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>> I'm the chair of the planning commission. On behalf of the planning commission, I would like to welcome you to the public hearing of Wednesday December 12th, 2012. Please remember to turn off your cell phones. Parking validation machines for the garage under city hall is located at the rear of the chambers. If you want to address the commission, fill out a speaker's card located on the table by the door on the parking validation table at the back and near the bottom of the stairs near the audio visual technician. Deposit the card in the basket near the planning technician. Include the agenda item number for reference, examine 4.8 pb 06-023. The procedure is as follows. As applicants and applicants may make a five-minute presentation. They fill out speaker cards in the order received. As your name is called, lineup at the front of the chamber. Each speaker will have two minutes. After the public they will need applicants and make closing remarks. They may ask questions and response to commissioner questions will not reduce the time allowance. The public hearing will then be closed and the planning commission will take action on the items. The planning commission may respond to the public testimony. If you challenge in court, you may limit only those issues you and someone else raised in hearing or written correspondence written to the city at or prior to the public hearing. The planning commission's action on rezoning, pre-zoning and general plan amendments is only advisory to the city council that will hold public hearings on the items. Roll call. All commissioners are present this evening. Deferrals. Any item scheduled for hearing for which deferral is requested will be taken out of order to be heard first on the matter of deferral. A staff recommended deferral is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferred dates recommended or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the agenda and to be sensitive to the concerns regarding the length of public hearing, the planning commission may proceed with remaining agenda items past 11:00 p.m. To continue this hearing to a later date or defer remaining items to the next scheduled planning commission date. Decision on how to proceed will be heard by the planning commission no later than 11:00 p.m. Staff? We have two items. The first is item 1A. It's plan development zoning p D.C.-12-010. Rezoning from the agricultural district to apd to allow up to 20 single detached houses on the corner of southeast Mayberry road and educational park drive. This is the property that is being recommended to be dropped and noticed. The second item is item 1 b. It's a conditional use filed cp 11-045 to allow religious assembly including a new 1737 square foot building addition on a 4.47 gross acre site. The zoning district

on the southside of white road, 190 feet of West branch. The staff is recommending this item be deferred to January 9th, 2013. That concludes our recommendations for deferrals this evening.

>> Thank you, staff. Commissioner Howard?

>> Thank you, ma'am. The chair staff, I am not familiar with the procedure on when something is dropped. What's the reason for that? The rezoning? The renoticing?

>> Thank you. The courtesy to the public here trying to follow an item rather than deferring items multiple times and this item was deferred from the previous hearing to deny it originally. In tracking several when we don't send out two notices. We did anticipate that we have issues that we need to resolve and take longer than anticipated. For that reason, we don't want to continue and we expect it will probably come back to the January date. Rather than having three potential deferrals as a courtesy to the community, we will renotice it. Technically the term is we will drop it. It's not technically a referral. We will send out new notices.

>> Thank you.

>> Thank you, commissioner.

>> I would like to make the motion to defer 1A and drop item 1A as recommended by staff and defer item 1 b to January 9th, 2013 as recommended by staff.

>> We have a second from the commissioner? Please say aye? Tea and motion carries unanimously. Calender and staff?

>> Thank you, madam chair. They have no consent tonight and there is no updates to that.

>> Thank you. Generally the public hearing items are considered yard in which they appear on the agenda. Please be advised they may take item it is out of order to fulfill Tate and accommodate public testimony or defer to later agendas for public hearing time management purposes. Item 3 a staff.

>> This is a conditional use permit for necessity. To allow alcohol at a full-service grocery store and existing building located on the West side of McLaughlin avenue North of story road. The state's department of alcohol and beverage control is requesting a determination of public convenience and necessity for the off sail of Chicago because it's located in a census truck identified as having a high crime rate. Staff would like to draw your attention to a minor change in the staff report. In addition to the finding that the proposed use is not located within 150 feet of a residence, it is not located within 500 feet of a school, daycare center, public park, social service agency or residential care or service facility. The draft resolution that you have this evening does in fact reflect the finding. With that, staff is able to make all findings for the conditional use permit and all mandated findings required for determination of public convenience or necessity. Often all of the required findings for a determination of public convenience or necessity cannot be made, but all four findings can be made so the action can be take own this item tonight. Staff recommends approve of the permit and determination of public convenience or necessity. As per the analysis found in the staff report.

>> Thank you. Is the applicant here? Would you please come forward, sir and state your name for the record.

>> Good evening. My name is Dan Cramer and I represent the owners of max market. Thank you very much for the opportunity to speak before you tonight and the staff for all the project. The market is a full-service grocery store. This market used to be located at 1799 south D'Anza boulevard until a couple of months ago when it closed to move to the new location at 955 McLaughlin. The market reopened in October of this year. While the new location is just a little bit smaller than the old store, it's much-improved and offered an extensive array of products from Asia and carries a wide collection of fruit, produce, meat, fish, and other sundries. Hours of operation are from 9 a.m. to 9 p.m. seven days a week and about 50 people are employed at the store. Max market has an existing license at the previous location and is here to request your approval to transfer that existing license to this new location on McLaughlin. While the sale of alcohol is very ancillary of offering, less than 1% of force space will

be used for the display of alcohol. It serves as an important component of the customers that can have a full-service shopping experience similar to other grocery stores of this nature. It's a convenience that the customers have come to expect over the past years of shopping at the d'anza location. There currently two other off sale licenses according to the abc within this census track. One is held by Wal-Mart and the other is held by happy market. This area doesn't have a high concentration of licenses. The other businesses that do sell Chicago in the area are very different in nature to Maxime market. In addition, the surrounding area is heavily commercial in nature. With many buffers between nearby residences. The offering will not disturb the neighboring residences. The owners of Maxime market have an unblemished record when it comes to selling alcohol and they are committed to being good neighbors and providing the offering in a safe and responsible manner with minimal disruption to the surrounding areas. Accordingly Maxime market requests you support this use permit in order to allow them to transfer the existing license to the new location. Thank you.

>> Thank you, sir. We have a question for you from the commissioner.

>> Thank you, madam chair. Was the D'Anza location in San José or Cupertino?

>> In San José.

>> Also in San José. They will not be going back to that asking for the permit to be transferred?

>> Existing license they had at that location. It will be taken from that location and moved. There won't be any net new licenses went San José area. It's that existing license.

>> They were selling alcohol at the D'Anza location?

>> Correct.

>> If they chose to start at that location, the new balance license.

>> The whole shopping center is is a parentally under construction right now. It's not really an option at this point. They are moving the license, it would have to be a totally new application.

>> Thank you.

>> I don't see any more questions under the commissioners. They stated they would like you not to sell malt liquor and individual beers and hours of operation for sale of alcohol to end at 10:00 p.m. Do you have issue on any of the conditions by the police departments?

>> No. The applicant conveyed their willingness to comply with the conditions. Hopefully the conditions are within the conditions of the use permit.

>> Thank you. And we do not have any speaker cards at this point. You still have five more minutes, but if your time is up, you do not have to continue.

>> Thank you.

>> Thank you so much. With that I will close the public hearing portion of the item. Council?

>> Just to clarify for the record, the condition that is the applicant has indicated, they don't have a concern with. They are conditions that we would work with the abc to include them in the abc license. They are not actually conditions that the city of San José would have jurisdiction over. Thank you.

>> Commissioner?

>> Thank you, madam chair. I move to accept item 3 a as recommended by staff and then if appropriate with the recommendation for abc licensing to follow and police's recommendation.

>> And second from the commissioner? Would you like to?

>> I just had a quick question of clarification of staff. When I was reading the staff report, I know that when we are making the finding for the conditional use permit, the overconcentration issue is whether there will be more within 1,000 feet, but looking at the determination of public convenience or necessity findings, that's based on the number of licenses allowed within a census tract by the abc. Is that right? I wanted to make sure I was reading correctly that for this one and I didn't see this in our staff report. I think I see it in the police report that there currently two authorized and this would raise it to three. Am I reading that right? I want to make sure I understood the distinction.

>> I will respond to the first part of the question. The findings are slice and diced differently with respect to use permits versus the determinations. The necessity for the use permit based on the facilities within 500 or 1,000 feet. For the determination of public convenience or necessity based on the census tract usually a much larger area in most cases. It is possible that you might have overconcentration when you look at it from one aspect say within 1,000 feet. You may not have it within the census tract.

>> After the second question, there currently two off sales within 1,000 feet that raises it to three.

>> Okay.

>> Thank you.

>> I would like to give them an opportunity to continue the presentations if you had more comments. We have and motion passes unanimously.

>> Thank you, madam chair. This condition is requested to allow issues until 3:00 for an existing establishment. That's East St. John's street. The subject site is bounded by retail and office uses. This occupies

the tenant space along the property line from the commercial building within the commercial zoning district. The zoning ordinance requires a continual use permit for late night users that operate between midnight and 6:00 a.m. This establishment presently operates from 6:00 p.m. to midnight. It does not propose changes to the tenant space or additional outdoor rides. No alcohol or food is served within the establishment. It is located at a distance more than 300 feet from the distance for the separated and the parking lot development. The police department has stated that they are a posed to a late night operation until 3:00 a.m., but is mutual to late night use until 2:00 a.m. based on a crime inquiry analysis conducted within 1,000 feet of the address. By staying open past 2:00 a.m., patrons who have been consuming alcohol at other locations may congregate at any open business increasing the potential for conflict. Staff would like to note a minor correction on page five of the staff report to eliminate the term public drinking from the conclusion section. Staff recommend that is the planning commission approve the conditional use permit to allow late night use until 2:00 as a project is in conformance to the San José 20-40 general plan and also the city policy for evaluation for 24-hour uses. This project conforms to the requirements of the California environmental quality act. This concludes the staff report.

>> Thank you, staff. Is the applicant here? Would you please come forward. You have up to five minutes to make a presentation and for the record please state your name. .

>> I'm the owner of the hookah lounge. Thank you for letting us discuss our issue here. Pretty much we have a hookah lounge and we are open until midnight from 6:00 p.m. We would like to be open from 3:00 to 3:00 a.m. We would like to be the place where we come after hours to sober up a little bit from what they have been drinking or become sober in another hour or so before they get on the roads and endanger people's lives. Pretty much, we dealt with extra security and hired extra security and we have done everything we can do to keep everyone safe. They recommended we stay open until 2:00. My issue is between 2:00 and 3:00 where we would make the most money. We smoke for about three or four hours. Aside from that, nothing more I can say.

>> Thank you, sir. You also will have another five minutes after the public testimony. So you can come back and continue your presentation. We have one other speaker on this item. Would you please come forward and restate your name for the record.

>> I am the owner of the single family residence on North fourth. That's approximately 200 feet from this establishment. It is since the 1800s has been a single family residence even though it is zoned as commercial general. The adjacent properties are general, but had been single family residences since the 1800s as well. My tenants said the patrons are frequently arriving with alcohol on their car and becoming drunk and throwing occupy their lawn and become a nuisance in general. There is a large number of public nuisance complaints within 1,000 feet of the establishment. When this establishment first came into being, the problem of drunkenness in the area went from a 2:00 a.m. problem with people leaving bars with people leaving the hookah lounge. We believe people are arriving drunk and leaving the lounge to drink in their cars and throwing up in the location and we object to any opening beyond 12. We are quite displeased by the fact that the lounge is this close to a residential neighborhood. They state that they actually believe the people beyond midnight already are parking in neighborhoods 1 to two blocks away and leaving the establishment at times up to 3:00 a.m. That's all. Thank you.

>> No questions at this point. Thank you so much. The applicant has an opportunity to continue his presentation or to do a rebuttal up to five minutes.

>> When we first had opened, we did send out letters and had no objections. If he had issues with him, I have neverá-- this is the first I'm hearing about it. We have been open for a year and this is the first time I hear about it. Everyone is welcome to knock on our door fist they have issues. We have no problem to go ahead and help out. Like I said, since then, since a few months ago, we started with extra security. What happens in our parking lot or what happens on the street is out of our hands. I can only do so much within my property dealing within inside the shop and in the parking lot. I doá-- we have noticed people drinking in the parking lot and we have taken care of that situation by hiring extra security, but we can't go into the street because it's public property. We had asked the police department to make rounds around the area several times to make the presence known, but to no avail. They haven't been doing it. With customers, it is free parking after 6:00 p.m. I can't stop that and we have right now signed a deal with the third street garage in order to get parking validated there as well. So there is no more parking issues on the street.

>> Thank you, sir. We don't have any questions for you. Actually commissioner? Would you please return? There is a question for you. From the planning commissioner.

>> Thank you, madam chair. Hearing the concerns that your neighbor has and obviously you don't have any control over thing that is not on your property, but are there practices having heard these concerns that you can envision doing to alleviate the issues?

>> If he is willing to sit down today and we can talk about a solution to help him out, if there people throwing up outside on his lawn as he is saying, I have no problem paying for his gardening service or if there is something, as much as I can prevent, I will. I cannot control everyone.

>> Sure. Thank you.

>> As much as I would love to.

>> Thank you.

>> Thank you. We just received another public request. Public speaking request on this item. Linda dean. Would you please come forward. You have up to two minutes to speak.

>> Thank you for accepting this short notice. My name is Linda dean. I run sober living environment dual diagnose and work with mentally ill men around the corner. I just want to bring up that I don't know if anybody has brought into the equation that in the same building complex is a marijuana dispensary club. By my observation there is a lot of individuals that go into the pot club and kind of remain around. I would be concerned and I don't know if there is any monitoring of smoking any marijuana in the hookah lounge. I know there is not alcohol there. If there is a convergence of people outside the facility, the lounge that could be intoxicated and unfortunately throwing up and doing all of that, could there also be under the influence people using the service of the pot club and kind of making it a little bit more complicated within the lounge. We can't stop the pot club yet. I'm

very susceptible of that because my paranoid schizophrenic joints are all over the place. They pick up the joints and smoke it that makes them psychotic and end up in eps. I would just like to say that if the lounge is there, it's there. If it's kept at 12:00 or if it's extended until 2:00, I understand the gentlemen's need to extend it until 3:00, but if there could be a monitoring of the marijuana being within the facility outside the facility as well, I would appreciate that kind of consideration. Just for the safety of the neighborhood. When schizophrenics get psychotic on pot and or alcohol, it could be pretty dangerous.

>> Thank you so much for your comments women have a question from the commissioner.

>> Thank you. A question. Thank you, madam chair. If I heard you correctly, some of the issues you brought up doesn't have to do with the lounge, but the medicinal dispensary that's in the same complex.

>> Yeah, but could influence patrons.

>> If I also heard you correctly, you said you don't know if these are issues. You are asking the question. That's all I have for you, thank you very much. Madam chair, I wanted to ask if it's possible for the owner to come back.

>> Absolutely. Since we took the speaker out of order, we can have the applicant come forward. If he wishes to do rebuttals or continue his presentation because he has time available.

>> To address her concerns, the medical marijuana place has been open long before we were there and has been an issue long before we were there. They close at 6:00 p.m. We open at 6:00 p.m. The people are gone by 6:00 p.m. so they have no issue with us. Their patrons, I want to say probably about 1% come to my place as customers. Since day one, we never had an issue with marijuana. People know we have signs posted up outside that if you do try to put marijuana or attempt to add into our thing, you will be charged \$200 and prosecuted to the full extent of the law. All our signs are up and have not had an issue with it since we opened in August of 2011.

>> We don't have any more questions for you. I will close the public hearing portion of this item.

>> Staff has no additional comments going on. Madam chair?

>> Madam chair, if I may, I just wanted to inform the entire commission that I received a request this afternoon from one of your fellow commissioners asking if the police would prefer to have a 1 a.m. close as opposed to a 2:00 a.m. I had an opportunity to talk to the officer who wrote the staff memo in your pact. She informed me that she was really trying to make sure that the 3:00 a.m. was absolutely known as something that the police department no way, no how would support. They wrote the memo from the perspective of the applicant's request and wanted to be very clear that they were a posed to the 3:00 a.m. They were neutral to the 2:00 and given the way the staffing works and the shift changes, et cetera, she did indicate that of course from a police perspective they would be happy to have closing hours be even earlier than 2:00 a.m. For the benefit of the full commission, I wanted you to have that information. We did get an inquiry from a single commissioner. I want you to know the police wrote their perspective and indicated a preference for an even earlier close time. I hope that assists the commission in its deliberation.

>> Thank you. Commissioner?

>> Thank you, madam chair. In that conversation, she didn't seem to have a strong preference between 1:00 and 2:00. It was earlier is better, but with the amount of officers it's insignificant or would it be a significant difference?

>> The shift changes happen around the 1:00 time period. There less officers available even though we augment in the Downtown area with the entertainment. Overall there is less staff. 1:00 a.m. is different than say 12:00 midnight in terms of the total number of officers. Again, their main point was to make sure that the establishment would not be granted a permit until 3:00 a.m. There staffing considerations and our budget is very fluid. She was talking about what our staffing situation is today in 2012. To the extent staffing levels are a fact for your consideration, that was information that was provided and I wanted to share it with the full commission.

>> Thank you.

>> Commissioner Kline?

>> Was there an issue with the weekends Monday through Thursday?

>> Not in my conversation with the police today. I think she was again responding to the applicant's request and that was really the issue before. Again, as the commission as you wish to make modifications to the staff recommendations and put any additional documentation into the record, we of course would appreciate that. Thank you.

>> Commissioner?

>> Thank you, madam chair. Just for clarification following up on commissioner Kline's question, if the staffing shift change and the lowering after 2:00 a.m., is that seven days a week?

>> That's my understanding from the conversation. Given that the conversation was happening this afternoon, we didn't have a lot of time to pull all the empirical data of exactly what the officer account was, but she was able to say that from in terms of absolute numbers that it is reduced after 1:00 a.m.

>> Thank you.

>> Thank you. At this point I will entertain a motion on this item. Commissioner?

>> Thank you, madam chair. I move that we accept the staff recommendation for approval.

>> Second.

>> Commissioner, the motion. We have a second. Would you like to speak to the motion, sir?

>> No. I don't have anything additional.

>> No comments from the commissioner at this point. We will vote by light.

>> Thank you and the motion carries unanimously. Item 3 c staff.

>> Thank you, madam chair. Item 3 c is a planned development permit appeal of the director's decision. To approve a plan development permit for a 229,794 square foot commercial office building with a below grade parking structure on a subject 1.89 gross acre site at the southeast corner of Winchester boulevard.

>> Excuse me, I'm sorry to interrupt you. I realized there two commissioner who is need to recuse themselves. Commissioner Kline and commissioner young. Would you like to speak to the motion?

>> I will be recusing myself from 3 c as my office represents the appellant in this matter.

>> I will recuse myself because I leased a town house within 500 feet of the project.

>> Thank you. We will have to wait until they leave their home and continue the discussion. Thank you for your patience.

>> We can continue your presentation.

>> Thank you, madam chair. To this point, the permit was the decision that was appealed for an office building. That was on Oleson drive. Additional correspondence on the item was received from the appellant today. This was E-mailed to all of the commissioners, however I have provided hard copies to you this evening as well. As discussed in the staff report, the subject planned permit is consistent with the golden policies of the general plan. More specifically the focus gross major strategy that focuses new growth into areas that were

unable with the city goals for economic growth. Fiscal sustainability and environmental stewardship and the development of new attractive urban neighborhoods. The site is within a mixed use area and the project will intensify uses accordingly. The planned development permit conforms in all respects to the planned zoning which was file number p D.C. 12-009 on the subject property. In that they conform to the development plan and adopted by the 29118 on August 21st, 2012. Specifically the zoning development standards for the overall development allows for a total of 937,500 square feet of commercial uses. The plan development permit as approved did not exceed that total allowable square footage for commercial development. The project meets the parking requirements as described in the development standards for the entire development site. The project meets the height requirements. If are these reasons, they say they can approve the planned permit. This concludes staff reports.

>> Is the appellant here? Would you please come forward? You have five minutes.

>> Excuse me for a second. Commissioner?

>> I was wondering what the benefit of the planning commissioners, I would ask council to give us guidance and focus as it relates to what we should be considering in this particular appeal. When the appeals are distinct, they are very focused on certain issues. I want a little bit of guidance before we take public testimony so we can listen to it in that perspective.

>> Thank you for the benefit of the commission. I believe what the commissioner is referring to is that you have received quite a bit of correspondence and you may recall that earlier in the year you did make a recommendation to the city council on the broader rezoning for the site. This particular permit would implement a portion of that rezoning so the original rezoning covered a variety of commercial uses in addition office. There was restaurant and drinking establishments and I believe retail sales of automobiles and the particular permit that is before you this evening is an appeal of the planning director's determination to approve a plan determine the permit for the office portion. I don't know if that's one of the elements that you were thinking about. The rezoning has a broad variety of uses and the planned development permit is simply to implement a portion of that rezoning

on a particular site and I believe it's lot 11. The other element is that you did also receive quite a bit of correspondence in connection with the clearance that was issued for the plan development rezoning and my understanding tonight is that the appeal was of the permit and not an appeal of the determination to add to the permit. I will let the hearing proceed, but hopefully that gives you the type of information you were interested in. I hope that's helpful to the commission.

>> Thank you and thank you for your patience.

>> No problem. Thank you. Commissioners, by way of introduction, I am a resident of Santana row. The decision is serious that will have material implications on all stakeholders and it's worthy of a deep and thoughtful discussion by the commission. The points I want to make are the following. It is premature to approve the zoning because of the mitigated declarations have been challenged in court. Since this is on the entire rezoning of p D.C. 12-009, this permit is based on a defective map and data as well as the office building in particular. For example, the study incorrectly states it is 60,000 feet and use of Santana row. We know this is wrong. In fact, it is approximately 114,688 feet of office space in Santana row. As a result they reported. If the actual number we will use and the construction of a 229,700 square foot building would exceed the square footage entitlement allowed by 20% as inconsistent with the zoning. This commission recommended the approval and the total office development to be 288,200 square feet. They approved this recommendation and staff wants you to ignore this by looking at the total of allowable retail and office space combined rather than the amount of space that was studied and approved. This permit calls for the construction of a 229,700 square foot building with 497 parking spots being built over the existing condition. This is 2.6 spots for 1,000 square feet of floor space. No parking study was done that demonstrates there will be sufficient use to meet the parking demand for all land uses. Staff would have you believe by reducing the minimum requirements to 2,661 spaces which is below the existing 3,640 space, there is not a problem. This is total nonsense. This is the analysis to determine the number of spots actually necessary to meet the project demand at full build out. Furthermore, the office prepared does not comply with methodology in the traffic handbook. That requires a complete operational analysis of materially impacted intersections whether signalized or not. To allow access on the circulation and parking. They should be identified to address the issues. This was not done. I want to point out that they are currently defective

and does not address the noise and safety issues. No noise studies were conducted by the applicant or staff to discuss the impacts of entertainment uses and to put a sharp focus on it, Santana Rowe is a residential development. There will be 13 million square feet of residential space while total retail entertainment combined would be 940,700 square feet. There over 1,000 people residing here. I particularly provide you with more information about crime and safety objections which I made to the mmd. Right now there is a lot of talk in the community about the reduced number of police officers. There has been no city. To analyze the impact of converting Santana row from a high end retail community to an entertainment zone. The question of crime and safety has been ignoring the analysis of the zoning that will get the approval of the permit. Police studies committed to the staff in support of other pd permits have found v F2 to be 65% above the crime index. Santana row is in beat F2. I will provide you with a number of documents, but I want to point out the response to the pd permit, pd 11-028 that came before the commission in January of this year. This very commission denied this permit bypassing resolution 12.002 that said among other things and quote, after considering evidence presented by the public hearing and the planning commission find that the following are the relevant facts regarding the proposed project. Fact number ten, the police memorandum indicate that is the project is located in a high area of crime. Based on the findings by the planned development permit and the determination of necessity, this proposal for the addition of off sale alcohol is here by denied. This was a unanimous pass. I want to be clear on my last point. I am not opposed to the eventual construction of a building in Santana row, however you cannot ignore the Santana row is a mixed use project. I'm opposed to the failure of doing the proper analysis and make sure it does not impact the residence and people residing at the Belmont village and impacts are adequately mitigated. I urge you to deny pd 12-014.

>> Thank you, sir. The applicant can come forward. State your name for the record and you have up to five minutes to make your presentation.

>> Good evening. I'm Yon sweet with federal realty. I want to thank the commission for your consideration this evening and the staff for all your incredible hard work and the community for their interest in Santana row. Ry appreciate it. We fully believe that this pd permit is fully consistent with the current zoning. We urge you to deny

the appeal and issue the permit. I thought we would spend the first part here introducing the building to see what we are talking about. I want to introduce the development partner, Tom Sullivan.

>> My name is Tom Sullivan and I'm with Westwood partners on this project. I have appreciated the opportunity to show you the building tonight. I tailored my remarks to be brief to work within the constraints of the format tonight, but I would be happy to discuss this as much as you like and be happy to answer any and all questions you might have. I hope I am doing that right. Oops. Is there a way to show the entire picture to zoom it out. Thank you. This is a building that has been designed to meet the needs of the technology tenants specifically in the market today and into the future. We think it's really tailored to where the market is going. We think it will be one of the finest office buildings in silicon valley and think it will lead the way for a generation of buildings to come. At the same time it has been designed to specifically address the kinds and quality of space that technology tenants want and need. It's been designed to be consistent with a level of standards that has been established at Santana row and think it is a cut above what's being done elsewhere generally speak. This is a view that we are looking at here of the North side of the building. We are looking across ole with Winchester on the right looking to the south. This side faces away from the sun. The facade is dominated by the floor to ceiling glass wall that will allow maximum penetration of natural daylight into the space which is of concern to tenants today. It presents a very accessible and attractive elevation to the residents and visitors at Santana row. Particularly with the public open space, it will be in the front of the building which you can see bracketed by the portion of the building on the right and dominated by the live oak specimen tree in the center of the open space. This is a view of the other primary faces of the building. The south, the long facade and the West, the shorter facade. We are standing in Winchester and looking at the building to the Northeast from the southwest. These facades are facing towards the sun and get the most intense concentration of sun light and instead of being all glass like the other, we think they are elegantly proportioned and large windows in a precast concrete building envelope. What really sets this building apart though from virtual lie any other building in the valley is the character and the quality of the interior space. This is what matters to the tenants of the building. This building has been designed with a structural concrete frame that has been inspired by the warehouse buildings on the south of market in San Francisco. Which for anyone who has familiarity of the market knows they are in the greatest demand of any believe in San Francisco in the financial district. It's where the technology companies are going and provides

the kind of space that they want to have. It's what San Francisco calls the creative space. The open ceilings will be 13 feet high and the floor place represented in the picture will provide the kind of efficient open and flexible space they need. We should mention that the building will exceed lead gold standards and we are going beyond the minimum requirement that is necessary because it's the right thing to do and think it will increasingly matter to tenants going into the future. I did want to mention one other aspect of the building as well. We are going well beyond the code requirements and trying to make the building attractive to bicycle commuters. That's another trend that we think will be increasingly significant in the future. You see more in the valley now and you see much, much more in San Francisco. As time goes by in the relatively near future, we will see more people commuting by bicycle in silicon valley. What you are looking at here, this is not the greatest picture, but what you are looking at are 44 enclosed bike lockers within the top level of the underground parking structure. We are going way beyond the minimum required. I am running out of time.

>> Your time is up, but you have five more minutes later on in the evening.

>> Thank you very much for your time.

>> Continue your presentation.

>> The commissioner has a question for you.

>> Thank you, madam chair. There additional bike spaces so that's 44 there, but are there other areas around there that people can lock their bikes up?

>> Just within the project not counting the rest, there a dozen more spaces near the front door in working with staff. They asked us to play some spaces by the front door for the convenience of potential visitors on bicycle as well as anyone who might prefer to go there. We designed the primary facility in the parking structure because it's out of the weather and protect and safe and secure and provided all bike lockers so it's not just access lockers. We have six fully enclosed changing rooms that will have a bench and a hanging rod and a sink and toilet

and shower. The commuter can come in and get completely cleaned up and changed in privacy in the parking structure before ever going up to their office space. The idea is to make it really pleasant and convenient to use the bicycle facilities here and there by make it more likely that people will commute by bike.

>> You also have electric car charging stations?

>> We will. Yes. Can I mention one other thing, but just to clarify the record, I think the appellant mention the parking spaces. There will be 675 in conformance with the code.

>> I believe what he was referring to was after you discount spaces already existing in the area. Then that changes the number. One more question for you, if they have an entertainment area in the office?

>> Many people think work is entertainment. There is no entertainment.

>> This is the table in your drawing. Other than that.

>> Correct. There is aá-- there will be a small retail building in the front. We do not envision the entertainment use there. If the monitor can go back on, this is a site plan. It shows a floor plate of the building and a very smallá-- this is facing North towards the apartment building across the way. This little building is a retail building. That we imagine having an and intend to have a primarily lunch-oriented food service facility. It's about 1400 square feet.

>> The food service facility there, I think part of the concern that neighbors have is that some of the food service facilities have turned into entertainment uses in the late evening. Is that a potential for this?

>> It's not part of what we intend. It's not part of the plan. We don't know who we will lease it to so it's difficult to say with certainty what that tenant or business operation might be. Our interest is to make it amenities of the office building.

>> What's the capacity for that section? For that retail space?

>> About 1400 square feet so it's about the size of a two bedroom apartment.

>> Thank you.

>> I will move forward with the testimony. I have a couple of speaker cards on this item. And Andrew fisher. We have been on Mr.áFisher as well. I would appreciate that. Please state your name for the record.

>> Representing the protest ant, Phil and PEGGY cohen. Good evening and happy holidays. Thank you. This is still a compatibility issue between the residence and this outstanding community called Santana row. You wouldn't have this pending lawsuit if the two sides were able to get together and work a little bit harder to try to get through the issues that have created this impasse. What huh tonight is an opportunity. What I would suggest is that you consider deferring the action tonight and directing the applicant with the protest ant to try to work out a common agreement in finding a compatible way for these residents that areá-- you talk to them going through torture in the evenings because of the excessive noise that is going on. To try to work out a reasonable compromise. You do have an opportunity tonight by going ahead and just deferring the action. The lawsuits going forward anyway and that potentially can invalidate everything you are doing. If you can nudge the applicant to work seriously with the protest ant to try to find a way to work through their impasse, we get through this. It really is a compatibility issue and strongly recommend you defer your actions. You can always take this up again next month. At least give an opportunity for them to work things out and have a win-win situation.

>> Thank you.

>> Thank you. We have a question for from you a couple of commissioners. Would you please return.

>> Thank you, madam chair. I would like to say that I was contacted by him and I told him that I wouldn't be able to talk to him about this issue because of the issues and the planning commission has been discussing. So we

didn't discuss the issue any further. What I'm hearing from you this evening is that there is concern about late night entertainment use. What I just heard from the developers was that their plan was for retail space of 1,400 square feet to be used as food service, but during the day. I wonder what your thoughts are for how that might translate into potentially being an issue for the neighbors or maybe it's not really an issue in this office building, maybe there is another portion of the development that you are referring to.

>> Yes. The office project is a great project and the applicants should be commended for what they are going forward with. Because you have the process involving the actual zoning and this is the only opportunity for the protestant to raise their issue. The problem is these restaurants that offer great dining up until 9:30 or 10:00, but after 10:00, they turn into a wild nightclub. These residents that are living directly across the street from the one active nightclub, Blowfish sushi, that is open until 1:30 or 2:00 in the evening. They did get a pd permit. The conditions are not being enforced by the police department. We know why they are not able to do it. You have this catch 22. There is probably ways of mitigating it and we go back to suggest the parties get together to try to work it out. Right now with this going forward, there is no reason for the applicant to do it. It is a late night nightclub use that is the problem.

>> So if there was something that the developer could say this evening, what would it be to make your client happy with the current structure?

>> If we were to get into the specific conditions? I think in general, commissioner, what you have is the excessive noise that occurs after 10:30 to 1:30 and ways to have different opportunities to mitigate the specific noise that occurs at the sushi in regards to that specific case. The concern that's that these residents have and there 21 town houses that look over the hotel Valencia area where Blowfish sushi is is representative of the over 1,000 residents that have the same concern. They all want to live in Santana row and like the interface of a really nice urban development of residential and retail commercial, but in this instance from that 10:30 to 1:30 in the evening where you have the excessive noise and presumably conditions in the pd permit that was supposed to regulate it, but they are not enforced by the police department. You have the catch 22 and there probably specific mitigation item that I think the applicant would be able to work out. Whether there enclosures or dealing

with specific noise mitigation levels. I can defer to Phil and he can get into more detail on that. As I understand it, they feel confident if the applicant was serious about trying to resolve the issue, they would make progress. They had to revert to a sequel lawsuit to get their attention.

>> Mr. Sanders, would you tell me how you think the lawsuit relates to the issue before us this evening and you believe that directly in relation to the lawsuit why we should be deferring the issue because of it.

>> In these terms it, the ability of these restaurants to convert to a nightclub use is predicated on the rezoning that is the subject of the clearance. The lawsuit is based on the fact that you now have the ability of these restaurants to convert to nightclub uses. I'm not the lawyer of record and I would defer to council on this, but that's my understanding that you have the sequel clearance that allows this convergence to nightclub uses.

>> Thank you. We have several more questions for you.

>> Thank you.

>> Commissioner?

>> I'm trying to reconcile exactly this. When you testified before us in July, your opening remarks were the 1 and only issue here that is really noise. By some of the E-mails I got in reading through those, it's noise to do the Blowfish or other late night entertainers. Looking here at a pd application and just to build an office building with a top end 1400 foot space that is larger than a subway space. It's not a very large space and will not lend itself long-term. That's I don't see converting into a late night use issue. I'm wondering do you find it reasonable that a project of this magnitude should be held up pending a sort of resolution of late night noise issues that are a couple hundred yards away unrelated to the project? I understand and agree with the concern you have, but the only opportunity the residents have is on the overriding sequel of clearance. So you can't separate the individual aspects out. You have to protest the overall clearance which is encompassing of the whole center. It's unfortunate that it is stopping the world class office in going up. We support the office project, but if they are going to

make progress in the problem that is paramount and the success of noise and compatibility with the residential living environment, they have to file the lawsuit. They have to protest this office project.

>> I understand that, but that's not their only avenue of recourse also. When somebody buys in a continuum project, they have disclosure of material facts and things they are buying into. I would envision that they have other satisfy avenues of recourse other than litigation. The number one litigated item in real estate sales is failure to disclose material facts. So if for instance, if they didn't do this disclosure properly, it's not a question I am discussing with you. Do you believe they have other avenues of resource as it relates to noise? I think they do.

>> There could be and I think that's a good point. That's why if the parties were force and there was a time out and the parties were forced to sit down and try to find a middle ground to satisfy them, there would be a remedy there. That's what I am suggesting.

>> Perhaps. There other forms and ways to solve it as well. No more questions. Thank you.

>> Thank you. Commissioner?

>> Thank you, manager. We have a question about the rational for the deferral. When you were here last time, the noise issue was discuss and we made comments about encouraging the two parties to talk about resolutions of the issues. Time passed and has there been activity in terms of trying to resolve these? What purpose would be served by a further deferral if we had the opportunity over the last several months to resolve this?

>> Good question. There has been some meet O meetings and there wasn't any meaningful progress in regards to finding a middle ground. I think the purpose of the deferral would be to demonstrate to the applicant this they need to make progress with the residences. There needs to be some progress in regards to how the developer here works with the residents to provide for an environment that is compatible for them.

>> You are suggestingá--

>> I'm suggestingá--

>> What are you suggesting about the developer so far? You are implying that he hasn't been working with you to come up with a resolution?

>> I'm aware of one meeting that occurred and I believe that was a by product of the statutory requirement of the conference because of the lawsuit. There has not been any meaningful discussions. I know that my client is very open and very willing to sit down and have a meaningful discussion in regards to trying to resolve this. I'm suggesting that they would offer that opportunity.

>> Thank you.

>> You're welcome.

>> More question for you.

>> Thank you, madam chair. For the purpose of disclosure, I received an E-mail with all due respect to him, I did not determine as for the respect for the ongoing planning commission. The discussion that was going through, but my concern is basically the same thing as has been mentioned. To me there good actors and bad actors within that facility. The good actors comply with the conditions of the permit and comply with the noise requirements. The bad actors won't. Bad actors lose their license. It has happened within that alleyway. When you say residents, I see one here. He may be right across and he gets the bulk of the noise. I understand that. I also feel that it is not the appropriate venue to get the applicant to stop what they're doing to address, especially because of precedence issues. If you set a precedence that this is how you can stop the big projects from going forward, I don't think that's the right message that we want to send. All of us recommend to the applicant to work with the appellant. No question about that. I just don't feel this particular proposal in front of us

is close enough to where the applicant or the appellant resides to make a difference. If I am mistaken, let me know. The other result, the other reasons that you gave us to defer for a month, I'm not convinced.

>> Not asking for a denial. Asking for a deferral. There is a difference there.

>> No, but deferral has costs too. You are a developer yourself. You know if you have everything to go, contractors waiting to jump in and get the job done. Get deferred. So it's not as simple as just deferring for the heck of it. I just can't see it at this application that a several is there. I wanted to know. Thank you. Thank you so much for your time.

>> Happy holidays.

>> Same to you.

>> Mr. Andrew FABer? You also have up to two minutes.

>> The applicants, I would like to see that.

>> Other public tickets.

>> You can come forward. You and the applicant can come forward and continue your presentation or you can do rebuttals. You have up to five minutes.

>> Thank you very much. I can't sure if there were other speakers. Representing the applicant, a couple of points. We are asking for the permit here for an office building with a small retail food service or something. It's consistent with the rezone asking that the council adopted. It was in front of you 4 1/2 months ago. It's consistent with the general plan. The office building has really nothing to do with the issues that Mr. Cohen has raised or Jerry raised. We would argue against any deferral. We have met with Mr. Cohen and we would like to work with

him. I don't think it's your role really to be involved one way or the other. We are trying to resolve the matter. If we can't, we will have to try the case. In any event, this permit has nothing to do with it. It's an office building and fully consistent with the approved zoning. The small retail or foot service is smaller in this open area here. Everything does in that area if it wanted to do entertainment purposes. It would need a special permit. It's not an issue here at all. This is really an office building. It was always conceived of as part of the rezoning. I don't think any points have been made legally that require response. The mitigated negative declaration is adequate and the permit is consistent with the rezoning. I'm happy to answer questions about that. If have questions about the tenant relationships, we can respond to those. Thank you.

>> I just want to add that when I was here last time, we take noise very seriously and we do. Our residents are our life blood and it's very, very important. We take them seriously and we had discussions and hope to have additional discussions and I'm hoping we can resolve this. We do urge you to deny the appeal and issue the permit. Thank you.

>> We have a question for you from the commissioner. How many times have you met since you came here last with our neighbors that live in the area?

>> We met I think once before and once since.

>> Was there anything that was gained from that meeting?

>> Well, we had discussions so information was gained, yes.

>> So my concern is that as a whole, as a city, part of the goal as the city is to work on the mixed use developments to increase them. We have the Downtown area and the residential living with the entertainment and clearly in the Santana area, we are doing the same thing. As the city increases in population, we will have to increase our density and excuse. We want to be able to point to our existing locations like Downtown and Santana row as positive examples of a good place to both live and work and enjoy yourself and your time off. So I

agree that this particular office building doesn't seem to be in direct relation to the noise issues that the neighbors are having. I am concerned in general for as a land use issue that this neighborhood concerns needs to be addressed. As the city we can continue these great developments and have positive relationships otherwise people will not want to move into the areas. I am urging you to really have good conversations with the neighbors and work with them on helping. We want the business to succeed as well. It sounds as though there hasn't been any communication that is made. The neighborhoods feel like their concerns are being addressed.

>> I think we can't-- I can't answer for the appellant, but we have taken their thoughts and their ideas very seriously and made what we believe are very serious proposals to make change. At this point we have a material bid spread. We love to continue discussions and again, it's in our best interest to have a place where people want to live. We are renting day in and day out. We are holding a great position on the market place and know our residents love to be there right now. I suspect that they love being there, but we have a noise issue that we understand. We take it very seriously. I appreciate your urging and recommendation. Thank you.

>> Thank you.

>> Thank you. Commissioner?

>> I want to focus in on how many people want to live there. You have several hundred at the market rate rental.

>> 403 market rate rentals with 212 we are opening in 2013.

>> Your occupancy is 99%?

>> It's 96%. The market has to come down overall a little bit. We are several hundred basis points above the market and we get top of the market rents. We are well above market.

>> Mire point is there 400 people there that go to Santana row for the vibrancy and the excitement and have free will to leave given the end of their lease. I wanted to have the idea.

>> I wanted to add because our rental are above 80% and the market is around 55%. It's very, very strong.

>> Your fallout rate is 20 points? Thank you.

>> Thank you. Commissioner?

>> Thank you, madam chair. One of the concerns was the parking issue and I understand that your office base, you want to use for your office tenants during the day, would you address how the parking plan has been evaluated for the area and relay what the interpretation is for how the parking needs are going to be met as this continues to be developed?

>> Yes. As part of the pd permit, we submitted our study and going through all of the parking that we have available. We have also gone throughá-- Santana row, it's our peak period in the evening in terms of our parking demand. If we go back and look at the last 12 months, for example, in the last 12 months, they have been the busiest for quite sometime as we recover from the recession. Not once from 8:00 to 5:00 p.m. have we been close to full in parking. During the weekday, we have plenty of parking available. Right now if you are to go there on a Thursday night at 7:00, things can be tight. That's the period when the parking for the building will be available in adding parking spaces to the pool.

>> As you further the development plans, there a few other lots that will come before us in the future. Will all of those be addressing the appropriate parking necessities that once they are developed they will create?

>> Yes.

>> Thank you.

>> I have a couple of questions to ask as well. Seems like only one tenant that is causing a lot of issues. We heard the same at the last hearing and this hearing and correspondence between the appellant and the councilmember. Have you had discussions with your tenant about the lease and the noise they are causing something.

>> Yes, we have. We have made measures to make it more quiet. Since the last meeting, we have had significant discussions with the San José pd that monitors and is there on site Thursday night and Friday and Saturday night during the subject periods. They added reading applications to their phone so they can measure the db levels out there. They can go back in and say it's too loud and you have to turn it down. They are all over it. Yes, we have.

>> We're know the police officers are strain and they don't have time to pond to noise issues when they have other issues to respond to.

>> The sjpd I'm talking about, they are 100% focused, but yes, on top of that, we have our own security staff on site, yes.

>> In regards to parking, I know it's a very popular place and there is always during peak times, more people probably there than perhaps available parking. Have you considered valet parking for the popular restaurants? I know in other cities, smaller cities, the most popular restaurants in Downtown, they have gone together and paid for valet service. To them it has been beneficial because their customers don't have to deal with parking and at the same time other residents can enjoy more spaces.

>> That's a very good question. We run three different valet operations. On the North side, the Westside and the southside to accommodate the extra traffic coming in. They get pretty full.

>> We do not have any more questions at this point. Thank you. The appellant, would you please come forward? You have up to five minutes to continue or answer questions.

>> Thank you. I was hoping I was going to get questions and that hasn't happened so far. Let me step back and make sure I tie this together. I said I'm not a posed to building a building. We have to play by the rules by which we are governed. That has not happened. The reason why the pd permit for the rezoning and this building are intertwined is because this pd permit affects the rezoning of pd 12-009. I hope and I'm sure our attorneys can explain that, but that's what's happening here. When we first came before them and protested the rezoning, it was on a multitude of issues. Noise was one of them. Traffic was one. Safety was one. The crime rate statistics are not something I'm making up. To sit here and judge whether or not we have a noise issue or not simply by the number of people here, we are not going to have run the place based upon the number of people showing up. We had a very legitimate noise report done which we committed and it clearly showed the noise levels were beyond anything required based upon the city zoning laws. The issue around this building and why I'm here in front of you today is because there serious issues around parking which you brought up. To think that the rezoning that was effectuated allows for the entire Santana row to go to one slot per 275 square feet when shopping falls are at one slot per 225. Office believes are one slot per 250. Restaurants are one slot for 40 square feet of serving space. How is it possible that Santana row has a lower minimum than all of those combined? My question is, where is the evidence that suggests that this will work? It doesn't exist. The other problem is if you look at the beautiful building, architecturally I don't have a explain the, but they stopped and asked the question about the main access into the building. A driveway that is going along the Belmont village. The parking study that was done suggests between 2,500 and 3,000 daily trips will be generated as a result of this building alone. 80% of that is going to go into that park O parking slot right along with 55% of where the people live. It's being built so you can't stop on Winchester. You have walked by and seen the traffic with people walk to the bus stops from Belmont village? This is just a really bad idea. Thirdly, no one has taken a look at the inside traffic patterns. They are connecting a couple of streets and you have that many new people. The traffic flow inside is going to be a nightmare. How many of you have gone down to Santana row on a Friday or Saturday or even a Monday, Tuesday, or Wednesday and seen what the traffic flows are? Let's be practical about what we are doing here. My point is lastly that this whole thing was predicated on a study and mitigated declaration that says that the total amount of office space that you can build here is 288,000 plus some square feet. You build this building and add it to the amount of office space that communists today, it's 20% greater than what the zoning rules are

today. What they haven't told you is a 60,000 square feet is wrong. They have 114,000 square feet. These guys know that everyone is paying their leases. How is that possible? Are you really going to approve an office building that is in excess of what the zoning laws are today? Bottom line is the reason why we started this whole process was because of traffic safety and noise. As we got deeper into this, it became apparent that how the whole zoning and the regulation around Santana row had serious issues. What I would say is to have the integrity for any individual to come in before the planning commission and understand the rules and regulations t has to apply to everybody. Not just me. That's the problem here. It's not being applied to them. The data speaks for itself.

>> Thank you so much, sir. Your time is up, but we have questions for you.

>> Good. I would love to have the questions.

>> Commissioner?

>> Thank you, madam chair. I want to address one of the issues you brought up and that is parking. This project adds net parking. It adds it for the peak period when the place success used. I don't understand why you would be against that portion.

>> Let me help you understand. It adds 495 slots. That's it.

>> That's a plus though.

>> However you are building a building of 229,000 square feet that is probably going to have over 1,000 people driving in there. The problem is there is no demand. Simply what they have done so you understand, they have a parking problem. There is more demand than exceeds supply. They know that. There has been no parking study done since 2006. I have researched it. I provided this to you. As you continue to build, where will the people park?

>> If they were using my money to build that without the study, I will be concerned. They are using their own money. Do they really not know what they are doing?

>> That is not how you should look at it. There people that live there. We can't even have people visit us because there is no available parking. The reason why the city establishes minimum parking ratios is to assure that there is a minimum. They told this city planning commission before on record that they will build the amount of parking based on demand. Where is the demand analysis done to support whether or not they have adequate supply of park?

>> Right. The way I look at it is they are extremely popular place. When I need to go somewhere and have to pass through, I go around. Because the popularity affects the freeways. Not just the parking lot in the neighboring streets that stretches become to the freeway off-ramp. As you know, they are doing a project to try to dress that. That's too popular and I know for my vote, I cannot knock them down.

>> Help me here. I think the only question in front of this planning commission is you have identified a particular problem. The problem sits in front of us. You do not have sufficient parking. What is being done to mitigate that? If there is not a mitigation plan in place, you cannot approve this pd permit. That's the problem. There is not enough parking available. I don't know of anyone in the world that would build a 229,000 square foot building and only add 496 slots.

>> We actually face that every time we approve a project. The way I resolve in my mind if the predictions come true, they are too short of a parking, they have to come up with something. Maybe satellite parking or bussing people from other sites. I don't want to argue with you.

>> I'm not arguing, but I'm trying to educate everyone here.

>> Thank you. At this point I understand your point that the office building may attract more spaces than they are creating, however as far as other transportation, I actually understand what I'm talking about here. The peek trip

generation is 8:00 a.m. and leaving at 6:00 or 5:30, whenever. After that is when the visitors come in and they are in there for night life. That number of parking spaces will be available to them. To me there is a net plus. Net positive effect when it comes to parking.

>> I'm saying if that's true, please show me where the study has been performed to be able to confirm that theory. If it doesn't exist, I don't know how this planning commission can approve this pd permit. It's simple as that. This is not about theory. This is has the work been done per the rules and regulations that traffic impact analysis handbook for the city of San José states you need to do a park study. That has not been done.

>> Thank you.

>> Thank you. Commissioner?

>> Thank you, madam chair. You brought up the issue of safety for the residents of Belmont. I remember we discussed this previously in great detail. We had many representatives from the community come out and I apologize. I don't remember the final decision on that, but I remember it was of a level where the planning commission thought it provided enough safety for those residents. Is there additional information that we should that have that differs from that meeting?

>> Yes. The problem is the information you were given was based upon a traffic analysis report that was prepared to evaluate at 125,000 square feet of office space offset by reductions in retail. The analysis was done by one comparing a prior zoning to a new zoning. That's how you can net things off. Two problems with that. We are not building a 125,000 square foot building. We are building a 129,000 square foot building. No one did the work to compare the actual building of that building against the conditions that are on the ground today. There big discrepancies there. I commuted myself that the traffic flow on the driveway coming in to this new building off of Winchester is going to be somewhere between two cars a minute and ten cars a minute. One car every 36 seconds or one car every six seconds. That's a huge amount of traffic flow that has to come unabated into the garage. How is it possible that someone walking on the sidewalk on Winchester to the bus stop or to Santana row

is going to pass that 26 foot wide driveway and not stop traffic. If it does, it will back up along Winchester or got forbid we have a type of accident. This is not sensible.

>> What is the analysis and the numbers you came up with? What was that based on?

>> That was based on me trying to interpret the data I have of 125,000 square foot building published to be two vehicles per minute. Then extrapolating up to 229,000 square foot building. Again, this is really simple in front of the commission. If you have the data in front of you, if it exists, you should approve it. If it doesn't exist, you need to tell them to go back and do the work. Just like anyone else coming in saying and asking for your permission, you will ask them, have they done the work?

>> We will have staff discuss these issues that you are raising. Thank you.

>> Thank you so much for your time. We do not have any more questions at this point. Commissioner?

>> I have one quick question. Within one of the exhibits that you sent through the planning commission today and I'm referencing specifically exhibit 13 which comes from the held sing group Inc., I thought that was one of the best piece in the program. It goes on to discuss how the stewardship of the association that runs the entire project is there for the good of the project. You can't necessarily make 100% of the people happy 100% of the time. What do you think of that particular E-mail that I'm referring to?

>> I agree with it and that's the reason I included it. We have a clear understanding and reading the email, it's clear that that is written from a commercial standpoint. The point of living in Santana row is one of balance. There is no balance. You have to understand that out of Santana row, there is roughly 212 units that are owned. We can't move. We made an investment collectively of \$150 million in buying these units. I'm not a renter. A renter can move. I will urge you to go on any social media site and read what people say about the experience in Santana row around noise and safety. This is discoverable. The problem that I have with held sing is they position us as we bought into a shopping mall. Now, I stop and challenge that thinking. I shared with you that before we

built up, there will be 1.3 million square feet of residential feet. There will be including office and entertainment and retail. Which side of the equation should you tip on? We have the right to the quiet enjoyment of our property. Please do not get trapped into the thinking of pleading the case that there not many, many people behind me that feel the same way. You cannot run the city based on a mob mentality. That's not your job. Your job is to look at the facts that presented before you and I have presented massive data around noise and around safety. Tons of data. I have tried to get you to be as knowledgeable about the conditions on the ground as possible. It strikes me as somewhat unbelievable that we aren't able to sit down and have a constructively conversation. The way they portray this to you is you think that I'm a type of crazy. I'm a nimby and I'm not willing to have a constructively conversation. Proposals that have been put forth quite frankly have been put in a manner that not one of you would consider. Take it or leave it. Bar with all due respect though, I doe have to defer orá-- I don't agree with you necessarily. Being in the real estate business myself when I buy and sell properties, you have substantial disclosures about what Santana row and was. To a large extent you should have expected to know what you were getting into.

>> You rate and like I said earlier, if there was a material issue and you have plenty of recourse opportunity elsewhere. I thought this exhibit 13 hit it right on point when I read it.

>> Let me respond to that. The question around disclosures.

>> Let me be clear on that. Again, this is outside of the issues. The much broader issues around the approval of a building that is in excess of the zoning space requirements for office. I'm going to answer very directly around the disclosure. The disclosures given to us on the cc and rs, on the front page has a very big piece of bold face print that said by the way, you want to know that you are in a flight zone. The environments within the flight zone are something like 85 db. What's amazing is the noise levels that we incur standing on my patio at night have pegged in excess of 90. I would be better in a flight zone than in Santana row. As far as the rest of the disclosures, they said very, very clearly if there is a nuisance, they have the responsibility to mitigate. It also said I have the right to the quiet enjoyment of my residence. Having music pounding through our rooms, having hundreds of people at

night time accumulating outside at 1:00 in the morning, a good portion intoxicated is not what I would call a vibrant community. Thank you.

>> Any other questions?

>> No.

>> Thank you very much. I really hope we can come to a reasonable conclusion on this.

>> Thank you so much for your time and we do not have any more questions. I will at this point close the public hearing portion and staff?

>> Thank you, madam chair. As stated in the staff report the city is aware of the pending litigation on the mitigative negative declaration and the court has not prohibited the city from taking any action on the mitigated negative declaration and council approved rezoning of the property. In regards to the office, the square footage of office space, the zoning approved 937,500 square feet of special space that includes office space and currently with the addition of this 229,734 square foot building, they would not exceed that total requirement. There is still excess commercial space to be developed under that total. As far as the parking, the staff did at the zoning TAJ recommend the parking ratio. We did this based on the fact that there is alternating use of the parking at different times of the day. Additionally there is also going to be a best rapid transit line with a stoplight adjacent to Santana row itself. We saw it as mitigating measures to reduced parking ratio. In regards to the traffic question and operational analysis, I would like to defer to the public works and department of transportation staff for those. This concludes the staff report.

>> Thank you. Staff?

>> Thank you. The director with the department of transportation. I think there were two traffic questions they caught during that discussion. One with regard to the driveway off Winchester boulevard. I wanted to emphasize

that the right and only driveway that provides limited access and the traffic report looks at how many inbound trips you have in the morning and the afternoon. Based on the analysis that we have and the expectations as well as experiencing many locations, we don't have any safety issues or operational issue World Trade Center driveway. I did want to point out there was discussion regarding the operations internal and the streets are private streets and not required to meet the level of service policy, however I would add if you look at the goals to the general plan 2040 making sure we develop streets that don't really carry cars and are really friendly to pedestrians and other uses. That's what Santana row construct and we emphasize the streets good for the all periods of the day. Not really streets that push cars in the peak hours when women are coming in and coming out. We did look at operational issues. Those are also disclosing the traffic analysis and not sequel issues. Like I mentioned as we try to focus on the local streets as well and focus on the entire day and not just the peak hour necessary for the street sign.

>> Thank you. Commissioner?

>> Thank you, maddal chair. With the traffic analysis, is that based on the density of the office as being proposed notice?

>> There two different scenarios because the existing site does have existing traffic capacity. If you look at the analysis we did two different scenarios. The existing plus project that compared the total office in addition that as required by them, we did the background project that takes into account the credits that they have for the existing entitlements. We looked at both of them.

>> And the turn from Winchester, is that turning right on to oleson drive? Is that correct?

>> They have access on to oleson drive, a full signal at that location. They have a separate access point that is a right turn only, a driveway for the site.

>> I'm sorry, the right turn only is where?

>> It's south between oleson drive and 280. Right at the edge of the site. It's a right in only driveway.

>> Into the office?

>> That's correct.

>> And how does that address the concerns with the pedestrians walking in that area, especially seniors who are slower walkers?

>> We thought going off memory, I did double check, but the total number is about 20 trips in the evening. I look at the high number that equates to two right turns per minute on average. It will vary and you have a lot more cars coming through. You look at Winchester or other locations, it's not really any different than other ones. I don't expect any issues and it's a limited driveway only. A right turn only and it makes it much easier to cross. We have a driveway with right ins and right out. You are only dealing with one and don't expect any issues.

>> I'm not sure if this sounds repetitive. That analysis of two cars per minute, the belief was it was based on previous analysis of the office building being a lot smaller in square footage for office space. Is that correct?

>> I'm not quite sure I am understanding the question. We can follow-up on the report. The thing I would add and we will follow-up right now since we are looking at it, if you look at the trip generation and distribution for it, just because the trips that can only use that driveway have to be traveling in that one direction from Winchester. It does limit how many people can access that driveway as the main access point. You have other access points that are going to be used to enter the office building. We can follow-up on the exact number and how it correlates to it. We will have to look at the report.

>> Thank you. .

>> Thank you so much. I don't see any more questions from commissioners. At this point I will entertain a motion. I will ask one question. On your commanding engagement report, you stated that there community members in attend asbestos and didn't say if they were for the development or against it. Do you recall?

>> Thank you, madam chair. There were a few that were in opposition to the project. Most of them seem to be there for informational purposes. I didn't get many negative comments other than what you heard here tonight.

>> That was during the first meeting?

>> Correct.

>> Thank you. Again, I will entertain a motion. Commissioner?

>> I'm prepared to go ahead and move to uphold the director's decision and find for the applicant and deny the appeal.

>> We have a motion and second. Would you like to speak to the motion commissioner?

>> Yes. Just to go back and focus on the true issues that were in the appeal, with respect to the mid-gated negative declaration and initial study, as the appellant said it's going E being challenged in court and I have a saying where I say let's let the law decide. I think it was probably prepared properly and fully. It was vetted and if in the eyes of the court they find otherwise, I'm happy to let the law decide. Also I don't think that's our focus tonight. Just briefly touching upon various points, parking deficiencies and I did my calculations based on the floor areas and what you end up in parking. I find that fairly consistent with the title 20 zoning code. It doesn't have to be for the benefit of the audience. You don't have to be consistent on the parking with respect to the title 20 code. We have latitude in zoning to increase the parking densities or reduce them. It's not set in stone as it relates to the parking ratios. I don't want to say it's a guideline because that makes it too whimsical. We have an increase or decreased parking requirements and when it comes to the settings, we will see more and more of that as

the city moves rapidly towards that sort of living environment. Again, traffic impact analysis goes back to the environmental aspect. I'm not going to talk about that. I am going to conclude by saying if we are going to be successful in moving the city forward in the following decades, city leadership, that's us. We have to have the courage for convicts for general plan 2040. Urban village concepts fit into that very closely. That is where the city sees itself going. In no uncertain terms it creates conflict within the settings within people that will live there or nearby. As commissioners and as city council people, we know full well and good that good leadership often requires us to act on behalf of the many-- of everybody. That's recognizing that we can't possibly make everybody please and happy. There some people that are not. The good of the many weighs out the needs or wants of the few. To me when I say that, this means to me the many is several hundred thousand people in the city of San José. Because several hundred thousand people of the city of San José had a chance to look the at gp 2040 program for over the last four years. If we are going to push the city in that direction, we have to have the courage of our convictions to really go forward in that direction. To me, this is a noise issue. It has to do with Blowfish and I don't think that we should as leaders allow projects or prevent projects from moving forward until noise issues get fully vetted. It's inappropriate. I think the applicant has a couple of different venues in which he could make the argument, one being sequel law and it could be value issues as it relates to disclosures when you buy your property. There is other recourse and I don't think it's appropriate to do it on this project in this case tonight. Thank you.

>> Thank you. Commissioner?

>> Thank you, madam chair. I find it ironic as you are discussing how noise issues shouldn't really be a factor so much in this particular along with going off and having a hard time focussing on what you are saying because I was distracted by the outside noise. Staff, there is the office space issue and it seems as though-- my understanding is that there is a certain amount of office space for the entire area. So that the initial proposal for this particular spot was set office space and then they later changed the plans and that increased. But it still meets the entire Santana row project office space needs, correct?

>> Thank you, madam chair, that is correct.

>> I don't know if you can address this, but I'm hearing a conflict in that in that understanding. Perhaps your reading of what was said about the office space is better than mine to really give me an answer of what this conflict is. I'm not seeing a conflict in them increasing the office space, but the neighborhood is. You can address that?

>> I think the confusion comes in. You have a total number in the plan of zoning itself and the initial study product description added a particular amount of office space and just slightly over 100,000 square feet. That was in addition what was analyzed. They had a number they were adding to of previous analysis for sequel purposes and the overall total square footage still falls within that zoning allotment that has been over 900,000 square feet. Does that answer the question?

>> It's your analysis that that doesn't negate the sequel analysis because the whole area and that maximum office space is still falling under the analysis because there was a maximum that was above what this threshold is.

>> That is correct.

>> Thank you. And for the traffic question, I hope that you came up with an interior. I had a question about the anticipated road improvements. Certainly when I try to go to Santana row in the middle of the day, hoping to not hit a lunch crowd and I'm still stuck in a lot of traffic.

>> I thought you were going to add more to that. When people ask that question, they tend to add a little more. Regarding the proposed road improvements, we had a groundbreaking for the 280 and the 880 interchange on November 9th. It is current lie under construction and expected to be completed by early 2015. That's one of the major improvements. In addition that, I would remind that Santana row will be doing a contribution as well. We did a master plan for the Stevens creek corridor between winchester and 880. We developed the master plan that will be constructed with the entitlement. Unfortunately has been delayed due to the economy. That will address the issues related to cuing what we have. They are not safety issues. They are operational issues and we

developed a master plan that will alleviate the existing concerns. I always like to add that as a popular place as it was stated here. Traffic will continue to use that corridor. Our goal is to make it function as best as we can and between the interchange and the other improvements, we developed a plan that will accomplish that. It will continue to be popular and busy.

>> Just elaborate on what those plans are to extend the turning lane in there.

>> Definitely. I think for the interchange, I will say that the 615 relief out there, we will actually control the movements and the ramps as they are coming into Stevens creek that make it function a lot better. In addition that, we have an agreement contributing towards a connection to the Monroe street that takes the traffic out and those signals provide a direct connect to Monroe street. Between 280 and Winchester, we looked at the entire length at how the median is allocated and the access point to valley fair and Santana row and we maximized the left turn pockets and the access points to make sure we have the cuing capacity as well as modified the signals to make it more pedestrian friendly. It will be modified to have the crosswalk on the other side of the street to make it a more comfortable crossing. We are adding bigger curb returns so people have places to wait while they wait to cross the street as well as getting rid of the pork chop. It's a combination of vehicular improvements and pedestrian improvements to make sure we are creating a good pedestrian connection between the two uses we are currently have a lot of people cross. By making wider crosswalks and putting in an additional will help with the signal timing and make everything function a little better. It's a combination of the freeway and the interchange improvement and the full corridor and pedestrian improvements and timing to make the corridor function better. The timing is as I mentioned currently under construction. The Stevens creek improvements is required to contribute towards that, but valley fair would be the one constructing it and as you know the expansion has been on hold for a little while. When the project moves forward, they will be part of the development.

>> The traffic reports that you are using for that development, are those recent?

>> For the valley fair development? They are a little different because they follow different standards. We looked at what's called a near term traffic analysis to electric at specific issues and items. For the interchange project, we look at modelling numbers that go out to 2035 and at the time we did that and take into account not just the growth that will be happening in the near term, but in the overall area. In addition that, it's the department of transportation that we looked at everything combine and we did simulations to see how it would work together. I would like to add again that I think the improvements will make a difference when they go in. At the same time as mentioned, popular place. There is always going to be people trying to get in and out of valley fair, but the effort is to make it function better. What we determined out of the simulations was that by putting all the improvements together it was going to function a lot better than it was today.

>> I assume that those analysis were incorporated in this plan we are discussing this evening.

>> That's correct.

>> As I mentioned Santana row will be doing a contribution towards the interchange improvements.

>> Back to my previous question that you were going to look up.

>> Thank you for giving us the extra time. What the report has on operational analysis that looks at the total trip that is the project will be putting into the system. That's for the total trips not taking any credits for existing entitlements.

>> Help me out as a lay woman who is not a traffic parking expert, I am hearing that initially we approved a certain office space and that is expanding a great deal. That's fine because it falls into the project as a whole. There is the question of the traffic in that particular location that seems as though it would increase as the office space increases. Therefore increasing the number of turns in and I'm still not sure if that is incorporated into the two cars per minute or if that increases the two cars per minute.

>> Let me try a different approach here. You let me know if I need to do it differently. I'm probably not being very clear the way I'm explaining it. For the sequel analysis and the straight sequel analysis, we looked at what is required by city policy and what is required by the cmp and the congestion management agency, the cma. We looked at what is required. It's to look at if you have an existing entitlement and existing credit, you give them to the project. Those are trips that can go into the system at any time. That's the secret work. When we look at the operational work, we look at the total trips the project puts into the system. We look at the full building and how it will be accessed and we put the driveway access, we look at the total trips Project will be putting into the system. That tells us the operational picture which is a little different than the sequel picture.

>> And the operational picture is two cars per minute?

>> I top the add that that is based on analysis and an average number. That doesn't mean if you go out you will time it and it's two cars a minute, but on average that's how many will get at the driveway, that's correct. That's a right in only driveway. The people who access it is limited by the fact that you have to head northbound on Winchester and make a right turn you have to use oleson or the internal system within valley fair. You can make a left turn in and in the outbound, there is no access at all. The driveway is going to be that much utilization when they are letting out.

>> Thank you. .

>> Thank you for great questions. Commissioner, would you like to speak to your second. I think we didn't give you an opportunity earlier.

>> The commissioner was extremely descriptive and eloquent in his description. Why he made the motion. Thank you.

>> Thank you. At this point, commissioner?

>> Thank you. I'm going to support the motion and because I can't find any substantial findings for this particular piece based on the concerns applying and enough relevancy for this office space. I am concerned about the potential issues with the retail not necessarily cooperating with the needs of the residents in Santana row as a whole. I hope and I urge the communication and the collaboration to really continue. Because we don't want the neighbors to be upset. We want to live there and once they buy in, the turn over may be kind of low because people performed the property. It's hard to sell. It's still not a great time for real estate. It's going up, but it's still not necessarily that they bought in and get their money back. So that limits turn over. If it was just rental, we might see a different turn over based on the noise issue. Of course there is going to be noise when you are living in that kind of area. Late at night, the excessive noise is just not providing for a liveable community. Please continue with those conversations and working together.

>> I too am supporting the motions. Underlying issue is noise and as we have been hearing over and over again, one of the tenants which is Blowfish. That's quite everyday through E-mail and communications. Even verbal presentations. I don't see how this will have an additional contribution more to the noise issue that the tenants are facing in Santana row and the 1400 square feet of space in my experience such smaller and not conducive to a nightclub. It's also a commission they're they mentioned earlier. I sympathize because he is living across from that certain restaurant nightclub. I have not been there. I don't know how the issues that he is talking about late at night are, but they are. To his family and the residents there. I will urge the property owner to work with his tenants and also the residential to come up with a win-win situation for all. It's going to be conducive to them if you have good tenants residing there and having great retail tenants and it goes hand in hand. At the same time when I mentioned earlier with the parking issues, this is like a mini Downtown and any will have parking issues. That's why I would urge you to the future to look into more and having valet parking. You have three of them, but working with your residents and with your most populated restaurants. To encourage them to have valet parking for the patrons. I will support the motion. Staff has put forward reasons why we should uphold the planning director's recommendation. With that I will ask for all planning commissioners to vote by light. All those planning commissioners present voted for the motion. Commissioner Kline, we are not in the discussions at this time. Item three d staff.

>> Thank you, madam chair. This plan permit and determination of public convenience and the quest is to allow the demolition of an existing 6,662 square foot Chevy's restaurant and the crux of a new 7,453 bj's location with a patio at the same location. On sale a full range of alcoholic beverages and beer with late night use until 1:00 a.m. The project is located on a site on the southwest corner of Coleman and autumn street. It is situated within the twisting market center. Surrounded by Guadalupe garden to the North. Industrial and commercial users beyond the market center to the West. Commercial users within market center and union road tracks to the south. The Guadalupe river park to the East. A plan development permit is required for a restaurant to include a drinking establishment, the sale of alcohol and late night use. Although the initial decision making body for a planned permit is say director of planning, the determination of the convenience for the sale of alcohol is required to be made by the planning commission. Therefore the planning commission would concurrently consider both planned development permits and determination of necessity and convenience. This establishment will operate from 8:00 to midnight from Sunday to Thursday. 8:00 a.m. until 1:00 a.m. on Friday and Saturday. The off sale of beer would consider and the delivery portion of the accident as intended as a convenience to their customers in conjunction with the food order. Per the police department, the project site is located in the tract with the ratio of existing retail on sale, off sale licenses to population in the census track and exceeds the ratio as a county as a whole. The city has to grant a determination of public convenience by issuance of the license for sale of alcohol. Subject to 6.84, the planning commission may issue the determination if all of the four required findings for the sale of alcohol are made. However they cannot be a proposed use within 500 feet of the gardens to the North of the project site across Coleman avenue. Staff request the planning commission to make a recommendation to the city council for the determination of convenience on necessity. Concludes that it's in conformance with the plan and city policies and the required findings can be made for issuance of a planned development permit for the demolition of an existing restaurant and construction of a new construction in the statement location. Staff has included a condition to provide enhanced rare and right side elevation drawings to commensurate with the front elevation. The resolution includes the division by the public works department within 30 days from the date of permit approval. This conforms to the requirements of the environmental quality act. This concludes the staff report. Thank you.

>> Thank you, staff. Is the applicant here? Can you please come forward? State your name for the record and you have up to five minutes.

>> Good evening. I'm Jared Taylor and thank you for hearing or application. Bj's and brew house is a national chain restaurant. I hope some of you have visited locations around the bay area. It is bj's restaurant and brew house. We don't propose to brew beer at this location. The reason we request the available to sell beer for off site consumption is you cannot purchase bj's beer at any other retail location. You can only purchase it at the restaurant. That's where the sale for off site comes into play. It's really that we have customers that come in and we enjoy the beer. They want to purchase the six-pack or a keg to take only and enjoy at home. Take out is a big part of our operation as well. You can order a pizza or food and take it home and we want to provide that convenience that you can purchase beer to take home with you at the same location. I want to emphasize that we are requesting full sale of alcoholic beverages for on site consumption in conjunction with the dine in. We propose no entertainment with the exception of rerecorded music. We enjoyed working with staff and we are here to answer any questions you may have.

>> Thank you. Commissioner?

>> Are you also asking for full gambit of alcohol for off site?

>> Only the beer. That's all we want to sell off site. Only the bj's restaurant beer because you can't get it anywhere else.

>> We don't have any more questions for you.

>> Thank you.

>> Since we don't have any other speaker cards on this item, I will close the public hearing portion of this. Staff?

>> Staff has no additional comments at this time.

>> Thank you. At this point I will entertain a motion on this item. Commissioner.

>> I will make a motion to consider to approve the pd permit and recommend the city council determination of public convenience and necessity recommended by staff.

>> We have a motion and a second from the commissioner. Would you like to speak to the motion?

>> No further comments.

>> To the second?

>> Knowing how brew pubs work, I think it's appropriate to allow them to sell their beer as carry out. I support the project.

>> Thank you. With this, we will vote by light.

>> The motion carried unanimously. Item three e.

>> I would like to disclose they made a contribution to my campaign in early 2012. That's just for the purposes of transparency. Staff?

>> Thank you, madam chair. This is a planned development and rezoning from the current apd planning zoning district approved in 2002 to the proposed apd planned zoning district which would allow up to detached residential units on an until 6.4 acre portion of the subject. Located at the corner of spring ridge drive. The current zoning for the property allows for development of up to six single family detached homes on the portion of the property that lies southerly of nor wood creek per are findings of a biological report and assessment. It was determined that the

influence did not extend to 100 feet and that a reduced set back would not significantly reduce or impact the corridor. The rezoning shows the set back established when the current zoning for the property was approved in 2002. Staff was supported of maintaining the existing set back, but upon further analysis in the staff's opinion, that was minor modifications to the project. It could conform to the plan and set back standard and maintaining the 12 units and lots proposed by the projects. And leave adequate room for the proposed homes. As for this reason that staff is recommending that the project include a 100 foot set back and minor modifications to the proposed development standards that would offset the additional 25 feet of set back. Including allowing 15 foot minimum year yard set back for the smaller lots on the torrider and allowing flexibility for the proposed cul-de-sac.

>> Just regarding the review, planning division received a total of nine comment letters and the declaration. The comment period closed just on Monday December 10th. We prepared responses which we distribute and also Sunday sent out an E-mail late this evening to the planning commission. As far as the major issues from the comment letters, one was the set back which John dealt with. We feel it can be accommodated. As far as the other issues, one was whether or not the proposed project is in a flood zone. After looking at the FEMA flood map, only the portion of the property that is actually in the creek channel is in a flood zone. The actual development site itself is not in flood zone a. That issue is essentially dealt with. The other major issue was just possible changes to proposed mitigation origin and they have one change proposed by the Audubon society in a longer window during which construction is required. Now the Audubon society proposed to have them start in January. We agree with that. We will agree with that that goes to council. Thank you.

>> Thank you. Sorry for the two-part tag team. Planning staff is recommending that the planning commission find that the project is in conformance with the California environmental quality act. Make a recommendation to the city council to approve the proposed planned development rezoning as modified for the set back and allow for the minor Mo modifications for the development standards for the subject site for the following reasons. Project is consistent with the envisioned San José 2040 general plan. The project conforms to the East hill development policy and the project conforms to the policy and it was prepared and circulated in conformance and no substantial evidence that the project will have a significant effect on the environment. This concludes staff's presentation.

>> Thank you so much, staff. Commissioner.

>> Thank you, madam chair. With the increase to the 100 feet, does that encompass the concerns about the tree removal and replacements.

>> Tree replacements or removal stays the same. It will be done as indicated in the initial study.

>> Thank you.

>> The applicant, Mr. Tom Armstrong, will you come forward.

>> Hopefully I'm not the appellant. Tom Armstrong at 1570 oakland road in San José, California. On behalf of the applicant, staff reached out to us today with the modifications that they were recommending. At this time I will go ahead and I think somebody is here to talk. I will let them talk and take the opportunity to respond and respond to the staff's comments. Hopefully get some vote tonight on the staff and some of my comments they want to put into the record as well. Thank you.

>> Thank you. Yes, you will have five more minutes after the public testimony.

>> Buyer we have two public speakers and one is Joshua Mclekklie. I am sorry if I butchered your names. Come forward and you have up to two machines to speak. State your name for the record. Good evening. Honorable planning commission, I am a resident of San José and this is with the Audubon society. The Santa Clara water district and three others committed comments on the negative or mitigated declaration for the project and we hope you have time to read them. If you read the letters, we trust that the decoration does not satisfy the requirements and is not provided adequate descriptions and doesn't provide analysis and mitigation measures. Did T does not contain the information that makes you have an informed decision. The project implementation would have no remaining impacts on the environment. We hope you will ask the developer and

the planning development to redesign the project so that the impacts for the system and the front can be avoided or truly minimize and return with adequate environmental review. I would like to add that we received responses after 5:00 p.m. today and haven't had a time to do a full review. However it is hard to believe that the hydro logical study was done. Thank you.

>> We have a question for you.

>> Thank you, madam chair. So with that change to the recommendation back to the corridor, that doesn't meet the needs for the Audubon society? We haven't seen that response to the comments yet.

>> I am saying staff said that they were changing back to the 100 foot.

>> We were very pleased.

>> And also that the actual housing developments are not in the floodplains. Are there additional concerns that you are aware of that we should know about?

>> Other than from the letter?

>> And I read your letter, but it didn't come today and I haven't absorbed and memorized any of it. It seemed as though it was the major issue that was the repairing corridor and how wide it was. That is addressed. I'm wondering if there is more that I forgot they should know about.

>> We did have a comment on connectivity and quota movement. As far as impacts to wildlife in the area and it will follow the area, that can be partially addressed to the set back. Again, we haven't had a chance to evaluate the responses or seen the language. I think my boss would say that the information we have in the mitigated decoration and the study, that language is not in there. Then we can make a full evaluation.

>> Thank you.

>> Thank you. .

>> Thank you. I do not see any more questions.

>> Good evening. I am a San José resident. In the past few months my environmentalist friends made me aware of several inappropriate projects that encroach on the corridors and do not adequately analyze impacts in the natural areas. For this project in particular, several environmental organizations committed comments challenging the adequacy of the mmd and by hearing this item two days after the mmd comment deadline, I don't believe that the decision makers had the opportunity to adequately understand the environmental issues. The Sierra club does not agree with the reasons in the staff report to approve this project. The project does not conform with policies in the new general plan for focused growth in a avoiding development in flood claims it. Does note meet the set back supported by the new general plan. I know that has now been changed, but I agree with the previous speaker that mmd should be updated to show what the project is going to be. And in general I don't agree with the reasoning that they would have allowed the same set back as they allowed in 2005. There is a new general plan and different policies in place now. I don't have the time in two minutes to tell you all the issues brought up in the letters. But it seems like you got a coup of my letters. I will keep that. I would like to say I urge you for the approval of this project to update and recirculate the mmd as appropriate. Thank you for your consideration on behalf of the environment.

>> Thank you. We have a question for you from the commissioner.

>> Thank you, madam chair. I would like to pose the same question to you now that we change the corridor back to the 100 foot set back and it has been investigated and determined that the actual housing development is not in the floodplain. Outside it is, but not in that particular location. What information do you think we should have in our decision making tonight?

>> Well, I believe that we should be shown exactly where the floodplain is and where the development is and there should be more analysis of the impacts in a sensitive area like this of grading and the way that tree removal will be done and tree replacement plans. More information about the plans to mitigate things because it's very difficult for us. We can't come running back to the files at the planning office every week and look and see that they did this plan and the grading plan is done right. They are not really giving full information. It's piecemealing the project. It's obvious that there will be very low grading. In a situation like this, it's not obvious and also the geotechnical studies will be done as part of the grading that is not adequate. They should be done at the time of the environmental so that people have the information. Also I'm very concerned about in this particular area if you have been there, that side of the road is open space. All the property surrounding that property of the seven properties, only one has an address. That means all of them do not have residences on them or they would have an address. I am very concerned about the potential for this inducing more development in the open space area and in this sensitive area that is on the edge of the town. It's not what the new general plan is not advocating for this kind of development. It's the opposite and this could induce more development on the edge. Those are some of them. Those are the ones I remember Right now.

>> Thank you.

>> That was the last public speaker on this item. You have five more minutes to continue your presentation or do a rebuttal.

>> Thank you, madam chair. A couple of items for the record. There were a couple of questions I like to address. Where am I being presented. This is on her time.

>> A couple of questions related to the information that was discussed in the letters. If you look carefully, you see a lot of project reference. A lot of them were copied and didn't apply to the project and a lot of them that they are raising are generically raised issues that can be raised on any site. We worked with staff for 15 years and what I want to point out is a couple of things. On the flood zone, what staff pointed out, this is approved and the site is graded. The trees are gone and that was permitted under the previous development. The black lines represent

the lots and the streets are a public street. The maps record and the lots exist. What we are proposing to add additional lots to a subdivision that anticipated it. One of the items we worked with under the old general plan that carries forward into the new general plan is that the utilities are size and the cul-de-sac is designed not to develop any more uphill of it. The large parcel up on the hill would be permanently set aside and open space not allowed to be development. We conditioned ourselves to do that. That was part of the goal of the staff and the city in curtailing urban pressure. We agreed to that and zoned that in. The map has been record and the conditions exist. We are not changing what is undue. That wasn't clear to some folks. This is a water district basin. This ends at our property. There is no real creek because it goes into the district and you can see the pipe right there. This goes into the pipe in the subdivision below us. The creek. On the two properties above it, it's not big enough for the district to declare as an area under the jurisdiction. The only reason it's there, that was the old style for taking care of the drainage where you put the creeks in a pipe. Construing that this is more than is really is, I want them to understand what the facts are. There is no creek that goes beyond the property. The flood zone issue identified and I think Mr. Beatty has a map to show you. That's in the area that's a channel and it has been disturbed over the years. There is crossings and farms and the road and everything else crosses this. This is not a pristine area and the entire site has been graded. Thank you.

>> Just a clarification I think the staff had the same thing. The site and you can see this is the FEMA map. For the flood zone that goes to the issue brought up before on one of the commissioner's questions that cuts through the middle. You can see where this clearly shows where the water is. This is not a huge creek or anything. That needs to be please considered. We also have been like I said the staff shared their concerns with us and I highlighted the existing set back which is a map and set of property lines at 75 feet and 100 feet would be. You can see the area disturbed. This is a 2012 ariel and it is completely graded. Only one tree in this mitigation that is to be removed and it's in the set back area and the reason it's being recommended to be removed is it's decaying and killing the other trees in the set back area. We will be glad to leave it or remove it, but that's something that the folks involved in surveying the trees for the raptors and everything else recommended. That's all we are doing and provided the to the city staff. You see structures that would be removed as part of the projects and I want to make sure that it's clear that what we are talking about here has context. It's not the pristine environment that success portrayed in the letters. They were actually copied from another project. You folks voted on it to and

dropped the issues that were worked out. There was a bit of mess going on here and I wanted to make sure they had good information. Based on what the staff said with us today, I would like to propose to the commission on behalf of our client that we would be very willing to work with staff and staff is being very reasonable with us in trying to put forward ideas on how to work with redesigning the proposed subdivisions to accommodate the recommendation for 100 feet. We have no issues while sitting down and working something out. We usually come up with a solution to go forward incorporating what the staff looked into. Give us the opportunity to work with them and hopefully come up with a solution in the next few days and address the comments made by the resource agencies that wrote letters. Go forward from there. If you would, I would recommend that you go forward with the staff recommendations. Thank you.

>> We have questions for you. Commissioner.

>> Thank you, madam chair. One of the concerns that was raised in the letter has to do with the size of the trees that will be replanted as replacement trees and the concern was that they're too small to equate to a natural habitat tree put into an area. There is a statement about the trees for the repairing area. They don't come that small. I wonder if you can address that and go with a larger tree to make sure that the natural tree is appropriate for the area.

>> I think staff may have a comment.

>> Okay.

>> The mitigation plan for the original set back called out one will go on trees instead of the 15 gallon. Smaller because you can get them locally. That's in the original plan to use local trees. One will go on instead of the bigger 15 gallon size that might be from another location. Keep the stock similar to what they were.

>> Dealing with staff on this and other side sides, they feel more comfortable. Bigger is not always better. They would rather have a higher number of trees and plants locally generated that have a smaller scale. They are larger,

the higher percent than the bigger trees when they are more established. I know the planning director made comments in the city council about that. They are nodding yes. That's part of the rational. If it's big, you put something big back. There is a lostá-- I'm not the tree expert. I think that's the rational.

>> Is there a place for making sure the trees as many of them as possible drive? I know it takes about a year of really maintaining trees until they have done that.

>> This obligates us to monitor that and provide reports to the staff. I know the city has been working to come up with the check on the mitigation and it's a new approval. We are more than willing to work with whatever the guidelines are for how we work with them to make sure that the mitigation has the survival rates that everything is saying we need to have. For the larger tree it's appropriate?

>> We will be glad to do it. We are glad to work with staff. We have done this enough times. Whatever everybody feels and the experts recommends and the staff feels comfortable with. We will work with that.

>> Thank you. Thank you, commissioner.

>> Thank you, madam chair. I am looking at the conceptual grading and drainage plans. Do you have a plan in front of you?

>> The staff report?

>> Yes. This is out of the plans that you committed. She is 4.0. You said basic grading has been done? The walls are not constructed, right?

>> Correct. What happened is it's a bit of a mess. There is a long process of entitlement for the subdivision and a small developer basically. They got in trouble once they got the entitlements. It's a long process of what they get. They recorded a map and got a grading permit. This was for a total of 10 and 7. The big lot is out of the

equation. It was a total of seven. They went through the process and got the entitlements and started the grading cutted the street out and that's about 2007 or so. They went broke. It sat there and it's a bit of a mess tonight. A lot of unpaid fees because they got halfway in and there is actually a recorded map that has been graded and the public works department and the other departments that are owed fees from the previous subdivisions. Mr. Meek has done work and we were able to put him together with the bank who was able to make the commitments to the city staff and director to work with staff to go forward to try to clean up the mess that is existing from the past subdivision. I think what we are trying to suggest is we are working in today's environment with a set of rules and we are willing to work to get to that and sweeten it up to get to the rules. We have traffic that will be half built out. That's a mess that is out there today. Everybody is thinking if somebody is thinking this is an untouched site, the staff is allowing us to do something far from it. It's diligent to get us to follow the rules.

>> Looking at the map, it looks like a 5% average slope on the original site. Of course you are grading it to get out of it. Am I correct in continuing it's not a steep plot?

>> It's like evergreen. More of evergreen. You looked at all of evergreen, it averages about 8%. A lot of people think it's flat and wouldn't argue about the 5%. Part towards the top.

>> But you are developing the lower part?

>> Right.

>> Then you refer to the storm drain in the Santa Clara valley water basin. Do you happen to remember the size of that?

>> I don't. You want to get back in? Typically what happens is they involve over the years a lot of projects and what the water district would do, they construct the head water of all the tributary areas that were larger than they needed to be. That was good for a flood control. I have been around the basin for 25 years and never seen it. Even with the water in it. The notion here, I'm thinking based on experience mostly is that that pipe is a lot

bigger than it needed to be to allow for a catastrophic effect based on the 100 year flow. This shows where the water ends up. It goes down to nor wood and that's a large pipe. It's way bigger than today's standards.

>> I guess you guys are lucky this is downstream of you, you are not proposing the detention basin on site?

>> We have to comply with the rules of the storm water and we are working with the staff and street the streets. We are trying to play by the new rules and adjust where we can to try to get everything to conform to where the city was going.

>> Thank you.

>> Just more comment. You guys do incredible plans. Every time I previewed plans from the company, I am always pleased. All the details are there. I don't feel like you are trying to sneak things through. You are putting everything in and I appreciate that.

>> I appreciate the compliment and that's why we do it that way.

>> Thank you. With that I will close the public hearing portion. Staff?

>> Thank you, madam chair. The key concern related to the idea that the certain concerns are with the adequacy as it was mentioned in the opening staff report have been addressed. Unless John Davidson has additional comments to make?

>> Just one thing that I wanted to add and reiterate. They have improved entitlement already from 2002 that allows development within the same area all be it with fewer lots with a set back. Should the commission approve the council, the developers fall back position is that project with the set back. This project we feel is substantial improvement and we were excited that they were cooperative and we were able to improve the set back to 100 feet in such a way that didn't cause a reduction in the number of lots. With a few minor tweaks allowed them to

have good sized building envelopes. With that it's a big improvement and we will be eliminating roadways for access to an uphill property that would have been partially within that set back. So this is really substantial improvement in our minds. We are happy that they were working with us and it's a good project and represents a significant improvement over the previous entitlement done. Thank you.

>> Thank you. At this time I will entertain a motion. Commissioner?

>> Thank you, madam chair I move it approve the project with staff changes brought up this evening with the return of the court back to the 100 foot.

>> Commissioner? Would you like to speak to a motion?

>> I'm so excited to finally have a project before me where we go to the hunters. Thank you and thank you to developers for that.

>> Commissioner?

>> Thank you, madam chair. I will be supporting the motion, but I'm troubled by the I'ming related to the environmental review. Is it correct that the comment period is still open through today? That's one question, but even if as was someone else stated that the comment period ended on Monday. Then we just received the staff report or the staff response as this item starts. In order to exercise independent judgment, I would like to have more time to review these kind of materials and I'm suggesting I don't necessarily have a problem now. I had a chance to read everything, but in the future would it be possible to have more time to evaluate this information?

>> Thank you, staff?

>> The comment period does close on the 10th of December. In a perfect world, we are not happy with two days between the close of comments and the planning commission meeting. We would like to have a week to do comments. Thank you.

>> Commissioner?

>> This may be an anomaly. One quick question. Somebody was talking about changing the survey date and adjusting it back to January or to January. What is the city's typical in terms of survey dates. In other words, what's the delta between January and what's typical.

>> The typical survey window for preconstruction surveys is February through August and this would move the start of this window to January. Thank you.

>> I'm wondering why. On one hand having consistency with the policies throughout, I don't know why this was changed.

>> In this case the biological report pointed out that there might be as many as three different kinds of raptors using the site and to capture the possibility of any of those visiting going with your earlier preconstruction date.

>> Thank you. No more questions.

>> Thank you. Commissioner? And I actually have a couple of comments as well. To me the 75 feet set back was going to be a deal breaker for the new project. I'm extremely pleased that staff made the developer to extend it to 100 feet. I tried to be fair when we are dealing with the city whether it's in West San José or East San José and North and south. Not too long ago in Guadalupe, the project, I was one of the proponents of the set back to 100 feet. To me, I was going to ask the difference between this project and that one and to come up with other examples. I'm really pleased to see that staffing developers have extended it to 100 feet. It's important for us as residents to protect not only the corridor, but the wildlife living in that area. As we are encroaching into their

habitat. To me it's an important issue. There other issues that were raised by the Audubon society. Regarding this plain. I believe that the staff has done an adequate job of explaining it. It was going before the city council. We will hope you have more answers to some of your questions. Much like what the commissioner stated, I am not comfortable with the short timeline either. It rushes us as the decision makers. I want to make the best decision for the city even if it's two weeks later. I understand it's the holidays, but still I much rather make the right decision than make a rush decision basically. For me it would have been better if I had the facts, but with the facts that I have this evening including the fact that you have changed the corridor to what it should be. What is the guideline stating? I am pleased with that. That's why I will be approving the motion as it is stated this evening. I also want to thank the Sierra club and Audubon for staying throughout this very long meeting during the holiday season. With that I will be asking for everyone to vote by light.

>> Thank you and the motion passes unanimously. Thank you so much for your time. Do we have petition this is evening?

>> Not this evening. Thank you.

>> Thank you, staff. Referrals from city council and board commissions or other agencies.

>> We have no referral this is evening.

>> Thank you. The report from city council.

>> The one item I wanted to bring to your attention was the discussion they had regarding a proposed rezoning of a very small portion of the Hitachi mixed use development site. The small portion is essentially on the East side and it's within the larger village oaks retail area that has already been approved with a plan development permit. The applicant came forward with a very targeted rezoning to one of the conventional districts. The commercial neighborhood in order to add a fuel station or gas station as part of the complex. This is one of the urban villages. As you can imagine, they had quite a robust conversation about what it means with the right uses

and what are the-- how we do the mixing of the residential business as well as gas stations and they had quite a good conversation. They ended up approving the zoning and they also made a referral to staff to come back to the council with a more thorough analysis about what it meant to be an urban village and how we might see the urban villages evolve overtime. Now that the area has been rezoned, we expect that the applicant will file for a conditional use and it will be before you. The councilmember set forth a memorandum identifying the issues if on appeal it goes to the council. We wanted it to be clear on the issues. We will analyze the issues that were stated in his memo and that way you will have the full benefit. I wanted you to be aware of the growing pains that San José is as we look at intensifying and mixing uses in the urban context you discussed this evening as well as the more suburban context where Hitachi is in the south. It was a good conversation if you are interested. I would recommend you watch the tape. That concludes the staff comments. Thank you.

>> Thank you.

>> Item 6 b. Commissioner on the committee. The international.

>> No meeting. No report.

>> Thank you, commissioner. Number 6 c reviewing the proof from 12-5-2012. It was just distributed to us.

>> Move to approve.

>> We're have a motion and a second. Approving say aye. Commissioners have huhá-- commissioners will abstain from this item. Thank you. 6 c reports of out standing business and urban design retro fit committee. .

>> I'm not going to be able to attend. We got a review and I can't attend that night. I have a board meeting. Maybe you can.

>> I will be there. I will share my notes with you. Thank you. Items d 2.

>> Madam chair, we had no meetings yet, but as you explained to the last item, we are going in the right direction.

>> Commissioner?

>> Thank you, madam chair. It doesn't say I'm on the subcommittee, but I did join it and I had an ad hoc meeting with the commissioner where he gave me information about the different pipe sizes and what they mean and the drainage flow and height issues with water. I also had a conversation with those who sent E-mails with letters we just had. What we talked about was how trees affect birds. She also gave me a quick analysis of creeks and streams and how the water flows and the different shapes and how that affects water descriptions and also provided me with extra readings to help me research the issue area. In the future, I might try to set up a meeting with the commissioner and a couple of the key environmental groups that we can get further information from them.

>> That will be great.

>> Thank you. It sounds interesting.

>> Item d 3, we will have hopefully a meeting in January and I don't have a further report on that item. Item 6 e on the study session. Staff?

>> Yes. At our last meeting, the commission identified topics for study sessions and I wanted to propose study session dates for your consideration. All sessions would be held in tower 332. Of course a light dinner would be provided for your benefit since we go directly to the regular schedule. The first proposed study session would be on Wednesday, February 13th regarding urban villages. The second would be a month later on March 13th regarding North San José. Pending development and development trends per your request. April 10th would be the colleagues from the police department and other relevant departments to discuss the off sale of alcohol

and late night hours, etc. To continue the conversation that we started at the retreat and you have a study session on May 1st. May 8th, we are proposing to do the plan study session. That one actually would probably need to occur in these chambers. Just because shortly you will actually be considering the eir and we want to make sure the public has opportunity to engage and be part of that conversation. Those are some suggestions for your calendar. If you need more time, we are happy to bring these dates back on the 9th for your consideration. Otherwise we are prepared to move forward if you are. Thank you.

>> Thank you. Commissioner? .

>> The February 13th date, I won't be able to make. It's a daughter's school play. What was the date after that?

>> March 13th.

>> I don't have an issue with any other dates.

>> Thank you and commissioner?

>> Last week you were talking that nobody thought about it. We never as commissioners had an introduction to title 20 in terms of just how it's written and you have title 20 and a general plan and you also have city policies. I want to kind of see how one goes through that document when they get a project like a staff level and how do you-- you go through policy and title 23 and the general plan and how you bring it all together. I don't want to say I never understood it, but I am hope if nobody wants to do it, but if others have that interest, I would have the interest in doing that.

>> That is a topic that staff can very easily pull together and even as early as January 23rd. If it is the interest of the full planning commission, we would be happy to do it as a study session and otherwise staff would be happy to do it as the newer commissioners to have a sense of how we go through the analysis and how the hierarchy is of all of the documents that the commissioner just mentioned. We are happy to handle that either way.

>> Thank you for the suggestion. It sounds like a great idea. Thank you so much for thinking about this since last week. I think we got a really great full schedule. I want to thank staff in advance. I know it will take a lot of preparation to organize these, but I believe collectively they will be extremely beneficial to all of those as planning commissioners. Thank you for not only starting to set the date, but organizing them and working on them. And with thisá--

>> I would like to add, other commissioners have interest in doing that?

>> Absolutely. Absolutely. I already wrote it down. The study session number six. I will keep us all very busy with study sessions. I will entertain a motion on this item. On the study sessions on the schedule. We have a motion and second. All approving please say aye. Thank you. The motion carries. That was the last item. Before we adjourn, I would like to thank staff for planning the director and assistant director and your employees and also council and the technicians and streets and traffic department and the police department and all those employee who is have been working have really been dedicated employees. I truly thank you from the bottom of my toward and I am saying that on behalf of all the planning commissioners. Do you an extraordinary job as we have seen in the last months when we took a tour of the third floor where the planning staff is. You are functioning with 1/3 of the staff you should have. You do an amazing job. Please relay that to the staff members. I would like to thank the fellow commissioners individually. You have doing great work in 2012 and individually and collectively, we will do great work as well. We truly compliment each other. That's what I like about the commission. I also want to thank the public because without the public we would not have public hearings. I want to thank them for taking the time from their schedules and lives to come to the meetings and relating to us what the issues are or concerns. I believe every comment we heard over the last year has truly made our projects and our city a better city and our projects better projects. I want to encourage the residents to stay involve and get involved and we absolutely do pay attention to every item that we hear in this chambers. Lastly I want to thank your family members. I have never done that before. They are the ones who allow you to be here and take the time away from them to serve the city. At this point if you have family members who are watching, I want to say thank you for putting up with us. Every other Wednesday. Also they are the factors of why we are here and able

to contribute to the city and make our city a better place to live. With that I will adjourn the last meeting of the year in 2012. I wish the city of San José a prosperous 2013.