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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, August 25, 2010. Please remember to turn off your cell phones. Or put them on vibrate. Parking ticket validation machine for the garage under City Hall are 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 number, not the file number, for reference. For, 4.A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, the 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 two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed, and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is advisory only to the City Council. The City Council will hold public hearings on these items. Roll call. Let the record reflect that all commissioners are here with the exception of Commissioner Kamkar. Next item, 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 wish to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. we do have your card. To effectively manage the. Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with the remaining agendized items past 11:00 p.m, to continue this hearing to a later date, or to defer remaining items to

the next regularly scheduled Planning Commission meeting date. Decision on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff.

>> Yes, Madam Chair. A number of requests were received for deferral of item 3C. They were forwarded to the Planning Commission for their review. Staff is not recommending deferral as the project was noticed in accordance with legal requirements as well as the public outreach policy and issues related to the corresponding Cambrian 36 annexation are not relevant to the Planning Commission's recommendation as to the appropriate zoning for this area. This concludes staff's report.

>> Commissioner Jensen: Thank you, staff. So we will call the speakers who have requested deferral for the item 3C. And ire speaking to the matter of deferral on this. One second, please. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. Because I am the fundraising chair for the Cambrian school parcel tax measure, measure L, I'm going to recuse myself on this matter.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Commissioner Platten. I'm sorry.

>> Commissioner Kline: Thank you, Madam Chair. I didn't know if you needed a motion to hear it or if we can just move forward with the speakers.

>> Commissioner Jensen: Staff.

>> Laurel Prevetti: We would recommend that we listen to the speakers and then you can consider the matter of deferral.

>> Commissioner Platten: Fine.

>> Commissioner Jensen: Thank you. So I'm going to call the first three speakers. I have three speaker cards. Mike Chrisman, Colleen Chrisman, and Patrick King. And if you would come and line up at the bottom of the stairs. Attorney, would you please clarify for us on this matter?

>> Thank you, Madam Chair. For the speakers, the item that you're speaking to right now is whether or not this item should be deferred, not the substance of the item itself. So I just wanted to clarify for the speakers that the item before the commission at the present time is whether or not the item should be deferred. Thank you.

>> Thank you. My name is Mike Chrisman. I live at 905 Sweetbrier Drive, Campbell, California. I am president of the Campbell Village Neighborhood Association. We come before the Planning Commission today to ask that the project entitled C10-010 be deferred to later date. The city has not provided sufficient and proper notice. Staff report does not reflect current conditions for the area known as Cambrian 36 and there are several unresolved negotiations regarding service delivery and the sphere of influence. Our deferral request is supported by the following policies, procedures and information. Project C-10-010, Cambrian 36 is a large development project and a significant community interest proposal per San José policy 6-30, public outreach policy for pending land use and development. Large development proposal is defined as any application for development approval with the Department of Planning, Building, and Code Enforcement of the redevelopment agency that is over 50 dwellings. Again, more than 50 dwellings, 60,000 square feet of commercial use or 100,000 square feet office or industrial space. The Cambrian 36 area is 103 acres with 320 homes and 28 business parcels. We exceed the required 15 dwelling units for a large development proposal by over 270 dwelling units. Cambrian 36 is also a significant community interest proposal. I'll get to the chase here and say that the applicant and the neighborhood designee in which the application is proposed determines has the potential to have a high degree of interest, either at the local, or citywide level.

>> Commissioner Jensen: Thank you, Mr. Chrisman. Your time is up.

>> Okay.

>> Commissioner Jensen: Thank you.

>> We're going to have the next speaker just continue on with this.

>> Commissioner Jensen: Fine.

>> And use the slide.

>> Commissioner Jensen: Colleen Chrisman.

>> Could we have Patrick?

>> Commissioner Jensen: Or whoever you would like. Please introduce yourself.

>> My name is Colleen Chrisman. So exhibit 2 interest there is significant interest by several councilmembers both for and opposed to the city annexation. The neighborhood is United in its opposition to be annexed into San José. A petition with over 450 signatures supports this statement. The news media in all forms, television, print and radio have been following this story. There have been demonstrations at both community meetings by San José and Cambrian 36 residents attempting to stop the annexation into San José. Several outside jurisdictions are stakeholders in the outcome of this area. Santa Clara County fire department, Lafco and the stiff Campbell. The City of San José has hired a communications consultant to help facilitate communication with the residents. San José residents want to know how their services will be reduced if Cambrian 36 is annexed into their city. Because we meet the criteria for both a large development proposal and significant community interest proposal the notification requirements set forth in policy 630 must be applied. Unfortunately they were not. Exhibit 3. Policy 6.30 page 3, early notification, the intent of early notification is to ensure that the property owners, tenants, neighborhood groups, community organizations and other interested parties have as much advance notification of proposed projects as possible. This provides stakeholders the opportunity to be informed about projects that may affect them. Exhibit 4, envelope postdated. Community meeting San José hosted two

community meetings, one on May 19th and the other just a week ago on August 18th. Only one week prior to the Planning Commission's hearing. Notification for the August 18th community meeting was mailed to residents including properties located within 500 feet residence of the area boundary. Again only 12 days notice in advance of the meeting. This does not comply with policy 6.30. Exhibit 5, policy 630, page 3. Community meetings purpose and intent, at a minimum for large and/or significant community interest proposals there should be at least one community meeting no less than 45 days following the filing of the application nor less than 30 days prior to the public hearing. The August 18th community meeting was held only seven days prior to this public hearing. A significant service delivery announcement regarding public safety was made at this meeting. There has not been sufficient time to analyze the new service proposal. Thank you.

>> Commissioner Jensen: And if you would please identify yourself as well.

>> Patrick King.

>> Commissioner Jensen: Thank you.

>> Good evening. Sufficient notice for the meeting was not given. A minimum of two weeks should be allowed for the actual noticing of the community meeting prior to the meeting date to give appropriate advance notice to the community and ensure a successful opportunity for input and involvement. Again, we were given less than two weeks' notice for the August 18th community meeting. Moving on. We were not given sufficient notice for today's public hearing. Exhibit 6, policy 6.30 page 5, mailing notice. Timing. Public hearing notices should be mailed a minimum of 21 days prior to the hearing of significant community interest proposals. We were given less than the required 21 days' notice. Exhibit 7, the staff report, the mailed public hearing notice and policy 6 through 30 directs the stakeholders to the San José Planning Department's Website for answers to questions regarding land development and annexation process. On the county island annexation page there is a link to a memorandum from planning director Horwedel to the mayor and San José city council dated September 11th, 2006. On page 3 of the memo it states, phase 2 and 3 annexation notification for public hearings will be mailed two months prior to the hearing. Again we were given less than 21 days' notice. In addition to not meeting the timing requirements for

notification, the mail notices were not given, were not -- did not get mailed to the proper mailing radius as specified in policy 6 through 30. Exhibit 9, a thousand feet is essential not desirable. Notice for this public hearing and the community meeting only went out to 500 feet radius.

>> Commissioner Jensen: Thank you Mr. King.

>> Not the essential thousand foot radius for --

>> Commissioner Jensen: Thank you, Mr. King. Thank you very much. Staff.

>> I think there's more speakers on this issue.

>> Commissioner Jensen: No we had three speaker cards on the matter of deferral.

>> Tom Davis.

>> Commissioner Jensen: Okay, Mr. Davis had not indicated that he was here to speak on the matter of deferral. If Mr. Davis would like to speak to the matter of deferral rather than the matter -- yes? Okay.

>> My name is Tom Davis. I'm the vice president of the Campbell village neighborhood association. Exhibit 10 the mailing for the 500 distance -- exhibit 11 -- I'm sorry. It was announced at the August 18th community meeting that the Santa Clara County fire protection district would retain Cambrian 36 in their jurisdiction, and San Jose fire department would not provide fire service to our area if annexed into the city. This change to the urban service area was not addressed in the staff report. Nor has the Santa Clara county fire department had an opportunity to respond in writing to the proposed zoning change. The environmental impact report is not accurate. It was completed 16 years ago, and does not reflect any changes to the general area. In addition, the EIR does not include an updated USA, is still sites San José fire department as a service provider. Exhibit 12. E-mail from the planning to the City Manager. You got it, okay. The staff report does reflect the current status of negotiations

between the cities of San José and Campbell. The two cities have been in discussion about the annexation of this area for some time now, over three years. The City of San José is still waiting for a counterproposal from Campbell and that is -- we can back that up with an e-mail. Finally, we are not asking you to vote on the annexation issue. We simply want San José to honor the policies and procedures set forth for this process. Please allow the city staff time to complete and submit accurate reports and give the affected stakeholders reasonable notice for community meetings and public hearings. We need sufficient time to review, analyze and respond to staff reports and the new service delivery proposals. Our neighborhood may be harmed if the due process procedures set forth by the City of San José are not followed. Please vote to defer project C-10-010 to a later date. Thank you.

>> Commissioner Jensen: Thank you. Very nice timing. That was the last speaker card. May I have a motion to close public hearing?

>> So moved.

>> Commissioner Jensen: And a second? All those in favor please say aye. Thank you. Staff would you like to respond to the issues that were raised? On the matter of deferral?

>> Just want to reiterate that we noticed the public hearing for this item in accordance with legal requirements, a 20-day advance notice was provided. With respect to the date, time between the community meeting and tonight's hearing, we did that -- the community meeting that was held was the second of two community meetings that we held. There was one back on May 19th which we provided significant, more than two weeks' notice for that. And the zoning issues for this project were discussed at that meeting. So I think we certainly admit the intent of the public outreach policy. The public outreach policy only calls for one community meeting. We had two. And we submitted every resident in the pocket received an annexation answer book back in April. So which that book addresses all the typical issues that are raised with respect to San José's annexation of pockets. So we feel that we certainly have met the intent of the public outreach policy and the requirements of the municipal code

regarding the noticing for this project and recommend that the council or the Planning Commission make a recommendation to the city council as to the appropriate zoning for this area.

>> Commissioner Jensen: Thank you, staff. Director, did you have something to add?

>> Laurel Prevetti: Just that if there were other specific questions that the commissioners had regarding the testimony that staff will be happy to answer those. I believe it's also our practice for all annexations that we do the 500 foot notice, and so that we did follow the proper procedure as it relates to that noticing. Counsel.

>> I just wanted to clarify, for both the public and the commission, and I don't know if maybe there would be differing information, that what's actually before the commission this evening is not the annexation. So whether or not the annexation occurs will be a decision that's made down the road. What's before the commission this evening is what is known as a rezoning, where whether or not the annexation occurs, if it should occur what are the appropriate uses and what's the appropriate zoning for the area. So when I started to hear staff talk about the procedures that follows for annexation, I just wanted to clarify that this is actually the rezoning. So maybe we can talk about what our practices are with regard to the rezoning items. Otherwise I'm concerned that we might be giving misinformation to the public that somehow the annexation is before the commission this evening, which it is not.

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

>> Commissioner Platten: Thank you. Could counsel or director clarify for the audience what the annexation procedure will be so that we understand the difference between tonight's rezoning and the annexation so that the individuals can understand where they can lodge their position with respect to annexation?

>> Laurel Prevetti: Thank you very much. We would be happy to clarify. This evening, the Planning Commission makes a recommendation regarding the rezoning. And then the city council will make the final decision regarding rezoning in September. We're looking at September 21st for that discussion. The city council is the body that

considers the matter of annexation itself. We take a two-step process. The first step is that the city council adopts a resolution initiating annexation proceedings and setting a public hearing to uncover issues associated with that annexation. So the initiation is tentatively scheduled for September 21st. And then the ordering of the annexation and the actual public hearing on the matter of annexation would be heard October 26th. So that's the tentative schedule right now. Again, it is the purview of the city council, not the Planning Commission, to deal with matters of annexation. Thank you.

>> Commissioner Jensen: Thank you. Counsel.

>> So if I could just echo and add onto what the director was referring to in response to Commissioner Platten's question, the rezoning is not determinative of the annexation. If the council makes a determination that the lands are annexed, that residential is appropriate for a certain portion, that commercial is appropriate for a certain portion, those rezoning actions would become effective only if the annexation actually occurs. So again, what's before the commission tonight is not the question of whether this area should be a part of San José, a part of Campbell or an unincorporated county pocket. That is not before the commission tonight. That, as the director noted, will be taken up by and considered by the city council through the separate annexation process. What's before the commission tonight is, if these lands should become annexed, if the city council should decide to initiate that process and take that action, what would be the appropriate uses, i.e., zoning designations for these lands.

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

>> Commissioner Platten: Thank you. So I'd like counsel to confirm that the understanding then is that the issues that are raised around the written documents received from these individuals who are otherwise requesting deferral with respect for example to continuation of fire service from Santa Clara County fire department, et cetera, those are issues properly raised in the annexation procedure, not on the rezoning issue here, so that we can confirm for these folks that they will be heard and have an opportunity timely to address those issues regardless of tonight's issue.

>> That would be correct. Normally the service delivery would be a topic that would be more appropriate for the annexation proceedings.

>> Commissioner Jensen: Thank you, Commissioner Platten. Any further questions from the commission? Or discussion? We need a motion on this item as to whether or not it's to be deferred. Commissioner Platten.

>> Commissioner Platten: Thank you, madam chairman. In view of the fact that the issues raised, the substantive issues raised by the members of the public tonight with respect to the annexation will be addressed, and you will have proper notice of that, I move that we do not defer the issue on the rezoning question which is before us tonight which does not relate to the objections raised substantively in your papers. On the other hand, I want to indicate that while we may have technically met the rules, staff has indicated we technically met the rules, I can tell that you the commission has long taken the view that the more notice the better. So I just want to make the motion to ensure the members of the public who are here tonight that their concerns set forth in writing are going to be considered in a timely fashion in the appropriate moment which will be the annexation process. So I move that we denial deferral.

>> Commissioner Jensen: Thank you, Commissioner Platten. Is there a second? Commissioner Kline? Is there a second? There is a second. Commissioner Kline.

>> Commissioner Kline: Yes, I can understand why at a speakers, the audience is confused. We're going to do zoning first and annexation later. That sounds backwards to me, too, interesting process. Annexation wars between cities and counties, this county, have been going back decades, just decades. You read Mercury News in the '60s you read all about the annexation wars. I have no particular problem in deferring this to the next meeting or even two meetings down the road. There doesn't seem to be any urgency at all on this item. So if the community does seem to have concerns and misunderstandings on the item, at least we can basically tell them what the process is in a more casual way than just hurrying this up. Again I see no urgency in this so I don't see why we can't defer it.

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

>> Laurel Prevetti: Let me clarify for the commission and the public. And that is that prior to the council's ability to hear an annexation, we do need to have the area rezoned. This is one of the last of the county pockets in the county pocket annexation program. The reason the commission is not hearing the other rezonings that are pending is that they are all conforming rezonings so they don't require any Planning Commission hearing. Otherwise you would have four other rezoning hearings on your agenda tonight which you do not. There is a time issue, and that is, if the city council were to order any of the annexations, in order to meet our county agreement, it's best if those are handled in the fall, so that way all the necessary tax data can be held. You know again, the council will make the final decision about whether or not they wish to annex. Given staff's experience at our two community meetings we've had ample opportunity to hear the concerns of the community. These are similar issues to what we heard last week. We understand that, because there's information that the community is still interested in, that there is an opinion that there's unresolved issues. But for the purpose of annexation -- of rezoning the matters, and we'll get to the rezoning if the commission wishes, those, the concerns that have been raised at the community meetings do not pertain to the rezoning. They pertain to the issue of annexation which is not the topic for this evening's hearing. So we certainly appreciate that, in other instances, the value of time, you know, does help heal and help resolve concerns. But those concerns really pertain to the annexation and not the rezoning.

>> Commissioner Jensen: Thank you, director. Seeing no further questions or comments from the -- thank you, Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you. I really appreciate the fact that you clarified the fact that this is not for annexation, it is really for rezoning. And realizing that there was an earlier community meeting in May, and subsequent, another meeting, and also I've seen this discussion in the newspaper and also other forms of media you have discussed, I think it's appropriate to move forward right now with the zoning discussion. Although I will have a lot of questions of staff about this zoning. Thank you.

>> Mayor Reed: Thank you, Commissioner Bitbadal. Seeing no further discussion may we vote by light on the matter of this particular issue, thank you. Thank you. And that matter passes, this item is not deferred, it will be heard this evening with Commissioner Kline voting in opposition. Thank you. Thank you, and there's Commissioner Cahan on her way in. Thank you. On the matter of public hearing, generally, the public hearing items are considered by the Planning Commission in the order in which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda. Is up as to accommodate significant public testimony or may defer discussion of items to later agendas for public hearing time management purposes. thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. In consideration of time purposes, I move that we move 3D, which is PDC 09-033, to follow 3A.

>> Commissioner Jensen: Thank you. Is there a second? Thank you, Commissioner Bitbadal. The order will be 3A, 3D, 3B, 3C. Thank you. On 3A, I'm so sorry, I completely skipped over the consent calendar. My apology. Out of public hearing, to consent. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak to one of these items individually, please come to the podium at this time. We have one item under consideration of consent, 2A. CP10-037. Conditional use permit to add beer and wine service, drinking establishment, to a newly Constructed restaurant on a 0.83 gross acre site in the Westgate West shopping center.

>> Staff has no additional items to the consent calendar or to the report.

>> Commissioner Jensen: Thank you, staff. Is there a comment or a motion from the commission? Commissioner Kline is moving to approve the consent calendar. There is a second. All those in favor, please say aye. That passes unanimously. And now, with all the reordering we're doing, back on to

3. 3A. Ordinance amendment. An ordinance of the City of San José amending section 20.200.740 of chapter 20.200 of title 20 of the San José municipal code to clarify the definition of a massage parlor use to not include state-certified massage therapists or practitioners. Staff.

>> Thank you. Carol Hamilton, Department of Planning, Building, and Code Enforcement. The ordinance before you this evening seeks to bring the City's zoning requirements for massage uses into alignment with recent state legislation. This legislation establishes a new statewide certification process for massage practitioners and massage therapists, and specifies that massage establishments that utilize only state certified practitioners or therapists should be treated by local jurisdictions in their zoning regulations, the same as personal service uses. Under the current zoning regulations for the City of San José, personal service uses are allowed by right in all of the commercial zoning districts, except the CO commercial office district. On the other hand, massage parlors are subject to specific local criteria. These regulations preclude massage parlors in the downtown. They allow them in the commercial, the CG commercial general zoning district provided the massage parlor is located 200 feet or more from any parcel that has a residential zoning designation and also, 200 feet from any other massage parlor or from any adult use and also, 500 feet from any school. The definition of massage parlor currently exempts certain types of massage from the massage parlor definition. If a massage use is done in conjunction with the practice of certain medical practitioners, if it's part of a state certified massage school, or a small part of a beauty salon or barber shop or health club it is exempt from this being treated as a massage parlor. Also, massage parlors that are located in large regional shopping centers are exempt from the locational requirements that -- the setbacks from specific uses. This ordinance would add one additional exception to that massage parlor requirement, and any establishment that employs only massage therapists and practitioners that are state certified would not be considered a massage parlor. It would be treated as a personal service use. So it would be allowed more broadly in the commercial zoning districts. The ordinance also requires that the massage establishment submit those -- the proof of certification to the city so that the city can keep track of what zoning regulations apply. And this concludes the staff presentation. Staff is available to answer any questions.

>> Commissioner Jensen: Thank you, staff. We have two speaker cards on this item. I'll call you both forward. Bernadette Murray and Beverly May. If you would come down to the front.

>> Thank you, and thank you Carol, for sending us a copy of this. I'm the chairman of the California massage therapy council which was created by SB 731. Just passed two years ago. It's a council that's established to protect the public just like city council, city governments are.

>> Commissioner Jensen: May I ask if you would introduce yourself please?

>> Oh, I'm sorry, Beverly May. I'm sorry.

>> Commissioner Jensen: That's okay.

>> The CAMTC protects the public by certifying massage therapists who meet educational and other standards that was set by the legislature. We are phasing in increased educational standards through that statute which is business and professions code section 4600. We enable consumers to easily identify credible certified massage practitioners, professionals. We make sure that professionals that we have certified have completed sufficient training at legitimate schools. We have been working in partnership of local law enforcement to reduce the use of massage as subterfuge for illicit purposes. Our organization, our board supports this proposed ordinance. It not only makes your ordinance congruent with state law but also enhances the public protections for citizens of San José. Thank you.

>> Commissioner Jensen: Thank you, Ms. May. Ms. Murray and if you would also introduce yourself.

>> Good evening, members of the Planning Commission. My name is Bernadette Murray. I'm a certified massage therapist. I'm certified by the California massage therapy council. I'm also a licensed massage therapist and I'm licensed by the state of Texas and I've had a state license for over 20 years. It has really been very important to me as a massage therapist to see a regular -- a fair, consistent standard of regulation throughout the state of California. And I've been very excited about the formation of the California massage therapy council. I am very supportive of the amendment to your current zoning ordinance that what it does for me as a practicing massage

professional is that it acknowledges that we are professionals, that we have had extensive training, and that I have undergone an SBI and a Department of Justice background check as well as having my education verified by the California massage therapy council. My office in Woodland is in downtown Woodland. I have an associate who is also a California massage therapy council, certified massage therapist. And her office is right across the street from City Hall and I look forward to the possibility that that might happen here in your delightful city. Thank you very much. And thank you very much for moving massage into the 21st century in your city. Thank you.

>> Commissioner Jensen: Thank you, Ms. Murray. Motion to close public hearing? All those in favor, please say aye. Thank you. Staff anything further to add?

>> Staff has no additional comments at this time.

>> Commissioner Jensen: Thank you. Any questions or comments from the commission? Seeing none, is there a motion that someone would like to make on this? Commissioner Bitbadal.

>> Commissioner Bitbadal: I would like to make a motion to approve staff's recommendation. That the Planning Commission recommends to the city council approval of ordinance amending title 20 of the City of San José municipal code, to amend section 20.200.740 of Chapter 20.200 to clarify the definition of a massage parlor use to not include state certified massage therapists or practitioners.

>> Commissioner Jensen: And just for clarification, I'd like to confirm that your motion includes consideration of the use of San José 2020 General Plan final EIR resolution 65.459.

>> Commissioner Bitbadal: That's correct.

>> Commissioner Jensen: Thank you. Is there a second? Would you like to speak to your motion, Commissioner Bitbadal?

>> Commissioner Bitbadal: Having someone who has actually used massage therapists, I know they are absolutely different, quite often are used after someone has had injury or has had -- you know whether it's in a car accident or you've been in sports. So I absolutely have seen -- it's a really different professionally than regular massage therapist that you would see. So certified massage therapists that we have had speak before us, they are absolutely professional, they're certified, and our motion is in accordance with the state law, SB state -- Senate Bill 730 which has put a lot more regulation on this profession. So I absolutely approve staff's recommendation. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. Seeing no further questions or comments from the commission, may we vote by light? Thank you and that passes unanimously. With Commissioner Kamkar absent. I'm sorry.

>> Laurel Prevetti: Let the record show that the vote was 6-1 with Councilmember Chirco absent. We are having difficulties, this one showing as Commissioner Platten as well. Instead of -- instead of our vice chair Cahan. Thank you.

>> Commissioner Jensen: Thank you. And now on tod matter of item 3D. PDC 09-033. A planned development rezoning to allow for the development of a 102 unit affordable multifamily apartment community on 3.46 gross acre site located on the east side of Senter road approximately 610 feet southerly of Tully road. Staff.

>> Thank you, chair Jensen. This is a planned development rezoning that would allow for the demolition of existing church structures on the site and the development of two three story buildings containing 102 multifamily residential units and two one story community buildings. All arranged around a common open space and surrounded on three sides by a surface parking lot. The proposed project is consistent with the San José 2020 general plan as it will facilitate infill development within an urbanized area consistent with the growth management major strategy. As well as maximize the housing opportunity on the site, and add to the production of affordable housing consistent with housing policy number 4. Given this, planning staff recommends that Planning

Commission forward a recommendation of approval of the planned development rezoning to the city council. This concludes staff report.

>> Commissioner Jensen: Thank you staff. Is the applicant here? And if you would step forward, please introduce yourself you may have up to five minutes to speak to this matter.

>> Good evening, commissioners. My name is Jonathan Noble. I'm a senior project manager for charities housing. Charities housing has a long track record of creating affordable housing developments that not only create wonderful living environments for the residents but respect the neighborhood as well. We are active in Los Gatos, Mountain View, San José, Santa Clara and Sunnyvale. Basically anywhere in Santa Clara County, and we've got something going on there. We're very excited about the 2500 Senter Road project. We've been able to create a design that creates a wonderful living environment for the residents, lots of common open space, as well as creating large buffers between us and some of the residential neighbors. We've got a setback of over 100 feet in the back and approximately 60 feet on the side where we abut residential. It's a development that we're like I said very proud of. We're very excited about proceeding forward and we've had a smooth process with staff thus far as well as with the community. Community has focused on a couple different items. Traffic and parking. But we've been able to in response to some of these concerns is adjust our unit mix. We've reduced the number of large units specifically two bedroom units and increased the number of studio and one bedroom units. There was no overall increase in the number of units but by doing so we were able to reduce traffic counts as well as parking requirements for the project. With that I'm available for any questions you may have on the project.

>> Commissioner Jensen: Thank you, Mr. Noble. I have no questions from the speakers. Thank you very much. Motion to close public hearing. There are no speaker cards on this item.

>> Commissioner Bitbadal: So moved.

>> Commissioner Jensen: All those in favor please say aye. Staff anything to add to this? Okay. In the interest of full disclosure I'd like to let you know that you I did speak with the applicant's representative Mr. Noble on this

item. We did not discuss anything that was not available either in the staff report or available through his testimony this evening. All right. Any -- thank you. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I'd like to make a motion to support staff recommendation to consider the mitigated negative declaration in accordance with CEQA, recommend approval of a planned development rezoning to allow for the development of 102-unit affordable multifamily apartment community on 3.46 gross acre site.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Is there a second? There is a motion and second. Would you like to speak to your motion Commissioner Cahan?

>> Commissioner Cahan: After thorough review of the plans it looks like a very good development. Reviewing the area, there is a supermarket within walking distance, there are two laundromats within walking distance, there's a Costco with affordable gas right there. So I think it's a really good location for those with needs of a low - that have a low income. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Seeing no additional comments from the commission -- oh, Commissioner Bitbadal.

>> Commissioner Bitbadal: Thank you, Madam Chair. I actually have one comment. I'm really appreciative of the fact that they are creating 102 feet of setback from single-family homes. And I know that you had mentioned it here but I really appreciate the fact that the minimum is 72 and you've gone above and beyond and I think it's really important for developers to realize when they're building several story residentials, to really consider single family home neighbors around them so I appreciate that. Thank you.

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

>> Commissioner Abelite: I just have a simple question to staff regarding that 100-foot setback. It appears to me in the drawings that are they using tandem parking to increase that setback, is that how they did that? I'm looking at the site plan and it seems to have very deep parking in the back. Is that what I'm seeing?

>> Yeah, the tandem, there is some tandem parking and it is along the rear or the eastern property line. Again, staff also felt that the mix of tandem with single access parking stalls was a reasonable mix and again those will be assigned to the units that have the two -- plus apartment.

>> Commissioner Abelite: Okay, thank you.

>> Commissioner Jensen: Thank you, Commissioner Abelite. Seeing no further comments from the commission, may we vote by light? Thank you. And that motion passes unanimously. On a 6-0-1 vote with Commissioner Kamkar absent. Moving on to item 3B. CP09-042. A conditional use permit to demolish existing gas station buildings, construct a new 3200 square foot pump canopy and 2400 square foot retail building with 24 hour use and offsale of alcohol on a 1.28 gross acre site in a CP, commercial pedestrian zoning district located at 4610 pearl avenue. staff.

>> Thank you, chair Jensen. The proposed project was originally noticed for the Planning Commission on June 23rd, 2010. It was deferred upon request of the applicant so a community meeting could be held prior to the public hearing. A community meeting was subsequently held on August 5th at Terrell school. At that community meeting seven members of the public attended, as well as the applicant, Planning staff, and a representative from city council office District 9. Some of the meeting participants indicated that they liked the concept of a new facility and the related site improvements of the new gas station commercial structure. Others expressed concern about the project interface with single family homes, the potential addition of a new off-sale establishment that's directly adjacent to a 7Eleven as well as another liquor store. The applicant indicated a willingness to perform weekly trash pickup in the immediate neighborhood, add security cameras, and provide recessed canopy lighting to reduce light intrusion on adjacent residential properties. Subsequent to the meeting staff has received several e-mails from the public which mostly voiced opposition to the proposal. Those have been forwarded to you via e-

mail. Specifically the issue of offsale of alcohol was raised in those. These comments were also, like I said, forwarded to you prior to the meeting. We've also received a petition with approximately 350 signatures of area residents in opposition. I'm not sure if that was forwarded to you but I have a copy that I can pass to you along the dais. So based on review of all the comments received at the community meeting and through other correspondence, staff continues to stand by its original recommendation, to approve the physical improvements on the site, but not the offsale of alcohol or the 24-hour late-night use on the site. This concludes staff report.

>> Commissioner Jensen: Thank you staff. And is the applicant here? And if you'd like to instead of forward, introduce yourself you may have up to five minutes to speak to this item.

>> My name's Fred Stern. I'm the architect for the applicant on this project. I'll wait for the overheads to come up. What I'll do is I'll first just present what we're doing and then I'll defer to my final comments as to how we're going to make improvements and mitigate any kind of offsite problems that we have. And we actually have two of the immediate neighbors that are -- if you'll excuse me because I want the other ones to come up too. That are immediately adjacent to our property that are here basically to speak on our behalf. And if you can zoom out, the Xs on the side are the residents that are here to speak on our behalf that can show that we've actually basically taken care of all of their concerns about our project. The existing site is basically oriented with basically three entrances onto the side. There is --

>> Commissioner Jensen: Mr. Stern, if you could pull the microphone a little closer so that -- thank you.

>> Sorry. There is an entrance to the site from the south that joins with the 7Eleven property. There is an entrance onto Pearl Avenue, there is an entrance on to Branham and further to the east which is up against where the properties are. What we're doing as part of our project is we're going to be closing off the western most driveway onto Branham to make it a safer property. We are also going -- safer access, you know for pedestrians and for vehicles. We're going to turn the canopy 90° so that cars that are at the spaces there existing five pumps and a cashier only at the existing site and a bathroom on the very southeast corner. What we're going to do is we're going to orient the canopy 90° so that cars are not facing towards the residence. We are going to place a

2400 square foot new, brand-new building that, you know, we'll work with staff on the looks. This is what was presented to the staff and also to the residents, and they were very happy with the look on that, on that project. We are oriented everything on this project out towards the corner of pearl and Branham. We are trying to reduce any of the incidents and basically improve most of the conditions that are already existing to the site. There is an existing 7Eleven that is directly to the south of us that has had problems on trash, and we are going to look to improve the situation on that area. I just wanted to make this presentation, and then I will defer to my final comments to just basically go over all of the things that we have presented to the neighbors to basically mitigate any kind of problems that this development will cause for the neighborhood.

>> Commissioner Jensen: Thank you, Mr. Stern. And I do have a number of speaker cards and you'll have an opportunity after they have spoken. I'm going to call the first three names, and if you would come and line up at the bottom of the stairs. Jamal Kully, Marlene Ross, Jean Thomas. And Mr. Kully if you would come forward and introduce yourself and you may have up to two minutes.

>> I'm going to be very brief. I'm Art Kully, I'm the applicant on the project. My architect is going to introduce the technical stuff and how we reached out to the residents and basically mitigated a lot of their issues, addressed a lot of their concerns. But what I would like to make clear to the council is that in this harsh economic environment if we do not get approved as a viable project for our banking purposes, it's a deal that will not work. Our banks are waiting for us to come back and say okay we got approval on this project and that's when we will get access to our funds otherwise we will not. We will go back to being a 24 hour gasoline use and that's how it will remain. That's all I have to say.

>> Commissioner Jensen: Thank you, Mr. Kully. Ms. Ross.

>> My name is Marlene Ross. I live in Tanglewood which is a complex over on Adama within walking distance of the gas station. I've been in that neighborhood for over ten years. The 7Eleven has been there. The liquor store has been there. We've got grammar schools right down the streets. There's two schools within walk distance. There's another school down further on pearl. There are a number of large grocery stores that sell

liquor. There's other places that can you get liquor. The 7Eleven and the liquor store have been there. Talking about hard times, they've been there and been established. Having another gas station with these two convenience stores and also selling liquor, I think in that close vicinity, should not be allowed. We really don't need that in that neighborhood, especially with all the school kids there. We have cars that drive through our complex. I think this addition, especially a 24-hour service, these people will be driving in the complex at night and trashing it. I've had my house, not the house but the garage broken into twice. I don't think this would be an asset to our neighborhood. So I would suggest that they not -- not have it. I don't think it's necessary. They've got enough there. Thank you.

>> Commissioner Jensen: Thank you, Ms. Ross. Thank you. Ms. Thomas before you speak I'm going to call up the other. Please come forward but I'm going to call the next three speakers. Carlos on pearl, boon Tan and Linda Alf.

>> Great, thank you. My name is Jeannie Thomas, and I live in the Tanglewood town homes on the corner of pearl and Branham. I've been a customer of the ARCO station at pearl and Branham for 20 years, since 1990, it's my gas station. I understand that there are plans to expand the ARCO station on pearl and Branham to include a 24-hour convenience store which would sell liquor. I'm here tonight for four reasons. Increased traffic, increased litter, in my neighborhood, potential for increased crime. And reduction in my home value. I'm dismayed to hear this news that this development is continuing. Or is -- has the potential of continuing. I'm concerned that another 24-hour store would increase traffic in our adjacent Tanglewood neighborhood. Nonresidents frequently use José speciale as a bypass, in order to make a U-turn at the corner of Narvaez and Branham. Additional services at the ARCO station will increase customers -- that's the idea -- to the location, and this may increase traffic into the Tanglewood complex by way of José speciale. It is likely that increased business for the proposed ARCO convenience store will add to the amount of trash and litter that has already dropped on Pearl Avenue and around the entrance into Tanglewood. Recently one of our residents collected a large trash bag stuffed full of litter and brought it to our homeowners' meeting. It was frustrating to see the amount of trash collected on a single morning by this resident. I'm concerned that another store selling liquor like the 7Eleven and the actual liquor store would mortgage more drinking in the area and potentially lead to more crime, potentially in our neighborhood. Finally I'm

concerned that expanding the ARCO stakes to include a 24 hour convenience store would diminish the value of my home for resale and affect the quality of life in my neighborhood. So I'll end by asking the commission to consider, would you want this to happen on a corner adjacent to your homes? Thank you.

>> Commissioner Jensen: Thank you. Carlos and if you would introduce yourself as you come forward.

>> Hi, good evening, my name is Carlos. And I just want to everybody consider how near is the three stores. There is a 7Eleven liquor store and there is 34 yards between 7Eleven and the a.m.-p.m. they going to build. I just want you to consider that, too close.

>> Commissioner Jensen: Thank you.

>> Not going to be good for everybody.

>> Commissioner Jensen: Thank you.

>> You're welcome.

>> Commissioner Jensen: Mr. Tan.

>> We took this video.

>> This is where the store is going to be. Okay. Stop, come. Taking measurement. Okay, so what, the --

>> Commissioner Jensen: Thank you.

>> 34, 4.

>> Commissioner Jensen: Thank you.

>> Good evening, my name is boon. I'm the franchisee of the 7Eleven next to the project that is trying to build. I live one mile from my store and I'm part of community that is contrary to the owner of the a.m. p.m. They are from, you know, investor from Arizona. So I do care about my community and because it is my community. So just want to show the slides. Why I think it is a bad idea. We have 24 hours, I work two 24 by seven stores sides by side, they have more traffic, more places for kids to hang around, more garbage, graffiti, and more like kids do hang around, more noise, traffic, et cetera. And just to prove my point you know like the city is for the people, of the people. The hearing is just meant for the community to voice. I think the message pretty clear because we have more than 1,000 petitions signed. They are opposed this. And I have another 80 from the Tanglewood petition signed I have not sent to you. The petition from the wine store. So why is a store a bad idea, high concentration, three stores selling liquor side by side, hard to prevent underage kids from buying. If they can't use the wine store, the 7Eleven store? If not, another store to try. On a regular basis, even though by law we can only sell alcohol up to 2:00 a.m. but still we have a lot of youth. It will be worse, more cars, more people, more for the kids before and after school, gas station longer because they're going to go by the store and people get them to buy stuff in the store as well. It is bad for the competition, it is not helping competition because economy is really bad and we don't make a lot of money from a business and we have another store put us identity of business.

>> Commissioner Jensen: Thank you, Mr. Tan your time is up but we do have a question from the commissioner, Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. I have a question for you as the person who is holding the petition, not as the 7Eleven owner. The petition, is that against the remodel altogether or is it just against the 24-hour business and the alcohol sale?

>> Against you know because it is 24-hour, if the business is selling doing exactly the same as 7Eleven it doesn't add value to the community and as far as the 7Eleven the franchisees with this project being approved, my -- the money they invested to this business, my money is going to be --

>> Commissioner Cahan: Again I'm not asking you as a business owner, I'd like you to put on the other hat. You showed us that you have this petition that is signed by residents. I'm asking you if the petition is against there being a building there that sells food or is it against the 24-hour use and the alcohol sales?

>> 24-hours and the alcohol sales specifically.

>> Commissioner Cahan: Thank you.

>> Commissioner Jensen: Ms. Alves. As you come forward I'm going to be calling the remaining speakers. My apologies for what I'm about to do. Michael Gershowitz, thank you. Pretam Grul. Go ahead and introduce yourself, and you can have up to two minutes.

>> Hello, I'm Linda Alves. I live on Meadowhurst, which is right alongside the gas station. When I spoke last time, they asked if I could meet with them and talk about my concerns and maybe we could work things out, and we did. So I had problems with the noise and safety. I mentioned to them about the air and water being right up against the fence with the cars being there. They said they would move it closer to pearl. I was worried about the garbage trucks every day. They said they'd have a cardboard crusher and only try to get it just one day a week for trash pickup. I was worried about deliveries through the night and in the early morning hours. They said there wouldn't be any and they'll try to minimize the amount of deliveries per week. I was worried about noise from the store and hearing noise through the night and affecting sleep. They offered double-paned windows to help diminish the noise due to my close proximity. Regarding safety, I was worried about parking next to the store where it was pretty much out of view. So they got rid of the customer parking there. They also said they would have security cameras around the store and the workers will be monitoring it. So regarding my problems and my personal concerns, they worked with me, and I do feel comfortable with the project going forward now.

>> Commissioner Jensen: Thank you.

>> Yes, good evening, my name is Mike Gershowitz. I'm a resident of Tanglewood town homes, which is a development of 315 individually owned town homes units on about 23 acres of property. So good evening to the commissioners, and thank you for hearing my part of the story. First of all, I want to commend the folks at ARCO that are doing a wonderful job in terms of a beautiful plan. I think that property looks a lot better with the renovations they're proposing, and certainly they've done a lot of outreach to the community and attended a meeting that we held at Tanglewood and addressed the concerns of our residents at least explaining their position. What I want to be clear is, tonight I'm expressing my own personal opinion. My personal opinion, I believe that we have adequate services from the stores that are already locally there. We have, within walking distance, they're directly adjacent to each other. A 7Eleven, as you well know, a liquor store, as you well know. My concern is that on our 23 acres at Tanglewood, it is mostly wooded. We actually have a lot of wood and trees and stuff like that, lots of convenient hiding spots. And the notion of another liquor sale, especially a 24-hour sale, I know already from my communications with the management of the association, that we do have beer containers and things like that. We know it happens. It's people make a purchase onsite, have to get offsite to figure out how to consume that. It does wind up in our backyard. So my main concern really revolves around this 24-hour liquor sale possibility. But I love the idea of improving the way that whole place looks. The comment I'd offer to the commission is if this thing is going to fly, I mean it's another business, it is revenue to the City of San José, please think about the notion of what can be put back into the community. If the liquor sales could be avoided, that would be a good attribute. If not, certainly the beautification is good. Another matter -- I know we've had discussions with the owner of the station -- might be the fact that a traffic light at Pearl at Adamo drive, which is something we've been asking the city for quite a while, would be something if they could help to fund that, and I believe they may raise a proposal. So if they are approved for any aspect of this project, I would look forward to them helping us. Thank you very much, and have a wonderful evening.

>> Commissioner Jensen: Thank you, Mr. Gershowitz. Mr. Greal, and if you would introduce yourself, as well.

>> Good evening, my name is Petam Greal. I'm the owner of the wine fountain, the liquor store next door. Couple of points I would like to make tonight, one is for myself, my point of view where I am at. What we are doing here is, we are opening another identical liquor store, type of liquor store type business. Which is -- which will hurt

definitely to the two existing similar businesses. So as being a part owner of the liquor store, so economy like anybody knows already hard enough. So I'm requesting the city not to make it worse for the existing business. We are -- the item, 23 year residents of the San José city, I want the city to develop, as well, I am you know part of the city. And -- but you know, I don't want the three conjective (sic) stores right next to each other. I would be glad to see a different development, a nice restaurant or stuff like that. So the second point I'd like to make is a lot of the neighborhood come to my store when I work the store. And their great concern is the 24-hour business that it will be open there. And also, the addition of the third liquor place. So those are the two major concerns. So they spoke to me, they stay over in my store with me, what can they do, only handful of neighborhoods could make it here, we know life is busy, lot of them are concerned, one way they show their concern is to oppose this project is to sign this petition. We have submitted hundreds of petitions opposing this project by the neighborhood. Also, the last one, we did a little bit of survey, and within one mile, we have ten convenience store, liquor mart or liquor businesses that store alcohol.

>> Commissioner Jensen: Thank you sir your time is up.

>> And last one --

>> Commissioner Jensen: Sorry your time is up.

>> Sorry, thanks.

>> Commissioner Jensen: Thank you. We have one speaker card remaining. K. G. McGuire.

>> Good evening, okay.

>> Commissioner Jensen: And if you would introduce yourself as well.

>> My name is K.G. McGuire, and my wife and I are the homeowners who live on Meadowhurst Court, which our property line is next to the adjacent 7Eleven easement and ARCO station. Initially we were against this project, showing the same concerns as the other community members. However, spending some time to understand and isolate the project itself, as well as speaking with the franchise owner and the architect of the project, we have come to the realization that the franchisee is actually willing to work with the residential neighbors to minimize the impact of this project. So our bedroom and our future nursery for our daughter, whom my wife is pregnant with, is currently facing directly at the station. So this project and its surrounding businesses affect us directly. There is an important distinction that needs to be addressed and that is between the current problem that exists today and the potential problems that the project itself could pose. For example, currently, just the week ago there was a beggar sitting in front of the store front, an existing business. And there's a sign that clearly states, no loitering. So this addition of this new convenience store will create an aggressive competition between these store owners. But I believe the one that will succeed is the one who will run a better business but also, that will be a better neighbor to the community. And also I believe the net number of consumers of beer and wine will relatively stay the same because this is a well-developed community already and we don't really -- don't believe that there's going to be a population boom in the area. So -- and I would believe that this will pose a minimal impact to the offsale of alcohol in this area. But regardless if the project passes or not we hope this raises attention that there's a concern in the community for safety and cleanliness in the area and we hope that the business owners will help upkeep their property and provide security and assurance that the community deserves.

>> Commissioner Jensen: Mr. McGuire, your time is up. That was the last speaker card. May I have a motion to close public hearing?

>> The applicant.

>> Commissioner Jensen: I'm so sorry. I'm just mixing everything up. If you would like to come forward again, Mr. Stern.

>> Will do, because I would like to get down to the specifics now on this and how we're going to help the neighborhood and not hurt the neighborhood. First of all, the recommendation of the Planning Department to not support the 24-hour sale of fuel is counterproductive to the development. There is a 24-hour gas station there. ARCO will not give up the 24-hour gas station. We have that. We're not going to give it up. ARCO will not relinquish it. Because they already have it in operation. If we have to have that, and we're going to have a convenience store that is going to improve the looks in the neighborhood, it has to operate 24 hours, because people who are getting gas need to come to some place to pay if they're paying cash. So they need to come into the store, and we can't just close the store, and have them have gas unless they're just going to use cards. But we don't want to limit people that are going to be paing in cash. Why would we want to lose the income for 24 hour fuel sales, okay? There's no way I can convince the 7Eleven or the wine shop owner that this is a good request. The reality is that we are competition, and competition is good for the community. The increased gas sales will allow us to give the neighborhood possible reduced pricing on convenience items and the convenience store, including beer and wine, will allow the ARCO to deal more in the pricing of fuel. There is no increase in customers to the area. There is a 7Eleven behind us that they sell beer and wine. There is a liquor store that sells liquor. We're going to be selling the same thing, it's just they're not going to have to go to two places and basically have a greener operation because they're going to do it all in one location. If there was an empty block, and you were to choose a location for a gas station convenience store, I would venture to say that the Planning Department and this Commission would recommend locating at the corner, not mid-block where it impacts the neighborhood. A letter from a representative from the Erickson Neighborhood Association commends us for attempting to improve the property, in the improvements we propose. He express concerns about potential increase in the fast food litter. That is not expected in that there would be no more than already is produced by the 7Eleven, and our clerks are better oriented to police the corner from litter, loitering, late-night noise, and increased graffiti. The proposal would not negatively affect any of those existing problems but would most likely help reduce them. The concerns of Jaywalking across pearl is more affected by the pedestrians attempting to visit the 7Eleven. Access to our property would direct them more to the north to the light at the intersection of pearl and Branham. The positives for this submittal far outweigh any negatives. In fact, the approval of this project and all of our requests will alleviate or reduce the negative issues that already exist. The improvements we are suggesting would reorient the canopy so the cars fueling at the canopy are not facing towards the yards, install

multiple security cameras in and outside the building to increase surveillance onsite and increase the security for the entire neighborhood, close the west driveway along Branham in order to improve safe circulation on and off the site, direct access and activity toward the corner of Pearl and Branham, away from the residential area, enclose the dumpster area and install a roof over the dumpster area, and in addition we will provide a cardboard compactor in order to reduce the number of trash trucks that would have to come in. We are going to try limit that to once a week if we can. Minimize the deliveries and make them from the front of the store where our main deliveries are only once a week from the front of the store. Volunteer, we are volunteering to pick up loose trash in the neighborhood area, which nobody else does right now. Design the lighting to be cutoff type lighting and recessed canopy types lights so that the site is securely lit but the lighting impact is reduced. Approval of the 24-hour operation and the offsale of beer and wine would significantly reduce the number of trips to the south directly affecting the neighborhoods 24 hours a day. In order to get to the 7Eleven if they're coming along Branham they go right along the neighborhood back and forth to the 7Eleven. We would get rid of a lot of that and unfortunately that's what they're concerned about the neighbors than 7Eleven. If we're able to operate 24 hours for the immediate -- for the gas and convenience store, and offsale of beer and wine we are willing to contribute \$10,000 to the light that the neighborhood is asking for on Adamo and pearl. In basically, in ending this, we have requested that this project go forward. We are in need of definitely the 24-hour convenience store in order to properly be able to do things for the neighborhood. The addition of the beer and wine will allow us to do more for the neighborhood and we will have a safer corner than what's there now.

>> Commissioner Jensen: Thank you Mr. Stern. We do have a question for you from the commission. Commissioner Platten.

>> Commissioner Platten: Thank you. Mr. Stern, I just want to be sure, because it is not clear in the staff report. The offsale of alcohol will be limited to beer and wine only.

>> Beer and wine, and we don't want to do that 24 hours. We will limit it to what the 7Eleven is doing right now so that if that seems adequate for the neighborhood, we don't care to do that 24 hours. We don't want to be selling alcohol 2:00 or 3:00 in the morning.

>> Commissioner Platten: Thank you.

>> Commissioner Jensen: Thank you. We have no further questions from the commission. Thank you, Commissioner Platten. There is a motion to close public hearing. There is a second. All those in favor, please say aye. Thank you. Public hearing is closed. Staff.

>> Thank you. Staff wanted to clarify a couple things. And the applicant's correct. Their request is for beer and wine only. But that being said staff is still recommending no offsale of alcohol. The other thing staff wanted to clarify, that in the proposed conditions of approval, there is a requirement for an adjustment to be done so that we can ensure that the design of the gas station portion, fuel, service portion of the project, complies with our storm water quality control requirement for uses of gas station, fueling station being that. Although we have that in the original conditions, we wanted it to be a little more detailed so that everybody understood what we would be looking for in that permit adjustment. And the things that we would be specifying would be to revise the plans to address the following. To demonstrate that the fueling area canopy or cover extends a minimum of ten feet in each direction of the pump. That again is a standard which we use in canopy upgrades in gas station new construction and upgrades. To also separate the fueling area from the rest of the site by a grade break that prevents runoff of storm water to the maximum extent practicable onto the remaining site and then grade the fueling area with a minimum slope necessary to prevent ponding. So again although in our original conditions we stated that they had to submit a major permit adjustment to revise the plans to ensure that they met the requirements of our policy 6-29, we wanted to be a little more specific in what we meant by that and what we would be looking for specific to the gas station or the fueling station area. Again staff is available for any further questions that the commission may have, of the project as a whole. We stand by our recommendation of supportive of the remodeling and reconstruction, but do have the concern of the convenience store operating late-night, as well as the offsale of alcohol.

>> Commissioner Jensen: Thank you, staff. Can you address the question raised about current existing 24-hour use?

>> I mean, there may very well be the existing legal nonconforming 24-hour. A lot of them are. Maybe I wasn't -- was there such a question.

>> Commissioner Jensen: Mr. Stern had indicated that ARCO would refuse to give up its current 24-hour use.

>> If they tear down the site and rebuild, they lose all legal nonconforming status of anything on the site. So they can't retain something for something that isn't there. So they have to reapply for it.

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

>> Commissioner Cahan: Thank you, Madam Chair. To piggyback on your question. So if they built the a.m. p.m. building that had items for purchase, and we limited the 24-hour use would they still be able to have a window open, if they had an tenant there so they could pay 24 hours?

>> There is a way you can design a project so you can support a late-night use of fuel service, and there are -- there are facilities that don't need an attendant for 24-hour. They do take cash at the fueling stations, and stuff like that. So if you want 24-hour it could be done that way, or you could have a window to the outside so people don't have to come into the building. So there are ways to design a facility to support 24-hour use of a fueling operation without other things onsite being open and accessible to the public.

>> Commissioner Cahan: So if there's a motion that follows your recommendation, then does that limit their ability, if they tear down and want to rebuild, does that limit their ability to have gas 24 hours?

>> Yes. And I think counsel can clarify that. Again, they are razing the site. So my understanding, if you raze a site, which means demolish everything, you can't hold onto things for what you build anew.

>> Commissioner Jensen: Counsel, would you --

>> It depends on the circumstances. I mean, if they were under a cleanup order, and so they were required by law to clean up haz-mat, and that necessitated a demolition, there are some cases that provide that if you're acting under a court order or you're acting under the law, that you can retain your legal nonconforming use status. But if you are demolishing the current use in order to institute a new use, then you would lose your legal nonconforming use status because your new use, you'd be applying for under current regulations, and that new use would be evaluated under the current code. So it -- again, it depends on the situation. But I haven't heard any facts that would indicate that you are under a compulsory obligation to clean up haz-mat and that that's prompting this particular development proposal.

>> Commissioner Jensen: Thank you, counsel. Commissioner Cahan would you --

>> Commissioner Cahan: Yes, so is it possible for us to vote to let them have 24-hour gas sales but not 24-hour convenience store sales?

>> Commissioner Jensen: Counsel.

>> It -- you can -- I think we do have the ability to do that. I think the alcohol sales is something that counsel would speak to relative to our ability to you know detail out when we can say where, but we can't necessarily say, you know, how. But in other things, there have been instances or projects in the past where the commission has supported that more specific to the fueling operations on the site.

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

>> Commissioner Platten: Yes, question for staff or counsel. The applicant has indicated it's willing to take a \$10,000 contribution towards the cost of the traffic signals that is sought by the neighborhood. May that be written into the conditions?

>> I know this council -- this commission is fully versed and has background on nexus requirements. So unless this particular development proposal creates the need for the traffic light, I would let the staff speak to that, it would not so much be a condition, but rather, it's a voluntary donation, that the applicant is proposing not as a condition of the development, but that they want to garner the goodwill and the support of the neighborhood. So they -- it sounds like a couple of the speakers have indicated that they have made private promises to those particular private property owners to do things to enhance the interface between the two uses. But again, it would be a voluntary donation, not a condition of the permit.

>> Commissioner Platten: Thank you, as I suspected. I'm prepared with a motion Madam Chairperson.

>> Commissioner Jensen: Thank you, Commissioner Platten.

>> Commissioner Platten: Of move that we Approve a conditional use permit to demolish existing gas station buildings and the construction of a new 3200 square foot pump canopy and 2400 square foot retail building on a 1.28 gross acre site in the CP commercial pedestrian zoning district, as recommended by staff. inclusive of the three conditions indicated by staff with respect to the minimum extension of the fueling canopy, the separate fueling area, by a grade break in the provision of a grade, that would be of a minimum slope necessary to prohibit ponding or pooling. Further, recommend that we approve 24-hour use and offsale of alcohol limited to beer and wine only.

>> Commissioner Jensen: Thank you, Commissioner Platten. Is there a second? That motion dies for lack of a second. Commissioner Kline.

>> Commissioner Kline: I was going to speak on something else but I will make a motion, but I do want staff clarification. Can you restrict just the 24-hour gas, 24-hour convenience, and up to 2:00 in the morning for wine and liquor? I think I've seen that before in other cities, maybe.

>> Well, I think by default, ABC regulations limit the sale of alcohol to 2:00 a.m.

>> Commissioner Kline: But the convenience can be open 24 hours.

>> You can determine if you want it 24-hour, or you feel that a lesser time frame is appropriate, you can recommend that, also. Staff in this case is not recommending anything after midnight.

>> Commissioner Kline: Just for argument sake, I will make a motion. My motion is to deny the use permit completely. I will follow it with a discussion why if I get a second.

>> Commissioner Jensen: Is there a second on the motion? That motion dies for a lack of a second. Can you repeat your motion, please, Commissioner Kline?

>> Commissioner Kline: The motion is to deny the use permit.

>> Commissioner Jensen: There is a second. Would you like to speak to your motion, Commissioner Kline?

>> Commissioner Kline: Yes, I would. I am very attracted to the development of the corner and the efforts the developer actually went through in talking with the community and trying to come up with something. I was hoping that it would be something else than a convenience store. That was my hope. I think he makes a very good argument for being competitive. He makes a very good argument for running other businesses out of business. I think that will happen. I think he's absolutely correct. I think what we'll have is two empty store fronts on that street and in this economy that's a tough one to think about. We have three viable businesses. As the applicant said, the gas station will continue on just pretty much as it is, which is great. And the convenience store, 7Eleven, will continue on, just as it is, which is great. And the liquor store will continue on, which is great. If we approve this, the gas station plus the new AMC will be just great, and the other two businesses will be out of business. That's just the way I see it. So to me, approving this is a negative to the community, overall, in a big way. I just don't understand why you would want three liquor stores on one corner. That just makes no sense to me at all, and from that point of view it makes no sense to me from a business point of view or a zoning or a use permit point of

view. So I would be against this. I would love to have that investment. I would love to have a Starbucks there. I would love to have some other type of density there. It's a big piece of property, a lot of great things can be done with it. Another convenience store selling liquor doesn't make any sense to me at all.

>> Commissioner Jensen: Thank you, Commissioner Kline. Is there any additional discussion from the commission? Okay, Commissioner Bitbadal.

>> Commissioner Bitbadal: It's quite interesting, because in one way, you don't want to put three liquor stores next to each other. In another way you're thinking that competition is good. One thing I've noticed is a lot of residents are discussing issues they have with the current liquor store owners. And I think that has been speaking clearly. And I hope, well, we cannot do anything about the existing ones but I hope that whatever message you are taking with them is that they need to be better neighbors. Thank you.

>> Commissioner Jensen: Thank you, Commissioner Bitbadal. Any other comments from the commission? All right, may we vote by light? And that motion fails on a 3-3 vote, with commissioners Jensen, Platten and Abelite voting against. And may we go back to additional discussion? Commissioner Platten.

>> Commissioner Platten: I have a second motion. That we approve conditional use permit to demolish the existing gas station buildings and the construction of the new 3200 square foot pump canopy and 2400 square foot retail building on the 1.28 gross acre site in the CP commercial pedestrian zoning district as recommended by staff inclusive of the three conditions discussed previously and approval of 24 hour use without offsale of alcohol.

>> Commissioner Jensen: Is there a second on that motion?

>> Commissioner Bitbadal: I second it.

>> Commissioner Jensen: There is a second on motion. Commissioner Platten would you like to spike to your motion?

>> Commissioner Platten: Clearly the sale of alcohol is a third rail issue with a significant percentage of the neighborhood. I think Commissioner Kline's points with respect to the ubiquity of alcohol sales point has some merit to it. Since there is an existing 24-hour use, it seems to me that with the relocation and redirection of the site under this proposal, 24-hour use issues are mitigated significantly. So facing that, the alcohol sale issue appears to be the biggest sticking point, I think we can accept the changes and permit the continued 24-hour use with the changes and the other conditions proposed by staff.

>> Commissioner Jensen: Thank you, Commissioner Platten. Is had any further discussion from the commission? Commissioner Kline.

>> Commissioner Kline: I'm going to support that motion and for the reverse logic, is I think it will make the business decision thought to do this project if there's not alcohol involved in it and therefore things will stay the same which I think is appropriate so I will support the motion.

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

>> Commissioner Bitbadal: Thank you, Madam Chair. I will support the motion because alcohol sales so many of them in such a small proximity is huge issue. I always think of East Palo Alto what it was before as you were taking the exit to university avenue. And many years back, there were rows and rows of alcohol like establishments, alcohol sales establishments. And wherever I see proximity of three stores, although a lot of the arguments they were good that competition brings the best person forward, and makes that best business succeed, what I'm afraid that we're going to have these establishment remain and the pictures of graffiti on 7Eleven really brought those memories back of that exit. So with that I will support the motion.

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

>> Commissioner Cahan: Thank you, Madam Chair. My largest concern with this is also the sale of alcohol, three in a row. So I will be supporting this motion because it limits the alcohol use.

>> Commissioner Jensen: Thank you, Commissioner Cahan. Seeing no further speaker lights, may we vote by light? And that motion passes unanimously, with Commissioner Kamkar absent. Thank you very much. And moving on to item 3C. C 10-010. Director initiated conforming rezoning from county of Santa Clara to R-1-5 single family residence zoning district as to approximately 94.75 acres and CN commercial zoning district as to approximately 8.24 acres for an approximately 103 gross acre unincorporated county of Santa Clara pocket consisting of 330 parcels, generally bounded by central parkway, union avenue, and Camden avenue. Commissioner Cahan.

>> Commissioner Cahan: Thank you, Madam Chair. For my previous reason, on the deferral of this issue, I will be recusing myself.

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

>> Yes, Madam Chair. To reiterate staff's recommendation. Staff's recommending the R-1-5 zoning district as it best reflects the lot sizes in the area which generally range in size from 8,000 to 16,000 square feet. The intent of this is to preserve the existing character of the neighborhood, single family homes on larger residential lots. Also comparable to the existing county zoning that is currently in effect in the area. Staff is also recommending the CN zoning district rather than the CG or CP zoning districts, as it best reflects the existing character of the two commercial areas along Camden and at the corner of Bascom and union. The CN zoning includes setbacks that are appropriate given the heavily traveled street, and the setbacks that are exhibited by some of the new development that has occurred along Camden avenue. The four-story height regulations of the CN zoning are also more appropriate than the CN or the CG height restrictions given the adjacency area to single family residential. This concludes our staff report.

>> Commissioner Jensen: Thank you, staff. Counsel would you like to weigh in?

>> Provide some context?

>> Commissioner Jensen: Please.

>> So for the benefit of the commission as well as the public speakers, the type of testimony you should be hearing tonight is R-1-5 is actually not reflective of the neighborhood, it should be more dense, it should be less dense. CN for whatever reason is not reflective of the commercial areas. It should be CG or it should be CP, more pedestrian oriented. I just wanted to note that in order to have an effective commission hearing on the item that is actually before you, the testimony you should be hearing tonight is the zoning district should be A rather than B or I support the staff recommendation on the rezoning. Once again as noted previously, the issue that is not before the commission is whether these lands ultimately should be a part of the City of San José, a part of the City of Campbell or remain unincorporated county territory. The item before you is, should these lands be annexed in the future, what would be the appropriate zoning districts applicable to these lands. And so you have the recommendation before you with regard to R-1-5 and CN. And the testimony that you should be garnering and request from the public this evening is whether or not those densities and those types of uses are the appropriate designations. Thank you.

>> Commissioner Jensen: Thank you, counsel. I'm going to call the first three speakers up and again if you could line up in the front of the stairs. If I goof up your names my apologies. Tom Bonarito, Jim Aspenwall, and K.G. McGuire. And if you would introduce yourself. And you may have up to two minutes, sir.

>> Pardon?

>> Commissioner Jensen: If you would introduce yourself.

>> My name is Tom Bomarito, and I represent the property owners of the U.S.A. service station located on the corner of Camden and Aaron on Camden avenue. Attached to the staff report regarding the director-initiated

prezoning is a letter from me requesting a change in prezoning from CN to CG for the properties facing Camden. The request is based on the following points. The CG zoning is actually what is proposed in the San José 2020 general plan designation. Two, this is not a new area to be developed. Many of the existing businesses have been established for decades. The service station has a 46-year history of continued service to the community. We believe that the zoning should be consistent with the historical and present uses of the properties involved, at least three of the 14 properties on Camden Avenue have nonconforming uses based on the CN zoning. The surrounding area of Campbell is not only commercial, but industrial. What the current focus on electrically powered vehicles, it is very possible that changes to the U.S.A. station 98 be necessary in the future. Service stations are a permitted use in the CG zoning, a conditional use in the CN zoning. Having said that we understand the reasons for the proposed prezoning to CN and we would not object to it, as long as we or our lessees can be assured that we would not be subjected to unnecessary expenditures of time, energy and money, to maintain an investment and valuable service to the Cambrian community that has existed for over 46 years, if a change in the business use or building is necessary. I think that some of this was covered in the previous --

>> Commissioner Jensen: Yes. And thank you Mr. Bomarito your time is up now but thank you very much for that information. Mr. Aspenwall. If you will also introduce yourself you may have up to two minutes.

>> Good evening, Jim Aspenwall. I should have been up here speaking on deferral of this because I was not aware of the staff document until yesterday when we got some e-mail responses to the Planning Department with a link to the PDF documents. So we have not had time to absorb the full technicalities. Specifically, to speak to the objection of the CN zoning, as it infers network -- neighborhood friendly. Again, not enough time to do speed surveys, traffic studies. But I can assure you that a lot of that area that is you're climbing is neighborhood friendly by this designation is not I have grandchildren I would not walk them down there for ice cream as much as a grandpa ought to because of the traffic hazards. We've had a pedestrian fatality within the last three years because of close proximity to the sidewalk to very high speed traffic out of compliance with traffic laws so in order to meet a CN a neighborhood-friendly zoning I would ask planning and the City of San José what they will do for traffic enforcement to make it neighborhood-friendly. Thank you.

>> Commissioner Jensen: Thank you Mr. Aspenwall. Mr. McGuire, before you come up I'm going to call the last two speakers. Am I on the wrong item? All right, Mr. McGuire's card got back in here. Mr. Chrisman and Ms. Chris Whittaker, please.

>> My name is Mike Chrisman. I'd like to bring up some of the issues about the deferral. If I may I'm concerned that there is so much discussion about the annexation process that we missed the point on exactly what we were requesting. We were very clear I think on we were requesting process, not the content of the annexation. I think that point was missed in discussions. A project this size warrants proper notification. The current notification did not comply with the policy 6-30. The community meetings, those goals weren't met as well. We were never informed what our services were going to be. And I also like to speak to the value of the annexation handbook because it did not accurately reflect what core services we were going to receive to our neighborhood, which has direct relationship to what type of zoning we should be addressing tonight. I'm also concerned that so many -- it wasn't just a single issue that there was so many policy violations that they were so easily not discussed, and so easily put to a vote, without extensive discussion on each point. So I hope that you review that, reconsider deferral. Thank you.

>> Commissioner Jensen: Mr. Chrisman thank you. And we do have a question from the commission. Commissioner Platten.

>> Commissioner Platten: Thank you. Mr. Chrisman, on the meeting that was held recently, was it explained to the participants -- first of all were you a participant in that meeting?

>> I was.

>> Commissioner Platten: Was it explained to you clearly or at all as to the differentiation between the zoning designations between CN commercial neighborhood district, a CG commercial general district and a CP commercial pedestrian district?

>> No.

>> Commissioner Platten: Thank you.

>> Commissioner Jensen: Thank you, Mr. Chrisman. We have no further questions. Thank you, Mr. Whittaker.

>> Hi, my name is Chris Whittaker. I live in the proposed annexation area. I know we're not talking about that issue tonight but I wanted to echo Mr. Kline's comments that I think we got the process backwards and that we are doing zoning, for something that we may or may not do, doesn't seem to make sense to me. And I feel that this is representative of the process that we've been exposed to, where we feel like we are being railroaded into this. And having the zoning take place prior to the annexation is just one more example of that. Thank you very much.

>> Commissioner Jensen: Thank you, Mr. Whittaker. And --

>> Commissioner Platten: I have a question.

>> Commissioner Jensen: Commissioner Platten. We have a question from Commissioner Platten.

>> Commissioner Platten: Thank you, Madam Chairperson. Mr. Whittaker, same questions as to Mr. Chrisman. Were you present at the last meeting?

>> I wasn't present. My wife and kids were there.

>> Commissioner Platten: Were you explained the difference between the zoning of CN, CP and CG?

>> No, sir.

>> Commissioner Jensen: I believe we have some additional speaker cards coming forward so if you would like to step forward and introduce yourself.

>> Hi, my name is Lisa Fletanich. I'm also part of the annexation and I also understand we are talking about the rezoning. And I'd like to kind of go off of what he was asking. Is were we explained what this means? I don't know what CN is. I don't know what CP or QR. I don't understand that or what it means to me. Nor do I understand the R-1-8 vs. R-1-5 which will pertain to me and my neighborhood and my home. So if that's something that can be explained or even something that can, again, be deferred more out because I'd like to understand it so that I can come back with questions. And be able to fully know how this impacts me, in my home and my family and my neighborhood.

>> Commissioner Jensen: Thank you very much Ms. Swetanich. And thank you very much for putting the pronunciation of your name on here because I never would have gotten that and staff will address your questions as soon as public hearing is called. Thank you. Carrie Whittaker.

>> Hi, my name is Carrie Whittaker. I've been at both the community meetings and no information was provided at all regarding zoning. I'm going to echo what Lisa said. I don't know what the letters mean, I don't know how it affects our neighborhood. When we discussed annexation and we met with the Planning Commissioners and we met with representatives from San José nothing about zoning was discussed. The only things that were discussed were really about our services. And I don't want to go into the details of the battle that ensued. But we haven't been informed about zoning at all.

>> Commissioner Jensen: Thank you.

>> And I was at the meeting and the one before.

>> Commissioner Jensen: Thank you, Ms. Whittaker. Is there a motion to close -- is there a second? All those in favor, please say aye. That passes unanimously. Staff if you would like to address the issues that were raised by the community.

>> Yeah, first of all with respect to the discussion of the zoning at the community meetings, at both community meetings the zoning was discussed. In fact at the second community meeting the proposed zoning map was attached to the agenda. It would be very difficult not to see it. It was also included in the general plan. Staff's recommended -- recommendation for the R-1-5 zoning district in fact reflects questions asked at the original community meeting with respect to the ability of property to subdivide. Staff revisited the issue, and looked at the lots in the area, and decided that the R-1-5 better reflects the existing lots in the area, and would discourage future subdivisions that concerns were expressed about. So it's blatantly untrue that zoning was not discussed at the community meetings. In fact the availability of the staff report was announced at the last community meeting as well. So that's in response to those two concerns. A concern was raised about the consistency of the CP or CN zoning district with the general commercial, general plan. Actually, CN, CP, and CG are all considered in conformance with general commercial, general plan. And Mr. Bomarito's concerns about having to go through the conditional use permit process for any modifications to his gas station, those same requirements would apply under the currently CN zoning district that is in effect in the county of Santa Clara. So that's all that staff has to say at this point.

>> Commissioner Jensen: Thank you, staff. There are any comments -- Commissioner Kline.

>> Commissioner Kline: Just to clarify that. So the CN for the county is pretty compatible and consistent with the CN for the city so whatever he has now basically he'll have in the future. If this was --

>> Correct. A service station is a conditional use in the county as well as under the proposed CN in the city. They are very similar zoning districts.

>> Commissioner Kline: Thank you.

>> Commissioner Jensen: Counsel, if you would lend some clarification because there was an additional comment made by a member of the commission and a member of the public regarding the order of the process. And if you would clarify for us.

>> Thank you, Madam Chair. State law does contemplate that before annexation occurs, that cities may consider rezoning the property. And the reason for that is so that if and when the property is annexed, it will already have a zoning designation on it. It won't come into the city and then at that point you start looking -- in effect it would come into the city without a zoning designation. To prevent that from happening, it's state law, the California government code contemplates that cities may consider rezoning the property. So if the property at issue is ever annexed, it will have a zoning designation applied to it. And so there won't be a gap and a delay in terms of what zoning designation applies so that persons may go through the development process and know whether it's a conditional use or a permitted use. And while staff has explained that they have tried to look at the existing lot patterns and the existing uses and match what is currently there, so that the zoning designations that have been proposed would not be disruptive, I think one of the speakers did correctly articulate that to the extent that the -- that the existing use did not precisely align, that those would become legal nonconforming and those uses would not have to go away, they would not have to come into compliance with with the zoning code they would become legal nonconforming just if they were in fact established in the county legally. If they were ever annexed the zoning designations would not force any property owner to modify their home or their business.

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

>> Commissioner Abelite: Just to follow along that line. So I'm talking with respect to Mr. Bomarito's issue, on the CN versus CG. How much more onerous sit, right now he would be coming in as a legal nonconforming use if we took him in as a CN and then if we sliced him out as a CG he would have no issues at that point, could you clarify that for me?

>> I think it would be a conditional use in CG as well, would it not, a gas station? I'm not sure that that would be -- that would be a different -- that would be a different process for him. The CG is more, you know, regional. It is more -- the CG would be more like your Home Depots, more regional facilities. I'm just noting that because one of the speakers felt that CN meant neighborhood friendly, as opposed to the scope of the use, not at the pedestrian level small mom and pop type stores or whatever, it's also not your Home Depot but it's something in the middle akin to, I think, the SIPP that's on Camden and the gas stations and whatnot. I don't know if that helps. Because I know CN, while it means C -- commercial geared towards serving the neighborhood as opposed to CG which is more geared towards serving the region.

>> Commissioner Jensen: Thank you, Commissioner Abelite -- thank you. Commissioner Platten.

>> Commissioner Platten: We have thoroughly explained, counsel has thoroughly explained and the questions by the commission has differentiated CP, CN, CG and the matters that just indicated. You have indicated that the rezoning was noticed on the documents shared at the community meeting. But was it shared in the same manner as it is in staff reports tonight, in other words, was table 20-100 part of that notice, was it clearly explained the difference between commercial pedestrian or was there simply notice that this was going to be the rezoning that had been determined by staff?

>> We didn't go into the detail that's explained in the staff report. We explained what was being proposed and why. But as far as an itemized analysis as to why CN versus CP or CG, no, but we made them notice, we made notice of the availability of the staff report for their reviewing if they wanted to go into more detail as to staff's reasoning for a recommendation.

>> Commissioner Platten: Thank you.

>> Commissioner Jensen: I'm sorry, the public hearing has been closed, and this is the deliberation opportunity for the commission. And the commission will be asking staff questions. Counsel would you like to make a clarification?

>> Thank you, yes. The director just looked up the regulations in the zoning code and in fact the CG, a gas station would be a permitted use, not a conditional use. So it would make a difference at the corner of Camden and Bascom. If it were a CG, it would be a permitted use and in CN it would be a conditional use. They would have to obtain a conditional use permit if they were going to make modifications and whatnot.

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

>> Commissioner Bitbadal: Thank you, Madam Chair. There is a spreadsheet that was provided to us. Is this provided by the staff or by optimum property management? I was wondering if that was accurate.

>> Commissioner Jensen: And Commissioner Bitbadal is referring to a spreadsheet labeled "zoning and uses Camden avenue" that is provided at the back of the staff -- staff report.

>> Yes, Madam Chair, that's an attachment to Mr. Bomarito's letter.

>> Commissioner Jensen: So this came from Mr. Bomarito. Lot of work there sir, thank you.

>> Commissioner Bitbadal: So my next comment is, I think for residential it seems very clear, R-1-5 is the best use, because they are mostly single-family residences. As a matter of fact, that's what the current designation is. I'm also, I would like to have a little bit more explanation, the difference between CG and CN, because it's clear that it's going to affect one business adversely and I want to see how it's going to affect other businesses. And maybe if somebody can go through this spreadsheet and tell me if this is accurate information that I have received in my packet, because there are a lot of businesses there that have been established, they have been well-known and well-respected businesses on Camden Avenue and also on Bascom avenue. And I want to make sure the decision we make is not going to adversely affect businesses during these tough economic times. Thank you.

>> Commissioner Jensen: Director, would you like to weigh in on that?

>> Laurel Prevetti: Thank you. Pardon me if this is a long explanation, but our zoning code has several zoning districts in the commercial arena. We have commercial office which is really intended more for office uses. Something called CP which is intended for commercial pedestrian, which focuses more on pedestrian uses similar to what we see on Lincoln avenue in San José. This is also intended to accommodate retail uses that are close to residential. CN is the commercial neighborhood district. And it is a district that's intended to provide for neighborhood-serving commercial uses, without an emphasis on pedestrian orientation. And that's one of the reasons why it has different development standards which I'll get into in a moment. The CG commercial general is really a district that's intended to meet the needs of the general population according to the municipal code. It allows for a full range of retail and commercial uses, particularly at a regional scale. So think of valley fair, think of Eastridge, our big types of retail. I would caution the commission in its discussion about what is onerous or cumbersome for our businesses. Our conditional use permits and all of our development permits are really the vehicle for you as our Planning Commission to really weigh how we can make sure that business can go forward in a way that is compatible with the neighborhood. So you just heard a conditional use permit, and you balanced very carefully, how do we make sure that this business can move forward with, while still being a good neighbor. And that's really the purpose of the conditional use permit. It's the same purpose in the county of Santa Clara which is the current regulations that this business would have to follow, that needs a use permit in the county, as what's being proposed here. In the staff report, on page 7 of 9, is a discussion of the differences of the development standards. So as is explained in the staff report we considered both the use factors and what would be permitted as of right, versus need of use permit, versus the development standards, in other words, what is the character of the commercial uses along the street. And when we looked at front setbacks of 15 feet as required, a minimum of 15 feet in the commercial neighborhood, compared to 25 feet in commercial general, that could be a difficulty for new businesses. So really, it's not just one aspect of a zoning district, but again, we need to balance all of the different things. And again our use permits are a way to make sure that the businesses can move forward while still balancing the needs of the surrounding community. Thank you.

>> Commissioner Jensen: Thank you, director. Did that answer your question, Commissioner Bitbadal?

>> Commissioner Bitbadal: Yes, absolutely did, thank you.

>> Commissioner Jensen: Thank you. Do you want to speak again? Okay. Commissioner Kline.

>> Commissioner Kline: If it's okay I'd like to make a motion.

>> Commissioner Jensen: Please.

>> Commissioner Kline: Move staff's report as indicated in the staff report without change.

>> Commissioner Jensen: There is a motion. Is there a second? There is a second. Commissioner Bitbadal.

>> Commissioner Bitbadal: Oh, no I was just going to second it.

>> Commissioner Jensen: Okay. Is there any further discussion by the commission? Commissioner Platten.

>> Commissioner Platten: I just want to indicate that you know, these annexations have a political and a personal dimension that go beyond just notification to the public as to the change in rezoning. And I think that that was not handled right here. I really do and I regret now the earlier motion on deferral because I think Commissioner Kline was right with respect to that. Having said that, I believe that the CN designation is appropriate. It conforms as Commissioner Kline was able to obtain from staff agreement that effectively replicates what's already existing for the county of Santa Clara. So it does appear appropriate. I want to warn staff lightly that this obviously is a political issue and I want to re-encourage the members of the public who are here tonight, to show up to voice their concerns about the annexation debate which is the real debate. So I hope in the future since the annexation issues are tender issues, that we take the extra step, and not simply say we've notified, because folks out there aren't lawyers, and they're certainly not planning commissioners or planning experts. So they need the kind of explication that's contained in our report tonight that wasn't contained in the notice. So although I support -- [applause]

>> Commissioner Platten: Support the motion, although I support the motion, I really want to advocate for staff to take those extra steps in the future and I expect to see all these folks back here on the annexation issue.

>> Commissioner Jensen: Thank you.

>> Laurel Prevetti: If I may, I want to express appreciation to the commissioner's comments. Because we've been hearing a lot from the community. And we really do appreciate the concerns that have been raised. The rezoning is really what's the item before the Planning Commission. And we still have other process ahead. So we do take to heart the comments of the commission, as well as the community, that we've heard tonight. Thank you.

>> Commissioner Jensen: Thank you, director. Seeing no further lights, may we vote on the issue of the rezoning? And that motion passes unanimously. On a 5-0-2, with Commissioner Cahran recusing and Commissioner Kamkar absent. Thank you. Petitions and communications. Public comments to the commission on nonagendized items. Please fill out a speaker 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 the agenda. In response to public comment, the commission is limited to the following options. Responding to questions raised or comments made by the members of the community or the public, requesting staff to respond back at a subsequent public meeting, or requesting staff to place the matter on the agenda. Seeing no cards, Referrals from City Council, boards, commissions or other agencies.

>> Laurel Prevetti: There are none.

>> Commissioner Jensen: Thank you. Good and welfare, report from city council.

>> Laurel Prevetti: Thank you. Last week the city council held its land use hearings. Of note was the Guadalupe Mines Roads rezoning which the commission heard. There was significant public testimony similar to what you

heard regarding the riparian setback and other concerns. I just wanted to state for the record that some of your commentary to the public also made its way into the council discussion. So just a reminder that we are being televised and folks can access this information, and your words do live on. So there were several community members who quoted some of the comments that the commission made. We ended up deferring the item or continuing it, rather, to August 31st because of some process concerns. It will be back next week, and the city council will be doing two things. First they will be considering an appeal of the mitigated negative declaration and then they will be taking the merits of the proposal itself. This concludes report from council.

>> Commissioner Jensen: Thank you, thank you director. Commissioners' report from committees. Norman Y. Mineta San José international airport noise advisory committee. Commissioner Cahan, Commissioner Cahan is no longer with us this evening. Envision 2040 general plan update process, Commissioner Kamkar is not with us this evening but I also serve with him on that and we have not had a meeting since his last report. Review and approve synopsis from 8-11-10. There is a motion to approve. Is there a second? There is a second. All those in favor? Thank you. That passes unanimously. Subcommittee reports and outstanding business. I don't believe we have any subcommittee reports at this time. Commission calendar and study sessions. Director?

>> Laurel Prevetti: Thank you. I apologize to the full commission, that I was unable to put together the draft agenda for the retreat, which is coming up next month. On September 23rd. For the benefit of the commission, we typically hold this retreat at City Hall. Typically get started about 8:30 in the morning and concludes about 3:30 in the afternoon. We do provide meals. We will likely be considering the items that come up at our last meeting for the agenda, including a smart growth discussion, because that will frame well the upcoming draft of the new general plan which will be public by the time of the retreat. I do want to note that there is only one commission meeting in the month of September in addition to the retreat. That's September 22nd. So likely, additional study sessions will be held after the retreat, if that's the will of the commission. So we will get you the draft agenda, and we've been able to do that successfully, according to the Brown Act, offline. So we'll be able to handle that in a different manner. Thank you.

>> Commissioner Jensen: Thank you, director. Are there any other comments from the commission on this topic? Okay, thank you. I believe we are done. Thank you very much.