

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.

>> Commissioner Cahan: Good evening. My name is Hope Cahan, 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 20, 2012. Please remember to turn off your cell phones. Or to put them on vibrate. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking ticket validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. For example, 4A, 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 submitted speaker cards in the order received. As your name is called, line up in front of the microphone at front of the chambers. 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 commissioners' questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. There is one item on our agenda this evening, that has already had public testimony. So we will not be following quite this manner for that particular item and I will go through the details of that when we get to it. It will take a special motion from the commission to open that up for public hearing. 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 actions on rezoning, prezonings, general plan amendments and code amendments is only advisory to City Council. The City Council will hold public hearings on these items. Let the record show that all commissioners are present except for Commissioner Yob. This evening is a special meeting and a sad meeting, because it is the final meeting of Commissioner Platten. Who has been on this commission for ten years. And the city council officially recognized him ass at his last meeting but as a commission we wanted to give him a final thank you for all of your years of service. I know you are a mentor to me before I began on the commission when I was interested in joining the commission. You met with me, even though you didn't know who I was, and you met with me to advise me on the commission. And when I was appointed to the commission you then continued to help me to fulfill my role as best

as I can. And I have always been amazed with the thoughtful comments that you make whenever you are speaking. It's always very poignant. And definitely, something that whatever you say, I take into great consideration. And you will be greatly missed. The commission has a gift for you.

>> Commissioner Platten: Uh-oh.

>> Commissioner Cahan: Because we know you love Hawaii, we got your gift from Hawaii. We didn't really take into account how long it would take for the gift to arrive from Hawaii. So it's not here yet.

>> Commissioner Platten: I've heard that excuse before.

>> Commissioner Cahan: It is on a slow boat from Hawaii. But we do have a gift for you. We will invite you back to come again so that we can formally present the gift to you. We hope that you will come back for that. We do have a card, signed by staff and the commissioners this evening, except for Commissioner Abelite. We weren't able to get it to him in time. But we do all feel you have served this position honorably, and you will be missed.

>> Commissioner Platten: Thank you, Madam Chair. It is with a great amount of humility that I accept your graceful comments, and I want to thank you personally, I want to thank counsel to this commission, who's been steady, the director, my fellow commissioners, who are steadfast and who best represent service to the City of San José. But mostly, I just want to take one brief moment to thank the citizens of San José whom we all serve here on this commission and on other commissions within the city. And I will just say that to me, the highest point of service that I can recall was the night that this commission approved the strong neighborhoods initiative for the si se puede neighborhood. One of the individuals that night, an older gentleman who did not speak English as his primary language, asked that a poem that he'd written be read to the commission in Spanish and translated. The power of the human heart, the power of democracy, the power of citizens coming together, is a marvelous and wonderful power. And I simply -- I want to commend the members of this commission who carry that out every month, several times every month, every year. And I have enjoyed my experience tremendously and I leave here feeling very good about this commission and its future. Thank you.

>> Commissioner Cahan: And now for our first item on the agenda, deferrals. Staff.

>> Other than item 1A, SP 11-039, which is going to be dropped and renoticed, at the applicant and appellant's request, there aren't any more deferral items.

>> Commissioner Cahan: Thank you very much. Commissioners, I will entertain a motion. Commissioner Kline.

>> Commissioner Kline: Move to defer item 1A to -- as staff recommends.

>> Commissioner Cahan: We have a motion and second. All in favor? Any opposed? Or abstaining? Motion passes with all those present voting in favor of. Consent calendar. We do have two speaker cards for item 2A. So woo will take that off of consent calendar and move it over to our public hearing time. We will be covering 2B in our consent. Commissioner Kline.

>> Commissioner Kline: Move to approve item 2B as staff recommends.

>> Commissioner Cahan: Okay, with that motion and second I'll get a quick staff report on that.

>> Staff has no additional reports.

>> Commissioner Cahan: Excellent. Okay. And all in favor? Any opposed or abstaining? Okay, that motion pass with all those present voting in favor of. Public hearing. Let's see, we'll start with 2A. Staff.

>> Thank you, Madam Chair. John Beatty with the City of San José Planning, Building, and Code Enforcement department. This is a conditional use permit to allow passenger vehicle and pickup truck servicing such as tires batteries lube oil change smog check air conditioning use associated with a future AAA store within a previously approved tenant space on a 5.33 acre portion of an 8.19 acre shopping center site known as Brokaw commons in

the CN commercial neighborhood zoning district located on the Northwest corner of Brokaw Road and Oakland Road. Planning staff recommends that the Planning Commission find that the project is in conformance with California Environmental Quality Act and approve the proposed conditional use permit amendment on the subject site for the following reasons and as further described in the staff report. One, the project conforms to the general plan land use transportation diagram designation of combined industrial commercial. Two, the proposed project complies with all applicable provisions of the CN commercial neighborhood zoning district. Three, the project is compatible with the surrounding land uses and four, there is sufficient parking provided for the proposed uses and other future allowed uses within the shopping center development. This concludes staff's presentation.

>> Commissioner Cahan: Thank you. We will open up public comment. Is the applicant here? Okay, great. So you will have five minutes to present. Then we have two speaker cards at this moment. And after that you'll have another five minutes to wrap it up. If you'll come on up and introduce yourself unless you don't want to make comments. That's fine. Okay.

>> My name is Scott Athern, I'm with Donger properties. I'm the applicant. I wasn't prepared really to make a comment. But it's an existing center that we're under construction. AAA came to us and asked us to put them in a space. So part of the use is, they want to be able to oil change, smog check for their clients. And part of this we need a C.U.P. to do that. That's why we're filing that. The Berryessa business association met with them today, and Councilmember Chu, and they're very supportive and excited about AAA coming to the center. So I'm here to answer questions and hopefully take care of it. Okay?

>> Commissioner Cahan: At this point we don't have any questions but I'll invite you back up after our speaker cards.

>> All right, thank you very much.

>> Commissioner Cahan: Thank you and if you will line up, T.A. felton and Christian Elma. You will have two minutes. If you will please introduce yourselves as you begin to speak.

>> Is there a stop watch?

>> Commissioner Cahan: There is a stop watch.

>> My name is Felton, Theodore Felton. I live within three quarters of a block of this proposed shop, it's a maintenance shop, it's an auto repair shop, it is going to be put close to my home. A shop of this type is going to create noise, odors, and airborne particles and as I recall when this project was originally put on the planning, it was supposed to be offices, personal services, area such as I think there's a fitness center and also cafes and minor retail. Not a shop. Not a maintenance area. Not something where right in my neighborhood, there will be an auto maintenance shop. I don't think anyone here would want someone to put a shop within three quarters of a block of your house. I've lived in this place 17 plus years. Quiet place, good neighborhood. But now, to turn it into a shop street or a shop zone I think is unfair and I resent it. Thank you.

>> Commissioner Cahan: Thank you.

>> Good evening. My name is Christian Elne. I represent the board of directors of the complex right across the street from this site called California north point. And nobody on the board has been informed of this hearing, or this project. We were just surprised by our -- one of our owners here, who just came up to the meeting a week ago and announced this. We made a copy of this sheet. So I request more time, and more feedback from the other 200 plus owners just across the street, to discuss that and have more points to bring up. Up to you. But I don't think it's normal. I haven't received any notice as well and I live right across the street from it.

>> Commissioner Cahan: If you had to estimate how far you are from the site, could you do that?

>> Do you have a map here? You can see it. You probably have a copy. Do you see Genoa on the map? I live across, I can see Oakland road from there, from my house, so I can see the site basically.

>> Commissioner Cahan: So you're over at Genoa way near home?

>> Yes.

>> Commissioner Cahan: Okay, great and we'll discuss that with staff.

>> Okay.

>> Commissioner Cahan: Thank you. Okay. You'll have another five minutes.

>> It's not really a -- when I hear shop, it's not like an auto shop where they repair cars, heavy noise like you know, the wrenches and all that. Everything that will happen here will be like a jiffy lube, oil change. They -- I believe they want to do tires. I'm not sure they're going to. But everything will happen inside the building. The building if you look on the map, it fronts onto Brokaw road. It's the furthest point away from any residential. The closest residential is across Oakland road, which are apartments. And that's still almost 2,000 feet away is the closest outskirts of the center itself. So I don't think there's going to be a noise issue. It conforms to everything environmentally. And it's all within the building itself. So there shouldn't be any noise whatsoever. So thank you.

>> Commissioner Cahan: Thank you.

>> Can we speak out? In regard to his comments?

>> Commissioner Cahan: At this time we just allow you to come up for your one opportunity. And I apologize for that. This is an item that will go to city council. So what we say is purely advisory to city council. So you absolutely will have the opportunity -- oh no, it's not, I'm sorry this one is not. I apologize.

>> He made an error in his statement. He said that was 2,000 feet from our complex.

>> Commissioner Cahan: We don't allow further comment from the audience. Staff absolutely is going to make a comment on how far things are, and where people were notified and all of that. So we will take it into consideration. Thank you. I'll take a motion to close public comment. And we have a motion and second. All in favor? Any opposed or abstaining? Okay that passes. Staff.

>> Thank you, Madam Chair. First, apologies for the location map that was previously shown on the overhead. This location map that's part of the staff report more accurately shows where the subject site is. It is a portion of the larger overall triangle at Oakland road and Brokaw but the use is actually in a pad building that's very close to the existing railroad tracks near Brokaw road. Where the asterisk and excuse my poor handwriting, the word "use" that is the approximate location. The development plans associated with the project show the shops building labeled number 3 on the site plan. The shops building is more than just a AAA tenant but AAA would presumably occupy most of the southern half of the shops building which itself is roughly or approximately 700 feet from the location of the shops of the service portion of the use to the nearest residential use across Oakland road. The shops or the service portion of the use will be in the back portion of the building labeled shops 3 on the site plan, and a more typical retail interface will look out onto the main parking field and turn around the corner of the shops building with some limited visibility into the service area from the Brokaw road elevation. The vehicles entering the shops or the vehicle service bays would enter from the back portion of the property along the property line shared with the railroad track, tracks and exit out the back of the property, would be completely shielded from not only the residences across Oakland Road but shielded from the remainder of the retail center, retail shopping center.

>> Commissioner Cahan: Staff for confirmation you sent out notification within 500 feet?

>> That is correct, Madam Chair.

>> Commissioner Cahan: So that doesn't include where residential areas are?

>> It's 500 feet from the project site. So the area that's outlined on the location map, 500 feet from that polygon if you will. So just as a sample, it includes properties on -- I apologize this doesn't have street names on it -- but properties with street names of Brooks Range Landing, Homer Commons, Point Hope Landing. And then as far as Murphy Avenue and down Oakland Road or up Oakland Road as well. It's -- it captures mostly residential properties but also captures the adjacent industrial properties and commercial properties to the East. As well as the future commercial properties to the South.

>> Commissioner Cahan: I believe I may have cut you off. Did you have more that you were presenting to us?

>> No, Madam Chair.

>> Commissioner Cahan: Commissioner Abelite.

>> Commissioner Abelite: Just once again for a point of clarification to the staff it seems to me that the active bay doors are going to be almost totally opposite away from the nearest residential area, maybe not 180 degrees but at least 150 degrees away, and it fronts a railroad track and it's got old Brokaw Road high traffic and not only that but my visit to the site at L.A. fitness building is very tall. So it seems to me there's a lot of levels of items that would obscure disturbing this am I correct?

>> That is correct.

>> Commissioner Cahan: Commissioner Kline.

>> Commissioner Kline: Madam Chair, in the north of the map it looks like it's zoned IP, is that correct?

>> That is correct.

>> Commissioner Kline: So basically some future development is going to go in there, is going to be industrial?

>> That would be the hope, yes.

>> Commissioner Kline: Thank you. And that clarification is right across from those residential units?

>> That's correct.

>> Commissioner Kline: Thank you.

>> Commissioner Cahan: Commissioner Bit-Badal.

>> Commissioner Bit-Badal: I would like to place a motion to approve the C.U.P. as proposed by staff.

>> Commissioner Platten: Second.

>> Commissioner Cahan: Would you like to speak to your motion?

>> Commissioner Bit-Badal: Yes I would. I truly appreciate the public participation, the comments. But clearly, based on the finding from staff, and also, comments from the applicant, and the discussion and discourse from commissioners, that this project conforms with our general plan land use and transportation diagram, and meets all the commercial neighborhood zoning district, so with that I would like to approve it, and wish the applicant much luck and I am glad that we are having businesses come to our city.

>> Commissioner Cahan: Okay, it does appear that this is going to be far away from where you are and that the buffers should hopefully prevent any sounds from affecting where you are and that there isn't going to be major car repair happening there. It is pretty basic and indoors. So I will be supporting this motion, and with that we'll vote by light. And that motion passes with all commissioners voting in favor of. Item 3A, staff. I'm sorry before we get to staff's report Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Thank you, Madam Chair. I will have to disclose based on Planning Commission's bylaws that I have received contribution from the appellant, representatives of the appellee and representatives of the applicant. Additionally, I will have to actually recuse myself from this item so I will be leaving the chamber, thank you.

>> Commissioner Cahan: Thank you. We will wait a moment as you gather yourself. Staff.

>> Thank you, Madam Chair. This item was continued from the Planning Commission hearing on June 6th for lack of a quorum on a decision to either approve or deny the subject planned development permit amendment. As of this evening staff received a letter from the applicant requesting to withdraw this application. A copy of this letter has been handed out to you this evening. Additionally, new letter supporting the denial of the proposal were recently received, most of these letters have been e-mailed to the commission already but copies, hard copies of all of these have also been distributed to each of you this evening. In light of the applicant's decision not to proceed with this project, staff recommends that the Planning Commission accept the withdrawal of this application and not move forward with a decision related to the matter of the appeal.

>> Commissioner Cahan: So commissioners at the last meeting we discussed that the public hearing was closed and that we would only entertain opening it if we had new information that came before us. We do have new information. We have already heard from the applicant and appellant as far as a five minute presentation. But we do have new information that would be -- would be valid for us to open it for a two-minute speaker card discussion on that. Commissioner Kline.

>> Commissioner Kline: I'm not sure what the protocol has been in the past but my experience has been that once an applicant withdraws you don't have to continue the public hearing at all. It would be not good use of city time.

>> Commissioner Cahan: I have been advised that we should make a motion on --

>> Commissioner Kline: Every city is different.

>> Renee Gurza: So according to our municipal code, once you've opened your hearing, and an applicant requests a withdrawal of their application, they actually need the consent of the Planning Commissioner, the decision making body. So it's only a request. And the Planning Commission needs to act upon whether they want to give their consent to that request.

>> Commissioner Cahan: Commissioner Platten.

>> Commissioner Platten: Madam chairman I move to adopt with consent the applicant's withdrawal.

>> Commissioner Cahan: So we have a motion.

>> Commissioner Kline: Second.

>> Commissioner Cahan: A second. Any discussion? Okay, we will vote by light. Oh sorry, we have Commissioner Kamkar jump the gun here.

>> Commissioner Kamkar: I'm a little bit confused. There was a withdrawal but we still have to vote on the appeal, can you go over that again, please?

>> Renee Gurza: So the motion as I heard Commissioner Platten make it is not to act on the appeal, but rather to act on the request of the applicant to allow the withdraw of their application.

>> Commissioner Kamkar: Was that agendized? Can we vote open nonagendized requests?

>> Renee Gurza: So the item that is on the agenda is their application.

>> Commissioner Kamkar: Not the withdrawal.

>> Renee Gurza: Right, but it is related to the item that is on your agenda, which is the decision to approve a planned development permit. So it is this application that the applicant is now requesting a withdrawal.

>> Commissioner Kamkar: I see.

>> Renee Gurza: And they do need the Planning Commission's consent so you can decide whether you want to support that request or not.

>> Commissioner Kamkar: Okay, thank you.

>> Commissioner Cahan: Okay, so the item was agendaized. We have had public testimony on it, now we have a motion before us and now we will vote by light. And that motion passes with all commissioners except for Commissioner Bit-Badal and Commissioner Yob voting in favor of. And we'll wait just a moment for Commissioner Yob to join us -- I mean Commissioner Bit-Badal. Thank you. And now item 3B. Staff.

>> Thank you, Madam Chair. This is a planned development rezoning from the CP commercial pedestrian zoning district to the A(PD), planned development zoning district to allow development of a 7700 square foot retail use, auto zone, on a .53 gross acre site located on the west side of north 13th street approximately 260 feet southerly of East Mission Street. Planning staff recommends that the Planning Commission find that the project is in conformance with the California Environmental Quality Act and recommend to the city council approval of the proposed planned development rezoning on the subject site for the following reasons and as further described in the staff report. Number 1, the project is consistent with the envision San José 2040 general plan land use transportation diagram designation of mixed use commercial. The conceptual design of the proposed project is consistent with the intent of the commercial design guidelines and the 13th street SNI improvement plan. And

lastly, the proposed project was found to be exempt from environmental review under section 15303C the state guideline for implementation of the California Environmental Quality Act. And this concludes staff presentation.

>> Commissioner Cahan: Thank you. Is the applicant here? Okay, no applicant and no speaker cards. So we will close public comment on that. Commissioners. Commissioner Abelite.

>> Commissioner Abelite: I'd like to go ahead and make a motion to approve the project as presented by staff.

>> Commissioner Cahan: Okay, we have a motion and second. Seeing no discussion, we'll vote by light. That motion passes with all commissioners present voting in favor of. That concludes public hearings. Petitions and communications.

>> Laurel Prevetti: We have none this evening.

>> Commissioner Cahan: referrals from city council, boards, commissions or other agencies.

>> Laurel Prevetti: None, thank you.

>> Commissioner Cahan: Good and welfare, report from city council.

>> Laurel Prevetti: I wish to report to the commission that last night the city council did approve the rezoning Union and Curtner project with the drive-through. They appreciated your insights. They struggled with the drive through use as well as if fast food restaurant and recognized that the benefits and costs of the project and in the end decided that they would in fact go forward with it, because it is a significant investment in that corner, and would result in street improvements. They've also heard some other land use items, most notably they denied Walgreen's appeal for the off-sale of alcohol at the Princeton plaza. Thank you.

>> Commissioner Cahan: Okay commissioners report from committees, the Norman Y. Mineta San José international airport noise advisory committee did not meet. Review and approve synopsis from 5-23. Do we have enough commissioners to do that? Okay, we do, all right. Just over here counting. Okay. So Commissioners Kline and Platten, did you have a chance to -- will be abstaining, okay. We are still able to vote on that so all commissioners who are not abstaining, motion to approve, second, all in favor? Okay. All right, no opposition to that. With two abstentions from Commissioner Kline and Platten as they were absent at that meeting. And then we have the synopsis from June 6th.

>> Commissioner Platten: Move adoption.

>> Commissioner Cahan: Okay, we have a motion and second.

>> Commissioner Abelite: I am able to vote open it since I did reconstitute myself.

>> Commissioner Bit-Badal: And the same applies to me.

>> Commissioner Cahan: All in favor, opposed, that motion passes with all commissioners voting in favor of. Election of chair and vice chair for the next year. Okay, traditionally we start with vice chair. Commissioner Abelite.

>> Commissioner Abelite: I'd like to introduce a motion to place Mr.-- Commissioner Kamkar's name as vice chair for the upcoming cycle.

>> Commissioner Cahan: Okay. We have a motion and Commissioner Kline.

>> Commissioner Kline: Second.

>> Commissioner Cahan: Motion and second. Okay.

>> Commissioner Kamkar: I will accept this.

>> Commissioner Cahan: Great, great. Okay. Seeing no other motions, we will vote on that. We'll vote by light. Okay. And Commissioner Kamkar will be our new vice chair. And now we'll move on to chair. Commissioner Kline.

>> Commissioner Kline: I nominate vice chair Edesa Bit-Badal.

>> Commissioner Abelite: Second.

>> Commissioner Cahan: We have a motion and second for Edesa Bit-Badal as chair. Commissioner Abelite.

>> Commissioner Abelite: I'm not sure how procedure goes I would be interested in nominating the current chair for the following year, so I'd like to make that nomination.

>> Commissioner Cahan: Yes, Commissioner Kline. Kamkar.

>> Commissioner Kamkar: Thank you. I just want to make sure that Commissioner Bit-Badal accepted the nomination, as well as our current chair accepts the nomination after the second.

>> Commissioner Cahan: I didn't get a second so I'm going to wait for Commissioner Bit-Badal.

>> Commissioner Bit-Badal: Are you waiting for me? I am accepting it, thank you.

>> Commissioner Cahan: Commissioner Kline.

>> Commissioner Kline: Maybe a reference. We have a second -- a first on one, do we vote on that first before we go to the second one? Is that normally how it's done, Robert's rules of order or do we separate them?

>> Renee Gurza: I believe in the past we've taken one nomination at a time and voted on each one.

>> Commissioner Kline: We have a first and a second, so we have to vote on that one first.

>> Commissioner Cahan: Great clarification, thank you. So we will vote on Commissioner Bit-Badal as chair, and we'll vote by light. And that motion passes with all commissioners present voting in favor of except Commissioner Abelite and I absolutely appreciate the nomination. Thank you. I think Commissioner Bit-Badal will be a good chair and I look forward to serving as a general commissioner under her chairwomanship.

>> Commissioner Bit-Badal: I must say that I really your chairwomanship over the last year. You've been excellent. You've been very fair, and although you have not agreed with some of the commissioners, you have really truly treated everyone with utmost respect and fairness, and I really appreciate that, thank you.

>> Commissioner Cahan: Thank you very much. It was an honor to serve for the year. Thank you. Okay. And subcommittee formation reports and outstanding business? Seeing none, commission calendar and study sessions?

>> Laurel Prevetti: We have no updates to your calendar.

>> Commissioner Cahan: Would like to make a general requirement that our July meetings are here.

>> Laurel Prevetti: If I recall that our meetings, John, were going to be in the council chambers in July. So the schedule is in error. We will be meeting here in council chambers. So -- and that will be depicted in your agenda for July 11th.

>> Commissioner Cahan: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. Before adjournment I would like to pay my tribute to Commissioner Platten. Whenever it's appropriate, please let me know.

>> Commissioner Cahan: We're about to adjourn so you should do it now.

>> Commissioner Kamkar: Thank you very much. Commissioner Platten, want to make sure that you know I think you set the gold standard. In the spirit of the coming-up Olympics, when it comes to Planning Commissioners. I haven't agreed all the times with you, but I have the greatest respect and admiration for the way you handle yourself, the way you approach the issues. And with the zeal that you fight for what you believe, you know, so just want to make sure I've been on record stating that. And hope to remain good friends the years to come, and you leave big shoes to fill as you leave this commission and I really appreciate having served with you for this time. Thank you.

>> Commissioner Platten: Let me just say those are very gracious comments, I appreciate them, and I will do my best to maybe lose a few pounds and reduce the size of the shoes as I leave here. If I may, madam chairperson, as a point of personal privilege I would like to move adjournment.

>> Commissioner Cahan: Absolutely, so moved. Thank you.