

The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

Planning Commission Meeting  
Wednesday, June 23, 2010

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, June 23, 2010. Please remember to turn off your cell phones. Parking ticket validation machine for the City Hall garage is located at the rear of chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Please 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 a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, or discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all Planning Commissioners are here. 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, to continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions to be heard by the Planning Commission no later than 11:00 p.m. Deferrals. Item A. CP-09-064 and ABC 10-001. Conditional use permit and determination of public convenience or necessity, to allow a drinking establishment, and the expansion of off-sale alcohol at an existing 462 square foot retail establishment in the DC commercial zoning district, and Item B, CPA 97-044-01, conditional use permit to allow an expansion of a truck parking lot and a 10,000 gallon diesel fuel tank on a 10.9 gross acre site in the IP industrial park zoning district located on or at Northwest corner of Rue Ferarri and Enzo Drive. Staff, do you have any –

ORATOR: No. Again, both of those are being recommended for deferral until July 14th.

COMMISSIONER JENSEN: Thank you, staff. May I have a motion? There's a motion and second. All those in favor please say aye. Opposed, thank you, that passes unanimously. On the consent calendar. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission,

staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. Staff.

ORATOR: Yes, staff would just like to update on item 2 A. Which is a planned development zoning at Foxworthy and Almaden. We did receive an e-mail today, from somebody asking the environmental and the traffic. The circulation period for the ND has closed, but if it's appropriate, I can respond to the questions for the benefit of the commission. There was a request asking about the traffic queuing because of the limited access out on to Foxworthy and whatnot. All of the traffic was reviewed internally by our traffic consultants. The access point off of Foxworthy is adequate to accept the queuing while cars wait to go northbound onto Almaden. And beyond that, there really wasn't any environmental related questions. So with the exception of that, staff has no updates to the items on the consent calendar.

COMMISSIONER JENSEN: Thank you, staff. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Madam Chair. Move approval of consent calendar as recommended by staff.

COMMISSIONER JENSEN: There is a motion and second. All those in favor, thank you. And I see we have a special guest leer this evening. If commissioners Campos and Zito would please join us at the podium in front.

ORATOR: Councilmember Kalra: Thank you, Chair Jensen. My name is Ash Kalra, councilmember and former Planning Commissioner, where I served with all three of these individuals to my right. I'm here today for a special presentation to commissioner Jim Zito, thanks to Xavier Campos. We're losing a lot of talent and service to the City of San José. Talking about 16 years total? That's a lot of time, energy and dedication to the city. And I think more importantly, as far as I'm concerned, is knowledge, you know, that these two individuals, both of whom I had the privilege of serving with for two and a half years, certainly have gained a great deal of experience and knowledge, I think has benefited this city tremendously. And so it's a great pleasure, and honor, for me to have the opportunity to recognize in small part their contribution to our great city. And so I'm honored at this time to present Mr. Jim Zito with a commendation on behalf of the City of San José.

COMMISSIONER ZITO: Thank you very much.

ORATOR: Councilmember Kalra: And Mr. Xavier Campos. And I'm sure that this is not the end of your service, if you look at both the commendations they talk about other ways that both of you have served. I think your service goes far beyond the walls here in City Hall and I know that you'll continue to be a tremendous asset to the community. So thank you both.

COMMISSIONER JENSEN: Councilmember Kalra, former commissioner Kalra, and former chair Kalra is a tough act to follow. So I'm just going to keep this very brief so we can get on with this evening's business. I've had the pleasure of serving with these fine gentlemen for the past three years. And their input and their advice along the way has been very helpful to me, and I'm very, very grateful to them, and it's going to be a loss to the commission to have them both leaving at the same time. Commissioner Zito, on behalf of the entire commission.

COMMISSIONER ZITO: Thank you very much.

[applause]

COMMISSIONER JENSEN: Commissioner Campos on behalf of the entire commission.

COMMISSIONER CAMPOS: Thank you.

[applause]

COMMISSIONER JENSEN: Thanks, all. Thank you very much and it is going to be a loss to us to have these two fine commissioners leaving us this meeting. So we'll try to keep this meeting as challenging as possible. Please keep the questions pointed to them and keep them on their toes. 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. First item is item 3.A. CP09-042. Conditional use permit to demolish existing gas station buildings, construct a new 3200 square foot pump canopy and 2400 square foot retail building with 24-hour use and offsale of alcohol on a 1.28 gross acre site in the CP commercial pedestrian zoning district located at 4610 pearl avenue. Staff.

ORATOR: Thank you. Again, this is a conditional use permit for the demolition of an existing gas station site, and the construction of a new retail building with gasoline service pump. The request also includes 24 hour use as well as offsale of alcohol. Staff would like to clarify the recommendation. In the staff report it is correct however on the agenda it is incorrect. Our recommendation is for approval of the proposed conditional use permit for the demolition and the reconstruction or new construction of the gas station, pump and retail buildings. Staff is not recommending approval of the 24-hour use and the offsale of alcohol. Staff has completed its analysis of the proposed project in conformance to regulations and policies. The applicant may do additional outreach should the project be deferred, however staff's recommendation will remain the same. As far as the alcohol, since there are existing offsale alcohol establishments adjacent to the subject property and the proposed offsale of alcohol at this location would only provide more of what already exists in the neighborhood without providing a variety of shopping opportunities. To benefit the community, staff does not support the approval of an offsale of alcohol establishment. With respect to the 24 hour use, the 24-hour use policy states that late-night uses should not be approved unless the facility could operate without detriment to nearby uses or the general welfare of the surrounding area. 24 hour retail establishments such as retail stores extend to cause problems with regard to higher traffic volumes, quick turnover with vehicles left running and radios left on, higher noise generating uses, they contribute to litter in the area and customers consuming food and beverages on the site. This site is surrounded on pretty much two sides been residential in close proximity and it would be located less than 300 feet away from the single family residences. So in our mind it does not conform to the 24-hour policy and we are not recommending approval of that. But again, with respect to the gas station portion of it, it's an existing gas station site. It does serve the community from that standpoint and we are recommending approval of the demolition of the existing development, and construction of the new site plan for a gas station. That concludes staff report.

COMMISSIONER JENSEN: Thank you, staff. Is the applicant, Mr. Fred Stern, here? Thank you. You may have up to five minutes. Please state your name when you come to the podium.

ORATOR: Good afternoon, members of the commission. My name is Fred Stern and the architect and the applicant for this dismissal. And I first would like to point out that we would prefer to defer this. We had contacted staff, sometime ago, and mentioned that. I have e-mails that were sent to me from Avril Beatty who is our planner on June 2nd where she was asking for additional information from Public Works and said we could not go forward to this Planning Commission meeting until those were submitted. I have an e-mail from her on June 10th where she first told us about the actual final staff recommendation, and the fact that there was a certain amount, quite a bit of protest concerning the 24-hour use, and mostly for the offsale of liquor. At that time, we asked her that we needed to find out what the protest was, and set up meetings with these people. And I did not receive a link from her telling us how to get this. I never received any information about the fact that we were scheduled for June 23rd personally. They sent it to some other address, I never got it and on June 21st I got an e-mail basically telling me what the protest was from the neighbors. We have in an e-mail as of this morning actually, I had received a name and -- of both the neighborhood association and the head of that association. And, you know, we had said that we would love to meet with them, and they had suggested that if this does get deferred, that we have a -- set up a meeting for their next neighborhood association meetings which would be July 28th. I would be happy to speak about our proposal. We would prefer to defer this but I know that a lot of people have come here to speak. So let me go over a few of the items very, very quickly. Number one, this is a 24-hour operation right now. It is gas sales. There is a cashier and a bathroom, that backs up to the area where the residents are. We are proposing, number one, to take what is a fairly unsafe area that is -- just has a cashier counter there, that has one less dispenser than we are asking for. As a matter of fact, had the cashier counter not been there, the cashier kiosk, there would have been another sixth dispenser in that area also. We are asking to remodel this, to make this into a better-looking corner. We will meet whatever requirements staff wants us to do as far as the look of this building, you know, they had sent us basically an example of what had been approved in San José before. We could match that exactly. But we felt that a more modern look to this you know might lend itself to a more contemporary look. What they had sent us is just sort of a southwestern territorial look. If that's what staff wants, if that's what the neighborhood wants, we'd be happy to do. We are making the traffic in the area better. We're cutting off actually shutting down a driveway on the west side. I don't know if there's an overhead that I can show these things on. But we're closing off the driveway that is closest to pearl, on Branham, for better access and safer access for the corner. We are building a building that, as I said, we will make as nice as we can to basically blend in, if we have to, with whatever anybody wants. The building's shape is essentially what was asked for by staff, as far as the exterior look. Let me first show what the existing area looks like. Now, I don't know how to work this, but (inaudible) right here.

COMMISSIONER JENSEN: And Mr. Stern if you could speak into the microphone so that we can hear.

ORATOR: Yes.

COMMISSIONER JENSEN: Thank you.

ORATOR: This is the existing condition. This is along here is pearl and Branham. And what there is right now is, there is a canopy with a kiosk in that location right there. And the bathrooms are, restrooms are in this corner right here, which backs up to a drive which then has a residential area to the east. We are not bounded on three sides by residential. We have residential on the east side of our property. We would be willing to enhance the fencing that was there, the landscaping that is there right now is very lush. We would do anything that the neighbors wanted. As it is right now, this drive that is actually right -- the right direction, yeah -- right here is the one we would be closing off. This is actually a safety hazard and we want to get rid of that as far as the new location.

COMMISSIONER JENSEN: Thank you, Mr. Stern. Mr. Stern, your time is up. You will have five minutes at the end but I would like staff to respond and then we also have a couple of questions from commissioners as well. So if you could just hang on.

ORATOR: We were made aware of the request for deferral at the point which that was made aware to us. This project had been noticed so indicated that that needed to be requested of the commission. It's always the purview of the commission if they want to defer. But there are a number of people here, and since it had been noticed, it may -- staff thoughts on that is to hold the public hearing and then, you know, decide whether or not you want to continue it or whatnot. We do have records of having mailed the notice to the address on buckeye in Arizona. Again, there is records that we mailed it to the 3159 or whatever the number is in buckeye in Phoenix, Arizona. Again, just on those things, I'll respond more substantively, you know, once the hearing is, unless you want me to respond to the 24 hour part now, but it may be more appropriate to wait until a lot of more issues are discussed.

COMMISSIONER JENSEN: Thank you, staff. And Mr. Stern, we have two questions from commissioners. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Madam Chair. Just so I have it clear, you are currently allowed to sell fuel 24 hours. So my question will be, if we move forward, and approve the project, but give restrictions to where you have to cease the mini mart operations at midnight or whatever the city requires you to, but continue to still sell fuel, would that work for you?

ORATOR: I'd have to really speak to the owner here. In this market right now it's very difficult to make this thing work with either one of those not being available to us 24 hour, or the offsale of liquor. You know, the end result is, the project may just stay the way it is, and be an eyesore on the corner that we can't do anything about. I do want to mention anything, I have an e-mail from Avril Beatty that says --

COMMISSIONER CAMPOS: You know, that's okay. I wanted you to answer that question for me. Thank you.

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

COMMISSIONER ZITO: I'll defer my questions until later, thank you.

COMMISSIONER JENSEN: Thank you, Commissioner Kline.

COMMISSIONER KLINE: I noticed here that -- I was just out there today and got gas at the gas station. I see there's a 7Eleven right next to it and there's existing cross-site access from 7Eleven to the gas station. And according to the plans, it looks like you have plans to close that out?

ORATOR: No, that is going to stay exactly the way it is. Where it says parcel, that area is going to stay exactly as-is. The access will still continue --

COMMISSIONER KLINE: So you'll be able to get from the 7Eleven to the gas station?

ORATOR: Yes.

COMMISSIONER KLINE: Thank you.

COMMISSIONER JENSEN: Thank you, Mr. Stern. That is all the questions we have. I'm going to call the speakers. We have a number of speakers, so if I -- I'll call you up in groups of three, and if you could please come step to the bottom of the stairs, that would be great. Brett Heppes, Gary Steinkemp, Amar Koli, and please forgive me if I brutalize your names. I'm very, very sorry for what I do. And if you could introduce yourself, Mr. Heppes.

ORATOR: Certainly. Good evening, thank you. My name is Brett Heppes, I'm the acting president of the Branham Homeowners Association. We are an association of 315 homes, town houses to the East of this proposed location. We don't have a problem, and in fact we welcome the fuel establishment that is there now. Yes, it's 24 hours and we don't have a problem with the permit to operate 24 hours. In fact we wouldn't have a problem with a convenience store that operates 24 hours. But we are very concerned that, with the existing sale of alcohol at the 7Eleven and the liquor store adjacent to this property, that the additional sale of alcohol would cause problems and detract from the neighborhood as a whole. And it has caused quite a bit of worry from the seniors and families with children in the neighborhood that the gang element may be heightened in the area. We've already had problems with that. And the additional -- the addition of yet a third establishment that's selling alcohol is just something that our homeowners and our families and seniors just do not like. Thank you for your time.

COMMISSIONER JENSEN: Thank you. We have a question for you. Commissioner Zito.

COMMISSIONER ZITO: Just a quick question. You had said you didn't mind the mini mart or the gas availability, excuse me, that you didn't mind the mini mart or the gas availability 24 hours. If -- and I'm not sure if we can do this but if it were possible to limit their alcohol sales to let's say 11:00 or midnight and not have 24-hour availability of alcohol would that make any difference to you?

ORATOR: That probably would allay some fears of our community. But with the 7Eleven just down the street, and the liquor store just down the street, although the liquor store isn't 24 hours, we don't see a great added value to it.

COMMISSIONER ZITO: Does the 7Eleven offer 24 hours to the best of your knowledge?

ORATOR: It does.

COMMISSIONER ZITO: And it does sell alcohol?

ORATOR: Yes.

COMMISSIONER ZITO: Beer and wine I guess?

ORATOR: Beer and wine. I don't know that the proposal has anything more than beer and wine sales.

COMMISSIONER ZITO: Thank you, Mr. Heppes.

COMMISSIONER JENSEN: Thank you, that's all the questions.

ORATOR: Thank you for the tuned. Gary Steinke. I'm treasurer of the Branham homeowners association, as Brett has said. We are very concerned about another establishment selling alcohol in our neighborhood and we're very supportive of the staff recommendation. There's obviously some differences in opinion. I personally don't see any need for a convenience store open 24-seven when we have big grocery stores in the near area. I shop at that gas stakes. It's a great gas station. So improving the gas and having a mini mart there open until midnight is great. I'm personally not against them selling alcohol because we've got a liquor store is that's only 50 feet away probably that's open until 10 or 11. If you have this store sell liquor after hours, if you sit out it's extremely noisy. Anyone that needs to buy alcohol after midnight raises concerns for us as far as our community. So we would really support the staff's recommendation. Thank you.

COMMISSIONER JENSEN: Mr. Colle, as you approach, I'm going to call the next three speakers. Mr. Steinke, we have a question from Mr. Zito. I'm sorry, Mr. Kollé, we have a question from Commissioner Zito.

COMMISSIONER ZITO: I'm sorry sir, I want to understand your position. What is more of concern, the 24-hour use or the alcohol use?

ORATOR: Most important is the alcohol and second is the 24-hour use because of the noise.

COMMISSIONER ZITO: My question is the same as Mr. Heppes. If we limit the alcohol sale for something other than 24 hours, from ten or midnight, would that be somewhat acceptable?

COMMISSIONER JENSEN: Thank you, Commissioner Zito. Before you start, Chris Scott, Linda Alf, Brittan Alwal.

ORATOR: Maybe I shouldn't be speak now, I represent the owner of the project.

COMMISSIONER JENSEN: You have two minutes, sir, please feel free.

ORATOR: I'm obviously for the project. Mr. Stern is going to be speaking about the technical aspects and the use and so forth. But if we do not get the 24 hour use we will not get funding for this project. You understand the economic climate that we're in. So that is something that we cannot live without. The rest of the stuff, we still need an opportunity to talk to the homeowners, and like Mr. Stern said we really didn't know about this until yesterday. We got all the information which was the 21st. We flew down this afternoon so we could be here. And that's why we actually asked for the deferral, to be able to talk to them and try and see what we can work out with the homeowners. Thank you.

COMMISSIONER JENSEN: Thank you and we have a couple of questions from commissioners for you. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. I want to make sure I'm clear what you just said. You said if you didn't get the 24 hour use, by that you mean the convenience store or also the sale of alcohol?

ORATOR: I'm sorry, focusing primarily on the convenience store at this stage. There is a law of diminishing returns when you make an investment which is close to \$3 million and it needs to make sense to the bank and to us.

COMMISSIONER KAMKAR: Of course. What you are asking for is the convenience store, 24-hour alcohol possibly?

ORATOR: That's right.

COMMISSIONER KAMKAR: I understand, thank you.

COMMISSIONER JENSEN: Thank you, Mr. Colle. Thank you.

ORATOR: Hi, my name's Chris Scott. I'm a resident also in the Branham homeowners association. I live right there on Pearl. My concerns about this whole thing are number one noise. There's constantly garbage in front of this house from the 7Eleven and so on down the street that's already there, hotdog containers and so on, so forth. Also I have found on several occasions people sleeping and drinking on the side of my house so that's another concern for me. And the noise, also. And that's basically about it. That's basically all I came to say. Okay? Thanks.

COMMISSIONER JENSEN: Thank you.

ORATOR: Hello, I'm Linda Alf. I live on Meadowhurst, between us and 7Eleven, where the other people seem like they're a little further away. So the added noise, it sounded like he wants to close off a driveway, which means that would create a driveway from Branham all the way to 7Eleven, so there will be a constant drive. I'm worried about safety. About four houses down, there was a break in, where someone pulled up to the back of the fence and went over the fence and burglarized the house back over the fence. This would create an area where you wouldn't be able to see like you do now because right now it is wide open. More garbage because of a 24 hour store. Garbage trucks, noise, everything that goes with us. I really want to sleep at night and I don't feel I'll be able to with a 24-hour store.

COMMISSIONER JENSEN: Thank you, Ms. Alp. I'm sorry, I have a question for you from Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair, I'm sorry to bring you back. Again my concern is, we're talking about this particular application. I want to understand how many of the problems already exist versus the number of problems this may add to it, right?

ORATOR: This will add more noise more garbage more garbage trucks more cars going by the fences, the other way, they could have went through the other way, now it looks like they're closing off, people can go behind the fence and people will be able to park behind there. If I hope that if this does pass that there would be another meeting where we could talk about each issue and actually the layout of it, the layout I don't like it.

COMMISSIONER ZITO: So if we deferred this item for the owner to work with the residents in the area would you find yourself participating in that discussion?

ORATOR: I wouldn't want a store past 10:00.

COMMISSIONER ZITO: My question is the applicant asked if he would defer this, so he could work with the community on these issues.

ORATOR: I would like that. Right now it seems like the homeowners association and nobody on Meadowhurst.

COMMISSIONER ZITO: So you would like this meeting?

ORATOR: Yes.

COMMISSIONER ZITO: There is a fence --

ORATOR: There is a fence so no one could walk in back of it. It wouldn't be like that with the gas station. That's why one person got burglarized. Hopped over the fence.

COMMISSIONER ZITO: There is a security issue there that you are concerned about?

ORATOR: Yes.

COMMISSIONER ZITO: Thank you very much.

COMMISSIONER JENSEN: And Mr. Gruer, before you come up I'd like to call our final speaker, Los Hernandez.

ORATOR: My name is Bittan grayall, I'm the owner of the liquor store. I'm against this project for several reasons. First of all, I put my hard earned money towards my business. We already have two similar businesses right next to each other, where we are competing and trying to make a living. Bringing exact type of business wouldn't do any good for the neighborhood. It will reduce the income on the -- on my part, and the 7Eleven, and it could possibly probably put me out of business, too. Secondly, also, a lot of the customers that come to my store, they are very concerned about it because of the children, because of the problems, that are already there, with the alcohol that you know, we are dealing with. They don't want to see no more problem. There was petition going against the project and all this that they probably submitted to the city. And the other thing is, you know, we get more like you know, homeless and the bum type of people, that get crowd there, when they have more opportunity to go door to door, lets say I check the I.D., I had others selling alcohol, they're next door. Now there's third opportunity. There's more opportunity for the youngster to buy alcohol, there's more opportunity for all the guys that could create a trash, create a bad impression for the neighborhood. And also, obviously, there's traffic as well. So we just against it.

COMMISSIONER JENSEN: Thank you. And we do have a question from Commissioner Zito for you.

COMMISSIONER ZITO: Thank you again, Madam Chair.

COMMISSIONER JENSEN: Mr. Griel, we have a question for you.

COMMISSIONER ZITO: So let me understand. So you own and operate a liquor store.

ORATOR: Right.

COMMISSIONER ZITO: Next door, close by, right?

ORATOR: Yes.

COMMISSIONER ZITO: So you sell hard liquor?

ORATOR: Right.

COMMISSIONER ZITO: Your hours of operation are what now? What are your hours of operation? Your store is open until away time?

ORATOR: I open from 7:00 in the morning to 11:30 the weekdays and the weekend we're open until 1:30. Up until 1:30 in the morning.

COMMISSIONER ZITO: So people are coming to your store and complaining about all the problems that alcohol brings to the neighborhood.

ORATOR: Yes.

COMMISSIONER ZITO: And you're concerned about the gas station?

ORATOR: Yeah, well, the complaint from the neighborhood is that, well, we obviously, we need liquor as part of the life to enjoy or celebrate, whatever that is, to bringing more and more liquor, what we already have wouldn't help is their concern.

COMMISSIONER ZITO: Do you sell single serving cans and bottles as well as six packs and so on?

ORATOR: Yes.

COMMISSIONER ZITO: You do. Thank you very much.

COMMISSIONER JENSEN: Mr. Gruel, what did you say the name of your business was?

ORATOR: The wine fountain.

COMMISSIONER JENSEN: Are you a primary wine store?

ORATOR: Wine and liquor and beer but we have all three.

COMMISSIONER JENSEN: Okay, thank you.

ORATOR: You're welcome.

ORATOR: Hi, William Ng. My concern again of the rebuilding of the station is as a worker of 7Eleven I had a very bad experience with the kids. And those kids tried to steal cans of beers or anything. And I think it's not going to be good for all neighborhood. And for the homeless, to many things. So my concern is about the kids.

COMMISSIONER JENSEN: Thank you, sir. If you could introduce yourself?

ORATOR: I'm sorry?

COMMISSIONER JENSEN: Como Seama?

ORATOR: Carlos Hernandez.

COMMISSIONER JENSEN: If the applicant would come up, you have up to five minutes.

ORATOR: If we could have a side by side, what is existing here on this overhead right here is the existing conditions. Five minutes goes by very fast.

COMMISSIONER JENSEN: Our technician is a magician.

ORATOR: I've tried to do many things to mitigate any kind of problems with the neighborhood. I wanted to have -- yeah. No, that's the one -- I want to keep this one here, too, the one I had, please. This is the existing condition right here.

ORATOR: What do you mean?

ORATOR: This is perfect. This is perfect. Thank you. This is the existing condition right here. If you'll notice --

COMMISSIONER JENSEN: I'm sorry, if you could speak into the microphone. Thank you very much.

ORATOR: Sorry. This is the existing condition right here. If you notice the pumps are aligned so when cars are parked at the pumps they are facing directly to the residential neighborhood to the east of us. You can see what we've done in the overhead here that I can't really point to is we're placing the building, the 2400 square foot a.m.-p.m. on the South side of the property facing away and an empty side on the east side, so there's nothing that is open that's facing towards the residences. We've also turned the canopy basically 90 degrees so when cars are parked at the canopy, the engine noise and the light, and everything, will not be pointing towards the residence. We would love to meet with the residents to work this out. I mean, we really do need the 24-hour operation. We are doing things, I think the existence of a new convenience store, rather than an area that is basically -- has no real security in it, once we have the store up, you know, there's not going to be -- it's going to be quiet, more quiet coming down towards the South, all of the noise are going to be pretty much moved towards the corner itself at Pearl and Branham. We have more security. We have more lighting that will not bleed over into the neighbors. We'll meet all the night-sky owners and what we'll have is more security and basically, the upgrade of are an Arco a.m.-p.m. will hold the other people in the area to a higher standard and we will help to basically have better security for the area and less problems in the area. We would ask for the deferral, so that we can meet with the residents, work something out. The 24-hour operation is essential for us. The beer and wine, you know, is something that we can look at. I mean even limiting the hours on the beer and wine or something like that. All we're asking for is beer and wine. We do not sell any hard liquor.

COMMISSIONER JENSEN: Thank you. We have question for you from Commissioner Zito.

COMMISSIONER ZITO: Thank you again, Madam Chair. So there were a couple of issues brought up about a security fence and I want to try to understand that a little better from your perspective. One of the

speakers came up and said that there's a fence currently behind the 7Eleven but they didn't feel it was going to exist –

ORATOR: The 7Eleven is actually to the South of us and that roadway that we were accused of putting in the access to 7Eleven is there. It is there right now. It's existing and what happens is the 7Eleven backs directly up to the existing residences there, and it's closer than we are. And –

COMMISSIONER ZITO: So do they have a double fence or something like that?

ORATOR: There is a fencing along the East side, with a large amount of planting. It is very heavily planted along the East side. Where we are, but further down, I believe, it's just a fence that's just at the back of the building. It's a zero lot line.

COMMISSIONER ZITO: Thank you very much.

COMMISSIONER JENSEN: Thank you. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. So looking at the I guess the existing slide that you have up, where it says parcel 2, on the drawing, that's the driveway you were referring to, right?

ORATOR: That is the driveway, that is existing and it goes back to the 7Eleven property.

COMMISSIONER KAMKAR: So do you still have access from that site into your site?

ORATOR: Yes.

COMMISSIONER KAMKAR: Okay. So when you said you are closing a driveway –

ORATOR: The driveways we're closing are the drives onto the street where we're closing this driveway here, closest to pearl on Branham. So that it's a safer entrance and exit with the right-turn coming off of –

COMMISSIONER KAMKAR: Sure, so people still have access from there but just not so close to the intersection would be farther away?

ORATOR: That's right.

COMMISSIONER KAMKAR: And the other question commissioner -- my fellow commissioner asked, if there's still cross access from 7Eleven to your site, you were talking about parcel 2? That constitutes the cross access?

ORATOR: Yes.

COMMISSIONER KAMKAR: You weren't referring to parcel 1?

ORATOR: No.

COMMISSIONER KAMKAR: Okay, I'm clear.

COMMISSIONER JENSEN: We have another question from Commissioner Zito. He's making full use of his last night.

COMMISSIONER ZITO: That's right, get full uses our night. Just a quick question, you have 24 hour availability for gas currently, right?

ORATOR: Yes.

COMMISSIONER ZITO: If you know where is the nearest gas station to this site?

ORATOR: I really am not aware of that. I should have probably checked that out but I don't know.

COMMISSIONER ZITO: Maybe a mile give or take? I'm trying to remember myself.

ORATOR: About a mile.

COMMISSIONER ZITO: About a mile give or take. Okay. And I don't know whether they're 24 hours or not. I could ask, maybe staff knows. That's what I wanted to know. Because again we're looking at public convenience and I know if I'm out late at night, gas availability is –

ORATOR: Well, if I do have some more time, there was you know some issues you know concerning things like you know the carbon signature that's here. I mean the idea of convenience stores, and one-stop shops, are to reduce the number of trips that people make. As it is right now if we didn't have beer and liquor you know somebody would come into the a.m.-p.m., they'd go in there, don't you guys have beer? No. They'd go out and they'd go around and they'd go to the 7Eleven.

COMMISSIONER ZITO: Thank you.

COMMISSIONER JENSEN: Thank you sir. I hear a motion to close public hearing.

ORATOR: Second.

COMMISSIONER JENSEN: All those in favor, thank you, thank you very much. Staff would you like to respond to some of the queries that were raised?

ORATOR: Thank you. Again, as our recommendation states, clearly their proposal to, you know, reorient the gas pumps and to place a building is better. The addition of the building fills out the site. You know, this is one of those, I don't remember what era it happened but it's just this free standing canopy with a little kiosk. Fortunately those are kind of going by the way side so we are getting more filled out development on these sites. I think again our greater concern is, yeah, the gas pumps, you can go in and get gas 24 hours. But you add a retail activity and you're going to get more activity than just the gas. That's going to be the draw now. Probably more so than the gas. So there's a little different -- we kind of view it a little differently. And again as far as the alcohol I mean, it's been stated very clearly, you've got two alcohol outlets you know within hop, skip and a jump from this one. So it really is -- is a concern when we're just going to, you know, line them up you know along pearl avenue. Again, just to clarify, there is residential across pearl avenue to the West so it is not just residential to the East. But you can see on the aerial across pearl avenue to the West, it is standard you know, six-plus thousand square foot residential lots. That's pretty much it. I mean it's really the purview of the Commission, if they want

to you know continue this to allow for community meeting to happen and have -- bring the parties together to discuss things. I think with respect to staff's recommendation we're looking at it from the 24-hour policy as well as offsale of alcohol. And I really don't see any of that changing as a result of their discussions. Again, we don't take into economics, we don't you know deal with it from a competition standpoint. We're looking at it as far as do we want a third alcohol outlet lined up along pearl avenue and do we want to add additional activity to this corner, which is you know bracketed by residential uses. So that's pretty much our comments. I'm available for questions.

COMMISSIONER JENSEN: Thank you, Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Madam Chair. So did you broach the idea of allowing them to continue the 24-hour, just fuel sales?

ORATOR: That, I think, came up late in the discussions. Because it wasn't really -- it wasn't really talked about, well we want to do -- we look at it as an overall thing. It clearly, there is an opportunity if you wanted to limit it to gasoline. We didn't necessarily research whether or not the existing 24-hour gasoline service was approved, or had it. So I can't really speak to that. But that is, I think, available to the commission to decide whether or not just a portion can stay open. I would question the ability to, you know, allow offsale of alcohol, but then limit the hours of sale. Because again I think in past discussions it's really we can say where it can be sold, it's really the ABC that determines how it's sold.

COMMISSIONER CAMPOS: Correct. I think what we should just get off the table now is, I'd actually like to continue hearing this tonight and not defer this. I agree with staff, I don't think -- I think the community is very firm and rightly so on their position regarding the sale of alcohol. And I don't think an additional 30 days is going to change that. People took time out of their evening to come and speak on the item. And I think that we should hear it tonight.

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

COMMISSIONER ZITO: Thank you, Madam Chair. With all due respect to Commissioner Campos, I'm thinking there is neutral ground to be met here. Talking to some of the speakers who came up it sounds like there is a compromise that can be reached. It is unfortunate. I would like personally to help make a decision on this but if we do continue it, I won't be here. So be it. I have faith in my fellow commissioners to come to the right conclusion. My question to staff is this: We have the rules for public convenience and necessity. We have the rules for our conditional use permit. And it seems like they're in compliance with all that. I mean, this is more or less a subjective decision, as far as whether we want to add another liquor store, if you want to call it that, or liquor outlet for beer and wine, on this street. But other than that, there's nothing that precludes that, from an ordinance or statute perspective. The second question it could answer is, I was looking for a police report, and police -- you know we usually get those reports from the police, and it says overconcentration, whether they're neutral or opposed or whatever. It may be in the staff report, but I haven't seen that either. So address either of those.

ORATOR: This site is not in the area of overconcentration so it's not subject to Caldera and doesn't require a determination of public convenience or necessity. As far as the offsale of alcohol staff does not feel that we can make the findings that the addition of this offsale of alcohol would not be harmful to the public's health safety and welfare. We have existing establishments in the immediate area and you know, they're an additional offsale of alcohol could contribute to, as I've said you know, more garbage, more noise, more activity. Why do they need a third one? You have one -- you have two adjacent to each

other. Why a third one? So staff does not feel that an additional outlet would be beneficial to the residential neighborhood which predominates in this area. I respectfully disagree that they meet all what they need to in order to get –

COMMISSIONER ZITO: What about the police report?

ORATOR: Again if they don't have it here, then you know, it's-d silence a lot of sometimes on their part is they don't have a position. It was not an ABC, sometimes they prioritize their review, it is not an area of high crime or overconcentration.

COMMISSIONER ZITO: Madam Chair, I'm ready to make a motion. I'm ready to move that this item be continued to give the community and the owner an opportunity to meet and work out, hopefully work to a mutual understanding and agreement on how this facility should work.

COMMISSIONER JENSEN: There's a motion and second. Would you like to speak to your motion?

COMMISSIONER ZITO: Very quickly. First of all I have to take into consideration the applicant's concern that there really wasn't time. And you know to what extent that is really -- whether it is only two minutes or two weeks, it sounds like there's more work that needs to be done. And we've seen many times certainly in my eight years where applicants have gone and work with the community and come up with a mutually agreeable and workable understanding. In this day and age when there's \$3 million on the table of economic development that's being requested, to go forward, I think we should try to do whatever we can to make that happen. Because I think that's good for everybody in the long run but with all due respect to the residents as well to make sure that their needs and concerns for safety and alcohol availability are also met.

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

COMMISSIONER KAMKAR: Thank you, Madam Chair. I agree with the motion. My question was, you know, first of all, competition is good for the community. If they can't get alcohol here, they can go next door and get it. I don't know how we are making it that much more if any. I do see them closing one driveway, making the intersection safer. I see quite a few pluses and not to mention the economic benefits and the construction jobs and everything else they bring in. You know, and there seem to be very approachable, and they understand the concerns of the community, they're willing to limit the hours of sales of alcohol voluntarily. And it seems to me like those are all good signs that these are you know good applicants to accommodate. So I will support the motion. But I also wanted to make sure staff knows my position. Thank you.

COMMISSIONER JENSEN: Thank you, Commissioner Kamkar. Commissioner Kline.

COMMISSIONER KLINE: This is going to be quick. I tend to agree with staff, but going out there today, this is a gorgeous piece of property. This could add a tremendous amount to the surrounding neighborhood if done right. I understand the applicant is going to listen to the neighbors. They could create an opportunity to actually do a little bit better than what we've seen tonight, maybe a lot better than what we've seen tonight, simply what you've seen around the city here. It's not really appealing, it's not really attractive. But with neighborhood input design wise otherwise, this could be something that's really spectacular so this is a great opportunity and I'd suggest we defer this. It gives us time to gel and come back to us. I've seen it before. I'm sure everyone has seen it before, where if you give a little bit of

time to come back with something that is much, much better. So it does sound like the applicant wants to defer, and I usually try to grant the applicant one deferral, at least.

COMMISSIONER JENSEN: Thank you, Commissioner Kline. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Madam Chair. I will not be supporting the motion. If really design and articulation of how the buildings are on that corner are the gist of that issue I would wholeheartedly support it. But I truly believe this is going to be an opportunity for the applicant to reach out to the community, again, and try to get them to agree with allowing a third retail outlet for alcohol. And I agree with staff on the issues. I don't think we can make the findings, we haven't been able to make the findings of putting three consecutive retail outlets, within 300 feet to buy beer and wine. When you look at neighborhoods that have deteriorated over time, and you ask questions, how did that happen? How did you get three retail outlets that sell alcohol on one corner? This is a perfect example of how it happens. So I can't support the motion.

ORATOR: Mayor Reed: Thank you, Commissioner Campos. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Madam Chair. I agree with my fellow Commissioner Campos that I believe this is an overconcentration for alcohol sales. And if this were specifically about alcohol sales I would not be supporting it. The second half of this is the 24-hour operations of food sales and fuel sales. And I think that potentially, that you might be able to come to some sort of agreement with the neighborhood, that they find satisfactory. So because of that aspect, I will be supporting the motion, to see if there's an agreement that everybody is happy with that you can come up with.

COMMISSIONER JENSEN: Thank you, Commissioner Cahan. I see no additional speaker lights. If we could vote by light, please. And that motion passions with commissioners Jensen and Campos voting in opposition. And Commissioner Zito if I understand you correctly you were requesting a 30-day continuance to our July 28th meeting, is that correct?

COMMISSIONER ZITO: That was my intent. So everybody understood that.

COMMISSIONER JENSEN: Thank you. I'm sorry, the July 28th is the evening of the neighborhood meeting. So we would have to continue this to at least August 11th.

COMMISSIONER ZITO: So if the second is agreeable, I'm certainly agreeable to the second, and hopefully, the commission is okay with that.

COMMISSIONER JENSEN: Is the seconder -- okay, the seconder is okay with that so this is continued to the August 11th Planning Commission meeting. Thank you. Item B. PDC 09-028, planned development rezoning from the APD planned development zoning which previously allowed a new religious assembly -- I'm sorry, I'm reading the wrong item. Let's try this again. PDA 91-006-82. Appeal of the director's decision to approve a planned development permit amendment to allow for country view custom estates to install entry monuments without gates on private streets at three separate locations: The corner of hollow lake drive and quail crest way, the corner of hollow lake way and glen view drive, and the entrance of the private street at the cul-de-sac terminus of Glenview drive approximately 550 feet southerly of echo valley drive, in the A(PD) planned development zoning district. Thank you. Staff.

ORATOR: Thank you, Madam Chair. Three additional comment letters were received and were handed to you at the beginning of the meeting and identified with the item number at top. All three letters are in opposition to allowing the gates. Planning staff recommends that the Planning Commission uphold the director's decision to approve a planned development permit amendment to allow for the placement of decorative entry monuments without security gates to highlight a change in the street hierarchy from public streets to private streets for the following reasons: The planned development permit amendment as conditioned furthers the policies of the general plan, and that allowing for the construction of the pilasters as entry monuments at each proposed street intersection without any gates would be consistent with the urban design, neighborhood identity, and residential land use policies of the San José 2020 general plan and residential design guidelines. The planned development permit amendment as approved for decorative pilasters without security gates conforms in all respects to the planned development zoning. The use of security gates would be inconsistent with the development standards approved in the planned development zoning file number PDC 85-109 because there are no provisions for allowing the neighborhood to be gated and the subdivision was not designed to accommodate gates. The decorative pilasters will enhance the esthetic qualities of the entrance to the private drive without restricting guest traffic and parcel deliveries. Further, the proposed project with security gates is inconsistent with the residential design guidelines which states that new streets should connect with adjacent streets to form a continuous network of neighborhood streets and is inconsistent with the general plan as gates would, one, create an urban barrier, two, discourage a pedestrian-friendly environment by disconnecting the residential development with their adjoining companion neighborhood, and 3, gates would not provide internal circulation within the larger residential neighborhoods. And as we pointed out in the staff report, country view custom estates is actually part of a larger country view development which includes town homes, large-lot residential and the custom estate lots. So it was planned as a cohesive development, so again planning staff recommends that the Planning Commission uphold the director's decision to approve the amendment for only the entry monuments as it is consistent with all relevant city policies and guidelines. This concludes staff report.

COMMISSIONER JENSEN: Thank you, staff. And I assume that you gentlemen are the appellants. If you would state your name and you may have up to five minutes.

ORATOR: Mike Barna.

COMMISSIONER JENSEN: Thank you.

ORATOR: Hello, my name is Mike Barna. I live at 7227 Glenview Drive. I'm the secretary of the HOA and I fully support this project. We request full permit approval for the following reasons: number one, the restricted access designation recommended by planning staff, PDC 851109 which states, and I quote, this part of the project meets identified procured criteria for use of private streets, in that it is intended to be used as an exclusive residential community with restricted access. The same document goes on to state that this project, A, is consistent with the general plan, B, is compatible with its surroundings, C, will contribute to the general plan. Number 2, the title report signed and published by the City of San José clearly stating that these roads are, and I quote, not offered for sale -- I'm sorry -- not offered for use to the general public but are intended for the exclusive use of owners, visitors, and tenants. Number 3, application of identified criteria as stated in the 1987 PC staff report, which indicated that CVC meets the identified criteria for private streets and inferred all associated guarantees relating to private streets indicating limited access. Note that the downhill section of this neighborhood did not get this same designation. Number 4, the internal circulation concept as given in the San José 2020 general plan guidelines is not applicable in this case in that the plan assumes that federal, state or local laws are not

broken. A trespassing individual internally circulating through the neighborhood would have to be breaking the law. Laws trump planning guidelines. Number 5. Incorrect application of zoning is a reason to eliminate gates from our project as stated in fact number 9 of our PD permit. The bottom line is, you can't tell us that zoning was not the issue after we were in the process of rezoning, then list rezoning as a denial line item. Number 6, in response to fact number 10, although security fences and gates are discouraged, they are not prohibited by ordinance or by the 2020 city plan, as evidenced by the many gated communities in San José. Relative to fact number 11, there are numerous examples on gates in San José with various geometry, setbacks, widths, et cetera. Here is a gated community and exit that has no turnaround and a minimal entrance length. In this case a vehicle denied entrance which then backs up would be backing up directly in the path of vehicles traveling at a relative high rate of speed on the major thoroughfare of Meridian avenue. Number 8, in further response to fact number 11, false assertions of stacking problems which will be mitigated or eliminated through the use of 24-7, 365 security services available via land line and possibly live video feeds that will modulate any potential backup. Number 9, the support of Councilwoman Nancy Pyle as stated in the Almaden Resident February 23rd, 2006, interview. Number 10, PRDS disclosure reporting requirements. Number 11, the numerous criminal and security incidents that have occurred on our private streets as documented in the 130-page color report that you all have been provided with. Number 12, the massive liability exposure that CVC is exposed to that pilasters alone will not solve. It's interesting to note that San José did not want to annex these steep and dangerous streets as public streets for reasons that we believe included liability exposure to San José. However, it is this exact same liability issue that CVC is exposed to that San José is not allowing us to relinquish, as they did by relinquishing public road control. Staff act number 6 indicates that delivery vehicles would be restricted, which is false. Staff has indicated the downhill and uphill sections of the development were built as one, implying some kind of linkage or that they are similar in nature. Why did San José planning state in both the PC staff report and the title report that CVC is a restricted access community, and none of the other surrounding neighborhoods received this designation? Internal circulation is fine except when there's a problem. In our case, our security gate project does not cause an instability or an urban barrier for law-abiding citizens. Connecting local neighborhoods with a pedestrian-friendly environment again assumes that no laws are broken. Number 15, line item number 10 assumes to be residual from a past letter since it appears to act independently of our current approval. Number 16, facts number 11 makes free references to park lots, as if it's just a boilerplate copied and pasted from another document. Number 17, relative to fact number 14, pilasters alone will not solve the problem and may possibly increase the curiosity factor. Number 18, finally, these necessary security gates should save the city money by reducing the number of calls to police to report criminal and nuisance incidents within our private community. Thank you.

COMMISSIONER JENSEN: Thank you, Mr. Barna. And Mr. Hashimoto, are you here to speak as part of the public hearing, or did you want to speak now?

ORATOR: Well, if I could take my two minutes now, I would do it at this time.

COMMISSIONER JENSEN: Certainly. So let me, then -- Mr. Barna, you also have five minutes, up to five minutes at the end of the public hearing. Let me go ahead and call the first three speakers. Mr. Hashimoto, and again, you have seen me mangle even the simplest names. So as soon as I pronounce your name, please forgive me. Rebecca Ellis and Gary Ellis. If you could please come and step to the bottom of the stairs, that would be great.

ORATOR: Madam Chair, Ray Hashimoto with HMM representing Country View Custom Estates. As Mr. Barna stated, we have some issues related to how staff has made the findings for the denial. This is

an ongoing problem that's been going on for many years in this neighborhood, and we're trying to find a permanent solution which really relieves this neighborhood of the liability and crimes and other things that have been happening in this neighborhood. And as Mr. Barna stated, in 1987, the original zoning for this subdivision said that it was going to be restricted limited access neighborhood. Nothing has worked. There are signs up right now that try to limit access, but people still come up. They are attracted to the views. They are attracted to the steep streets. There are things going on there like skateboard lugeing and other things that this is really an accident waiting to happen. And if somebody is killed or maimed on these streets, I have difficulty trying to find fault with the neighbors who are trying to limit the access to their neighborhood. Staff has indicated that this is not in conformance with the general plan. I believe that they did make findings in '87 to call the subdivision consistent with the general plan and limit the access. The zoning was indicated, doesn't allow for gates. On the other hand it doesn't prohibit gates. We think we've designed something that works well into the community and works with the urban design that's there right now. The residential design guidelines. Again, guidelines, not rules. Every project should be looked at independently and if there are reasons to allow changes, or something different than what the guidelines would call for, so be it. I think that there -- this has been designed well enough to include safety issues, include provisions for stack, include provisions for access by emergency vehicles and deliveries where the residential design guidelines don't really fall on this particular design.

COMMISSIONER JENSEN: Thank you, Mr. Hashimoto. Your time is up. I'm sorry, Mr. Hashimoto, we do have questions from commissioners. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Madam Chair. Was there a reason why the gates weren't put up when the development was built?

ORATOR: Not that we know of. I don't know why it wasn't. I just know that now, for this private street, limited access by more than signage is needed.

COMMISSIONER CAMPOS: Okay.

ORATOR: It's just a problem.

COMMISSIONER CAMPOS: Thank you.

ORATOR: Mayor Reed: And Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. Mr. Hashimoto, a couple of questions. Are you the author of this document or one of your colleagues?

ORATOR: The 130-page document?

COMMISSIONER ZITO: Right.

ORATOR: That was provided by the homeowners association and perhaps Mr. Varner would like to speak to that.

COMMISSIONER ZITO: No questions on that yet. Just a question, do you feel that the vandalism and other problems that this documents is much different than other neighborhoods in San José?

ORATOR: I believe it is, just because of the -- what I'll coin as an attractive new sans of this neighborhood. It is at the urban fringe of San José, next to a park, it has tremendous views of the valley, and I think that is an attraction to people.

COMMISSIONER ZITO: And these roads are private roads as it stands now?

ORATOR: These were always private roads from the very beginning.

COMMISSIONER ZITO: And their care and upkeep are paid for by an HOA I suppose?

ORATOR: That's correct.

COMMISSIONER ZITO: These gates would limit access by car or pedestrian or just vehicle access?

ORATOR: The pilasters would go from curb to curb and there is no sidewalks in this neighborhood. In theory, someone could citizen around the pilaster and come in. But this is a neighborhood that doesn't have connectivity to other neighborhoods. It is at the edge of the urban fringe. Residents have issues because they would like to have limited access.

COMMISSIONER ZITO: I'm just thinking your comments about the young hooligans in the neighborhoods, come by with their pray paint cans and so on, you're not going to do much to limit that if they feel they want to get up there, they're going to have access as long as they don't have a car I suspect. I'm just curious about how much of the problem that's going to solve. This is an open question that I'm willing to hear from the rest of the people that talk to us and the applicant when he comes back. Thank you.

COMMISSIONER JENSEN: We also have a question from Commissioner Kamkar for you, Mr. Hashimoto.

COMMISSIONER KAMKAR: Mr. Hashimoto, is the homeowners association also supportive of your position?

ORATOR: Yes, and I believe Mr. Barna can speak to that. A majority of the homeowners, members of the homeowners association, have agreed to put the gates in.

COMMISSIONER KAMKAR: But as far as the homeowners association themselves officially --

ORATOR: Yes, their position is supportive of the gates.

COMMISSIONER JENSEN: Thank you. We have no other questions. Thank you very much. Please step forward. If you would introduce yourself.

ORATOR: Hello, my name is Rebecca Ellis, and I live at 7163 Glenview drive. And I oppose the gates. I'm certainly in favor of planning staff's recommendation for monuments. The reason is that I actually live with my husband and my mother-in-law at the entrance on the other side, I should say, of the proposed gates. And what it would mean for traffic going up the Glenview hill is, those automobiles or vehicles that are restricted and not able -- allowed through the gate, of course they would need to back up to turn around. Because there's been no provision in the street dimensions for any sort of turn-around. So

the design of the street, both the private street as well as the public street, does not accommodate the proper turn-arounds that gates, you know, deserve. So we can see a stacking, as you've mentioned, and some of the planning guidelines, that certainly would occur, and of course, our driveway allows the turnaround. So -- sorry for my hand talking here. So I'm definitely opposed to it. I think it's not well-designed at all for gates. I'm certainly in favor of a safe neighborhood and I appreciate your time. Thank you.

COMMISSIONER JENSEN: We have questions from the commission. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. If I understand correctly your opposition is more of inconvenience to you because there is not an adequate turn around, i.e., the design isn't very good for allowing people to back out and so on?

ORATOR: Yes. There's quite a heavy traffic of delivery vehicles, construction vehicles, and so forth going up the hill.

COMMISSIONER ZITO: Uh-huh.

ORATOR: And so as -- to go up the hill, the gate would restrict them. And they would back up. They have no way to turn around should they be restricted.

COMMISSIONER ZITO: So if the gate was designed in such a way if it's possible even that you could have a turn around that it didn't impinge on your private property would you be okay with that?

ORATOR: Definitely.

COMMISSIONER ZITO: Okay, thank you.

COMMISSIONER JENSEN: Thank you. And Mr. Ellis, before you begin I'm going to call the next three speakers. Dan Wallace, Greg Patterson, and Curtis Jacobsen.

ORATOR: Good evening. My name is Gary Ellis. I'm sorry it's come to this, to have a neighborhood meeting, but so be it. I'm here to represent myself, my family, and 20 other families who live on the public streets in immediate proximity to the proposed gate location. All of us are opposed to the gates, and you can see the list of families on the slide. I'd like to put those families and the gates into visual context for you on this map. You can see the proposed gate location. The lower part of the map represents the private streets, the upper part of the map public streets. I'd like to draw your attention to the lots with the red background. These are homes occupied by residents who are opposed to the gates. They're on the public streets again and they're the folks who are most directly impacted by these gates. No one that we've come into contact with on public streets is on favor or neutral on the gates. They're all opposed. The folks that are not represented here we were not able to contact or they chose not to have their views represented. We've talked about the guidelines already. In our opinion, these gates are clearly contrary to the guidelines which presumably exist for good reason. Here's an aerial shot of the gates and my intention here is to let you see visually, these are normal streets and normal intersections. There is clearly no provision for stacking turn around or other accommodation required for gates. To my view the gates are clearly an afterthought or an oversight. Here is another gate location, same consideration applies. Let me summarize our position real quickly. We think there's inadequate justification for the gates. We don't agree with the notion that somehow Country View Custom Estates is a magnet for crime,

vandalism and juvenile delinquency. To the extent that homeowners on public streets have their rights and interests abridged, we don't agree with that. There are many streets in the neighborhood that have similar characteristics that have no sidewalks, that have steep curves and hills and also have beautiful, expensive homes. So it's not just those folks that have those considerations. We've talked about the fact there's no provision in the street plan. You've heard the comments on the residential design guidelines and again I'm representing at least 21 homeowners who are opposed to these gates.

COMMISSIONER JENSEN: Thank you.

ORATOR: So we respectfully request that you uphold the commissioners decision on these. Thank you.

COMMISSIONER JENSEN: Thank you. We do have a question from Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. I will ask you the same question I asked the prior speaker. I guess I'm trying come to grips with understanding what is the problem? Stacking sounds like a problem. In looking at these diagrams depending on where they put the gates I could understand where that might be the problem. Other than that, what are the –

ORATOR: I should put the slide back up so you can see exactly where these gates are. There is no provision for gates in that the traffic that's going to approach the gates are going to stop in close proximity to homes on the public streets and, for that matter, on the private street area, if they are exiting. So we are going to have the noise associated with vehicles decelerating going through the gate and accelerating and so forth. For folks that can't get through the gate, or if there's stacking again, that's going to occur right in front of our house. The results of the impact on the neighborhood, I mean, we don't want to have gates in the neighborhood. We think it's going to detract from the atmosphere of the neighborhood. We don't think it's good for the homeowners that are nearby. We don't think it's good for the neighborhood. And frankly, we don't think it's particularly good for San José. We believe that there are other ways to mitigate the concerns that have been raised here, and frankly, I see an absence of good faith effort on the part of my good neighbors in CVCE to address those issues. We've had no communication among the communities on this issue since 2006. Why don't we try work together and come up with a cooperative way of at least attempting to mitigate these concerns before we take this rather dramatic step.

COMMISSIONER ZITO: So you're suggesting that there hasn't been an attempt to meet with the surrounding community on these gates?

ORATOR: I'm not aware of any communication. I may have missed something, but I live immediately adjacent to this community. I have received no communication from them. I would welcome an opportunity, as would many of my neighbors on the public streets, to collaborate. Let's try some other methods before we go to this approach.

COMMISSIONER ZITO: Thank you.

ORATOR: Thank you.

COMMISSIONER JENSEN: Mr. Wallace, if you would introduce yourself when you come to the microphone.

ORATOR: My name is Sean Marengule, I'm a resident of Country View Custom Estates for the last six and a half years. Next to my home is an empty lot. And after the school close I get lot of students who come in a car, sit there in the evening, drink beer. We have several complaints to police officers who came in and help us out. And so this is a major nuisance as far as I'm concerned, because the empty lot is just next to my home. Now, the other thing is, people complain about our roads, but we maintain those roads, we pay for it, and we have to pay homeowners association dues for those roads. The other people who live in that community down below, they don't have to pay anything. And they are just talking about not allowing us to put the gates. The security is more issue. Liability, the skateboarders come there because the hill is fairly steep. So all the kids come there in the evening, especially after the schools are closed, and come down very fast. If they get into an accident, it is an issue of liability for us. If City of San José will take over those roads and take up the liability, we have no issue. But if we have to pay, and we are only 76 homeowners, so the liability is fairly big for all of us. And those are the two major issues, security, liability, maintenance of the road. Those are the main issues for us, thank you.

COMMISSIONER JENSEN: Thank you. And I have a question for you from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. I have a question for you. Actually two. One is convenience. I guess these skateboarders, or the students that come in the other cars, they take a parking space, I guess, you know, would that be an inconvenience to you?

ORATOR: The view is great from there, that's why most of the kids come there.

COMMISSIONER KAMKAR: So the second question is, are you pretty sure that these are not your own community, the own neighborhood kids that are coming -- you know, pretty certain they come from, you know, other parts of the city?

ORATOR: Right, they do.

COMMISSIONER KAMKAR: You are pretty sure.

ORATOR: Yeah.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER JENSEN: Sir, there are no further questions. And Mr. Dan Wallace, there we go.

ORATOR: Hi, I'm Dan Wallace. I'm an insurance broker, I do a lot of work with MFC, the property management group that manages this HOA. I represent about 30 HOAs in the area personally, and I actually don't represent this HOA. So I hope this doesn't get me in bad favor with the directors and officers. I am going to say it's probably in the best interest to have the gates, and there's a couple of unique aspects about this HOA in particular that may give some clout to my party here. I guess most pressing is that in their current commercial package, they have no notices of any of these loss exposures which is very common because these claims would happen on the personal HOA contract not on the master contract. That being said, if there was a massive claim, let's say someone drove down the hill drunk at the steep grade and got injured, if it came out to be that the insurance companies found out about our talkings here today, they might find that there was mispreparation on the part of the HOA and deny the claim which is a serious concern. I think the topography, as mentioned before, the grade of the hill is something that concerns me as far as loss exposure. My biggest concern as I was kind of assessing the

loss exposure here was actually the kids driving away, is the actual cars. I mean these are million dollar homes, these are single family homes, they're not condominiums with three stories. These are single family homes, burglars want to get in, kids like the views, and what I'm concerned about is kids drinking and smoking and driving down the hill. Maybe skateboarding is going to happen, maybe we can't stop that, but we can stop the kids driving cars in. So and then, again, to the attractive nuisance, whether it is a attractive nuisance is debatable, because it is a natural landscape. However, if you look at the -- how the covenants of the insurance policy are going to read it, are children likely to trespass, yes. Did the HOA have knowledge of the children's trespass, yes. Do children at the age don't know it's dangerous, yes. Usually it's going to be kids in high school that have a car that are 16 or 17 that are --

COMMISSIONER JENSEN: Thank you, Mr. Wallace, your time is up. Thank you very much. Mr. Patterson, and if you would also introduce yourself.

ORATOR: Hi, my name is Greg Patterson and I'm here to represent -- give you some night on automatic gates and how they would benefit this neighborhood and also the surrounding neighbors in this community. One of the big things that's been talked about here is the stacking problem. In this day and age with the technology that we have the only people that would ever be denied access here are essentially people that don't belong here or are not supposed to be here in the first place. These gates could be tailored and modified as time goes on for construction projects and things. They can be set to be open during certain hours and times of the day and tailored to allow even the minimum amount of people having to stop and be able to be allowed access. Residents can have great range from down the street. The gates actually slow things down. So traffic starts to move at a slower pace, people are not supposed to be there are not there. And I would think that for the surrounding community, the neighbors in that area, that should be a benefit. Knowing that, you know, the riffraff and people that aren't supposed to be driving up and down those streets and bottlenecked at the end of those streets are not there any longer. Also, it is our position that these gates will help reduce the vandalism and reduce the liability issues that have been happening and be of benefit to people who live there and the people that surround the surrounding area.

COMMISSIONER JENSEN: Thank you, sir, and we do have a question from Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. So are you familiar with the proposed gate style that they're suggesting for this facility?

ORATOR: I am.

COMMISSIONER ZITO: Okay. So is this going to be the kind of gate where somebody would have voice access to a residence to get access?

ORATOR: Yes, it will.

COMMISSIONER ZITO: So they'll dial in a number and say hey Bob I'm here.

ORATOR: Unannounced guest.

COMMISSIONER ZITO: They will basically be punched in from that residence?

ORATOR: Correct.

COMMISSIONER ZITO: What happens with gate malfunctions? I have to believe that nothing's perfect, and eventually something will happen where a gate won't open, either to let somebody out, or let somebody in. What happens then?

ORATOR: The system has a manual override, so it can be manually overridden by the gate company or somebody within the community. It also has a backup system, a fail safe system. Power outages and things like that are not an issue here, but the gates are designed to fail safe during any type of a power outage.

COMMISSIONER ZITO: How long would somebody have to wait at the gate in order to get something like that corrected, during a typical situation?

ORATOR: It would be predicated on the homeowners association, what their protocol is there. So they could set up their own protocol, as far as, okay, our first response, our second response, our third response. The gate company obviously is part of that equation, as well.

COMMISSIONER ZITO: So there would be some sort of -- and I'll just be real simplistic about this -- some sort of a crank that they can use to manually open the gate if they need to, assuming power is gone or the mechanism is dead in that sense?

ORATOR: Basically, yes.

COMMISSIONER ZITO: Okay. Have you discussed with them the design of the gate in the sense of turnaround possibilities?

ORATOR: Well, ironically, the photos that were shown earlier, it shows that there's a big turnaround at the end of the street, it's actually a bottleneck that comes at the end of the street and was designed almost for a gate system, because there is a big turnaround there, people can turn around, or they can proceed to go up the hill at this point and use it as a continuance to go around and connect to the following street like a big U-turn, basically. So there is plenty of room to turn around. Some of the concerns about what happens if somebody was to not -- you know, wasn't supposed to be there and stopped there and had to turn around in somebody's driveway, I don't think is going to apply in this case. The other two entrances that were shown to you you're actually just driving by. So again, most people will not be in front of that gate that aren't supposed to be.

COMMISSIONER ZITO: Well, I'm -- you know, if the concern is not the people who are supposed to be there, it's the people who are not supposed to be there. Because if that's not the case you don't need the gates in the first place, right?

ORATOR: Correct. And that's why we're trying to tailor that and bring that down to the minimum.

COMMISSIONER ZITO: Thank you so much.

COMMISSIONER JENSEN: Thank you, Commissioner Zito. We also have a question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. How about first responders and fire departments? Would the gates be designed in a way not to limit their apparatus and allow them to get to their destination quicker?

ORATOR: Yes, the technology provides them with all forms of access. Right now we're up to all the current code standards that they're requiring, both fire, police, paramedic.

COMMISSIONER KAMKAR: Okay, and then the second question, privacy issues. Would homeowners association be able to choose if it's going to keep track of who's going in, who's coming out?

ORATOR: Absolutely.

COMMISSIONER KAMKAR: Okay, thank you.

COMMISSIONER JENSEN: We have no further questions. Our next speaker is Curtis Jacobsen. Before Mr. Jacobsen comes forward I'd like to call the next three speakers. And just so you know, we have a large stack of speaker cards. Bob Strain, Jennifer Say, and Carolyn Say.

ORATOR: Good evening, Curtis Jacobsen, San José Fire, assistant fire marshal. I'm not here to advocate either way. I'm just here to answer questions related to public safety access.

COMMISSIONER JENSEN: Thank you. We have a lot of lights. Commissioner Kamkar. Yes, Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you. I'd like to ask you the same question I asked the previous gentlemen, regarding what is the fire department's opinion on this case?

ORATOR: Can't really state an opinion but I can tell you that there's various ways we access gates currently. We have what's called a knocks box system. I actually brought one if you want to see it. It is a keyed box, a security box that we can keep either keys or switches in. Only we have access to it through the security we have. The timed access, the cooperate or the firefighter, disembark with a set of keys, open the switch box or grab another set of keys we have for access and then get on to the vehicle and continue to the emergency. There are also ways it can be opened through what we call an Opticon system. If you notice that when we go code 3 on the streets that are served by VTA, the lights will change ahead of us, and that is activated by our strobes. So they can also use that technology to open the gates. The third one is either the key pad, we can have the code and then the code would come to us via the actually emergency response. So we can set it up, that any time we get a response to any of the affected addresses, it says like on this one it says in the flint creek area, community gate access equal, hit the key button twice and enter code 9072. We get this not only in paper if we are in the station but if we are in the vehicle we get it on our mobile data center.

COMMISSIONER JENSEN: Thank you. And we also have a question from Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, player, you answered my question. Madam Chair.

COMMISSIONER JENSEN: Thank you. We have no further questions. Thank you very much for coming here. Mr. Bob strain. And if you would also introduce yourself as you come forward.

ORATOR: My name is Bob strain. Glad to meet the commission. I am located sort of overlooking the north location of one of the proposed gates. And I'd like to speak generally in support of the staff recommendation. And there we go. I'm going to do this by citing some other gated communities in San José. First example is the villages. And if you look at the location of the gate at did villages, there's approximately 200 feet of nonresidential buffer outside the gate. There's some commercial, and you can see a line of trees between the residences, and where there would be any potential backup. Second example you've seen before from ground level. And this is the entrance from the villas of Almaden coming off of Meridian Avenue. And I've drawn in the gate line there, and here we have roughly 150 feet. Again, the access to the gate is buffered from the homes by trees, and there is adequate room to turn around there. The third example is the Glenview approach. This is the one that I overlook, to country view custom estates. And the gate line roughly is there. And you can see there's no buffer. Any cars that would come there are directly in front of the Ellis and Smaha residences. And generally represents a potential for serious problem. Now I do somewhat sympathize with the residents of country view estates because of the liability and those kinds of problems. But I think they're victims of poor planning by Chappell, the developer, because there was no space left for a proper approach to the gates, any one of the three gates. And Glenview Drive traffic would become a significant nuisance, mainly to the homeowners outside Country View Custom Estates, and not to the homeowners within Country View Custom Estates.

COMMISSIONER JENSEN: Thank you sir, and your time is up, thank you very much. And we don't have any speakers, any questions from the Commission. Thank you very much. Jennifer Say.

ORATOR: Hi, my name is Jennifer Say, and I live at 7168 Glenview Drive. I am in opposition to the gate, because I feel as though if it's placed there, then there is no room for a turnabout, and there will be stacking, and people will be pulling onto our driveway to get out. And not only that, but our families will be -- I guess will be known as the gatekeepers or maybe act as security guards for those who are trying to get access. And I don't feel as though the gate is effective in preventing crime or stopping it, because people will be able to find a way around the gates and they will be coming onto our properties to get around the gates. So I guess it's just the issue of stacking that the gate isn't actually effective, and acting as gatekeepers, and that it will build traffic so that we won't really be able to get out of our own driveways.

COMMISSIONER JENSEN: Thank you. And we have a question for you from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. So the question is, a gentleman that came before you and spoke, and he said he can customize and program these gates. So during heavy traffic, let's say rush hour when people are getting in and out, it can stay open, you know, so there's no stacking.

ORATOR: Right.

COMMISSIONER KAMKAR: It's open, you go through and then sort of when the rush hour or the heavy volume, you know, goes down it goes back to preset closed and, you know, on an as needed basis. If that were to be the case, would that relieve, take care of your concern?

ORATOR: Yes, but also as was previously mentioned in the case of -- sorry, I lost my train of thought -- if the gate were to not work properly then what if it didn't close at the right time and what in it was closed during off hours and there happened to be a lot of traffic at that certain time or there was a first responder trying to get in. Then I don't --

COMMISSIONER KAMKAR: Yeah, I understand it's not going to be perfect but you got to balance both sides, the benefit.

ORATOR: Right.

COMMISSIONER KAMKAR: So thank you for your answer.

COMMISSIONER JENSEN: Thank you. No more questions from the commission. Our next speaker is Carolyn say. And Ms. Say as you're approaching I'd like to call the next three speakers. Thomas say, John Smaha and Antoinette fisher.

ORATOR: Hi, my name is Caroline say and I reside at 7168 Glenview drive. I'm opposed to the gates, vehemently opposed actually. There's absolutely no buffer between the gates and our property. In fact having a system where it's voice activated and controlled, I'm actually very concerned because our windows are very near that area that we would actually -- we'd be able to hear the conversations and then dialing that goes on at the gates. So I think even if the gates were left open during the day and the evening, if it were the case that there were someone that weren't residing there and approaching the gates and needing to speak to someone who did live on the property and needed it often, I could hear the conversation from my window in the bedroom which is facing the street right there along the sidewalk. Concerning liability to exposure, I went to elementary school, middle school and high school in Almaden valley. I've lived in the neighborhood for over 20 years and the adjacent neighborhood. I honestly have never seen any gangs, never heard of any gangs, and I can't believe that some of the kids that are in the pictures I saw with the photos of the chalk on the trash cans in the neighborhood aren't the kids of the neighbors, the neighboring folks of mine. I think we should absolutely be very proud of the fact that regardless of away we talk about here, we should be proud of the fact that we live in such a nice and wonderful neighborhood and I think all of our interests are absolutely in line. We want this neighborhood to be safe and honestly it has been safe. I have never felt threatened. Another concerning thing that I do want to bring up is that without the buffer and the backlog of traffic and log of cars sitting in front of the area, what would happen is that they would kind of pull -- need to back up if they aren't able to access and go through the gates, back onto our driveway, and there's a possibility of delivery trucks and gardeners who may not have cell phones and who don't have someone answering on the other line, who want to come and knock on our door and actually ask us if they could use the phone or approach us if we are coming in and out of the house. There are six of us living in the home.

COMMISSIONER JENSEN: Thank you. Thomas Say.

ORATOR: Commissioners, and dear homeowners. I wanted to point out that I'm here to represent myself and also two other children I have grown-up children here and I have two other children who are too young to come here to protest. So that you know, the gate, we are talking about no buffer. But I want to let you know that how serious that we meant by no buffer. The proposed gate, if built, would not be yards away from our house, and it wouldn't be feet away. It would be inches away from my house, right there. I can point out to you that anyway, it would be inches away from my house. And if the gate would be here, it would be a few feet away from the two he bedrooms facing the street where my younger children were sleeping. So I can't remember, apart from the hours are talking about, for the traffic to go through, what about in the middle of the night, car stopped there, the cars were stopped a few feet away from my younger children, and I wanted to ask the homeowners who were proposing the gate, if you were to live in my house would you want a gate there from the bottom of your heart? Now, when Chappell built this community, I live only a block away when I purchased this lot. If Chappell were to design a

gate there, I want to tell you that, all commissioners, I wouldn't have bought this house if the gate was part of the original design. Of course the homeowners are complaining about steep hills, narrow streets. But they bought those lots knowing that the street didn't change, the street did not change from the time they bought the house.

COMMISSIONER JENSEN: Thank you, Mr. Say. Your time is up. Thank you very much.

ORATOR: Thank you.

COMMISSIONER JENSEN: Tom Smaha.

ORATOR: My name is John Smaha, I live at 7262 Glenview Drive. My home is actually at the northwest cul-de-sac. My kids' windows -- I have three kids, 9, 7 and 2. Their bedrooms will all face the cul-de-sac where one of the proposed gate sites will be located. I have two major concerns. One of them is noise, one of them is operation. Both of them, to me, again, if -- there is no perfect system. There is going to be cars that cannot get up there. There will be congestion. We were told as much as we were told by CVCE that the noise will not be an issue, nor the congestion will be an issue. CVCE has also told us that they will take care of some construction issues that haven't been resolved six years later. So when I look at those unfinished homes up there, and I ask myself, do I trust their opinion on noise and congestion? I have to wonder. It seems to me that what we're doing is we're taking a problem, and I have sympathy for their problems. But we are taking those problems, and we are now placing them firmly in front of 21 other residents who are extremely happy with our neighborhoods. We like it just the way it is. And now we are going to be asked, to shoulder a burden, although we're being told there are no issues. Again I look at those unfinished homes and say do I want my kids to trust that? So thank you. I'm very, very opposed to this gate.

COMMISSIONER JENSEN: Thank you. Antoinette fisher and before you come forward I'd like to call the next three speakers. Please step forward but before you begin speaking. Hang Zang, Chen Yu Huey, Batar Razabi.

ORATOR: Hi, I'm Antoinette Fisher. My family resides at 7098 Quail Crest Way. We object to gating at our location because we anticipate increased traffic hazards, congestion and noise due to a gate installation which does not allow sufficient face for queuing, vehicle turnaround, and noise abatement. There will be a loss of enjoyment of our property as well as a decrease in our home's value which was verified by real estate agents. What buyer in their right mind would say, that's the home I want, right in front of those security gates? In Almaden Valley today security gates are placed at the end of an individual driveway, a street with very few homes, or are designed for safe and quiet traffic management. Forgive my nervousness. Consider there are 75 estate homes with at least two cars per home moving in and out of gates twice a day at the very municipal. This equals 300 estate vehicles alone. That may not sound too bad, unless it's your home at the gate site. The volume increases with the following, "PG&E, cable, telephone trucks, garbage, recycling, street cleaning, sewer maintenance, UPS, FedEx, U.S. mail, and other delivery trucks. Housecleaning, landscaping, pest control, daily visitors including large nighttime social events, construction trucks, including managers, laborers, materials, earth moving, and excavating machinery, city inspection and numerous other equipment. Construction has been going on the entire seven years we've lived here and will continue for some years out. Currently all traffic moves unimpeded, though at peak times, quite heavy. The argument that the estate roads are private, and therefore, earn the right to exclude pedestrians and vehicles, seems logical however, if this right includes

forcing homeowners near the gates to bear unwarranted cost, there's something fundamentally wrong with that private property right. Thank you.

COMMISSIONER JENSEN: Thank you, Ms. Fisher, you did a great job and we do have a question from a commissioner. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. So you've answered quite a few of the issues that was raised. One issue that I'm interested in your opinion is the liability that they talked about.

ORATOR: Yes, that's a legal issue I'm sorry for interrupting. I was hoping the City Attorney might be able to speak up on that tonight. I don't know the answer to that.

COMMISSIONER KAMKAR: Okay, that's okay. I just wanted to because you're pretty eloquent and you talked about quite a few different issues I wanted to know how you feel about that, but that's okay.

ORATOR: I'm sorry.

COMMISSIONER KAMKAR: No problem, thank you.

COMMISSIONER JENSEN: Thank you very much. We don't have any additional questions. Hang Zang.

ORATOR: My name is Hang. I'm living at 7949 Glenview Drive, it's right on the gate. I'm part of the Country View Custom community. So you know, the gate is right in front of my house, in the front entry. I think in the common sense no one would want that happen. And the thing I try to emphasize is, 11 years ago we bought the land from the Chappell developer. They specifically tell us there is no gate, absolutely no. So that's why we bought this property and designed a custom home and no gate in count. So right now if we want to change the zoning plan, changing the master plan, I would think that's really big impact for our family. So basically, what I need to do is we need to tear down the home, redesign, change the orientation to accommodate the gate design. Otherwise it's -- I think it's common sense if your front entry, there is a gate, in the front of your entry, what you can do? Plus, if the gate is blocked there, actually it cannot block traffic. People can walk through my property going to this community. Or if they like, they can drive through my lawn, dry through my property if they urgent. So anything could really happen to my house. So that's why I was, I'm very against is the gate. Project, even I'm part of this community. So that is my position. Thank you.

COMMISSIONER JENSEN: Thank you very much. We have no questions from the commission, thank you. Chen, thank you very much.

ORATOR: My name is Ya Hue Chen. I live basically right in front of the one proposed gate. And think about the ten years ago, I was so happy to move to this house. And the neighbors think about the summer, where propose a gate right in front of my house! And as so many people already mentioned security, safety and noise are all our concern. But I want to include one thing. My job is a project management and one key element of project element is risk. And have you heard anything about, just take one step back. This is not perfect, we deal with risk every single day. But I never heard anything like, especially in such a good country, we deal with our freedom, we deal with equality. But right now, someone tried to transfer their risk from that area to our area. Do you know how many times when I see that sign they say they want to stay up for one gate, how many night I lost my sleep? That's all I want to

say. And I think everyone has a fair judgment. I hope tonight when we walk out, this the third time we need to deal with this kind of proposal. I hope we don't need to deal with it another time. Thank you so much for your patience, and then time to listen to us. Thank you.

COMMISSIONER JENSEN: Thank you. Bettar Rezavi, and as you're coming forward, I'd like to call the next three speakers. Vicky Simmons, Hashak Patel, Bettina Rosenberg.

ORATOR: Good evening. My name is Bettar Rezavi. I'm a resident on Glenview Drive just a few homes downhill from one of the proposed gates. And I'm here to ask you to uphold the planning director's decision to not allow gates to be constructed. I've lived in this neighborhood for 12 years. We moved in before there were any homes on the hill in the country view -- in the custom country view estates area. When we purchased the property we were told emphatically by the developer that there would be no gates. That's one of the reasons we agreed to buy the house and we looked forward to living in a neighborhood that was continuous, and maintained that sense of continuity. To hear that we now want to put a gate there would be extremely unfair to the people who purchased the property before that decision. If safety and security are a concern, rest assured we share that concern too. We want the neighborhood to be safe. But we don't believe a gate is the right answer for that. There could be security guards that patrolled the property at night, there could be a stop sign and other mechanisms to stop speeding vehicles. Speed bumps, as an example. There are other alternatives and we don't believe gates are necessary or called for or fair in this case. Thank you very much.

COMMISSIONER JENSEN: Thank you. Vicky Simmons.

ORATOR: Thank you, my name is Vicky Simmons. I'm a resident at 6967 Hollow Lake Way, the less-mentioned of the two streets involved in this gate proposal. I've owned the property there for eight years and lived there for five since building the house. I'm a resident of the Country View Custom Estates and I'm a dues payer for that homeowners association, but as you've been hearing from a lot of us tonight, not all of us support the gates. In fact, on Hollow Lake Way only a slim majority voted for the gates, and roughly one-third of the households did not vote. Many of the lots on Hollow Lake Way are still not built. On Hollow Lake Way, let me just share my experience, vandalism and crime have been limited to extremely minor incidents, and all to my knowledge on construction sites. People do walk, they jog, they ride bikes, and yes, they even drive on Hollow Lake Way. They even drive up to the cul-de-sac and turn around and come back down. And like any other paved surface, whether it's a school parking lot or a public street, or private street, you need to be careful when you're on that paved surface, and you know that there will be vehicles. Police and park rangers have always been very fast to respond to any call that we have made. Park rangers, because we do back up to the Almaden quicksilver park, and in short, my experience in this area of Almaden valley -- and this is supported by police statistics, if you look them up -- is that this is an extremely low-crime area. We're very fortunate to live in such a wonderful place. The City of San José has a thoughtfully conceived policy outlined in their 2020 general plan. The gates should be discouraged. Gates of all kinds should be discouraged in our neighborhoods. Unless there are overwhelming or unique condition that exists that screens out for such gates. While the homeowners association that represents us there has spent a lot of energy and money trying to justify these gates, mostly the nuisance crimes that are cited, speeding vandalism littering skateboarding walking pushing baby strollers --

COMMISSIONER JENSEN: Thank you, Ms. Simmons. Your time is up. Thank you very much.

ORATOR: I'm sorry, thank you.

COMMISSIONER JENSEN: Mr. Mr. Patel.

ORATOR: Hi, my name is Ashook Patel. I'm the original owner on 7156 Glenview Drive, which is the third house from the gate. So when I bought the house there was a lottery system, and basically I just picked the best place which I could pick at the time. Chappell did not inform me at that time that there would be a gate. You can see the beautiful area, there is a whole contiguous development there. It's not something separate there, the hill versus that. The houses on the streets over there are also multimillion houses, basically. My study room is outside, near the gate, basically. What I notice, it is a lot of traffic in rush hour. Every minute, every 30 seconds, every five minute, even with my window closed, today I can hear noise. So when you put a gate, which is a mechanical device, I think the problem is going to get worse. The cars are going to stop, they're going to start accelerating, and things are going to worse. I don't know how to resolve this problem besides, you know, putting a gate. Maybe there are other ways to do it, but I'm not the expert on it. So that's my biggest concern here, putting a gate I believe is going to increase the noise pollution, people are going to back off you know in the driveways and things like that, and it's going to basically become a sight for sore eyes, as far as I'm concerned. It is going to bring my property value down, and so that is -- to me, I believe it's not justifiable, at least to me.

COMMISSIONER JENSEN: Thank you, Mr. Patel.

ORATOR: Thank you.

COMMISSIONER JENSEN: Bettina Rosenberg, and as you're coming forward I'd like to call the next three speakers. John Leroy, Laurie Baron and -- I'm really sorry -- Keppel Woodworth. Thank you.

ORATOR: Hi, my name is Bettina Rosenberg, and I live in Country View Custom Estates at 7195 Eagle Crest Court, and I would like to go on record as in opposition to the gates. To be honest, I simply don't recognize the description of my neighborhood that has been provided by the people who are argue for the gates. My small cul-de-sac off of Glenview Drive is quiet and feels safe. In fact, the squawking of wild turkeys is much louder than noise from passing cars. The neighborhood is clean. We are not plagued by drunk drivers, dangerous cruisers or drug addicts, and I have never seen a crack pipe. In fact, the police department has described our neighborhood as one of the safest in San José and had said the gates will not make it any more secure. Instead, they recommend simply locking our doors which is common sense. And I think that people who constantly make calls to complain are actually then using the escalating number of calls to justify requesting that gates be allowed at the entrance to our neighborhood. And I think that those complaints and that reasoning is self-serving, it's circular, it's harmful to the reputation of my community, and by extension, to that of the entire city. I worry about the negative impact the gates will have on the neighbors below us in Country View Estates, and they've spoken very eloquently about their concerns. And I also worry about the mention of security cameras being placed on the gates. That was mentioned at the last hearing and there was some discussion of it now. I think that's a violation of my privacy, I think that's a violation of the privacy of the -- especially of the people who live right by the gates. I don't want my movements monitored, and I don't want my friends' movements monitored, and I just -- the whole idea makes me feel extremely uncomfortable. I'm concerned that the gates will delay the entry of fire, police, and medical personnel in the event of an emergency, rendering our neighborhood less safe, not more. And you've heard some discussion of the high technology of the gates, but as we've all read recently with the accident in the Gulf and the big oil spill, I'm very happy people believe that technology is perfect, but it is not. And it can break down, and that can lead to extreme inconvenience and even harm. And unlike people who have presented this gate plan to you, I'm extremely happy to see

pedestrians, regardless of where they live, climbing our hill, and I'm actually in awe of their stamina. I welcome drivers who slowly cruise through our neighborhood admiring our beautiful homes and wonderful views.

COMMISSIONER JENSEN: Thank you.

ORATOR: And in fact, I think that's good for our property values and will be helpful if I ever need to sell my house.

COMMISSIONER JENSEN: Thank you, Ms. Rosenberg.

ORATOR: I don't want to live in a walled community. Thank you.

COMMISSIONER JENSEN: Your time is up. But we do have a question for you from one of the commissioners. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. I guess the question in my mind is, do you attend homeowner association meetings?

ORATOR: I have attended several of them.

COMMISSIONER KAMKAR: And do you -- I mean, what is your take on it? Seems like we're hearing opposite, completely opposite description, as to if they are for it or against it. Do you feel that your neighbors have opposite views as you do?

ORATOR: I feel there are some very vocal people who feel very strongly about the gates. There are some like me who feel very strongly opposed and there are many who don't vote and seem to be ambivalent about it.

COMMISSIONER KAMKAR: I see. So as far as you know, there's no actual vote count so the --

ORATOR: There have been votes but many people do not participate. Of those who have participated the majority have expressed a preference for the gates in our neighborhood.

COMMISSIONER KAMKAR: I see, okay, thank you.

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

COMMISSIONER ZITO: Thank you, Madam Chair. Ma'am how long have you been a resident of the neighborhood?

ORATOR: I moved there eight years ago.

COMMISSIONER ZITO: Since you moved there how many garage sales have there been?

ORATOR: There haven't been any to my knowledge.

COMMISSIONER ZITO: I was hoping to get good deals. The reason I bring that up, some people have those in those areas, the question is when people come and how they get access and so on. So I was just wondering if they were at all prevalent. Are you familiar with the HOA guidelines? Is there a -- what am I looking for -- the CC&Rs not allowing garage sales? Some private --

ORATOR: I don't know, to be quite honest.

COMMISSIONER ZITO: Just curious.

COMMISSIONER JENSEN: Thank you, Commissioner Zito. There are no further questions.

ORATOR: Thank you.

COMMISSIONER JENSEN: Mr. Leroy.

ORATOR: My name is John Leroy. I live at 7238 Glenview Drive. I have lived there with my wife Sherry and the dog Shiraz for the last six years. I happen to be the current president of the HOA for CVCE. Obviously, as probably many things that come before you as a commission, there are very strong pros and cons against it. Certainly, while I do respect the opinion of the people who are outside our development who are against the gates, when you look at, from a practical standpoint, and you've had people who urinate in your front yard in front of you and your wife, where you have people who drive across the neighbor's lawn and hit the fence that protects the water tank there, knocks off a gas cap for the gas line where the gas company, police, and everyone have to come, these are examples of people like the last speaker who lives on a small cul-de-sac where the people who come and do drugs and things there are from the general area, not meaning the two different subdivisions we're talking about, but they're from San José. So they park when there's an access to get out, should anyone call them on it, or the police come. Or if you're in a cul-de-sac like Eagle Crest, of course they don't have any problems. Who's going to drive into a dead end and do drugs and potentially have the police called there. So when you look at it from a very practical standpoint, those things don't happen on Eagle Crest, and Hollow Way is very similar, because if you drive up, there's no way to get out. Where if you looked at the diagrams, at both pro and cons we're showing this evening, there's easy access in and out of Glenview Drive. So from my standpoint, I think you've heard lots of factual information. I think we've addressed the issues of stacking, as well as noise. No -- as several of you have said, there's no perfect way to do this. But from a fiduciary standpoint that we have as members of the board, I think it's appropriate that we would make the request for the gates, and the gates are very consistent with the restricted access that the City of San José proposed and approved for Chappell back in 1987, long before the current general plan 2020 was in effect. So that preceded that.

COMMISSIONER JENSEN: Thank you, Mr. Leroy. We do have questions for you from the commission. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. So you're the president of the HOA, is that right?

ORATOR: Yes I am.

COMMISSIONER ZITO: Thank you very much for coming tonight you could probably answer some of the questions. Has the HOA considered private security?

ORATOR: Yes, we do use that on major holidays like the 4th of July and others where there have been consistent problems over the years.

COMMISSIONER ZITO: Have you weighed the cost of private security on a more regular basis maybe not every day maybe weekends or something versus the cost and maintenance of gates?

ORATOR: We have, we have looked at that and we thought that the costs were inappropriate at the times that we were going to need it, it could easily happen Monday through Thursday, Monday through Friday as well as on the weekend.

COMMISSIONER ZITO: What about neighborhood watch?

ORATOR: We do have neighborhood watch and we have a number of sessions with the City of San José police. What they have indicated as would you understand with some of the budget restrictions, is there are not sufficient people to patrol that area frequently because yes, it does not have the same incidence of crime that some of your downtown areas would have.

COMMISSIONER ZITO: Okay. And how many lots are yet undeveloped in your community?

ORATOR: I think there are about nine or ten right now that are undeveloped.

COMMISSIONER ZITO: In your estimate, and I realize it's just your estimate, would you say that maybe some of the problems have to do with the fact that there are these I suspect fairly large undeveloped lots that are accessible as opposed to the fact that you've got a cul-de-sac? There are a lot of other pretty upscale neighborhoods.

ORATOR: Sure.

COMMISSIONER ZITO: Some gated some not gated.

ORATOR: Yes.

COMMISSIONER ZITO: To be honest with you I'm here a few years and I've never heard anybody complaining about the level of abuse that your neighborhood's getting, in that type of a neighborhood, you know, people urinating on your lawns, people crashing into your front -- unless you live near Tiger Wood's house, you don't usually don't have that kind of problem. So I'm just curious if part of that problem has more to do with the undeveloped lots.

ORATOR: I don't -- I certainly think that's a valid question on your part. I don't think from my personal experience, and I'm obviously not personally familiar, only the reading of some of those other incidents. But where I live, which is almost next to the water tower at the top of Glenview Drive, the issues that we've had with skateboard aren't primarily people who walk in with a skateboard and skate down. They're more interesting things where four kids will drive up in a black SUV, two of them will get out with skateboards, and they'll all start at the same time. And the ones on the skateboard will try to beat the SUV down to the end of the street. So we're not talking about normal things.

COMMISSIONER ZITO: So Darwin would take care of that problem eventually.

ORATOR: You know, you would like to think so, but I'm not sure about the liability, from a fiduciary standpoint, that I would like that.

COMMISSIONER ZITO: That's a very good point. All kidding aside, nobody would like to see that kind of a problem. I completely agree with you. But I do think something like a neighborhood watch. We had that in our neighborhood that may be able to deal with issues like that, and really it requires the cooperation of the neighbors in that HOA to be able to say, we're going to sign up and patrol the streets, at least until some of those more attractive nuisances like lots that aren't developed yet get developed. And to be honest with you -- I'll go one step further -- your conversations with the builder, have they provided security for those lots that haven't been developed yet? Do they have security?

ORATOR: In terms of fencing of the lots that are undeveloped, no. Obviously anything where construction starts they have all the normal regulations of the city to completely surround it with fence and that kind of things but the empty lots are truly empty lots.

COMMISSIONER ZITO: Let plea ask this and I'll ask this of the appellate as he comes back down here. Are those lots owned by Chappell?

ORATOR: No.

COMMISSIONER ZITO: They're not. They're probably --

ORATOR: Most of them are people who bought them from an investment standpoint, and now they're not exactly a great investment. I think the Rejavic family may still -- who owned that entire hillside may still own one or two of those lots.

COMMISSIONER ZITO: I'm not a legal expert in any way, shape or form, but there may be some recourse in going back to the owners of those lots as far as the issues of attractive nuisances, just to say.

ORATOR: Yes, and we have attempted to do that. And I think one of the downcountry homeowners brought that up, about how ineffective he feels we have been in terms of forcing people to build within the time deadlines established by the CC&Rs as well as the city. But from a legal standpoint, an HOA only has so many legal alternatives. You can only fine people for so long. You cannot force them to build, and neither does the city apparently have that right.

COMMISSIONER ZITO: Right, you can't force them to build. And I don't know the legal ramifications, and maybe counsel could illuminate some items for us. And just so you know, and all kidding aside, your issue of liability has not fallen on deaf ears, and I will ask certain entities to address that situation.

ORATOR: Good. Thank you. And I think one of the first owners in favor of the project had indicated if the city was willing to take over, because we have all the city services. The city is just not responsible for the maintenance, the liability, et cetera, of the streets. But we have all the normal city services, whether it's trash collection, or mail, or anything else, it's all the same. Thank you.

COMMISSIONER JENSEN: Thank you. We also have a question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. So the question I have is, have you considered maybe placing one gate? As a trial and see how, if the problem that some of the homeowners talk about actually materialize?

ORATOR: We have attempted to look at that from the fairness of all homeowners we did not come up with that as a recommendation because again even the homeowners who were against it, the majority of homeowners on each side of the street wanted the gates. So if you lived on Hollow Lake Way, we didn't think it was equitable, since you were -- the majority of you were in favor of it, we'd say, oh, okay, don't worry, we're going to build the gates over here. You can help pay for them, we'll take care of that liability, but we're just going to leave you because you live on Hollow Lake.

COMMISSIONER KAMKAR: Right, but the idea that some of the problems that people think about they may be just what they think. They may not actually materialize. For example, you know, the exact solution, dissolution of the cars, it may not happen if the gates are timed correctly, where you know, in heavy traffic the gate stays open, and when it's not, then there's only single cars that are coming and going. So I just wanted to see if you had considered.

ORATOR: We definitely had considered that, and I'm not sure if the last part of your comment was consistent with your question. But we did consider whether there were streets like Hollow Lake did not need a gate. We actually had those discussions with the homeowners, and the majority said, well, we would feel very left out if the people on Glenview get gates, and we don't, which was the reason. Now, were the city to come back and say, hey, we understand the issues on Glenview, and we would be willing to positively look at that, based on the recommendation and also the subdivision approval back in 1987. I'm sure that we would be happy to consider that.

COMMISSIONER KAMKAR: Work something out. Thanks very much.

ORATOR: Thank you.

COMMISSIONER JENSEN: Thank you. Laurie baron.

ORATOR: My name is Larry Barna, B-a-r-n-a, thank you. I'm a retired nurse and I'm the second-newest home owner to reside in CVCE. My husband my daughter and I moved in, in July of 2008. Five days before we closed escrow I got my welcome to San José. Five days after we closed escrow, we had the opportunity to meet the former owner, because some guy and his daughter drove onto our private road, and decided they would park in front of this home for sale. And enter the property, entered the property, gained access to the house, and my husband happened to be driving up there and he was going to just check on things. And confronted this man. What are you doing in there? Well, it's all about this. It's the public's feeling that they're entitled to do anything they damn well please, any time they want. But private doesn't mean private for me or you or maybe it do today, but not tomorrow. And I have a real issue with that. Now, I can't change the world but private road means private road. And I have tried everything in my power, call police, I know policemen on a first-name basis. That's sad. They're good, they're working as hard as they can. I feel bad that I have to call them about nuisance crimes that I believe gates would reduce. In June of last year I started a neighborhood watch program and I worked with Dirk Parsons who came to my home and gave a presentation. I have members of that neighborhood watch that I e-mail on a regular basis. I read the Almaden Resident and the Almaden Times weekly, every week. I let them know about things that are happening. I walk the neighborhood. I keep an eye on people's property. But

I'm one person. And I've done as much as I can do to stay aware, to stay in touch with my neighbors, to go to HOA meetings, to be involved, and I don't see any other option. I wish there was.

COMMISSIONER JENSEN: Thank you, Ms. Barna, your time is up. Before you begin speaking I'd like to call the next three speakers. Dave Subashida, my apologies. Gary Garcia, Brent Stewart. Thank you.

ORATOR: Hello, my name is Crystal Woodworth. I live in 7251 Glenview. And my family is in support of the gates. When we purchased the property 12 years ago, one of the initial people to build up there, we were told definitely that it was a gated community. And they walked us and showed us the cul-de-sac below was built extra large so that there was a turnabout before going onto the one-way traffic streets with no sidewalk and all the turns. At the time, I thought that would be great but I really didn't understand the impact, you know, I was a little bit ambivalent but I thought it would be cool, to be blunt. Since then, I have come completely the other way. In January of 2007, we were hit by a car at 1:00 in the morning by a nonresident, three teenagers that were intoxicated, that completely destroyed our property and the fence and the water tank right next to us. We were right at the top of the hairpin turn. We have always heard the cars squealing around, we do every weekend. Since that happened we completely brace ourselves, throughout the weekend nights in particular. And of course, the -- it was months of -- to repair. The water geyser was 12 feet that was broken on the water tank, right between our two properties and the car actually landed on a gas line. So it took quite some effort to remove the car safely. My children are in the bedroom that be shown right there. They are no longer there. We moved them because we're concerned for their safety. So in addition, once again we're kind of in this vicarious position that we happen to be at the top and the turn about area and the road was designed for one way traffic. However, we have become the turn about right in front of our property but there's not room to make a U-turn or a wide turn right there so they're using our driveway all the time. Whenever my children are playing as my neighbors know I put orange cones all across the front of reply driveway and they're not allowed to go in the street, only to stay on our property and I have to avoid cars turning. There are many nuisances that we all experience that we've talked about here but this is something for my family's personal safety and the safety of the families up there as well as our personal liability. The father of one of the intoxicated children came over the next day –

COMMISSIONER JENSEN: Your time is up. Thank you very much. Dave I'm going to let you tell me your last name.

ORATOR: You can just call me Dave.

COMMISSIONER JENSEN: Okay, thank you. For the record, we do need your fill name, though.

ORATOR: Good evening, members of the Planning Commission, my name is Dave Shugista, and I am a homeowner in CVCE. Although our neighborhood has signs posted, no trespassing, and the street is private, it has largely been ignored and abused many years by our non-CVCE neighbors. Here's some examples I'd like to share with you. During the past several years I've called the San José police department numerous times reporting public loitering, disturbances with regard to the vacant lot next to my house. The vacant lot has fantastic views of city lights of Silicon Valley including Downtown San José. As a result, this empty lot attracts many non-CVCE visitors during the day to stop and enjoy the view. But more importantly, during the evening it is a magnet for young kids to park their cars and party with alcohol and drugs. I used to politely ask these individuals that this is a private street as well as they shouldn't be either drinking smoking doing drugs or loitering on the street as well as disturbing the peace. In addition, the vacant lot is always littered with liquor bottles and food debris that the neighbors and I are

always picking up. I no longer approach these individuals after one of my cars parked in my driveway had a window smashed the following day. I confronted the kid saying he shouldn't be here and had a smashed window in my car. Hence I call the San José police department. Second point, just several weeks ago my wife called 311 at around 10:00 p.m. and reported several carloads of kids, around 12 to 15 kids congregating on an empty lot next to our property, disturbing the peace, smoking, possibly doing drugs. Two police cars responded within minutes, and the kids were gone. If the gates had been installed, we would have not wasted the limited resources of the San José police department responding to calls of this nature. Three, item three I have here is since my home is located on the top of the hill in Glenview, many cars use my driveway, as well as my neighbor's, to make U turns. Once they reach the top of the hill, you know, they figure, oops, got to go back, and they use my driveway. And so what happens, I've had damage to my property when they're making these U turns in my driveway. The first incident, a hit and run, I saw a vehicle back into my driveway and damage my raised storm drain and take off.

COMMISSIONER JENSEN: Thank you, Mr. Shugista. I hope I didn't bungle your name quite so badly. Your time is up. Thank you very much. Mr. Garcia.

ORATOR: Hello, my name is Gary Garcia. I live at 7245 Glenview Drive. I've lived there for eight years. I've seen a lot of my neighbors' homes being built over the years, and I have a lot of problems with things happening at night on Glenview Drive. Not so much during the day. It's mainly at night. I've gotten home after dark and almost hit several people, at several different times, walking in the middle of the road because we don't have sidewalks. They walk in the middle of the road, they're dressed in dark clothes and I've almost hit a few. I've had experience with cars going over 60 miles an hour on my street with me trying to back out of my driveway and a black Porsche coming around the corner in one instance and almost hitting me and this guy is doing 60 miles an hour. They use Glenview drive especially up at the top as a raceway. Pedestrians use Glenview drive as a walkway or hiking trail, so much happens at night, you know. I've gone out, at night, and shoed children or young adults away from my house in cars, either trying to make out, or doing drugs, or God knows whatever. But a lot happens on Glenview drive especially at nighttime. It's not so much during the day. It's kind of a quiet neighborhood during the day but at nighttime a lot of stuff maps. You know, and I'm really concerned about the liability problem, with me hitting somebody, getting in an accident, somebody getting hurt, or rolling over a car that could - - because it's very steep and it's very curvey. So a lot happens. You know, that I'm afraid of the homeowners are going to be liable for.

COMMISSIONER JENSEN: Thank you, Mr. Garcia. And we do have questions for you from the commissioners. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. So the gates may not stop the pedestrian. You may still need to contend with those. But I do have a question for you. Do you -- so you're a resident of CVCE or do you live just outside the limit?

ORATOR: No, I'm a resident, I'm towards the top of the hill also.

COMMISSIONER KAMKAR: Homeowners association, also, thank you.

COMMISSIONER JENSEN: Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. Sir, how long you have been living there?

ORATOR: I've lived there for eight years.

COMMISSIONER ZITO: Okay. What is the street light situation there?

ORATOR: Street lights are adequate. My wife wants to have them painted, she doesn't like the color. But they are very adequate and there's actually a street light in front of my house. But that doesn't seem to stop people from parking in front of my house. I've gone out of my house several times a night.

COMMISSIONER ZITO: I'm not worried about parking. I'm worried about you not seeing pedestrians and such.

ORATOR: Yeah, it's fairly adequate I would imagine.

COMMISSIONER ZITO: So would you say that a person and I understand not having sidewalks makes it a problem situation to start with, not very friendly or walkability but in general, someone was walking along the whatever you want to call it, the curve, if there was one would they be visible to a driver?

ORATOR: In some cases, I would say yes but if you look at our streets it's very curvey and a lot of times I'll be going around a curve at nighttime and I won't be able to see them right there as I come around the curve. In most cases they are fairly well into the streets.

COMMISSIONER ZITO: Okay, thank you.

COMMISSIONER JENSEN: Thank you, we have no further questions. And Mr. Stewart, as you're coming forward I would like to call the next three speakers. Farook Larasand. Shiro Fugura, and Joe lay. Thank you.

ORATOR: Hi, I'm Brent Stewart, I live at 7232 Glenview. I'm in favor of the gates. I want to show you the cul-de-sac and where those gates are proposed, you can see the line there. So inches is perhaps a dramatization. It is fairly far away, they are not, you can see a car there, you get a perspective of the size of the turn around, which in my opinion is adequate. But I wanted to give you an idea what we're talking about whether it's inches or yards or feet. I think really, the argument comes down to just a few primary points. It's one of safety. We've had some accidents. There are issues. It's not a matter of if this is going to happen. It's when and then what are we going to do? So we just want everyone to be safe, and with people accessing areas that aren't authorized for that it's just not going to be safe. The second is really it's a liability issue and we've gone over that plenty of times. I don't want to be responsible. I don't want to get sued when this again happens, we believe it will at some point. It is a wheel issue here. We are not reinventing the wheel. There are plenty of access issues established in and around gates. It is knot nothing knew we're trying to establish here. And lastly, it is a cake issue. San José can't have their cake and eat it too. If it's a private road we need to treat it as a private road. If it's public, that's all right too but we should if it's private we should have right to restrict access. If it's public, you guys can take over the maintenance and liability. Either way is fine. Thank you.

COMMISSIONER JENSEN: Thank you. Mr. Larasama, is farook Larasama here? You can see I'm doing very bad job with your last name.

ORATOR: Good evening. I'm Farook Larajami. I live at 7221 Glenview Drive. I'd like to let you know that I'd like to vote for the plan. I feel this plan will save our street. Safer for our street so that's why I like the plan, vote for that. That's it.

COMMISSIONER JENSEN: Thank you. And we have no further questions for you. Thank you. Shiro, Hiro, Fukura, Sura, okay. I'm going to give the address a shot. 6419 Montana court. Okay. Looks like you've gone. Jo Lay.

ORATOR: Hi, my name is Jo Lay, and I live right in front of the gate that is one of the worst gates which is the Hollow Lake Way and Glenview. I'm against the gate because Hollow Lake Way is sloped and curved. With that gate, I'm right in front. So I -- when I'm -- like during the day when I do some yard work, I can see some people coming down the Hollow Lake Way pretty fast. I can imagine the gate if installed, which has no room, of course we talk about stacking, it's a very dangerous problem in this particular gate. So my main objection is a safety issue. So that's it.

COMMISSIONER JENSEN: Thank you, Ms. Lay. And the next three speakers, John Salahi, or Salatle, Ed Mendens, and Sherry Leroy.

ORATOR: I don't know if you've pronounced my name. It's John Salah, is that right?

COMMISSIONER JENSEN: That would be you.

ORATOR: Thank you, so my name is John Salah. I live on Hollow Lake Way. I live just above where the gate structures are, about five highways up. I'm at the peak of a hill where I also see lots of skateboarders. So I'm on a public street, I see skateboarders all the time. They come down there, and that sounds like if they put more gates up, there will be even more skateboarders coming through our area. My issue has a lot to do with the traffic movement. So as the gates are going to restrict the traffic more, they will obviously push more cars in front of us. It will change the original status of the PD, so the aspect of the PD, which was not having gate structures, which is not what we bought into when we first signed up. So I think many people also mentioned that issue. I think emergency access was brought up but sounds like there are solutions to that. One thing that was not brought up is home values. Okay? So it would also I think reflect and change potentially our home values. Obviously there's no way to project that and predict that at this point, but obviously if you have two kind of areas that are melded into one, now you're creating a completely different kind of area. It was intended to be one area, one structure, yes, there are different houses different streets all that sort of thing. I think a couple of people brought up that you know as I'm listening to my neighbors here I'm very empathetic with the problems and with the crime. We're all concerned about those types of things but by doing that is going to push all of that structure down through us where we didn't have that. So if all of a sudden people are doing whatever problems are going up there now we're going to say well we'll just go down closer to the edge of the gates. All of a sudden when we didn't have a problem we're just moving the problem potentially. I think that was -- those are pretty much -- oh and access to walkers. So there are lots of people, if I could get a dime for every person that walked in front of my house because I'm on a hill I'd probably be a multimillionaire at this point. People do like to walk up the hills.

COMMISSIONER JENSEN: Thank you, Mr. Salah, your time is up. Mr. Mendens.

ORATOR: Good evening, commissioners. My name is Ed Mendens, I reside at 367 Santana Heights, Number 3100 in San José. I was born and raised and continue to live and work here in this great city. I

formerly resided at the Country Custom Estates until December of 2006, but I no longer live there, and I have no vested interest either way in what your determination is here tonight. However, the security gates I believe vigorously are necessary to be installed at the three entrances of the private streets, because the existing conditions are inherently dangerous to the public welfare for the following reasons. The streets are relatively narrow. The streets are steeply sloped, being in the hills with nearly 700 feet elevation. The streets are winding and serpentine, and there are blind curves, okay. And there are no sidewalks, as has been mentioned. And that's important to understand. Pedestrians must walk in the streets. As a consequence of these combined street hazards, the public is at risk whenever motorists, skateboarders, pedestrians enter the private streets. There exists a large volume of compelling historic evidence documenting accidents, injuries, trespassing and nuisances. There is also a large property with a water pond owned by the San José Unified School District within the private community that is accessible by these private streets. This pond property is required to be fenced for safety reasons pursuant to a grant deed provision, but this pond property remains unfenced and the gating would satisfy that security and safety requirement. So thank you for your consideration -- oh one last thing is when I was there if I have time, there were two polls taken roughly 18 months 20 months apart and 72% of those who responded were in favor of the gate and 78% on the second one were in favor of the gates.

COMMISSIONER JENSEN: Thank you, Mr. Mendens. Mr. LaRue, Leroy.

ORATOR: Good evening, how are you? This has got to be tiring for as well. May I ask a question before my two minutes start?

COMMISSIONER JENSEN: We don't interact unless one of the commissioners has a question for you. But we're here to listen to whatever you might have to share with us.

ORATOR: Okay, great. I would like to know by show of hands if, in fact, how many you have read the 140-page report that was provided you by our association. How many? Three? Four? Five? Okay. Okay. Thank you. My name is Sharinda Roy, I'm a resident of 7248 Glenview Drive, I'm David's neighbor and Gary's neighbor and I'm Crystal's neighbor at the top of the hill where the car ran over and sat on the -- I don't know something that could burst. Anyway, long story short I have been a prior past president of the board. The bad news is for my husband is he got the job after me and I was on the board for three years. We've been residents actually for seven. I want to put this slide up just quickly. Now I understand why people are having problems with these. As Ed mentioned before, there is actually a 700 to 500 foot drop to where the residents of country view estates is. I think it's important to understand the topography. The reason they are talking about the skateboarders is I was actually the one who calmed the police on that. It was amazing. At 12:30, 1:00, a black SUV loaded with kids, I could hear them our bedroom window is up there. I got out of bed because I was awakened. I thought they will go over the hill because they go past us. It is very quiet. Then I realize they were turning and in my driveway. I literally saw two kids each hanging on the mirrors, squatting down, they proceeded to squat down and like a skier --

COMMISSIONER JENSEN: Your time is up.

ORATOR: The liability is horrendous.

COMMISSIONER JENSEN: Mr. Urna the appellant, that's the end of the public speakers. If the appellant would like to come up you have up to five minutes to make your closing remarks and respond to any of the comments that you may have heard here this evening.

ORATOR: I'd like to start with the turn around at the bottom of Glenview drive. Stacking seems to be an issue here, so this is a street level photograph, a series of photographs with the plan view drawing of the bottom of Glenview drive. This car is staged so as to simulate a denied entrance at the gate, backed up. As you can see, the circular area at the bottom, the cul-de-sac is massive. It's large enough to turn around huge trucks. This vehicle is staged, simulating a backup. As you can see it doesn't come anywhere near anybody's driveway. Simulated backup, no driveway would be affected. Second picture gate number 2 again simulated backup denied entrance. Backing up onto a minimally traversed road of hollow lake. Backup is not an issue, there's no driveways involved in this. Third photograph holt owe lake, again a simulated backup on a sparsely populated road, certainly not a hazard. These pictures were taken in the morning, last one about 11:00 a.m. The car in the foreground was parked, no other traffic on the road. Other issues I'm assuming that since you all read the security report that you're all very well aware that Glenview drive and that portion of Almaden valley is on a cruising path. Drug use is prolific there. We're on the street level. I spent a great deal of time out in front of my front house. I have a lot of time off, I am lucky enough to spend a lot of time in my house. The drug use is huge. The bong, pipes, we have seen continues on a daily basis. Early in the morning, late in the evening. The documented cases are substantial. The liability is huge. Put it all together, you've got steep winding roads, blind corners, narrow streets with no sidewalks, speeders, who are actually most of them are trespassers, they don't belong there. They're out for a good time. They're causing problems. Exposing us to massive liabilities. Massive liabilities. So the design addressed esthetics and functional characteristics. We believe it is an excellent solution to the problem. One question came up, why in 2006 did we not go to people? One of the speakers was up here Ed Mendez was the president of the board at the time. Unfortunately he moved out just before the appeal process was to take place and the appeal was dropped at that point. I'm open to questions.

COMMISSIONER JENSEN: And we have a question. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. So I'm going to ask the questions again, as far as neighborhood watch and private security. Help me understand, why those solutions aren't going to mitigate.

ORATOR: Say that question again, please.

COMMISSIONER ZITO: The use of neighborhood watch and private security, the two possibilities for mitigating the kinds of vandalism and trespass that you've been discussing.

ORATOR: We've computed the cost of private security. First off we do have private security every weekend, Friday and Saturday night for a few hours during the critical periods when we've seen most of the incidents occur. We also have –

COMMISSIONER ZITO: Just let me stop through. How has that affected the number incidents?

ORATOR: Minimal impact or no impact.

COMMISSIONER ZITO: Continue.

ORATOR: Neighborhood watch we've established that, minimal impacts. We've got e-mail from Dirk Parsons, minimal impact.

COMMISSIONER ZITO: Have people actually been going out and manually walking the community?

ORATOR: Part of the problem when that happens is, as Dave Sugasita said, he had retaliatory vandalism against his car when his family confronted people in front of his house. I've been personally threatened confronting trespassers. We're a little reluctant to do that. It is a plus and minus. It's a catch 22.

COMMISSIONER ZITO: So we have neighborhood watch in our neighborhood and first thing the police tell you is do not confront a violator, call the cops.

ORATOR: We will call, we will talk with them if they are blocking the road, and we happen to be driving behind them, in my case. If they are right near your house, you may talk to them. Police response is slow. As you know, San José has cut back police and fire, neighborhood watch programs, et cetera. Police response, unless it's a serious emergency is slow, often the trespassers are gone. It doesn't take that long to smoke dope and move on.

COMMISSIONER ZITO: Okay. So the other questions I've got are street lights. It seems that there was some people concerned about the ability to see people walking and those people could be their neighbors.

ORATOR: There's blind corners, thank you for driving that up. As you drive through Glenview Drive in particular, the trespassers that are foot walking pedestrians on Glenview will jump onto private property sidewalks to avoid any danger from vehicles that are moving down Glenview. We see them all the time. I would not want to see them jump the wrong way. They're jumping out of the way. There's blind intersections. And again, we're talking 500 vertical feet. This is not the kind of terrain where you're going to see trespassers driving up or walking up, committing issues, and then walking down, or generally doesn't happen that way. They drive up. They drive up in vehicles, cause problems, and then drive down.

COMMISSIONER ZITO: I'm talking about the fact that what I'm hearing from testimony from people is that there are people walking around. They don't know whether they're trespassers, they could just as well be neighbors.

ORATOR: 50 homes on Glenview Drive, roughly 25 on Hollow Lake. We know most of the people that are up there. You live long enough, you see the people that are up there. It's a small community, most people know everybody. We also know where many of the trespassers live. You'll see them trespass up, and then the next week you'll be driving, and they'll be walking into their home, for example. We call them serial trespassers. It's prolific, it's constant, it's never stopping. Many of these we do not confront, we just accept.

COMMISSIONER ZITO: These are trespassers from adjoining neighborhoods, is what you're telling me?

ORATOR: Yes, from -- and from the opposing neighborhood nearby. Those are -- most of the walkers come from the opposing neighbors. It's a nice walk, it's a great workout, definitely.

COMMISSIONER ZITO: And honestly, gates aren't going to stop that so much.

ORATOR: Pedestrian traffic, not as much. We are very much interested in the vehicular traffic control. The pedestrian traffic control is secondary in our mind from a security standpoint. But it still exposes us to huge liability having trespassers up there.

COMMISSIONER ZITO: Well, that's the next question I have from you. And I'd like to get -- I suspect you've done some research on exactly what that liability is. We had a person from the insurance company come up and talk about what liability you're open to if you do not get the gates put up.

ORATOR: There's various forms. I'm sure your city attorney could address that issue certainly more. I'm not an attorney. But for example, if there is a dangerous situation that an attorney could argue has remained dangerous, and that perhaps that Country View knew about or allegedly knew about, that the injured person could have some claim to lawsuits. I've heard of questions where --

COMMISSIONER ZITO: No, I don't want to hear, "I've heard of cases." What I want to understand is your insurance company has said you're open to liability for these issues. Not just something you may know about anecdotally. But I want to know specifically what your insurance company has said is your liability if these gates haven't been put up.

ORATOR: Well, in the interview I had with our existing current insurance agent, he said if things like people getting run over, people getting hit, people falling down, a slip-and-fall type of injury, if there's enough of them our insurance costs could rise considerably causing a financial hardship to the residents of CVCE. If there's more examples of those, insurance could be elevated into the very high-risk category which could produce a substantial financial jeopardy. In addition, if there's a lawsuit, a slip-and-fall or a runover or something like that, it could dramatically and easily exceed the limitations of our policy which is only a few million dollars.

COMMISSIONER ZITO: Fair enough. Then the next question is, is what are you doing regarding the empty lots, what is the policing, what is the mitigation put in place. My understanding -- and please help illuminate -- what is that situation, who owns those lots? What are their responsibilities, et cetera?

ORATOR: They are privately owned. First off, the drive-through trespassers may not stop at the lot. Police have been called enough times, I think perhaps word has gotten out that maybe the lot at the top of Glenview is a little bit off limits. They still stop there. But the drive-through trespassers that are smoking dope are cruising, smoking dope, driving through our nice, nice neighborhood, enjoying the views, enjoying the privacy, relatively nonconfronted, a nonconfrontary neighborhood and environment, and moving on. It's these incidents, and you see at least two of them in the report, of property damage due to intoxicated, stoned drivers. As far as the empty lots go, we are encouraging the builders to build ASAP. We are encouraging the real estate agents to sell those lots and to get those lots constructed ASAP. But we all know the current situation of the housing market.

COMMISSIONER ZITO: Does the HOA have a requirement that any owners of undeveloped lots fence their lots and/or provide security for those lots?

ORATOR: As far as security goes, I do not believe there's a requirement for them to provide security in our CC&Rs. As far as fencing, there is some level of requirements. It's have to research our CC&Rs. We on the board are not seeing that as a first-order problem.

COMMISSIONER ZITO: The other thing is, was the development designed with the idea that there were going to be gates?

ORATOR: Well, that was well before my time at the community but the feeling that I'm getting is that when Chappell offered those lots for sale they offered them to independent builders who did their own thing. Chappell certainly controlled the overall environment but at that point, there didn't appear to be a clear picture. I've called Chappell and asked them for documents on the history file, they can't really produce it. The fact that this is private streets to me differentiates them so substantially from the surrounding neighborhood, that one could not enter into this without the thought that these would eventually be gated.

COMMISSIONER ZITO: Okay, I'm not going to go there with that. My point is this, I can understand the liability issue and I'm very empathetic about that, okay? And I had told council that I'm going to ask questions regarding liability once public hearing is closed. But I can't help but see that in general, this doesn't seem to be a development that was actually designed with the idea of having gates in mind. The reason why, every single gated community that I've seen has a turn around, not a backup, but a turn around provision so that somebody who is not granted access, or have some way made a mistake, can go forward, turn around, make a U-turn and come back out again, not back up into oncoming traffic or into cars or other scenarios. And the gate location is such that it does not interfere with the quiet enjoyment of other private residences. So that's my concern.

ORATOR: There are numerous examples out there of gates that don't have a turnaround. I showed one during my presentation at the villages on Meridian Avenue. There was another one that was submitted in the packet that we provided to you. There are numerous examples of various geometries that do not have gates backing up, denied entrance and backing up into traffic, directly into traffic on heavily traveled streets.

COMMISSIONER ZITO: And this is a condo complex. This is a condo complex, where you have superhigh density, and you don't have three, 400 foot frontages in front of people's houses.

ORATOR: And you would think that those gates would have a large amount of use and could also be dangerous. How were they approved in that situation?

COMMISSIONER ZITO: And I'd have to ask staff that, and I'd have to believe a lot of this had been brought in many, many years before. But that's not an argument I want to have here. I just want to understand what the history of this is, and I want to be fair in that I see a liability issue, which I will have staff address. But I also see that, you know, it's been put in -- you're asking us to approve something that, in my opinion, could have been planned a lot better, let's put it that way.

ORATOR: Perhaps it could have been planned in a lot better in the past, but here we are, here and now. Nobody could have anticipated these issues that we had back then. The world was a little bit different in 1987, '85, '84.

COMMISSIONER ZITO: But my understanding is that this has been planned for a gate since the inception.

ORATOR: No, I didn't say that. What I'm saying is that the original developer, Chappell, can't provide a history file showing that they in fact had gates planned. We see some documentation of monuments. It's

implied perhaps that gates were thought of, but gates were never built. We never had final drawings for gates. That brings us to this point here and now. In 2006, this was presented -- this could have been presented to you by earlier administration. It wasn't. The project was dropped. Here we are today.

COMMISSIONER ZITO: Okay.

ORATOR: Also, I also want to say, there's multiple --

COMMISSIONER ZITO: Thank you.

COMMISSIONER JENSEN: Thank you. We do have a question from Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Madam Chair. I don't recall any conversation about using speed bumps to solve the problem with skateboarders or speeders. The skateboarders that may be seen as a nice jumping ramp but the little bumps that are all together would cause a lot of problems for skateboarders, have you discussed using that for skateboarders and cars?

ORATOR: Speed bumps, it would be nice if speed bumps would solve vandalism, vehicle speeding, vehicles trespassing, narcotics use. It might make a ride rather terrible for a skateboarder, but skateboarders are only part of the problem here.

COMMISSIONER CAHAN: But you also have the speeding. You discussed the problem with speeding and the potential for blind curves. You could use speed bumps as a way to slow people down, even the protection for your own residents.

ORATOR: It still won't stop the trespassers. It still exposes a huge liability. In fact, a speed bump, you could lose control, you know. If a car is speeding, hits a speed bump, you could lose control even more. Then with the issue, was the speed bump correctly designed, did we accommodate -- that's liability.

COMMISSIONER CAHAN: Thank you.

COMMISSIONER JENSEN: We have no further questions, thank you very much. There's a motion to close public hearing and a second. All those in favor? Opposed, thank you. Staff, would you like to respond to some of the comments?

ORATOR: Thank you. I'm going to kind of start at the higher level with the general plan. I'm going to go ahead and if it's okay, use the words of the appellant, opposing neighborhoods. That's a concern. That's the very reason we have the general plan policies that we do about discouraging gates, integrating neighborhoods, new neighborhoods with existing ones. These policies did not happen after this development. They began, you know, early on in the late '70s, continued on through horizon 2000. 2020 was not a revamp of the horizon 2000 general plan. In fact it carried the existing policies forward. And in fact with envision 2040 the task force has looked at that time same issue and has worked to strengthen those policies understands the real importance of integrating the neighborhoods in San José. Integrating neighborhoods is what's going to create community, is what's going to you know combat this criminal activity if it does in fact exist. So again those general policies are very critical and moving towards a community and integrating the differing neighborhoods so that they can all work towards the same goal of having a safe and health environment to live in. The planned development zoning, you know we do have documented evidence, there was no planned design for gates. It's clear that the number of gated

communities in San José can probably be counted on one hand. And the design of them have been such that it -- we kind of hide the fact that it's a gated community. Those gates are pushed off the major thoroughfares. We don't want to put it in the remaining citizen's face that you can't enter here. It's back, we don't want to create those urban barriers. That's why the villages you see put off, Silver Creek, yes it is a gated community but the public can pass through it and the gates to enter into the private areas are pushed back off that public right-of-way. There is a variety of reasons why public versus privately streets exist. Many developments come before you with private streets. The reasons are, not to restrict access. Many times they are to accommodate differing development standards, more houses. So it's really a way to accommodate development, in the case of country view estates. You know, that street was not going to meet the fire access standards from a steepness standpoint. So therefore, there was the primary purpose behind that being a private street was not to create a gated community or restrict access from our neighborhood versus your neighborhood but it would not meet the fire skate standard. So therefore, the city can't, doesn't want to accept that into their public street system. I think Commissioner Cahan brought up a good point. You know, clearly there are a lot of things going on here that in other communities, other neighborhoods of the city, we look to try and integrate different ways to address them. Our traffic calming program, our neighborhood watch program, block parties, all of these things to really you know work to address specific issues whether it's speeding on a street, whether it's you know not enough eyes on the street, things like that. So there's I think ample opportunity to work other turns into this neighborhood to help them address some of the issues that some feel are happening out there. You know the vacant lots, like any other neighborhood in this city, if it's a nuisance, we've got our code enforcement division that can come out take a look and see whether or not that property owner who's not living there or somebody owns that property, they are responsible for the maintenance of that property, and ensuring that it's not becoming a nuisance to the community. Again, I think, you know, the issue of liability, you know, even property owners who front on public streets, there is, you know, some liability they have on that public right-of-way in front of their home. So again we're all dealing with that issue. It's not exclusive to people who live on private streets. And I'll let the legal minds deal with that more. And again, I just come back to the fact that you know our real goal here in the City of San José is to really, you know, work to bring our various neighborhoods together. I think it is not common to see gated communities in San José. Yes, we do have some. But they're not -- they're not common and we really, you know, in moving forward with our envision 2040 are looking, you know, how we can, you know, further integrate the citizens of this city to really create a healthy environment that we all should participate in and we shouldn't think in terms of opposing neighborhoods. Thank you.

COMMISSIONER JENSEN: Thank you. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Madam Chairman. In order to focus our efforts here tonight I have a motion. I move that we uphold the director's decision to approve a planned development permit amendment to allow for Country View Custom Estates to Install entry monuments without gates on private streets at the three separate locations as recommended by staff.

COMMISSIONER JENSEN: We have a motion and a second. Would you like to speak to your motion?

COMMISSIONER PLATTEN: I don't think so, we've gone through this.

COMMISSIONER JENSEN: Thank you. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. So let me ask the question regarding liability. That's actually the only issue that I find I have to overcome before I make a decision, and that is, being

that this is a private street, and that the city bears no responsibility for this, as I understand it, I'd like to understand how that works and in fact what would be the situation if a similar activity occurred on a public street versus this a private street, if you can address that?

ORATOR: I assume that question is to me.

COMMISSIONER ZITO: Yes, the legal minds of staff.

ORATOR: The legal mind.

COMMISSIONER ZITO: Mind.

ORATOR: Because this is a private street, the city does not have any obligation for the operation maintenance and liabilities that may occur on the street arising out of the use of the streets. So typically you would expect that a homeowners association would have liability insurance. Again I do have to emphasize that I have not reviewed any documents pertaining to the formation of this homeowners association. I do not know how they have chosen to allocate their liability, how they have chosen to provide some assurance with regard to the liability. So I can just confirm that yes, they do have that liability and that was the arrangement that was made back when this development was constructed. If it were on a public street then the city does take over the operation, maintenance and liabilities, and the city attorney's office defends trip-and-falls and various lawsuits that are brought with regard to dangerous conditions on our streets. So I'm not quite sure if I'm answering your question but yes, it is the private homeowners association responsibility and I say that only because that is typically what you would expect. It's the formation of a homeowners association to deal with those issues. I just want to emphasize I haven't looked at any formation documents. I don't know in fact how they have chosen to set themselves up and organize and allocate their liabilities. Performance bonds are not un common. But there's a motion on the floor, so I would not go into the concerns I have legally in terms of some indemnifications I would want to see. I'll see where the commission goes. If the commission does decide to go in favor of the gates, I will be putting on my light to request the staff add additional conditions regarding indemnifications against the city against any liability arising out of the use, operation, and maintenance of those gates.

COMMISSIONER ZITO: Of the gates themselves. If I could ask, do you have no concerns of any liability if we don't -- if we don't approve the gates?

ORATOR: You know the city doesn't have the obligation to dictate the form in which somebody is going to protect themselves. So any more than the city would have liability if we didn't allow someone to erect a ten-foot fence which they couldn't do. We have regulations against that. I think the commission has referred to a variety of methods that could be used that could be tried. So the gates, or installation of the gates, is not the only method and no, I don't believe the city is required to approve the gates.

COMMISSIONER ZITO: So I'm just going to say there overall and I think the ball has been dropped on a couple of different areas here. Number one, it's amazing to me that, to hear staff say that you know, they wouldn't take responsibility of the street, at least what I understood them to say, one of the reasons why is because it wasn't wide enough for a fire turn around. Did I not understand that? Could you restate that?

ORATOR: No, and the city and different departments in Public Works, speak to public street standards, we have set standards. And sometimes when a developer wants to install you know rights of way and they don't meet it, the only time we can look to that is through a planned development zoning and the creation of a private right-of-way. So again it happens all the time. They've wanted to make narrower streets so they can make bigger lots and so –

COMMISSIONER ZITO: That's my point. They wanted something and the city said if you want that then we can't take responsibility for the streets because they don't meet our guidelines.

ORATOR: What we said is if you would like to put the roadway and put it at this grade, because of our fire access standard, it would need to be a private street.

COMMISSIONER ZITO: Right. I could have been built is up that it would meet city regulations.

ORATOR: Potentially.

COMMISSIONER ZITO: But they presumably chose not to for whatever reasons they had. For my perspective this is not a superhigh dense development complex where they had to have every square inch of ground in order to build what they built. These are large executive homes frankly if they had widened the street a little bit more it might have met certain guidelines. The other thing is, it -- if they wanted gates in the first place I would think they would have done a better job of designing the development to put better gates, gates that were more, how could I say, neighborhood-friendly if in fact that was one of the things they needed to do. I am concerned about the liability issue, but as counsel mentioned and alleviated my concerns a little bit, is we are suggest private security, neighborhood watch, speed bumps, other ways, better lighting, and frankly, why there aren't any sidewalks. I mean, yeah, it is a nice feel, not to have sidewalks. But you know what, sidewalks are safe. And if you want your people to be safe, put in sidewalks. It's about as simple as that. People want to walk. Unless you let everybody walk across each other's lawns. So, you know, yeah, it doesn't fit with the elite establishment, and believe me, I live in Evergreen, I understand what that's all about. But the simple thing is to provide safety and security, you need to put other amenities in. And for that reason, I have to say I don't think the developer -- I don't think that there was enough thought put into this ahead of time to provide the level of security that's necessary. And with that being the case, the gates aren't going to solve the problem. The gates aren't going to solve the problem for pedestrians either, and for that reason I'll support the motion.

COMMISSIONER JENSEN: Thank you, Commissioner Zito. Commissioner -- sorry, attorney. Counsel, would you like to speak?

ORATOR: I was just going to note for the Commission that in the Planning Commission's report to the city council on the original planned development rezoning, the reason for the private drive, at least as stated in the summary report from the report from the Planning Commission at that time, was that private drives would reduce the loss of trees, probably because they didn't have to be as wide, so some of the trees could be saved, and that it would reduce the amount of grading. And as the director had referenced it, that would be because apparently that the streets could be more steep than what the city would normally be looking for. So it was to reduce the amount of grading and to reduce the loss of trees. That's the expressly stated reason.

COMMISSIONER JENSEN: Thank you, counsel. Commissioner Kline.

COMMISSIONER KLINE: I did take a trip this afternoon, I'm the trespasser, sorry, on the road, sorry. The comments I can make are pretty direct. It's an extremely unsafe road. I couldn't believe how steep the road was. I was just amazed that this was approved at all by anyone. I've never seen -- and I've been in the area for quite a while I've never seen a poorly designed roadscape for pedestrians or cars. Blind -- I can't believe going up and going down how blind it was going around the curves. I really sympathize with the property owners who bought the properties, maybe not fully realizing what they were getting into. They are gorgeous homes and gorgeous views. It is a beautiful environment any other way. So when I was first going up there, I said there's no way I'm going to look at these gates because I believe that we should bring communities together, and I believe that everything staff said is correct. But I did mitigate my stance once I saw some of the safety issues on this road. Given that, I'm going to support this motion, because I think it is not the fault of the other property owners down below to really be impacted by something they were involved in. I don't think we do want to gate our communities in San José, and there are ways of mitigating traffic issues. There are a whole bunch of different ways to mitigate traffic issues, some, just a small percentage indicated here, and I think that is the number one safety issue here is the traffic. The rest of the crime issues I just don't buy. It looks -- I'm sure there are crime issues. And in other neighborhoods there are crime issues. I don't think that's the real driving force here. I think people driving up there fast, driving down, the convenience of doing it, it is a little mini freeway up there, it can be. You can really lose track of your speed very, very quickly. So I do think there's an issue there, and I think the association has to deal with that on their own private street. And there's lots of ways the city can probably help them by showing different examples. So I am going to support the issue, and I do understand the safety issue.

COMMISSIONER JENSEN: Thank you, Commissioner Kline. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. I have a slightly different take on this and see things a little different. I feel if gates were to be put on they will keep traffic from coming up there. The first time trespasser comes and confronts a gate they're not going to come back so that's going to lower traffic in the whole neighborhood, not just the top portion but in the whole neighborhood. And so -- and I think as a civil engineer who understands how they design these things, they go with the topography. And people who buy, they know what they're buying. They look at it, they understand, you know, the serene value, they understand the narrow streets, and it's by design that it's like that. It's not by accident. So -- and of course fire engine and everything will be able to get up there, otherwise they would not have gotten City's approval. So I see it as it's a private street, you know it's labeled as such. The city allows no trespassing signs to be put up. And so if we want neighborhoods to be fully integrated, those trespassing signs should not be there. So the way I see it is, that those gates will resolve the traffic issue, which then resolve quite a few other issues that come up from those traffic, the blind curves, the accident, the overturning of the cars, and so that's the way I see it. Thank you.

COMMISSIONER JENSEN: Thank you, Commissioner Kamkar. I will also be supporting the motion. I also was apparently a trespasser this afternoon and visited the neighborhood. And I had read in the staff report from 1987 that it indicated that preservation of trees was one of the reasons, as counsel pointed out, for making it a private street. I did not, however, notice an abundance of old, well-loved trees out on the street. It looked more like a newer development. It is a beautiful development. Just gorgeous, you have gorgeous homes, and it looked really quite sparkly new. And I agree that the streets are quite steep. I was born in San Francisco, and let me tell you it was just like driving around home town again, coming over Glenview and pointing down without actually seeing the down before I got there. And I am very sympathetic to folks who are concerned about trespassers. But it seemed clear to me that the community was not designed for gates, because the communities who abut this neighborhood are given no privacy

from the gating area. I've seen a number of gated communities and by and large they all provide private access, as staff reported, where you can approach the gate without parking, and idling near or next to homes that are outside the gated community. And for that reason I will be supporting the motion. Seeing no further speaker lights, we have a motion and second. Can we vote by light, please? And that motion passes, with Commissioner Kamkar in opposition. Thank you. And our next item is C, PDC 08-065. A planned development rezoning to allow for the development of three single family detached residences in addition to an existing single family residence on a 2.07 gross acre site located at the northern terminus of grand oak way approximately 250 feet Northwest of Hematite court. Is the applicant here? I'm sorry, staff. We'll let staff speak.

ORATOR: Thank you, Madam Chair. Yeah, again, three additional comment letters were received and they were handed to you at the beginning of the meeting identified with item 3C on the top. Two of the letters are from adjacent neighbors stating their objection to the project, and one is from the applicant responding to the objection of adjacent homeowners. This is a proposed planned development rezoning and it will allow for the development of three new single family detached residences in addition to the existing single family residence, two of which are in a flag lot consideration and accessed via a private driveway. The additional single family residence on the site will remain in its present location. As stated in the staff report, the proposed zoning is consistent with the Evergreen East hills development policy the intent of the flag lot policies and the goals and policies of the San José 2020 general plan. More specifically, residential use policy number 18 as the subject site is a large parcel surrounded by typically single-family residential lots and the proposed planned development rezoning is consistent with the criteria of the flag lot policy. Planning staff is recommending that the Planning Commission forward a recommendation of approval of the planned development rezoning to the city council, due to its consistency with all relevant city goals and policies. This concludes staff report.

COMMISSIONER JENSEN: Thank you, staff and now is the applicant ready and would you like to speak? And you may have up to five minutes.

ORATOR: Good evening, Madam Chair, and members of the Planning Commission. My name is Michelle Fisk, I'm with Charles Davidson company. We are the civil engineers and planners. It's upside down. There we go, sorry, we're representing the landowner Mr. Sidhu for the property located at the current terminus of Grand Oak Way and San Felipe road. We are here today to request a rezoning for a 2.07 acre parcel to two dwelling units per acre, which matches the current general plan designation of two dwelling units per acre. This project is located by the Evergreen-East Hills policy area as approved by the city council on December 16, 2008. With this rezoning we're requesting three residential unit allocations of the 500 residential units of allocation available through the EEHDP. So the site is kind of the green rectangular piece there. As the triangle, you can't have typical square lots, so we have to get a little creative how the site plan works. So what we planned is to have one existing unit, and that's -- it's about one acre. And it faces out onto grand oak way. We also have an additional home which faces out onto grand oak way and then we have two flag lots on the back portion of the site. Those flag lots would be served by a single shared driveway, and you can see this blue area here. This is actually an area that serves -- it's a driveway easement to the existing driveway which goes up to the lands of Bruce. So we're trying to bring these kind of -- basically we chose that location so we could utilize this driveway cut and not have to add a bunch of extra driveway cuts around grand oak way and minimize kind of the drive that are on this site. We also wanted to open up the and there and have some eyes put on it. There were properties backing up to it and we wanted to make sure this didn't come a big long narrow alleyway with fences on either side and nobody looking at it. So if we were to back up to it nobody would be looking at it, it would be kind of a prime place for hiding and attracting crime and that sort of thing which obviously

nobody wants in their neighborhood. So the proposed lots range from 14,000 square feet to approximately one acre. The properties to the Northwest which are kind of this side are typically just under an acre, and the properties to the east on the other side there are approximately 8,300 square feet. So these lot sizes that we've chosen are nice kind of transition from the larger lots to smaller lots in the other neighborhood. The three additional units won't have any significant traffic or sound impact on the neighborhood, current neighborhood. So this project meets all of the current residential design guidelines, the city standards for flag lots and the proposed project will have to meet all the development standards that would be established by the city including city parking ratios, building heights and setbacks. So as you saw you got a letter that I kind of addressed the concerns of the neighbors because, you know, I didn't want them to feel like we weren't thinking about them, and that we were thinking about what was the best thing for this neighborhood. They did also point out that the rose property would have three streets on -- surrounding it which is not entirely new in this neighborhood. For example, so this is our site. And right here, is another property which has the same sort of thing. I'm going to show you a closeup of it. So you can see that I mean this is even a worse case where it's got three public streets and the back street of San Felipe road. This is at least a driveway in his backyard so it is not, you know, a horrible situation. And right now there's already a driveway in his backyard so all we will be doing is paving it with some pavers and making it a nice driveway and having people look at it. So in closing we ask you to approve the rezoning as supported by the City of San José Planning Department, which matches the existing General Plan designation for a total of four residential units on the 2.07 acre site at two dwelling units per acre. And I will be available for questions at the end of the hearing.

COMMISSIONER JENSEN: Thank you. And we do have questions for you now. Commissioner Kline.

COMMISSIONER KLINE: That's a real good question. Would you go back to the original. What was the reason you wouldn't want to put a driveway on the north side? It looks like there's a nice buffer of a right-of-way on the -- buffering the south homes. And the north side, it just seemed like it would be illogical to put a driveway there, there might be a real good reason, I don't know. It would buffer the back yards of some of the north properties and still give you the same square footage, to a certain degree? As a matter of fact, I think it would.

ORATOR: So this blue area here is actually a driveway easement for this existing driveway. So there's always going to be a driveway there. So rather than having a driveway here and a driveway there and having this triangle pieced --

COMMISSIONER KLINE: You're saying that the south driveway already exists, you're saying?

ORATOR: Yes, yes, so that's the access to the -- there's a parcel of land up there --

COMMISSIONER KLINE: The blue already exists, but the rest of it doesn't exist yet?

ORATOR: Right, this part doesn't, but this side does.

COMMISSIONER KLINE: Right, and that's what I'm saying, it's a nice buffer to the houses on the side to have that easement there, but you have to put another driveway above it to have a real highway to the homes. Wouldn't that be just as easy to put it in the north side and then you'd actually have a buffer to those homes, also? And you're not losing square footage or maybe a small bit because of a blue bit, but that's minor.

ORATOR: One reason is that, number one, you'd have two driveway cuts then in the frontage, which that's just one more driveway cut. We're always trying to minimize the number of driveway cuts. Also, this property is remaining, and he's got a pool over there and lots of other facilities and things that actually back up to that property. So it doesn't necessarily need quite enough room to get a driveway past that without taking out his pool and stuff.

COMMISSIONER KLINE: That is a good reason. That was the reason, all right.

COMMISSIONER JENSEN: Thank you. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. So you mentioned Lands of Bruce.

ORATOR: Yes.

COMMISSIONER KAMKAR: What is the reason that you're not talking to them to maybe possibly use that driveway? So that's also reinventing the wheel?

ORATOR: We actually did talk to him, because I thought that would be -- you know, an ideal situation, we even offered we'd build it, we'd work with it. And they just weren't -- they didn't know what they wanted to do with their property yet and they weren't willing to make any kind of commitment. And in the PD stage, we'd certainly be willing to talk to them and see if we couldn't -- I think it would be an ideal thing to, you know, combine those two driveways, because there's only three units that would be served off of it. We did try to do that, they just weren't ready to go there.

COMMISSIONER KAMKAR: Okay, I see, thank you.

COMMISSIONER JENSEN: Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. The area that the Land of Bruce, it's my understanding, and correct me if I'm wrong, that that is an easement that was created for cows to be able to go back and forth. So not actually a driveway for cars, meant for cars to go back and forth?

ORATOR: It is an ingress-egress easement. So it is the actual only connection to a public road to that piece of property. So it is meant for vehicles, it's ingress-egress, which is typically for vehicles, walkways, whatever kind of however you want to get in there.

COMMISSIONER CAHAN: Thanks.

COMMISSIONER JENSEN: Thank you. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. So to ask the question in a differently way. Is that easement the only driveway for vehicles to get to and from a landlocked piece of property?

ORATOR: That is my understanding, yes. There is no other public street access to that other property, so this is the only access, yes. So otherwise it would be landlocked, yes.

COMMISSIONER ZITO: Right, so whether it is one trip a day or one trip a month, the bottom line is, that that has to remain?

ORATOR: Correct.

COMMISSIONER ZITO: So if you were to put the drive on the other side, then you would have two drives essentially?

ORATOR: Correct. And that triangle would have drives up one side and drives up the other side, and that would also, like I said, be sort of a blind alley, because you would have fences, obviously, on either side.

COMMISSIONER ZITO: I apologize for missing part of your presentation. I had some personal matters to deal with. But so is this going to be, now the way you're proposing it with the pavers, does that widen it for a two-way access, is that how that works, or is that just meant to be for parking? Or –

ORATOR: No, the pavers are basically for storm water treatment sort of issues. We don't want to have extra paving out there. The width of the driveway was actually driven by fire, and they wanted to have, because it's so far out, you know, because it's a flag lot, they wanted that width of street.

COMMISSIONER ZITO: So let me ask the question a different way. Will the access to those homes be achieved through both the Lands of -- is it Bruce, and the pavers, or is it just the pavers?

ORATOR: No, it's just the pavers at this point. And that's what we're saying, ideally we would like to have one driveway that Bruce and us could use and we would still –

COMMISSIONER ZITO: Would that be divided somehow, would there be some sort of a wall? Or –

ORATOR: Right now -- yes, yes. And what we were looking at was doing sort of an open split-rail fence, some kind of open fencing between our driveway and the Land of Bruce driveway so it's not just a big old fence there and nobody looking at it.

COMMISSIONER ZITO: And only two homes are going to be served by that driveway?

ORATOR: Correct.

COMMISSIONER ZITO: So they would have to do that kind of little zigzag up into the blue area to the tan area and then up into those homes?

ORATOR: Right.

COMMISSIONER ZITO: And that's going to be private, I assume?

ORATOR: Private driveway, yes. It's just a driveway. It's not a street or anything.

COMMISSIONER ZITO: Okay, just a flag driveway?

ORATOR: Flag lot, typical flag lot driveway.

COMMISSIONER ZITO: Okay, thank you.

COMMISSIONER JENSEN: Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Madam Chair. I apologize if you already answered this question. I was deep in thought looking at these and may have missed it. But would you be willing to move the driveway to the other side?

ORATOR: No.

COMMISSIONER CAHAN: No?

ORATOR: I mean, we really wouldn't want to, I mean --

COMMISSIONER CAHAN: I understand it's not your first option, or else you would have brought it to us that way. But is that something that you would be willing to do if it deemed the best option?

ORATOR: If that was the only way to do this and we could make it fit with the existing swimming pool and that sort of thing, you know, then yes, we would be willing to do it. Because we would like to -- you know, but ideally, no. How about that?

COMMISSIONER JENSEN: Thank you. Thank you, Commissioner Cahan. You will have up to five minutes after the public speakers. We have three speaker cards I'm going to call all three of you. Jackie Clemons, Craig Clemons and Dana rose.

ORATOR: Actually, I'm not Jackie, I'm Dana, if you don't mind. We actually have a presentation so we're going to go in order, can we change the order?

COMMISSIONER JENSEN: Please, feel free.

ORATOR: Okay, while he's doing that. Dear commissioners, my name is Dana Rose. Per the planning commission letter that was sent on June 17, 2010, the neighbors on Hematite Court that border this project have concerns with the existing proposal. I will address the road concern in the next two slides, and additional speakers will talk about possible solutions along with future concerns. The new street is only 40 to 50 feet from the Hematite homes compared to the meadowlands. The master bedrooms in the back of the Hematite homes will be looking at garages, streets and cars. The street has four offstreet parking stalls, thus not considered a driveway. Which is not typical with the neighborhood layout. This may lead to more homes offstreet with further development. The Rose home, which is mine, on that corner, will be now -- have three roads against all sides. I didn't buy it that way, but it's now going to be developed that way, which is some concern to me. Six homes on Hematite have streets on the front and back sides of their properties. Two proposed homes face the back of two Hematite homes. So now when you're in the master bedroom you'll be looking at someone else's home. On top of the recent Dow approval to add homes onto Grand Oak Way -- oh, sorry, all these issues decrease privacy and increase noise. On top of the recent Dow approval to add homes onto Grand Oak Way, at least for my property, because now I'm at the corner of all this. Typically backyards face each other in communities for privacy, which is consistent with the neighborhood layout. The current proposal would decrease the property values of the Hematite homes if approved. That's it.

COMMISSIONER JENSEN: Thank you. Oops, we have a question, Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. So let me ask you this. Supposedly that cow walkway or whatever the heck it is has been there forever, right?

ORATOR: Correct.

COMMISSIONER ZITO: Well before the Hematite homes were there.

ORATOR: Right.

COMMISSIONER ZITO: What has been your experience with any activity along that road?

ORATOR: That road is pretty much -- you might see a vehicle go up and down it once a day. They have horses back there. There is a farmer that goes back there once a day. I talk to him periodically. He takes apples from my tree to take back to his horses. So it's kind of a -- it's not a driveway. There is not a lot of people going in and out. It is just a farmer back there, he leases the land. I imagine some day, it will become someone's louse. You know, it is 18 acres back there. But, you know, I wouldn't mind someone driving by, but having cars packed in my backyard and people getting in and out looking at garages, I think it destroys the privacy level. Usually you'd like to have houses backed up, the backyards together.

COMMISSIONER ZITO: And it seems that -- and I'm thinking out loud here -- it seems with these four properties you've got a choice either way. Either they back up to your houses or they back up to the other houses, right?

ORATOR: Correct, but they're like 120 feet away. They're a little bit further away. They would be impacted, right? So we're just looking at less of two evils.

COMMISSIONER ZITO: Right, now the fact that -- okay, so yeah, you unfortunately have the short straw with being the guy on the end.

ORATOR: Yeah.

COMMISSIONER ZITO: So you'll see all of the traffic that goes to those two homes.

ORATOR: Correct.

COMMISSIONER ZITO: In addition to your friend who steals your apples, right?

ORATOR: Yeah.

COMMISSIONER ZITO: Whereas the other five or so really are only going to be subject to the path that's already there, really.

ORATOR: Yeah.

COMMISSIONER ZITO: So you're really the one who's going to get the brunt.

ORATOR: That's correct, it's right back against my property.

COMMISSIONER ZITO: And I don't consider that lightly, I just want you to know that. Okay. Thanks.

COMMISSIONER JENSEN: Thank you, Commissioner Zito. Commissioner Kamkar also has a question.

COMMISSIONER KAMKAR: Thank you, Madam Chair. Okay, so if you were to -- if you were God, and you wanted to put, you know, homes back to back, you probably have to put a cul-de-sac right in the middle of this triangle so that the homes were back to back.

ORATOR: Right.

COMMISSIONER KAMKAR: The problem with that is, that's going to destroy one existing home and at an additional cost to the developer.

ORATOR: Right.

COMMISSIONER KAMKAR: Would you, as one of the residents, be willing to, you know, accept one or two more homes for the developer to pay for the home in case that was an option?

ORATOR: I think later on we're going to come into some future slides the next presenter we propose moving the driveway to the other side of the property back away from us. This one driveway or cow path that we have now and that creates a little bit of a buffer.

COMMISSIONER KAMKAR: I understand that scenario. This cow path or this ingress egress, some day it's going to be developed, right?

ORATOR: Correct, that would be someone's road some day.

COMMISSIONER KAMKAR: And you're not concerned about that I guess when that happens --

ORATOR: We talked about that and you know having cars parked in your backyard versus someone driving through is two different factors. Someone, you know, just getting by, but starting their car up, stopping it, garages opening up and down, things of that nature is more of a concern I have. People parking, parties, you know, people are going to have off-road park -- there's off street parking, you know they're going to -- I entertain just like anyone else does, so I imagine they're going to entertain. And that road's going to be blocked, right? They're going to have a big party some day, and there will be a lot of noise back there.

COMMISSIONER KAMKAR: Okay, thank you.

COMMISSIONER JENSEN: Thank you, Mr. Rose.

ORATOR: Thank you for your time.

COMMISSIONER JENSEN: Mr. or Mrs. Clemons.

ORATOR: Mr. Clemons, and not Mrs., as you can tell. I'm a neighbor, live next to the Roses, and you've pretty much stolen all my thunder on my slides, so I'm going to go a little bit off my slides. I think this overhead picture gives you a better view of what we would like to see with the development on the north side where there's a big buffer between the Meadowlands homes and the driveway, versus putting it in our backyards where it's 40 feet from our bedrooms. Regarding the dirt road, as Mr. Rose said, we may have that farmer go up and down there once to twice a day. Which is a whole lot different than having a driveway with UPS, with deliveries, with mail, with the driveway that long I don't know if those homeowners in the back part of the lot would be dragging their trash cans out to the main street or if weed have trash trucks backing up there beeping at 7:00 in the morning when we're sleeping in our beds. To the earlier question, the development with us isn't the issue. Mr. Sidhu in the past has submitted a letter to the city, it was September 1st, 2006, indicating he may be interested in building eight homes on that lot. It's not the development, it's the intrusion of our privacy. The dirt road is somewhat charming. But having a driveway right next to that, that we look out at our bedrooms isn't. And Mr. Sidhu didn't engage any of the neighbors in his development plans to see what our concerns are. So it's not developing the property. It is purely what it does to our privacy and the backs of our homes being sided on two sides by street. Thank you.

COMMISSIONER JENSEN: Thank you. We have no questions from the commission. Unless Commissioner Zito has a question?

COMMISSIONER ZITO: No.

COMMISSIONER JENSEN: Thank you. And Jackie Clemons and if you could introduce yourself when you come up. Thank you.

ORATOR: Good evening, I'm Jackie Clemons, I live on Hematite court and quickly in conclusion a request for your consideration this evening would be as follows. We request that the commission not support the current plan, and we request for Mr. Sidhu to work with his neighbors to mitigate density, noise and privacy issues while allowing him to develop his property. Some examples of -- have already been mentioned this evening would be of course to move the proposed street to the north end of the property, reorient the homes so that they don't face the back of the Hematite homes, and possibly to freeze all future development on the Sidhu property to prevent further erosion of the city of our neighborhood. Thank you so much.

COMMISSIONER JENSEN: Thank you. And would the applicant -- would the applicant like to come forward and address some of the concerns that have been raised?

ORATOR: So, yes. Just quickly there was one thing that -- there was actually a typo on the cover sheet that said offstreet park instead of off lot parking. And that's just actually a standard, city standard residential guidelines requirement. And so there's not actually extra off lot parking. It's just -- that's just a city standard. There's one -- two garage spaces and one off-lot park is what it's supposed to say and that's just following the standards so wanted to be clear on that. If I can put this -- so there we go. So if we were to move, you know, the driveway to the other side, it doesn't shorten the driveway any. It basically makes them the same. The houses are basically in the same orientation and you still have a driveway. We are really trying to minimize and this would have a nice big fence along it with nobody looking at it. So we're really trying to keep safety in mind and minimize the amount of paving and the driveways that are along there. So that's really kind of all I had to say on that.

COMMISSIONER JENSEN: Thank you. And I have no questions from the commission. So motion -- oh, I'm sorry, I spoke too soon. Commissioner Kline.

COMMISSIONER KLINE: Slide that up real quick.

ORATOR: You'd think I could figure that out after so many times.

COMMISSIONER KLINE: This is great, I'm not a designer but clearly, I've been doing this for quite a few years and it just seems to me that house number four would actually be repositioned to square it up, almost towards the driveway which would give it a real nice flavor, house number three would get improved by having a much nicer backyard, even number one I think would get a better shot of having an extended backyard and what you're really cutting out by going there is really, I don't know what the landscaping looks like up on the north corner but it looks like it's an awful lot of empty space that you're now taking advantage of putting a driveway in and you're moving that to the backyards of 3, 4 and 1 which I'm sure they would appreciate and 2 would get a boost too because they would have a bigger backyard. I don't understand the issue, we're giving all three pieces of property bigger backyards and we're using what looks like a very vacant area to do it with and we're giving a lot more buffer to the smaller houses on the South and houses on the north had huge buffers in the first place. I think this is a much better design and I think that would be my conclusion. This is a design issue.

ORATOR: I know you can't really see it on this, it is kind of light. But there is a pool that's right up next to it, so you would be two or three feet from the edge of the pool, which obviously is not very safe. You'd have people jumping over the fence to jump into the pool or something.

COMMISSIONER KLINE: Lots of pools are next to fences, not uncommon.

ORATOR: True, it's true, but I would just like to keep liability down.

COMMISSIONER KLINE: Pools cost about \$40,000, too.

ORATOR: Also, this is something that we would be willing to look into in the PD when we can also maybe talk to the Lands of Bruce and see if we could do some kind of combined driveway with them, you know, I mean, we might be willing to look at some flexibility on the driveway down the road if that was something that would, you know, make people feel better about it. Because we're not really -- you know, we don't even know what the houses are going to look like at this point, so we're not really tying that kind of information in. We're just trying to get the two dwelling units per acre, ideally. But I wouldn't want to promise that we put it over there either, without having the chance to look at it and how it could work.

COMMISSIONER JENSEN: Thank you, Commissioner Kline. I don't see any other speaker lights, so thank you very much. Motion to close public hearing? All those in favor? Thank you. Staff.

ORATOR: Thank you. Probably, you know, that sketch went away, but one reason why the thought is to initially design, again, it's a driveway, it's not a road. And to clarify, Lands of Ruth is designated nonurban hillside on our general plan, it's outside our urban growth boundary, so therefore the opportunity for development of it is not. It can have one house, because it is a legal lot of record. So it is not going to be a road, it's going to be a driveway to. So we're really looking to how can we best design this site, to accommodate a driveway to two known houses and potentially a third. And by keeping it on the south

side, you keep the opportunity open for combined use of -- it's actually, the only easement is that front part. That part that travels east is part of the parcel, correct?

ORATOR: Correct.

ORATOR: So that is a piece of a 20-foot strip of land, or 23-foot strip of land that's going to remain. So by designing it the way we did is to create the opportunity to, at some point in time, hope that people can get together and really just minimize the use of land for the purposes of a driveway. If you would put it on the north, that would always be there and you would always have a driveway to the South. So again, efficiency of land, I think that's really what it is. And it is a driveway. There is -- on Grand Oaks Way, it is a standard street section, so there will be parking on both sides. So again, trying to design this site to minimize curb cuts, maximizes onstreet parking for guests of the site. I think you know I put in the two off-lot sites is really just -- you know, you could have put a three-car-wide driveway, same difference from a paving standpoint. It still offers the opportunity for that third car to park adjacent to the home. There was a question relative to our -- the property owners of lot 3 and 4 are going to have to push their garbage out. Yes, so you will not -- they will not have a garbage truck moving up that driveway. They will have to roll their garbage cans out, which again happens in a lot of cases nowadays, where we have smaller developments. They do roll their garbage cans out to the street and line 'em up, and then they pull them off the street. So these two lots will have to do that. Any other questions, I'm happy to answer. You will see in the proposed development standards, you know, setting out the opportunity that if that strip of land does become available for access, that we could relocate that driveway. And again I keep saying driveway because it's just the two homes, it's not a roadway, so that we can better use land, and at that point we could continue to create a buffer, and a landscape buffer perhaps, between the rears of the houses and the final drive. Right now we don't have the ability to create that landscape buffer because we don't have access to that strip of land, to Lands of Bruce. But should it become available, we'll not only have that but we'll have the existing driveway that we could use towards a landscape buffer between the rear yards on Hematite Court and the driveway for the two homes plus Lands of Bruce. So with that I'm available for any questions.

COMMISSIONER JENSEN: Thank you, staff. Commissioner Zito.

COMMISSIONER ZITO: I'm still digesting what staff has told us. This is a zoning, correct? So my question, after all these meetings, I know for short, is this level of detail something that would be addressed at the zoning stage, considering it is a driveway? It is not really a street, it's a driveway, you know.

ORATOR: You know, at times, it is important to address the detail of access to certain properties, and I think you know, Northside versus Southside, you know, it could go either way. But at the same time, you know, looking at it holistically, understanding that strip of land for Lands of Bruce, again, how can we best plan for the future? So I mean, you could not -- and in fact we didn't -- we do have a development standard that talks about the driveway. We could leave it open. It doesn't physically zone it in on the land use plan, but the proposed development standards, it just really talks about the driveway to have a width of 20 feet, it then says that should that strip of land from Lands of Bruce, so we didn't specifically say.

COMMISSIONER ZITO: I guess my questions to staff or director, is, is it our purview at this point, even to ask, or even to state, you know, we would approve this zoning, specifically with a northern access versus a southern access? I mean was that within our purview seeing this is a saving, the way things are currently written or --

ORATOR: You could if you wanted to. We have a conceptual site design. We did zone in a driveway width, and we did zone in that should that Lands of Bruce come in, with the assumption that the driveway is going on the south, but there isn't a specific development standard mandating it.

COMMISSIONER ZITO: I appreciate that. So my feeling -- I'm kind of up in the air -- is, I understand the situation with the Lands of Bruce, but we have been told many times, and we've always gone on with the fact that you can't plan on the future, especially lands that are not part of this application. I understand if all things were lined up, that make a whole lot of sense. My concern is that it won't line up, and I think that the folks who came to speak here tonight make a pretty compelling argument that their back yards are, you know, whatever that is, 20 feet to their property line versus the north side backyards are in order of magnitude bigger. And that, to me, says a lot. So I concur with Commissioner Kline in his assessment. For that reason, then, if it pleases the chair, I will make a motion.

COMMISSIONER JENSEN: Please do.

COMMISSIONER ZITO: That we recommend approval of a planned development rezoning to allow for the development of three single family detached residences in addition to the existing single-family residence on the 2.0 gross acre site, as recommended by staff, with the exception of a northern drive access as opposed to the southern drive access.

COMMISSIONER JENSEN: There is a motion and a second. Commissioner Zito, would you like to speak to your motion?

COMMISSIONER ZITO: I just think that I would like to believe that some day, you know, Lands of Bruce will work with the current developer. And if something happens between now and the time that things finally get approved, maybe they can bring it back. I don't know. I don't know if that's possible. Given what we know today, it only makes sense, and I like the thinking of Commissioner Kline, and I believe the orientations of the existing lots or the proposed lots would be better and better served with a northern drive and also would have much less impact on their northern neighbors than what will happen if you have the southern drive impact on the southern neighbors.

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

COMMISSIONER CAHAN: Thank you, Madam Chair. I would like to first state for the record that I did have a conversation about this project with one of the neighbors, Mrs. Helsing. We discussed the issues that were e-mailed, and she was trying to figure out how to get this into our discussion, into our records. And so I instructed her how to e-mail staff, to then have it forwarded to all of us. I concur with my fellow Commissioners Kline and Zito about the orientation being better on the north. I believe that I want to get this out of the backyards of the people to the South. I'm concerned about having a driveway, having the lands of Bruce drive/cow path, then having a fence, then having another driveway, then having the garages, the back yards, I think that it's going to be not as pleasant as it could be if the orientation was up on the north. And so I concur with the motion. Thank you.

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

COMMISSIONER KAMKAR: Thank you, Madam Chair. I also will be supporting the motion. If the access is from the north, then I believe the backyard of the proposed lot would have preferential I believe

sun exposure from east to west, and I believe the planning and the design of those would be much -- much conducive to the direction that we are going for the city and bring over resources and all those good stuff, so I support the motion, too.

COMMISSIONER JENSEN: And I would like to state that I'm also going to be supporting the motion. And I'd like to point out that according to the drawings that we were provided in the staff report, the distance between the north side of the houses to the northern property lines is 41 feet. And it appears as though from the drawings that the swimming pool is roughly bisected by the existing house. Which, unless the pool is really large, means there should be a good ten to 15 feet between the pool and the -- a northerly driveway. And while Lands of Bruce is there, it's only 23 feet wide. So it's never going to be a house, it's never going to turn into buildings. And there is of course the possibility that that land would be sold to either the property owners on the southerly side or on the northerly side, and everybody would get a much bigger backyard. I would like to ask staff, I know that there's ongoing reference to that short little portion at the edge of the current terminus of Grand Oak as the driveway. Is there any reason that could not be returned to open land?

ORATOR: My understanding, there's an ingress -- is there an easement -- there's an ingress easement over, is it lands of Sidhu, to that -- yeah. So it's hard, but that driveway actually is an easement over lands of Sidhu to reach that strip of parcel which is owned fee simple for Lands of Bruce. So that -- no. I think the answer is no we don't have the ability to require that easement to go away.

COMMISSIONER JENSEN: At least for the time being, as long as lands of Bruce remains a cow path?

ORATOR: You know, I don't know this reference to cow path. That is an ingress-egress easement. It doesn't specify for animals, pedestrians, vehicular, so it's assumed that you can go over and across with whatever, to a property that currently has no public street access.

COMMISSIONER JENSEN: Okay, great, thank you. I see no further questions from the commission. If we could vote by light --

ORATOR: Staff would like to just make sure that your motion was to approve as recommended by staff with the exception of a northern driveway access. Can you, I think, articulate that a little bit more? Do you want to see a development standard requiring --

COMMISSIONER ZITO: Absolutely, it would have to meet all development standards, I would assume that. We already went into that with the last. But yes, full development standard, and similar to what the applicant gave us in the last drawing.

ORATOR: So I'm going to ask you, looking at the development standards, currently what we have proposed is, again, a driveway width of 20 feet. So you are in your motion suggesting to include a development standard requiring that driveway access to lots 3 and 4 to occur along the northern property line. Correct?

COMMISSIONER ZITO: Uh-huh.

COMMISSIONER JENSEN: Thank you. And with no further lights from the commission, if we could vote by light, please. And that motion carries unanimously. Thank you very much. And now we are on to item E.

COMMISSIONER ZITO: D.

COMMISSIONER JENSEN: E. I can't spell, I can't pronounce names. I can't do anything tonight. Sorry for the applicant here for item D. CP09-012. Conditional use permit to construct an approximately two mile pipeline to transport jet fuel in the heavy industrial zoning district located generally underground between 2500 seaboard avenue and 2150 Kruse Avenue. Staff.

ORATOR: Thank you, Madam Chair. This is a proposed conditional use permit which will allow for the construction of an approximately two mile long to be referred to as San José international airport jet fuel pipeline, to transport jet fuel between the existing Kinder Morgan San José terminal that's located at Seaboard Avenue -- well, that terminal and the new San José international airport tank farm. I might have those locations reversed, but from one terminal over to the other, from Kruse drive over to seaboard. One comment letter was recently received and it was e-mailed to you. I do have copies if you don't have. The letters from L.B.A. Realty, they are property owners of 2540 to 2590 North First Street. They are concerned about the project. Their main concerns were safety, construction impacts, future development and property value. I think over the course of presentations we'll be able to address some of those concerns. And as stated in the staff report, the project involves the installation of an eight-inch diameter underground pipeline approximately two miles in length. The proposed pipeline will be buried underground for the entire length, using conventional open-trench construction methods and horizontal directional drilling techniques. The applicant can go into that a little more. Approximately two-thirds of the pipeline will be directional drilled, thereby avoiding high-traffic areas. The average depth of the pipeline is approximately 20 feet with depths of 30 feet under the Guadalupe River and a minimum of five feet in other areas. The land uses adjacent to the project site are generally industrial and industrial park. The proposed pipeline will carry jet fuel which is similar in properties to kerosene and is not explosive. Based on the characteristics of jet fuel, the most likely public health and safety hazard presented by this project would be a release due to an earthquake. This type of pipeline failure may result in an accidental release of fuel to the environment, causing groundwater and/or soil contamination. However, given the pipeline's location underground and the automated control system and leak detection system that will be in place, the hazard from an accident release during a seismic event or unstable soils is considered less than significant. An initial study was prepared for the project and a negative declaration was circulated for public review by the director of Planning on May 15th, 2009. On April 20th the council, the city council of San José adopted the mitigated negative declaration, as recommended by the director of planning, in their consideration of other actions. Mitigation identified in the initial study has been incorporated in the resolution as conditions of approval. This concludes staff report.

COMMISSIONER JENSEN: Thank you, staff. Is the applicant here? You may have up to five minutes, and if you would introduce yourself.

ORATOR: My name is Roy Wickland, and I'm representing Wickland Pipelines tonight. The staff did a great job in summarizing the project, so I'm going to quickly go through my comments, hopefully in three or four minutes, and then our attorney, Sean Cottle, has a couple of remarks, and then I'll turn it over to him, and then we'll be happy to answer any questions. As staff says, this pipeline replaces trucks that currently deliver fuel to the San José international airport. San José is the last major airport in California that still receives its fuel by truck and trailer. And there's probably two or three others in the nation, so it's a little behind times. Sacramento airport, as you know, adopted a modernization plan recently, and part of that modernization plan was a new fuel farm at the airport which was completed and commissioned early this year by the airlines. And the last leg of that fuel farm modernization plan is to replace the trucks that

currently serve the airport with a pipeline, underground pipeline to serve the airport. I'll just briefly mention that the pipeline size, as staff said, is eight inches. It is approximately 9850 feet long, which is a little less than two miles. The average depth is 22 feet, which is fairly unique for a pipeline. Most petroleum pipelines or natural gas pipelines are usually four feet, three to five feet, actually. We're doing horizontal directional drill for a majority of this route, so that's why we're quite deep, and the average, as I said, is 22 feet. So what that accomplishes is, we're not tearing up roads or as many roads, we're not disrupting neighbors and businesses. It's much safer, and it is a more expensive way to install a pipeline. But after discussing this with staff and the neighbors, this is the approach we've taken to install it. It is jet fuel. It is a lower volatility product, not like gasoline or even natural gas. And the total volume in the pipeline is approximately 628 barrels, which is about 25,000 gallons. That's less than your average service station in San José. So just to get a perspective on how much fuel is in the line at any one time, that's how much is in there. You have a map I think in the staff report, and this shows up in the upper right the Kinder Morgan terminal, which is an existing terminal, and the pipeline that ends and terminates at the airport. Just looking at one section of the pipeline, this is the intersection of North First and Component, and this is the property to the left there with the six buildings was the landowner commented to staff in the last couple of days. I'm not sure they fully understood the project, but I wanted just to mention for their particular piece of property we're across the street, on the other side of Component, and for the entire length of their property we're 25 feet below the street level. So this project will have little or no impact on any of the points that they raised in their letter. As I mentioned earlier the airport did a study in 2006 and determined that the pipeline delivery here was superior over the existing truck delivery. The airlines selected Wickland to do this project. We built a similar project for them a couple of years ago at the Sacramento international airport, very similar. We did the permitting, we built it, and we operate that facility for them. We also based on recommendations from the staff had the community outreach, met with the land owners that we were crossing and designed our facility to make sure we accommodated some of their questions and concerns. The landowners have commented to staff and they approve of the project. City council, as staff said, approved the CEQA document. They also recently declared their intent to issue a pipeline franchise agreement for going under the city streets and at the time staff recommendation approvability of these conditional use permit. This projects some of the benefit, that currently now have to certain the airport, obviously that results in reduced traffic and reducing congestion in the area. Significant air applies, associated taking those off the road. California fire marshal has stated through studies that pipelines are 300 times more safe that transporting fuel by truck. We have a state-of-the-art leak detection system and it's a state-of-the-art pipeline that were regulated by state fire marshal and the Department of Transportation at a federal level. This will result long term in lowering jet fuel prices at the airport which hopefully will be reflected in the price of tickets. Pipeline transportation is lower than truck transportation. And there will be some local benefit here. Our expectations are that we can build this before the -- and have it installed before the end of this year so there's jobs and investment in the local community associated with that. This is just the graph showing the truck emissions versus what pipeline emissions -- or emissions that are as a result of the pipeline and the significant reduction both in CO2, carbon and NOX emissions.

COMMISSIONER JENSEN: Thank you, and your time is up. Mr. Cottle, if you would like to fill out a speaker card, you're welcome to have two minutes. And I'm sorry, we have questions from Commissioner Zito. So Mr. Wickland, if you'd like to come back up.

COMMISSIONER ZITO: You don't have to apologize for my questions.

COMMISSIONER JENSEN: I'm just apologizing for everything tonight.

COMMISSIONER ZITO: Just a couple of questions regarding seismic tolerance on this pipeline. Seismic tolerance, earthquake --

ORATOR: Earthquake, yes, we -- a geotech firm, we've done geotech work along the entire site. We've actually done an extensive geotech report that's been submitted to the city geologist, Mike Shimamoto -- I think I have that correct -- for his review, and it meets the latest, the highest earthquake standards here in San José. So that's all been reviewed and incorporated in the design.

COMMISSIONER ZITO: So you're talking about state-of-the-art safety and leak prevention. I assume besides having setoffs on either end of the two-mile length, you would also be able to shut it off somewhere in between so that if you had a break you wouldn't dump all 600 gallons.

ORATOR: Well, the way the design is, it can't do that, because there's lots of ups and downs. So you have that effect, that won't happen by the way it's designed. But what we do have is, it's constantly monitored, 24-7, it's a pipeline that they have a system called a SCATA system now which enables you to monitor the pipeline remotely and locally, and then is extensive testing and review. So I can go into lots of details on that if you like.

COMMISSIONER ZITO: I'm getting the picture, and it sounds great. The other questions I have got is, besides saving money for the airlines, does it save money for the city at all?

ORATOR: Well, it reduces truck traffic. I mean, if you look at 76 truck trips a day, that's 27,000 truck trips a year. That has an impact on roads and things of that nature and communities. So -- and then obviously, the air emissions.

COMMISSIONER ZITO: Okay, but a direct financial -- this is nothing to do with the city in other words. This is purely a private --

ORATOR: Correct.

COMMISSIONER ZITO: Okay, that's basically the question. Thank you very much.

COMMISSIONER JENSEN: We also have a question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. So what about the other property owners, that you're doing a five-foot cut and cover. You know, is their access going to be blocked in any way, or--

ORATOR: This project, actually the construction of the pipeline will take about 60 days, but it's in segments. So I think the longest we're at any one place is maybe two weeks, and we designed it so we're not blocking any driveways. And if we do have to dig through a driveway, we have to plate at night. We have submitted a traffic plan to the city and Public Works that they've reviewed, and so we're taking all those precautions. But most of the trenching occurs in undeveloped lands, so very little of the trenching occurs in developed areas.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER JENSEN: Thank you. We are also have a question from Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Madam Chair. I apologize if I missed this, I was gone for the very first half of your presentation. Would you address going under Guadalupe river, I understand you're going to go under 30 feet or some.

ORATOR: Right.

COMMISSIONER CAHAN: But I'm still concerned with heightened awareness of water issues and contamination. I wanted to hear from you how those things are going to be addressed.

ORATOR: Okay. We're directional drilling underneath the Guadalupe river and 30 feet from the bottom of the river. So it's more than 30 feet deep. It is actually 50 feet deep or something, that's a minimum 30 feet so it could be deeper than that. And that is drilled, we drilled Sacramento, we drilled under the Sacramento River, I-5 under the Yolo Bypass. So it's a very proven technique, and the pipe is double-coated and extra-thick at the Guadalupe River, because it is river crossing. So we have taken all those precautions. It also is continually monitored once it's in service, and then inspected periodically by sending what they call a smart pig through the line to measure wall thickness, corrosion, and things like that. Did that answer your question?

COMMISSIONER CAHAN: If there was by chance a leak underneath the river, do you know how that might affect the river?

ORATOR: At that depth, it's quite a bit below. So it would obviously -- it could have an impact long term possibly if you had a leak but it's quite deep and would not expect it would have an impact. I can't answer that question. The EIR determined that there was no significant impacts environmentally. If something like that happened, we'd have to -- we'd have to deal with it. And not -- I don't have a good answer for you on that.

COMMISSIONER CAHAN: Okay, thank you.

COMMISSIONER JENSEN: Thank you, and we have no further questions so Mr. Cottle, if you would like to -- thank you.

ORATOR: Good evening commissioners, I appreciate the hour being late so I'll keep my comments relatively brief, I hope.

COMMISSIONER JENSEN: You've got two minutes.

COMMISSIONER KAMKAR, I believe -- or I hope to answer your question about the property owners, and that's what I'd like to focus my attention on and identify the property owners who are directly affected by and have consented to the project. And they include, as you look across the projected route, they include Pacific Bell telephone company, Union Pacific railroad company, Myref, Zanker Road, LLC, which is the McMorgan and Company, Dollinger Zanker Associates, and that's the Dollinger properties. They include the San José 2447 North First Street Syndicate Holding LLC, and they are the successor to the campus at North First Street, basically, the area where the arrows are pointing on the pipeline. Also Legacy Properties II, SJ Orchard Properties LLC, and last, 370 West Trimble Road Corporation. So the property owners who are private property owners have granted easement agreements to Wickland Pipeline for the development of the pipeline route. And all the other areas for the pipeline will be in the

public right-of-way. And that's why yesterday city council approved the resolution for the franchise agreement. Thank you.

COMMISSIONER JENSEN: Thank you. We also have questions for you. Commissioner Zito.

COMMISSIONER ZITO: Quick question. Did you state this was going underneath the railroad line as well, Union Pacific?

ORATOR: Yes.

COMMISSIONER ZITO: So there will be active train traffic above?

ORATOR: Just like any other utility that exist underneath the railroad system.

COMMISSIONER ZITO: Are you giving any more mitigation because of the vibrations?

ORATOR: I can't answer that. we have a minimum depth there also that's a spur it's lightly used so it's not a main line railroad.

COMMISSIONER ZITO: Are you making any other concessions?

ORATOR: Yes, sir -- with what?

COMMISSIONER ZITO: With depth.

ORATOR: They had to mead certain standards and the geotech people assured us, we met that with design. We're going under VTA and we're getting a permit from VTA, we are 25 feet below VTA and that's part of our process getting the approvals from VTA.

COMMISSIONER ZITO: All right, thank you.

COMMISSIONER JENSEN: All right thank you. We have a question for you from Commissioner Kamkar.

COMMISSIONER KAMKAR: Do you know where the CHP facility is on Zanker, do you know where it is on this map? I just wonder how close to the CHP facility you are crossing?

ORATOR: Is that the Highway Patrol?

COMMISSIONER KAMKAR: Yes.

COMMISSIONER JENSEN: Could you use the microphone, thank you.

ORATOR: I do not know where the CHP is on Zanker. I haven't seen any in this area so it might be further down.

COMMISSIONER KAMKAR: Okay, thank you.

COMMISSIONER JENSEN: We also have -- no, okay. Looks like we're done. Motion to close public hearing.

ORATOR: Thank you.

COMMISSIONER JENSEN: All those in favor? Thank you. Staff would you like to comment on anything you've heard?

ORATOR: Unless you have any questions of me, I think Mr. Wickland and Mr. Cottle answered them. So if there's anything specific to the staff part of it, all the property owners and private property signed on to the C.U.P. So I mean, if there were questions about that.

COMMISSIONER JENSEN: Okay, thank you. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Madam Chair. I'd like to make a motion.

COMMISSIONER JENSEN: Thank you.

COMMISSIONER ZITO: That we consider the mitigated negative dec in accordance with CEQA and that we approve the conditional use permit to construct an approximately two-mile pipeline to transport jet fuel in the HI heavy industrial zoning district as recommended by staff.

COMMISSIONER JENSEN: There is a motion and second. Would you like to speak to your motion?

COMMISSIONER ZITO: Just very quickly. This is one of those times when we really have to trust the CEQA clearance and the fact that everyone has signed on. I'm not an expert in the technology but from what I have heard, especially that pig, I have heard about that, I have seen it on TV they send something in the lines to really detect if there's breaks or leakages or thinnages of the pipe. I think that's -- it sounds like they're using the most modern technology to assure as much safety as possible. Given that we'd rather have it underground than on the roads, there's probably a much greater safety hazard transporting that jet fuel, so for that reason it sounds like this is a great plan.

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

COMMISSIONER CAHAN: Thank you, Madam Chair. My question is for staff. And I know that this is on a much smaller scale than the offshore oil drilling issue but thinking about that and that there were results that were not necessarily considered, initially, do you have any concerns about the water issue that you may not somewhere thought about before but you may have some red flags out?

ORATOR: I missed the first part of that, sorry.

COMMISSIONER CAHAN: I'm just wondering if there are any concerns that you have at all about going underneath Guadalupe river.

ORATOR: I think that issue is analyzed through the initial study and that the design and the depth is -- and the manner in which they are doing the construction, addresses any issues or potential impacts and reduces it to a less than significant impact. So no, we don't have any concerns beyond what's been analyzed and felt that it's not going to have an impact.

COMMISSIONER CAHAN: Okay, thank you. I am enthusiastic about taking the trucks off the road, and I think this project will be a positive one for us. I am hopeful that all things have been considered with the water and we have enough to cover any incidences that might happen. I'm going to keep my fingers crossed about that and I will be supporting the project.

COMMISSIONER JENSEN: Thank you, Commissioner Cahan. Commissioner Platten.

COMMISSIONER PLATTEN: Just indicate that I'm familiar with the SCATA systems. Our entire water supply in the valley is covered by SCATA systems with the Santa Clara Valley Water District. Foreign access of what this pipeline involves in terms of loss. In addition, the system that's used to clean the pipe and detect the problems with the pipe is the same as used at Monterey Bay Aquarium to ensure the pipe down there is working properly. This technology is well developed, well established, it's used throughout the State of California for large fluid movements, mostly with water systems, and this is not a situation like the gulf, where we're talking about working more than a mile deep down underneath the ocean. So this is an environmentally sound project, and I call the question.

COMMISSIONER JENSEN: Thank you, Commissioner Platten. And with no further speaker cards from the commission or the public, may we have an opportunity to vote by light, thank you. And let the record reflect that that motion passes unanimously. Thank you very much. Item E, Planning commission bylaws, consideration of adoption of a resolution to amend the Planning Commission bylaws to add certain disclosure and eligibility requirements for Planning Commissioners. Staff, did you want to speak to this?

ORATOR: This actually was initiated by the commission itself.

COMMISSIONER JENSEN: And perhaps Commissioner Zito, or Commissioner Kline, who helped to develop this, would like to speak to it. Commissioner Kline.

COMMISSIONER ZITO: It's up to you.

COMMISSIONER KLINE: I'll do my bit and Jim can jump in any time. Thank you, Madam Chair for allowing us to do this. My first concern as noted in my letter was I had actually three concerns. One was an appropriate thing to put in the bylaws, it would be better someplace else like a city ordinance. Two, was the amount really kind of too low, considering existing campaign finance laws. Three, do we really have the legal authority to remove a planning commissioner or make him resign or even to recuse themselves. And basically, we are not a policy making body, legislative body, so we can't create new laws or policies. We were looking at this, and Jim and I jumped in and said, well, let's look at best practices. So we went on the web and picked about 40 or 50 bylaws. We also thought maybe we better take a look at the existing laws on the books and see what they have an impact on this proposal. Looking at best practices, we began to look at 30, 40 bylaws, they looked pretty much exactly the same as our existing ones, actually, almost no difference. Ours might be a little bit meaner or stricter when making people recuse for legal issues. But other than that they are pretty much the same. So the good news is, we are the best practices at the moment. But, you know, best practices come from someplace, and the fact is that this is what we're looking at today might be the best practice in the future. So it's kind of neat to look at this and see if we can improve something. So looking at existing law we found that there is actually an existing state law that's very strict. It's section 84308, approved in 1983, part of the political reform act of 1974. It specifically prevents Planning Commissioners from receiving contributions or even

the solicitation of contributions, of up to \$250 within 12 months of meeting in front of applicants and appellants, and is extremely strong in punishment, financial penalties of thousands of dollars, jail time up to one year. So that's a pretty stiff law, and it's really interesting that I didn't each know about this before going into it, which is nice that we know now. The 250 just happens to be the same amount that city council raised in our city, but again, this is statewide. A lot of other city councils have different types of limitations, some higher, some lower, and of course our mayor limitation is much higher. County Board of Supervisors, DA, et cetera, et cetera, it is not a trivial thing that it just happens to be 250. It is a very strong law. The question is do we have the opportunity to enhance it or make it better? I think we do, actually, and I think that's the conclusion we came to here. We did ask legal staff to do research too. I think that's René. They came back and said can we physically enhance that, and how can we do that? Well, they actually came back with some good information, too, municipal code 208080 states that city council only delegates the ability to adopt our own procedural rules or regulations within a specific scope. They basically delegate us a capability to change our bylaws and do certain things. That's interesting because a lot of organizations in the valley here don't do that. They actually -- everything has to go through the VTA, for example for changing bylaws, et cetera. But the scope is very specific. It does not include removing aforesaid planning commissioner. It doesn't even allow us to force the Planning Commissioner to recuse themselves. That is not part of the scope and it cannot be reasonably interpreted as such. However, the idea of requesting a disclosure probably is allowable and doesn't take away the affirmative right of a commissioner to do their duty. Given those constraints of state and local laws we came to the current proposal that states that Planning Commissioners should disclose when an applicant or an appellant has contributed \$50 within the last 12 months and they should consider whether it creates a conflict of interest or the appearance of conflict of interest. The act of recusing themselves is left up to them. I think it's a pretty good section. I think we should be proud that we're actually taking a lead in this. In saying that, I want to take two points here. Our entire political system is basically is based on campaign contributions, from those who either directly or indirectly are affected by political leaders. So a legal campaign contribution in itself is not an automatic conflict of interest. Otherwise, Sacramento would close down. There has to be a motive behind the contribution. Did I give that money because I believe the person is a good candidate, or will he get my thing passed? It's impossible to know that answer. It is impossible, right? You can't tell what's in someone's mind. So how we deal with that problem in our local, state, and federal laws is that we passed laws that sunshine the contributions and we limit the amount of contributions to certain degree that we hope would take that problem away. \$100, \$600, et cetera. People should have the right to say, hey, I got an in kind contribution from that guy six, seven months ago, he is in front of me now, I support this project whether I got the money or not. It's legitimate, but that's basically what we come up with. The only down side I can see its might be unfair, when a Planning Commission is running against a nonplanning Commission, given the fact that what the Planning Commission does, in our pseudojudicial role here, I think that's a good trait.

COMMISSIONER JENSEN: Thank you, commissioner, I'd like to thank you for taking the role of staff. We have a speaker staff, Mr. Struthers, would you like to come forward and please introduce yourself. Thank, Mr. Struthers.

ORATOR: Good evening, thankfully it's not good morning. Neil Struthers, head of the building trades council. I want to thank Commissioner Kline, for putting a lot of work into this. Because when I first read this I had some real serious concerns. We still have minor concerns, but we support disclosure and transparency, in fact the more the better. However, we believe this proposed bylaws change may create more questions than it answers. In fact the city is already contemplating something similar and in fact has delegated to the elections commission for further review before it comes back to city council. So we think whatever the commission does as relates to this matter, should be in line with what the city does and

who ultimately has authority on land use decisions as you are as an advisory body. So I think at a minimum the items should either be put on hold or scaled back here so it doesn't conflict with potentially what the city council will come back with. You know, the other concern we have and maybe it's been addressed, I heard some new information here tonight, but for at least city council members, there's requirement under state law and city charter that you don't get to recuse yourself or abstain from doing your duty unless you have a legal conflict of interest. And what I read in this, is this appears if you have an appearance of a conflict of interest that you must or suggest that you recuse yourself, which I think is a little confusing if it becomes voluntary. And I think that raises some interesting questions. For example, what about a commissioner receives money from a candidate campaign in his or her role as either a consultant or in the case of Commissioner Jensen, as a campaign manager, money that came from applicants or developers that had business in front of this committee, or in front of this commission, 12 months previous. Does that mean that Commissioner Jensen has to disclose and recuse herself on those grounds as well. So you can see that there's a lot of questions when you start talking about recusal. I think if you want to focus on transparency and disclosure, that's great. The more of it the better. But -- and when it comes to recusal I think you're treading into very complicated and muddy waters and I would suggest that until the city council come back that you limit it to disclosure and not recusal. Thank you.

COMMISSIONER JENSEN: Thank you. We have a question for you from Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Madam Chairman. Is it the pay-or-play issue that you're referring to, because I'm not clear what that reference was.

ORATOR: Yes.

COMMISSIONER PLATTEN: Can you just describe that a little bit, because I want to make sure that I have the same understanding as to what that is.

ORATOR: I don't know about it in detail. I've been asking some questions, but I understand this is -- you know, Councilmember Kalra has raised this issue. There was much debate about it, and it was referred to the elections commission. So it does have direct correlation to what you're doing here, is for those who have business in front of the council --

COMMISSIONER PLATTEN: My understanding is the issue is whether or not the city can limit the making of the contributions does that accord with what you understand it?

ORATOR: No. I mean I think you're talking about the repeat-d are you talking about the recent Supreme Court condition?

ORATOR: Maybe that's where the confusion is last this year, I want to make sure we nailed down what you are referring to.

ORATOR: I think the City's requirements are very clear, about 250 maximum. This one here has brought it down to 50. I don't think that's a problem for disclosure purposes, but from recusal purposes, you know, once again recusal is a whole different set of questions that go with that and then the dollar amount would then be considerably less than what the city council uses.

COMMISSIONER PLATTEN: All right.

ORATOR: I think Commissioner Cahan brought up higher standard than the city council and does that create an unfair situation for those in the Planning Commission who decide to run for higher office? I'm not weighing in on that particular issue but I think it raises a couple of questions particularly where you a that has received money from an applicant or potential applicant, that needs to be addressed too if we're going to be talking about disclosure and recusal, and I think you should have a discussion about that.

COMMISSIONER PLATTEN: So at least with respect to disclosure that's not a problem, from your perspective?

ORATOR: Absolutely not, the more the better.

COMMISSIONER JENSEN: We also have a question for you from Commissioner Kline.

COMMISSIONER KLINE: Turn my mic on. You understand that we don't have the legal authority to do that. This simply says that the planning commission voluntarily considers to look at the situation and see if there might be a conflict. It's basically a way of, in most cases, 99% of the cases they're going to look at it and say no, there's no conflict of interest. But in situations where I start recusing myself, or disclosing, every Planning Commission meeting, for six months, they'll know it's not a conflict of interest, it starts to send a flag out that someone's using our agenda for farming for campaign contributions. And I think that-d that's what this is really about is to just make sure that people are on theirs to, disclose, and give them the Tim I think it is consistent pretty much what you're indicating. Its not what we start out, step forward and if it matches or is consistent with what's going to come out of the city council, it's great. And of course the city council has every right to change this.

ORATOR: I mean just the option of recusing versus the requirement I think raises a number of questions. I do think you know this started out as somewhat of a gotcha ordinance, I think some of that still remains potentially, I just caution you that you can't predict all the hypothetical situations that come up. I pointed out one but I'm sure there is a dozen more that I haven't thought of or any of you have thought of either. So I just would caution you that be careful what you ask for be because you may not understand what that brings.

COMMISSIONER JENSEN: Thank you. And I believe City Attorney would like to speak.

ORATOR: Well, I can wait until the close of public hearing. Actually I was going to comment on what Commissioner Kline had said, because we were getting a little off topic. But in fact the commission bylaw does not call for removal, so it is only disclosure.

COMMISSIONER JENSEN: Commissioner Cahan.

COMMISSIONER CAHAN: My light keeps going on. I keep turning it off. It goes on. There's a ghost in here. I do have a question for Commissioner Kline, but I'm not sure when that needs to happen.

COMMISSIONER JENSEN: Okay, great. All right, so I'm hearing -- okay. There's a motion to close public hearing. There's a motion and second, all those in favor, thank you. So all right, now Commissioner Zito, would you like to speak to --

COMMISSIONER ZITO: No, first of all I want to thank our legal counsel. She worked very hard, way past normal hours. It was kind of a deadline thing and she really went above and beyond. I appreciate her

guidance. I did bring forth a very strong and strict recommendation at first, and I did so deliberately so that we would really take notice of it and to understand what we're trying to do. My whole purpose of it was to continue in our what I have seen over the last eight years as improving the way the commission works, improving the integrity, improving the sunshine, and to really foster trust in our community. Because too many times I hear oh they have been bought off. That really really bothers me. As a commissioner I, I know that every commissioner I have every so I think I appreciate Mr. Struthers saying more disclosure the better. That is what I was going for. I was really quite, how can I say, impressed by past commissioners who have been running, who have set either, or have actually in one case that I can specifically state have essentially resigned because they thought there was a potential conflict of interest. And I really thought that those are the standards that we have always gone by, and our staff has always been very good about saying if there's even a minute conflict of interest, you should disclose, you should say something. If you live too close, if you've talked to people about projects outside of the commission hearings, you need to disclose that, and they have been very big on that. So that's really where I was coming from. I really appreciate the way that we've worked on this. I have to say that I have -- a lot of people have known Mr. Kline, Commissioner Kline before I have, and I really have come to really respect and appreciate his work and what he's going to bring to this commission. And I'm just saddened that I won't have that ability to work with him, at least on the commission, in the future, and I really appreciate his work. I think what we came to is a meeting of the minds. It's full disclosure of \$50 or more, and it's basically saying, ask yourself the question, is there a conflict of interest or not? If you think there's a conflict of interest, then as we've been told all along, you should recuse. If not, fine. You know, and there is no requirement to do so. So with that I'm very -- I was in Singapore and working over my iPhone trying to get messages back and forth on how we're going to get this to look. And Commissioner Kline actually did most of the legwork. And again, I appreciate the work that he and Renée did in my absence. And I think it's a very good compromise, and it's a baby-step. I appreciate what Mr. Struthers said as far as people working on campaigns and how that might affect us. If there was a way to put your arms around the whole thing, I would have loved to do it. But under the circumstances, given the time we have, given where we had to draw the line, I think there is room for further enhancement. But at this point this is a baby step, or even a small step, maybe not baby step in the right direction. And so I appreciate the input from Mr. Struthers, and I appreciate the work and consideration by this commission.

COMMISSIONER JENSEN: Thank you, Commissioner Zito. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, just a question for counsel. When this issue arose with the city council, my recollection is that the city attorney instructed council that even upon the receipt of a contribution and a disclosure, that the city councilmember was still required, had an affirmative duty to act on issues before them that did not constitute a conflict of interest. Are we under that same duty?

ORATOR: You are referring to a provision in the city council rules of conduct that you do not have in your bylaws or in the charter.

COMMISSIONER PLATTEN: So that duty does not descend to us?

ORATOR: Right, it is in their rules of conduct.

COMMISSIONER PLATTEN: Okay, I wasn't clear on that. I too want to congratulate Commissioner Kline. Because I think what was a very inchoate group of proposals has been reduced to a very meaningful proposal. I do have a problem with the second provision, because it's really unenforceable. It's really just unenforceable. I don't know that we need to put something in black and white that's

unenforceable, to say that the commissioners shall consider recusing. I mean, how are we to judge that, and therefore, why would we have it in? So I -- on the other hand, I appreciate the effort, because it does signal a desire. But it's purely prefatory, it's wishful, it's nothing more than that. So I don't know if the word "shall" is appropriate to use there. Other than that I think Mr. Struthers has identified a couple of potential problems with it. I'm wondering if I could also ask counsel to define, because maybe my understanding of the play-or-play reference coming back from the elections commission is incorrect. Does counsel have an understanding as to what is coming back from the elections commission on that?

ORATOR: I don't. That would be Lisa Herrick in our office, or Rick Doyle. So I'm not familiar with the term pay or play. But I did want to note -- I still have my light on -- I guess I could go ahead, that the subcommittee did actually have a brief discussion about the nature of bylaws, what constitute bylaws, what legal enforceability do they have, how do you enforce them. And for the benefit of the commission, the bylaws are your own rules of conduct and how you decide you're going to conduct your affairs, conduct your business. They aren't intended to create legal liability. Actually, elsewhere in your bylaws it specific notes that a failure to follow the meeting procedures doesn't invalidate the meeting. So if you don't follow Robert's Rules of Order to the T, it doesn't invalidate the proceedings. So the subcommittee again did have a very similar discussion to that noted by Commissioner Platten. And I thought I would just allow the entire commission to have the benefit of that discussion, which was that this isn't intended to create legal liability. It's intended to provide common ground and an expectation of behavior in hope the commission will conduct itself.

COMMISSIONER PLATTEN: Well, that's good, that's a good clarification. Given that, I mean, I'm torn. I like the concept, but I don't know if I like the language. I kind of want to wait to see what the elections commission comes back to the council with on the bigger issue, which I think is more important, whether it's a potential -- not just a potential but a real conflict of interest. So I don't know exactly how I'll vote on it at this point, I think Commissioner Kline has done a marvelous job putting us in intelligible print.

COMMISSIONER JENSEN: Thank you, Commissioner Platten. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, madam chair. I was going to discuss my concerns about the recusing and how to enforce that, and you have addressed a lot of that. Because of the fact that there is no enforcement of it, I don't really agree with having it in there. It doesn't make sense to me. It seems as though the disclosure is the important part. And the consider recusing, again, you don't know what someone's thought process is in their head, and we're not enforcing it. It's a suggestion, but there is so much discussion already about that sort of thing, that I don't necessarily agree with having it in the bylaws. I think that that creates a confusion that there is in fact enforcement of it. And that we somehow need to be taking extra steps beyond our own consideration of that. And I'm also curious to know about what the elections commission is going to decide and what city council is going to decide, what they think additional requirements should be for themselves, and then recommendations for other commissions, and including stricter things. This says taking \$50 in campaign contributions within the last 12 months, but I believe that the pay or play includes a certain amount of months after you have voted on an issue, that you cannot take contribution, as well. And so that puts a stricter regulation. That sounds like a beneficial thing. So I'm sure that there are other aspects to it that I'm unaware of that we could incorporate. And I think that perhaps we should wait and see what that commission comes back as, and what the city council does to then mirror that, so that we are in agreement with what the city council is doing.

COMMISSIONER JENSEN: Thank you, Commissioner Cahan. Commissioner Kline. Commissioner Zito.

COMMISSIONER ZITO: Thank you, madam chair. Yeah, I can understand that, and I didn't even know that there was a consideration, because again I asked counsel what was going on, and there wasn't a clear answer to that. My concern is that if we wait, we get nothing. We've seen many times things going before the City Council taking weeks, months, years, and not ever coming to any fruition at all. My feeling is that we need to take the leading role on this. And frankly if the city comes back with something stricter, then this commission has the right -- either they'll be forced to follow that new restrictive rule because the city ordinance will trump whatever we have, or you just go back as a commission and just update it. My feeling is, take the first step, be the leaders in this regard, and really, you know, I would have loved -- and Commissioner Kline and I discussed -- this should be for all boards and commissions, right? It shouldn't be just us, I agree with that. But we have no other jurisdiction over other boards and commissions. If I were -- whoever said it earlier -- if I were God, how would I want to see? I would like to see everybody follow these same rules, but we don't have jurisdiction over that, so why not be the leaders in this area? And as far as the, you know, the issue of shall, and specifically say, in addition shall consider recusing themselves. It doesn't say you have to. And as far as enforcement, you're absolutely right. But then again, if they don't disclose the \$50, there is no enforcement on that, either. So the bottom line is, all the bylaws, whether we don't follow Robert's Rules, whether we don't disclose the \$50, whether we follow the two-minute rule or any of the other rules that are in here, none of them are really enforceable. These are meant to be guidelines, you've heard all along, on how we should conduct ourselves. And it's basically raising the bar to a level of we have integrity, the Planning Commission has integrity and is taking the lead on that integrity, and we will -- and my whole thing is public trust. We want the public to feel comfortable coming before us and not saying, oh, so-and-so is running for office, and who knows, right? It's really demeaning when I hear that. And I think to say no, no, we disclose it, and if we feel it's a conflict, whether it be a money contribution or a married to the brother-in-law or sister-in-law or I work for the person, there's a reason to disclose, and there's a reason to recuse, if you feel there's a conflict of interest, whether it's money or any other reason. And so that's where this is coming from. And so I ask the commission to really look at the intent, and see -- in my opinion if this is approved, I see no harm. I don't see any harm done, because the city council's work on this will essentially trump whatever we do, whatever we say here. And counsel could correct me if I'm wrong in that regard. And so I think this is taking a leading role and really sets the commission and says come on everybody, follow us. And that's what I'm really trying to do here. And it's not going to affect me after tonight. Commissioner Campos and I, after eight years of good work, are gone. So it doesn't affect us. It affects the rest of you folks, and you know, it's essentially what I believe is the integrity of this commission anyway.

COMMISSIONER JENSEN: Thank you, Commissioner Zito. Commissioner Kline.

COMMISSIONER KLINE: My vote is worth at least \$51, to tell you the truth. But for bringing people on board to get this behind us, I think I've heard a consensus here to accept up to the recusing part of it. And I think that would be a significant step forward. You already put that motion? Oh, I should make that motion? I think that would be a significant -- I wouldn't make that motion, but if someone else does I'd support it, mainly because by stating it, by basically disclosing it, you're setting a standard where you're going to have to say whether it's a conflict or not, just by stating it. I think that's almost implied. I'll stop and somebody else can make that motion.

COMMISSIONER JENSEN: Thank you, Commissioner Kline. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, madam chairman. I agree with Commissioner Zito that we should take that step, and I think it's an appropriate step. I'm going to move the following: That the proposal be amended, that a period be placed after the one two three four fifth line after the word agenda, that we move adoption of that language and defer, not say good-bye, but defer consideration of the second clause until we get a report back from the council. And I would ask staff if that's okay to report to us when the council has dealt with the pay or play issue. That way we've taken a step, we've staked it out, and we can plant that flag. And I think that's important, I think that's what Commissioner Zito has promised, and I think that that's worth doing. So I'd make that motion and ask for a second.

COMMISSIONER JENSEN: We have a motion and second. Would you like to speak to your motion?

COMMISSIONER PLATTEN: I think I already did.

COMMISSIONER JENSEN: Okay, just for the record, I'm going to read what I think it is that you're moving, and please correct me if I get this wrong. Any commissioner who has received more than \$50 in campaign contributions within the past 12 months, last 12 months, from any applicant or appellant on a matter before the commission shall disclose that information as soon as that matter is reached on the commission agenda.

COMMISSIONER PLATTEN: And the remaining clause will be deferred until staff reports back on the action by the council on the elections commission's return of the matter of pay and play or pay or play.

COMMISSIONER JENSEN: Thank you, Commissioner Platten. And I will be supporting this motion, as well, and I appreciate very much Mr. Struthers' call towards transparency and sunshine. And just for the record, when I was in the role of encouraging people to make campaign contributions, I actually carried with me the list of contributors so that I would have the opportunity both to disclose and recuse myself if I felt uncomfortable in any way that there may have been an expectation. And I'm sure that Commissioner Campos was equally prepared to both disclose and recuse in his role as a candidate. So we have a motion and a second. Let's vote by light. And that motion passes unanimously. Thank you very much. And 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 may not take any formal action without the item being properly noticed and placed on an agenda. In response to public comment, the planning commission is limited to the following options: Responding to comments and 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 matter on a future agenda. Seeing no one from the public here with a matter nonagendized. Referrals from City Council, boards, commissions or other agencies. Staff?

ORATOR: Laurel Prevetti: There are none.

COMMISSIONER JENSEN: Thank you. Good and welfare. Report from city council.

ORATOR: Laurel Prevetti: Just very quickly, yesterday the city council did approve the Cisco development agreement consistent with the Planning Commission's recommendation of Monday night. Thank you again for holding the special session. The week prior, the city council did approve the dove hill general plan amendment, consistent with again the Planning Commission's recommendation. The

council approved a motion on that, that actually requested that at the subsequent stages of the development process, that many of the issues that you heard by the community be addressed through the zoning and through the permit. And then further, requested that if, after a PD permit is approved for a senior assisted living, that if, within two years, that project does not occur, that the city council would initiate a general plan amendment to return the land to nonurban hillside. There were other land use actions, but those are the highlights, given the hour, thank you.

COMMISSIONER JENSEN: Thank you, staff. Commissioners' report from committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Madam Chair. Haven't met.

COMMISSIONER JENSEN: Thank you. Envision San José 2040 general plan update process, Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Madam Chair. We have not met. We will meet this coming Monday, and that will be our last meeting for at least six months, until an EIR is prepared. Thank you.

COMMISSIONER JENSEN: Thank you. Review and approve the synopsis from 6-9-10. I'm not sure we received a synopsis from the meeting on Monday night. So I –

ORATOR: No -- yes, so tonight it's just for 6-9 and 6-21 would have to be deferred off to July 14th, to be heard with the 23rd.

COMMISSIONER JENSEN: Okay. So there has been a motion and a second to approve the synopsis from June 9th, 2010. All those in favor? Commissioner Zito did you have a –

COMMISSIONER ZITO: Not on the agenda. I just would like to make a comment to the commission when all is said and done.

COMMISSIONER JENSEN: Okay, thank you. Subcommittee reports and outstanding business? Hearing nothing, appointment of a representative from the commission to the airport committee, effective July 1st, 2010. With the commission's permission, I'd like to suggest that we wait until the new commission has been installed on July 1st, in the event that -- first, it will give us a larger pool of potential applicants. And if that's okay, if somebody would be interested in making a motion to that effect. There is a motion and second. All those in favor? Thank you. Commissioner Zito.

COMMISSIONER ZITO: Yes, I just -- okay.

COMMISSIONER JENSEN: I'm sorry, your light came on after Commissioner Zito's, so I wasn't sure. Okay, please, Councilmember Campos.

COMMISSIONER CAMPOS: Thank you, Madam Chair. Having served on that committee for probably six -- six years, I wanted to just give some food for thought. Given the tech background and the business background of Commissioner Kline, I would ask the commission to consider, when you get the new commission together, to consider an appointment of Commissioner Kline. Thank you.

COMMISSIONER JENSEN: Thank you. You're being served up as a sacrificial lamb already. Thank you. Commissioner Zito.

COMMISSIONER ZITO: Yes, I just wanted to first of all thank the planning staff for eight years, and for all their immense professionalism and deep knowledge. Many, many late nights, many long applications, and I had a ball. I really want to say that. I really enjoyed myself. People said, you know, what are you going to do now? There's no way to compare what you do on the Planning Commission. And I thank the planning staff for all your support, for all the immense knowledge that I've gained from working with you guys, and I still don't know probably half of it. So I want to thank planning staff and the director and the deputy directors and even the people who aren't here anymore. They all really worked hard and worked with us, and I felt like a family. Coming from an Italian family from New York it was pretty close, a lot of back and forth and learning from each other and so on. And I especially want to thank my fellow commissioners, the ones present and the ones in the past. I mean, I don't know if they will ever listen to this, but again, I learned so much from working with the professional and knowledgeable people that sit at this dais and the ones who have sat before you guys. My only sadness is again like I said before, there's going to be good talent coming on the commission. Commissioner Kline and the two new commissioners that I won't have an opportunity to work with, and that's my only regret. So other than that I would recommend this to anyone to do, because it is immensely fulfilling, and it's a blast. So thank you very much for eight years.

[applause]

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

COMMISSIONER CAMPOS: Yes, thank you. You know, I also wanted to thank all of my colleagues and those in the past that we've served with. And I think Commissioner Zito got it right. It is a very, very fulfilling accomplishment to be able to serve the city and the community in this type of capacity. And I want to thank staff for all of your hard work, and I mean, the work you put into this is amazing. And to help us prepare for our meetings is just -- you know, you guys do great work, so thank you very much.

COMMISSIONER JENSEN: Thank you, Commissioner Campos and with that, I believe we are adjourned. Thank you all.