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Planning Commission Hearing
December 2, 2009

[Gavel]

COMMISSIONER DO: good evening. My name is Thang Do, and I am the chair of the planning commission. On behalf of the entire planning commission, I would like to welcome you to the planning commission public hearing of Wednesday, December 2, 2009. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under city hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed card in the basket near the planning technician. Please include the agenda item number and not the file number for reference. Example, 4a, and not pd 06-et cetera. The procedure for this hearing is as follows: after the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the planning commission will take action on the item. The planning commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The planning commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the city council. The city council will hold public hearing on these items. The first order of business is roll call. Let the record reflect that all commissioners except for Commissioner Cahan are present. The first item is deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the planning commission agenda, and to be sensitive to concerns regarding the length of public hearing, the planning commission may determine either to proceed with remaining agendized items past 11:00 p.m, continue this hearing to a later date, or to defer remaining items to the next regularly scheduled planning commission meeting date. Decision on how to proceed will be heard by the planning commission no later than 11:00 p.m. Staff.

SPEAKER: Thank you. Staff recommendations for deferrals are as indicated on the agenda. PDC08-010. The recommendation is to defer to January 13th, 2010 per staff's request. Additionally, conditional use permit CP09-047, is recommended to be deferred for one week, to December 9th, due to renoticing -- needing to renotice it in conjunction with the determination of

public convenience and necessity that goes along with it. And the third item, requested for deferral, is conditional use permit cp 09-02 6. Is recommended to be deferred to January 13th per applicant's request to conduct additional outreach.

COMMISSIONER DO: Is there agreement? Those are passed. Next item is consent calendar. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the planning commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of these items individually, please come to the podium at this time. We have no public speaker cards for the consent calendar. Staff.

SPEAKER: No update to what's already on the agenda.

COMMISSIONER DO: Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Move approval of the consent calendar.

COMMISSIONER DO: all in favor? Consent calendar is adopted.

[applause]

COMMISSIONER DO: Next item is public hearing. Generally, the public hearing items are considered by the planning commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. There's only one item, which is CP09-019 and ABC09-001. Conditional use permit and determination of public convenience or necessity to allow offsale of alcoholic beverages including beer, wine and liquor, at an existing convenience store that currently is permitted to sell beer and wine on a 1.01 gross acre site, no new construction, in the cg general commercial zoning district located on the north side of alum rock avenue approximately 500 feet westerly of Jackson Avenue. Staff.

SPEAKER: Thank you. Staff has no addition to the staff report. However, we'd like to again point out, as I passed out earlier, correspondence from los mariposas homeowners association indicating their opposition to the expansion of or the proposal as before you. That concludes staff comments.

COMMISSIONER DO: Thank you. Is the applicant here? Would you please approach the microphone? You have up to five minutes to address the commission.

SPEAKER: Hi, my name is Rick Cole and I have no comment. I'm just here to answer any questions.

COMMISSIONER DO: Thank you very much.

SPEAKER: I understand it's automatic denial so --

COMMISSIONER DO: G.O. Do any commissioners have questions? Thank you sir. You will have up to five minutes for rebuttal if you so choose. We have three public speakers and would you please all come down to the bottom of the stairs. The first one is Gabriel Antovich.

SPEAKER: it's Gabrielle Nnntolovich.

COMMISSIONER DO: I apologize. You have up to two minutes.

SPEAKER: First of all I would like to say I'm with voices united which is the silicon valley chapter and we coordinate the mayfair neighborhood coalition in San José. We have our meetings at the mayfair community center which is just beautiful. So we've been coordinating a consciousness about alcohol and drug issues in San José. These are complex issues. It's not as simple as let's have another liquor license and these people are really good people and they will do the right thing and so we should issue it. We're looking at the context in which you are bringing another liquor license to the area. And I know this one in particular has been denied. But what I want to speak to is that nothing happens in a vacuum. East San José has a lot of places where you can buy alcohol. Some of those places are very responsible people, and sometimes, there's no money to really investigate, to make sure everyone's doing the right thing all the time. I know, in this economy, the police don't have enough people to, you know, do sting operations to make sure people don't sell to underage drinkers and also don't sell tobacco from these places. And so what we want to do is, you know, work with city council, to look at the context in which alcohol is brought into a community. You know when their research does show that if there are more places you can buy alcohol it increases alcohol problems. We were against, you know, having gas stations selling alcohol. I mean, let's face it, they are driving and buying alcohol. And --

COMMISSIONER DO: Ma'am, thank you.

SPEAKER: -- possibly drinking it. I will be working with the planning commission and any other organizations to make connections with that. I have copies of our newspaper.

COMMISSIONER DO: Next speakers.

SPEAKER: I am a resident of Los Mariposas, which is right next to the business. Our development is a low-income moderate income development that was built by MACSA and supported by the city of San José to change the environment in that area. That particular business, Paul's quick stop, used to be a portuguese bakery when we first moved in there and it had a liquor license. When it sold it became a convenience store, grocery that sells beer and wine. And now the owner is requesting a general liquor license. We, myself as a resident and as a member of the board of directors of Los Mariposas neighborhood association, we really oppose the liquor license change. There are already many businesses around there that sell liquor. There is a convenience store on Jackson and Alum Rock. There is the PW, even the hardware store is selling liquor. So we have more than enough businesses that sell liquor. There is also a bar and a builder's hall. That whole little strip mall really needs to be changed in order to being

improve the quality of our lives in our community. And so we really do not -- we oppose a change to the liquor license because we really want to see a different type of business in that area. We have a lot of problems in the community from the effects of the bar and that whole environment. We have a lot of damage to our development. We have people coming in and sleeping in our stairwells. Using our stairwells for things that are not appropriate. We have people breaking into our garages, so we have a lot of crime.

COMMISSIONER DO: Ma'am, your time is up. Thank you for your comments.

SPEAKER: Thank you.

COMMISSIONER DO: Next speaker, please.

SPEAKER: Good evening, honorable chair, board. My name is Danny Garza. I represent Mapa, Mexican American Political Association, I'm their chapter chair. I sit with the NAACP, with la raza round table, and the mexican heritage plaza. Speaking for MAPA, this map is a joke. This map should represent the east side. This map is not complete, as the lady just said right now, there is a bar right next to that, that sell liquor. Of course. That's what we have in bars here. And it's right next door. Okay? Our police force don't have the officers to enforce the problems that are alcohol-related. That includes domestic violence, and domestic violence on the eastside against women and children are outrageous and unacceptable. Anything that aids that is unacceptable. In closing I just want to say there is already an overabundance of alcohol on the eastside. There is an overabundance of alcohol on alum rock. Thank you.

COMMISSIONER DO: Thank you for your statement. Mr. Cole, would you like to say anything? You have five minutes for rebuttal. Any statements from commissioners? Staff?

SPEAKER: The one comment I would make is in reference to the map. It -- this map is not intended to show all establishments that have alcohol available to them. So it does not show the establishments that do have a license for on-sale and we do recognize that there are such establishments in the area. Beyond that I don't think we have any additional comments. Thank you.

COMMISSIONER DO: Thank you. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I'm going to go ahead and make a motion.

COMMISSIONER DO: Please.

COMMISSIONER CAMPOS: That we deny a conditional use permit in Determination of public convenience or necessity to allow offsale of alcoholic beverages including beer wine and liquor at an existing convenience store that currently is permitted to sell beer and wine on a 1.1 gross acre site, no new construction, in the cg general commercial zoning district as recommended by staff. And I further want to recommend, or ask the council to honor and uphold our decision here tonight. Thank you.

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

COMMISSIONER KAMKAR: Thank you, I have a question for staff. I know police department isn't here but I'm a little bit surprised by, you know it seems like there's an overabundance of alcohol in this -- or businesses selling alcohol in this area. I'm surprised that the police department is neutral. Do you have any information as to that? Why is police department neutral?

SPEAKER: No, I think their position is stated in their memo and I wouldn't want to try and second-guess it in any way or manner.

COMMISSIONER KAMKAR: Okay, thank you.

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

COMMISSIONER ZITO: I just want to make clear that Commissioner Campos's additional comments are not part of the motion, is that correct?

COMMISSIONER CAMPOS: They are not part of the motion but in the past we have honored the mandatory denial but for grocery stores we've given additional comment and consider that additional comment for the council to consider, thank you.

COMMISSIONER ZITO: In most other cases we've, when the applicants have not shown or have shown that they were upstanding members of the community we've actually endorsed their applications to the city council. And just want to go on record as saying, I understand what the community has come out and said. I understand the eastside in general has an issue. I find that it's curious to me that a hardware store sells liquor. I'll buy a chain saw and a bottle of jacks. That spells problems to me. But in general though, without knowing more about this site and this applicant I personally would be neutral on my recommendation to council. And being that this is a mandatory denial, it's not much of an issue but just want to go on record as saying that I don't know enough to support Commissioner Campos' opposition to it.

COMMISSIONER DO: Thank you, Commissioner Zito. And I think that the applicant understands that it's a mandatory denial on the part of the commission. So let's take a vote by light. So the motion is passed unanimously with Commissioner Cahan absent. So that closes the public hearing item. And moving on to petitions and communications. There are no items unit this heading. Moving on to referrals from city council boards commissions or other agencies.

SPEAKER: Laurel Prevetti: There are none chair.

COMMISSIONER DO: Thank you, director. Next item is good and welfare. Excuse me for one second. Just for signature. Good and welfare, report from city council.

SPEAKER: Laurel Prevetti: Thank you, Laurel Prevetti, Assistant Director of Planning, Building, and Code Enforcement. Last night the city council considered numerous land use

amendments, as well as text amendments. These were items that the planning commission heard in November. All of them were approved by the city council. That includes the ohlone height amendment to 150 feet. That includes the cadwallader amendment to allow density of up to 5 units to the acre, with council understanding that it's likely to happen at the zoning stage at 2 and a half units per acre. That also included the evergreen village allowance for 35 additional units within the evergreen specific plan and other items. The council did make reference to the general plan update, so since several of you sit on the general plan update task force I think you'd be pleased to see how the council is relating the work that's moving forward with the task force to the decisions that they are considering now. In addition the city council did approve zoning code changes as it relates to transitional housing and some other cleanup matters and that concludes staff report. Thank you.

COMMISSIONER DO: Thank you, Director. Commissioners report from committees, Norman Y. Mineta San José International Airport. Commissioner Campos.

COMMISSIONER CAMPOS: the next scheduled meeting will be December 14th of which I will not be able to attend. Thank you.

COMMISSIONER DO: Thank you. Envision San José 2040 general plan update marrying.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I missed that meeting, I was wondering if one of my fellow commissioners would -- Commissioner Zito.

COMMISSIONER ZITO: Thank you. Four topics if I remember correctly. Urban forest and there was one other -- historic preservations. That's right. There was one salient -- they had mentioned, instead of making the normal findings that we have with the 2020, they have called it something different. They've renamed the -- see I'm not prepared otherwise I would have brought down my notes on this. There were ten objectives that they've identified that will now be the criteria for general plan changes where there were seven strategies, that's right, strategies versus objectives that were outlined in the 2020. And so they've made that change and it's supposed to give better direction and clarification for staff and commission moving forward. That's my report.

COMMISSIONER DO: Thank you, Commissioner Zito. Item c, review synopsis from the last two meetings, actually from the October 28th meeting and November 18th meeting. Any commissioner has any item? Commissioner Zito.

COMMISSIONER ZITO: This is the synopsis, right?

COMMISSIONER DO: Yes,.

COMMISSIONER ZITO: The prior synopsis for November 18th. The last item, I think it's 6 e says recommended approval. What we approved was the 12 units.

SPEAKER: right.

COMMISSIONER ZITO: So that needs to be updated, the motion was for 12 units and not the staff's recommendation. Other than that I move approval of both.

COMMISSIONER CAMPOS: Second. North Dakota all in favor? Approved. And the last item is subcommittee reports and outstanding business. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. We have a neighborhood alcohol outlet retail subcommittee that we put on hold until the beginning of 2010. And given tonight's item I think it's a good time to just remember that we were looking at the first quarter of 2010 to start thinking about that. And I wanted to get it back on the front burner, if possible. I don't know what the staff situation is at this point but it would be helpful if we had a schedule for when we could start doing that.

SPEAKER: Laurel Prevetti: Staff would recommend, given the reductions that the department has endured, that we consider a study session in January on alcohol use. I think it's timely to probably go through our C.U.P. Findings and our public convenience and necessity. Now that you've been seeing quite a few and quite a number pending that you'll be seeing and in the context of that study session we can discuss not only the findings but also potential code changes. I do have to say our code, our ability to modify the zoning code is constrained in two ways. We now only have one staff member who is handling all of our code amendments and that person is handling the zoning code update which the council has identified as a key priority. In addition, we need to make sure that our attorney's office also has the necessary resources and given our sunshine requirements and other demands on our attorney's office we don't want to create an expectation that we're going to move forward with, for example, the grocery store concept on alcohol beverages as we've discussed. So I think having a discussion about what is within the purview of the commission as these applications continue to come forward is definitely valuable. And we will encourage the staff to also be part of that discussion so that way we can be learning together and make sure the commission has what it needs as they make their decisions on these C.U.P.'s.

COMMISSIONER JENSEN: And in the event my subcommittee co-member Commissioner Campos is in agreement I'd like us to remain open to the possibility that it may require subcommittee effort to further investigate and do some assessment on this. Those of us that live in the impacted communities know firsthand about the challenges and the difficulty community members have in ensuring the health and welfare of their communities.

SPEAKER: Laurel Prevetti: Yes, staff certainly remains open to the subcommittee. Again we just want to make sure that the commission has the resources that it needs to conduct its business and that we don't overextend or over promise in terms of how staff can best support the commission.

COMMISSIONER JENSEN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Lisa and Director. So that brings us to the end of the meeting, so the meeting is adjourned.