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>> Commissioner Jensen: Good evening. My name is Lisa Jensen, 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, May 25, 2011. Please remember to turn off your cell phones. Or put them on vibrate. The 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, please 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. For example, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make up to a five-minute presentation. The chair will call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chambers. Each speaker will have up to two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else has raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is advisory only to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all The commission is here with the exception of commissioners Kline, Kamkar and Platten. 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 would like 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 the remaining agendized items past 11:00 p.m, continue this hearing to a later date, or defer remaining items to the next regularly scheduled Planning Commission meeting date. The decision on how to

proceed will be heard by the Planning Commission no later than 11:00 p.m. we currently have one item on the deferral list. 10-012. Appeal of the director of planning's decision to approve a special use permit to allow the installation of a 60 foot tall Wireless monopole. Staff.

>> This item is actually withdrawn and is no longer going to be considered.

>> Commissioner Jensen: Thank you. Consent calendar. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. CP11-016. Conditional use permit to allow a drive through automatic teller Machine. We do have a speaker card here from the applicant. And we don't have any other speaker cards. I don't know if you wanted to pull the item or just have the commission vote on it. Okay. Thank you. Okay. Commission is there a motion or discussion on this item? I'm sorry, whose ever light was on it went out and I don't see it. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Motion to approve.

>> Commissioner Jensen: Thank you. Is there a second? There is a motion and second to approve this item. All those in favor? Thank you that motion passes unanimously. With commissioners Kline, Kamkar and Platten absent. Public hearing items. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda, such as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. 3A. PD 10-015. Appeal of the director of planning's decision to deny a planned development permit to allow offsale of alcohol for a General retail store/pharmacy in an existing approximately 14,000 square foot tenant space in a shopping center on an approximately 9.15 gross acre site in the A(PD) planned development zoning district located on the East side of Monterey road approximately 1000 feet southerly of Blossom Hill Staff.

>> Thank you. Again, this is an appeal of the director's decision to deny a request for offsale of alcohol at a general retail store/pharmacy primary reasons for the director's denial of this was, this would result in three offsale establishments within the same shopping center within you know a radius of 500 feet from each other. And, you know, we felt that that would really adversely affect the surrounding residents and people who frequent that. And that there does not need to be an additional offsale establishment to serve the surrounding residents, or the people coming to the center to shop, that there is a convenience in the existing two offsale establishments. So other than what's in the staff report, I'm available for any -- to answer any questions. Thank you.

>> Commissioner Jensen: Thank you staff. Is the applicant here? Mr. Cramer. And if you'd like to come down and address us, you may have up to five minutes to make your presentation.

>> Thank you for the opportunity to speak before you this morning. I'm Dan Cramer the outside counsel for Walgreen's, staff is of the opinion that somehow the offsale of beer and wine will adversely affect the neighborhood. The question is how did the staff during this period there were absolutely no violations and no evidence of adverse impact on the neighborhood. Was it based on evidence of bad practices at Walgreen's other stores? The answer is no again. The fact is Walgreen's sell alcohol without any history or adverse impact on the surrounding communities. Was it based on concerns voiced by the police department? The answer is no. The police department voiced no opposition to this use as the store is located in an area that is low in crime and not overconcentrated with licenses. Was it based on the store's proximity to licenses? Staff indicates the store is located within 150 feet of a residentially zoned for residences. Only one person submitted any sort of complaint and he's the neighboring liquor store owner who has concerns for the potential for added competition. And Walgreen's is not trying to become another liquor store and no intention of competing with this gentleman. Nevertheless, even if some sort of competition arises, competition is not grounds for denial of an application. The reality is that the sale of alcohol will be detrimental has no base whatsoever. Walgreen's has been selling beer and wine since the end of prohibition. Without some sort of concrete evidence that the denial is warranted so for this reason Walgreen's strongly urges you to overturn the Planning Department's decision to deny this use permit. Thank you.

>> Commissioner Jensen: Thank you, Mr. Cramer. I have two speaker cards. I'll call your names. If you would line up at the bottom of the stairs. My apologies in advance, I'm going to bungle these names, please don't be offended. Sobarta Gohr and Gary Castro. Are you Mr. Gohr?

>> I'm Gary Castro.

>> Commissioner Jensen: So Mr. Gohr comes first, thank you.

>> My name is Sobarta Gohr and I run a store next to Walgreen's. Forgive my English here. I'm here to protest Walgreen's appeal of the director of planning to deny the planned development permit of offsale of alcohol. I agree with the planning director's decision to deny Walgreen's a planned development permit since a recent will not be good use of land since there's no additional revenue for city as demand is being met by all the existing more than sufficient stores in the neighborhood. There are already two stores. Lucky's store and six to midnight. Walgreen's is sitting between Lucky and the six to midnight store that my wife runs. Walgreen's application, if new permit is issued, we will have in addition to these two we will have Walgreen's, which sits between 5510 and Walmart is trying to get at 5503. In addition, if you go to the map and across the street at Blossom Hill, 200 feet in there there is a store, already four stores within walking distance. Issuing the permit to Wahlgreen to allow offsale of alcohol would not concentrate land use and would result in overconcentration of offsale of alcohol. Residences residing between freeway 101 and Monterey highway. Two licenses there. Our store is located between blows only hill road, this railroad track and that small rectangle.

>> Commissioner Jensen: Sorry your time is up.

>> I'll take a few minutes I hope you don't allow Walgreen's to -- thank you.

>> Commissioner Jensen: Sorry your time is up. Two minutes goes really fast. Mr. Castro.

>> Hi good evening my name is Gary Castro, I'm a community leader in San José with Walgreen's. One of the opinions I wanted to argue was the primary point there was a saturation of business, with us being given to sell alcohol. It's been brought to the Planning Commission as well as one of the local councilmembers one concern is that there would not be enough alcohol licenses for San José if it was issued to us and they were actually trying to retain a certain amount of licenses for grocery stores. Arguments come to us multiple times that San José is aggressively seeking an increase in grocery store establishments throughout San José as there is a shortage. Points I would like to argue is just blocks from here we saw a lucky store that could not operate sufficiently and profitably and had to close its doors. We've also seen P.W. super have to close its doors in San José. Why, because they were not profitable. Why, they did not get enough consumers within their doors. The argument that we need more grocery stores is not actually apparent when we look at the consumer aspect of it, the revenue is not there. In this particular area in this census track we already have a lucky store. So if we were to retain a need for an additional license for a grocery store in that particular area where would it go? The supermarket lucky's is already handling that particular area. So to close this would I just simply say that Planning Commission is not substantiated their argument by denying us that they are benefiting the community both on a micro level and a macro level. Hoping for the future that they would be able to benefit and attract more businesses by retaining us from not being able to achieve this license. Thank you.

>> Commissioner Jensen: Thank you, Mr. Castro. We do have a question for you from Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Did you say you were with Walmart?

>> Walgreen's.

>> Commissioner Cahan: Thank you.

>> Commissioner Jensen: Mr. Cramer, you may have up to five minutes in closing presentation if you would like.

>> Thank you. I won't use the five minutes. But I just want to add, there was something in the staff report that I was unclear about, confused about. Walgreen's has indicated that it's willing to sign conditions limiting the sale of alcohol to between the hours of 8:00 to 10:00, 8:00 a.m. to 10:00 p.m. And in the staff report staff contends that the city didn't have the time to limit the time that Walgreen's sells alcohol. Every other city that we have dealt with, when the city recommends that the license should have conditions on the sale, ABC accepts those conditions. I was unsure why it would not work. I would think that this Planning Commission has the power to do that. Again I would like to contend that Walgreen's is willing to limit the hours of sale from 8:00 to 10:00 p.m. Thank you.

>> Commissioner Jensen: Thank you, our City Attorney can respond to that question.

>> In our conversations with the state alcoholic beverage control department there is California state law, in the business and professions code that alcoholic beverages may not be sold between 2:00 a.m. and 6:00 a.m. So I think what the speaker is alluding to is the city can work with their local ABC and that the hours can be placed into the ABC permit, the liquor license. And that would be true. The city does not directly regulate the hours that alcohol can be sold because that is in the purview of ABC. But I think the speaker is saying yes that the city can work with the ABC and his experience what he's saying is that the ABC typically will abide by or cooperate in the hours that the city recommends. So it's not that the city imposes the hours limitations but the city can work with the ABC and the speaker is noting in his experience the ABC would typically give great deference to what the city would be recommending as far as hours.

>> That's exactly what I was trying to say. Thank you.

>> Commissioner Jensen: Thank you. Okay, motion to close public hearing? Thank you. Let the record reflect that Commissioner Platten has joined us and I'm going to assume he was here for enough and has had the opportunity to read everything. Thank you. Staff.

>> Thank you. Couple things I wanted to clarify. In issuance of a conditional use permit, we're issuing it basically to go with the land. So although Walgreen's is the applicant at this time it is not being issued to Walgreen's and

we really do not consider their past performance or how they present themselves today in whether or not we feel that offsale of alcohol is an appropriate land use at this site. So it's really not operator-based and in the past and going forward, you will see that we don't base our recommendation on operator. That really comes into play when the other licensing happens to ABC and whatnot. To also play -- continue on with the discussion related to what we regulate versus the ABC, in our discussions with ABC, again, if the city is going to suggest certain limitations on a license, they're also going to want to see some reasoning behind that limitation. Because again, they need to do that. So I'm not confident in suggesting that just because we put it in a land use permit they carte blanche wrap it into a permit. The licensing process and the public participation process that ABC holds and also whether or not again if there's any suggestions from either the police or the land use permitting process, those -- that suggested direction needs to be backed up with kind of evidence as to why that needs to happen. That's not to say if the applicant wanted to put that limitation on themselves through that licensing process they can also do it in that instance. Also note that if that limitation were to be applied for release, those don't necessarily come back through the city. So there are limitations that are put on ABC licenses, you know, that we may or may not know about. They're also -- there's also the ability to apply for those limitations to come off that we may or may not be made aware of. The other issues that, again, I just wanted to clarify is that our recommendation is not based on preservation of market share or considers competition at all. So it's not the fact that there's, you know, another, you know, spall business there that played a role. It really is, you know purely on the fact that -- and it may seem different from the past which I think is a good thing, is that you know, we do not have to afford every single retail operation the opportunity to include offsale in their business plan. We are taking a much more serious look at that. And that we would rather have more dispersed land using the offsale, as well as you know recognizing that, you know, there does not have to be the ability for people to pick it up in every shopping experience that they have. So again the existing two in the center was sufficient. I also wanted to -- one of the speakers mentioned there was a pending ABC license application for Walmart. We did research this. There is not from our research a pending ABC application for the Walmart on that site. There had been one applied for a while back but it shows on ABC's Website as withdrawn. So we don't have any requests in for Walmart and we did not see in researching their Website an active application being considered for the Walmart on that site. So again, we did not consider that there was an existing or a pending application for Walmart. It's really the existing for the lucky's and the small site. Let's see. Also, you know, regardless of whether the adjacent property is only zoned it has been PD zoned

for multifamily residential and the purpose of the zoning regulations to consider not just developed but also land zoned for that is that we are trying to look into the future and respect the future residents relative to this land use request. Again, I think that's it. I'm available for any questions.

>> Commissioner Jensen: Thank you, staff. Commission? Commissioner Bit-Badal.

>> Commissioner Bit-Badal: I do have a question to ask staff. Do you know why any selling alcoholic beverages in 2000, are you aware the reasons?

>> I've just been told that Walgreen's made a decision to pull out of California altogether with the offsale of alcohol so it wasn't necessarily on a site, just some sites. But you know if you want that answered further you'd have to open up again and ask Mr. Cramer. But it was really wholesale pulling out of California. Thank you.

>> Commissioner Jensen: Commissioner Bit-Badal? Would someone like to put forward a motion? Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I would like to make a motion to deny the appeal and uphold the planning director's decision to allow a planned development permit for to allow offsale of alcohol for a general retail store/pharmacy store in an existing approximately 14,000 square foot tenant space in a shopping center on an approximately 9.15 gross acre site in the A(PD) planned development zoning district as recommended by staff.

>> Commissioner Jensen: There is a motion and second. Would you like to speak to your motion, Commissioner Cahan?

>> Commissioner Cahan: Yes, thank you Madam Chair. The 150 feet from residential property is of great concern. We do want to uphold keeping our offsale of alcohol away from the residential, and even though the

buildings are not there right now they will be in the future. And so we need to make sure that they are secure at this point.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Seeing no further speaker lights, may we vote by light? And that motion passes unanimously. With commissioners Kamkar and Kline absent. Thank you. Our next item is 3B. RA 07-002. Appeal of the planning director's decision to grant a request for reasonable accommodation to accommodate a 32-bed residential care facility, drug and alcohol rehabilitation, on a .59 gross acre site in the R-1-5 single family residence zoning district located at the southwest corner Of Fleming and Morrie drive. Staff.

>> Thank you. I just wanted to point out that we did pass out exhibit -- or submission from Atchison barbason Codotian Covacivic which has two items associated with it. So I didn't put the item number so that's for the reasonable accommodation request. So thank you. Planning staff recommends that the Planning Commission uphold the director's decision to grant the reasonable conscious request for the residential care facility. Identified protected class of disabled individuals as defined by the federal and state fair housing act city has very limited ability to regulate or condition such request in a manner that might otherwise respond to perceived concerns of the neighborhood. Given that staff, planning staff makes the following findings, persons on bam of the accommodation is being requested are considered disabled under the federal fair housing act. The exterior characteristics of the subject property will not change as a result of this request. The facility will have no more than eight staff members at the facility at any one time and no more than 32 residents. Which per the zoning ordinance would require that the provision of 16 parking spaces happen. This facility has two parking areas that will accommodate a total of 13 cars. However, according to the operator the residential service facility and their kind of operating requirements or resident requirements, the residents are not permitted to drive. And then as represented in the floor plan none of the common areas of either of these structures, the living room, dining room or kitchen areas that total 1450 square feet have been converted to bedrooms. Again, those common areas existed in the structure, have been retained as common areas, they have not converted any of that to additional bedrooms. So again, planning staff recommends that the commission uphold the director's decision to grant this reasonable accommodation request. This concludes staff report.

>> Commissioner Jensen: Thank you, staff. And we do have a number of speaker cards. So the order of which we're going to go is the applicant then the appellant, then speaker cards then applicant and appellant. So if I have gotten you in the wrong order please let me know. I have as the appellant, I'm sorry, Karam Zafar, if you would like to come up and introduce yourself you will have up to five minutes to make your presentation.

>> Thank you, my name is Karam Zafar and I live at 3732 Morrie drive directly across from the treatment facility. I'm here to appeal the director's decision which grants a 500% increase. In support of my appeal are a number of neighbors. We hope you'll agree that the scope and magnitude of this accommodation and the ram figures fictions this has for upsetting the single family character of our low density residential district are simply unreasonable. We believe that the guidelines set forth in title 20 of the San José municipal code have not been fully and equitably applied. Even in the staff report applied to this commission the two key tests, that of necessity and that of reasonableness have not been addressed. In a letter sent to this commission by our attorney Mr. Kasavich, stated quite clearly that reasonable accommodations are not carte blanche processes in which the city has little or no discretion. The rest of us will now talk about the reasonableness of the request, focusing on impact of surrounding uses and preservation of our single-family character. We all live in the neighborhood and we know very well the profound impacts of this facility. So if it were true that the facility has no impact on surrounding uses, that the facility causes no nuisance and no blight, and that it does not impair the single family characteristic of the neighborhood then why would all of us be here? Why would you see 86 petitions in your packet? Why would residents who have lived here for decades or even for less than a single year come out here today to show their opposition to this unprecedented expansion in a low density setting. We're all here because this facility does generate an adverse impact on surrounding uses and because this facility does fundamentally alter the single family characteristic of the zoning district. My fellow neighbors will testify to that. The staff report however only examines these factors superficially. Single family character is assured simply because the site contains certainly family structures and these structures will not be altered. Is that the extent of what it means to preserve the single family character? At what point does it become too many in the basis of scope and magnitude? Clearly the number of people occupying a single facility is a legitimate determinant of single family character because that character is impacted by scope and magnitude. Yet the staff report completely misses the issue of scope and

magnitude. The staff report also fails to consider item 3G of the application, which asks, do you provide services at the property to nonresidents? The applicant replies, after care is provided to our graduates, twice a week. Graduates are not residents. They constitute additional head count, additional parking, and additional traffic. Weekends and holidays are also family days. During which the number of people at the facility rises again. This further adds to traffic and parking. Not only are our weekdays impacted, but our weekends and holidays are impacted as well. Moreover, item 3F of the application lists the services to be offered onsite. One of these services is, organized recreation, which we have painfully come to know consists of outdoor volleyball, outdoor ping pong, outdoor weight lifting and outdoor horseshoeing. Because outdoor exercise is endemic, it happens over and over, day in and day out. And our quality of life has been adversely impacted by this fact. Organized recreation like institutionalized sporting events is an incompatible use in a single family zoning district. Because of these and other factors, we contend that various provisions of title 20 of the San José municipal code were not fully and appropriately applied, because impact on surrounding uses, impact on the single family character of the neighborhood and justification of need or necessity were not adequately considered. In plain English, this process has been all about accommodation, and not about reasonable accommodation. Thank you.

>> Commissioner Jensen: Thank you. Nice timing. And as the applicant, I have Bob Nunton. And I don't know if you wanted to share your time with your attorney or if he wanted a separate three minutes, two minutes.

>> Separate.

>> Commissioner Jensen: Okay, thank you. Okay, that's fine, too.

>> Okay, good evening, commission. My name is Bob Norton and I'm the founder of support homes incorporated. The reasonable accommodation appeal before you this evening is for the residence located at 1281 Fleming road in San José. This has been operating as a residential recovery home since approximately 1965 founded by Benny McKewen and remains the Benny McKewen center. The knowledge of the City of San José. The facility has received funding through the county of Santa Clara, alcohol and drug programs for over 20

years. We were -- when we took this facility in November of 2009, we had no idea that the property had not been allowed to operate that long without a proper permit, with all this -- these government agencies clearly acknowledging its presence. Once we were alerted to this fact, we have worked diligently to get the reasonable accommodation permit in place. Very aware of the process we have gone through this through our own properties in the City of San José. Spanning over 20 years. In 1997, a requirement was set forth for all residential programs within San José city limits to go through the process. However, this facility slipped through the cracks. Even though they were still operating with everybody's knowledge and all the contracts through the county and the city. Support system home Inc. has always been and continues to be completely cooperative with the city ordinance with respect to this facility. Just like we have in our other location without incident. We enjoy good neighborhood relations and continue to do the same with 1281 Fleming avenue. Records show that all attempts to get the police and the city involved by the facility proven to be unfounded. I'd like to state back in 1985 and '84 that was a 35-bed facility. I've known the directors and the head of that organization all these years. And they -- it wasn't until we took this over in 1996, and the new development of homes across the way, they were all aware that it was an alcohol and drug program that they were moving into that neighborhood. We did go to a community meeting that they held last year in the neighborhood, and we were welcomed pretty good at that time with the neighbors and I was not in any major complaints. Even though there has been a force to drive this, to divide us from the area, we have felt that since this has been here since 1965 for people with an addiction we have worked diligently to keep this up and going forward. With that I'd like to state the fact that it roughly runs about \$60,000 to run that operation per month. It's quite expensive to do this but what we're doing is putting in a need for the community and the people that need the help, it is ironic we're talking about alcohol being sold in liquor stores and on the other hand we're helping the people that have bought that alcohol out of those stores. Divine order. Thank you very much.

>> Commissioner Jensen: I do have a number of speaker cards. I'll call you up in groups of three. I'm sorry we do have a question from Commissioner Abelite.

>> Commissioner Abelite: Just wanted to clarify. Did you say \$60,000 a month to run that facility?

>> Yes.

>> Commissioner Abelite: Thank you very much.

>> Commissioner Jensen: I'm going to butcher your names. George Skovocich.

>> I'm George Kovocich, I do represent Mr. Savar. What I failed to attach are a couple of things which I would like to be part of the record. How do I do that, staff? The building permit information on the one story building this is all we were able to obtain from the county of Santa Clara. And then the other is, I referenced another decision of the director in RA 05001 in my letter and I just wanted you to see that as well. In which he used the good part of policy 16 to the good part for my client in this case, to support that project. Or that facility. But that was deleted in this case. The other thing I wanted to do is indicate in this case, there is a error in my letter, policy number 16, it's written in a mandatory manner but actually, the policy says that social for more than six persons are encouraged to locate, I use mandatory language and I apologize for that error. My primary purpose in this matter was to deal with the legalities, of this situation. I'm not going to go into that at length, I don't have time to do that unless you have questions. But what I wanted to say is I think this is a somewhat unique situation. Because this place has been operating for a long time. My concern, you know, just practically speaking is that may be a little bit of a driving force here which is not what the law is about. But I --

>> Commissioner Jensen: Thank you, Mr. Covacevich.

>> No warning sign?

>> Commissioner Jensen: There is a light.

>> These people have experienced, this isn't speculative as to what the impacts are going to be. And you're going to hear about that and I think that's a very moving story. Thank you.

>> Commissioner Jensen: Mr. Zavar has five minutes at the end of the presentation. If he would like to cede it to you as his attorney, I'm sure that would be fine.

>> That's right, thank you.

>> Commissioner Jensen: Ms. Silva if you would come forward and introduce yourself.

>> Good evening, I am elisa Silva, I live directly across from the fast. This treatment fast has a far greater impact than a sober living home. As the turnover in the services are greatly expanded, the tremendous impacts on the quality of life and character of our low-density zone is real. I personally witnessed so many problems and nuisances that I began keeping a daily log, which I submitted to the city as exhibit A. I have never witnessed such flay grant nuisances in any of my other homes, apartment lives and town homes. Every day life includes outdoor family and games or the special event that have visitors parking more cars. But whether the event ends everyone goes home and life does return to normal. It never returns to normal at 1281 Fleming, as the facility operates 24-7, running a commercial style operation with so many ancillary services and visitors that the chance for peace and quiet is fleeting. My log does have many entries. An example, on September 15th, 2010 I arrived home to the usual boisterous volleyball game. And along with that there was a man at my garage door, trying to retrieve the volleyball. He didn't seem in particular hurry to leave my house. When he did I called 311. Retrieving lost balls is a very regular thing. There is no yard fence on the Rae drive that helps with any privacy. These incidents are chronic, along with the incidences that obstruct my right to peace and quiet, I can hear all of their outdoor conversations and the foul language.

>> Commissioner Jensen: Thank you, Ms. Silva. Two minutes are up.

>> May I submit these for the record?

>> Commissioner Jensen: Please do.

>> All right, thank you.

>> Commissioner Jensen: Mr. Scanlon as you're coming up I'm going to invite the next three speakers to come down. Susan Aresco, Yo Go, Robert Sotello. Thank you.

>> Pete Scanlon. 3618 Warner. At the last meeting of city staff, residents talked about the times when they had to call the police department or times whether the police department had been at the center. In response, Mr. Norn stated that all the police events were unfounded. The police department prepared a record of all the calls for service at the facility. Also a page which gives dispositions when the officer clears the call, the disposition he gives the call and in fact there is a disposition if he deems the call to be unfounded. The time was April of 2010, to March of 2011. During that time there were 22 calls for service there, police responses. Not one of the 22 was determined to be unfounded by the police officer who handled the call. 16 instances of loud noise where the officers responded, all were cleared in NOR, which means no report filed, and G George, the officer arrived and either the person or incident involved they were gone when the officer arrived. In addition to the 16 calls, for excessive noise, the officers responded for where they took a report, they responded two occasions, 290 check, people who had been convicted of certain sexual crimes have to register. Two times officers responded out there to check their status. One of those occasions the person was arrested. State parole in that time period responded out there for a search and the last two incidents staff from the center actually were the reporting parties on the call. One of those incidents was a parolee was arrested and the second incident was they called in for officers to conduct patrol checks in the area. They believed the vehicle was possibly bringing drugs to the center.

>> Commissioner Jensen: Thank you, Mr. Scanlon, your time is up.

>> You're welcome.

>> Commissioner Jensen: Thank you.

>> Ladies and gentlemen of city Planning Commission: My name is Susan Eriso. My husband and I live at 3670 mace court. We have lived in winter heights for nearly 16 times. I will mention a handful of incidents. I'm a little upset and a little nervous because some of these things are very offensive to me. I came home early one day and found a young woman near a neighbor's mailbox. I asked her what she was doing in our court, a one way street. She said she was waiting for the bus. I told her there was no bus stop in our neighborhood and I was calling the police. I provided the police with the description and I contacted the treatment facility who told me she was a client. I told them if I ever caught another client in the neighborhood I would call the police again. There is a room from the second floor of the facility that can view my kitchen. Seeing a man sitting in the window looking into my house, from their vantage point they can see any access coming in and out of our court. I was walking my dogs last month near the treatment facility and a client yelled out, who wants to make fives bucks? I felt that this was offensive vulgar and have not walked my dogs there since. I can't count the number of times fire trucks ambulances have gone tot treatment facility. Blocks traffic adds fire noise and makes me uneasy about what residents may be going to. It is very unnerving when you hear it in the middle of the night. The noise that comes from the games is very, very loud. It is especially loud during the summer months, when we leave the windows open to catch a breeze. We can't watch a movie or listen to music. The largest concern we have is the number of clients they are proposing bringing to the facility. I'm afraid how much more that nuisance will cause. I'm fairly certain that allowing treatment facility to comment more than six clients will lead to more situations such as the ones I've already described.

>> Commissioner Jensen: Thank you, Ms. Alisa, your time is up.

>> My name is Peo Go. I just move in last month. Into 3651 Warner drive. Had I known what I known before I moved in, what I know today I would have never moved. In my limited association with RA 07-002, what stands out to me the most is the blatant disregard of R-1-5 residential zoning or low density residential character by the director's decision and their approval to exponentially expand the existing facility that will forever alter the fundamental nature of this single family neighborhood. According to the state provided list of all residential treatment facilities in Santa Clara County, every legal facility is in R-1-8 or higher density district. There is no precedent for putting such a facility in R-1-5 district. If the city knowingly breaks this rule, it will open up the flood

gates to all other R-1-5 and lower districts. Effectively, undermining its own zoning program. Inasmuch as we like to have reasonable accommodation to the residents of this facility, it is our responsibility not to do it at the neighborhood's expense. We merely, therefore, ask this commission to consider keeping the neighborhood's fundamental nature, the single family homes per the existing R-1-5 residential zoning. Thank you.

>> Commissioner Jensen: Thank you. Mr. Sotello and as you're coming forward I'm going to call the next three speakers. Felix Santoral, Barbara Sanosa and Mary Redigan.

>> My name is Robert Sotello, I live at 3681 mace court. In relation to the rehabilitation facility, I'm against the facility primarily because of the noise factor. I've always loved the hilly and rustic nature of the area but from the beginning I noticed recurring noises and discovered they were always coming from the facility. In recent years, it has become a continuous racket from morning till evening of yelling and screaming as they play their games. I live over 350 feet away. My home has double paned windows. Even closed I still hear the yelling and the noise. I walk over three quarters of a mile on my daily walk and I can hear them from that distance. If the facility is expanded with more people I dread the added noise. There are over 100 homes in the immediate neighborhood and yet of all the overwhelming noise, comes from one home. The facility. And I fear for the future. Thank you.

>> Commissioner Jensen: Thank you. Mr. Santoral if you would introduce yourself.

>> Felix Sandoval, 3641 Morrie drive and I've lived there 36 years. To Joe Horwedel, not all of it, two minutes worth. The property is located in R-1-5 zoning. The zoning ordinance specifically states that the residential care facility shall not exceed six beds. Currently the project is surrounded by single family homes. Staff, Mr. Campos office, and the closest matching RA, staff said 1157 Taylor street, which approved 31 beds on a site similar in size to 1281 Fleming avenue. The key findings that were the basis of the RA approval at 1157 Southeast Taylor simply did not exist at 1281 Fleming avenue. Case law on numerous occasions, the criteria can lead to denial of reasonable accommodation as follows. The requested modification imposes an undue financial burden on local government. The modifications to create fundamental alteration of local government land use and zoning schemes. When looking at the exceptionally high volume of fire calls to the property, 123 fire calls in just six

years. The density of this project is arguably causing financial administrative burden on the City of San José. Additionally this call response volume is not consistent with the surrounding residential neighborhood. In addition, the closest transportation stop for anybody available there is the VTA bus stop, at number 71 which is two miles away.

>> Commissioner Jensen: Thank you, Mr. Sandoval. Your time is up. But if you would like you may submit the letter from Commissioner Campos.

>> Yes, I will, thank you.

>> Good evening. My name is Barbara Espinosa, I live at 3665 Warner drive, 86 families have signed a petition to oppose the applicant's request. The zoning ordinance specifically states that the state licensed residential care facility shall not exceed six beds within the R-1 zone. This care facility is surrounded by only single family homes. This is not about discriminating against those persons seeking recovery from drugs and alcohol abuse. Adding more people to this facility would create a major impact to our neighborhood. For example, the exceptionally high volume of fire department calls, 143 calls in just six years. There have already been 23 calls to the fire department, eight of them medically related. The calls would certainly increase with more people at the center. Calls are in excess and beyond the norm in a normal neighborhood of this low density. It has been recorded that there have been 20 -- 99 interactions with the San José Police Department plus in a 11 year period, and 133 interventions by the San José fire department, to the existing six-person facility. Based on the new number of patients, is the police department to expect 500 calms and the fire department to -- oh 92 containment. Let me back up. Based on the new number of patients, is the police department to expect 500 calls and the fire department to expect 615 calls in the relatively new five? The added people would certainly put a drain on the resources of the city which is presently feeling the burden of budget cuts. Thank you for your attention.

>> Commissioner Jensen: Thank you very much. And Ms. Redigan as you're coming forward I'll call the next three speakers. Mike fox, senior. Rick L. And Laurie paloma.

>> My name is Mary redigan. I went to see what it was and coming down the street was a group of 17 people, and in our neighborhood we don't have sidewalks. So they're walking down the street, they don't walk to one side or the other side of the road, and so when a car is coming, this car was coming they approached it and they basically surrounded it and they started talking to the person. The person could not move forward or anything. They had to basically wait until they left. And at the same time, there was another neighbor trying to get into his vehicle. Two of them wandered off to him. They go and approach people as they're outside and making comments that are not friendly comments or anything welcoming and it's pretty intim dating to see. I saw this and my son was supposed to go outside and do a project and I basically told him he had to go and do it in the backyard because it's intimidating to see a large group like that walking down your street. So I just basically wanted to let you know nap we come from a very quiet neighborhood so when you hear a lot of noise it's you know alarming. I'm hoping to keep our neighborhood quiet and safe. Thank you.

>> Commissioner Jensen: Thank you, Mr. Fox.

>> Good evening, labeling, I'm Mike Fox Sr. And I have worn many hats in this community from every major organization. All dealing with the social fabric of our county and our community. Alcohol and drug abuse, other drugs are part of the social fabric of this community. And all communities. 1919, we enacted the Volstead act which outlawed the sale of alcoholic beverages. 1923, the the United States outlawed that. Unfortunately we did not make any rules regarding drinking or the use of drugs. Drinking in 1958 alcohol is of the American medical association defined it as a disease. We have people with this disease. I have been recovering myself for 34 years. And treatment facilities are part of the fabric of this community. And we need them, as an investment in our community. To take care of the problems that, where there are no rules. It's a lack of maturity and there are many reasons with it. The treatment facilities do a great job. One time Janet Gray Hayes asked me, she said I wished you had the airport in your backyard. I said you know I wish I could accept that so I could have something deleterious too, so I could overcome the great surroundings. We have to have something to accept, in this situation. Thank you.

>> Commissioner Jensen: Thank you. Mr. L.

>> I'm Rick Leir, a recovering alcoholic. Much like Mr. Fox I've seen a an awful lot of the problems that are associated with alcoholism firsthand. It strikes me as society has passed measures like proposition 36, stating that they want the government to sort of look at drug addiction and alcoholism as a medical issue more than perhaps more than a legal issue at some level. That this is a compassionate humane way to deal with these things but it must be recognized as well that when you pass an act or pass a proposition like 36, make it law, that recovering alcoholics, recovering addicts are going to have to go somewhere to that place they're recovering. I have heard it said by members of the community and I certainly understand their concerns. There's R-1-8 zoning areas that could handle something like this. It is obvious if it was an R-1-8 zoning area it would be cared as a matter of fact right. There wouldn't be needed a variance, we wouldn't be here. Benny McEwen, I know another person who is deceased, whose sponsor is Benny McEwen. He is known throughout this community for providing support for recovering addicts and alcoholics. My understanding is the support system is merely carrying on that tradition. It is nothing new, as Mr. Norton said, there's been many times when the city has been out to -- the city was aware of this place. My time's up hmm?

>> Commissioner Jensen: Yes.

>> But thank you very much.

>> Commissioner Jensen: Thank you very much.

>> Hi, my name is Laurie palomo. I'm actually the clinical director of support homes and employed there for 11 years. I'm hands-on in supervision with the treatment center there on Fleming avenue. There's been several -- I wanted to kind of do a mini intro in regards to what kind of structure that goes on with the clientele there. The clients do have recreational areas where they can play volleyball, they have an area where they can play ping pong and have access to that area, a very small area. They are monitored on a daily basis. The neighbors talked about them taking a walk, walked around the neighborhood. They are supervised by staff members every time

they go off the facility. There was communicates in regards to different types of arts and crafts and not institutionalized arts and crafts, recreational activities I should say. They do arts and crafts and they do do therapeutic moldings and in treatment, participation. There are no vehicles that are accessible to the clients there in regards to the parking areas are the concerns in that area. None of the clients are walking off to go to the nearest bus station, you recalled, VTA. None of the clients are leaving the facility unless they're supervised and actually with staff members at all times. So they're not just wandering in the neighborhood. The noise level, and the complaints of the noise level, we have talked to several officers after being notified that the noise level was too elevated out there by the neighbors, and we actually have an officer that came up to one of the sites on one of the times that they were called. And this is on August 24. We talked to the officer and the officer said the complaint was too many people being outside, playing volleyball in the area and the noise was very loud. As the officer approached and eyed out the situation to evaluate it confirmed that the situation the noise level was not considered elevated. He said it was normal.

>> Commissioner Jensen: Thank you, Ms. Palermo, your time is up. If we can get D. tran, N Nguyen and Lauren Dow, our next three speakers.

>> Good evening. My name is D. tran and I live at 1278 mace drive. A property that abuts to the rear of the facility. And I'm here tonight to on behalf of my family to speak out, to oppose the proposed expansion of the facility. The plan increase which represents 533% growth would definitely alter the fundamental nature of our neighborhood. The facility, this current facility has already created much nuisance in our neighborhood of quiet, well kept single family homes. One time my wife was walking our dog by the facility and the residents made lewd remarks, whistled at her. She is now afraid to walk by there. Other women in our neighborhood have reported similar incidents. The increase of the facility's population will only exacerbate the situation. Another source of nuisance is the foul language and foul and loud language the men at the facility use when they are hanging out in the yard playing games. It's like living next door to a daily frat party. While we support the mission of the facility, the men deserve the chance to get better but this is not about treatment. This is about location. And this objective must be balanced against the need of the neighborhood to exist without fear and intimidation from this facility's residents. The request must be carefully weighed against the need of the neighborhood to live from peace and

fear. The residents have no vested interest in this area. How is this proposed expansion has the real potential to single handedly drag down the property value of the entire neighborhood of more than 100 single homes there? Therefore we implore the commission to please reconsider the director's decision regarding expansion. Thank you for your time.

>> Commissioner Jensen: Thank you, Mr. Tran.

>> Hello, my name is Vin Nguyen. I'm registering strong resistance to the project. On November 14th my birthday I was throwing a party, a person came over, he says he living in this facility, he want to make friends with me. He said can he come to the party, I say okay. After the middle of the party he is offering drug to my guests. So I have to shut down the party and ask him to leave. Secondly, people who live in there normally have to report on time on Sunday so when they are late, they speed up very fast in the street to in order to make time so it's not very safe. Another thing is, given towards the last six years we have 123 calls for six people live there. Now if you agree it's up to 32 people, you -- we may receive another 500 calls. We work hard to live in this area, enjoy the quiet. Given every night you're going to get a siren and the firefighter and we can't sleep well. Another thing I want to bring up is, we are very hard to sell the house or refinance right now because the bank uses as a reason not to finance the house. So if the house value go down, I think the city and the county will lose the property tax also.

>> Commissioner Jensen: And Ms. Dow as you come forward, I will call the next three speakers. Ms. Lauren Dow still here? Okay, calling the next three speakers. Somebody Shirmovich. Jim Willy and Mary Guzman.

>> Good evening. My name is Wasran Lubichan. I live at 3628 walnut drive. And me and my wife joss recently about three years ago moved in. At the time when we moved in, the neighborhood was one of the like best areas. And I when we were looking for a house. It was always quiet and I knew that there is a facility but I never actually figured out exactly this home, it looked like normal, regular house. But unfortunately, later the same year when we moved in the facility was acquired by another company and expanded, which dramatically changed the facility's appearance and the appearance arounds it. The area around the facility now is always overcrowded, the adjacent streets are regularly speeding there which put an end to my biking and riding around that area. So high

noise that he of I can have volleyball and basketball games, shouting which is about 20 minutes distance from the house. I often work from homes and even close the windows it doesn't help me to avoid the disturbance. Not thyme trying to avoid the neighborhood in any means. Often would I hear cursing or shouting from people in there and I see that people always watch my step when I pass by. And regular I see people from the facility working around the neighborhood and speaking loud and looking in every window in our houses and previous speaker just mentioned they supposed to walk only around the facility but I live 20 minutes away and even the furthest corner of our neighborhood completely unsupervised.

>> Commissioner Jensen: Thank you.

>> Thank you.

>> Thank you, members of the Planning Commission. My name is Jim Willy. My wife and I built our house about 15 months ago. I'm speaking only from my opinion, I know it's a minority opinion amongst many. When we bought our property we're a little concerned about -- we were very concerned initially about the facility. We did some research on our own, we went ahead and bought our property. Two weeks after the escrow closed, the owner of the facility reached out with our neighborhood association and came and spoke to our group. I found his story very compelling and I commend the work he is doing. With that, I do have concerns about the variance, as it's been proposed or as I have read. Two main items, one, one item I've seen in the proposed variance is requiring the facility to pave a ten-space parking lot off of Morrie. And despite the comment earlier in the evening that there was no visual change to the outside, to me, requiring a new parking lot to be paved outside the facility for ten spaces really does change the character of the neighborhoods as I drive into it every day. In addition as someone else has already spoken the patients there don't have cars. They are there without cars so they don't need a parking lot. I would be concerned, I'm not of the minds that this is a decision of either 32, a variance of 32 and allow them their whole variance or that they have to be shut down by putting them down to six beds where they couldn't probably support \$60,000 a month. I think there's probably room for a compromise somewhere in there. My concerns would be one, the parking lot not required to be done because I think that drastically changes the character of my neighborhood. Two, when the gentleman came to speak he advised us at our neighborhood

meetings that his running total was about 25 to 27 people. I think an increase to 32 is a variance that isn't necessary. Perhaps there's a compromise to some of the neighbors that lowering the number to 24 --

>> Commissioner Jensen: Thank you, sir. Hang on a second. We do have a question from Commissioner Platten.

>> Commissioner Platten: Sir, what changes about the character of the neighborhood with the paved parking lot for you? Can you articulate exactly what you mean by that?

>> If you drive into the neighborhood you see ranch style homes, no sidewalks on many of the streets, horses walking up and down. It's very much a residential neighborhood. A ten-space parking lot out there in the middle of nowhere, all of a sudden it becomes like a commercial area, dentist office or something. And that one last comment. A neighbor of mine who has young children and I now have two has made a comment that some of the gentlemen there have made comments to their young children. And young children are very naive, they don't know who's good who's bad to talk to. I request that if the facility does stay there that they make it an utmost effort that these people who are coming through there on a rapid basis for 30, 60 days and a rapid turnover make clear that they're never to talk to the children in the neighborhood who won't know the difference between who's a good guy and who's a bad guy there, that's a main concern of mine. But primary points if the number could be reduced.

>> Commissioner Platten: Got it.

>> Not 32, 20, 24.

>> Commissioner Jensen: Is Mary Guzman here?

>> (inaudible).

>> Commissioner Jensen: You're here for the shopping center, okay, great, thank you Mary. And John Arajo. I'm going to just skewer the names.

>> My name is John Arajo and I live at 3591 Warner. I just wanted to share my experiences with Ben's facility. A couple of years ago, there was a resident that had walked out in the middle of the street, and was sitting in the middle of the street. Middle of the night. And so we called the police. And they you know went ahead and tried to figure out what he was doing. And apparently he had some sort of a relapse and they took him away. But you know as I mentioned we later found out he was a resident at Benny McEwen. Back at that time my kids were pretty young so they were pretty scared. Also, someone mentioned that the bus stop is a couple of miles away. Over the past couple of years, I've had to rebuild my fence a couple of times. People have been pulling the planks off the fences and cutting across to get to Clayton road and eventually to story and king where the bus stop is. So I've had to rebuild or replace planks two or three times. I know that if the number of people is increased it's going to you know, increase this activity, and I'm really getting tired of rebuilding my fences and replacing them. So I plead with the council to repeal the facility there. Thank you.

>> Commissioner Jensen: Thank you. And now, Jeff Jonoff. If you would like to come up on behalf of the applicant. And if you could introduce yourself and correct the name that I just mangled.

>> Is this five minutes or --

>> Commissioner Jensen: Five minutes.

>> Jeffrey Janoff, general counsel for support systems homes. Let me just -- I want to do two things just respond briefly to some of the are remarks that came up and add some legal remarks for the record. In reference to the last speaker, I'm sorry about his fence. But I think as a practical matter the residents are not using the bus. They're not even driving. So they wouldn't be -- they wouldn't be the ones that would be doing anything to destroy the fence. And we certainly wouldn't want that to happen and with supervision that type of thing doesn't happen. The other interesting thing is about the parking lot. My understanding is that the city, or the staff was

requiring the parking lot to be paved. That was not a requirement that we were interested in. I did have a memo that was prepared a few years ago, by deputy City Attorney Brian Doyle. And he makes three points which I wanted to put forth into the record. The first one is that the City of San José's general plan commits the city to the goal of decent housing for all persons. The plan further provides that the city should foster compliance with the state and federal law prohibiting discrimination in housing, a disabled person is someone who has a physical or mental impairment which substantially limits one or more of such person's major life activities, that's from the government code and most importantly this definition includes persons who are recovering from addictions or narcotics or alcohol and that are not current using substances. Which is the case in this facility. The second point that Brian Doyle makes is that the courts have held certain number of persons recovering from substance abuse must be allowed to live in a single family dwelling because living together in such groups is thought to be therapeutic and also may be the only way most of the residents can afford to live in a single family situation. And that I think is most important in this case. Because there's often talk about, well, they should be somewhere else, let's put them in a different situation. But the reason they're in this situation is they're trying to get back to being good citizens, contributing to society and this is the way to do that, with support of others. And lastly, Mr. Doyle makes the point that California and federal fair housing laws require the city to make reasonable accommodations in the rules, policies, practices or services, when such accommodation may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling. Which is the case here. This is a very unique situation really that we have, because of Bennie McEwen existing for I think 45 years in this location, and I'm pretty sure it predecades any of the neighbors are who have spoken tonight, each neighbor came into the situation where this house was already in existence, already operating in this manner. And nothing has changed since that time. It's been the same throughout. So the fact that there's an argument that this is going to alter the fundamental character of the neighborhood is not well taken since it's been that way for 45 years. Going -- in our application and I won't go through all those but there are eight grounds for accommodation that are detailed in the ordinance. And I believe in the application sets forth the basis, as does the staff report, for why this reasonable accommodation is well-founded and meets the requirements provided in the ordinance. In terms of the police involvement in this case, admittedly there are going to be some incidents where there has to be some involvement of some kinds of an agency. But I believe that those are kept to a minimum. And frankly, a lot of the calls were generated as a result of neighbors' concern. And they have legitimate concerns and we try to meet

those on a daily basis with supervision. And I think that the rules that these residents live by probably are a lot more stringent than most of the residential houses.

>> Commissioner Jensen: Thank you, Mr. Janoff. Your time is pickup but we do have questions from the commission. Commissioner Platten.

>> Commissioner Platten: I want to understand from the staff report and from the proposed use permit conditions, it speaks in terms of 32 total occupants, inclusive of staff. We've heard some testimony tonight that suggests that the center has run with about 25 to 27 folks coming in for treatment?

>> That's true.

>> Commissioner Platten: Can you give us a better feel for what the 32 total indicates in terms of occupants who are there for treatment versus resident -- staff/residents?

>> I think the application was 32 plus 8 staff. But it doesn't currently have that number.

>> Commissioner Platten: Of the 32, which is in the proposed and in the director's findings, how many of the 32 represent staff, versus treatment?

>> No, I think that that is the maximum number of residents.

>> Commissioner Platten: As I read it, reading on page 7 of 9, that the house will have 32 occupants which includes staff. And then looking, unless I'm in error on this and then looking on the resolution, the draft resolution, on page 4 of 5, the determination of reasonableness, item number 8 reads, the alternative accommodation granted for 32 residents, including any resident staff members.

>> Oh, resident staff members.

>> Commissioner Platten: All right, so my question is of the 32 folks, how many are resident staff members and how many are not? That's all I'm asking.

>> Well, that probably fluctuates based on the number of residents.

>> Commissioner Platten: Give me an estimate. I'm trying to match it up with the testimony that I've heard.

>> Well --

>> Commissioner Platten: That's fine. (inaudible).

>> So in other words 32 beds.

>> Commissioner Platten: So you're talking 32 folks in treatment?

>> Maximum, yes.

>> Commissioner Platten: Okay, good, I just want to make sure we're clear.

>> Commissioner Jensen: And none of those 32 are staff living onsite?

>> Right.

>> Commissioner Platten: So my follow-up question is trying to match it with the testimony that I heard from one of the gentlemen. Are you current running at the 32, or are you running 25 to 27?

>> We are running 27 residents.

>> Commissioner Jensen: Could you speak into the microphone?

>> 27 employees. The others come and go as we all do for our employment.

>> Commissioner Platten: Thank you.

>> Commissioner Jensen: Thank you Commissioner Platten. Commissioner Bit-Badal also has a question for you.

>> Commissioner Bit-Badal: Thank you, Madam Chair. When you opened the facility how many clients did you have and how many employees, basically?

>> I think it's the same. It would be the same. (inaudible).

>> I think that's the same. It's been that way traditionally. That is the number of beds that that facility can accommodate.

>> Commissioner Jensen: If I could clarify just one more time, how many employees total?

>> Eight employees. 20 -- when we took it over, there was a license 50 state of California for 27 residential. And it was licensed by the -- it was certified by the alcohol and drug department of Santa Clara County plus the fire department. And then we licensed it under our names for the same amount as it was when we took it over, 27.

>> Commissioner Jensen: With eight full time staff none of whom live on site.

>> None of them live on site.

>> Commissioner Jensen: Thank you. Commissioner Bit-Badal if you would like to continue.

>> Commissioner Bit-Badal: If no one lives on site it is a 24 hour center right? Who takes care --

>> There's a night rotate, swing shift graveyard shift.

>> Commissioner Bit-Badal: Thank you.

>> Commissioner Jensen: Some of the community members made a distinction between what it had been like prior and after the changeover in ownership. So I think it's a little misleading to indicate that they moved in and it's been the same for the past 40 years. Because they made a distinction between now and previously. Just wanted to point that out.

>> Well, it's hard to know the timing of those comments. Because I think one of the neighbors even referred to a woman, there are no women residents, since support systems have taken over. So they may not necessarily be coinciding with support systems management of the facility.

>> They were in the process of complaining about the facility being there prior to us taking it over. But no one knew about the reasonable accommodation, we all thought it was in place. But when we thought there was a new company overtaken from the previous, they searched a little bit further and found there wasn't a reasonable accommodation and that brought us forth to where we are today.

>> Commissioner Jensen: Did I understand you correctly that you took ownership in 1997? No?

>> No, 2009. But in 1997, in this county, all of programs were getting reasonable accommodations on their properties. And for some reason, this facility didn't receive that. They just felt like it was grandfathered in, from my understanding talking as the director of alcohol and drug services on this issue in the past. So it was overlooked, and if everyone assumed that they had grandfather rights, and just never pursued it.

>> Commissioner Jensen: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I understand you have eight staff members. How many staff members are on at one time?

>> It varies, all depending on the shift. Usually in the daytime there's like maybe four at one time. And then as we go onto swing it's maybe five in the daytime and then because I'm counting my cooks, we have a cook that comes to prepare the food. And swing is two and late graveyard, there's two. And then early in the morning, there's only one like maybe 4:00 in the morning and another one comes on at 6:00 and then there's 2:00. It just rotates out, another one comes on at 10:00, then we have the counselors come in. I have two full time counselors coming, three CD techs in the daytime. And two CD techs in the evening and two in the --

>> Commissioner Cahan: So the most you have at one time is four to five?

>> Sorry, I don't have a schedule in front of me.

>> Commissioner Jensen: Thank you. Commissioner Abelite.

>> Commissioner Abelite: Yes, I had a question regarding when you took over the facility several years ago. I presume in your course of business you may go out and take over other facilities in the area, the region.

>> Yes.

>> Commissioner Abelite: Wouldn't it be part of your due diligence in doing so to figure out if there is RA permits with each facility you took over?

>> In 1997, I did my due diligence, we went out had four separate living homes in San José that we got the RAs on and I have another 32-bed facility in San José that I have the RA on. So we all were doing it collectively together in the community. They actually opened up the flood gates and let us bring -- do a fast track to get all the programs through. And all the programs said, we're talking about when we pursued that. So I was just understanding the assumption that this had it also. But normally outside the area if I go to, I will check. But because I've been in San José, and founded here 20 years ago, involved with the community, involved with the providers, knowing that we went through this and they were right along with this, so the -- when I say they, the ARH who ran the Benny McEwen, did go through the process to get RA running the properties. That's why I was under the impression that this was so old they allowed this one through. I don't know if that answers your question.

>> I think historically that the ARH had begun the process and begun the paperwork but it was never completed.

>> Thank you. Correct. There wasn't a document. I didn't go any further. But they applied for the 32-bed back in -- there was a document. I did research that, there was a document back in 2007 that they were going for a 32-bed facility and I didn't pursue anything further than that either.

>> Commissioner Abelite: I would have thought you would have made that a contingency for the purchase of the property. I would have.

>> Well, that was a contingent, the need for care at that facility was very important.

>> Commissioner Abelite: Thank you.

>> Commissioner Jensen: If I understand from one of the community members, you provide services for nonresidents onsite?

>> Not that -- no.

>> Commissioner Jensen: Because they were reading in something in your application that led them to believe that there were services for graduates of the program.

>> Might not -- maybe it was at our other facility. Not at this facility.

>> Commissioner Jensen: Not at this one?

>> I have multiple facilities. I have, if you go on my Website it will state that. Well networked in Northern California.

>> Commissioner Jensen: But none of the graduates of the program come back? Okay.

>> (inaudible).

>> We have a continuum of care and treatment for the clients that we graduate but the after carry programs are not actually on that site on Fleming.

>> Commissioner Jensen: Thank you very much. I have no further speaker lights. Mr. Zafar you have up to five minutes and you may share it with your associate if you would like to do so.

>> I would like to concede my time to (inaudible).

>> Commissioner Jensen: Okay, thank you.

>> Thank you again, chair and fellow commissioners. I have another document, this is a map of the area. All the -
- it has a legend on it. All the Xs are the people that have submitted petitions to you previously, in these proceedings. And I just want to make clear that the staff report had a bunch of stuff that was submitted by the

neighbors, attached to it. And I'm considering that to be evidence in this case. Because I assume you've reviewed it. Okay, and you know, I guess I have to take them at their word, but this is the application for this particular reasonable accommodation. It does say they provide after care services and it says after care is provided for our graduates twice a week. So that was the basis of that comment in my letter and by one of the neighbors. You know what we're dealing with here is social legislation. And you know social legislation is good to a point and the point to which it becomes not good is when it's misused. I sincerely submit to you it's being misused in this case. And you know I don't think I'm speaking alone. I really don't know how much of my letter you got to read or how much of this stuff you were able to read because it was pretty voluminous. The document from the federal government which is the tail that's wagging this dog, that being the legislation that came out of the federal government, and that was the federal government's joint statement of the Department of Justice and urban development. I hope you've read it, page 6 of the report, of my letter. And basically there they're talking about what causes a fundamental change in a neighborhood. And they point out, the contrast between four more people living together in a single family neighborhood. And then I go to say and I'll quote, by contrast, a 50-bed nursing home would not ordinarily be considered an appropriate use in a single family neighborhood. For obvious reasons. Such a facility might or might not impose significant burdens and expense on the community. But it would likely create a fundamental change. I mean, this is the legal standard. The legal standards is necessity, and burden, financial burden. You know they're making the point about all these emergency services that have to be provided. But if they were dispersed in other parts of the community presumably you'd have to respond there, too. But the fundamental nature is critical here. And so they go to say, on the other hand, I mean they make my case for me and my client and the neighbors. On the other hand, a nursing home might not create a fundamental change in a neighborhood zoned for multifamily housing. And that's the rub here. This is the -- this is the square in the round peg. It doesn't belong. Your zoning ordinance is already created an accommodation. It allows six. Or less in this district. This is not an all-or-nothing proposition. And I heard no evidence even though I sent council my letter yesterday, I heard no evidence of need. I heard \$60,000. One of you asked the question about that. What does that mean? Well, \$60,000, maybe that means because you have got 27 people there right now. But that begs the question. Should you have 27 people there? If you only had six, your expenses wouldn't be \$60,000. And I gave you as an exhibit, exhibit 1, testimony by Mr. Norton in a Campbell proceeding, city of Campbell proceeding, where he commented where he has a number, runs a number of places. And the question

asked by councilmember, I think it was -- I don't know if it was Planning Commissioner or what, six or less. And he said well, and then he hesitated and then he basically said something about seven. So the point is that the only evidence that's been prevented and that's through me, is this is an economically viable facility at probably six or maybe seven. But we're dealing with 32. I mean we've ratcheted this up, well as I indicated, 400%. So these aren't hardened people. I know this is a hazardneded cliché, not in my backyard.

>> Commissioner Jensen: I know you're just getting started but your time is up.

>> Thank you.

>> Commissioner Jensen: Is there a motion to close public hearing? And a second? All those in favor? Thank. Staff.

>> Thank you. I'll just follow up with a couple responses. Regardless of what's in an application or not the definition of a residential service facility is services provided to residents only. And there's a prohibition of providing services to nonresidents. So we don't have to condition that that not happen because by definition it can't. So they should not, whether there's six or fewer or seven or more, be providing services to nonresidents by definition. Related to the parking area, you know, we can accommodate that in a variety of different treatments. You know, single family homes do that also, permeable pavers, all sorts of ways. Our generality to paving is we need to create a dust, free environment. There are multiple ways that we can accommodate that so it doesn't look like a commercial parking lot with stripes and stuff like that. So that would come in for the site development permit to make that change. We would you know look to make it palatable to the environment in which it's presented. And council might want to speak to this more, but the allowance for six or fewer, in and of itself is not the accommodation. That's an as of right. And then beyond that would be what we would have to consider for accommodation. And again, I'm available for comments -- I mean questions, sorry.

>> Commissioner Jensen: Can you address the discrepancies between the staff report which says 32 residents including eight on-site residence staff?

>> I think that's going for whatever kind of conceptual they have relative to clients versus staff, that maximum people residing onsite is 32. Whether it be clients or staff members. Whether it's previous, the 32 residents, people who can reside on there is 32 maximum.

>> Commissioner Jensen: But the applicant indicated they have up to 27 members --

>> The request is for 32.

>> Commissioner Jensen: Right. They currently have up to 27, they stated they want 32 client residents with no staff living on site.

>> Yeah, and if they don't have staff residing there, the 32 is for clients. So we're not saying 32 clients, plus additional. It's if they're going to have any of that staff residing there, it still has to stay within the 32. Because that's what the spatial allowances can be.

>> Commissioner Jensen: Okay, director.

>> Laurel Prevetti: Just wish to clarify because I can see a little bit of confusion. The way it's being written is to acknowledge an outer envelope of 32. So if at some point in the future, the operator decides, you know Kim really do need to have a staff residing onsite, to give this needed supervision, then they would need to lower their client count in order to maintained that maximum. So this gives them the flexibility, if over time, they need to do that.

>> Commissioner Jensen: Thank you. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. Your definition of residing is sleeping over, even if there's eight more people in the house, correct?

>> Laurel Prevetti: Correct. Because again, they are sleeping --

>> Again they are sleeping in bedrooms or places where that is to happen and that's governed by the housing code and the spatial requirements for that.

>> Commissioner Bit-Badal: And then my next question is, I understand there are ten parking spots that have been allocated but yet residents do not drive. And they can only have eight staff at any time. Are the two extra spots for visitors, is that what -- or was it based on number of residents? How do you come up with the ten?

>> The parking requirements are based on zoning code. And it's based on -- it's not necessarily assuming that the clients drive or whatever. It's -- there is going to be a need based on the number of beds there, whether it's people coming to visit, people coming to service, people coming to do other things. That that's the parking requirement. So it's just what the code requires. I think recognizing that, there is a certain requirement, but they don't have clients that drive. Then a little less in that area should be okay. Because of the fact that none of the clients drive, so it would be supporting staff that's there onsite, and any others that come to the facility at any given time.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Commissioner Platten.

>> Commissioner Platten: I just want to see if I can understand, I understand the sliding figure of 32, the cap figure, whether it's staff or clients. Where does the figure 32 arise from? Because that source I'm not seeing in the draft.

>> That was per the request.

>> Commissioner Platten: That's just pure request.

>> We don't feel compelled to go beyond that even if the site from a housing code standpoint could accommodate it.

>> Commissioner Platten: Okay, thanks.

>> Commissioner Jensen: Thank you, Commissioner Platten. Is there any further discussion? Commissioner Abelite.

>> Commissioner Abelite: I have a couple of questions for staff. I note, you can't help but notice the 123 or so EMT and fire calls out to the site in six years. To me, that's one every two and a half weeks. Does staff have a handle on what an EMT callout to a particular location is in terms of cost? I mean, I would think you're rolling -- you're rolling a fire -- and what I'm talking about is, what I'm trying to determine is, is there an additionally high burden of cost associated with this particular site in this neighborhood, having so many callouts?

>> I can't really comment on that because I don't have that sort of information.

>> Commissioner Abelite: Right, okay. I would think it is pretty substantial over the course of the year. I want to shift. I want to take a look at, I just want to get a clarification of what the words program means. Our draft resolution page 4 of 5, and the word -- I'm going to get to it real quick. So I'm looking at our resolution, that we would be passing. So page 4 or 5, the very last item, item number 8, and it says will not require fundamental alteration in the nature of a city program. And does city program have to do with the work of zoning?

>> I think in this case we are talking about our zoning program.

>> Commissioner Abelite: And the nature and the character of a neighborhood.

>> Yes. There's one additional thing that, if you're done with your questions, I'll make a statement. Otherwise feel free to ask any other questions.

>> Commissioner Abelite: I do have one other question. In our packet we reference a letter from Nora Campos, and I didn't find it in my packet. And I think it was issued, while she was still in city council.

>> We have in your packet a letter from Xavier Campos.

>> Commissioner Abelite: I have that as well.

>> Laurel Prevetti: There was a letter from the city council woman of a similar nature.

>> Commissioner Abelite: That's all the questions I have.

>> The other thing I want to talk about, they do talk about being certified through the county of Santa Clara District Attorney's office, the drug and alcohol rehab. When the whole reasonable accommodation process got started that was a critical -- that plays a critical role in really working to help these facilities be good neighbors. So there are -- or at least there were requirements of that certification, good neighbor management policies and whatnot. So to the extent that the district -- that that office through their certification program continues in that vein, that was one of the things that the area residents could call upon to make sure that these facilities were being good neighbors. And that the District Attorney's office, drug and alcohol, was very interested in hearing from the neighbors to ensure that the facilities that they are certifying did live up to the agreements of that certification.

>> Commissioner Abelite: And so would you say the burden to make sure that there's a good neighbor policy being enforced done by the District Attorney's office or us?

>> There's a certification process that's happening that in order for facilities to get referrals through the court system they need to be a certified facility. So there is -- there are incentives, I think you know, or was through that process. And there used to be even a hot line that area residents could call.

>> Commissioner Jensen: I would like to point out that not all residential care facilities are required to be certified either by the county or the state. And then I'd also like to ask for counsel's guidance regarding reasonable accommodation and what leeway the commission may have in terms of the staff proposal, the director's proposal is for 32, and does the commission have any leeway in that area?

>> Thank you, Madam Chair. I think if I were going to try to assist the commission with its deliberations on that item, probably the best way to do that would be to say that most of the testimony that you've heard tonight seems to focus on what's reasonable in terms of the accommodation. So going back to a statement that staff made at the beginning which is, six and under is allowed by right. So six and under would not be here. Because there would be no accommodation required. So now you have an applicant who would like to have a facility for more than six in this zoning district which requires accommodation. And so you have the applicant focusing on the fact that there is a reasonable accommodation process that reasonable accommodation in the application of the zoning code is to be afforded to disabled persons, and they provided testimony that the residents at this facility qualify as disabled persons such that reasonable accommodation should apply. And then again, so you're going to have to weigh and balance all of the testimony and the evidence you've been presented. You have the applicant explaining that you can't discriminate, you have the applicant explaining why the request is reasonable or should fall within the realm of a reasonable accommodation. And so they've focused on the potential benefits and service that they afford to their clientele. And their representatives talked about prior City Attorney memo, about the goal of providing decent housing for all persons, and that the goal of the ordinance is to ensure that everyone in our community has a fair access to housing. And then you had the appellants also focused on and acknowledging that a reasonable accommodation applies. I haven't heard any dispute on that issue. You have the appellant providing testimony to the commission about, but what is the scope of what is reasonable? And so they provided testimony that not all accommodations are required under the law. And so they focused you to information in the testimony they provided about what is the scope of what's reasonable. They're alleging that at the very outside, they provided information from the federal government that you're not required to put a hospital in this neighborhood, you're not required to put, I forget the words he used, I think he said it was on page 6 of his letter, that you're not required to put -- let's see, it wasn't a hospital, what was it? Some sort of very dense commercial nursing home. And so the appellants were focused on what's the scope of what's reasonable given the density,

given the density of persons at the facility, given the density of the surroundings, given the number of persons, given the testimony you heard about noise and parking. So I think if I were to focus is commission's deliberation, almost all the testimony seems to be focused on what's the scope of what's reasonable. Not that accommodation doesn't apply. I think everybody is acknowledging that reasonable accommodation does apply here. It's really going through the factors in the zoning code which is what the applicant and the appellant did. Factors should be set forward, staff set them forth in the report. Accommodation from zoning code what are the potential benefits, what are the potential impacts on the surrounding uses, what are the physical attributes on the property I think staff focused on that. What are alternatives, I think the appellant gave you some testimony on alternative accommodations, I think both of the parties did really focus on the factors that are set forth in 2160.050 as did staff. So what you have before you is I'm glad to say relevant testimony. Unfortunately we get testimony that isn't quite relevant. Both parties in this instance as well as staff have focused the information that they're giving you on those eight factors. So now it's up to the commission to weigh and balance the testimony you've heard to determine what is a reasonable accommodation. I don't know if that helps you.

>> Commissioner Jensen: Thank you. Commission? Commissioner Abelite.

>> Commissioner Abelite: And just following along that line as we do our deliberations, reasonableness, really also has to test what's happening to an R-1-5 neighborhood in terms of it shouldn't alter the character of the neighborhood as someone who expect to see in that density and that layout, is that right?

>> Absolutely. The appellant provided quite a bit of information regarding their assertions that the scope of the accommodation and think gave you testimony about why they believe it would fundamentally alter the nature of the zoning program in terms of the lower density residential zoning district. The applicant I believe provided information, their assertion, I believe, they were providing testimony that this has been here for a very, very long time, so how can it be altering something when it's been there for 40-some years? So again both sides did provide you testimony on that element.

>> Commissioner Abelite: And with respect to financial burden, or added financial burden to the city that also comes into play on our test?

>> That is one of the factors I believe. Factor number 7, whether the requests proposed would place an undue financial burden to the city, I think that's where you were alluding to the testimony of emergency response.

>> Commissioner Abelite: I'm still trying to get the handle on, if you have a 32 bed facility are we still going to have 123 callouts in six years on fire and EMT? And not -- I'm just saying that outloud, because I don't know how, if that would go up or down or that would be a stay on par. I am wrestling with that because it seems like an inordinately high number of calls in that location. I guess I'm going down the deliberation path right now. That's troublesome for me, and since I have the microphone I might just as well go ahead. I believe that neighborhood, based on that density, I think one of the big drivers of that is, we all know that there's a certain per square foot bed count that you can put into any household. And when you go to that max level you are creating a lot of population into each one of those two houses and with so many people there you can't expect in a normal life, normal, in thrives a typical family may live, in that sort of zoning district, people don't go outside necessarily, all the time every day. I think a lot of families spend time inside the house. But in this particular case when you have so many head count in each building and you have a smaller proportion of common area in that building it only naturally displaces the activities outside. So now if you have activities outside seven days a week for a large part of the day, that is way outside, is it the realm of normalness in a R-1-5 zoning area. I can see people playing horse shoes one or two times a weekend in households around the area, but I can't see where having that happen a large part of time, that being normal. And the weight machines, with the nice weather outside they could be doing that all the time. Just in general you would have so many people outside, because they're displaced, without having adequate space inside. That's what's weighing on my mind. And I am prepared to do a reasonable accommodation. What I'm wrestling with, is what's the number? Anybody else I'm happy to listen to.

>> Commissioner Jensen: We're all happy to listen to anybody else. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I hear exactly what you're saying, commissioner, and I've been struggling with the same thing, as well. And I do believe in providing reasonable accommodations. It is important that we provide such services and locations throughout our community, and for them to be distributed throughout our city. However, at this point based on the testimony from residents and the applicant, I believe that 32 is higher than the number that I wish to see at this location. I had also wished, throughout the years, there had been better communication between the facility and the residents. And quite often you'll want such issues such as noise and I don't know your clients cussing and talking to can kids, such issues to be resolved before the applicant comes before us. But that is not the case, anyhow, I don't believe that the number should be 32 and I just wanted to express that at this time.

>> Commissioner Jensen: Thank you, commission. Looking at the two separate houses, there are two separate properties, one with six bedrooms, the other with four bedrooms. There are a total of ten bedrooms and three bathrooms between them. I don't know if that might help someone come one what they think is an appropriate number. As it stands right now with 32 there would have to be three possibly four to a bedroom. Commissioner Platten, do you have anything to -- you're always --

>> Commissioner Platten: I guess that's my cue to make a motion. I move that we grant the appeal to the director's decision to grant the reasonable accommodation request as follows: By amending those provisions in the resolution with respect to the total number of individuals, whether staff or clients, at 24, as opposed to 32.

>> Commissioner Jensen: Thank you, Commissioner Platten. Is there a second? Is there a second? Is there a second? And that motion dies, for lack of a second. Would somebody else, Commissioner Abelite?

>> Commissioner Abelite: Yeah, I am prepared to make a motion with a revised number. So I'm -- I would like to go ahead and provide a reasonable accommodation, and the number of beds in the facility in my mind should be about -- should be 20. So I'd like to make a motion that we take the reasonable accommodation resolution document in the packet and we probably have to change that number in a variety of locations within that document. And I don't think we have to address the number of staff. We could just do 20 in terms of a bed count --

occupant account. Not bed count, occupant count. I think that being said I think I have the ability to agree with the determination of reasonableness. Part 2 --

>> Commissioner Jensen: Is this part of your motion?

>> Commissioner Abelite: No, the motion is simply 20.

>> Commissioner Jensen: There is a motion, there is a second. Would you like to speak to your motion?

>> Commissioner Abelite: I think granting a reasonable accommodation twin this zoning district, a lot of our findings within our resolution now make me feel that's a reasonable accommodation. I'm very happy to make that motion.

>> Commissioner Jensen: All right, thank you. There's a motion and second. Director?

>> Laurel Prevetti: Thank you. If I may ask for a clarification of the motion. You mentioned you wanted to replace the number 32 with the number 20 in all locations in the proposed resolution. The resolution talks about total occupants but during your comments you mentioned you didn't want any more than 20 beds. So could you clarify what --

>> Commissioner Abelite: So my motion is for 20 beds and if staff has required maybe four or five extra staffers around the clock that is beyond the 20.

>> Commissioner Jensen: The applicant had already previously indicated that they had had eight staff members.

>> Commissioner Abelite: Right but those are not part of the 32.

>> I think they said they were not residents. They have eight gross they consider but they don't consider them staff.

>> Commissioner Abelite: They are on shift.

>> Commissioner Jensen: Do you anticipate four additional people staying overnight?

>> Commissioner Abelite: They are not residents there.

>> Commissioner Jensen: Rotating shifts but 20 overnight accommodations?

>> Commissioner Abelite: Exactly.

>> Commissioner Jensen: Does that help director? There is a motion and second. As the based on the testimony that has been provided to us this evening. I see no additional speaker lights. Does everybody know what they're voting on? You made the motion, I'm not speaking to you. There's a motion and second. I think everybody knows what we're voting on. May we vote by light? And that motion passes on a 4-1 vote with Commissioner Platten voting no and commissioners Kline and Kamkar absent. Thank you very much. The next item is Planning Commission bylaws. Consideration of adoption of a resolution to amend the Planning Commission bylaws to modify the requirement for a quorum of the commission at study sessions and site visits. the commissioner who -- director or counsel?

>> I was just going to note that the commissioner who proposed this and who has done quite a bit of research, unfortunately is out ill this evening, so I would request that we allow him to be here and participate in this item.

>> Commissioner Jensen: Can I get a motion to that effect?

>> So moved.

>> Commissioner Jensen: Is there a second?

>> Second.

>> Commissioner Jensen: All in favor? Great, this has been deferred to a future date. Can I get a motion to open the spring 2011 general plan hearing?

>> Commissioner Platten: So moved.

>> Commissioner Jensen: There's a motion. Second?

>> Second.

>> Commissioner Jensen: All those in favor? Thank you. We move to item 6.A, public hearing. The following projects considered are East Alma. We have a general plan amendment to request the change to the San José 2020 general plan, land use transportation diagram, designation from general commercial and heavy industrial to combined industrial commercial. And PDC 10-026. Planned development zoning to rezone from LI light industrial and HI heavy industrial zoning districts to CG[PD] planned development zoning districts to allow the demolition of the three existing structures and construction of up to 257,296 square foot of commercial buildings on 19.75 gross acre site. if the commission is okay with this, I'd like to take each of these items and vote on them individually before moving to the next one, but as they're all related I'd like to get them out there. Staff.

>> Thank you, Madam Chair, the first item 6A 1 is the sophistication of the EIR, for the sun garden general plan amendment. Immediately following this item on the agenda. The EIR represents the City's independent judgment and analysis regarding environmental impacts, mitigation and alternatives to the project. If the Planning Commission certifies the final EIR as complete and in conformance with CEQA as amended, the proposed general plan amendment and rezoning may be heard immediately following. On March 1st of this year a notice of

availability of the Draft EIR was published in the Mercury News and was also mailed to responsible and trustee agencies as well as public outreach, radius owners and occupants. The draft EIR was circulated for 45 day public review period from March 1st to April 15th of this year. The project's only significant unavoidable impact is that it will exceed the Bay Area Air Quality Management District's threshold for greenhouse gas emissions and will generate emissions at levels which are considered to have a significant cumulative impact on the environment. As required by CEQA, the city prepared a first draft EIR as well as text revisions to the document. The First Amendment was distributed to city officials and all commenters on May 2nd, more than 14 days prior to this hearing. The commission should receive copies of the First Amendment in your packet and the First Amendment together with the draft EIR constitutes the final EIR under consideration this evening. Staff recommends that the Planning Commission adopt a resolution to certify that they have read and considered the final EIR, that it has been completed in accordance with CEQA, as amended, and that the final EIR reflects the independent judgment and analysis of the city. This concludes staff report.

>> Commissioner Jensen: Thank you, staff. We will take testimony on all three of those items simultaneously, so when I call your name just let us nose specifically which item you are interested in speaking to. First of all, our applicant Mr. Michael Mulcahy. If you would introduce yourself, please.

>> Thank you, Madam Chair, commissioners, good evening. My name is Michael Mulcahy. I'm the managing partner of SVS Next Gen Partners. I'm the development partner for the applicant Sun Garden TIC. It's exciting for us to be here at this point and by the way I'll be speaking on all the items in this five minutes. Being here in front of the Planning Commission tonight is a great pleasure for us. My family has owned this site for a very long time and we have a very long history in the Monterey corridor. The site was formerly home to sun garden packing company which ceased operations after the canning season in 1997. During its heyday, Sun Garden was the largest independent canner of tomato products in the United States. Today the site has two occupied buildings consisting of 110,000 square feet and the balance is vacant after the demolition of the plant in the summer of 2002. Our preplanning goes back several years. To approve our ultimate application, we acquired two acres of surplus railroad, I'll point this out, there's one to the East that's a limb more than two acres and there's win to the South of the site about one acre, which gives us all told about 20 acres at the Monterey road site. That is to

improve the access, circulation and landscaping. Early on we acknowledged the need to invest in a fully signalized intersection, I'll point that out here right at cottage grove as well as up here on Northeast side in the acquisition over Alma, there's an Alma railroad crossing here that we know will need to be revised, as well as the acquisition of the south end has allowed us too incorporate the three creeks trail segment which you'll hear more about this evening. Our development plan and objectives are as follows, to fully redevelop the site and maintain long term ownership, build a quality community retail center, introducing needed goods, services and infrastructure for the surrounding neighborhoods. Pay attention to the site's important historic legacy as part of our architectural design, advance the Monterey corridor redevelopment plan and city policy for preservation of employment lands and lastly to continue to respect the stakeholder input and support throughout our development process. The entitlement process began officially in May 2010. Our GPA and zoning changes have addressed CEQA requirements for the EIR process finding that no significantly impacts occur as a result of our proposed development as for what you heard greenhouse gas emission east few moments ago. The JPA submitted in June 2010 is consistent with changes proposed in envision San José 2040. Conceptual planning illustrates that the layout addresses all city development policies and we have evidence of community and neighboring property owner support as well. In cooperation with planning and parks departments and save our trails volunteers a nearly 600 foot segment which I point heed out on the South end has been embedded in our planning since the beginning. As for the entitlement process specifics we have been engaged with staff on the EIR GPA and zonings and nine all hands meetings have occurred since February of this year. Our goal has been to bring this to the commission a fully vetted project satisfying Planning Department concerns and city development policy and guidelines. We believe we have accomplished this in concert with city staff. Consequently we have but one disagreement. Pretty amazing given the size of this project. There are three existing driveways currently in place, south of our planned new signalized intersection. I'll point them out. Here's the signalized intersection. There's one, there's two and there's three. All of those exist today. It is our strong desire to retain all of those driveways as we see them critically to the successful marketing of our project. Staff recommendation elimination of one of the three existing driveways to be determined at the PD permit stage. Our traffic and environmental professionals do not see an issue in retaining all three of these driveways and we ask that your recommendation tonight on the zoning will allow for the retention of all three driveways South of our newly signalized intersection. My team members are here tonight joining me. I'll introduce them. The environmental consultant, Judy Shandley from

Powers and Associates. Traffic is Gary Black from Hexagon. Architecture, Ken Rodriguez, Rodriguez and associates. And entitlement manager Henry Cord, Cord and associates. That finishes my presentation. Thank you so much for your consideration this evening. We'd be happy to answer any of your questions.

>> Commissioner Jensen: Thank you, you will have an additional five minutes to speak. Thank you for keeping it well under five minutes.

>> Thank you.

>> Commissioner Jensen: I'm going to call the first three speaker cards. Mary Guzman. You can speak to all three items when you come forward, you may have up to 2 minutes. Martin Delsun and Lovey Center. And nice to see you again Mary.

>> Thank you. The bear is here, she is ready to go. I am for it, I approve it, I am handicapped, I would like a shopping center that I can walk to because I don't drive anymore. Thank you all.

>> Commissioner Jensen: Thank you, Mary, thank you for your continued service to your community.

>> I'll be here until the day I die.

>> Commissioner Jensen: Okay, we're counting on it. Martin Delsun.

>> Good evening. My name is Martin Delsu aboutn. I come to voice my support of the sun gardens redevelopment project. As a resident of Willow Glen, I'm very aware of the obstacles in heading East around town. The three creeks trail offers the potential of a safe off street path for cyclists and pedestrians. The city is now in negotiation with Union Pacific railroad to purchase the western half of the trail. The eastern segment between highway 18 and Senter road presents more difficulties. The railroad has already sold several parcels and the commission may recall the fiasco on the trail right-of-way. You have this evening a plan for the development

of another parcel along the right-of-way. I was very pleased to see that the redevelopment plan has the foresight and the generosity to reserve an easement for the Three Creeks Trail to be constructed along the edge of the property. This portion of the trail will be an essential link in the City's growing network of interconnected trails. I urge the commission to accept the staff's recommendation and approve the project to city council under the understanding that the easement for the trail must remain part of the redevelopment project. Thank you.

>> Commissioner Jensen: Lovey Spencer and after lovey we have Tasha McMahon.

>> Good evening, commissioners. My name is lovey Spencer and I live about -- our family has owned for the past four decades property about two and a half blocks from this and we share Mr. Mulcahy's excitement about the potential of its development. Two years, two decades ago, my neighbor, Bernice Ortiz and I started a neighborhood watch program because of the decline in the neighborhood. I mentioned that the neighborhood meeting that concurred that happened was, is that we have come full circle in our neighborhood. We -- where the Hispanic library is located, at that particular site there was a Safeway store. So now we're going to have perhaps a Safeway store or one of their competitors, in this area. We concur with the findings of the planning department. I think that in addition to the items of adding jobs and goods and services to our continuing to improve neighborhood is that there will also be the aesthetics of this very blighted area. The corridor along the Monterey road area, beginning at Curtner and this could certainly be a wonderful anchor at the other end of that corridor. Will not only provide those goods and services, but will also improve a marvelous historic entrance into our city that began along that corridor. We again support, very excited about the project. And we urge your approval. Thank you.

>> Commissioner Jensen: Thank you. Ms. McMahon. If you would introduce yourself you have up to two minutes.

>> Chairperson Jensen and honorable Commissioners, my name is Taisha McMahon, I'm the president of Save Our Trails, connecting Santa Clara communities, a volunteer group that is incorporated as a California nonprofit, 501 (c) 4, social welfare organization. The mission of save our trails is to promote trails in Santa Clara County for

the benefit and enjoyment of all people. We are excited to appear before you this evening, and praise and thank Michael Mulcahy and Sun Garden TIC, for the dedicated right-of-way for the Three Creeks Trail as part of the Sun Garden Retail Project. This is not only an enlightened and generous gift it is an act of great courage. We hope that their example will inspire all developers who follow them to share their vision, one that likes a future in which trails will increasingly green both transportation and recreation for the coming generation. Thank you.

>> Commissioner Jensen: Thank you. And Mr. Mulcahy you may have up to five minutes if you would like. I don't know that there's anything for you to object to.

>> I don't object to anything anybody said. But if -- if it makes any sense to be available for any questions, I'm happy to defer my five minutes for that.

>> Commissioner Jensen: We would give you your five minutes and we'd talk to you. So you have whatever you want.

>> Well let me just -- I did not do a very good job of orienting you to the site. I don't know if that's helpful. I notice you craning your neck to what I was pointing at. I'm not seeing any takers for that.

>> Commissioner Jensen: I have no -- I take it back. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. And the plan that you have here, I see a lot of parking pavement. And we've discussed the village-type of feel for different areas and trying to maximize space. And in this particular picture, it just looks like a lot of what we already have, which was areas with strip malls, with buildings and lots of parking in front of it. And do you have any discussion going on with kind of trying to give it more of a -- using the space a little more for more than just flat parking?

>> So what you're looking at is a conceptual site plan, but worked over many months with the Planning Department. What you have is a packet that will show you along the frontage we have made a commitment to

have a certain percentage of the linear feet of the building up on the street. For example, this area here, at one point we had a sort of building back off the street. And there's been a strong push from the Planning Department and our architect, Ken Rodriguez has responded well, to create some activity up off the street as you see there. What you see reflects that work. We have a 12-foot sidewalk at the front of the property as well as the landscaped areas there, which will also give a nice aesthetic appeal. Again this is conceptual but we don't see the kind of street trees that will be required up on the sidewalk as well. The other thing that I think we did also by moving this building to the north, it really allowed a nice view corridor, if you will, that incorporates this trail section, sort of into the property. Your question goes to the question of, you know, sort of parking. I think we tried to balance, you know, really pressing, you know, landscaping into that site, including this entire section here, along the trail, part of it will serve as the bioswales to deal with the storm water as well as be a heavily planted area as well. So I think we've done a good job of reflecting some of the requirements by the planning staff. But also, in the language of our development standards, it describes -- and I do not want to misquote, and Jeannie if you're available to help me quote, talks about some interesting buildings. I'll say that much. And some cases, not to require two stories, but to acquire density and the appearance of two-story, so that you have that movement in the architecture. The other thing that's not you know talked about here and we're not at the stage where we would reveal that. But is it our intention and I talked about it earlier to bring back some of the architectural elements of the canning industry. We don't know what really that looks like. We have lots of photos, I have a brick in my office that is from the old cannery building. It is our intention to own this a very long time. So pride of ownership and the integrity of the development will be important.

>> Commissioner Cahan: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. And I'd like to support Commissioner Cahan's comments. And thank you for moving some of the buildings forward. I really appreciate that from an urban perspective. You are known as being rather visionary and you have a great deal to do with the rehab of a certain neighborhood not far from here that is now really well populated and has a lot of construction going on on the corner. And it's all very creative and interesting and one of the reasons is the buildings are right up at the street front and the parking is hidden behind. So as you're moving forward with your design I personally would

appreciate if you could see about moving more of your buildings forward, perhaps even the two mock-two story to bring that street front feel and perhaps bringing the courtyard more centralized behind the buildings, into the interior whatever, I know this is not going to fly but I'm going to ask for it anyway which is stacked parking. One of the biggest channels that valley fair has is all their buildings are hidden behind all that lovely parking garages. Maybe you being visionary you don't want all that parking on the front. That's my comments. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you. And I really appreciate the comments about bringing back some of the historic aspects of the building or of the original building. I've seen the great work you've done in Willow Glen for the theater. I appreciate that so that was music to my ears what I heard you were going to be doing this. With that I also appreciate Commissioner Cahan's and also chairwoman's comments. I do believe that we should go to the direction of the villages. I understand that we're not quite there yet. But I want you to know that I personally would like to see that throughout the City of San José. So in the future projects, I urge you to think about that, and try to implement that as much as possible. With that I'm ready to put forward a motion.

>> Commissioner Jensen: Well, we're not ready. We still have public hearing.

>> Commissioner Bit-Badal: That's true.

>> Commissioner Jensen: If you hold your motion. Thank you, Mr. Mulcahy. I believe that's all the questions we have for you this evening.

>> Thank you.

>> Commissioner Jensen: Is there a motion to close public hearing? Thank you. All those in favor? Thank you. Staff.

>> I think with the exception of wanting to point out that we did hand out an amended draft of the development standards and as Mr. Mulcahy said, we agree with virtually everything with the exception of the one development standard which does want to put a limitation on the number of access drives along Monterey in the development standards that staff is recommending, support of, we do have a limitation of four. I think that goes along with again, we do feed to balance, you know, this is off a major roadway. There are some, you know, operational concerns with you know driveway after driveway. Also, you know, creating an environment that balances the needs of the pedestrians accessing this site. As well as the cars. It is car oriented. However, we can do things from a development standard standpoint, you know, bring the buildings forward, they do have the opportunity to park it only at 1 for 2.25 because of the amount of square footage. So there is an opportunity further down the road at the permitting stage to take the 90 to 100 excess parking spaces and do something more creative with that. Help out with the area of the trail. But again, just wanted to point out that staff does feel strongly about the limitation on the access drives but again, you know, that being the only thing that we've really disagreed on, I think that's a pretty good position that we're in here with this development.

>> Commissioner Jensen: Thank you staff. Commissioner Bit-Badal. Would you like to add to this?

>> Commissioner Bit-Badal: Excuse me. Yes, I would -- with this I would like to put the motion forward, first is for the EIR. Number A-1, is to certify the EIR as it has been completed in compliance with the -- with and conforms to the requirements of CEQA. And that the final EIR reflects the city's independent judgment and analysis. The Planning Commission further directs staff to forward and present the certified final EIR to the city council for review and consideration.

>> Commissioner Jensen: Thank you. There's a motion and second. Would you like to speak to your motion on the EIR?

>> Commissioner Bit-Badal: As it has been stated by staff there is no significant impact.

>> Commissioner Jensen: Thank you, except for greenhouse gases which is mentioned.

>> Commissioner Bit-Badal: I understand that, yes.

>> Commissioner Jensen: Okay, is there any comment from the commission? Okay. If we may vote by light. And that motion passes unanimously. With commissioners Kamkar and Kline absent. Next step, on our Monterey corridor discussion, is a general plan amendment, Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Great, with that I would like to put a motion forward, as stated by staff, consider the environmental impact report in accordance with CEQA, recommend approval to the city council, a general plan amendment request to change the San José 2020 general plan land use transportation diagram dissention from general commercial and heavy industrial to combined industrial/commercial on a 19.75 gross acre site as recommended by staff.

>> Commissioner Jensen: Thank you. Is there a second? There is a motion and second. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Could I get some clarification on what the 2040 plan for this area looks like?

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

>> I think we mentioned that in the staff report, that actually, 2040 does identify this as reality the combined industrial-commercial. So you know, we're -- it's pretty much in conformance with 2020 because it's commercial and industrial. But 2040 really takes that and sees the opportunity to go either direction because they are both jobs and revenue generating uses. So it proposes a combined industrial-designation for the site.

>> Commissioner Cahan: So and the reason why I ask is because when I first came on the commission, the discussion was not to convert industrial lands. And so to see such a big conversion in an area that it still continues to be heavy industrial, light industrial, I was concerned about losing that land as we have lost many pieces in the

past. The project is good and I'm not saying anything about that. It's just specifically the land designation that concerns me about changing it. So I wanted to know if the 2040 task force had already really envisioned that, and if there was perhaps some other area that the 2040 task force had looked at heavy industrial, light industrial, to counter losing this land at all.

>> Laurel Prevetti: If I may Madam Chair.

>> Commissioner Jensen: Please.

>> Laurel Prevetti: As you know the envision 2040 task force is very much concerned about job generation in our city and in fact embraced all of the provisions regarding employment land preservation. There are opportunities throughout the proposed general plan for more job growth in various locations within the City of San José. And we are using the combined industrial/commercial designation more generously in the 2040 plan than we are today. That it will have that flexibility, in fact, later on in your deliberations you'll be considering the planned development zoning, and you'll see in the development standards the acknowledgment of the possibility for light industrial uses. So again, the proposal before you tonight tries to maintain the job generation not only for commercial but also for industrial. So we felt that this was, in fact, consistent with the existing general plan, as well as the direction for the new one.

>> Commissioner Cahan: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Seeing no further speaker lights may we vote by -- I'm sorry. Please do.

>> Commissioner Bit-Badal: To my motion, that is. I really appreciate your comments, Commissioner Cahan. I just also wanted to point out that this certain zone was surrounded by general commercial and also combined industrial commercial. So if it had been surrounded by heavy industrial, that's true, that could be undue burden to the existing industries but it's not at this point and will create the extra taxes that the city needs.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. Thank you very much. And that motion passes unanimously. With commissioners Kline and Kamkar absent. PDC 10-026. Planned development zoning to Rezone the light industrial and allow demolition. Commissioner Bit-Badal.

>> Commissioner Bit-Badal: I think this is my last motion for this evening. I would like to place a motion forward as recommended by staff, consider the environmental impact report in accordance with CEQA, recommend approval to the city council, a planned development zoning to rezone from LI light industrial and HI heavy industrial zoning districts to CG (PD) planned development zoning district to allow the demolition of three existing structures and construction of up to 257,296 square foot of commercial buildings on 19.75 gross acre site as recommended by staff.

>> Commissioner Jensen: Thank you. Is there a second? There is a motion and second. Would you like to speak to your motion.

>> Commissioner Bit-Badal: Thank you, Madam Chair. Yes, as we have had before, generating jobs, and most specifically bringing sales tax revenue to the city is extremely important. This particular project will comply with the proposed envision 2040 general plan as staff has indicated and conforms with the land use goals and policies of the current general plan, San José 2020. As stated earlier I would love to see some of the historic aspects of the previous business, incorporated. I am a huge believer that a lot of the good things do happen when you sit down with staff and work out the details of the project. I'm confident that will occur. In terms of the of course runoff, I would love to see more forest parking lot and incorporation of more vegetation, as it were, by Monterey corridor. And I really appreciate the trail aspect of it, as well. I thought that was a nice touch and great cooperation. With that, I will end my last motion. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Bit-Badal. I would also like to say I think this is a -- sorry, Commissioner Abelite.

>> Commissioner Abelite: I have a question for staff and then depending on the answer I want to go further. I want to talk about the driveway issue and the rub between applicant and staff. By voting on this zoning are we committing to the driveway count one way or the other?

>> Commissioner Jensen: That is the staff recommendation.

>> Yes, staff recommendation is limitation of four along Monterey corridor.

>> Commissioner Abelite: So the drawing up on the board would not be correct?

>> That one has five.

>> Commissioner Abelite: Because I don't have a particularly big problem with multiple driveway --

>> We have staff from Public Works that can speak to the reason of why that is. Karen Mack from --

>> Commissioner Abelite: I would like to hear that please.

>> Thank you commissioners, Karen Mack from Public Works. If you could put the site plan up again I'd really appreciate it. The project in proposing a full access signal along Monterey highway at cottage grove. It is the safest way to enter and exit a 40 mile-an-hour highway that carries -- it's a major commute route for San José and it carries a great deal of cars. Entering a 40 mile-an-hour street, and multiple driveways that close, create some safety concerns on a few notes. The project has done a wonderful job of creating a safe, signalized access, with full pedestrian facilities connecting the neighborhood, across Monterey highways. They're you can constructing a bus stop just south of that senate, they're linking it to a path just South, and in the hopes that Monterey highway will evolve to a roadway that will carry more pedestrians, encourage more transit riders, more park goers and this center will benefit and hopefully become very successful. The driveways pose problems. It's a potential safety, conflict to peds. The bus stop which is in front of the site, it is our desire to limit the conflict, for a ped, especially

on Monterey highway, not the most comfortable place to walk. The developers pointed out to us that people don't walk on Monterey highway. We hope to change that or the current general plan that we are working on that now, hopes to encourage all of those things and kind of balance some of the decisions we've made. In addition, the traffic report does a signal warrant study at Monterey and Cottage Grove. It actually attributes very little if not no traffic to those other driveways. The warrant is satisfied and it is adequate that signal to serve these sites along Monterey highway. So the other driveways are a matter of convenience which is not to be taken lightly, probably contributes to the success of the shopping center. However, from the staff standpoint it is our desire to balance and create a multimodal environment, especially along Monterey road. And if I might add one more thing, is the more driveways you have, the less street trees you have. And for Monterey highway those street tree buffer between the roadway and anybody on that sidewalk, a beautiful 12-foot sidewalk by the way, creates more of a feeling of safety. Those are the reasons why we would like to limit them to a what we think is a very reasonable 4 along Monterey highway.

>> Commissioner Jensen: Thank you, staff. I would like to also say I am very excited about this project, I think it fills a gap down on Monterey Highway, and as Mary indicated, she will be walking kind of a long stretch for her, but if she can do it so can her neighbors. And I really appreciate the harkening back to some of the historic designs that were in the area previously and perhaps you could put that brick to good use. And I'm especially grateful for the incorporation of the three creeks trail. That's going to be a major asset to the community in the future. But I would like to see more buildings, and more articulation. And I'm glad we're getting rid of one of the driveways. And with that may we vote by light? And that motion passes unanimously. With commissioners Kamkar and Kline absent. And one other thing Mr. Mulcahy, congratulations getting everybody here speaking in the same tune. Keeping them here, yes. Okay, is there a motion to close the spring 2011 general plan hearing? Is there a second? There's a motion and second. All those in favor? Thank you. Petitions and communications. Public comments to the planning commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed or placed on an agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a

subsequent meeting, or directing staff to place the item on a future agenda. Seeing no speaker cards, we'll move on. Referrals from City Council, boards, commissions or other agencies.

>> Laurel Prevetti: There are none.

>> Commissioner Jensen: Thank you. Good and welfare, report from city council.

>> Laurel Prevetti: Very quickly. The city council has been conducting public hearings on the proposed budget. This includes the capital improvement program. Under another separate communication, you should have received the memorandum that summarized your recommendations to the city council and that was part of their deliberations. In terms of land use items we did receive two appeals for offsale of alcohol that were subject to your public hearings, one for the Mi pueblo market, and one for the Walgreen's. The actions on those two items were deferred from the council's May meeting and will be held sometime in the near future. Once those are acted upon we'll provide you an update. Thank you.

>> Commissioner Jensen: Thank you. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan.

>> Commissioner Cahan: The committee has not met.

>> Commissioner Jensen: Thank you. Envision San José 2040 general plan update process, Commissioner Kamkar. Is not present. Do you have dates on those?

>> Laurel Prevetti: We still aren't sure whether we need to convene the task force in June, you'll get communication on that and we do hope to bring the task force together in August.

>> Commissioner Jensen: Thank you, review and synopsis of the May 11, 2011 commission meeting. There is a motion and second. All those in favor, thank you. Election of chair and vice chair for fiscal year 2011-2012. Don't we usually let people know that this is going to be on the agenda?

>> Laurel Prevetti: By posting it on the agenda, it is available for you to discuss. We do have two absences tonight. We typically like to have this handled before the end of the fiscal year.

>> Commissioner Jensen: If I could defer this to the next meeting, there's a motion and second to defer this to June 8th, all those in favor? Thank you. Subcommittee formation reports and outstanding business. Seeing none. Commission calendar and study sessions. We do -- director?

>> Laurel Prevetti: Yes, thank you. Wanted to first acknowledge that while Kim Walesh was originally available on June 22nd, after informing her of that date, she's asked that we reschedule the study session on demographics and economic trends. She believes that she's generally available in the month of July and August, if the commission would have a different preference.

>> Commissioner Jensen: If she needs to move it then we can move it. We move it to July, Commissioner Platten?

>> Commissioner Platten: I'd rather move it back after summer because we've got folks who take vacations. I usually am gone part of July and part of August. I think it's better to say let's wait until after summer and schedule it in the fall where we'll be able to nail down a good date.

>> Commissioner Jensen: So talk to Kim and ask her what's good for her in September-October time frame.

>> Laurel Prevetti: Great, we'll be back with another suggestion for after the summer season, thank you.

>> Commissioner Jensen: And we have another item.

>> Laurel Prevetti: I just wanted to acknowledge through separate communication the commission has been very gracious about perhaps an extra meeting in mid June. As far as the communication I got back we do not have a quorum for either the 15th or 16th of June. So your next regularly scheduled meeting after that time, June 22nd would be the time when the medical marijuana ordinance would come for your recommendation.

>> Commissioner Abelite: Is that so big we can't fold them into our regular agenda hearings?

>> Laurel Prevetti: It is already you know again for lack of a quorum there is no need for an additional meeting to your June calendar. Your June 22nd meeting will have a fair number of land use items and now also it will have this ordinance.

>> Commissioner Abelite: Oh, it will.

>> Laurel Prevetti: Yes.

>> Commissioner Jensen: The challenge, if counsel could go back through what the challenge is.

>> The challenge is the mandatory circulation period under CEQA. From the time it was put into circulation, it needs to circulate for 20 days. That 20 day period is up after June 8 but before June 22nd. If this came up on your June 22nd agenda, it would be too late to get to a council meeting in June. So that's why I think the director was hoping to schedule a meeting around June 15th. It would allow MMD circulation period to complete and for the commission to hear the item and then still make a city council meeting in June. But I understand that schedule has been revised.

>> Commissioner Jensen: So what that means is city council will hear it in August.

>> Laurel Prevetti: That's correct. And again, we were asking something extraordinary of our commission, and I don't want the commission to feel badly at all. If you can't be here you can't be here, but thank you very much, though, for responding to the request. We appreciate it.

>> Commissioner Jensen: Thank you, and I'm sure I speak for all of us, when I say I'm not that unhappy we don't have three meetings. So where are we? I believe that concludes this meeting, thank you all very much.