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>> Commissioner Bit-Badal: Good evening. My name is Edisa Bit-Badal, 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, November 7, 2012. 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 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. 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. 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 the City Council. The City Council will hold public hearings on these items. Roll call. Please let the record show that all commissioners are presents with the exception of Commissioner Kamkar. 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 items for which deferral is being requested. If you wish 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, to continue this hearing to a later date, or 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, do we have any items suggested for deferrals?

>> Thank you, Madam Chair. Staff has no recommendation for deferral for this evening.

>> Commissioner Bit-Badal: Consent calendar. Consent calendar. Item 2A. Actually: Consent calendar items are considered to be routine and will be adopted by one motion. Commissioner Cahan.

>> Commissioner Cahan: After you're done reading.

>> Commissioner Bit-Badal: Okay. 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. And Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I just had a quick question for staff, and on item 2B, there are cut-throughs easements over to the grocery store and the bank and I'm wondering if those are going to stay because it's not documented in here. So I don't want to pull it, if I get the answer that I'm expecting. But if it's a different one then I'll pull the item.

>> Thank you, Madam Chair. It is staff's understanding that the existing easements will remain in place. Thank you.

>> Commissioner Cahan: And will that be written anywhere?

>> It's not reflected in the staff report. But the proposal did not include any proposal to change the existing nature of the existing easements. Therefore, they will be remaining in place. As far as staff understands from the application that was filed.

>> Commissioner Cahan: So for legal counsel, on an issue of an easement of an existing easement area across the street we had an issue with the gas station that was there but now is being taken out. Wanted to use an easement and the owner on the other side did not and so we had an issue before us. Because staff, even though they had intended to have that area as an easement didn't add it into the requirements. Does it need to be specifically stated here or is it fine because it's a continuation?

>> Renee Gurza: Thank you, Madam Chair. The easements are a matter of private arrangement and they do run with the land unless action is taken to extinguish them. And staff is indicating that there is no proposal to in any way affect those private property interests and the existing property rights and easement arrangements that have been established. So they would remain in place, there is no plan to extinguish them.

>> Commissioner Cahan: Okay, thank you.

>> Commissioner Bit-Badal: Commissioner Yob.

>> Commissioner Yob: I'd like to move to adopt the consent calendar.

>> Commissioner Bit-Badal: Any second?

>> Second.

>> Commissioner Bit-Badal: We'll move on to 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. Staff item 3A.

>> Thank you, Madam Chair. I'd like to first start by saying that revised standards were handed out to you this evening, working with the applicant, Public Works and planning staff, we revised one development standard highlighted on the third page in yellow. This is a public works requirement, and we, based on provided information, we are allowing the applicant to construct the homes on lots 2, 3 and 4, prior to the required culvert work that are on the opposite side of the creek from lots 2, 3 and 4 so we did change the development standard from what you previously saw. As discussed in the staff report the subject planned development rezoning for four single family detached residences is consistent with the goals and policies of the 2040 general plan and the site's rural residential land use designation, in that the proposed two-story single family homes are a density of 1.96 dwelling units per acre less than the land use designation's two dwelling units maximum, and the layout is consistent with the density of the surrounding neighborhood. Additionally the site layout heightened setbacks are in compliance with the standards of the flag lot policy and the approached development is also in conformance with the -- proposed development is also in conformance with the city's riparian corridor policy in that it meets the exception to the policy's 100 foot setback. The site is adjacent to a small lower order tributary whose riparian influence does not extend 100 feet. The implementation of the project does include measures which will protect and enhance the riparian value of the corridor more than a 100 foot setback could. The project will be removing two exist homes out of the set back currently within a 75-foot said back of the riparian area. The project is going to provide a 50-foot riparian setback to the new homes. Which as I said before, exceeds the current setbacks of the exist homes. The project will also provide riparian enhancement plan that includes planting of native trees and shrubs along these currently sparse riparian corridor. For these reasons planning staff recommends that the Planning Commission find the project in conformance with the California Environmental Quality Act and recommend to the city council approval of the proposed of the planned development rezoning. This includes staff report.

>> Commissioner Bit-Badal: Thank you staff. Is the applicant here? You may come forward. Please state your name and also you have up to five minutes to make a presentation.

>> My name is Mark Lazarini with Dell properties, the applicant. The information and staff report that you have received is complete. It's accurate and I'd ask that you approve this application. I'm available for any questions, should you have them now or after any public testimony. That is all I have for my presentation. Thank you.

>> Commissioner Bit-Badal: Thank you, I do not see any questions at this point. So we do have a speaker card on this item. We have one public speaker, Joshua McClusky. You have two minutes. Please state your name.

>> My name is Joshua McClusky, I'm a resident of San José, San José State student, and intern with the Sierra Club of Silicon Valley, and I'm here on behalf of the Silicon Valley Sierra Club and the Loma Prieta chapter. Oh, sorry, Silicon Valley Audobon Society, and I'm here on behalf of them and the Loma Prieta chapter of the Sierra Club. We jointly submitted comments on this project and at this time we have seen no evidence that our comments have been taken into consideration. We have given a copy to all of you and we have a copy we would like submitted to the record. I myself tried to follow up on Monday to see if staff had integrated our comments, but we have yet to find a response, we have yet to receive a response from them. This project is inconsistent with the San José's riparian corridor policy. One does not fix harm of the existing degradation by causing greater harm by encroaching on the creek. The biological assessment is inadequate. The mitigated negative declaration ignores the downstream and watershed level impacts of the project. Sign shows that lower level tributaries like Misery Creek are not less important in terms of setbacks. In many places they are more important due to the pervasive watershed impacts that include flooding, sedimentation, pollution, home and garden products that impose toxic impacts on stream ecosystems and disrupt animal movements. The findings that this project will not have a significant impact on the environment cannot be made based on the analysis provided in the initial study and mitigated negative declaration. We ask that the commission not approve the project until our concerns that we've raised have been addressed properly and in an adequate CEQA document and request the preparation of an EIR. Thank you.

>> Commissioner Bit-Badal: Thank you, and I do not see any questions at this point, so I will call the applicant. That was the last speaker on the item. The applicant, you may have up to five minutes again to do a rebuttal or continue your presentation.

>> Thank you, Madam Chair. I've not seen the comments that the previous speaker has referred to so I'm somewhat at a disadvantage as to their points. But as staff indicated, and we work closely with staff and our consultants to come up with an approach to the site that was consistent with City's policies. I might also add that this is adjacent to a development that was also previously approved and in a sense it's become an extension and in that development we are also proposed an enhancement to the riparian area. This is a continuation of that enhancement and it will provide I think significant upgrade to what the existing conditions are. There is existing structures that are actually within 50 feet of the setback, which will be removed. We have one structure, one parcel which is our parcel number 1, which is on the Northeast side of Misery Creek and it's a single house which we are proposing to move back 50 feet to give some appropriate setback. And given nature of that parcel, that's about as far as we can move it and still have a housework. But again, the influence of this riparian area doesn't extend beyond that. And so again, we're enhancing that. On lots 2, 3 and 4 as you can see, it's, if you have that diagram in front of you, we're looking at a setback consistent with what we have actually already had approved, in terms of the project that is already under construction. And you can see, it's approximately -- it varies probably between 75 and a 100-foot setback, depending upon the actual house siting on the lots. But that's the extent of it. Our environmental consultant is here as well if there's any questions. And would welcome any feedback from staff on this as well. And any question that you might have.

>> Commissioner Bit-Badal: I do not see any questions. I do have a question because on the Sierra Club letter that we had, it said community meeting. Have you had any community meeting?

>> We've been active in this neighborhood for the last five, six, seven years with various meetings and developments. We've had several ongoing meetings and discussions with the neighbors, in fact there is a letter of support for this development in your packet with the neighbors that we have been working with out there. And again, our relationship with this community goes back to 2005, with the approval of our project adjacent to this -- this piece is basically a remainder infill piece which our intention is to integrate it into our existing project. So that finishes the puzzle out there and creates a nice living environment and as well as some natural habitat, which is part of our restoration effort.

>> Commissioner Bit-Badal: Thank you, I do not see any more questions. Thank you so much.

>> Thank you.

>> Commissioner Bit-Badal: And staff.

>> Thank you, Madam Chair. As staff indicated earlier, the proposal does meet the exception of the riparian corridor policy for the 100 foot setback. The project will be removing structures from the current riparian area, it will also be enhancing the planting in the riparian area, removing nonnative trees and planting things that are native and consistent with the riparian vegetation. The biological assessment provided for the project in the environmental document stated that the creek's riparian influence did not currently extend to 100 feet. So what this project is proposing to do will actually enhance the riparian area. Additionally you asked about a staff community meeting. With a project this small it's not typical per the public outreach policy that we hold a public meeting on this. And the neighbors in the area I had been in contact with on numerous occasions with general questions but that concludes staff report.

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

>> Commissioner Cahan: Thank you, Madam Chair. Staff would you address the concerns that were raised by the Sierra Club and the Santa Clara Valley Audubon society besides you just discussed the community meeting but the other issues in their letter I haven't heard any real discussion with their concerns. And in the years I've been on the Planning Commission I cannot think of a riparian corridor item that has come before us that has actually met the 100 foot requirement and that concerns me. So if you could further that discussion for me, that would be helpful.

>> Joe Horwedel: I will respond for the riparian setback and I'll let the staff work through the rest of the issues in the letter. The riparian corridor study does have a 100 foot, as the number. As the starting point. Kind of the

assumption for larger streams. I think it is a bit of a misnomer in labeling this as a creek. That this really while it has some vegetation, that is in the area of some of the oak trees along there really is more of a depression through a field that is in this area. We did look at this when we did the larger subdivision that this is the missing piece of. Had extensive discussions with looking at the biologic impacts of the creek, how we dealt with the road crossing, different alignments, as you heard from Mr. Lazarini, was probably about four years through the process, staff made some recommendations, a number related to the project, the council ultimately did some different things and pretty much set the pattern for this project. But as it relates to the actual 75 feet, staff does believe that that is appropriate, that it more than exceeds the riparian corridor study the goals of that the intent of that, with the creek waterway, channel of this nature. So as for projects doing the 100 feet there are projects that are built in the city with the 100 foot setback. I think it is a fair argument that there have been numbers of projects that have done less than 100 feet and certainly is a part of the adoption of the general plan, the policies around riparian were ratcheted up within the general plan and it is one of the things that the council in its most recent priority-setting session has moved to the top of the pile of projects for staff to work on this next year which is to go look at the riparian corridor policies of the general plan, the riparian corridor study and see how we can do a better job to have clarity of the expectations of how the policy would be implemented in different circumstances. So that it does not have the appearance of individual one-off type solutions. That there is more of a going into before a project shows up of what the expectation is for different types of riparian corridors, the health of those, the vitality, the size, as well as the existing situation, such as if there is a house or a parking lot or is it an open area that has had no development at all. So that there's clarity for what the right solution would be, I think would help with your concern.

>> Commissioner Cahan: So we -- a lot of these projects that come before us do in fact have a house or some existing structure there, and then a discussion is, well that is there and it's closer to the riparian corridor than the proposed project. But still the proposed project is not 100 feet. And it just concerns me, because then the argument is, well, we're making it somewhat better, but we're still not meeting the goal. So to have more specific clarification on the different areas, and how they really affect us environmentally, if there is a big flood, if we do have some huge storm like hit the East Coast, and things flooded that people didn't expect because they haven't had that kind of weather, and we know weather is changing, how are we going to be affected by the potential

increase of rain or flooding, and what are our needs with the riparian corridor to really meet the safety of our community? And staff, if you could also address the question because I don't think it's in the letter. But the question that was raised about how we're addressing the runoff from a home --

>> Joe Horwedel: Cumulative standpoint.

>> Commissioner Cahan: Agricultural.

>> Joe Horwedel: I was going to follow up. One of our things that is part of our permit that we received from the regional water quality control board here in Santa Clara County and has the same requirements now throughout the Bay Area requires that new development be designed to not only not increase the amount of runoff that goes into the creeks from a predevelopment standpoint but to also go through and retain water onsite now and put it for adaptive reuse. So it's -- the new development versus stuff that was built you know surrounding this development back in the '80s where everything was just pushed into the creeks quickly through storm drainage is designed to go through and retain the waters on property. And either percolate it into the soil or a much slower release in the design of drainage from yards into other natural spaces on the lot, rather than, again, straight into the storm drain system. So that if there are problems of fertilizer use, pesticide use, that that's designed to stay on the property rather than being just flushed into the storm drain system. Around it's just a function of what's going on regionally through the stormwater -- the regional water quality control board regulation. And we've had problems in the past of Thompson creek undercutting because of that flash flow into the storm drain system. The new design standards are really about reducing that amount that's slowing that water so that we don't undercut the stream bottom in Thompson creek which has caused the sedimentation problem at Lake Cunningham. So it is part of you know incrementally we do deal with that. In some ways those regional rules are the mitigation at a cumulative level because those were created to deal with these projects at a small scale and large scale to make sure you don't have that cumulative impact.

>> Commissioner Cahan: Does this project fall into that?

>> Joe Horwedel: It is subject to I think all of those because it's greater than 10,000 square feet. So it would have all of those requirements kicking in.

>> Madam Chair I would like to add along with the flooding, the initial study to do a flood plane analysis, the results of the study showed that the limit of the ten and 100 foot flows remain at the 50 foot riparian setback area. So that flooding would not occur in any fenced yards or building areas on any of the lots. So that was the result of the flood plane analysis for the project. Back to the Sierra Club Audubon society letter, their item number 2 on jurisdictional water states that the site should be evaluated by army corps of the United States, and require state and federal permits. Misery Creek ask considered part of the waters of the U.S. and is in their jurisdiction so they would need to get any permits, should they be doing any work in the creek from them. There are -- director spoke to number 3. Number 4 on their letter, burrowing owls, the mitigated negative declaration does require that they do a burrowing owls preconstruction survey for burrowing owls. I think this letter -- I'm not sure what theory saying as for burrowing owls, that the prior -- that that mitigation measure is adequate, that it's a standard mitigation measure for burrowing owls.

>> Joe Horwedel: And on that one, fish and game did publish the March staff report. We actually are having extensive discussions with fish and game like almost on a daily basis about burrowing owls. It is one that is in I would say significant transition of how burrowing owls are handled. It really is a CEQA impact and is a part of the discussions with fish and game of what even their regulatory role is, is one that's continued to refine itself even in the last two weeks in our discussions with them. We are, as part of the discussions going on with the habitat conservation plan, working through a number of those issues elsewhere in the city where we do in fact have owls. My memory was, this is not an area where we have seen owls in the lengthy amount of time. So from staff's standpoint we did not see that the -- doing different than we have about the preconstruction survey. It's kind of a safety valve just to make sure there isn't something that has been missed. But through survey work of the habitat plan, looking at other projects in this area, we had not seen them in this immediate area. It's not an area that is then conducive because of the amount of trees in here that we would typically find them. But as a safety valve we did put that in. But as I said the larger issue about how the staff report issued by fish and game is going to be

implemented by us, as well as the other cities here in Santa Clara County, is still going through a significant amount of discussion at the city council level.

>> And number 5 nesting birds, the mitigated negative declaration also has a similar mitigation requirement for preconstruction surveys. And for construction not to be scheduled during certain times of the year when raptors and other migratory birds might be nesting. The maintenance of this area, this area would be subject to a homeowners association that would be subject to the maintenance of that riparian area.

>> Commissioner Cahan: Will that be in writing somewhere?

>> That kind of condition usually comes at the planned development permit stage. That's the condition that is commonly included in the planned development permit itself for any common areas to be maintained by someone at the association. Number 6 regarding lights, fences and retaining walls, at this time we have not looked at you know, at lights on the rear of the homes. The fences or retaining walls and that's something that we would do as a part of the design work that we review at the planned development permit stage.

>> Commissioner Cahan: Will there be an opportunity for the Sierra Club to participate in any of those discussions?

>> At the planned development permit stage it is a public process. So once the planned development permit was submitted they would have a chance to review the development, yes.

>> Commissioner Cahan: Thank you.

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

>> Commissioner Abelite: Just going back to director Horwedel. You're talking -- I think the HCP is going to handle a lot of this in the future anyway, if it gets adopted. You're about a study session at CityCouncil and how they're talking about tightening up the riparian, but I'm assuming it might be a moot point in six months or so.

>> Joe Horwedel: Yes, so the council is still having the discussions about the habitat plan. So as we bring that forward for its final adoption, you know that is included in the plan, burrowing owls, riparian. And that's part of our discussion with the council is how those relate to our riparian corridor study and what we've done in the past about owls and how that changes with individual projects and that's why it's slowed down at the council they wanted absolute clarity about how that really works, is a kind of eyes wide open.

>> Commissioner Abelite: That's part of it?

>> Joe Horwedel: That's part of what we're working on right now.

>> Commissioner Abelite: And then the other component, you talk about onsite stormwater retention and -- you know, that's actually zoning code that this body actually passed in the last two weeks, two months?

>> Joe Horwedel: Yes, so there are parts of it that are in the zone code, there are parts of it that are in other parts of our municipal code, and then pieces that are in the council policy on stormwater implementation, and then the permit itself that we hold as the city.

>> Commissioner Abelite: Right I mean our zoning code revision was just truing it up against regional water quality board, just to be more precise.

>> Joe Horwedel: Right, so it's the minimum square footage, acreage type standards, we reconciled those again.

>> Commissioner Abelite: Thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. The question to staff, again on the Sierra Club letter, and just for the record, I want to make sure that everything is clarified, on the jurisdictional waters of the United States you addressed that. And it is the City's practice not to require these permits at this point. Can you confirm that? That comes later in the process, right?

>> Joe Horwedel: If there is an army corps permit that is required, the applicant is required to deal with that prior to development. It is not a condition prior to zoning. Essentially the corps really will not even be able to issue a permit at that stage.

>> Commissioner O'Halloran: Okay. And then I didn't hear staff respond to the part of the letter about cumulative impacts. Could you just summarize how that's addressed in the mitigated negative dec, how cumulative impacts is addressed?

>> Joe Horwedel: Commissioner O'Halloran, the -- how staff deals with that is really through compliance with the stormwater regulations of the regional water quality control board which have been written for the whole Bay Area to deal with the issue of incremental increase in storm water and the velocity of that water into the system and through our implementation of those permit requirements, it requires developments in the storm drainage systems and the storm solutions to be designed to slow water into the creek system, to go through and retain water onsite, to treat water and design grading solutions so that areas drain into natural detention type facilities, to keep it on property rather than into the creeks. So through that permitting process, and that regulatory structure that the city has implemented to implement the regional water quality control board regulations is how we see -- we deal with these issues.

>> Commissioner O'Halloran: Okay, and so that was documented in the negative dec?

>> Joe Horwedel: It is a fundamental -- it has to happen. They don't get a grading permit without doing that.

>> Commissioner O'Halloran: Okay, I just want to make sure it's on the record. Thank you.

>> Commissioner Bit-Badal: Thank you Commissioner O'Halloran. And for the record, the public hearing aspect is closed. At this point I will entertain a motion on this item. Commissioner Abelite.

>> Commissioner Abelite: Yes, I'm prepared to make a motion to consider the mitigated negative declaration, in accordance with CEQA, recommend to the city council the approval of the planned development rezoning to R-1-1 single family district to an A(PD) planned development zoning, to allow for the development of up to four single-family detached residential units on two acres for the reasons as stated in the staff report.

>> Commissioner Bit-Badal: Commissioner Yob. Would you like to speak to your motion Commissioner Abelite?

>> Commissioner Abelite: I'm a resident in this area and I've seen this property for probably two decades now and the hunt property in the past has been really an eyesore to the community anyway between Meadowlands and California oak creek, this was a very large 18 acre parcel of land and both of those communities are elevated and looking down into this parcel as well as others that were kind of falling into disrepair over time. And I know there's sensitivity about the riparian corridor but this piece in particular was really poorly handled by previous owners. So I think it's just going to kind of finish out the project area, it's going to create a nice framework for the entry of the third community among the two existing so that's why I'm supporting the project.

>> Commissioner Bit-Badal: Commissioner Yob would you like to speak to your second?

>> Commissioner Yob: No thank you.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I'm very reluctantly going to support this motion. I think that we really need to do a better job on our riparian corridor analysis. And I'm really only supporting it because I think it will be an improvement and we're doing the onsite drainage that hopefully will address flooding issues. And then the burrowing owl has not been noticed in that area. But I still think we have a lot of holes in what we're doing. And I'm concerned about us waiting until there is the thorough plan, the cross-county plan. Because that may not happen for a while. It looks like it's been delayed and may be delayed for an extended period of time. I hope we can hurry and kind of come up with a firmer evaluation of the corridor so Planning Commissioners can really have a set of tools that will help us evaluate appropriately. Thank you.

>> Commissioner Bit-Badal: Thank you so much for those comments. I do not see any other speakers. So we're going to vote by light at this point. This project was approved unanimously. Thank you. Moving on to item 3B. Staff.

>> Joe Horwedel: Madam Chair, the Planning Commission at the study session had proposed doing changes to the bylaws for the Planning Commission. Staff has prepared at the direction of the Commission, in staff report, what the suggested changes are. There is a number of letters that have come in from different groups concerned about the proposed bylaws. And staff did not do any outreach for the proposed change. This really is a proposal by the Planning Commission. And so really, am looking for direction from the commission of how you would like to deal with outreach. Certainly a public meeting, at a meeting like this is an opportunity for the public to be engaged. But I don't think we really have let the public know about this issue. Other than it showing up on the agenda. So from staff's perspective I think you have a couple of speakers here tonight. You have some letters that are available. I would suggest hearing from the public but I would suggest deferring this to a later date to allow a kind of outreach out into the community, and make sure that all interested parties are able to participate at such later date.

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

>> Renee Gurza: Thank you, Madam Chair. As you're considering the outreach component that was just referred to by the director, just a quick note that to the extent that you hear testimony that outreach is required I just wanted to let the commission know that this is not a land use or development proposal. So it's not subject to city council policy on outreach 6-30. You may decide that as a courtesy or as a policy that you'd like to allow the public an opportunity to comment. But I wanted to let you know that it's not legally required. Thank you.

>> Commissioner Bit-Badal: Thank you. I have two speaker cards on this item. I will call them. Would you please come forward. Neil Struthers and Eric Schoennauer. Please state your name for the record.

>> Good evening, Neil Struthers, chief executive officer of the building trades council for Santa Clara County and San Benito Counties. I spent two years on the general plan task force with some of you, so I know a little bit about it. I understand a little bit about the role of the Planning Commission, about land use in general, what I don't understand is the need for this bylaws change. I don't know what problem we're trying to correct. Hopefully, somebody could explain that to me. Let me read what caught my eye in this proposal. It says: A Planning Commissioner shall not conduct independent fact finding investigations related to a matter coming before the commission or engage in conversations with interested parties about the matter outside of the public hearing. Seriously, what -- how does this lead to better decisions? Limiting public input, information? I don't fully understand this. I mean I agree with the director. This needs to be deferred. The labor, the business community, the developer community, community groups need to understand the need for this proposal. And I would ask you to defer it for some time into the future. Not next month but sometime in 2013 for your own credibility. This is limiting democracy to two minutes at a time every other Wednesday is not acceptable. Thank you.

>> Commissioner Bit-Badal: Thank you, Mr. Schoennauer. Eric Schoennauer.

>> Good evening, Chair Bit-Badal and members of the commission. My name is Eric Schoennauer, I'm a resident of San José at 90 Hawthorne Way. I interact with the planning commission and city council from many different perspectives, as a land use consultant, as a neighborhood leader, as a community leader on different issues. I think that decision makers arrive at better decisions when you have more information, and perspective, not

less. And so I think that it's good for decision makers to meet with interested parties to visit a project site, and meet with all sides of the issue. Obviously, in my professional life I want you to meet with me and my client. But I also think you should meet with neighborhood leaders, with next door neighbors, with environmental groups, whoever might be opposed to my project because I think only through hearing their information, and their perspective, can you arrive at a fully informed decision. So I don't know what problem is trying to be fixed. I would suggest that if there's a concern about transparency in the process, that you could enhance your disclosure process or protocol. Now that's what the city council does. Prior to any decision, they state at the dais all of the people who they've met with on a particular council item. So it's fully transparent who you've approached by, who you've been lobbied by, who you've talked to. So you might go that path where you still keep the flow of communication information but you make it clear to everybody, who you're communicating with. Thank you.

>> Commissioner Bit-Badal: Commissioner Cahan, actually Mr. Schoennauer would you --

>> Commissioner Cahan: Actually I jumped the gun. I was waiting for public comment to be closed.

>> Commissioner Bit-Badal: At this point would I close the public hearing. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I make a motion that we defer this item to at least March, if not later.

>> Commissioner Bit-Badal: We have a motion and second. Would you like to speak to your motion? Commissioner Cahan.

>> Commissioner Cahan: I would, thank you. I'm very concerned about the effect that -- we have someone else who wants to talk on this? I'm very concerned about the effect that this potential bylaw change could have on our entire community. And therefore we as a commission I believe should require an outreach to all of our neighborhood associations, and to the business community. Also, the United neighborhoods association. All of our environmental groups. Silicon Valley leadership groups, leadership group. The developers, our labor unions,

and any other organizations that I might not have thought of that come before us because they are affected by the decision that we make as a Planning Commission. We absolutely value staff and staff does a great job. But we don't always get all the information. And that was exhibited in the previous meeting that we had, that actually seemed to jump start this whole thing, where, in that discussion, it was the noodle house that wanted to renew its C.U.P. and have the hours continue to go till 3:00 and the staff took out the requirement for them to have a security guard. It turned out that the person, the applicant didn't even want to take that out, had not been asked, did not realize that they could speak at the meeting, and didn't have an interpreter. So that they could actually have a conversation with us. And then, at our staff retreat meeting, when the police arrived, and I spoke to them and asked them if they were aware of this, when they made the recommendation to us that it -- to go with staff, they were not aware of taking away the security guards. At an area that is a high gang area. And is he they would have made a different referral, different opinion. So clearly that states to me that we need to be talking to the community and we need our community people to be involved in this decision, this potential bylaw change. I'm really concerned by this. So I do request that we do reach out to all of those groups. And any others that my fellow commissioners might think of. Thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner Kamkar would you like to speak to your second?

>> Commissioner Kamkar: Thank you, Madam Chair. Yes I do. In addition to what Commissioner Cahan said, we have also received three letters from some of the organizations and they have brought out the same concerns that one of our speakers talked about, is that you will get better decisions when commissioners are better informed. Limiting the contact with the outside, I believe, does not serve that purpose, number 1. And number 2, is I've had the opportunity to attend the league of cities where the Planning Commissioners and councilmembers attend. And, or the public luncheons, public official luncheons that is put on every once in a while. And that's where you meet other Planning Commissioners from other cities. When you compare notes, you realize for some reason we are extremely restrictive in San José, you know. And you know, not that it's a bad thing. But I wish in our outreach we also check into what the neighboring municipalities, the neighboring jurisdictions deal with these issues. And try to understand if they're so different from us, why? And so for that reason, I seconded, March I

think is plenty of time for this outreach and studies to take effect. And so we'll be a little bit better informed for jumping the gun and changing something as critical as the bylaws. Thank you.

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

>> Commissioner Kline: Yeah, I have no particular problem in continuing this to have a better outreach. And I especially like the idea of outreaching to the neighboring communities coming from the neighboring communities I can assure you we are not restrictive compared to other communities. As a matter of fact I can make a list of Palo Alto, Saratoga, Santa Clara, that all who have this language, which I have concerns with too, but they all discourage ex parte communications radically, not only for planning commissioners, but in some cases for city council people. The issue is not a particular personal issue or project issue, it's a good governance and due process issue. One important element of fair hearings is assurance that all parties to the hearing are apprised of all information which has been provided to the decision-making body, so that each party can be aware of and respond to the information. When the individual is contacted by a quasijudicial decision maker, when individuals contact them in outside hearing, outside the hearing other parties to the hearing to the proceedings are completely unaware of this, are unaware of what goes on inside that meeting and do not have an opportunity to respond to that meeting. So this is just a due process issue. In short, ex parte communications creates an appearance of impropriety. And exposing that I met with someone, I've been doing this for 17 years, often we say I met with Joe, nothing happened, nothing happened, we don't know if nothing happened. I met with Joe and it was extremely helpful. Well how was it helpful, what went on? I wasn't persuaded one way or the other but it was extremely helpful. What information was provided, what exchange was provided? And I was not influenced at all by that discussion, that meeting. Great, how do we know that? How do we know that you even know that you were influenced in that particular meeting? So this is a great discussion to have. And I'm really for continuing it. But you'll find that including league of cities by the way and the vast majority of the cities across the state, highly discourage. Now the words are different in each of the cities and we can argue about that, highly discourage ex parte communications because of a due process fairness doctrine that then takes, you simply don't know what goes on in these particular meetings and no one does and there's no way of disclosing -- opening that meeting up and you can't simply say you had a meeting with Joe and you know I've been doing this for 17 years,

I've never actually had someone say you know I had a meeting with Joe and he absolutely convinced me so I'm going to decide this way. Now if that would happen I hope legal would be jumping up all over the room saying you have to leave the dais because you just prejudiced yourself or biased yourself on this particular decision. Now, that's the extreme, but just take that down as far as you go and you still have to leave the dais. Right? Because any type of bias in a closed setting would be biasing us on this particular decision, judicial decision. Again I'm more than happy to send this forward except for wording issues, admin issues, I think it was a little Draconian, I think this you will find this consistent with other cities. I would like a comment from legal because you didn't make this up obviously. Where did you get this wording from and it's completely off the wall. That's a question.

>> Renee Gurza: Thank you, Madam Chair. No I didn't make that up. It's not completely off the wall, that's my legal opinion. I surveyed the state of California as well as the federal government. It is not as Draconian as the federal administrative procedures act. It's not as Draconian as the California Administrative Procedures Act which actually forbids communications outside the public hearing process. If I may, for the benefit of the public especially the speaker who said he really didn't understand, he referenced the general plan task force. I know that the commission is sensitive to the distinction between quasijudicial functions that it performance and quasilegisative. But again for members of the public, the commission makes reckless recommendations on legislation. And in that manner acts in a quasijudicial capacity. Which is a kin to the general plan task force that the speaker was alluding to. And in that context tons of outreach is performed. Tons of stakeholders are brought into the process. When you are talking about legislation, everyone is brought into the fold and we do tons of outreach. I wanted to highlight especially for the speakers that in the very beginning of the lack it talks about quasijudicial proceeding. So the general plan task force would not be at issue here. It's when the commission is acting akin to a judge. So it's when the commission is acting as an appellate body, as an appeal from director's decision has come to the commission, or is acting as a decision making body, it's a different hat that the commission wears. They're acting as a judge. So just as you wouldn't expect a judge who's hearing a litigation matter to go out and perform his or her own investigation, but rather, would hear the testimony presented in the courtroom, it's that hat that the commission is wearing in this particular bylaw amendment. So I just wanted to highlight that. I don't know who's going to do the outreach because again this was something that was not generated by planning staff. So it was generated by some commissioners requesting it. So we might want to get

some clarity on how outreach will be performed. To echo Commissioner Kline's statements, the purpose of the amendment is to actually safeguard constitutional due process and substantive due process to prevent unfair hearings to prevent bias to ensure that we have fair and objective decision makers, fair and objective processes to ensure that the commission all has the same information. I think Commissioner Kline explained in detail how you can exhibit a bias or obtain information that maybe subconsciously you're not even aware of. The bylaw amendment in no way impacts the ability to petition your government. Absolutely -- nothing about how the public comes to you to give you testimony, to give you evidence, to give you information changes through this bylaw amendment. What it really goes to is going outside the public hearing process. And going off the record. And going out on your own, and having conversations and going out and collecting your own facts and your own evidence. Again, when you are acting in a judicial capacity. So think about yourself as a judge in a courtroom and the judge saying, I'd like to put this on hold while I get out my magnifying glass and perform my own investigation to the crime scene. So it's akin to that sort of construct that you want to be thinking about. I hope I answered your question. But more directly yes, I did survey quite a few other jurisdictions, other administrative bodies and you are correct that there are some that are much more Draconian.

>> Commissioner Bit-Badal: Commissioner Abelite.

>> Commissioner Abelite: And ironically enough I need to disclose, on the previous agenda item and I failed to do that when I was making the motion, that I did have incidental discussions with the applicant. Probably over the course of like five or six months. I had no bias on it. But the nature of those talks were the hunt property is going to be coming before the Planning Commission soon, that's great, I know it was deferred, I wasn't here at the time of the deferral, and then I said why was it deferred, and I was told that it was deferred because there was a rework of two -- what phasing this particular hunt phase was going to go into and that's bit. I had no meaningful meeting per se on this, it was more like an incidental contact. I wanted to get that out of the way, get it out before the public. And going to the item at hand I do want to say I have great concern about it too and I greatly echo Commissioner Cahan and Kamkar's reservations about it and the desire to go into the community and hear more about this. Unfortunately I wasn't part of the study session, I couldn't be there and so I didn't really have a full background to it. But when I saw the bylaw I was kind of disturbed by it myself. Again I haven't been in the

government as long as Commissioner Kline has and maybe I'm not as good at it but I do have concern over the language and what it does and perhaps we'll talk about it more in the future so I will support the motion.

>> Renee Gurza: Thank you. The good news was, that was a rezoning. That is a quasi legislative determination.

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

>> Commissioner Yob: Thank you, Madam Chair. I'm also quite disturbed by this but for the reasons actually stated by Commissioner Kline, I'm concerned that this isn't already existing in our bylaws. I think it's important to really emphasize what counsel stated, which is that this is specifically directed to administrative and quasijudicial processes. I am an attorney by profession and I can analogize this to a judiciary hearing when you are before a judge and the court, the judge does not have side communications with the attorneys on either side or the parties, those are called ex parte communications. I think it's an accurate statement of the law the way this amendment is drafted? And that it is a due process concern not to have this type of policy in place. I also think that the reason behind the rules, in a court of law and due process, here as well is that it's to prevent undue influence, not to suggest that there is any that goes on here. But this is not trying to chill communication, rather, it's intended to provide more open dialogue, and more open communication. You know, Commissioner Kline was talking about you know, Joe may or may not have influenced him with his comments in their meeting but maybe Joe if he's standing here he may influence me if I'm able to hear the same information that's provided to Commissioner Kline. So for that reason the disclosure piece is not effective because just the way the human cognitive process works, you're disclosing what you heard. And I may hear something very different than what Commissioner Kline or Commissioner Cahan heard. And so it's only appropriate for Joe to be here, in front of the commission, and for us all to hear his comments and be able to process them and consider them on the same playing field. This does not limit the ability of the public to come before us. They can write letters, send e-mails if they can't come to the meeting or certainly come here and speak to us at the commission meeting. So I am fully in support of this change. I do, however, think that we need some more education on this. I think there's some confusion sometimes even among the commissioners ourselves on what is quasijudicial and what is not. And so one of the

things that we also discussed at the retreat that I would like to reiterate that I hope we can do is designate on the agenda on each individual item which item is quasijudicial and which one is not. I think that's a good reference point for commissioners. If you do happen to have contact with somebody and you know as this bylaw is drafted it does say if however you are on a site inspection and you happen to have some kind of communication you should disclose that. And I think it's a great way to be able to refer back to somebody if they were to approach you to say you've obviously looked at the agenda on this item, this is quasijudicial I encourage you to bring all of your comments to the commission either by letter or by appearance in front of the commission at the meeting. We encourage every member of the community, whether it's attorneys, consultants, neighborhoods. We want to hear from you absolutely 100%. But we want to do it in a way that's open and fair and that everybody's getting the same information at the same time. And for that reason, I will be in full support of this. When we are considering whether it's tonight or some other time. The other thing I think in addition to commenting on whether it's quasijudicial or not on the agenda I think it would be useful to have some sort of a FAQ or something on the city's Website that explains to the community what that means, what is quasijudicial, what is administrative, was legislative, so there's a reference for them to look at that and understand. We do wear different hats and we need to remember which hat we're wearing when each item comes before us on this agenda. In terms of deferring I would be able to support some short deferral for purposes of people providing more input. I personally feel like I have enough information to decide on this tonight. I didn't see any concerns in any of the letters that were submitted or any of the comments here about wording. If somebody had some wording change or some modifications to the language you know I'd certainly be open to hearing that but I don't see that in anything that's before us tonight. So those are my comments.

>> Commissioner Bit-Badal: Thank you, Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I can support the deferral. I had some questions, though, so that when this does come back, I hope that staff could address these. Because I've thought about it a little bit more since we had our study session. First, if you could clarify, and again I'm not asking for the answers now, but is this a best practice, or a requirement? The idea of prohibiting ex parte communications or is it a best practice to avoid them? So if that could be addressed when this comes back to us. I'm also not convinced about

the distinction between being able to go out and do a field visit, as part of an investigation, and -- versus other kinds of investigations. So maybe that's something we can discuss. But just the rationale why you would make a distinction if you could address that. And then the third item is you know, it made sense to me when you were talking about that analogy that we're being a judge. But it seems like the analogy is different or maybe, I mean this is just how it seems to me, that we're relying on staff for our information, that is basically saying that we can't get information from anyone other than staff. And it almost seems like it has an effect on whether we're doing our duty. So if that could be addressed in the staff report as well. So those are the items that I had. I didn't need them to be addressed -- okay that would be great.

>> Renee Gurza: Would you like -- I can address them now if you want. The most of important thing you said that I want to address right away is the perception that the bylaw says you can only get information from staff. I think it's really important for everyone here to know that you don't just get your information from staff. You also get all information from the public, from anyone who writes a letter or shows up to testify or provides an e-mail. What this is getting at is, an individual commissioner going off the record, outside the public hearing, going outside of the public process, outside of daylight, outside where everyone else can hear the testimony, and having conversations. So I think that's important. You absolutely can hear whatever the public has to say. So you don't only get your information from staff. You get your information from anybody in the audience who decides to show up or write a letter. I hope that's clear, because I can imagine that if there was a perception that you could only obtain your information from staff, that would cause you great concern. So I want to make sure that that's clear. In terms of best practices or requirements, what we had heard at the retreat was that there was a common understanding by some commissioners that you wouldn't go out and you know, put on your detective hat and get your magnifying glass and go investigate the scene yourself. This was intended to memorialize what at least some commissioners thought was your best practice. I concur with, I think it was Commissioner Yob who made the comment, that we haven't yet talked about the language. In other words, this was meant to be the starting point for you to have the discussion. So if the commission wants to discuss the language, I think of course, we would welcome that conversation. This is intended to memorialize how you decide that you would like to operate. So it absolutely needs to reflect how the commission would like to conduct, would like to conduct itself. In terms of some of the comments about actually going out and conducting the site visit, I think you had asked the

question, what's the difference between a site visit and going further? So what I had garnered from doing research in other jurisdictions is, this concept that you would go out to do the site visit to generally familiarize yourself with the area and the property that's at issue. The verb that I thought I wanted to highlight for you in case you want to change it, restrict it, broaden it, is that a Planning Commissioner shall not conduct independent right, on your own, fact-finding investigations related to a matter coming before the commission or engage in conversations and what that was meant to pick up is at the retreat some commissioners said you know when I go out and I perform a site visit someone might come up to me and say who are you? I might identify myself and they might start talking to me, am I supposed to say whoa whoa whoa stop? And so I tried to get the concept of when you are out there, you may hear something. But it's this concept of engaging and trying to hold your own independent hearing at the site. So tell me more about this what did the neighbors say how is the parking -- all the information that you think is relevant it might be relevant but you're doing it outside the public hearing. I wanted to focus on the word engage. It's not that you can't hear something, it does ask you that if you hear something that you believe is relevant, be able to disclose it. But as a commission debates the language that it would like to see in its bylaws I want to at least highlight the reason the word engage is there, versus you can't even hear what an interested person would like to say. Again getting back to Commissioner O'Halloran's question, yes, it is best practice. I think the commission has previously established that, at the last study session the commission wanted to go a bit further so it is memorialized but again feel free to debate how want it to be memorialized. The main concern I think was independent fact finding investigations. So maybe the commission would say you know, at this point in time, we definitely want to have the language in there about a commissioner shall not conduct independent fact finding investigations, but maybe delete, at this point, not that we think it's a good idea, but maybe we don't want to put in writing you shall not engage in conversation with interested parties, maybe that's not something you want to tackle right now. The two are speakers that came forward, they indicated it wasn't because they had concerns about commissioners going out and playing Columbo, they were concerned about this language of can I not talk to a commissioner? In a quasijudicial hearing that probably is best practice, as Commissioner Kline noted. There definitely are administrative hearing bodies who prohibit it. But again, this is for you to decide what you want in your bylaws that guide your behavior. And so I would note that yes, you know, it's important to do the outreach that you feel you would like to perform. Part of that outreach I hope will be community education. Because I just wanted to note that if you do community outreach and let's say the entire

community wants you to go out and perform fact finding investigations and you hear from all groups you go out we want you to come out here we want each of you to hold an independent hearing, we want to talk to each you outside the public hearing process yeah, I think Commissioner Kline said maybe there will be some legal counsel jumping up and down. No matter how much community outreach you do, the community I don't think can propose something that would violate substantive or procedural due process or undermine your ability to conduct a fair hearing. So yes, perform the outreach, but you know, I think we need to manage expectations and I hope that whoever is performing this outreach will be able to put it in context. And again, since this was a commission endeavor, you may want to give some thought to how you are going to perform this outreach. Thank you. I hope I answered all your questions.

>> Commissioner O'Halloran: Yes, thank you very much, that was very complete, I'm impress you are able to do that on the fly. I do have a question about the outreach. What would constitute outreach for something like this? I'm just not familiar with the procedures.

>> Renee Gurza: Thus far the only information I've heard, there was a laundry list of stakeholders that I believe Commissioner Cahan noticed and had itemized and then she invited the balance of the commissioners to put forward additional stakeholders. That's what I've heard so far. I'll have to defer to the commission or to the secretary of the commission who are --en the logistics on how this is going to work. And again I just want to note, perform all the community outreach that you want. But there will be this limit line that no matter how much the community may say, on an appeal we want to be able to speak to you outside the public hearing process. Why, maybe not to persuade you. Let's assume it's all education. Well, the entire commission needs to have the benefit of that education. So there will -- even though you're performing the community outreach there will be legal limits as to what you can come back and propose. And I hope that -- I hope I'm explaining that, that there will be this outside limit that is constrained by procedural due process and providing fair unbiased decision makers fair unbiased hearings that some proposals may not meet that standard. So we'll have to be sensitive to that.

>> Commissioner O'Halloran: Can you just clarify that? Is the legal line is it a legal judgment that council will make or is it a law that we would be violating?

>> Renee Gurza: So there are some cases I mean again when you come back with the proposal if necessary I'll perform the legal research but there are cases that talk about the fact that if a commissioner has exhibited a bias that commissioner needs to recuse themselves from participating. I know you're familiar with that. If you come back on an item and say you know the applicant took me on a site visit and told me all the wonderful aspects of this project so therefore I'm fully supportive of this project but it's based on information that wasn't obtained in the hearing and you're exhibiting the fact that you spent much time performing your own private hearing on the application. You definitely as a commissioner will be raising concerns about whether or not you're biased and whether or not you can provide a fair and impartial hearing and be a fair and impartial decision maker.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I think what legal counsel said is very confusing. I've been on the commission for a number of years. And I've gone on a number of site visits that's encouraged for us to go on site visits. And when you go on a site visit you are affected by the site visit and the site visit that's something that's outside of the hearing. So I can't bring the site to the hearing and look at it there. When I went out to look at the recycling area and the garbage area because the Milpitas community was upset about the smell of the garbage, that's not something that I can decide here at the Planning Commission meeting. Which is why I went to that site. And I toured it and I smelled. And I went all around. I got a great tour. We had about a half an hour meeting with the windows wide open with the breeze flowing in so that I could really get an understanding of the smell issue which was a big concern to the community. Also, going by the neighboring drying area, to see what that smelled like. I mean so this conversation about how we can only be influenced by what happens in this meeting, it's not -- that's very confusing what you just said.

>> Renee Gurza: Thank you and I'm sorry for being confusing. You absolutely can perform site visits. And I want to make sure that again what I started saying before, you are not only influenced by in this room. What I was saying is that you get information from staff, you get information from the public. You perform the site visit. It would be completely appropriate for you to go on a site visit, and come back, and you hear testimony from

someone that says, you know I'm out there all the time. I don't smell anything, during your deliberations it would be completely appropriate for you to say I performed a site visit and I couldn't believe how much it smelled. So I -- you know, the language is very explicit. That you can perform a site visit. And it's very explicit about why you perform the site visit. So let me see if I can clear that up. You can perform the site visit to familiarize yourself with the site. Maybe you'll see a lot of cars parked on the street and you'll say my goodness it's really crowded or whatever it is you'll obtain from a site visit. The language is there about familiarize yourself with the site. For the purpose of trying to explain that you wouldn't go out in order to conduct your own survey of all the neighbors. How do you feel about this use? How do you feel about this continuous? What do you think this will do to you? That's the type of information that you want to garner through the public hearing. So if I were going to draw a bright line it would be only to leave a confusion it would be to go out and perform a site visit so you could see the physical construct, the physical environment but not to go out to interview everybody. So bright two ends of the spectrum. If you want to go immediately sort of to the gray area right, so you're not going out and performing your own investigation, you're not going out and interviewing everyone within 300 feet of the property but on the other hand you're not just sitting in your car. What if you are sitting in your car and somebody comes up to you and asks a question, hi, I'm the property owner, can I help you? So the reason for the, shall not engage, and again you may think of a better word. So I absolutely encourage the commission to think about how it wants to or if it wants to have language in here about this. Engage in conversations, maybe you can think of a better word. Provoke, begin, I mean you're not the initiator.

>> Commissioner Cahan: Okay, what I want to add to that is, you know, sometimes on these site visits we either can't get on the property without being with the developer or it helps to figure out what the plan is, to meet with the developer. I've met with Mr. Schoennauer before and gone to his site for a project, and he was trying to explain things to me and measure things out for me because there was a -- on this particular one I'm thinking of it was trying to change the distance allowed for the setback. And then he actually even took me over to another site that was physically built so I could see what that setback looked like. And then after coming to the commission and hearing from the different community members that came before me, I ended up making a decision at that meeting, the public meeting that was against what the developer wanted. So -- and I completely revealed the fact that we met, and what was discussed, and what we did. And I think you had a great question of how the

commission would like to conduct itself. And I -- that's how I like to conduct myself. If I don't have a good enough understanding of the project then I want to have the ability to try to make sure that this project is a healthy project for our community. And that it meets the general task force plans. And then I reveal any information that I gained to as much detail as I can. And I think going back to the noodle house, when I asked the District Attorney's office if this was a gang area that there would be a problem, with not having a security guard there till 3:00 a.m., if that would be a risk to the safety of the community, I then revealed that information here, in explicit detail. I think I gave every bit of information about that conversation, except that the time that it took and the name of the person that I talked to. And when started that is because I looked at the police evaluation and I thought well that can't be right because I've read in the newspaper about a couple of shootings flight that area, in that Tully and King area and that there were gang shootings and at 3:00 a.m. without a security guard in a dark parking lot, where everything else is closed, that just can't be right, and I know there aren't going to be any police officers at our Planning Commission meeting. So I need to get more information to find out about it. And I brought that information. And that -- I mean, I think that that is what our community is asking from us as a Planning Commission. Is to make our best judgment. I mean gosh, we learned so much from that meeting that went wrong with what was presented to us. There were so many items that you know, the lack of the translate with staff not fully telling the applicant what was being presented, with staff not presenting the police with all of the details. I mean there were so many holes in that, I just --

>> Renee Gurza: So I think what the commission has done in the past in that scenario is a commissioner will contact the secretary to the commission and will say exactly what you said. I am really concerned because I heard there were just two shootings in that area. I'm really concerned about gang activity. Will you please, prior to the hearing, either ensure that someone from the police department is there, or will you contact the D.A.'s office and have a representative of the D.A.'s office there because I would like to hear testimony on that issue. And in that fashion it occurs at the public hearing because I think you're right if you have those concerns. And you absolutely if you feel there's a hole in the staff report, maybe the director can chime in if he feels differently. But my understanding is if a commissioner feels there is a lack of information that is important you should call if secretary to the commission and say I see analytical holes in this report and at the hearing I expect to hear testimony from I would like to hear testimony from or about this issue.

>> Commissioner Cahan: Well additionally this was a last-minute thing that came to my attention. And I don't think there would have been enough time for me to contact and have a representative here. Now, that's just one particular item. As a whole commission, I mean I believe that the commissioners on this commission really had the best interest of the commission and the city at heart. And I don't think that any of our commissioners are hiding information that they are gathering purposely hiding information. And I have faith that my fellow commissioners will reveal the information that they have gathered without us having this bylaw change. And there have been developers who have asked to meet with me on a project that was quasijudicial and I said no, you know, it's not appropriate for me to meet with you on this, I have all the information I need to go forth into the public hearing. And let me remind you that it's quasijudicial. It is not judicial. We are not a court of law. There are not attorneys representing both sides. What this does is it actually hurts our neighbors. Our neighborhoods, our neighbor -- our lower socioeconomic neighbors the most. Because they are not necessarily as active in coming before the Planning Commission, of knowing that these things are happening. Of understanding the process. Of being able to come together as a neighborhood. We have some really strong neighborhood associations, and that's great and they come and they fill up this room. And we -- the other meeting we heard from them for hours on the cell tower. That was fabulous. They came together they shared a lot of information with us. And there are other neighborhoods that do not have that kind of neighborhood activism. We are hurting those neighborhoods, those neighbors if there is a situation that we think gosh we should get some more information on this and we're not able to get any information except what comes before us and they may not even know that this item is happening in their neighborhood or they may not have the language ability to come before us or even the understanding that they can come before us. So I'm very concerned about this bylaw change as it stands.

>> Renee Gurza: Thank you. This is a great discussion. This is exactly the type of discussion you should have. I believe the motion on the floor is a deferral. So again I just want to clarify for the staff -- the staff -- the commission if we could get some clarity around the logistics of how the outreach will be performed. I don't know if the director has any thoughts about that or if there's a commissioner who wants to be delegated or volunteer, again just some specifics on how it will occur, thank you so much.

>> Joe Horwedel: I'll throw kind of a first piece out and then do I want to hear from the commission. Certainly, we are the staff to the Planning Commission, I am the secretary to the Planning Commission so part of my job is to help you all be successful in how we do the work of the commission. So staff is prepared to go and assist as a part of outreach and I've got some ideas about how we might go do that. But it is one that I very much would look for some members of the commission to be appointed by the commission to participate and help with this discussion and kind of working through with the interested parties that have been mentioned. I really think that there's probably a workshop type format, essentially a community meeting type forum that we should work through this, and really have that discussion, debate. But I think it then also needs to come back into a meeting like we're having night so that the community you know the million residents of San José that are interested, flipping channels, coming across to also be able to see kind of the discussion, results going on with that. So very much, myself and my leadership team would make ourselves available to help with some of the logistics around that and actually hosting helping do that. But certainly I would look for a member of both sides of the issue from the commission at a minimum to help come play.

>> Commissioner Bit-Badal: Thank you and we actually do have more speakers. Our commissioner he have been patiently waiting for a long time such as Commissioner Kamkar and would I like to give him opportunity to speak as well.

>> Commissioner Kamkar: Thank you, I make it quick. Commissioner Cahan did a terrific job of bringing up the facts. I bring up the fact this is quasijudicial and not judicial. Let's don't confuse the two. In a judicial setting you have a judge, you have trained lawyers, you have two parties that go against each other. This is not the case. Here you got developer you got staff and you've got the community. Three parties. They're not as trained as the other one. So it's not really a fair fight, you know? And so let's remember that. Number 2, a judge is not encouraged to be part of the community. They want him to be 100% outside the community. Whereas, in picking us, we are required to be part of the community. We have to live in San José. To be able to represent San José. And they try to not pick from one district but as many districts as possible to get our personal experiences into the -- into our decision-making process. And those are done by choice. Those are done not by accident, but by design and by intention. Just like Commissioner Abelite was saying, said I passed by this site, so many

times. He gets personal knowledge by just passing by, you know. And how you going to keep that personal knowledge out because it didn't develop through the public hearing. So there are inherent I guess imperfections in the system but overall they balance themselves out. And so you know, I again second and support the motion to look at this again in March, until then, we can have our public meetings and outreach and the discussions among ourselves, to see what's the best way to -- what's the best way to go about doing this. In the retreat, Commissioner Kline came up with an idea that whenever we get communication from one party, forward that to the planning staff and have them distribute it to the rest of the commissioners. To me, that makes perfect sense. Because I think everybody's intention are right. Everybody's intentions are to you know be as open and transparent as possible. We also don't want to alienate you know, volunteer commissioners, you know, that we don't trust you. We want you to just come in here, make sure that has that connotation. And I don't appreciate that. So with that, those are my concerns, thank you.

>> Commissioner Bit-Badal: I'm going to add a couple of more cents here, everyone has had at least one or two chances to speak. In terms of adding to the list of outreach, I would like to add a couple of more items, is former planning commissioner. I would love to hear from our former Planning Commissioners, to see what their thoughts are, because they have been doing this for many years. We've had one recent Planning Commissioner who left, Chris Platten who left, I would love to hear from him. And community based organizations, those are organizations who at times come before us, and it's really important to hear from them. I would like to also add that to that great list that Commissioner Cahan has added to the list. I'll talk some more but I just wanted to add the list in terms of outreach. I personally think that this is a large list that needs lots of letters to be sent to interested parties. And of course, assuming staff has great list of all the neighborhood associations, no, you don't. So this really would require a lot of time, so the date of March, I think it does make sense. Because it's going to take a lot of work. Absolutely. So it really does need a lot of outreach because this is just three letters that we received within two weeks. And definitely, we need to make sure we're hearing from more members of the community. Whenever I think about why I'm here, and the most important thing that comes to mind is making the best decision. It's not to expedite the process, it's not to rubber stamp, it is really to make the best decision. Because I'm the kind of person who cannot sleep at night if I made the wrong decision. And the worst is when I have family members pointing out bad projects to me every time I pass by them. And believe me, I do get

that, as well, as if I'm the only person who makes those decisions. So best decisions for me whether I'm at age 41 or 80, is not just reading one packet, it's going out there and talking to people and getting the information. So putting into the facts because I have been also a resident who came before us and I always think about this. What if I'm on the other side of it? That's why I try to be really respectful of residents who come before us. As Commissioner Cahan said, we have residents who have never come before us, this is the first time they come before any body. For me, faith in government as Commissioner Kline said is the most important thing. And I don't believe that two minutes as we saw at the last hearing with the cell tower. That does not gives people faith in government and I'm cutting them off in two minutes. And at times government we even cut them to one minute. I mean how much information can we gives on that dialogue? We left that commission at 11:30 and it was that night when I looked at people's faces and someone came to me very angry that evening, I knew that person was not heard that night. And you know what happened with that meeting? All those and they were the most organized, some of the most educated residents we have in our district. Those were the engineers, the nurses doctors these were the people who were educated and they know how to read. Because all the packets they brought before us they were so extensive. So when they felt that way I don't want to know how a resident who is work two jobs, does not have the time or the education to do the research, how that resident will feel before this commission with only two minutes as information. For me disclosure is the best way to gain confidence in government. Not limiting speech. And also, another thing I observed from the last commission meeting was, those residents when they knew they cannot talk to us, guess what they did? They went to their councilmember and they started negotiating with the councilmember. Now is that what the councilmembers want, for them to take on all the work of the Planning Commissioners? No, time and time again I have heard from councilmembers specifically our liaison, saying thank you so much, instead of having hundreds of community members at our meetings, you are working things out, you are working through problems so we do not have to have hundreds of community members at our meetings. And that's impactly what we're going to do. What we're going to do is make ourselfvessors discourage more members of the public come before us and speak. I am personally very concerned because I'm a Planning Commissioner, right now later on I may not be a Planning Commissioner but as a resident of City of San José, I want to have that right to come here and talk to you. Not only here, but before the meeting, to have the discussion. And it is your obligation and my obligation right now as a Planning Commissioner to disclose who I talk to and the subject matter and what I learn because those subject matters and

those discussions what makes it this Planning Commissioner one of the best Planning Commissioners I've seen. We have said this time and time again. I am saying this from the bottom of my heart because I know for me when I go home it's best for me to make the best decision for the at this time. I don't want to walk by the project ten years, 20 years later, and see something I could gain more knowledge on but I didn't have the opportunity to do that. I needed to chime in because there are a lot of discussions going on. With that I'm going to go with Commissioner Kline.

>> Commissioner Kline: I just really want to refocus what we're kind of focusing on here what we're supposed to be focusing on here, that we're not limiting information that we're not talking about two minutes or three minutes or five minutes, we're talking about public's disclosure of real information, not of a meeting that took place someplace but putting things on the public record. I like the idea of extending this, I have no problem with that, I will support that, I think March is plenty of time, really, three letters and two weeks, the fact is that a lot of things have been said that's not really focused on this. We're talking about getting things in the public record. The information should not be private, it's public, right, you're basing your decision on private information that's not good due process, pictures. If you have a question that needs to be answered, if people have questions that needs to be answered it gets in the public record. Two minutes is never enough time, three minutes isn't enough time, five minutes isn't enough time. It's just a fact of life in a public hearing, it's difficult to get that done. That's why you have reports and e-mails, there's a lot of different ways of getting information to us. I think the best way of doing it, I think the director has a great suggestion, workshop, I think there needs to be some work before the workshop because two Planning Commissioners subcommittee. I was going to volunteer not myself, to me seems to be different, Commissioner Yob and Cahan to organize the preworkshop to make sure everything we've said here gets written up in some sort of chart matrix that form the basis much that meeting and focus on what we're talking about here which is give me things in the public record, not limiting information, not limiting time to people, just making sure that our divisions are based on things that are in the public record. And I think that's the intend of this, I mean the wording can be changed. There's -- and it can be less or more. I've seen wording where it says highly discourage contact with third parties, period. We can work on that but the idea ask that ex par tease communications in general is a bad practice. You will find that everywhere, right? Everywhere. I've been a lot of places in this county. And Planning Commission here doesn't follow best practices on this particular issue we

would -- many issues and we're great Planning Commission and city staff is district. But ex parte communications is one area we should work on that's all. As we learn more it's a great discussion, it's a great learning process, as we learn more I think we'll be able to get better. And if I'm wrong we'll find out pretty quickly.

>> Commissioner Bit-Badal: Commissioner Cahan. Commissioner Abelite.

>> Commissioner Abelite: I do appreciate that this is a very healthy discussion and I think it's great for newer members of the commission as well. I wasn't going to read my comments but since we're talking ois broadly I think I will read them now. First let me say I'm truly honored to be a part of this commission. And although I'm not a planning commission junkie from a history point of view I would dare say this is probably one of the best or a very solid commission historically. We all come from different backgrounds and different perspectives and we bring together experiences together that in a wonderful way that serves the city really, really well. You know who are we? We're civil engineers we're planners we're heavily engaged in our community. We have a lot of leadership background from other cities, we have land use attorneys, an ex builder, RDA, this fabric, this makeup is incredible. It's very rare and I am very happy to be part of it. One thing I've loved about all of us, I have learned that you are all honorable citizens. And what I meant by that is like all of you, I took an oath to serve the city, the constitution of California and uphold truth and honesty, right? And I think truthfulness and honesty is embedded in all of our characters and I really believe that to be true of all of us. So what does all this have to do with the bylaw amendment? I personally know I don't need language to remind me of it. I know it, we all know it, we wake up every morning we see ourselves. I've served on this commission two years four months, and I -- in totality I might have spoken to parties six or seven times over that 28 months. It's actually kind of rare and I've gotten phone calls from one of the speakers tonight about an male and I went down the road of the analysis with the judge and you can't talk to me like that speaker, with other speakers, before I hung up that phone I made it absolutely clear that they appreciated that response and understood that analogy, and then I terminate the phone call, that's it. So I view these sort of sealed meetings as not a big deal, okay? But what I think is a big deal is, I really don't want to be gagged from talking freely to parties when I see them. I want the ability to talk because it helps me prepare for the meeting. We spend our Saturdays and Sundays cracking open and reading these very well written packages by staff. And then if you're like me, we typically drive to our sites maybe on Mondays and

Tuesdays to put our eyes on the ground to really see what the ground reality is. But what that packet doesn't reveal are the very hot issues to the community or to the developer. The packet is very long, 12 pages on an item, and you can't pull out of that what is really the meat of it. Occasionally when you meet people or if you get feedback you learn what are the, you know, hot buttons and may also learn what can be give points and things like that. Let me also say unless you are really experienced at speaking at that podium, and let me tell you, I was someone who stood at that podium after scary groups like us. It's unnerving. And unless you are really experienced at speaking and unless you know these people who you are talking to, it's tough, and often, you just want to sound articulate, and you just want to get one point across, and your crucial point and maybe get one ask. And then you're doing this and nervously looking at the clock ticking away, because that's all you've got. Now, can you imagine what it's like to be an applicant or even a constituent who has spent tens of thousands of dollars on application, month and months working through a process, and then is asked to place all of their marbles on the table for a five-minute presentation. That's the same goes for the public, you know, you got a tower issue, they put all their marbles on the table in two minutes. That's it, done, you're gone. I would much prefer they know that they can call us and talk to us if they feel they need to talk. And I want to rely on us knowing when we can't, okay? I see no benefit in passing this amendment. I think honest commissioner don't need the amendment. If there's a dishonest commissioner or somebody in government that behavior won't change no matter what in terms of putting this into the bylaws. Again I'm troubled by it. I don't think we're arguing too broadly apart. I think we're really just distinguishing what happens in the field sometimes or what we try to do to learn about the project. So I don't think we're really fighting each other much but I think we're trying to make sure we're getting it right and we still do what we need to do, to make the right decision in the end. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner O'Halloran.

>> Commissioner O'Halloran: I'm probably to blame for some this discussion because as a new commissioner I was asking questions about what ex parte conversations are and what the best practices and everything. I know staff is busy commissioners have limited time. I have hesitations about spending a lot of time on this issue. My question to staff is how big a risk is it to the city if you have a commission that doesn't have a common practice as

far as ex parte conversations, related to quasijudicial -- because you know, I think that's where the issue started. And in the end, it's the risk to the city.

>> Renee Gurza: Thank you. It is better to have it in writing, simply so that there is a common understanding. I would agree with Commissioner Abelite. I thought it was a very nice statement that you know a bylaw probably isn't the solution. I mean it is good to have it in writing. It is good to have guidance. It's good to have common understanding. It's good to be able to point to something and say there, you see this is the line. But I do agree that as always, this commission never tries to beeline it for the basement of ethical standards. So I hear what Commissioner Abelite is saying that all the commissionerless are quite ethical, have ethical standards. The bylaw sets the floor. We already know that the commission has instituted a best practice of not engaging in private -- holding private hearings out at the site. That said, I know that there are commissioners who have policies about simply not meeting on quasijudicial matters. But it is better for clarity sake and it's better for uniformity sake and it's better for guidance sake. And I think maybe the bylaw in a sense the fact that there were some commissioners who asked us to look at the issue, raised the issue that some commissioners thought this was the resume anyway. And obviously, other commissioners thought there wasn't any such rule. So again that just raises the benefits of having a bylaw to set that common understanding. Because I think the fact that there was some commissioners at the last study session or at the retreat that said maybe we should have a bylaw amendment, because obviously there were some commissioners who didn't think that independent fact finding is a problem. So I hope that answers the question. But for clarity sake for guidance sake and for common understanding so that we're all operating under the same rules, those may be some benefits to actually having the bylaw amendment. And so the risk, if you don't, is that although all the commissioners have very high ethical standards, they may interpret -- they may see their behavior as ethical whereas some other commissioner may see it as problematic. I do believe that all the commissioners have high ethical standards conduct themselves, ethically, nobody is deliberately going out there thinking that they're doing something inappropriate. So one person's I need information I want to do my best job, might be another commissioner's yes, but it needs to occur in the public hearing. So I see a problem that maybe all of this happened outside the public hearing. So that I suppose those are the benefits of the bylaw amendment is just simply everybody has a common understanding of what they think guidance for their behavior should be.

>> Commissioner O'Halloran: Yes, Madam Chair, I'm just wondering whether we can come to a consensus on this. I mean this has been a very educational discussion. I think it helps all of us, you know, clarify what the side-board should be. I guess I'm just concerned about the path forward and spending too much staff time on this.

>> Commissioner Bit-Badal: Commissioner Yob.

>> Commissioner Yob: I just wanted to say I think this is an important dialogue. I think the dialogue we had at the retreat was a very important dialogue. And just two comments I agree, I had my light on for a while because I wanted to make the comments about ethics that I don't think any of this is intended to be a challenge to the ethical standards of anyone on this commission or anyone in the community. Not our consultants, not our members of the public who come here, neighbors, et cetera. It's not a challenge to that. It's just -- I think it's important for us to focus back on what the problem was that we were trying to address and really this was a discussion about independent faculty-finding. And there was a misunderstanding at the retreat among the commissioners, whether it was appropriate to do google research or to figure things out on your own or to initiate phone calls. Maybe this amendment does go too far and there's a middle ground. I think it's greatly to have this kind of dialogue and that's how we can end up with something that we can all live with. It's ought about education and dialogue and sharing these ideas. I know I was nominated to participate. I was actually going to volunteer the participate on having a conversation with how we might conduct this outreach, and continue this conversation at a later date. So I would volunteer to be -- to work with the director and whomever else is on the committee to talk about this outside of this meeting, come back and perhaps report in what we're thinking in some periodic time, but set it to come back at a particular date and perhaps March is the right one because we can always extend fit we needed to or if we were done sooner than we anticipate, we would always request to have it expedited on the calendar. So that would be my suggestion.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I was somewhat nominated to be the other side. But I'm pretty maxed out with my time at the moment. So I'm concerned that I wouldn't be able to do the proper job with this, that really needs to be done. And I don't know if perhaps the chair would be willing to take a nomination.

>> Commissioner Bit-Badal: The minute you said you don't have time I could see where that was going. I'm the only one who isn't serving on subcommittees and that's for a purpose. Yes, I will absolutely take this on but this is not something that commissioners can do. Because this is really an official business of the city. It really needs to come from official side organization, that is the City of San José. Any official communication really needs to come from the city. I feel bad for staff, I really feel bad this came forward because when we took a tour of City Hall we saw how few staff members we have. The last thing I wanted to do is give you more work and burden. At the same time, I personally cannot make decision on this item without hearing from members of the public, neighbor associations. What are neighbors thinking? They're not here to know what we are doing and this is going to really directly affect every resident in the City of San José. Because they may not have a project right now but they will in the future and this definitely could affect their -- their way of communication or communication from -- between the Planning Commissioners and members of the public. And that's what I always am concerned about, members of the public. Because I am so confident that lobbyists and those who are paid to come before us, they will always find a way. What I'm always concerned about is members of the public, especially those who are -- they don't know our process and they don't know how to come before us. So with that of course I will serve on that committee. At this point we have Commissioner Yob, myself, I would like to actually propose a former Planning Commissioner to also join us, because to me, it's really important. We have had this bylaw since 1967. And it was functioning fine with no challenges. I would like to hear from those who have served from the past. That's why I brought up the fact that former Planning Commissioners. Because to me in my personal life, if it's not broken why fix it? Sometimes the fix is even worse than the original perceived problem. Commissioner Kline.

>> Commissioner Kline: I was going to try to make a -- in light of Commissioner O'Halloran's excellent point about staff time and not taking a lot of time on this, I don't think there's a lot in this amendment that is controversial except the line that says or engage in conversation with interested parties about the matter outside the public hearing. I think the rest of it should be already practiced, and if it's not, something is wrong. That is the

line that everyone seemed to have a hard time with. So I've done some outside research on this item, but it is a legislative item, and I did notice that a lot of people are using the phrase to ensure that all commissioners receive the same information relative to quasijudicial hearings third party contacts regarding the hearing are discouraged. Doesn't forbid it, you can have casual conversations if you want to but it is simply discouraged. If we could replace that with the right English, that says cannot, I think that makes everybody happy, I don't think there's anything in there that is controversial. If we could use this as the first hearing, we could bring it back and notice to the public for the changes and see if that rectifies it see if that reduces conflict and staff time. Because I think we do discourage de facto communications. I think issue is people just don't want to cut it off completely. Maybe there are instances where you do run information you want a little bit more information and a little conversation might excite some information you can't get out of that is not going to bias you anyway.

>> Commissioner Bit-Badal: Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair I hear Commissioner Kline yet there's a letter from former Planning Commissioner, two times Planning Commissioner, two times city council member, also an attorney Ms. Linda LeZotte that says you should reject this outright. So there is more than one side of the story. You know, and so I think we should allow the to be happen the different sides to come forward instead of trying to jimmy with the language. You know I think having an education, you know, education for the public and you know for the staff I think will go a long way. Thank you.

>> Commissioner Bit-Badal: Thank you. Commissioner O'Halloran.

>> Commissioner O'Halloran: Thank you, Madam Chair. I'd support the suggestion that Commissioner Kline had. I'm not sure how we'd do that. I guess we have an existing motion already. But in response to Commissioner Kamkar's comments, I think what this would do is change the wording, it comes back, there's a public hearing, an opportunity for public comment and I'd be supportive of that. How to do that, I'm not sure.

>> Commissioner Bit-Badal: Staff.

>> Joe Horwedel: Madam Chair. I would say that if that is where the commission is interested in heading with the revised wording, then something similar to e-blast out to let them know it's available. I would ask with all the different groups that were mentioned today, if there are specific parties in there that you are interested, we could add to that. From staff's standpoint going on kind of the hunt to figure out who all to go tell was really the impossible assignment for us, as opposed to actually crafting something and pushing it out and then whether it's having that couple-hour workshop on it and then bringing it back to the commission? That's almost the easy part as opposed to just who do you want me to go talk to. So I would say, if that's the will of the commission I would like really an e-mail from you all as to who you would want us to reach out to and making sure we're hitting the right spots and making sure we're not back at this for the next three months or two months.

>> Commissioner Bit-Badal: We have a motion and second I'm sorry what?

>> Commissioner Kline: Ask I discuss something?

>> Commissioner Bit-Badal: Trying to explain the process. So in order to have a substitute motion, you have to put a substitute motion and second or you can ask the original maker of the motion to do a friendly amendment. And that is within the discretion of the original make maker. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. If there was going to be wording presented, then I would prefer to use the wording from former city council member Linda LeZotte of requiring full disclosure and listing out what that disclosure is. That would be my word change. So I'm not sure there's full agreement on what the word change, so I don't agree to that amendment.

>> Commissioner Bit-Badal: From what I'm hearing and from what I've heard from couple of speakers here, it's pretty much important to have a public hearing. I think I'm going to personally go for deferral of the item on a personal level just so we can hear from all interested parties and come up with language change that will be thoughtful rather than rushed. Commissioner Yob.

>> Commissioner Yob: So as the -- I didn't make the original motion but can I recommend a friendly amendment to the motion or can I make it myself, just a point of order?

>> Commissioner Bit-Badal: You can make a friendly amendment but maker of the motion has to approve it.

>> Commissioner Yob: Okay. I'd like to make a friendly amendment to the motion on the floor, that this matter be continued to the -- a meeting in January with some proposed amended language, and at that point we will have a further public hearing on that recommended language.

>> Renee Gurza: Can I get some classification? So the friendly amendment is to go ahead and defer as was included in the original motion, but do the outreach with the amended language, and then come back in January, versus March?

>> Commissioner Yob: Correct.

>> Commissioner Cahan: Madam Chair.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: We don't have language on the amended --

>> Renee Gurza: Correct there will be amendments come out of the outreach, but it is what amendments you use to conduct your public outreach. Yes you're right, there isn't agreement yet because that will come back in January or March depending on what the commission adopts tonight.

>> Commissioner Bit-Badal: So we're not adopting a language tonight, we're just deferring it to January. And the committee, which is comprised of Commissioner Yob, myself and a former Planning Commissioner, we can ask a

couple of them to join, will come up with a language that works. And then we will bring it back. I'm just trying to clarify this. And we will bring it back to the January meeting for a full discussion by Planning Commissioners.

>> Joe Horwedel: Right.

>> Commissioner Bit-Badal: Is that what --

>> Renee Gurza: That's what I snoot understood the friendly amendment by Commissioner Yob.

>> Commissioner Cahan: Madam Chair, we have Thanksgiving and Christmas and people trying to get back to life in January. January is kind of fast, having that meeting, you guys having the time to get together and come up with the language. So I think it's a good idea for you guys to come up with some amended language that then we can use for discussion. I definitely agree to that portion of the friendly amendment but the time of January I think is still too soon.

>> Commissioner Bit-Badal: Understood your concerns and I agree with you, because there's too many holidays coming forward. So we can keep it as-is at this point.

>> Renee Gurza: There were a couple of friendly amendments. So the commission simply could say, go out, do the outreach, bring it back to us. And then when the subcommittee comes back, it could be January, could be February, could be March, the direction could be --

>> Commissioner Cahan: I would agree with that. You guys when you figure you have done a thorough job coming back before the commission I think that's a good compromise.

>> Commissioner Bit-Badal: Great and the second of the motion is Commissioner Kamkar. Are you in agreement with this?

>> Commissioner Kamkar: So my understanding is that we going to keep the meeting in March but the language is going to be changed between now and March, do I understand the amendment? No, sorry?

>> Renee Gurza: So I think it's important to have clarity. So the way I heard the original motion with the friendly amendment but that I believe was accepted by the make are of the motion, is that the starting language that we go out with, will be the language as amended by Commissioner Kline or proposed to be amended by Commissioner Kline. So we delete -- oh, you didn't? So forget the language. At some point you'll decide what the starting language is. So there's a motion to defer. But rather than have it a date-certain in March there's a motion to defer in order to allow staff and the subcommittee to perform outreach and then bring it back, once the subcommittee feels it's ready to be brought back. That could be January, that could be February, that could be March.

>> Commissioner Kamkar: Okay, with that explanation that's pretty clear, would I say yes.

>> Commissioner Bit-Badal: Great, thank you. So I still have a speaker, speakers, Commissioner Yob you spoke already. Commissioner Cahan, any other comments, no. Commissioner Kline.

>> Commissioner Kline: Before I offer a substitute motion I want to make sure we have some specific information. One is by March or by end of March. Two is that the basis of the language is in section 5B as a starting point. Because I don't think there's a lot of disagreement on most of this. And I think, I think a majority of the commission believes that. And third some whether my substitute language is in there or not as far as the sentence is concerned, that if they don't come back by March, that should be brought back here anyway. That means, there's only two -- they could be in deadlock forever so it has to come back in March basically.

>> Commissioner Bit-Badal: From what I understood it --

>> Commissioner Kline: If that's my understanding of the friendly amendment then I'm okay with it, I won't make a substitute motion.

>> Commissioner Cahan: Madam Chair my understanding of the friendly amendment was that there now is not a specific time restriction. It's a, when the committee, staff, and the community have had the opportunity to do what they need to do, and the committee being the ones to facilitate the decision on the amended language, when they think the amended language is ready to come back before the commission for a full discussion?

>> Commissioner Bit-Badal: That's right, this is how I understood it. Because this is not a development where a developer is waiting for financial institution waiting for an answer from Planning Commission. Really it's something that came about internally, we are doing it internally, we should have no time limit. Originally we said March, which gives you five months and going into --

>> Commissioner Kline: Great, I'll make my substitute motion, my substitute motion is to take what legal has provided us here as the basis and give it to the subcommittee for improvement and outreach with staff's assistance, leave my wording out because you guys can do whatever you want with it at that point, and come back by second meeting in March. That's my motion.

>> Commissioner Yob: Second.

>> Commissioner Bit-Badal: We have a second. You agree to -- Commissioner Yob.

>> Commissioner Yob: I agree to the amendment and then can I second or someone else has to second?

>> Commissioner Kline: No, you're just seconding a substitute motion.

>> Commissioner Yob: I second the substitute motion.

>> Commissioner Bit-Badal: So Commissioner Kamkar.

>> Commissioner Kamkar: Just a clarification, this is not an amendment, this is a substitute motion. So I guess we vote on this first and if this didn't pass then we go back to the original motion. Thank you.

>> Commissioner Bit-Badal: That's correct. Mr. Kamkar you are absolutely ready to be chair next year. With that, oh, Commissioner Abelite, I'm sorry.

>> Commissioner Abelite: I apologize, I may be a little slow. But those two motions almost sound identical at this point. I just can't --

>> Commissioner Kline: The time limit and using this the basis of the starting point.

>> Commissioner Abelite: Okay, all right, I think I can make a choice, okay.

>> Commissioner Bit-Badal: Commissioner Kline do you want to restate your substitute motion?

>> Commissioner Kline: Clearly this is something we don't want the planning staff to be working on for years. In my point I don't think this is controversial best practices, it needs to be wordSmithed, it can be massaged for the appropriate nature of a big city like this, but we will find out quickly if this is best practice. I'm not worried about the language but I don't think this is something that should be a year's length or even six months out the road, this is something a reasonable project can be done.

>> Commissioner Bit-Badal: Can you explain the motion for clarity? Not --

>> Commissioner Kline: The motion is to take this amendment with system staff to outreach, the amendment wok as-is as provided here. The outreach would include the process would include the subcommittee meeting, with legal, and staff, to wordsmith this in the appropriate manner with input that we're heard tonight and with outreach setup to redraft it again, maybe a third time perhaps, and then come back here, no later than second week of March, with a changed amendment.

>> Commissioner Bit-Badal: Does it include a former Planning Commissioner as well?

>> Commissioner Kline: I think Chris Platten will do this completely voluntarily if you want me to invite him.

>> Commissioner Bit-Badal: Or Chris Platten or Linda LeZotte. Either of them. We can ask them it is within their discretion, they are not obligated. Put two names out there.

>> Commissioner Kline: Clearly they can't be voting members. They are providing input.

>> Commissioner Bit-Badal: Absolutely, they've had plenty of experience they can clearly give us information, we will now vote by light .

>> Commissioner Kline: Maybe.

>> Commissioner Bit-Badal: So the motion passes by 5-2 with Commissioner Kamkar and Cahan opposing. With this I'm going to move forward with petitions and communications. Public comments to the Planning Commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed and placed on the agenda. In response to public comment, the commission is limited to the following options: Responding to statements made or questions posed by members of the public or requesting staff to report back on a matter at a subsequent meeting, or directing staff to place the item on a future agenda. Staff, any petitions or public items?

>> Joe Horwedel: Nope.

>> Commissioner Bit-Badal: Thank you. Referrals from City Council, boards, commissions or other agencies. Staff?

>> Joe Horwedel: No. None from staff.

>> Commissioner Bit-Badal: Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I wasn't sure if this was the appropriate section to ask staff but this is where I threw it in, in my notes. So the question came to me when I was reviewing the gas station at Foxworthy and Meridian and across the street from that, there's that whole section of development that I discussed with the easement issue, there was a gas station, right across from rotten Robbie on Foxworthy and meridian as well, and that gas station came before us wanting a change, I can't remember what that change was, but that then easement became part of that discussion and we as a commission said there needed to be an easement allowed into that main shopping center because it was just a small little section. And then now, I drive by it, and it's no longer a gas station anymore, there's something else being developed and I don't see any easement so I just wanted to report back on what happened with the easements.

>> Joe Horwedel: So there is a little small strip center I think that's getting built on the corner. I'm trying to remember how that one ended up playing itself out, if it was a permit appellate or if it was a zone change that the commission saw. I know there were a couple -- like a ten year project that's gone back and forth so we will get back to you on it. I know there's been some questions from the community about architecture and things on that too that we have been doing the research on. Mike knows the history on it so we will provide a memo to the commission that will show up in the public record that will answer that question.

>> Commissioner Cahan: Thank you.

>> Commissioner Bit-Badal: Thank you, Commissioner Cahan for doing your due diligence. 6A report from city council.

>> Joe Horwedel: Couple of things to report from the city council, I talked earlier about the habitat conservation plan, the council has had discussion about the habitat adoption, lots of debate about how to proceed with it. We've shared the discussion that the Planning Commission had around the habitat plan, the first up is actually an appeal of the EIR that you certified for the habitat plan. We did receive an appeal for the YCS properties, partly in and partly out of the city limits that want to do December 4th. The council did defer tentatively to December 4th the decision on adopting the habitat plan. Right now we're still working through a number of questions that the council had raised and some different community groups had raised about the plan. So we'll know more next week about whether we think it will stay on December 4th or if it will move into a January time frame. Staff were not going to bring the back for adoption until we had really answered all the questions so kind of when it's ready it's ready type status. So that is kind of the latest what's going on with that piece. The council also, at -- not I don't think it's the last meeting but the meeting before, did have the appeal for the conditional use permit for car wash at the smog doctor site on Camden avenue and the council deferred the item or continued it back or referred it back to staff, and the applicant, to work through some of the environmental issues. Commissioner Kamkar spoke on behalf of the applicant at the meeting. So it's one that, as we bring that back, we'll be completing the environmental review with the applicant's consultant team. And bringing that in front of the Planning Commission at some point in the future.

>> Commissioner Bit-Badal: Thank you, staff. Commissioners report from committee, Norman Y. Mineta, Commissioner Cahan.

>> Commissioner Cahan: No meeting, no report.

>> Commissioner Bit-Badal: Thank you. Review and approve synopsis from 10-24-12. I will entertain a motion. So we have a motion from Commissioner Kline, and second -- and Commissioner Kamkar will recuse himself. All those voting please say aye. So we have Commissioner Kamkar recusing. And item 6 please.

>> Joe Horwedel: Madam Chair, as a result of some of the questions we received on the last item and kind of looking at the question, how would a member of the public know that this discussion was occurring. Realizing that

we put the agenda on the retreat online but not a synopsis online and kind of investigating some of that history I realized that the subcommittees that we have formed we don't actually list on the agendas. So one of the things I've talked with laurel about is in the future we list the active subcommittees so the public has a way of knowing there is subcommittees. The synopsis it says none, I know we have had beings from time to time reports on these things. I want to use this as an opportunity for cleaning up our best practices of staff of supporting you and the public of having awareness so we have as my memory is the urban design group is one that is still active and then we will add on what we will call the bylaw subcommittee. The public will be aware was there a report out or not on that item . End of our -- report.

>> Commissioner Bit-Badal: Thank you, item 6e, commission calendar and study session. Looks like we have a study session on cell phone wireless communication facilities for December 5, 2012, in T-332 from 5:00 to 6:15 p.m. I was curious if anyone had gone to the cell tower, it was on a Friday, I don't know if it was joint venture event, it would be good if --

>> Joe Horwedel: I think staff that we were sending a staff person to that event. We had received an invite and I think it was joint venture who was sending that. I think if anything in particular that the commission would like to make sure that we include in the study session, let us know now or if you shoot Laurel or I and e-mail and we can work to make sure we have a good complete session for you.

>> Commissioner Bit-Badal: Yes, some of the items came up at the last public hearing what other cities were doing so I would like to know what are the practices for other cities in terms of independent consultants. So I would like to have an understanding how that works. I think one city that was mentioned was Santa Cruz. I don't know if there are any other ones. That's what I hear from members of the public, but I would like to have a much better understanding of what the practices were for other cities.

>> Joe Horwedel: And best practices.

>> Commissioner Bit-Badal: Absolutely, I am always talk about the best practices not the worse. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I was not assigned from my staff to go to that meeting but another staff member was and I asked her to let me know if there was discussion about the effects of the cell phone towers and she said there was no discussion about that at that meeting.

>> Commissioner Bit-Badal: Thank you for disclosing that some appreciate that. With that I will close the public hearing, thank you, and have a great evening. We're adjourned.