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>> Commissioner Jensen: Good evening. My name is Lisa Jensen, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, September 22, 2010. 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, please fill out a speaker card located on the table by the door on the parking validation table at the back, 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 For example, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will then call out names on the submitted speaker card in the order received. As your name is called, please line up in front of the microphone at the front of chamber. Each speaker will have up to two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all -- the commission is here. Deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to changes 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 to either proceed With the remaining agendized items past 11:00 p.m, continue this hearing to a later date, or to defer remaining items to the next regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. There are currently no items listed for deferral. Consent

calendar. Consent calendar items are Considered to be routine and Will be adopted by a single motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item Removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of These items individually, please come to the podium at this time. CP10-030. Conditional use permit renewal for an existing wireless communication monopole, flush-mounting of existing antennas and an associated equipment enclosure on a 4.09 gross acre site in the R-1-5 single family residence zoning district located on the north side of golf course road approximately 180 feet easterly of Monterey highway. Staff. There is no update, according to staff. Commissioner Platten.

>> Commissioner Platten: Move adoption of the consent calendar.

>> Commissioner Jensen: There is a motion to adopt. All those in favor, please say aye. That passes unanimously. Public hearing items. Generally, the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. 3A. Ordinance amendment. An ordinance of the City of San José amending title 20 of the San José Municipal Code to amend Chapter 20.50 clarifying setback regulations for the industrial districts to amend sections of chapter 20, to allow utility providers to sign development permit applications for utility work occurring entirely within public services area easements. Staff.

>> Thank you, this is Carol Hamilton from the Department of Planning, Building, and Code Enforcement. This ordinance makes three changes to the zoning ordinance, the first el deals with the application requirements for utility structures on private property in a public service or public utility easement. Currently the zone ordinance requires that the private property owner sign such an application. This amendment would allow the agent of a utility company to sign an application for such a utility structure, provided that the public service or utility, public utility easement authorized that utility structure within that easement. The provision also provides for notification of the property owner regarding the size and location of the proposed structure, and the requirement for a city

permit, a development permit, so that the applicant, so that the property owner can still participate in the process. The second amendment clarifies the requirements for what can happen in a setback in the industrial zoning districts. Currently the zoning ordinance has sections that address this issue in both the residential and the commercial chapters, and this will add a similar section addressing what can happen with setbacks for the industrial chapter. The section is identical to what is in the commercial chapter and is consistent with the staff's current and past practice. The final amendment clarifies the definition of a front lot line. Some properties are -- some streets are held as easements, meaning that the property extends to the center of the street or possibly even further, and this just clarifies that the setback is measured from the closest edge of the public street regardless of whether the street is held in fee or as an easement. This completes staff presentation. Staff recommends that the Planning Commission recommend that the city council approve the proposed ordinance.

>> Commissioner Jensen: Thank you, staff. I see no speaker cards. Is that correct? Okay. Commissioner Platten.

>> Commissioner Platten: Thank you, move adoption of the recommended approval to the city council the ordinance in accordance with staff report.

>> Commissioner Jensen: There's a second. Motion and second. Is there any discussion? No discussion, may we vote by light? And that motion passes unanimously. 3B. CP10-038. Conditional use permit for a change of use from an existing church to a drinking establishment, with a new restaurant and bar. Operating hours after midnight, and addition of a 420 square foot outdoor patio on a 1.2 gross acre site in the CP-pedestrian commercial zoning district located on the north side of Blossom Hill road, approximately 610 feet easterly of Santa Teresa boulevard. Staff.

>> Thank you. As again, as presented in the staff report, this is a conditional use permit to allow the conversion of a previously approved church use that's in an existing building that previous to that was a bank. And allow for a public eating establishment which would otherwise be allowed as of right in conjunction with a drinking establishment. And an outdoor patio, as well as -- excuse me while I -- after-hours late night use until 2:00

a.m. We did hold a community meeting on this. We did get, you know, one interested resident, and we should have passed out to you some correspondence received via e-mail to you all on this subject. Staff analyzed this with respect to the council policy on late night use as well as the bars, and although there is a residential neighborhood adjacent to the east to Northeast of this site, the configuration of the subject building, as well as the location of the outdoor, small outdoor dining area, and the conditions placed on the permit, staff feels that the proposal would conform to those policies, and any impact from the after-midnight use and the outdoor dining and the drinking establishment in conjunction with the bona fide public eating establishment would minimize them in all respects. Again, I'm available for questions, if there's any need to clarify information in the staff report.

>> Commissioner Jensen: Thank you, staff. Is the applicant here? Would you like to come forward? And you may have up to five minutes. And please be sure to introduce yourself. Hang on one second. Is the microphone on there? It sounds like you're -- you're good now.

>> My name is Leland Hicks. There we go. I'm with a franchise group that builds TGI Friday's in the San José area.

>> Commissioner Jensen: And if you'd like you can talk to your proposal. You have up to five minutes. It's all your time.

>> I'm just happy to answer any questions. I've spent quite a bit of time with planning going through everything. I do have some story boards that have the site plan and the elevations if there are any questions relative to the structure or the layout. Other than that --

>> Commissioner Jensen: Thank you. Commissioner Platten.

>> Commissioner Platten: Thank you. How do you respond to the assertion that base you're open until 2:00 a.m. you are going to be an attractive gathering place for folks who leave movie theaters and other locations and therefore cause large groupings and resulting disruption to the area?

>> I don't know quite how to answer that. But I know the two stores that we currently operate, part of the 2:00 a.m. is part of the franchise agreement because Friday's has first right of refusal to operate this store in the event that we do not properly operate it. But the two stores that we currently operate in Cupertino and in San Mateo, Sunday through Thursday, we're making last call at 11:30. And the doors are closed at 12:00. Fridays and Saturdays we're making currently in the operation even though we do have a 2:00 hour. Those are closing about 1:00. Last alcohol served about 12:15. So we haven't seen that in either one of the other stores and the one is directly across the street from the AMC theater in San Mateo at the Hillsdale mall.

>> Commissioner Platten: And how do you respond to the allegation that the ratio of onsale retail license in the census tract involved exceeds the ratio of onsale retail licenses of the population of the county in which the premise is located? In other words, the allegation is that the onsale retail license in this particular census tract exceeds that ratio countywide?

>> Well, and I think the staff found that even though it does, because we have the developer here, I think just because of the high concentration in the mall area, that changes -- you know, that changes the ratio considerably. We don't find ourselves any different than the facilities over there.

>> Commissioner Platten: And finally, how is the working relationship in your store in Cupertino with the local law enforcement officers and what do you anticipate in San José?

>> It is very well. Prior to each opening I'm in charge of the development all the way through opening. Prior to opening, we meet with the law enforcement officers, review our security measures, we had shared with staff some of the -- a program called surf which is two part. One is ensuring we don't overserve patrons and create a situation related to that and the second part is ensuring that we have proper closing procedures and the police actually buy into it. I think there was a report from the local law enforcement that indicated that this particular area was not a high density crime area. And I think that's part of the staff -- the staff report to you.

>> Commissioner Platten: Thank you.

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

>> Commissioner Cahan: Thank you, Madam Chair. I wanted to get clarification. The area that's going to be the outdoor patio seating, is that the section that's closest to the party city?

>> It is.

>> Commissioner Cahan: So you'll be taking out the glass --

>> If you're looking at the structure, there is --

>> Commissioner Cahan: From the parking lot?

>> Yeah, from the parking lot and you're looking on the left-hand side where we've created it, we're not coming out past the structure any. There currently is kind of a vestibule typesetting there. It's not enclosed with store front but we're going to take that area. We'll fence it in and meet all of ABC's requirements regarding liquor and sales and having it properly designated. But it doesn't come outside the existing structure as it is now.

>> Commissioner Cahan: But it goes to the edge of the building?

>> That is correct.

>> Commissioner Cahan: Okay. And would you opposed to that being closed off at 9:00 p.m. on Sunday through Thursday? Currently it's listed as being closed at 10:00, the outdoor seating area and I'm wondering your position on it closing an hour earlier on the weekdays?

>> I have to be honest with you. The two that we have now are almost not used. At Cupertino, I don't think that that would be a big issue with us. I can't think of one right now. But it -- the two that we have aren't -- aren't high-use now for several different reasons. Most of the people that come in there are looking for the energy inside the building. Occasionally if the weather's nice we sat large parties out there but after 9:00, I would -- wouldn't see it as being an issue.

>> Commissioner Cahan: Okay, thank you.

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

>> Commissioner Bitbadal: Thank you, Madam Chair. I have a question to ask you about the maintenance, in terms of operation. We have here that your mechanical equipment used for outside maintenance, including blowers and street sweepers, will not be used between 10:00 p.m. and 7:00 a.m. Is there a possibility to put it 8:00 in the morning, is that something to be consistent with other requirements, is that something that you see an issue with? It's just because your proximity is so close to the neighbors, I mean it's --

>> During our community hearing one of the issues that the neighbor did bring up was noise. And we've already talked to and would make a concession regarding you know the trash trucks at 5:30 in the morning are loud would make that same concession about policing the lot. You know most of that stuff is done manually. I can't speak on - - because we share parking with the shopping center, I can't speak on behalf of the area that we would -- that we would conjoin with them. But we -- we certainly could wait until after 8:00.

>> Commissioner Bitbadal: Okay, thank you.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. Commissioner Abelite.

>> Commissioner Abelite: Going back to the sweeping of the parking lot, this is already a preexisting, very large shopping center, and I would imagine that they are already running their parking lot sweeping at some regular intervals, probably at very, very early hours, which is kind of normal, because there are no cars on site.

>> Caret.

>> Commissioner Abelite: So I would assume the applicant's desire is just to maintain what already exists out there in terms of hours, and not push it later on. Then you start getting cars interrupting the patterns of the sweepers.

>> Yeah, that is correct. I think the only thing is that with the location of our building is a little bit closer to the residential facility. But --

>> Commissioner Abelite: Right.

>> But you know what the landlord does for the joint property, I don't know. I would know that we would police ours every morning but again most of it is manual policing of the site, of litter and those types of items.

>> Commissioner Abelite: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Abelite. We have no additional speaker cards. Are there any further questions of the applicant? Seeing none, thank you very much for your time. We appreciate it.

>> Thank you.

>> Commissioner Jensen: Is there a motion to close public hearing?

>> Commissioner Platten: So move.

>> Commissioner Bitbadal: Second.

>> Commissioner Jensen: There is a motion and second, all those in favor? Thank you. Public hearing is now closed. Staff.

>> Just a couple of comments. There are several conditions in here which have time things, so I would probably want us to be consistent. So if the commission were to consider you know altering staff's recommendation on condition number 18, the cleaning part, delivery hours number 21 and number 22, hours of glass recycling, either go you know make it 7:00 a.m. or 8:00 a.m., whatever, but I think we need to be consistent with all three of them just to ensure greater ability to adhere to them and no confusion on the applicant's part. It is correct in that this is part of a larger shopping center which was constructed at a time when there was not necessarily a requirement on the sweeping stuff and they're not necessarily subject to that in the current code because it was developed precode. So at the minimum we can put it on this which may, you know, have an effect on how they do the overall but we can't guarantee it. So if we do keep it on this, I want it understood that it really is just subject to that area, related to this -- this building. But again, could carry over to the larger scheduling for the center. Recognizing Commissioner Cahan's request to shut down the outdoor dining area at 9:00, don't necessarily want to debate it but it is a very small outdoor patio. It's 28 seats. You know, during the week is probably where you'll get more family members who might want to enjoy the outdoor area so we typically put a 10:00 because sometimes you know, it allows a little longer time for people to stay out there, and whatnot. So again, but if it is the Commission's wish we can modify that. But staff didn't feel the need, just given the small nature and the location of it out in front of the building, and not extending out beyond the existing. With that again, I'm available for any questions you may have.

>> Commissioner Jensen: Thank you staff. Would you clarify why the recommendation for approval when clearly there is an overconcentration in the area?

>> Well, again, this is an area that's served from a regional standpoint also. You have Oakridge mall you have this shopping center you have main street shopping center you have the stuff that's on the south side of Blossom Hill. And so given all of those, a lot of those licenses are associated with bona fide public eating establishments. The way our code is structured today they can serve alcohol as of right with meals. Some of these establishments want to have the ability because they have, you know, an internal setup such that they would like to have the ability to serve alcohol for patrons who don't have a meal necessarily. So we require them to get approval of a use permit for a drinking establishment. The way this permit is conditioned, it's connecting that drinking establishment with a bona fide public eating establishment so if that eating establishment goes away they have to come in and amend this use permit. So again a lot of the on sale licenses are associated with the restaurants at the mall, some at main street. So that as the applicant said contributes to what would be perceived as a real over concentration within the census tract.

>> Commissioner Jensen: Thank you. And one of the letters that we received in advance from the public indicated a concern that the landlord was able to determine the amount of security necessary for commercial establishment within the facility. Can you clarify specifically what 23 security management plan C says with respect to security? And is this similar to other restaurants with attached bars?

>> Again, you know, this -- this plan is more, or this condition is more tailored around a drinking establishment that's in conjunction with a bona fide public eating establishment. And that it's kind of you know our way of saying you know you got that other use going on there. So the security issues may be less than a drinking establishment absent an eating. So that we're going to leave it up to you all with the exception that you have to have a minimum of two management personnel. So the management onsite for the use as a whole, it and of itself helps in managing the security of it. And then anything beyond that, again, this being different than just a standard bar that you might see in the downtown or out other areas that don't have that eating establishment. Also conditioned in here is that food service be available at all times the establishment is open. They can't shut down their kitchen and they have to have their full menu available during all hours of operation. So really looking at this in the sense that it's a restaurant but don't want them to get caught up in if someone just goes in and they don't want to order a

meal and they order a drink and they're with others that order meals that they have that ability to serve that alcohol absent a meal.

>> Commissioner Jensen: So if I understand you, this is common practice for restaurants with attached bars in our shopping centers in San José?

>> Yeah, and we again are seeing a lot more of these, we do the chili's the Chevy's the macaroni grills. They were long thought to go into Oakridge but it never materialized. It is another restaurant that can serve a larger population in South San José.

>> Commissioner Jensen: Thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Wanted to discuss with the fellow commissioners my reasoning for asking about the 9:00 p.m. closing of the outdoor seating should this become a motion I wanted to address it beforehand. Where the outdoor seating is, it's right next to an alleyway that then leads directly to the back of a group of houses. And I think that voices as we know they carry very easily. I know people in the park behind my house, you can have two people back there and I can hear them clear as day. So if you have 28 people out there eating those voices I think will tunnel right down bounce off the walls and tunnel right down to the residence, and cause a great deal of noise. And I believe that it is up to us to assure that during the weekdays, that they will not be suffering any excessive noise after 10:00 p.m.

>> Commissioner Jensen: Thank you, Commissioner Cahan. I see no additional speaker lights. Would someone care to make a motion? Commissioner Abelite.

>> Commissioner Abelite: Yes I would like to make a motion to approve a conditional use permit for a change of use from an existing church to a drinking establishment, new restaurant with bar, operating hours after midnight and an addition of a 420 square foot outdoor patio on a 1.2 gross acre site in the CP pedestrian commercial

zoning district, as recommended by staff. And so that's my motion but I'd like to speak a little bit to it. As it relates to, or actually do we wait for a second?

>> Second.

>> Commissioner Abelite: And if I may, as it relates to the sweeping in the mornings and the alleged, possible noise out there I think we also need to remember that this site is sitting right on top of a probably 30 to 50,000 ADT traffic street and I think that noise level is vastly superior to any sweeping that's been already going on out there for probably ten, 20, 30 years. So I think that really is an irrelevant, I don't think it is -- I don't think the impact is that great and with respect to the time issue, I don't see that -- that's not a very large area. Maybe we can put in some sound mitigation. But I'm happy with the applicant as submitted.

>> Commissioner Jensen: Commissioner Abelite, may I ask, staff pointed out that there were inconsistent times. Does your motion include a request to make those times consistent?

>> Commissioner Abelite: Yes I'd be happy to.

>> Commissioner Jensen: Are you making a motion for the 8:00 a.m. time?

>> Commissioner Abelite: I'm happy with staff --

>> Commissioner Jensen: Staff pointed out they were inconsistent.

>> Commissioner Abelite: I'm sorry, I thought all three times were consistent in the staff report.

>> Commissioner Jensen: No. They're all inconsistent.

>> Commissioner Abelite: Yeah, I'm happy to true them all up.

>> That was not an error. That is our typical conditions. But what I said is, if you were going to start to affect them, that you might want to just understand how others may not go along with them. So if your intent was to make them all one time or another, but again, glass recycling you know again people are going to be in the facility. So the 8:00 a.m. seemed to make sense. The standard sweeping is consistently with what's in our zoning code. So what would appear to be -- they're not the same but there's reason why they're not the same so staff comment was that I was just pulling it out so if changing one there was an intent to, you know, affect the others just to be cognizant of that.

>> Commissioner Abelite: Don't need it.

>> Commissioner Jensen: And just so we note we have two number 17s and two number 18s. So the number 18, to which you're referring to is the one that is on page 5 and is labeled cleaning.

>> Yeah, I'm sorry it's the cleaning one and the glass recycling. And the delivery hours. So we'll make sure the numbers are consistent. But the conditions related to cleaning glass recycling and delivery hours. So again delivery hours is, again, recognizing standard times of delivery, 7:00 a.m. is been how we consistently dealt with permits across the board, same with cleaning, glass recycling again because that is for people coming into the facility the 8:00 a.m. start-time is why we have that different from the 7:00 a.m.

>> Commissioner Jensen: Thank you. What would you like to do Commissioner Abelite?

>> Commissioner Abelite: I'd like to just stay consistent with what the staff report already recommends.

>> Commissioner Jensen: So make no changes.

>> Commissioner Abelite: Correct.

>> Commissioner Jensen: Okay, thank you. Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you, Madam Chair I was actually going to propose a friendly amendment to move them to 8:00 and one of the reasons is because if someone is doing mechanical equipment use for maintaining the blowers at 7:00 in the morning and we saw how close the home is to that facility I think it just would be helpful to the neighbor to move it to 8:00 and it's only one hour and that's not something that can be done indoors, really clearly states outdoor and my concern would be if it's not written here that somebody may not enforce it in the future. So with that, I was hoping to put in a friendly amendment to move it to 8:00 o'clock to be consistent with all the hours.

>> Commissioner Jensen: Commissioner Abelite.

>> Commissioner Abelite: Actually I'd just prefer to keep it the way it is with all due respect to Commissioner Bitbadal. That's because the shopping center has been running for many, many years. They already have a sweeping program in position. It's always better to sweep these parking lots very early in the morning when there are no cars because you get a better coverage. Again we are sitting on a very high average daily traffic count location. I don't think the noise that comes from the sweeping could make a dent in the traffic that exists. With all due respect I'd like to stay consistent with the staff's recommendation.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal and Abelite. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Since Commissioner Abelite is not able to change the time of the outdoor seating closing to 9:00 p.m. I will not be able to support this motion.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Commissioner Cahan, may I ask you, when you say a 9:00 closing does that mean that patrons who are already there are required to leave, or does it mean that there is no additional seating in that area starting at 9:00 p.m?

>> Commissioner Cahan: I'm not exactly sure how that's usually enforced, and that is the way that our next item is written, 7:00 to 9:00. Certainly there would be no seating out there after 9:00. I would assume that that would mean after 8:30 that they no longer start seating people out there.

>> Commissioner Jensen: Staff can you clarify how that works?

>> When we put limitations on the use of the outdoor patio the intent is they do the monitoring so that to their best ability there is no activity out on that patio after that time. So they would have to kind of assess who's coming in to eat. And if it's 8:30, 8:15 they might have to seat the last people at that time. Because it's worded that no activity you know happen after that. That you captain use that patio after that time which means they have to start -- don't kick the people out but they have to not seat people so that by attrition they're not there after that time.

>> Commissioner Jensen: So they would look at what their average time is for service and --

>> Do their best, yes.

>> Commissioner Jensen: Thank you. Commissioner Kline.

>> Commissioner Kline: I was going to share the same concern with the patio, but after looking more carefully at the plans, the patio's pretty small and it's not really in the alleyway itself. And the wall adjacent isn't actually across from it. So although I do share that concern, and I would probably be the first to jump up and support that, I think this particular outdoor patio the way it's positioned is probably okay. I don't think it's going to generate very much noise especially towards the alleyway direction towards the East. And only because the way it's set within the building. That's my only comment, otherwise I would support the measure.

>> Commissioner Jensen: Thank you, Commissioner Kline. I'm prone to agree with both commissioners Cahan and Bitbadal on the issues raised, especially in a residential neighborhood where there may be a significant number of families and the challenge is getting young people to bed and the noise problems and I know from

where I live while street traffic is a constant drone other things like garbage pickup and street sweeping and voices are more prominent because they are intermittent and at a different frequency and pitch than other things like traffic that seems to drone on. Staff, counsel, let me ask you, would it be, if the maker of the motion were amenable, possible to have a six month trial period on the closing time and have a report back?

>> You have done that in the past. Again, six months is a little bit short. Sometimes it doesn't take into account summer months when people tend to want to sit outside more. Really, if you were to make your decision, just so you know, if it turns out that it does create an adverse impact, the staff can be alerted to that through neighborhood complaints to code enforcement and it can come back specifically for a modification of that provision. So even if you were to go ahead and make your decision tonight, it still can be brought back, the permit can be brought back to the commission for modification if it turns out that the permit condition is creating an impact.

>> Commissioner Jensen: Thank you, counsel.

>> Staff would like to point out the two conditions. I'll refer to them as number and content. 11 and 12 on page 5, nuisance and noise. So again, we really tried to craft a condition that was reasonable and enforceable. We have always struggled with noise but again I think since this is adjacent to residential taking into consideration you know any noise generated from the use between the hours of 10:00 a.m. and 2:00 a.m., that is audible by normal hearing within a residential unit with their windows closed shall be reduced to a level such that it is no longer audible or it will be considered a nuisance. So again, really, you know, taking into consideration those things that could cause an impact on those residents and make it a condition that one can enforce because we're using our own senses, we're not dependent on a meter that's going to take in other noise from that area because there's a lot of noise generated in this area, but I really trying to create enforceable conditions so that we can step in, we can you know at any time, if there's a nuisance, bring an order to show cause or a notice of noncompliance. We don't need a circumstances months trial. If in two months there's a problem out there we call them in. So to be very honest I think that gives us a lot of ability to monitor on a continuous basis not just come back in six months

and tell you how it's gone. Six months we may not have gotten one single call but that seventh month we get a call. If we get a call and they're in violation of their permit, we can cite them in noncompliance.

>> Commissioner Jensen: And can I ask then specifically on that since the conditions state noise generated from the use between the hours of 10:00 p.m. and 2:00 a.m. that is audible, if it were a patio use that was occurring between 9:00 and 10:00, and TGI Friday's, I love Friday's, Friday's is a fun and festive place where people go to have a really good time, as they should, and you take the whole Friday atmosphere and bring it all through the week, and it's wonderful. But given that, there may be celebrating parties out on the patio who, between 9:00 and 10:00 p.m., are creating -- having a good time, and causing a noise that is audible, but outside of the hours from 10:00 to 2:00. So would they be in compliance with their permit and thus not subject to any repercussions?

>> Again, it states 10:00 p.m. and 2:00 a.m. So it's not 9:00 p.m. and 10:00 p.m. So it's stuff happening again --

>> Commissioner Jensen: Right, so the question goes back to the patio.

>> Again, the point, if anything is happening, regardless of that, if you are asking even at 5:00 p.m. they are out of control and considered a nuisance, we've got condition 11 to say you're not in control of your patrons, you're causing a nuisance, regardless of what time it is, that that can come into play.

>> Commissioner Jensen: Okay, out of control is above and beyond --

>> I'm sorry, a nuisance, as defined in title 20.

>> Commissioner Jensen: So if any of the residents are annoyed, they can't put the kids to bed, they can't get quiet -- okay.

>> I can't speak to the sensitivity of children in the residential units, because everybody's different, so I think counsel may speak better to the issue of nuisance.

>> Joe Horwedel: So let me go through and deal, as the person who also has the enforcement side of things, that we do take a reasonable measured approach to enforcement. That we do not dwell in nitpicking. So because sometimes we are used as a weapon between property owners or residents that just don't get along. And we will - - we do not get sucked into that. If there is a pattern of creating a nuisance we will deal with that. But I would say it's the standard that is put on this, is much more stringent than the single family house that is in the neighborhood across the street where they are allowed to go through and have teenagers playing loud music by right until whenever until it is a points it is considered a nuisance and the police department will respond. I think of putting it in context of what is the real issue here is that this is a property that is allowed by right to operate from 6:00 a.m. to midnight. It allowed to have customers that come in and out seven days a week until midnight. So to the extent that we are regulating them back of things that they can't do before midnight is because they're asking to operate past midnight. So I would just ask that we try not to ratchet down too hard on things, recognizing that they could ask to not do the midnight piece and you know be 6:00 a.m. to midnight and have no real controls on that.

>> Commissioner Jensen: Thank you, director. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I used to live in that neighborhood for almost ten years. I want to make sure my fellow commissioners understand, Blossom Hill road is like an expressway, almost like a freeway except a few more traffic lights. Santa Teresa is like an extension of highway 87. Highway 87 ends into Santa Teresa boulevard. This intersection has four corners, it has a shopping center in every single corner. So you know, I think the noise that's generated by the traffic itself more than dwarves happy, singing people in that back patio. So you know, I think we should be happy a franchise like TGIF is moving in and I think staff has done a great job with the conditions they put in that things don't go out of control. So with that I also want to declare that I support the motion and call for the question.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. In order to stop commission discussion, and go directly to a vote on the motion, we would need a two-thirds majority vote to close public -- to close commission discussion. Are you making a motion, then, and you'd like to call a vote on that?

>> Commissioner Kamkar: I would, yes.

>> Commissioner Jensen: Okay. All those in favor of closing terminating commission discussion? We do have speaker lights. Those opposed, nay, was that a nay? Okay. We have two and five. Okay, somebody tell me is that two-thirds? Okay. So my apologies to the other commissioners who wish to speak. We are going to vote on this item. Can we vote by light, please? And that motion passes on a 5-2 vote with commissioners Jensen and Cahan in opposition. And I would just like to say that my opposition was strictly related to being more flexible in terms of the patio hours. I support the project overall. Thank you. Moving on to the next item. CP10-039. Conditional use permit for a drinking establishment in conjunction with a bona fide public eating establishment and a 763 square foot outdoor seating area at an existing tenant space formerly occupied by blockbuster video at a shopping center on a 3.6 gross acre site in the CN neighborhood commercial zoning district located on Northwest corner of Almaden expressway and Crown Avenue. Staff.

>> Thank you. Again, this is a conditional use permit to allow for a drinking establishment in conjunction with a bona fide public eating establishment and an outdoor seating area. An existing tenant space at a shopping center located on Almaden expressway between Camden avenue and crown boulevard, place. Again, this, similar to our last proposal is going into an existing tenant space. Difference is being, this is a much larger outdoor patio and, you know, recognizing that, staff has included similar conditions relative to time of use of that patio. And again, that this drinking establishment is in conjunction with a bona fide public eating establishment. So should that aspect go away they would need to come in and modify this use permit. So it would in no way allow for just a stand-alone bar on its own. This one, again, the -- because the applicants were cognizant of their proximity to the residential, to the West, did agree to limitation on the outdoor, use of the outdoor dining area to between 7:00 a.m. and 9:00 a.m. Monday through Thursday and 7:00 a.m. to 9:00 p.m. Friday and Saturdays. We included the same noise standard here, the difference being, because they're not asking for late night use, they're just going to

be operating up until their as of right midnight that you'll see a difference in that condition, that any noise generated from the use between 10:00 p.m. and 12 midnight and that because we had the limitations on the outdoor area is really focusing on the activity going on within the restaurant. Additionally, you'll see on the plans that there's currently just a cyclone fence. Again, this is a pass-through between two building areas of that existing shopping center. So they're utilizing or taking advantage of that to create that outdoor dining area and currently to the back side closer to that rear parking loading area at the center there's just a cyclone fence with redwood slats that allows for access between we're taking the opportunity to require a more aesthetically pleasing and could have the potential to affect any noise generated from the outdoor patio and have that upgraded to a masonry wall. Trying to think. We did have a community meeting and were able to engage 70 to 80 people at that meeting to discuss the project, have gotten a lot of feedback from them, both for, in support and nonsupport of the proposal. And again, at the beginning of the meeting there was a distribution of some of that that we've received via e-mail. And we've discussed how we've addressed some of those concerns or we feel we've addressed some of those concerns through the staff report. With that I'm available for any questions.

>> Commissioner Jensen: Thank you staff. Is the applicant here? Thank you, and if you would come forward and introduce yourself you may have up to five minutes.

>> My name is (inaudible) by the Almaden mining company which is the name of the restaurant that is proposed for this shopping center in the Almaden area. The people putting together the Almaden mining company, they find that there's not enough good moderately priced eating establishments in their corner of the Almaden valley and find themselves frequently having to travel out all the way out to Blossom Hill or Los Gatos to find a moderately priced family oriented restaurant. And so that's what we're proposing to do here. It's the place that they envision is a place where you can bring the family, you can bring the kids after the little league game, friends from your bowling league, perhaps you can come and watch a sports game. A place where you can get together in an atmosphere that is conducive to that. A lot of the concern had been that the Almaden mining company is a bar. We want to emphasize that it is not a bar. The Almaden mining company proposes to stay open until 11:00 p.m. not midnight. We've cut back on the hours, on the outdoor patio, closing at 9:00 p.m. on school nights if you will. We are asking to stay open until 10:00 on the patio Friday and Saturday night. The restaurant is here to

provide a moderately priced menu, comfortable atmosphere. It will be you can wine and cocktails it is not intend to be a bar. At the community meeting there were many concerns from the public. Some of those concerns dealt with parking. We have tried our best to mitigate some of that. The parking that is behind the building, we're going to work in conjunction with the landlord to make that employee parking. We've got a large number of employees from the bank all the way down to Safeway. If we can concentrate the employees in this area that will help bring down the traffic in and around the area. The landlord does have a security team, the security team does patrol in and around the areas. We will work with the landlord to step up those patrols and try to keep people who are just hanging out back there, get them moving along. Patio noise was also an issue. We have worked with the staff to modify our proposal to include a sound wall at the back of the breezeway. We'll put some landscaping in there and we'll bring the height of that sound wall up to the bottom of the mansard roof and landscape it with some vines. There is already a mature Crape Myrtle tree and we'll make that sound wall an asset to the shopping center rather than a liability. We're not proposing to do anything but dine out on that patio. So no music, no televisions, no barbecues, it will just be a place where you can go out and eat with the team, or enjoy a summer afternoon. Other than that, it's a basic necessity or a basic restaurant that the community down in the Almaden valley is missing.

>> Commissioner Jensen: Thank you, Mr. Renchon. We have a question for you from several commissioners. Commissioner Platten.

>> Commissioner Platten: Thank you, madam chairperson. I want to go to the comments we received from the copper wood homeowners association. They categorically fall into three categories. One is increased traffic, two is possibility of increased trespassing, especially along the copperwood property, and three is noise and security. So you've addressed those generically, but I want to deal directly with the three that are raised there. Can you just talk about parking, increased potential trespassing on the copperwood property, and noise and security. The association indicates that they already pay for some private security watch, and they're concerned that they may have to increase their expense as a result of the restaurant's operation.

>> In terms of the trespassing, the shopping center already employs a private security team who patrols through the parking lot to try to make sure that people who are there have a valid business reason to be there. The restaurant will help to bring more people in and more activity in. And that helps push out some of the undesirables. Having that security team there, and keeping the employees in the back area, that also helps limit where people are going, keep the people who are the valid patrons out in front of the building where you can kind of keep an eye on them. How this is going to affect the people across crown avenue, I'm not certain that I could give you a definitive answer about that. This is Almaden expressway. There are thousands of cars that go through an hour. Lots and lots of people. I don't know how an additional restaurant would affect that positive or negative.

>> Commissioner Platten: Are you aware of any litigation that has occurred between the copperwood homeowners association and the existing tenants arguing that there is an attractive nuisance or any imposition on the enjoyment of property by the homeowners association?

>> I'm not aware ever any litigation one way or the other. However I would like to point out that the planning staff and the Public Works did a traffic analysis, a basic traffic analysis and said that the restaurant would have no impact whatsoever on the traffic there.

>> Commissioner Platten: Thank you.

>> Commissioner Jensen: Thank you, Commissioner Platten. Commissioner Kline.

>> Commissioner Kline: Just a quick question. On the drawings, I was there yesterday about 11:30, parking was pretty difficult. But not impossible. Drawings outdoor patio has a gate in front of it with a wall. The alleyway itself was kind of interesting a lot of people out there kind of just standing leaning against the wall lot of trash looked pretty bad compared to the rest of the shopping center. Do you imagine this gate that's in the front aisle way is that going to be closed, so when the patron gets seated they go through the front door and they let out to the side door where the seating is or do you imagine there would be some type of front someone seating that location too or is that closed off?

>> The California building code requires that I provide a certain number of exits out of this patio area. And so we're required to put those in there.

>> Commissioner Kline: Is the door going to be open are you going to use it for seating people, not whether it's going to be locked or not.

>> No. In order to be seated on the patio one would need to come through the main door to the restaurant and then be seated in the patio by the hostess. New Jersey same thing about the back door, closed not locked?

>> There is currently a door by the back by the restrooms if you look on your plan. We're not planning on having hardware --

>> Commissioner Kline: I'm asking the question, because it seems to me it is very convenient for people to park in back and then will use this alleyway to walk into the shopping center. It's a real quick way to get in, if you can't find parking real fast. So if those are basically blocked off to the public, it prevents people from using the parking at back to walk through to the front.

>> Oh, no there is a way to get from the back parking through the alleyway and out. Many of the tenants in the suite use the trash enclosure. That's behind there.

>> Commissioner Kline: There needs to be a public access as well as dining?

>> That's correct.

>> Commissioner Kline: Thank you, just clarifies.

>> Commissioner Jensen: Thank you, Commissioner Kline. Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you, I just want to clarify, this is not a white table cloth kind of restaurant. Is it more like Sonoma Chicken Coop in terms of the style, or is it going to have wait staff and such?

>> It will be a wait staff. You will be seated, you will be -- there will be a hostess to take you to your table, and then waitresses and waiters to take your order, yes.

>> Commissioner Bitbadal: Okay, great, thank you.

>> Commissioner Jensen: Thank you. I have no further questions. Thank you very much. We have a large number of speakers wishing to speak on this item, so I'm going to call people up three at a time. And if you would come to the bottom of the stairs and line up that would be very helpful. Dan Venegas, Ronald McKee, and Michael Almaf. Please. Come forward introduce yourself and you have up to two minutes.

>> Thank you. Hello, my name is Dan Venegas, I'm the managing partner in the Almaden mining company. I'm an Almaden resident along with my wife and two children who attend our local schools. I've been a coach there for about eight years and have always felt the need for a common place in our neighborhood that could feed our teammates and our families. Let's make it possible for our friends and family to enjoy a nice dinner in our own back yard. I want to thank you all for coming to voice your opinions, and bettering our community. If in support of a neighborhood family restaurant please stand up and let's hear your applause. [applause]

>> Thank you.

>> Commissioner Jensen: Thank you, Mr. Venegas, Mr. McKee.

>> Yes. Good evening, councilmembers. And thank you for allowing me to speak. My name's Ron McKee and I'm a 20 year resident of country love estates. My home is the corner lot immediately behind Safeway. I rise in opposition to this proposal because I believe it will interrupt my rights to a quiet and peaceful enjoyment of the

residence. I lived here 20 years and I tell you the zoning laws do not work. I made numerous complaints to Safeway about the noise. I've complained about the teenagers and to the zoning commission about garbage. Only to some avail there has been improvement. I believe consumption of alcohol in the evening is further going to disrupt the neighborhood in terms of noise and there is a sound barrier already along the back of the whole park lot and it doesn't work. Of greater concern is the aggregation of teenagers during off hours. They congregate, they make noise. As a matter of fact a few months ago we had the swat team behind the Safeway because they were staging look a shoot out and a murdering. We have a lot of problems out there I don't expect the police to answer everything. Most of the complaints you don't hear about because they go to the merchants. There is going to be more dirt. There's going to be more noise. It's going to be a problem. I have no dog in this fight, and I'm moving. I'm speaking for the other residents.

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

>> Okay.

>> Commissioner Jensen: And Mr. Amalfi. As you're coming forward I'm going to call the next three speakers. Jessica Imshaw, Clint Johnson and Brian Quint. Thank you, please go ahead. And if you would introduce yourself and you have two minutes.

>> My name is Michael Amalfi. I am a long time resident of the Almaden neighborhood, 17 years myself, my wife is 38 years. We've been there for a while. The reason I'm here speaking in support of this is I'd like to think of renewal for the long term. This is a vibrant business area. Not served by very many restaurants, and I think this is something that could strengthen our community, bring families, teams, friends together. When businesses and neighborhoods die, the neighborhood dies. And our neighborhood just lost a very large business in PW markets and I'd like to make sure that the commission is cognizant of that fact and that this is an opportunity to put something in this site that will be there for many, many, many years. And I would just like to make sure that those that are here to support it, express that as well. This is -- this is an opportunity when you look at Oakridge mall, when you look at the Payless shopping center the fine work that is being done there and what has really

happened to those communities that are around there as far as renewal and regrowth and again, I just support that. Thank you.

>> Commissioner Jensen: Thank you. [applause]

>> Commissioner Jensen: Our next speaker up is Ms. Earnshaw.

>> Oh, I'm sorry.

>> Commissioner Jensen: Thank you.

>> Hi, my name is Jessica Earnshaw and I'm an 8th grader at Castlewood Middle School. I think the Almaden Mining Company would be great for the following reasons. I played many sports through all my life and there were many occasions when we wanted to go out as a team or even as just like a family. And there weren't enough choices in the area that we lived in. This new restaurant would be a fabulous location to gather right here in our community. Instead of having to travel out of the area to have a hearty fresh meal. I strongly agree that this new establishment could bring business family and respect to the Almaden area. Thank you.

>> Commissioner Jensen: Thank you very much. [applause]

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

>> We'll try it again. My name is Clint Johnson. I'm a resident of Almaden for two years. I'm also a restaurant owner. I have three restaurants in Santa Clara County. And I have no vested interest in this restaurant other than I'd be happy when we get another restaurant in Almaden. We have very few there to choose from. Also one thing that I think anybody that might be opposed to a restaurant coming into a community, being a restaurateur myself, part of our philosophy as -- in the restaurant business, is to give back to the community. And we support the community with sponsoring little league, softball, we work with schools so there's a variety of things and ways that

we do give back to the community. So I want to make you aware of that and also make the residents that might be opposed to this aware of that. And it's not a bad thing to have a business in Almaden. So thank you very much.

>> Commissioner Jensen: Mr. Johnson we do have a question for you.

>> Excuse me?

>> Commissioner Jensen: We have a question for you from Commissioner Kamkar.

>> Excuse me?

>> Commissioner Jensen: We have a question for you.

>> Commissioner Kamkar: Thank you, Madam Chair. So I've got a question for you. How long have you owned your businesses how long you have been in this --

>> 25 years.

>> Commissioner Kamkar: Okay. In your opinion if this application were to be approved, without the hard liquor, beer and wine, soft liquor but without the hard liquor, what would it be chances of surviving?

>> Well I think anybody that wants to go to a restaurant that wants to have a cocktail I think that's a plus at least I do. If I go out to dinner someplace I might want to have a martini and maybe a glass of beer or something like that. I want to be able to have the choice. To have beer and wine is one thing but to be able to at some occasions to have a martini or something like that is a totally different thing. I mean we do have restaurants in Almaden that do serve hard liquor so I don't know what the objection to that would be.

>> Commissioner Kamkar: No, I just wanted your opinion as to how you know important is that element to the overall business.

>> Does it do what?

>> Commissioner Kamkar: How important is the element of the hard liquor, the income of the hard liquor?

>> I think it's an important element I really do because people that do want to enjoy a cocktail versus somebody that just wants to have wine I think it would be a draw for those people that want to go and have a cocktail. So I mean I'm for it.

>> Commissioner Kamkar: Thank you.

>> Commissioner Jensen: Thank you.

>> Anything else?

>> Commissioner Jensen: No we're good. Thank you very much. [applause]

>> Commissioner Jensen: And Mr. Clint as you're coming forward I'm going to invite the next three speakers to come down. They are Todd Courtney, Brian Elwood and Mary Ann Brian. Thank you.

>> No problem. Good evening, I'm coming to support a favorable vote for you tonight involving Almaden mining company. I come to you strictly as a fan of this restaurant. I've lived in Almaden valley approximately 12 years, paint of three kids living at home and I live within a mile of the proposed restaurant site. I'm active in the community and one of thousands of parents who live in Almaden. I love it for the beauty, the schools, the concern, and engaged neighbors, and the pride felt living here. There are some basic conveniences deep into the Almaden area but they are best basic. Retail is not a specialty. And food's barely on the map. The variety of fun

entertainment and dining family establishments is seriously lacking. We basically have the options of some fast food chains and a few of what I would call traditional food fare. Not much that is local in nature, not much that is truly different. We have such limited real estate that appears zoned for anything fun to spend your limited entertainment time and dollars on. To be honest, if my family wishes to visit a restaurant that is local in theme, different, variety of food and drink, often drive out to Los Gatos, or Campbell, I like to invest in my community. But if the community cannot provide the options, I vote with my car, and take my entertainment, food and drink dollars elsewhere. I would like Almaden to eventually become a place where we cannot only live, but we can have fun. From the perspective of different themed restaurants for both food and drink that is just not the case right now. It is basically a place to live. It is often not a choice decision to eat at an Almaden restaurant but sometimes a default. So in summary I would like to spend my entertainment dollars in Almaden for that is difficult today. I'd like more tax dollars generated for my community, that is difficult today.

>> Commissioner Jensen: Thank you, Mr. Clint. Your time is up. Thank you very much.

>> You're welcome. [applause]

>> Hi, I'm Todd Courtney. Been an Almaden resident born and raised there so my whole life. First let me say I am for the restaurant. Let me say I have no financial attachment to the restaurant or to the owners. I was at the community meeting and I heard the concerns I do have compassion for those that live in the buildings and the houses right behind the Safeway center as I would not enjoy the noise of delivery trucks to Safeway or teens messing around late at night. But I have to add that every single homeowner knew the center was there prior to them moving there because those houses were built way after. So having one more space occupied at the center would not lead me to believe that there will be more noise that is already there. To add to the question Commissioner Platten had on copperwood I grew up like I said there I had friends in copperwood in the 80s and they always had security people there so that's not a new thing. The security wasn't for derelicts. It was really for teenagers like myself at the time. And so I don't think that's going to be change to be honest with you. It's just a high density residential area and there's a lot of teens. That's the way it is. So at the community meeting some mentioned the center was too busy. I would commend the center owner, making it convenient for us in

Almaden. The alternative is the Valenti center which is dead boring and nothing to offer. I think what needs to be clear is that this is not an issue about being able to open a restaurant serving alcohol. Anyone is allowed to do this while following the rules of course. This is allowing a restaurant to build a wooden structure with a countertop with some stools to sit on and hopefully a flat screen to watch the sharks game. That way when spouses are gone at soccer tournaments the alone spouse can go there sit on that stool, order a hamburger have a beer and watch the game.

>> Commissioner Jensen: Thank you, Mr. Courtney your time is up. [applause]

>> Hello. Can you hear me?

>> Commissioner Jensen: Yes, thank you.

>> My name is Brian woods I'm on the copperwood board of directors of the residence association. Based on overwhelming feedback from our owners within the complex which is 224 units approximately 600 residents you wouldn't believe the number people that have come forward to the board and expressed concern about this establishment. We've heard a whole litany of concerns. I'd like to focus on one which is this is a walk-up hard liquor bar with an eating establishment. Directly across the crown, on your map, from our homes. What makes the situation a little unique in my mind is crown really is the main entrance to and from this establishment. There is no exit directly onto Almaden expressway so the majority of cars come in and out from this very narrow parkway on crown into the shopping center. You also can't make a right turn. You have to make a right turn if you go down crown heading East. So you can't make a left heading back to the main part of San José. So really, when it was said that Almaden expressway is a major thoroughfare it's true but it doesn't reflect the actual traffic conditions in the center. Which is kind of screwy to begin with. So you have these homeowners that say right across the street is the main entrance to this bar. That we've already had troubles with this establishment in terms of security, trespassing loitering vandalism and now you have people who have the potential to drive up be served at a bar and drive past our front doors. And I'm also here with Mary Ann Bryant the president of our board and she will be addressing some of the other issues.

>> Commissioner Jensen: Thank you Mr. Elwood.

>> Welcome.

>> Commissioner Jensen: Miss Bryant as you're coming forward I'm going to call the next three speakers. Jacqueline Phillips, Richard Miestra and Jeffrey Phillips.

>> Thank you very much for allowing us to speak. As Brian said, we are about 600 homeowners in single-family town homes and yes, Safeway was there when a lot of us moved in. But Safeway is not our concern today. And Safeway's deliveries is usually in the middle of the night or first thing in the morning. The gentleman said earlier that they were going to use the back for parking. That's all well and good. But those people are going to dump on crown or on Camden. If they dump onto crown, I guarantee you, their first way, the first street they're going to see is our entrance on the left which is copperwood circle. It is marked with a sign about that long and that thick and it just says copperwood circle. It does not say copperwood homeowners association. We have enough problems with vandalism from the overflow lot at Safeway. The people of that shopping center do a very poor job of policing. Because we get the overflow, and the fights, and the vandalism, and going into our swimming pool, et cetera. And we have -- we do have police. Not 24 by seven. But we do have police security. And we're saying, this is going to add more traffic, more kids hanging out even though they're not 21. There's going to be more kids hang out. And we just feel it will be a detriment to our area. Thank you.

>> Commissioner Jensen: Thank you Ms. Brian, your time is up. Thank you. Please come forward.

>> Hello. Thank you. My name's Jacqueline Phillips and my husband and I have been residents in Almaden for about 16 years now and we live out in the country club area of Almaden. I'm going to read something to you that I put together. As many of our other members in our community my family and I feel that it would not be of benefit to have a restaurant with a bar situated in the Safeway shopping center. We would be more amenable to just a restaurant being established serving only wine and beer with a meal. The people living just behind the center in

the town home community must be taken into consideration. They must be taken into consideration. In the planning and building of the patio aspect of this restaurant as well as to when and how deliveries are made and the entrance and exit doors to the facility. The people have enough noise and nuisance to contend with, in letters you received and people speaking about it but I think we need to be concerned about their living situation. We don't want to add anything more to what they have to deal with every day. And it's not just five days a week. It's seven days a week. Because when the weekends come along we all love to have a lovely weekend together, right? We like to have a nice Friday night, Saturday and Sunday but if we're saying your restaurant is going to be open until 10:00 or so on a Friday, Saturday and Sunday or even on a Friday and Saturday those two nights are so special to so many families those are the two nights we have to really relax be home with our families and not have to deal with the outside world. So I'm asking that this community be looking out for everybody. Not just the people that want to have parties or go someplace and have a great, fun time. Please look out for everybody. Our living situations must be paramount in the planning and building process of this restaurant. And if this can't be accomplished, then I would have to say no to a restaurant and a bar being established at the Safeway shopping center.

>> Commissioner Jensen: Thank you. Ms. Phillips your time is up. Thank you. [applause]

>> Hi, good evening, my name is Mr. Richard Maiestri and I'm a resident at the country club town homes opposed to the restaurant and bar location. I'm one of the few residents that lives closest proximity to the site within 70 feet of the outdoor patio. I think one of our major concerns is the increase in noise and traffic in the alley, as it funnels the noise like a megaphone. If someone is standing on the load dock at Safeway in the middle of the night having a smoke break or talking on their telephone, we can hear them all the way down at the other end of the parking lot as if they are standing in my backyard, which I'm already limited in using until after most of the businesses close and the delivery trucks and most of the traffic there has dissipated. The idea of having the outdoor patio is a major concern to us because all that noise -- excuse me tall noise has nowhere to funnel but into the country club town homes directly behind some folks who couldn't be here tonight because of their age, and their necessity of taking care of their newborn children and some special need children that also live directly behind those homes -- I mean the proposed site. The increase in traffic over those speed bumps that exist there now would be like going across

the Bay Bridge constantly, 100 times a day. And the sound reverberates into the homes even if you have your doors and windows closed. And we hear everything that goes on there. I'm not against the restaurant or place for families to come in and enjoy the meal. I would be one who would love to go around the block, go in and watch the ballgame and have a piece of pizza. I support that. Having a hard liquor, I don't think that would create a great concern. Considering we had a death up at Almaden expressway this morning. It was underage drinking but drinking nonetheless how do you control the -- judge your dime is up. Thank you Mr. Phillips. As you come forward I'm going to call the last two speakers. Susan Gaden and Atrina Betafor.

>> Good evening commissioners, thank you for this opportunity. My name is Jeffrey Phillips. I'm a 16 year resident of the Almaden area. As my wife has indicated, we live about three quarters of a mile from the area. We would not be directly impacted as many of the people that have spoken and probably will speak. And we are all for a restaurant in this area. What we are not for is a restaurant serving hard alcohol and I don't think anybody here has or will defend or present reasons why serving hard alcohol is good for the neighborhood. It just is not a good thing. And I don't believe that it's necessary to make it such for a viability business. All it does is create an opportunity for more traffic accidents, more misbehavior, drawing in of an undesirable element to the community. And as you can see it is a densely populated area. And a densely populated parking lot. And to have as I understand a closure at 11:00, and you probably fully well know and recognize, that parking lot would not be cleared until 11:30 or midnight and with Safeway next door, what's to stop a person having had a few martinis to say I'm not done I'm going to go to Safeway and buy a six-pack and continue to drink in the parking lot. There's also a high congregation area for teenagers in the area and again some it is just mixing fire and gasoline together to have that. Again, a restaurant, I think, is a great idea, and I support these people for proposing a restaurant. I just believe, as commissioners, if you remove the bar, you'd have a much greater proposition on the part of the neighbors, and a much more congenial environment for our neighborhood. Thank you.

>> Commissioner Jensen: Thank you. [applause]

>> Good evening. My name is Susan Gaden. I've been an Almaden resident for the past 15 years. The past two years have been very hard on Almaden valley along with the rest of our country. It is very sad to see so many

doors closing in Almaden. First blockbuster in that shopping center, then Mountain Mike's, and down the street P.W. recently closed, and there are many other doors that have been closed for a long time in Almaden. I know there are concerns regarding the parking lot in that center. The noise, the teenagers, the security issues and those issues need to be addressed. But I don't see that this particular business is exacerbating those issues. They have been issues for a long time and they do need to be addressed but apart from this proposed restaurant. I'm very excited that the Almaden mining company is willing to become a part of our local economic recovery and I look forward to having this business in Almaden. Thank you.

>> Commissioner Jensen: Thank you Ms. Gaden. Hang on. We have a question for you from Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair, could you please talk about the hard liquor part. You addressed the parking addressed the noise you addressed the traffic those issues you didn't talk about the hard liquor. Any opinion about that?

>> I have seen Sonoma Chicken Coop is pretty much the only other place that Almaden residents have to go if they want a full bar. We have a couple of other restaurants and a wine bar that serves wine and beer, but no other place except Sonoma chicken coop so I think that would be advantageous for the Almaden community to have a full bar.

>> Commissioner Kamkar: Thank you.

>> Commissioner Jensen: Thank you, that's it. [applause]

>> Hi, my name is Atrina metaphor, I'm a junior at the local high school and actually live close to the site. I'd like to speak for this restaurant because I think it's really advantageous to the community, because not only is it a good place for youth and families to get together and celebrate, but I'm also on two sports teams at the school, and we often find that we don't really have anywhere to go for team bonding so it's really good to bring the community

closer together. And as a former speaker mentioned, there was a death, and he was a Leland alumni so -- sorry -  
-

>> Commissioner Jensen: It's okay, take your time.

>> Really sorry.

>> Commissioner Jensen: That's okay, we completely understand.

>> I think it will bring the community together. After such -- after such a horrible event. And as many speakers have mentioned, teenagers and traffic are a problem. And I'd like to apologize for that. We don't mean to be a nuisance. But I think that that's something that we can control on a community level and a hard liquor issue really isn't that big of a deal because I think that most people in the community are responsible enough to know how much they've had and how much they can, and we won't be serving hard liquor to people that aren't responsible enough to understand that such as minors, because that's against the law. And I just think it will be really beneficial to all the communities around it, and all the businesses around it and the people and it will bring us all closer together.

>> Commissioner Jensen: Thank you very much. [applause] And that was our final speaker. Is there a -- I'm so sorry, the applicant, if you would like to come up you will have five minutes an additional five minutes to address any of the questions or comments that were raised or present final arguments.

>> Yes, I just wanted to address a couple of these issues. And many of these same issues did come up at the community meeting and it was our goal to try to mitigate as much as we can. In terms of drinking at a restaurant, we're not intending to be a bar, a place where you would go to get drunk. We're here to be a place where you can have a cocktail or a beer or wine while watching a sports game or with the team. We will be staffed by a professional wait team and a professional restaurant. They know when people have had too many. They know when people, if somebody has had too many they'll call them a cab. They're not going to send them out on the

neighborhood. That's a big liability for a restaurant. The patio, the patio is far more than 70 feet off of the -- from the back fence in there. It's an addition -- it's more -- it's further than that. That was a question that somebody had mentioned and we are proposing a new sound wall in there to try to direct any noise away from the homes. In terms of deliveries, that is an existing shopping center. Deliveries are taken all day, throughout there. If the restaurant doesn't go in another business will go in. That business is likely to take deliveries as well. So I don't know that we're going to be any more, cause any more or less noise than any other business would there. By bringing employees, designating that area as employee parking, I think that that will help the traffic in and out of that area and then the increased security from the landlords will also help bring that down. And will also help mitigate some of the teenagers hanging out back there so those are just some brief points that I wanted to make.

>> Commissioner Jensen: Thank you very much. Is there a motion to close public hearing?

>> Commissioner Platten: So moved.

>> Commissioner Jensen: Thank you. And all those in favor? Thank you. Public hearing is closed. Staff.

>> Thank you. I wanted to address a couple things that were brought up and to clarify for the commission and the speakers. In the case of on-safely alcohol we don't distinguish between beer and wine and general, like we do in offsale. Again, if you're a bona fide public eating establishment operating between 6:00 a.m. and midnight you can serve as incidental to that alcohol. That means the full range of alcohol. Our current code doesn't distinguish between beer, wine and hard liquor in the case of on-sale. Just wanted to clarify that. As far as the use of that rear parking lot, again this is part of a larger center so we can't affect the center as a whole operation but we can incrementally deal with some issues on a tenant-by-tenant basis if they do come before us. And in the case of this business have put a condition in there that they put signage up that limits parking in the rear to employee-only. And so that it's not patrons of the restaurant parking back there. So they're required to put signage out there and hopefully, that will affect even more than just restaurant patrons. But again, you know as I think the architect brought up we are required to keep an access open there, because it does serve as a through way to some of the services the other tenants need as far as garbage and whatnot. It is true, there are limited opportunities for

commercial to happen in Almaden. And you know cognizant of the fact that these locations are, you know, pretty closely wrapped by residential, trying to include the condition to really minimize any impact that the businesses may have on the adjacent residential. So again, limiting the hours of operation of the outdoor patio, upgrading the sound barrier because there is a masonry wall that runs the rear of the center already. But you know hoping that it might help a little bit in further attenuating not only sounds from the patio but other sounds. And then again, the other similar conditions that we put in relative to the outdoor use and again just to restate that this one is not looking for late-night use so as of right they would be able to operate just up until midnight. Thank you.

>> Commissioner Jensen: Thank you, staff. Are there any commissioners who wish to speak? Thank you, Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you chairwoman. Actually, staff and also the applicant have answered a lot of the questions. Such as the sound barrier which will help the project. And one of the residents mentioned that there is going to be -- there is already existing off-loading of items from trucks. And I know those are really noisy during early hours. So it really killed some of my questions about the 6:00 a.m. time line because as a resident mentioned that already happens which is quite noisy. I'm actually supportive -- in support of this project. My family and I regularly -- are regular patrons of the shopping center, long time resident. I'm very familiar with the proposed project and existing conditions. And I heard loudly from the community as well regarding the economic development. Of course you always want to balance it with the need of the community and existing residents but the truth is that the back area of that shopping center is already extremely loud because of the trucks and I've been there so many times in the last week to visit at different times you can hear the trucks clear and loud. And this particular business has met all the legal and planning needs and city policies so far. And not only that, it will fill a vacant spot which exists in the community which was blockbuster, which a lot of us used to visit over the years. But most important than that it will be providing a great need to the Almaden community by bringing a much needed restaurant to the area. It's quite amazing that the population 37,000 only has 22 restaurants and I don't even know how it considers all of them restaurants. Many of them are only fast food. It is true it will include a bar area, but I calculated only 10% really 9% comparison to TGIF which was close to 25% which was the previous applicant, that means that TGIF one out of 4 could be going for the bar but here only 1 out of 10. So in

terms of the argument that this is going to be mostly a bar and has restaurant with it is not really true. Because it's nearly 10%. If you count the seats for the bar area. People often wait at the bar too while their table is cleared so I'm sure the bar is not going to be used for people to go there and watch TV and drink. But also having lived within Willow Glen within walking distance of Lincoln avenue I imagine that this restaurant will be an asset much like many restaurants we see on Lincoln avenue. It will be an added benefit to the community in the area and I truly foresee that and it really also depends on the business owners who I'm glad to hear they're from Almaden because they will then definitely take care of the area and the business and they will be good neighbors. Additionally it will promote walkable communities which I'm a supporter of. If you look at the map that shopping center is surrounded by neighborhoods, residents. And most people a lot of people who actually go to the shopping center walk there to get their coffee and to do their grocery shopping and such so it would be great that we will have people go to the shopping center to have dinner, rather than sit in their car and drive to an off location to have a dinner which most of us rarely do nowadays. I'm confident that having a family style restaurant will encourage residents to walk to the restaurant basically and with that I would like to put forward a motion to approve the conditional approving staff's recommendation, approve a conditional use permit for a drinking establishment in conjunction with a bona fide public eating establishment and an approximately 763 square foot outdoor seating area at an existing tenant space, formerly At a shopping center in the CN Neighborhood commercial zoning district as recommended by staff.

>> Commissioner Platten: Second.

>> Commissioner Jensen: There is a motion and second. Commissioner Bitbadal, would you like to speak to your motion? I'm giving her the opportunity.

>> Commissioner Bitbadal: Thank you. I always prepare some statements, and it has happened in the past that I cross off my comments and change my mind. But this one, it really just solidified what I was thinking as I was sitting in Starbucks today and reading the packets and making probably my fifth visit to that patio area. I think it's going to be a great asset to the area. I know that we are short in nice restaurants, family style restaurants. I know most people go to very few restaurants we have and residents want to go somewhere close-by. I'd much rather

have the residents come to parts of San José and spend their money in their own city, I hope their own parks and other amenities rather than go to other towns. It really benefits us economically in the City of San José. Benefits the whole community. Again, I was glad to hear that the owner was also resident in the area because I know they will take good care of the restaurant and they will be good neighbors. So that's all.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. Commissioner Kamkar.

>> Commissioner Kamkar: Thank you, Madam Chair. I'm also an Almaden resident of 25 years. I actually have lived immediately adjacent to this site for five, six years I lived -- my house was one of the houses that was adjacent to the sound wall that they're talking about between the site and the residence. So -- and everything I heard they didn't exaggerate. When they say trucks are noisy they sure are. When they said when people talk back there you hear it. I'm here telling you that's exactly true, it wasn't an exaggeration. And I'd love to have a new restaurant in Almaden. Like the owner, I coached a little, not little league, but soccer for about six years. I coached robotics, my kids went to public schools. Almaden is my community. The only issue is the hard liquor you know that's the only issue I have with it. Otherwise you know I think everything is fine. The noise, you know, you can't do anything about it. Those are Safeway trucks or delivery trucks. But the hard liquor you know, I just can't get myself past that. And so that's the only reason I cannot support the motion, because of the hard liquor. If hard liquor were to be taken off of it, then I'll be happy to support it. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Kamkar. Commissioner Kline.

>> Commissioner Kline: I was going to talk about something else but maybe I'll talk about hard liquor now. No, I was just making answer observation here. Talking about sound walls and I thought that was here but I wanted to make sure. The sound walls you're talking about is the sound wall in the back next to the parking lot. But there actually is a new sound wall being proposed in the plan fairly high goes up to the rafters of two buildings with two little exits on both sides of it which is really -- should mitigate a lot more than the existing sound wall in the parking lot which is way too far away to mitigate the noise and the traffic. That and the tree will help quite a bit I think. As far as I think that's the major issue I have with that is the outdoor dining. Although I love outdoor dining, it adds

enormous amount to a neighborhood to have outdoor dining close by. As far as hard liquor and soft liquor, if anyone has actually worked in a restaurant like I have being a bartender and a waiter, knows that the amount of alcohol in glass of wine or a beer is exactly in a martini and another drink. You can get drunk with five glasses of wine or five martinis, same way. Makes no difference when you've buying a liquor store and you're buying bottles it's a little different and that's why we have the difference in code I'm sure. So I'm not really too concerned with that. I'm more concerned with the noise and how that would funnel into the neighbors in the back and I think the mitigation has been taken here with the larger sound wall closer to the seating and the tree. And the only other comment I would make is there's 13 tables. I you know we could actually have ten tables there and it would probably be a beautiful patio also we could make it that way. But that's the only thing I would suggest. Otherwise I'd support this motion.

>> Commissioner Jensen: Thank you, Commissioner Kline. I'm also going to be supporting this motion and I have a great deal of empathy for the residents who came out in opposition to this proposal. But it's very clear that with a neighbor owning and operating this restaurant and already recognizing that there is a neighborhood surrounding and being cognizant of that and restricting their hours to 7:00 to 9:00 Sunday through Thursday and only asking for late-night hours Friday and Saturday and also not being a late-night operation meaning they won't be open between midnight and 6:00 a.m. or 7:00 a.m., I think these folks have already demonstrated that they have a significant interest in being good neighbors. And for the gentleman who is a restaurant owner who is not a partner in this but mentioned ball teams, sponsorships, I'd say go right over there and find the property owner and get them to sign up and support your local soccer league or baseball. Clearly the teams who are here understand the challenges with teenagers. You guys are already Ms. Meddi and I'm sorry the other one I've already forgotten your last name you're clearly leaders and it is going to be up to you to ensure that your fellow teens behave responsibly, and maybe you can get something going to make your neighbors behave responsibly. My own neighborhood we are fortunate to have a neighbor owned restaurant with alcohol and a patio and in the summer we have outdoor movies and we have outdoor live music and it is a joy and a pleasure for all residents. And the folks who live over the fence literally over a wooden fence on the other side are given special dispensation in terms of being honored guests. It is a valued place in our neighborhood and it is a wonderful community gathering spot and I hope that you will be able to give the folks at Almaden mining company a chance to be good neighbors

and encourage them by voting with your dollars and showing up at their door. I see no further requests to speak so may we vote by light, please. And that passes on a 6-1 vote. [applause] With Commissioner Kamkar voting in opposition. Thank you. Petitions and communications. Public comments to the Planning Commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the commission for up to three minutes. The commission may not take any formal action without the item being properly noticed or placed on an agenda. In response to public comment, the planning commission is limited to the following options. Responding to statements made or questions posed by members of the public. Requesting staff to report back on a matter at a subsequent meeting or directing staff to place the item on a future agenda. I see no speaker cards. Referrals from City Council, boards, commissions or other agencies.

>> No.

>> Commissioner Jensen: The director is informing me, no. Good and welfare report from city council.

>> Joe Horwedel: Let's see, the city council last night did approve -- my brain just went blank.

>> There was a conditional use permit that came before the commission about a month ago for a private school on Foxworthy. And a -- the commission heard that. I mean the council heard that. They did support it with some additional conditions put forward by the vice chair. More related to restricting physical activity within 100 feet of those backyards of residences. So little more restricted to deal with any noise.

>> Commissioner Jensen: Counsel is making comment that that's daily physical activity.

>> Yes, in the councilmember's motion it was regular activities, recognizing every now and then they may need to be over there, but everyday activity.

>> Joe Horwedel: Thank you, Jeannie.

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

>> Commissioner Cahan: No report.

>> Commissioner Jensen: Thank you. Envision San José 2040 general plan update process. Commissioner Kamkar.

>> Commissioner Kamkar: We have a meeting coming up this Monday the 27th.

>> Commissioner Jensen: So I'll be able to report at next week's meeting?

>> Commissioner Kamkar: Yes.

>> Commissioner Jensen: Thank you.

>> Joe Horwedel: One thing I will add is the task force has now received a printed version of the general plan text, it is about two inches thick. That is a result of the two-plus years of the task force. I think Monday night's meeting is meeting number 43, so it's a tremendous amount of work of the task force -- three years, it only feels like four. And that the draft text is out for the public to look at now as well as the draft land use plan, the task force is going to spend their next three meetings I think it is looking at the text, making sure that we have covered all the appropriate areas in the plan. And that there's proper balance to the policies within the plan. We're also looking at the general plan amendments that are on file right now to see which of those can be accommodated within the envision 2040 and which ones would come this fall to the Planning Commission and council for decision and using those general plan amendments as an opportunity to test some of the policies within the general plan and the implementation sections of the plan.

>> Commissioner Jensen: Thank you, director. Review and approve synopsis from August 25, 2010. Is there a motion?

>> Move to approve.

>> Commissioner Jensen: There is a motion to approve. Is there a second? There's a motion and second. All those in favor, that passes unanimously. With Commissioner Platten absent. Subcommittee reports and outstanding business. Hearing none -- commission calendar and study session. We have an all-day study session, or our offsite retreat tomorrow. Members of the public are welcome to attend. It will be in --

>> Here at City Hall on the third floor of the tower, room 332, our main conference room, starting at 8:00 with welcome and refreshments until about 8:15, and then we'll break for lunch, and then continue until about 4:00, 4:30.

>> Commissioner Jensen: Thank you. Is -- are there any other requests or suggestions for study sessions? I see that none of the ones that were presented previously have been agendaized, so hopefully, by next week, we will hear something. And if that's all, the meeting is now adjourned. Thank you very much.