of the commercial area. It is extremely difficult to navigate that site. That's where the goodwill is, and it's a very challenging,ists -- traffic wise it's not very safe to try and pull into the small area. It's not pedestrian friendly. And it goes against our guidelines. And so I would like to get legal counsel, because I believe that Ms. Hansen gave very detailed examples in our guidelines of how the city wants us to have this access. And I'd like the get legal counsel on our ability to enforce that.

>> Commissioner Do: Counsel, please.

>> Thank you, Mr. Chair. Well, if it would help guide the commission's deliberation, I don't think I've heard anyone state here tonight that addressing that particular issue at those two driveways would be a good idea. And we have the traffic engineering folks here who could probably concur about what a great idea it would be. But that's not the analysis that you need to perform. So if I can help you go through a couple of steps on the analysis that you need to perform. The first thing you look at is what is the development proposal. First take a look at that. And then ask yourselves what burdens are being created by the development proposal? So you have the Department of Public

Works, and you have the Planning Department saying, that they have performed that analysis, they have looked at the development being proposed, and they have asked themselves, does that development create a burden, create an easement necessity, that it is appropriate to a particular condition to address that impact? So the portion that we appear to be jumping over is the first step. We're all jumping to the easement, what a great idea that easement is. But what the commission needs to do first is take a look at what is the development being proposed. And the commission has had to grapple with this before. I know that you'll be familiar with that. But we've had instances where we've had a vacant lot that a developer comes to propose and it's a large lot and there is a bus stop on one end of the lot. And so the entire neighborhood comes out and says, if you develop that property, I'm going to have to walk all the way around this very large Lot to get to that bus stop. Right now I can just walk through the vacant lot. And we spent quite a bit of time saying how inconvenient that is going to be for many, many people. The problem is that the developer create the need for the bus stop because they wanted the developer to put a path down the middle of his property and say make it easy for me to get to the bus stop. And I don't know if you remember that hearing but that also was a very long hearing where we had to say is the developer really creating the need for the path? And the developer wasn't creating the need for that path. It was simply an existing condition and the developer was developing his testimony. There has been a lot of testimony tonight about how great that easement might be and that may be true but before we get there and before we can say developer provide us this wonderful thing we have to make sure that the developer has an obligation to provide that wonderful thing and not just a wonderful thing. In as much as everyone would be in concurrence, the first prong that needs to occur is what is this development and is this deformity somehow creating a need for us to impose that condition? So when you hear people talk about nexus everyone throws that around. Really the concept is that we can ask developers to provide a lot of wonderful things anded that be spending a lot of money that is it really fair and is it really legal to ask them to provide all those wonderful things. When people say nexus really what they're saying is you have to make sure that the developer is creating a burden, is creating an impact, is creating an obligation to fix a problem that the developer is creating. So that's the prong that we don't want to skip over.

>> Commissioner Do: If I may ask you a question which is that then does the fact that this proposed development propose to put a driveway right next to an existing driveway, right? I mean the Chevron driveway is there are already.

>> My understanding is that that's not the proposal that's before us tonight, that the proposal tonight, I'll go back to the staff report, I believe is actually reducing the number of trips. So let's see, they want to demolish and existing commercial buildings and construct a new 17,000 square foot pad and reconstruct a new 13,000 square foot pad and allow offsale of alcohol. And that is, I believe, if I looked at some of that --

>> The driveway on Haase yen Edesa gardens side is existing and improved.

>> Right, it exists today.

>> Commissioner Do: So okay, so there are currently two driveways, the two sketches, the two comparison sketches, that showed one without the other cross access and the other one -- the other one without the cross access, it shows the two driveways, the upper one that's the existing condition?

>> Yes, thank you, Mr. Chair if I can clarify. The upper diagram represents the site development permit that was approved for Barry murk in about a year ago. It does show two driveways. The Chevron station has been demolished, was improved which a cyclone fence. We approved a planned development permit for the Hacienda gardens project overall. It's unfortunately that yes, there is a 23,000 square foot reduction in the commercial as currently imposed based on what their entitlement would have allowed them to do there probably would have been the access to require the cross action in the context of the originally planned development zoning which allowed another 299 residential units to be built which is part of that same plan of zoning but unfortunately we replied that zoning. We're questioning whether or not we have the legal ability to go back and fix that wrongdoing I guess if you will at this point in time, based on what's currently proposed and that's the dilemma we're in.

>> Commissioner Do: So nexus existed at once, pay not exist today?

>> The redo of that shopping center designed that parking lot and at that time there would have been the nexus given the fact there was a much more substantial project imposed, clearly the nexus at the time to get that.

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

>> Commissioner Zito: Thank you, Mr. Chair. I'm going to ask and I think I went over to counsel and asked if she remembered an application that I'm sure Commissioner Platten remembers from early on in our tenure, when an ex-commissioner, Jay Ross, came and argued a point about property rights for a property owner on the Alameda County who wanted to put up a gate between his parking lot and the park lot of an adjacent property. And the guidelines were, again, brought out and said how can you allow this? Your guidelines say you have to allow cross-access, blah blah blah. And Mr. Ross presented us with some court decisions that basically said Property rights trumps our guidelines.

>> Yes.

>> Commissioner Zito: That's my recollection. I don't know if it is Mr. Platten's recollection.

>> Commissioner Platten: Mr. Chair, if I may, it was four or five years ago, the parking lot behind the bakery of the Alameda. The issue of nexus has been litigated since that time. If my recollection is correct, the New Jersey case, can you refresh my recollection on that?

>> No.

>> Commissioner Platten: And my knowledge of law is consistent with the representative legal counsel tonight.

>> Commissioner Zito: Which says you can't force -- that's basically what we came up with, back in -- my recollection it was longer, but then again, yesterday reminds me of last week anyway. But so I have to thank Mr. Ruby for taking my badgering and not throwing things at me. I was being tough on him for a reason because yes, it does defy common sense why we wouldn't have a cross access easement. But by the same token, at least from a legal perfect, what my recollection is and I tried to be as consistent as possible with our application of what we've learned and our guidelines, is that we really can't force the nexus here. There is no --

>> What's important for me is I haven't heard anybody say the developer is proposing X and X translates to a need for a cross-accessing easement. There's been no discussion this evening at all. And so based on the record we have so far I would be very concerned if you went down that path.

>> Commissioner Zito: Mr. chair, with that, while it defies common sense, I would like to make a motion that we consider the use of the mitigated negative declaration in accordance with CEQA and we uphold the director's decision to approve a planned development permit to demolish an existing commercial building and construct a new 17,000 pad building for retail commercial uses reconfiguration of 13,090 square feet of previously approved in-line retail space and allow the offsale of alcohol on an 8.96 gross acre site in the A(PD) planned development zoning district as recommended by staff.

>> Commissioner Do: There is a motion. Is there a second? Commissioner Platten seconds. Commissioner Zito.

>> Commissioner Zito: I can only say that like I said, it makes sense to have a harmonious relationship and to allow that cross action, I think it would serve the customers, the users of both sites, very well. And I hope that the developers, i.e. land owners would come to some agreement on that. But given what's put before us I can't see how I can support the appeal.

>> Commissioner Do: Commissioner Platten I have you on my screen, do you still have a comment? Okay, thank you. Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair. Staff you indicated that originally there was a cross-access and there was a nexus. Can you state the reasons why that was originally part of the plan?

>> Thank you, Mr. Chair. I think the issue was overlooked. The original project involved the creation of four new pad buildings for the hacienda gardens project. It was a net increase of I can't remember exactly how much square footage but it was a fairly sizable addition to what was there at the existing shopping center. It affected the very driveway or created a driveway or modified it in some slight way. There was originally access from the Chevron station to the hacienda garden site. And there was some substantial amount of residential proposed too. Because of the fact that all that work was being done directly or next door to this Chevron site there would have been a nexus this was probably way down the list of things that we had thought about at the time. And unfortunately, that was the case. Had we thought about that I don't think we would be even having the discussion. I don't think staff would have thought twice, the Commission had probably not thought twice about the appropriateness, the scope or the magnitude of the project the traffic implication, we're past that point now, and kind of grasping at straws to try to find a way too fix that at this late date.

>> Commissioner Jensen: Thank you. So I hear very clearly from staff that in fact there is a nexus. I would like to add that the dual driveways are very poor urban design and certainly not in compliance with our guidelines. Based on the fact that there was originally a installation of a cyclone fence to protect that empty property from visitors does not eliminate the original plans for an exit and I will be able to support the motion.

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

>> Commissioner Cahan: Thank you, Mr. Chair. I concur with Commissioner Jensen. There was originally an access point. It was intended to have an access point. It was seen and now also concurred that that access point is important for the entire project. This is part of that entire project so that I believe there is nexus for it. Fest.

>> Commissioner Do: Thank you, Commissioner Cahan. I think I really -- I think the counsel really should clarify the issue again. Because I think -- I think -- doesn't it come down to -- I mean, you raise the issue as to whether that no one has discussed the point as to whether the development, the propose development, is triggering some you know, this can be that's being asked, or not. And but now, by -- if the commissioner thinks a vote right now is going to be an overturning the director's decision, and what kind of legal exposure are we putting the city into?

>> Actually, the way I count the votes it would be that there is a motion to approve that may not somewhere a quorum to pass it. So what I hear Commissioner Jensen saying and I hear Commissioner Cahan echoing, there was once an easement and, we are now analyzing a different development and that would be the development activity we should be analyzing. I do understand the point being made that it is in our design guidelines, and so therefore, we should follow our design guidelines. And that would be true if we had an impact at that particular driveway. So I don't know if it would be helpful for staff to probably do -- do you have a pointer to show where the development is occurring on the site versus where the driveway is and to discuss the reduction in the overall development. But what I am hearing Commissioner Jensen and Commissioner Cahan say and I think Commissioner Cahan said it more directly was, there was originally cross access easement and there was originally nexus and I feel we have today. That would not really be the analysis. Now you have a development parole before you, now you need to analyze that development proposal and what are the conditions on that development proposal?

>> Staff may want to clarify. I'm not sure staff has any facts to suggest that there previously existing cut in the current, twin the two properties, that loud people to pass from one to the other. But how that existed from a legal standpoint we don't know.

>> Commissioner Do: Well, then, Commissioner Jensen.

>> Commissioner Jensen: Thank you, Mr. Chair . Staff indicated that one of the reasons that there had been a nexus was that the project proposal as it stood was an increase in the demand and size on the total property over the original project that had been there. Does the project as it is proposed in what the director approved also increased the total amount of use and the number of square feet of buildings and so forth. Over the original project that was there prior to any of these motivation.

>> The original approval that was approved was for 160,000 feet.

>> Commissioner Jensen: I'm sorry, not that project but what was there prior to that project. Because I read in the documents that we have that there had been an original project there, a development there that the project proposal increased the demand on the property as a result, and that there was a nexus due to that increased demand, that this is a revision of that project, the newer proposal and that this decreases the demand on the property from the original modified proposal, changing what had been in originally, I know I'm speaking in circles. But does this proposal still increase the demand on the property over what that site had been originally? And I say this because I understand there's been several changes to the project proposal.

>> So if I understand the question is, is that even if it's identified that what's proposed now with this new building is a net reduction from the original approval? Does it still represent an increase in what was this e-there prior to the zoning being approved or not?

>> Commissioner Jensen: Thank you for taking my circles and straightening them into lines, yes.

>> The analysis that we do, is whether or not this planned development permit falls in line with the square footage that's loud under the current plan of development zone. Not necessarily a comparison of, is this still bigger than what was originally there, I'm afraid I don't have the answer.

>> Commissioner Jensen: I think those are one of the questions that we as a commission would need to have answers. I hear that it doesn't pair there's an a nexus at this point, prior to what the proposed changes were, this determination of whether or not there's a nexus should also be based on this project proposal as opposed to what was there originally. And I'm not comfortable supporting -- you know, I totally support the development, I think it sounds like a great idea. I'm sure that between the new gas station and the new project proposal, here, that it's going to do a lot of good at that corner. But I'm very concerned about the lack of access between the two properties. I understand easement versus traversing, simply traversing but it's already a driveway. There are already cars and vehicles going in. And it doesn't seem to me to make any sense. And I understand that I would like to know how does this compare to what had been there previously? Because I think that determines whether or not there's a nexus.

>> Well, I'll tell you what. Let's assume the answer is, he blew it out of the water and that there was nothing there before and then it was just a massive development and we missed the condition. So just -- I would say, assume that the answer to your question is, that it was -- that back when the original development came through there was nexus and what I'm proposing or suggesting or advising is that that was that development. And now we have a new development that we need to be analyzing and does the change warrant the change in condition? We have had that in different scenarios. Schools as a matter of fact, I think it was Bellarmine that wanted to add pool lights. And at that time the neighborhood came out and wanted all kinds of conditions put on the Bellarmine C.U.P., that had nothing to do with putting lights around the pool for water polo games. We struggled with the nexus issue there too because as you recall the neighborhood around Bellarmine really had quite a few conditions that they wanted to take that opportunity now that the school had come in to add a variety of conditions. And we had a similar discussion that we need to analysis the fact that the proposal is they wanted to put lights around the pool for water polo games. And what burdens and what impacts does that create and that's what we would place our conditions on.

>> Commissioner Jensen: And I hear, I hear counsel and I understand what the issue is, however, there had been a nexus. It was accidentally overlooked. It slipped through the cracks. However you'd like too say it, I hear staff apologizing for having let it slip in the past. Is and I'm not sure, in fact I'm positive that a previous oversight is not justification for allowing that oversight to perpetuate a mistake that was made previously. I suppose if we were to support the proposal as it stands, every time we saw it we would cringe a little as we watched people driving in and out of driveways trying to figure out how they are supposed to get from one gas station to another, whether getting out and getting gas, pulling back into another driveway or the reverse I think it's a in terms of design good design it is a certainly a symbiotic relationship to provide that access. And I believe that there was a nexus. I believe the nexus was demonstrated. And if I accept staff's original theoretical definition that let's assume there was zero and we're going from zero to something, well this something is still greater than the zero that had been there previously and therefore a nexus is justified.

>> Well, again, if we are going to kick ourselves then the time to have kicked ourselves was when we missed it. And so now -- I mean in other words, if this proposed development if you find that there is something about it that does create a burden at that location, and we don't impose it, then yes, now would be the time to kick yourself. But what you're describing is that we missed something in the past, and so the appropriate time to kick ourselves when we see that condition that we don't like existing would have been back when we missed it and not with this particular development proposal. If that again helps guide the commission's deliberations.

>> Commissioner Do: So thank you. Let me ask one question also. So not being a lawyer I guess I'm kind of baffled by this, but given that the current proposed project is reduced to such an extent that the nexus no longer exists, that we cannot make a case, we don't know that I'm just following along on this line. Given that that's the case, is it within our purview to say that with without an easement, without a cross easement, a cross access that we not allow this new driveway that is so close tot -- to a likely driveway on the other side? Could we do that? Could we -- -- so we don't -- we can't require cross access but can we not allow this driveway? They have plenty of driveways elsewhere.

>> It's already been -- see these are two separately owned pieces of property. And it's already been approved and there's been no finding that there's a real safety issue.

>> Commissioner Do: I see, okay.

>> It's less desirable than we'd like but again --

>> Commissioner Do: Okay.

>> This is an existing situation and you know, knowing that that corner property is soon to be developed, again, trying to encourage the private property owners to work together to really create a cohesive commercial development that would you know benefit everybody including the property owners. But no, we cannot retroactively change a previous approval on another piece of property.

>> Commissioner Do: Director.

>> Commissioner Jensen: One thing I will add is the reminder that Mr. Ruby did a lot of legal discussion there about nexus. The one thing that hasn't been discussed tonight is this is a de novo hearing. The Planning Commission has everything and anything to do with this is a permit request to build a building, reconfigure buildings, offsale of alcohol and the Planning Commission can be involved in anything and everything related to that.

>> Commissioner Do: Well then last statement may change our thinking quite a bit. At least on my part. But Commissioner Zito.

>> Commissioner Zito: Okay, I've got to digest that for a minute but before I do that I just want to understand what I understood, want to verify away I understood counsel to say and that was forget about what happened in the past. Assuming this is a new application that came tonight. Does staff believe there's enough nexus to require a pass-through? And what I'm hearing staff say was no matter how many ways three ran the numbers they could not come up with a nexus. So regardless and all due respect to Commissioner Jensen and Commissioner Cahan, I completely understand what they were saying but the bottom line is that the pass is the pass and it's a new slate somebody took the eraser and said start over, this is essentially a brand-new application it's not the same as the one that came before us before and because of that when you rerun the numbers they can't come up with enough to say that the cross-access easement is required. And because of that that's why we can't -- we have no -- we have no hope to hang our hat on. Now with that said, okay, so I got through that part of it. Now director Horwedel just threw another wrench into it. And away I'm hearing him say is because this is an appeal the whole application is open to who can I say decision? Is that a fair statement?

>> Joe Horwedel: Correct. 21.270 section 2 says the Planning Commission shall hear the matter de novo. So obviously the driveway that is in question already exists. You are hard pressed to make them move that. You are being asked to go through and approve buildings and landscaping and other sorts of things. So those are within

your purview. I'm not recommending that you go there but as a part of what I'm hearing, the conversation out there is a frustration between parties in a sense that there is no hook. In other words, this is saying you are hearing this de novo.

>> Commissioner Zito: Okay, so the situation as it exists today given the diagram that sits before us is the one at the top which says that there are two driveways. Okay? There is no opening between the two sites. Okay? So that's current situation. What I'm hearing the director say is, we can go back in and review the overwhelm application and see where we could possibly make improvements on this application, because it is, in fact, a planned development permit. I personally did not come to this hearing with that thought in mind. And if we, as a commission, decide that that's the right thing to do I'm going to ask for a deferral.

>> Commissioner Do: But let me if counsel could clarify one further point. Even given what the director just said the nexus is still an issue, you still need a nexus.

>> Correct.

>> Joe Horwedel: This very much applies.

>> And any other changes you do to the proposal, other site you are going to have to establish that nexus. Staff having gone through the analysis of the project at the director level we've kind of done that for you so unless you see a real fatal flaw in the project design in the overall site configuration I would encourage you to ask us questions on that.

>> Commissioner Do: Thank you. Well, without going into --

>> Commissioner Zito: Mr. Chair, as a matter of course we have a motion on the table.

>> Correct.

>> Commissioner Zito: It basically is to uphold the director's decision. I think if I could be so bold as to make a recommendation that we at least call the question on that, see where we go.

>> Commissioner Do: I was about to do that. No further lights so let's vote by light. So the motion did not pass. Commerces Do, Zito and Platten voted in favor. Commissioners Jensen and Cahan are opposed. No concurrence on the excision. Which means that the matter be deferred -- I would invite a new motion. Commissioner Zito.

>> Commissioner Zito: I would move that we defer, without a quorum we can't go forward and then that would also give us an opportunity to review the plan and see if there's anything else we'd like to discuss given there's an appeal.

>> Commissioner Do: There's a motion to defer. Is there a second? Motion and second. All in favor? Say aye.

>> Commissioner Zito: Any opposed?

>> Commissioner Do: So the motion is approved to defer the item.

>> Is that to May 5th?

>> Commissioner Do: I think that that's up to staff. Right?

>> Again I think if it's just for purpose of getting more commissioners at the meeting it would be to the next available meeting which is May 5th.

>> Commissioner Do: So the issue is deferred to May 5th. That closes the public hearing portion. The next item is petitions and communications. Public comments of the planning commission on nonagendized items. There are none. And number 5, referrals from city council, boards, commissions or other agencies. Director.

>> Joe Horwedel: The city council yesterday had the general plan 2040 presentation, we brought forward to the council the different growth scenarios, jobs, housing balance criteria, that is known as scenario 6 and that the city council did have a lengthy conversation around the general plan. In the end they concurred with the work of the task force and the recommendation from staff to move forward with scenario 6, that scenario does result in a jobs to employed resident of 1.3 jobs to employed resident and about 120,000 housing units in the future city. We are now moving forward with the EIR portion of the project now that we have that part of our project description, we're anticipating a draft EIR being available at the end of the area and the draft general plan document being available in the June time frame for the public to see it all bolted together.

>> Commissioner Do: Thank you, director. Item 6, good and welfare, report from city council, was that also your report as well? Okay, thank you. 6 B commissioners report from committees. Commissioner Campos is not here so we'll skip the airport noise advisory committee report. Commissioner Kamkar is also not here. Commissioner Zito would you like to step in on the San José 2040?

>> Commissioner Zito: Just a little, in addition to what director Horwedel said we have another meeting coming up this Monday and we will follow through on some of the phasing and targeting as we're going forward, and it will just build on what was presented already to city council. And I don't know if Commissioner Jensen has anything to at. No, okay.

>> Commissioner Do: Thank you, Commissioner Zito. The synopsis of the last meeting, April 7th, 10, is there a motion to approve?

>> Commissioner Zito: Motion to accept.

>> Commissioner Do: Second. All in favor, so the synopsis is approved. Subcommittee reports on outstanding business, any subcommittee reports? Commissioner Jensen or any other? Nothing on the alcohol thing. And the - let's see, so the approved changes of the Planning Commission schedule, the May 12th is cancelled and in lieu of that we add may 19th. Is there a motion to approve? all in favor, and let's, before adjourning, I guess this is my last meeting so I just want to say thank you to staff and thanks to my fellow commissioners. It's been a truly wonderful experience for me, I learned a lot in most of knowledge of planning process as well as the whole public hearing process. And all of that. So I will miss the process. And I thank everybody, I thank my fellow commissioners for having endured my, at times, amateurish chairmanship of the commission. But thank you and good luck on moving forward.

>> Joe Horwedel: We do have some comments for you, Mr. Chair.

>> Yes, commissioner chair Do on behalf of the Planning Commission it gives me great pleasure to provide you with this commendation which reads, be it resolved by the Planning Commission and the Planning Department of the City of San José whereas Mr. Thang Do, may 2008 to this day, and as chairperson from July 8th 2009 to April 21st, 2010 and whereas Mr. Thang Do Planning Commissioner for the City of San José has given himself with devotion honor dignity and integrity, whereas Mr. Thang Do has served with a genuine interest in land use planning and has applied his professional knowledge as an architect to benefit the commission as a whole whereas Mr. Thang Do has a general understanding and respect for all citizens of the City of San José of diverse opinions and backgrounds, and whereas Mr. Thang Do will be remembered as a hardworking sincere and genuinely remarkable member of the Planning Commission of the City of San José now therefore the Planning Commissioners and the staff of the City of San José unanimously approve this resolution of commendation. Thank you very much. [applause]

>> Commissioner Do: Thank you, I'm very touched. Thank you.

>> Joe Horwedel: On behalf of staff, we did very much want to thank you for, one, choosing to be on the Planning Commission, because it is not something that is for the feint of heart. Tonight's hearing, disclosures was

not something that we always do well when we look for candidates. But having a practicing architect on the commission is something that staff feels is really important and we know the challenges that that presents to practicing professionals. And we very much appreciated your jumping in and helping make San José a great city and raising the bar for design in this city so thank you very much.

>> Commissioner Do: Thank you, director, thank you to everyone.