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San José Planning Commission  
Wednesday, April 22, 2009

COMMISSIONER ZITO: Good evening. My name is Jim Zito, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, April 22, 2009. Please remember to turn off your cell phones. Parking ticket validation machine for the garage under City Hall is located at the rear of the chambers. If you want to address the Commission, please fill out a speaker card located on the table by the door on the parking validation table at the back, and at the bottom of the stairs near the audiovisual technician. Deposit the completed cards in the basket near the planning technician. Please include the agenda item number, not the file number, for reference. Example, 4A, not PD 06-023. The procedure for this hearing is as follows: After the staff report, applicants and appellants may make a five-minute presentation. The chair will call out names on the submitted speaker cards in the order received. As your name is called, line up in front of the microphone at the front of the chamber. As you come up to the microphone, please state your name. Each speaker will have two minutes. After public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commission may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. Planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearings on these items. First order of business tonight is roll call and please let the record reflect that all commissioners are present except for Commissioner Cahan. Next item, deferrals. Any item scheduled for hearing this evening for which deferral is being requested will be taken out of order to be heard first on the matter of deferral. A list of staff-recommended deferrals is available on the press table. Staff will provide an update on the items for which deferral is being requested. If you want to change any of the deferral dates recommended, or speak to the question of deferring these or any other items, you should say so at this time. To effectively manage the Planning Commission agenda, and to be sensitive to concerns regarding the length of public hearing, the Planning Commission may determine either to proceed with remaining agenda items past 11:00 p.m, continue this hearing to a later date certain, or defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions on how to proceed by the plaza of Planning Commission will be heard no later than 11:00 p.m. Staff.

SPEAKER: Thank you, Mr. Chair. This is A, CP07-081, requested to be deferred to may 6th, per applicant's request and 2B, CP09-003, the request for a conditional use

permit for a tow yard. That is being requested to be deferred until may 13th. That concludes staff recommended deferrals.

COMMISSIONER ZITO: Thank you, staff. Any further? Mr. Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Recommend the list of deferrals also 2B.

COMMISSIONER ZITO: Any concern by the commission? Seeing none, that passes unanimously. With Commissioner Cahan absent. Okay. Consent calendar. Item 2. The consent calendar items are considered to be routine and will be adopted by one motion. There will be no separate discussion of these items unless a request is made by a member of the Planning Commission, staff, or the public to have an item removed from the consent calendar and considered separately. Staff will provide an update on the consent calendar. If you wish to speak on one of these items individually, please come to the podium at this time. Staff, on consent.

SPEAKER: Thank you, Mr. Chair. The only comment that staff would have on consent, is staff did distribute a letter from the applicant on item 2A. Just to draw that to your attention, Mr. Chair.

COMMISSIONER ZITO: If I'm not mistaken, I have a speaker card on the applicant. If the applicant would like to speak, we will put this item from consent. Okay. If you don't want to speak, we can consider it as a consent item. If you want to speak we'll pull it and let you discuss it.

SPEAKER: Yes.

COMMISSIONER ZITO: Okay, so we'll pull this item 2A per the applicant. So for the commission, any other -- Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. If there are no other questions, from the commission on the remaining items on consent I'd move approval.

COMMISSIONER ZITO: I hear a second. Are there any questions or concerns on consent items? Seeing none, all in favor? Any opposed? Hearing none, all consent items except item 2A have been approved per staff recommendation. Okay. Item 2A. This is CP08-043, conditional use permit to allow -- I'm sorry, Commissioner Platten. Your light's on. Nothing? Okay. He beat you to it. Okay, sorry. Back to item 2A. CP08-043, conditional use permit to allow a continued operation of an existing entertainment business with on sale of alcoholic beverages and lately night use until 2:00 a.m. in the D.C. downtown primary commercial zoning district. Located on the north side of West Santa Clara street approximately 100 feet east of north Market Street. Staff.

SPEAKER: Thank you, Mr. Chair. Currently the vault ultralounge, conditional use permit to allow on sale of alcoholic beverages and late night use to 2:00 a.m. The police

department indicates it's neutral to this application. Listed in the memorandum attached to the staff report dated July 30th, 2008. Staff has inserted the appropriate conditions into the draft resolution. A letter before you this evening brings up several issues, first being the language regarding citations having to do with the occupancy of the entertainment venue. And this language actually states that this was cited based on several recurring incidences of a report. And so staff would address that by stating that the police worked to bring a business into compliance with regulations. They do not cite every violation. The example given by the PD was a speeding ticket, for example, but that after several violations a citation would be actually issued. So that language reflects that issue. The other issue brought up was, actually, a standard condition and standard language regarding a disturbance coordinator, that's Planning Department's standard language and we would say that we would request that that language would stand, and then the last issue was, regarding the compliance order, which is a common condition used to address evidence of past compliance concerns. Particularly those affecting life safety, excuse me, such as occupancy, loads in a building. So based on that report, planning staff recommends the commission approve the proposed conditional use permit in that it conforms to the general plan, furthers the downtown revitalization major strategy and conforms to council policy regarding violation of night clubs and bars. This concludes staff report.

COMMISSIONER ZITO: Thank you, staff. Applicant. Please state your name and you'll have up to five minutes.

SPEAKER: Good evening, chairman, commissioner. I'm Mauricio Mahijo, owner of the Vault ultralounge. I agree with the staff recommendations to approve my C.U.P. with the following changes. First on page 5 and 6 of the staff report states police department also reported that the vault ultralounge had been cited for repeatedly exceeding the occupancy limits provided by the San José fire department. This statement is factually inaccurate. We have been issued an administrative citation one time for overcrowding, and a citation one team for overcrowding. Other than that there have been no other citations pertaining to overcrowding, as such, we are asking that you remove our requirement to come before you in one year, pay the additional fees and this uncertainty will negatively impact my relation with my employees, vendors, investors and financial institutions. The other condition that we take issue with is, the disturbance coordinator. The name is negative and assumes that there's a disturbance that needs to be coordinated. I propose that the commission adopt a language similar to other language previously approved by this body and renamed as a service coordinator to a service ombudsman. The project shall be conditioned to maintain a community relation ombudsman on site during all hours of operation and publicly post an advertised community relations ombudsman to neighboring businesses. All complaints received by the community relations ombudsman shall be maintained in the log of calls and dealt with as quickly as practicable. Failure to maintain an appropriate log of calls shall be considered a violation of this permit. With these two changes it is my hope that the commission will approve my C.U.P. and allow my business to operate in a very difficult economic climate. Small businesses reflection on them poorly should be avoided.

COMMISSIONER ZITO: Any questions from the commission? Okay, I have a couple. So first, we always coordinate all disturbances, right? Disturbance coordinator is just a term that they always seem to use, okay? So you want to call them ombudsman, that's fine. But there are five conditions, or statements under that item 14, page 7, providing an onsite disturbance coordinator during all hours of business. You're asking to actually change those conditions as well, correct?

SPEAKER: Yes.

COMMISSIONER ZITO: Any chance you have them in writing that you can give to the commission so we can give it a little bit of an overview here? We just got this tonight, so it's a little bit difficult to consider this as such. So let me -- Commissioner Platten.

COMMISSIONER PLATTEN: Yes, let me ask you a couple of questions with regard to the report we got from the San José police department, okay? Do you have it in front of you, by any chance?

SPEAKER: No, I don't but I'm aware of it.

COMMISSIONER PLATTEN: All right, for the benefit of my fellow commissioners I'm looking at page 2. And it does reflect the record that you indicated which is there has only been two administrative citations but it has some other entries. And I want to make sure I understand how this works, okay?

SPEAKER: Yes.

COMMISSIONER PLATTEN: So for example, the police report indicates that on March 3rd of this year you were given an administrative citation for overcrowding, okay? Were you present, did you receive that administrative citation?

SPEAKER: I received the citation, not on location. But yes.

COMMISSIONER PLATTEN: What does that mean to you as the owner and operator? What do you have to do in response?

SPEAKER: You mean --

COMMISSIONER PLATTEN: When you get the citation what does that mean? I assume you don't throw it in the garbage, you do something about it.

SPEAKER: We appealed it.

COMMISSIONER PLATTEN: Where does that appeal stand today?

SPEAKER: The person in charge stood by the decision and we accepted it.

COMMISSIONER PLATTEN: Okay. So what have you done to address that prospectively?

SPEAKER: We don't have those issues anymore.

COMMISSIONER PLATTEN: It sites no citation was issued on another occasion, correct?

SPEAKER: No report was ever even told to me that I had received on my business.

COMMISSIONER PLATTEN: When the police department shows up and fills out a report that says gee, you may be overcrowding, did you get notice of that?

SPEAKER: No.

SPEAKER: You have no way of knowing whether or not that's factually correct or not?

SPEAKER: No.

COMMISSIONER PLATTEN: Indicates here August 18th, July 1, 2007, reports were taken for overcrowding. Again you don't have any notice of that?

SPEAKER: No.

COMMISSIONER PLATTEN: And on June 8th, pardon me, on December 16th, 2006, it says a report was taken for having no one counting the number of patrons in order to determine if you were over the occupancy limit or not. Did you ever get notice of that?

SPEAKER: No.

COMMISSIONER PLATTEN: So none of these things are in this report you ever received notice of?

SPEAKER: No.

COMMISSIONER PLATTEN: Okay, thanks.

COMMISSIONER ZITO: Thank you, Commissioner Platten. So discussing with the director here, couple of the items, and comparisons of what you're proposing besides just the name change from disturbance coordinator to ombudsman, it seems that there are two things that were different, and that was item B or C, and that's the annual basis, owners of the tenants of the project site a notice containing contact information for the establishment disturbance coordinator, copy of the notice, et cetera, and also, item E which in the staff report sure the log be kept current and is available on the project site for inspection by city staff, and you've changed that to

SPEAKER: I think it's eliminated, Mr. Chair.

COMMISSIONER ZITO: It says or to maintain a appropriate log of calls, shall be considered a violation. You're suggesting they maintain a appropriate log of calls but not have it available for the city staff.

SPEAKER: That's correct.

COMMISSIONER ZITO: I cannot personally cannot make a decision on this sitting here and seeing this for the first time. I would like to get more of staff's input in regard to those items and, if appropriate, have staff come back to us possibly to give us their input, with a much further analysis of these changes. Which would mean that I'd entertain a motion for deferral, if that's appropriate in staff's -- yes, and the police response to that.

SPEAKER: Joe Horwedel: I was also going to suggest, based on the conversation about the alleged overcrowding situations, we do not have a member of the police department here tonight, unfortunately, so that's something we could work with them to have them here and actually walk through how they deal with that. And then, we can also, staff, walk through how we're now dealing with this, with code enforcement doing our evening inspections where we are documenting what's going on out there.

COMMISSIONER ZITO: So let me give you an opportunity here and say, again personally it would be up to the Commission on vote, but possibly if you're willing to accept the staff report as-is we can get on with it. Otherwise I personally would want to see a deferral. What's your feeling on this?

SPEAKER: I'm not accepting the current report.

COMMISSIONER ZITO: Okay, fair enough, thanks. Commissioner Platten.

COMMISSIONER PLATTEN: I'm prepared to make a motion to defer Mr. Chairman but let me indicate, if we will have police here to explain the report I would like the applicant to have an opportunity to meet with the officer or officers beforehand in the event there is any information that needs to be exchanged between the department and the applicant to make sure we're clear on this. And before I make the motion I'd also like to make you a motion Mr. Mahia. You can describe to us what's the ethnic breakdown of your patronage? Let me ask you, I'll tell you exactly why I'm asking. It is a hot topic concerning enforcement procedures at the night clubs and whether or not there have been prejudicial procedures against members of certain ethnic background and I think we need to be careful here and determine whether or not and I hope it's not case at all but I want to determine whether or not any of that comes into play in this particular application.

SPEAKER: I'm really surprised first of all that you're asking me that question. Because I don't just promote to –

COMMISSIONER PLATTEN: I don't assume you do. I don't assume you do, sir.

SPEAKER: I pride myself in my business, and being now going on five years consistently having a good relationship with the city, with very involved with a lot of changes that are happening downtown and a big advocate, share the same vision. So I'm surprised. But there is no certain ethnic background in my business.

COMMISSIONER PLATTEN: Again to explain myself, the accusation has been made, I'm not saying I accept it or not but the accusation has been made that there is an uneven enforcement in the downtown area especially in those of Latino descent. I don't believe there is anything here but I simply want to make the case.

SPEAKER: I believe there is the lack of communication within the department, the urgency ordinance, there wouldn't have been one report on overoccupancy.

COMMISSIONER PLATTEN: I'm sure that will be the case. I'm prepared to move to defer this per staff's desire, two weeks?

COMMISSIONER ZITO: Would that give you enough time to meet with the police department?

SPEAKER: I've already met with the police department. As soon as I got the first report back in October, I met with the Chief of Police. I never got one notice regarding the reports that were taken. I was very concerned, especially with the relationship how closely myself and the San José entertainment and restaurant association has been working with the Chief of Police. And other city officials.

COMMISSIONER PLATTEN: Well, given that Mr. Chairman, let me move that we defer this matter to May 13th.

COMMISSIONER ZITO: We need to close public hearing first which we would have done by this point.

COMMISSIONER PLATTEN: Let me make that motion preliminarily.

COMMISSIONER ZITO: We have a question from Commissioner Kamkar. If you're done Commissioner Platten. Commissioner Kamkar, question for the applicant.

COMMISSIONER KAMKAR: Correct. I want to make sure what you're telling us directly. You don't dispute there may have been issues, you're saying it was not raised up to your attention or up to your level, do I understand correctly or you're saying there was never, ever overcrowding?

SPEAKER: I'm disputing it. I'm not aware of any of those. I disputed the first citation as well and I went through the administrative process, except during these economic times I'm not going to spend my money on attorneys to fight it all the way superior court.

COMMISSIONER KAMKAR: Sure, I understand, and I just want to understand, the -- okay.

SPEAKER: Sorry about that.

COMMISSIONER KAMKAR: That's okay. I want to make sure I understand. The officer came, officers saw overcrowding and discussed it with your manager on duty at the time and the manager did not report that to you, do you consider that not overcrowding or do you consider that, you know, there was no return report so --

SPEAKER: I'm the owner operator, manager, on premise 24-7 all year. Last five years.

COMMISSIONER KAMKAR: So if somebody shows up, they will meet with you?

SPEAKER: Oh, yes.

COMMISSIONER KAMKAR: Question number one. Thank you for that clarification. Question number 2, is there signage you know on the business that this application is coming up for the public hearing? Is there signage on the door or on the side or somewhere?

SPEAKER: Oh, yes, there was -- during the -- we had received a grant from the city for a facade grant. During that time there was a posting. Then when they scaffolded the building, it was covered by the scaffolding. After the scaffolding was taken down three months later, the windows that were -- we originally had it had been retinted. So there's been posting. It's even been replaced.

COMMISSIONER KAMKAR: Okay. And my third question is regarding soft close, the 3:00 soft close. Can I get your opinion on that? Do you prefer 3:00 soft close or --

SPEAKER: I think it's a great opportunity for the city to try something new. I was an advocate, in that program. We would be completely for it, except I think the city hasn't figured out what their fees are going to be yet and they're going to add more fees, then we're not interested.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER ZITO: Thank you, Commissioner Kamkar. Commissioner Do.

COMMISSIONER DO: Thank you, Mr. Chair. I just have one question for you. You can repeat for me very clearly what exactly are your oaks to the conditions?

SPEAKER: I wanted to remove some of the language of the reports and having to come back in one year to review my conditional use permit, I think that exposes me to more reports, unknown reports.

COMMISSIONER DO: Okay, so number 1 was to do away with a one year requirement for rereporting.

SPEAKER: Oh, yes.

COMMISSIONER DO: That is one. What are the other objections?

SPEAKER: The other objection is just to remove disturbance coordinator and just change the wording to, what is it, can't even think of it --

COMMISSIONER DO: Ombudsman.

SPEAKER: Community coordinator, you know, something that takes away the negative connotation.

COMMISSIONER DO: Are there changes to the responsibility of this person that you're proposing?

SPEAKER: No.

COMMISSIONER DO: Okay, thank you.

COMMISSIONER ZITO: Thank you, Commissioner Do. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I notice you were handed some additional information. Is there anything pertinent you'd like to add from that that maybe we should know about?

SPEAKER: Well, number 10 on the C.U.P, it says, the noise and acoustics, they're similar language there to what we're referring. And for the person that would be in charge of the disturbances or --

COMMISSIONER ZITO: Okay. Commissioner Platten. Any further questions from the commission? Seeing none, motion to close public hearing. Second? All in favor? Any opposed? Nub. Okay, public hearing is closed. Staff.

SPEAKER: Well, firstly Mr. Chair, there may be other staff comments but staff would like to draw your attention to the first paragraph under the background staff report. The applicant's been operating without a valid conditional use permit since May of 2008. So while you may be considering deferral, I think it's just important for purposes of the record and your deliberation that you understand that the operator is without a valid C.U.P. at this point in time.

COMMISSIONER ZITO: Thank you. Other comments from staff? One question I have for staff is, usually compliance review would go before the director, and not usually come before the commission. It's typical that staff would recommend something a little less

formal. It seems that there's considerations here for coming before the commission. And just give us a little bit more behind that. It seems one of the objections the applicant had is, they didn't want to come before us in a year.

SPEAKER: Let me say it this way. Firstly, for those of us, staff who are here this evening, we don't have as much immediate history as perhaps others before us. But our understanding is that there's been a series of issues that have just recently been rectified in terms of issues with the police department, with the fire department, with the building division. And the like we said, the operator does not have a valid C.U.P. There's been these other issues, regardless whether citations were issued or not, there's a prior history here, a history of concern and it's not atypical for us in a situation like this, to require or suggest, recommend that the commission require a compliance hearing to see if, you know, in one year's time, that the operation has been operating in accordance to the conditions so imposed. Maybe that's not the way it's been done most recently, we've done that in the past, in similar situations. It's up to the commission whether you want to do that or not, but it's staff's understanding of the history and the fact that it's taken us almost a year to get to this point to get a valid application before you for your consideration, there's been no valid C.U.P. Staff had concerns and wanted to bring that to the commission's attention. Thank you, Mr. Chair.

COMMISSIONER ZITO: Thank you, and I appreciate that explanation. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I know that there were a number of C.U.Ps that had so-called fallen through the cracks over time. Is this considered one of those that may have slipped through the cracks?

SPEAKER: Mr. Chair, I don't know that I would characterize it quite that way. The applicant did come forward with a application for renewal. The zoning code has particular requirements in terms of the timing for submittal for a new application to be considered a timely application which then holds your existing use permit valid, until the new application can be considered. In this particular case, this was not a timely request for renewal, and hence, their prior conditional use permit which was issued by the redevelopment agency did expire because it wasn't a timely renewal request, Mr. Chair. Thank you.

COMMISSIONER JENSEN: Perhaps the director could clarify because this sounds like one of the changeover between redevelopment and the Planning Department.

SPEAKER: Joe Horwedel: No.

COMMISSIONER JENSEN: No?

SPEAKER: Joe Horwedel: It is one the city did inherent from the agency. The presumption is that the city does track expirations and notify applicants that their application is expiring. In this case, the applicant did make a application prior to the

permit expiring. They did it two weeks before expiring so that's why it's considered not timely. I believe the applicant did realize his permit was expiring. It has taken a while to get a complete application together.

COMMISSIONER JENSEN: Right, I note that it's been almost a year since the application was filed. Okay. And then I had a question, the applicant had indicated that one of the reasons they didn't want to have a compliance review in one year is that they were concerned that there may be random visits by the police department, and some unknown number of reports filed. If we were to remove the one-year compliance review, and change it to some other time period, would that preclude PD from making visits or filing reports?

SPEAKER: Joe Horwedel: No. The police department does regular inspections of all the clubs and entertainment venues around the city, and in the downtown there is a regular program that also includes code enforcement that we do a monthly inspection of the clubs during their business hours to not only look at the normal police requirements, but we are looking at conformance with the use permit. There's been a concern in the past that the use permit was not being looked at on a regular basis. We are now looking at that on a monthly basis to ensure compliance. Irregardless of compliance hearing, there is regular review of the police department, entertainment staff, code enforcement and fire department does go out also on a semi regular basis to check out how all the clubs are operating. We are trying to coordinate that so we're not out there every night. Some days it feels like that, so we are trying to lessen the burden to the clubs around. But it is one that the important concerns about public safety is, we want to make sure that everything is operating appropriately.

COMMISSIONER JENSEN: Okay, great.

COMMISSIONER ZITO: Counsel.

SPEAKER: Thank you, Mr. Chair. For the commission's benefit whether that particular provision is within the permit or not, to bring an order to show cause process before the Commission and explain why there are problems occurring at the site that require either modification or revocation of the permit. So even if that condition is not in there, nothing precludes staff, if they learn or become aware of issues from bringing a compliance hearing to the commission, whether it be three months, six months, a year, or further out. But as noted earlier, the commission at times has been concerned, whether it be because of changing conditions where you're approving something and you know that residential uses will be coming online, and you want to know about land use compatibility issues, you have asked for staff to perform some sort of false after a year. But I believe the chair is correct that the commission hasn't typically imposed full blown compliance hearings but rather has asked staff to look at the issue after one year and then bring it forward, as needed. Staff has indicated it works nor them as well simply because it prevents staff from expending the energy, time, resources to bring forward a full blown compliance hearing. I believe the chair's recollection of the commission moving away from imposing those staff intensive reviews and mandatory hearings is accurate.

COMMISSIONER JENSEN: Thank you. Can you tell me, someone on staff, how many similar C.U.Ps have we issued that have a one-year compliance review and how many are required to come back before the commission?

SPEAKER: No, I cannot.

SPEAKER: Joe Horwedel: That's one thing I was going to ask come back in the report if one is required.

COMMISSIONER JENSEN: And then the changes in the memo from the applicant and the staff requirement, it appears to me and perhaps will have had enough time now to have looked at it, it appears that 14.B and 14.E are being eliminated and 14.C and D are both having the language within them modified. Would staff concur?

SPEAKER: Joe Horwedel: Yes, that's correct.

COMMISSIONER JENSEN: Can I make a substitute motion?

COMMISSIONER ZITO: I'm not sure -- there is no motion on the floor.

COMMISSIONER JENSEN: Oh, great, then I would like to make a motion.

COMMISSIONER ZITO: Please.

COMMISSIONER JENSEN: That we accept the staff report with the modification that this come back with a -- I believe our normal time period for compliance reviews, and please correct me if I'm wrong, is five years, with a five-year compliance review, is that correct?

COMMISSIONER ZITO: I've heard three.

COMMISSIONER JENSEN: Then three.

SPEAKER: If I can clarify, you're asking for a compliance review, not a compliance hearing. If there aren't issues then it would never come back to you for a full-blown hearing.

COMMISSIONER JENSEN: That's right. In that case, thank you, counsel for pointing that out. I think compliance review at a one-year time period is appropriate. It doesn't require the applicant to come back in front of the Commission, if there is anything adverse then staff will inform us and the applicant and we can move forward. But the language as the chair pointed out, the language for disturbance coordinator is normal. That's what we normally have. Internally, you may want to call them whatever it is you want to call them but that's kind of the City's language. And some of the modifications that you were recommending, I was a little conflicted over. Rather than notifying just

your neighbors, I think it's important to have that information posted on or near your building in a prominent way, because you don't know where your neighbors are going to store it. So with that, if I could get a second.

SPEAKER: Second.

COMMISSIONER ZITO: So there is a motion and second. And if I could ask to please restate your motion.

COMMISSIONER JENSEN: The staff recommendation with the modification that instead of a one-year --

COMMISSIONER ZITO: Compliance hearing. You want a one-year compliance review.

COMMISSIONER JENSEN: Correct.

COMMISSIONER ZITO: And that's the only change.

COMMISSIONER JENSEN: Correct.

COMMISSIONER ZITO: And there is a second on that motion. Would you like to speak any further on that?

COMMISSIONER JENSEN: No, thank you.

COMMISSIONER ZITO: Seconder speak on that motion?

COMMISSIONER DO: Yes, thank you, Mr. Chair. And I think that Commissioner Jensen's motion is reasonable, is a reasonable compromise. Essentially, I think that the changing from a hearing to review reduces the burden on the applicant. So I think that that may not meet your request, but I think it goes part way towards doing that. As to the change in terms of all of that, it doesn't appear to me like that's a significant condition. And the more significant aspect of that is, the duties and responsibilities of such a position. And you yourself said you weren't looking for changes in that regard. For those reasons I support the motion. Thank you.

COMMISSIONER ZITO: Thank you, Commissioner Do. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I support the motion, I do however want to discuss one item of it, and that's the wording of the disturbance coordinator. I do agree with the applicant that a better term can be used to probably mean the same thing, but not have the negative connotations that a disturbance coordinator would have. So I wanted to make a friendly amendment to the maker of the motion, accept, you know, that one item, changing the community relations ombudsman as the title instead of the disturbance coordinator.

COMMISSIONER JENSEN: Can I ask staff, my understanding and what we normally see is a request for a disturbance coordinator. That's the City's understanding. And what the applicant or the business calls that person onsite could be anything.

SPEAKER: Joe Horwedel: That is true. We don't require them to wear a jacket with that on the back.

COMMISSIONER JENSEN: In that case, I'm sorry, I very respectfully reject your amendment.

COMMISSIONER KAMKAR: But I still support your motion.

COMMISSIONER ZITO: Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Staff, are there any fees involved with bringing it back for review?

SPEAKER: Joe Horwedel: I was just going to -- I think for the benefit of the commission, I was going to do a little bit of work here on condition 16, which is the compliance review as in the permit. So that I think it captures -- it would replace the word hearing, compliance hearing with compliance review. So it would say within one year of the date of the issuance of this permit, a compliance review would be conducted by the staff. The applicant shall pay any and all fees required for the review, and that would be an hourly charge. There is no set fee for that. So if staff spent two hours, we would ask for reimbursement for two hours. I would strike, any conditions, literal would be a fact finding exercise, really wouldn't expect there would be much work with that, with the monthly inspections, staff would be doing that review, but the staff time would be literally to have staff write a quick memo to the commission that we would bring back to you in the next 13 months, saying here is what we found in the last 13 months, informational item.

COMMISSIONER CAMPOS: There is no fee involved with having to apply for another permit or application?

SPEAKER: Joe Horwedel: For an hourly charge, we would charge him a couple hundred dollars for the staff to do that piece. There would not be an application that he would be exposed to potentially getting turned down. There would not be the ability to go through and rewrite his permit and add conditions which I think was the concern. So it literally is a mid term report card that would be provided.

SPEAKER: There also is no public hearing. It is simply staff providing a staff report, there is a charge for that but there's no public hearing, no opportunity to change your permit.

COMMISSIONER CAMPOS: Okay, and then my last comment is, even though you can call the disturbance coordinator whatever you want on site, I think what this does, on paper, is it sends a strong message that the business community downtown, the entertainment community and restaurant community want to build strong community relations. And words, you know, that's communication. And if you're telling someone, well, go, you know, if you get a complaint in the office, and say well you know, they have a disturbance coordinator, it does start off a negative connotation. It does, in my opinion, it does. But if you tell them, you know, they're the community relations director or ombudsman some however they call it, I think they call it -- it starts off in a more collaborative feeling. And so I think we got to start somewhere. And I'm not going to request a second friendly amendment, because I know where that's going to go. But I really think that you should consider changing the language. Thank you.

COMMISSIONER ZITO: Let me ask the director a quick question. If, upon this review, and we don't anticipate this happening, but you find additional concerns, then that would escalate into a show-cause hearing?

SPEAKER: Joe Horwedel: Well, if there are things that we're finding out going on, the first thing we're going to do is we're going to talk about Mauricio. That was part of the code enforcement program. We started that at the beginning of the year, with the clubs of their use permit and walked through what compliance looks like. We said, success looks like this. That is, when we go through and each month we meet, walk through the clubs, we give them notes of what it was, if there was something going on so when we come back next month, this is how we would like to see things resolved. So it's a realtime, if there's corrections needed, we deal with it within realtime. We don't have a problem with any of the clubs, they have gone through and dealt with the issues that have been raised that we have been identifying. If there is something of a substantial nature going on with any club, we have several tools. One of which is to do the order to show cause, that would come back before the Planning Commission, and for your decision on whether to readvocate that permit or to say that it's not a problem. We also have the ability to, through the entertainment permit process, if it's an issue related to entertainment, to revoke the entertainment permit, there's a whole process around that. We also have an ability to provoke the occupancy permit, 49 occupants without an occupancy permit. We're looking at a matrix that deal with all the issues that might have to do with an entertainment night club type use and the different permits that the city has, there are a number of those. Actually working through the scenarios, if this is an issue this is what enforcement would look like. So that there's for the clubs about how the city would proceed and there's clarity within the city organization so that we don't kind of have four people doing the same thing or nobody doing some things. So we want to make sure that there's clarity about how to proceed and that's what we're working on right now. As we figure that out, get it worked out I think that would be good to share with the commission so you have confidence how we're dealing with it and same thing we're sharing with the clubs.

COMMISSIONER ZITO: My concern is removing verbiage about conditions appropriate, seems like there's an avenue that think applicant or any other applicant has an issue there obviously are means to correct those.

SPEAKER: Joe Horwedel: That is most certain of any permit that is issued. The Planning Commission has the ability through the public hearing to revoke that permit, reissue it with additional conditions on it. This just says it clarifies that staff does not have the ability to do that. That would require the order to show cause process.

COMMISSIONER ZITO: Thank you, Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. I will support the motion, but I will concur what Commissioner Campos said, I think we should look at different language, this is a hot and heavy issue we're trying to sustain. I also want the applicant to reach out to the police department, even if you're unsure there is a report, make the contact with the PD and make sure you have the contact so the proactive and prophylactic steps are taken. You contend these are not true, I'm sure you're in good faith here tonight, sir, I have no doubt about that but try to beat those things down as they come up, it would help you in the overall relationship. I know that's what you're going to do, I want to thank you in advance for that. I'll be supporting the motion.

COMMISSIONER ZITO: Thank you, Commissioner Platten. I want to underscore what Commissioner Campos has said. But I think the appropriate avenue would be to make recommendation to staff in general that they look at this piece and correct it for all or to change it for all and not to make this particular one a poster boy for that item. But I appreciate that, and I agree with the softening the verbiage. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I will be supporting the motion. For all the reasons stated, that the rest of the commission has begin. I do want to say that for the record, I have patronized this business. They -- every time I've been there, I've always seen a very respectful crowd there and respectful staff. They've also done a pretty good job in getting back to the community. They've hosted the Cesar Chavez memorial walk. There was a prereception before the walk. We have to give them the confidence that they're going to be supported no matter where they open up, whether they are a restaurant a night club or a hotel. With that I will be supporting the motion.

COMMISSIONER ZITO: Thank you, Commissioner Campos. Director.

SPEAKER: Joe Horwedel: I was asking staff, are we going to be able to Reeves the motion tonight or coming back?

SPEAKER: Yes.

SPEAKER: Joe Horwedel: That's coming back. Staff will be looking to see if there's a softer title that maybe we can weave into this or not. Won't guarantee but look at it in the next half hour.

COMMISSIONER ZITO: To make the correction on a more global basis, would be appropriate. Ombudsman, I don't know about that word but certainly understanding the intent of the applicant. I will be supporting the motion. At first I was a little bit concerned because I thought there was more to vet. But I think the commission did a fabulous job of getting through the details, and staff was very good in response. And I appreciate that very much. Saved us all having to come back and deal with this. I will say that reading through staff report on the surface, I haven't frequented your establishment. Being a father of three I don't get out that often. But it did concern me to see that there were some issues. So whether it be your establishment or any other establishment, those issues will raise concern certainly for me and I know for most other commissioners. I think you've heard from the commission that in general, we are concerned about those things and we take it seriously and we really appreciate that before they come before the commission that they get dealt with before the appropriate departments and so forth. With that I will be supporting the motion. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. While we're talking about procedural changes, perhaps we could work with PD to make procedural changes. I heard staff say that it's fairly common for PD to develop reports, two or three at a time, second or third one then a citation is filed. But from the applicant's testimony, it doesn't seem as though they received those reports. So it would be really helpful in PD as Commissioner Platten mentioned, they are coming under fire right now, in the interest of sunshine and transparency, if a report is filed for PD, to be sure and let the business owner know that something has been filed, so that if there is any discrepancy or disagreement, they can work that out.

COMMISSIONER ZITO: Seeing no further comments, let's vote by light and that motion passes unanimously. With Commissioner Cahan absent. Thank you very much. On to the public hearing items. First item, first generally the public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to a later agenda for public hearing time management purposes. item 3A. Review and recommendation of the strong neighborhoods initiative, Hoffman Via Monte neighborhood improvement plan amendment to the city council. County district 10. Staff.

SPEAKER: Thank you, Mr. Chair. The strong neighborhoods -- the strong neighborhoods initiative, Hoffman Via Monte plan amendment is one of the 19 plans that have and will continue to come before you as each of San José's strong neighborhoods update community vision for their neighborhoods. The goal of this plan is to highlight the neighborhood's accomplishments to date, document the renewed community vision, identify the community's renewed top ten projects, and neighborhood action coalition members and other community stakeholders with a clear guide on improvements to support and partner on in order to further and continue to achieve the community's goals

of improving the quality and character of the Hoffman Via Monte neighborhood. Several Hoffman Via Monte community leaders who actively participated in the development of this plan are here tonight and would like to share with you their community goals. Staff would like to thank all of the members of the Hoffman Via Monte coalition, in renewing the action agenda process and the creation of this plan amendment. At this time staff recommends that the Planning Commission recommend to city council to consider the environmental impact report in accordance with CEQA and accept the strong neighborhoods initiative Hoffman Via Monte plan amendment as a renewed community vision of the future, and encourage Hoffman Via Monte members, residents and community members to continue to community building activities. This concludes staff report. Thank you.

COMMISSIONER ZITO: Thank you, staff. You have three speaker cards. I guess they're representatives of the Hoffman Via Monte area. Very good. We have Laura Mondieu, hopefully I didn't slaughter that too badly, Carmen and Brenda. If you want to come up to the podium. Certainly.

SPEAKER: Okay, good evening chair and Planning Commission. My name is Laura Mungia, I'm the co-chair of the Hoffman Via Monte NAC. I am coming here as a representative of our neighborhood requesting that the Planning Commission approve our plans. The community has been able to accomplish many of our first priorities. Let me give you an idea of a few of them. The first one comes to mind because of the collaboration with the Planning Commission was our alleyway improvement project. This was a major capital improvement which allowed for the repaving of extremely deteriorated alleyways in our neighborhood and created secure fencing between our alleyways and pioneer high school. Another priority that we had was to address blight throughout our neighborhood such as couches, mattresses tires et cetera in our alleyways and carports. This was not only unattractive but also invited more bulky items to be dumped into our alley ways. With the cooperation of code enforcement and no tolerance program we have seen a great reduction in these items. The last priority that I think is important to mention is the establishment of a neighborhood watch program in our neighborhood. This program was established well before I moved into the neighborhood, three years ago and joined the NAC but it no longer existed when I got involved. Since there is and always has been a constant concern of crime and gangs in our neighborhood, our new community activity worker, Monica Lemas was able to bring her instrumental knowledge and firsthand knowledge of neighborhood watch in her neighborhood and helped us establish a new neighborhood watch program. In our new amendment, we express our need to have a place for young and old to gather and socialize. With this center we are certain that it will also become a landmark for our neighborhood because of private ownership, the residents will take when they are going to be involved in the planning and design of this new center. Our goals and our dreams have been started becoming reality with the support of many but foremost, SNI. And we Hoffman Via Monte will continue to set our goals high in our neighborhood and truly appreciate all the support that Planning Commission can provide. Thank you.

COMMISSIONER ZITO: Thank you very much and appreciate all your dedication to your neighborhood. Is Carmen Navarro here? And if Brenda Perales is also here, can you queue up as well? Thank you.

SPEAKER: Good evening, Planning Commissioners. My name is Carmen Navarro. I'm here not only on behalf of my community, but I'm also here representing the Hoffman Via Monte youth and young adults. The Hoffman Via Monte some of the priorities that are important to the youth and that are now on the new top 10 list are, establish recreation programs. Recreation programs that provide and promote healthy lifestyles like being part of the sports teams or leagues. We'll give the youth a chance to feel good about themselves, both physically and mentally. Having training classes will help adults and youth alike in developing valuable life skills like ESL and computer classes. Building the Hoffman Via Monte center, we will also need place to house these programs. I currently serve on the Hoffman Via Monte neighborhood center, working with city staff and the architects to ensure that the neighborhood center represents the needs and desires of the Hoffman Via Monte youth. Again, these are just some of the priorities that are important to the youth of the Hoffman Via Monte community. Lastly, I would like to thank the Planning Commission too for giving us the opportunity to speak to you about the Hoffman Via Monte plan amendment.

COMMISSIONER ZITO: Thank you. It's our pleasure to have you here. Ms. Perales.

SPEAKER: Good evening, Planning Commissioners, my name is Brenda Perales, I'm a sophomore in high school. I'm also here on behalf of my community, speaking on behalf of the Hoffman Via Monte youth and young adults. I'd like to start by thanking you for your past support and ask for your future support for the Hoffman Via Monte top ten priorities. As you heard from Carmen, the Hoffman Via Monte youth were very active in developing the Hoffman Via Monte top 10 list. I'd like to highlight to you some of the other priorities that are important and are on the new top ten list. Increase police presence. Every day, we the youth at Hoffman Via Monte community, recognize the work of the San José police officers to keeping the community safe, through community policing process our neighborhood has enjoyed a good relationship with Captain Edwards and lieutenant bowing. Increase lighting will make it easier for drivers to see pedestrians, especially small children and the elderly. Improve park, having a place to go and something to do for teens is sometimes a challenge. However our community is very lucky in having a park within our community. We think that by adding a basketball park, a new seating area will make the park welcoming to teens and adults alike. Again, these are just some of the things that are important to members of the Hoffman Via Monte neighborhood community. Service to the community in whatever capacity will make our community our city a better, safer place for all. I would like to thank the Planning Commission for giving us the opportunity to speak about the Hoffman Via Monte neighborhood improvement plan.

COMMISSIONER ZITO: Thank you and again it's a pleasure. Any comments from staff?

SPEAKER: No further questions.

COMMISSIONER ZITO: Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, player. I'd like to congratulate you for having such articulate youth dragged into City Hall. I was really impressed by the things you've already accomplished, because they're very time consuming, things like recreating your neighborhood center, fixing neighborhood street lights, I know it's hard. Getting improvements on your alley ways, that's a remarkable thing to have accomplished. Neighborhood watch and the other projects that you've been working on, those are all really tough things which I know I'm not telling you anything but I want to let you know I know how hard that is. For the new things that you are focusing on in the future, some of which is carryovers from what you're doing now, that's really great. Consistency is great. Having the youth participation in encouraging those things and being champions is really, really wonderful. I'd also like to congratulate you on Monica Lemas. She is actually one of my neighbors so I know how hard she works. And you are very fortunate to have her. I know in our neighborhood we're really excited with the participation she provided to us. Tell Monica that Lisa said hi. I'm prepared to make a motion.

COMMISSIONER ZITO: Please.

COMMISSIONER JENSEN: Consider the environmental impact report in accordance with CEQA and forward to the city council a recommendation to accept the strong neighborhoods initiative Hoffman/Via Monte neighborhood improvement plan amendment as the renewed community vision for the future of the Hoffman/Via Monte area SNI planning area, and 2, encourage residents, property owners and community members to continue to dedicate their time, energy and resources towards the plan, and this amendment, while continuing their community building activities, as recommended by staff.

SPEAKER: Second.

COMMISSIONER ZITO: I have several seconds. Motion and second. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. One, I just want to congratulate you all, for all the hard work that you've put into your community. I remember your community when it first started, and you know, I took a drive out there this afternoon. And there's still a lot of work ahead of you. But there's a huge difference. One other thing that just popped out is, how well you guys are taking care of making sure that graffiti comes down or it doesn't stay up or it doesn't even happen at all. So I want to congratulate you on that. I do have a question from staff. I was on the corner of Gallup and mesa, I notice that there is a -- that there are two buildings, they look like they were apartment buildings, and they have construction fences around there. Is that where the proposed new community center will be?

SPEAKER: That is correct. The neighborhood center.

COMMISSIONER CAMPOS: The neighborhood center. How long before that gets into construction? Because it seems like you've -- the city's already acquired the property.

SPEAKER: The redevelopment agency has acquired the property. They have hired an architect, architectural firm out of San Francisco. The process is ongoing and developing with the neighborhood, community outreach process in terms of developing the programmatic spaces of the center itself. And I'm not exactly sure of their overall schedule but I believe they'll be going through that process for several other months and they'll have other further refinement process as well as staff evaluation and environmental review. So I don't believe they have a construction date of this year but sometime next year.

COMMISSIONER CAMPOS: Okay. And then my other question is, regarding the alley improvements. That does include trash enclosures? Because part of what I was seeing, I'm still seeing trash bins being left out. Will that include trash enclosures?

SPEAKER: Are you asking about the alleyway improvements that were complete or the ones that are proposed?

COMMISSIONER CAMPOS: That will get -- that are proposed.

SPEAKER: Yes. The trash enclosure standards have changed since their original adoption of the plan and they do now require to be covered and completely enclosed. So any future alleyway improvements would include those improvements.

COMMISSIONER CAMPOS: Okay. And I think that's it. I -- my last comment is I think that's an excellent spot for the neighborhood center. You know, there's only a couple of ways in. I think -- yeah, there's only a couple of ways in and you have to drive by that center. And what a great gateway to your community. So congratulations.

COMMISSIONER ZITO: Thank you Commissioner Campos. I just want to underscore the commissioners' sentiment and the fact that you have had the younger residents so involved in this process. Typically, we get the older residents, the people who are homeowners and such. And of course there's an interest there, to see the young folk come forward and really give of their time and dedication really shows a remarkable leadership potion and just foresight in where values are and the pride in their neighborhoods. And we see that often in this city. But not often enough. And I just want you to congratulate yourself on that, and people will recognize your leadership abilities as you go forward. So we appreciate that very much. With that, there's a motion, and a second. Any further comments? Questions? Okay, let's vote by light. And that motion passes unanimously. With Commissioner Cahan absent. Good luck on your future endeavors. Okay, item 3B. B. Ordinance amendment. An ordinance of the City of San José amending title 20 of the San José municipal code, the zoning code to amend section 20.40.100 of chapter 20.40, section 20.50.100 of chapter 20.50, and

section 20.90.060 of chapter 20.90, and to add a new part 13.5 to chapter 20.8 and a new section 20.200.995 to chapter 20.200, to provide for the appropriate relocation of existing card rooms. Staff.

SPEAKER: Good evening. Those young women are a tough act to follow. Nora freeman with the San José city attorney's office. I was asked to provide you a brief background on how this matter got to you this evening. And others will be able to answer any questions you have about the substance of the title 20 amendments themselves. Title 16 of the city municipal code was amended in 1999, to provide certain regulations for the card rooms in San José. Those amendments were challenged by the two card rooms. There was a lengthy administrative process. Subsequent to the administrative process, a number of lawsuits were filed. And in the summer of 2007, we began a mediation process with retired Supreme Court justice Edward Pinelli. During the discussions with the card rooms over those many months, one of the things that we learned was that they had difficulty in their lease negotiation he with their landlords because, under title 16 they were not allowed to relocate. They did not express a desire necessarily to relocate but they expressed the desire in the ability to relocate, vis-a-vis the negotiations. Since then, we have learned that one of the card rooms may be interested in relocating, although that is all extremely preliminary at this point. The settlement discussions were colluded, actually, Christmas eve of last year, and we put the settlement on the record and then spent two months trying to hammer out a actual settlement agreement. Prior to that time we had had discussions with planning staff and Reneé Gurza of our office was involved in just what the title 20 changes might look like. And those were hammered out during the time period when we were also finalizing the settlement agreement. The proposed changes are an attachment to the settlement agreement and the settlement agreement was approved by the council on March 24th. And as part of that hearing, and that process, the council adopted a resolution sending these proposed changes to you. And that's how we find ourselves here tonight. If you have any other questions about that process I'm happy to answer any questions you may have, and I would defer to planning staff and Ms. Gurza for any other questions specifically on the title 20 amendments.

COMMISSIONER ZITO: Commission have any questions or concerns? Commissioner Do.

COMMISSIONER DO: Thank you, Mr. Chair. I just have a very short question. Under the criteria for which, I guess for which relocation would be considered, or for which card room could be approved, was the requirement for distance, and it says that if one card room is required to be at least 500 feet from another one. And I'm just curious as to the intent of that distance requirement. Is it to avoid a concentration of card rooms?

SPEAKER: Yes, that's precisely it. That we didn't want to create an area, a card room area or card room zone where they would all locate. And so the thought was that they would be separated by a minimal distance.

COMMISSIONER DO: It seems if the intent would be to avoid a concentration of card rooms, 500 feet would be hardly adequate.

SPEAKER: I think that distance has actually changed over time. I think at one point it was a thousand, and I cannot recall who requested the change. I know at one point a thousand feet was contemplated.

COMMISSIONER DO: Seems to me like it should be five miles or something like that.

SPEAKER: Well, there was -- there were concerns raised by the card rooms that they want to make sure that the ability to locate is real. And so the greater the distance that is created the more logistic problems that are created.

COMMISSIONER ZITO: Thank you, Commissioner Do. Commissioner Platten.

COMMISSIONER PLATTEN: I think I'm actually pleased with the language. I just wanted to thank Ms. Fryman for being here this evening. I just want to say Nora, the agreement is entirely consistent with the agreement hammered out by retired judge pinelli. I'm prepared to make a motion.

COMMISSIONER ZITO: Let's make it formal. Motion to close public hearing, second, so moved, great.

COMMISSIONER PLATTEN: I move that we recommend to the city council approval of the proposed ordinance as set forth in staff's report.

COMMISSIONER ZITO: And there's a motion and second. Any further comments, questions, concerns? Seeing none, let's vote by light. That motion passes with Commissioner Jensen and Cahan absent. Thank you. Okay, item 3C, another ordinance amendment. An ordinance of the City of San José amending title 20 of the San José municipal code, the zoning code to amend section 20.100.500 of chapter 20.100 (part 4) to allow the director of planning to reactivate certain expired development permits and to extend certain development permits for a discrete period of time and to make other related clarifying changes. Staff.

SPEAKER: Thank you, Mr. Chair. At this time the term of a development permit is 24 months unless otherwise provided in the permit. Two term extensions for up to one year are now allowed, except in the downtown zoning districts for development permits for office uses can have up to four term extensions, on or before October 13th, 2011. The proposed ordinance would allow the director of planning to reactivate or extend the term of development permits expiring between November 1st, 2008 and October 13, 2011, except where residential development subject to the north San José area development policy. The proposed ordinance would increase from 2 to 3, the number of one-year term extensions, subject to specific exceptions. The first exception pertains to the downtown zoning district where for the same time period the proposed ordinance would increase from four to five the number of one year extension for office uses. Secondly, the

additional term extensions would not apply to permits for residential development subject to north San José development policy. Staff recommends approval of the proposed ordinance. This concludes staff's report.

COMMISSIONER ZITO: Thank you, staff. Question from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I'm a little bit ambiguous as to the problem is that we're trying to solve with this ordinance change. Could you please explain that please?

SPEAKER: The problem that we're trying to address is the current downturn in the economy. So that permits that were issued permittees who received those permits have encountered financial difficulties, and rather than to require all those permittees to come back in, pay new fees, process new applications for developments that would likely be approved, reapproved anyway, to take into account the current financial hardships being experienced by the development community, and allow their permits to either be reactivated if they have recently expired during this difficult period or for a discrete period of time, I think it was until October of 2013, to be able to ask for an extension of their permit rather than have to come in, pay the permit fees all over again, possibly go through the outreach, the community hearings, the Planning Commission hearings, and go through those processes, all over again.

COMMISSIONER KAMKAR: Okay, thank you for the explanation. I think the date was October 11th, October 2011.

SPEAKER: Okay 13th, 2011. If I might add to what counselor Gurza said, we are also trying to align the San José permit extension with a state law, and most of the time it's happening with a planned development permit. We have a set of a tentative map and a planned development permit. The governor's map didn't extend, we have people who have been granted an extension on their tentative map and would have to start all over with their planning. This would make much more sense for them.

COMMISSIONER KAMKAR: I actually appreciate that. The question that I have then is why are we excluding the north San José and why are we excluding commercial? What's the difference between them?

SPEAKER: The north San José planning area you will remember, it was a very deliberate decision on encouraging development, and the basic philosophy was use it or lose it. That the amount of housing in north San José was oversubscribed and we did not want to encourage developers to lounge development which would preclude other developments that were ready to go from moving forward. We are going to be dealing separately with the north San José projects with the separate decision process for them to be extended. Those first permits will expire in June and so we will be looking at those to decide whether to grant extensions based on their activity, meaning they have gone forward with building permit drawings, they've acquired park plan, I've done their agreement, rather than they have done nothing. And those projects if they have done

nothing we will not be inclined to extend because we are also trying to include affordable housing in north San José greater than was previously done.

COMMISSIONER KAMKAR: Okay, and what about commercial? Is the commercial also part of the exceptions? The commercial projects, we have much less of an issue with that so we are more inclined to approve that, because we are not over subscribed at this point. But it is something we will be mindful of, because we don't want to be in a situation with a large amount of square footage for retail, but we're not allowed to build the improvements to get us into the next phase.

COMMISSIONER KAMKAR: Thank you, Mr. Chair.

COMMISSIONER ZITO: Thank you, Commissioner Kamkar. Commissioner Do.

COMMISSIONER DO: I'm prepared to move for closure of public hearing.

COMMISSIONER ZITO: I don't believe we ever opened them.

COMMISSIONER DO: I'm prepared to move to Recommend approval of the proposed ordinance amendment to allow the director of planning to reactivate certain expired development permits and to extend certain development permits for a discrete period of time and make other related clarifying changes as recommended by staff.

COMMISSIONER ZITO: There is a motion and second. Are there any further comments? Seeing none, let's vote by light. That motion passes unanimously. With Commissioner Cahan absent. Okay. 3D. CP08-085. Conditional use permit to allow an entertainment establishment (karaoke only) with after midnight operation until 2:00 a.m. Fridays and Saturdays and a portion of a 2 gross acre site, an alternating parking arrangement in a portion of a commercial building on a 2.4 gross acre site. No exterior construction proposed. The site is located in the CP-pedestrian commercial zoning district on the southeast corner of South de Anza boulevard and Via Vico 1132 south de Anza boulevard. Staff.

SPEAKER: Thank you, Mr. Chair. Again this is a conditional use permit for a karaoke establishment, for entertainment uses as well as for late night operations on Friday and Saturday evenings. The proposal is to have some minor consumption of food on the site but no provision of alcoholic drinks onsite. Two major issues that were -- the planning focused on with relation to the site. The overall commercial center does not have a plethora of parking on it. So the proposed conditions of approval included a condition that limits the number of rooms operating in the facility up to a certain point after which other businesses on site closed. The facility's also designed in a way that has somewhat significant amount of parking in the rear which is immediately adjacent to some single family residences, and staff has also added a condition that a gate be put on this area and this be closed off to any patrons after 6:00 p.m. which will help address any concerns that the neighbors might have about people loitering in this area after the business closes. This concludes the staff report. Thank you.

COMMISSIONER ZITO: Thank you, staff. Is the applicant available? Please approach the podium. You will have up to five minutes.

SPEAKER: Hi, good evening Planning Commission and staff. My name is Yen Chen. I'm with Entero commercial, representing my client, Stanley Chen, as well as Larry Lang who is the architect on this project. The current applicant has been in business with Music Tunnel DV in Richmond for the last nine years. The Richmond location has a total of seven rooms. The operator has run a successful business there for the past nine years without any issues. There are also residential homes within a hundred feet in that Richmond location. I have pulled the police reports for the Richmond KTV, the only minor issues were for someone not paying the bill and false security. One important note I'd like to make to the council is when a customer comes in a group, one person has to be responsible to sign a form stating the rules. They also need to give up their driver's license as well to the employee in the lobby until the bill is paid and the customer leaves. Holding the driver's license and having the customer's contact information protects Music Tunnel KTV and also if the customer breaks any rules, breaks any equipment or does 90th pay, the information can be provided to the police. There was a community meeting held on January 29th, where approximately 31 neighbors came in opposition to the project. Music KTV has understood the neighborhood concerns. Number 1, the lack of parking onsite, customer parking in the residential neighborhoods. The park study conducted by the city and my client shows that because of the operating hours of the business, any time before 6:00 p.m. only three small rooms, two medium rooms and one large superlarge room may be in operation. After 6:00 the other tenants in the complex will close and the parking will be then sufficient. In the rear as the staff has mentioned, there is parking but it's only going to be for employee only and part of the condition there will be a gate installed. Also the previous use was a restaurant and there didn't seem to be any issues with parking. The second issue regarding noise generated by patrons, drinking on site, littering, smoking on site, all of these issues will be handled because we are having security on site. There will be cameras installed onsite, interior and exterior. Signs will be posted throughout the business stating no smoking and no alcohol. The type of patrons that the use would attract is also a concern of the neighbors. Because this is -- we do not serve alcohol, these patrons can go to the other karaoke bars if that's what they're looking for. Also the last issue was the increase in rats and other pests in addition to food use. Music Tunnel KTV has a small kitchen, it doesn't serve restaurant style foods. Trash enclosure is part of the condition. Music Tunnel KTV is a music establishment. Not a karaoke bar or club. There are many karaoke bars in the Bay Area that serve alcohol and if customers want that type of establishment they can go there. Due to the misconception of the business my client provided a free shuttle tour from San José to Richmond on Saturday, March the 7th. At 6:00 p.m. All the residents behind the location were invited. Including the HOA president, Roger Hewett and his wife attended. They cited it as informative to them. I can tell you they were impressed and enjoyed themselves. A couple of items that were addressed were the noise issue, we took them inside and outside. Once the doors are shut you can not hear the noise as well as the rear exit door for emergency exit only. Richmond facility and the San José facility. We also showed the three owners office, which shows monitors and security monitors monitoring the

outside. This can be used for company meetings since they only charge by the rooms and not by the number of people. Places for people to sing and have birthday parties. With numerous high tech groups in the area, this is a great place for people to enjoy themselves. We would like to let the neighbors know we are highly aware of your concerns, we would like to have a good relationship with all the neighbors. We invite everyone to come and sing at the Richmond location and hopefully at the San José location. Thank you.

COMMISSIONER ZITO: Thank you. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. You were in the location where the building was rebuilt, building had caught fire.

SPEAKER: That's right.

COMMISSIONER KAMKAR: You have been there for how long there?

SPEAKER: The current applicant hasn't been in the building.

COMMISSIONER KAMKAR: Hasn't started, okay. Have they, except for the Richmond office, do they have any other establishment?

SPEAKER: No. That's their only one.

COMMISSIONER KAMKAR: Only one, okay. And the hours of operation, you say, before 6:00, you believe since not many rooms would be in operation there would be no parking issue and after 6:00 those neighboring businesses would be closed, so there would be parking necessary. Have you done a study, how much parking would be necessary and if you are short, how many over?

SPEAKER: Yes, we have conducted a parking study, and I can provide you that. Hold on. It was also in the staff report.

COMMISSIONER KAMKAR: Remember the page by any chance?

SPEAKER: Starting page 5 of 7. It says parking conformance, existing building constructed 1979, H-78-172. Original permit, 111 parking spaces, the building entirely filled with retail commercial 1 space per 200, 123 parking spaces would be required. But because we have -- our ratio is 1 per 40, it requires more parking. Based on the net of the 4,350 square feet if a tenant space was a retail use it would require 22 parking spaces. The proposed karaoke have a requirement of 1 per 40. For entertainment use. 2107 square feet of use per entertainment. Well over the 22 parking spaces allotted for the existing space. In order to allow the proposed karaoke use to operate and meet the parking standard, an alternative use of parking must be approved. Allows us 880 square feet of entertainment space. This is equivalent to approximately one-third of the proposed use. One large one superlarge room operation, at 6:00 p.m. a No. of the other

onsite businesses close. This makes enough available space for the proposed use. 1260 square feet of commercial building with a total parking requirement of 52 spaces, however, one-third of these space are provided in the rear parking area which is not available for entertainment use. The 6:00 closing does provide 30 additional parking spaces, resulting in a total of 56 spaces available for the use after 6:00 p.m. This provides adequate parking for the use of the entire establishment. It is worth noting that all other uses on the site will cease by 10:00 p.m. in which the entire parking lot would be at our use for the entertainment use. The use of 34 spaces after 6:00 p.m. will be restricted for the C.U.P. solely for the karaoke use so as to prevent double counting. A condition is in the draft to require subsequent city review if the other onsite tenants past 6:00 are changed. Through use of alternatively parking arrangement this project conforms to the parking requirements.

COMMISSIONER ZITO: There are five speaker cards, after which time you can come back up and use up to another five minutes if you choose to address the concerns of the speakers, mostly. Deepak Sabness, Roger Huett. (saying names) if you would queue up, those are the five speakers. Approach the podium, you have up to two minutes.

SPEAKER: Good evening, chairman Zito and commissioners. My name is Deepak Subness, representing the 40 planned unit town houses immediately behind this particular building. We are opposed to the karaoke establishment primarily for the following reasons. This establishment plans to stay open until 11:00 p.m. on week days and 2:00 a.m. late in the night. Our neighborhood is a high density residential and recently the nature of the neighborhood has changed with a lot of families having small children. And the nearest town home to this place is only 60 feet away. And this kind of an establishment that stays open until 2:00 a.m. on weekend and 11:00 a.m. on weekdays, is just not conducive to neighborhood. We would like to have street parking which is tight as it is to be available a little bit for the guests that visit us. As far as the assertion that they have adequate parking We dispute that because what they are not addressing is, the waiting people, the people waiting outside because they have restrictions how many people they can accommodate outside. We believe they will create parking jams and noise and nuisance and loitering. The staff has said that environmental review is not necessary, we disagree. This is not an existing fact. This is a fundamental change in the nature of business that is seeking to come there and we strongly believe that an environmental study including the traffic patterns, former study of how many physically available, I can tell you that in the night after 6:00 p.m, there are several cars that are still parked there. There is a foot spa that is open for business until late in the night and there are patrons that are visiting that particular facility. And we believe that the current San José ordinances are actually not in line with you know 60 feet separation between an entertainment establishment that wants to stay open as light as the proposed facility is. We believe that the current ordinances require at least a 300 feet separation in San José. And finally, please ask yourself if you lived in my community, would you want a karaoke club that stays open until 11:00 every night and 2:00 a.m. on weekends and have you small children in your home that are trying to study in their homes for their schools. Also homes built in 1979, code there we don't have the dined of sound insulation. And the

noise that we are talking about is not just the noise from the karaoke club. They cannot stop the noise that will be generated by the traffic and approximate people. Thank you.

COMMISSIONER ZITO: Thank you.

SPEAKER: Good evening, ladies and gentlemen. I want to thank you for your time and attention. This evening, my name is Roger Huett, I'm not the president of the homeowners association, I'm the treasurer. You've been introduced to the location of our planned unit community. It's a little figure right behind the subject property. I mean no offense. But television programming is so bad these days, I occasional watch this committee's proceedings on TV. It's been my experience that the decisions you make rarely go against the recommendations of the staff. But when they do, it is usually based on your superior knowledge of and experience in the situation appropriate interpretation of city policies. Such is the case leer. City policy 6-27 states that 24 hour uses should not be approved unless the facility can operate without detriment to nearby residential uses or the general welfare of the surrounding area. It goes on to define what is meant by nearby. Physical separation of incompatible uses is the best means to avoid potential problems. Generally 24-hour uses should not be located within 300 feet from any property residentially zoned. Do you know how far 300 feet is? In football it's the distance between the end zones. In baseball, it's the distance from the home plate to the outfield fence. In basketball, it's the length of three courts lined up end to end. In other words, it's a long way. The proposed project provides a physical separation of a mere 60 feet between the karaoke club and the nearest family unit of vista bay Saratoga. Do you know how far 60 feet is? In football, 60 feet is two first downs. In baseball, it's the distance from pitcher's mound to the home plate. And in basketball it's a three-point basket. It's not very far.

COMMISSIONER ZITO: Mr. Huett, your time is up but Commissioner Kamkar has a question for you.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I understand your figures and I can relate to the numbers the way you described them. But this is not a 24-hour use. This is a -- you know, it starts and stops and it's not a continuous use. You can explain to me the relevance of 24 hour use versus what they're proposing?

SPEAKER: It was stated commissioner, that city policy 6-27 applied, I suppose, because it's a 2:00 a.m. operation. And there's very few facilities that I know of that stay open 24 hours a day, and I think that's just a general classification.

COMMISSIONER ZITO: Anything past midnight.

COMMISSIONER KAMKAR: Okay, thank you.

SPEAKER: I have one paragraph left if I may chairman.

COMMISSIONER ZITO: I'm sorry, I just can't extend your time. I appreciate and I think most of the commission's got the gist of what you were saying.

SPEAKER: Okay.

COMMISSIONER ZITO: I also appreciate the platitudes. And I think the deadliest catch and how it's made is on opposite us on the discovery channel. But, no, just -- I appreciate that you are knowledgeable in the area, and you keep abreast of these kinds of issues. I wish more neighborhoods had people like yourself who were interested in what goes on around them.

SPEAKER: Thank you for those comments. But I don't understand why it took less than two minutes when I practiced and it took more than two minutes when I actually did it.

COMMISSIONER ZITO: I think it was the platitudes that sent it over. But I appreciate it very much.

SPEAKER: Very good. Thank you all.

SPEAKER: Good evening, commissioners. My name is June Ober Dorfer. I am the vice president of the vista homeowners association. We have a quorum, we could hold a meeting if we want to. I would like to address some of the policies, one is avoiding a concentration of nighttime uses in any one area. There is currently across the street, in San José still, a nighttime use, so it's a-d every single night they're open until 2:00 a.m. It's a pub. They have outdoor seating. They have live music. Our neighborhood has been experiencing noise from that facility, and we really request that you don't add additional disturbance on top of the noise that we already get. From having an entertainment facility so nearby. City policy further states that new entertainment facilities should be discouraged from locating near any existing residential uses, and we have residences immediately adjacent to the proposed new facility, on those grounds, we don't want to add another one. Second is the policy about 24 hours of late night uses within 300 feet, as it's been pointed out, the current -- the proposed facility is extremely close the entrance to that facility is very close to the residential side street. Parking is an issue. It's going to be much closer for people, patrons to park on that side street than in the more distance, more distant strip mall parking spaces. And so they're likely to do that. They're likely to leave the club at 2:00 in the morning. Rowdy, they've been partying. Karaoke is an energizing thing and they'll be loitering in the streets and making noise and disturbing the families. There is a provision for further offset, based on very strong community opposition which this project has. And I think I'm going to be called for time.

COMMISSIONER ZITO: Yes, I appreciate your comments. There is a question from Commissioner Kamkar so that extends your ability to make comments.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. When it comes to items like loitering, you know, if this project gets approval, provision in place to clean that up. So

they can just loiter and get away with it, you know. So you know, that's one item. I have two questions for you, number 1 is, when you moved into your neighborhood, was the 24-hour or the late-night use that you mentioned across the street? Was that there at the time when you moved in?

SPEAKER: I think it probably was. It's been there for a very long time.

COMMISSIONER KAMKAR: Exactly. And you know, that brings me to my point, that sometimes we have to balance, we this city, and you as resident, have to balance the need for both type of uses, both residential and when it comes to a busy street like de Anza, that's more likely where a establishment like that would like to locate, rather than you know in a the middle of a neighborhood which is not much access. The other item I have, the other question I have for you is, you know, does the 2:00 a.m. weekend bother you more, or does the 11:00 p.m. weekday closing bother you more? Which one is worse? I know if you had your choice, you wouldn't want any of them. But if you had to choose you can guide us a little bit?

SPEAKER: I think it's the 2:00 a.m. It's people leaving, going to their cars, starting their cars, starting their car stereo. Up to 2:30. The city documents indicate that loitering is a very difficult type of activity to mitigate. And I think even having a security guard, particularly if they're halfway down the block on the public street the security guard won't be able to mitigate that. And in some cases that's the closest parking.

COMMISSIONER KAMKAR: I know sometimes we've asked for the establishment to, you know, have people cleaning up the very next morning before even residents wake up to have that cleaned up to make sure that, so you know, that has happened before. But anyway, thank you for the answers. I just wanted some guidance.

COMMISSIONER ZITO: Thank you, Commissioner Kamkar. I'll wait to close of public hearing. All right. Is there further -- no, no, no, there's more, there's two more speakers. I was going to ask a question of staff but I'll wait until after public hearing.

SPEAKER: Good evening commissioners. My name is Allen. I have been a resident of the Via Vico neighborhood for approximately two years. My concern is one thing before the place was burned down it was a family restaurant. And then ever since the restaurant move in, rat has been a problem to my house. And then soon after like a few months after the restaurant burned down, the rat totally disappeared. That was another concern. The place my neighbor just mentioned across the street, they had a music until 2:00 a.m. in the morning however usually they failed to abide the law, the noise levels. So I had to call the police fairly frequently like once or twice a month have the police go in and then lower the noise. So the noise issue is definitely a concern and that's across the street. So having something so much closer within 60 feet would be a concern to me at night. Especially I read a lot at night between 11:00 to 1:00 in the morning. Lastly, my concern is people loitering along the street after they left the karaoke bars. The karaoke place. Because of the mention, the parking is very limited, in front of the site, with a lot of place occupied by the fishing yard and the flower shop and then the massage place, the cars

always park there after the shop is closed so the parking space is really limited. So in order for people to park they have to park into the neighborhoods. And then enough when people, beside causing a parking issue for people like me who sometimes come back after 8:00 or 9:00, their parking place would be taken by the karaoke place. People after they finish, wandering into the car, usually after happy place seeing for one or two hours they're very excited they will be talking very loud right by the street where I live. So usually teenagers will talk ten minutes usually, nighttime to say good-bye.

COMMISSIONER ZITO: Sorry, your time is up. We appreciate your comments and I think we understand.

SPEAKER: Thank you for the opportunity to comment.

COMMISSIONER ZITO: Mr. Bu.

SPEAKER: Good evening chairman, good evening commissioners. I live on via Vico. And just as the previous speakers, I just want to emphasize, we already have the Britannia arms across the street. And they operate late at night. Our windows are really shaking from the noise. In the mall, the karaoke club is supposed to start, we have a business called monsters of rock. This business caters to young people. They operate, they are actually open at 11:00 at night, sometimes midnight. People coming out of this business are parking on our street, every morning, even today we can find cans of beer, trash, food on the street, this is what's going to happen also with the karaoke cafe or bar or whatever it is. And I just want you to consider, I called the police many times regarding Britannia arms and I didn't do it in the last two or three years because they told me no, they operate under license. So what I would like to ask you, I mean, this is a very simple answer. When you give a license it's very, very difficult to get the police to do anything afterwards. What is noise, what is excessive noise, it's just -- it's very hard to prove. And our life, you know, in this neighborhood really becomes hell, you know, if you add more than what we have. The monsters of rock and Britannia arms, it is already a powerful cocktail, previous disturbance. People after they get out of the club, they park, they stand in the street, they talk. At 1:00 after midnight, you really don't have to yell. It just affect our quality of life. So I would like you to consider, and not give the license, once the license is given, there is just nothing we can do.

COMMISSIONER ZITO: Thank you, Mr. Beer. Commissioner Do has a question for you. Commissioner Do.

COMMISSIONER DO: Is that amplified music or people shouting in the parking lot what is the nature of that noise, source of the noise?

SPEAKER: The source of the noise is either the band or they have a disk jockey. This is not people -- I'm talking about, if you know where Britannia arms is, it is across de Anza East of rollingdale drive. Weekends, the windows are shaking in our units, just because of the base --

COMMISSIONER DO: Thank you very much, thank you, sir.

COMMISSIONER ZITO: Sir, there's additional questions. If you don't mind. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I'm going to ask you a question I asked the previous citizens. If you had to choose between 11 p.m. weekday versus 2:00 a.m. weekend closing, which bothers you more, 11 or 2?

SPEAKER: 2, I think significantly more disturbing. Yes.

COMMISSIONER KAMKAR: They mentioned they wouldn't be serving beer or alcohol. Hopefully the issue of the beer cans or things like that would actually not be increased.

SPEAKER: Well, you know it bothers me, commissioner because as I mentioned before, I'm sure the monsters of rock they do not serve alcohol beverage or anything. But I can tell you today, today yesterday, every day, I go down to street. And I can see along the sidewalk, you know, cans of beer. So these people, I don't know where it's coming from but I can tell you I see cans of beer, bottles of alcohol and plastic containers from food on this side.

COMMISSIONER KAMKAR: This is on via Vico?

SPEAKER: It is on via Vico where I live.

COMMISSIONER ZITO: You mentioned this monsters of rock where is it?

SPEAKER: It is down from my unit, they operate every night, they don't shut down at 6:00.

COMMISSIONER ZITO: Okay, thank you. Okay, applicant. Seems the big questions or concerns are of course parking, but also, noise control, both from inside this facility and from people going in and out of your facility. So you're welcome to speak about whatever you'd like but it would be helpful to get your perspective.

SPEAKER: I'll address that clarification. Monsters of rock was in the shopping center, not there anymore. It is actually on bark lane and de Anza boulevard. Where the K and the L underneath, that's where it's been relocated to, just a clarification. The noise issue, Britannia arms was brought up a couple of times. They have an outside drinking area. Our establishment is all indoors. There's nothing outside. The music from Britannia arms, because it's indoor-outdoor kind of pub atmosphere, of course you can hear it because they're Balagso it very loud. We have a third party study from Elpac and associates, they've done the study at night and it conforms with the city requirements. I wanted to address a couple of things. I did some research into two similar karaoke establishments that are nonalcoholic and nonsmoking. One in Cupertino in Gambi and

homestead. They have a total of 13 rooms, also within 100 feet of residential. I pulled the police report on Gamba, no reports at all. Friday 1:00 p.m. to 2:00, I have a documentation here to approve to the council and police reports for that. The second one is are we wrong music studio in El Camino, that's been opened since 1919, total of ten years. 14 karaoke rooms and single family homes behind that complex. The police report I pulled for that, two minor incidences. 2725 El Camino real, music studio is suite 107. In the police report it had no suite numbers, just the address. Hours of operation for that was Monday through Sunday 5:00 p.m. to 2:00 a.m. Both establishments have good track records, as does my establishment as well. The hours in Richmond for my client currently. They end at 4:00 a.m. on Fridays and Saturdays and during the week they close at 1:00 a.m. I have also pulled on yelp, all did reviews are favorable and good reviews from you know, a vast type of clientele and customers. And music tunnel KTV has great reviews on great service and cleanliness and venue. A lot of people said they didn't serve alcohol, they didn't like that. There's other places they can go for that. I have proven which music tunnel cafe, can operate well run business, they have the experience to run the business, they are very firm on their policies regarding nonalcohol and no smoking, they have great services, clean location, state-of-the-art technology and we are willing to address all the concerns of the neighbors and work with them as well as the city to develop a beneficial relationship. And just one note, out of the five speakers three out of the five kept on using the word club, bar. Again it's a misconception because about we're not that. I just wanted to make that clear. So thank you very much for your time, and you know, if there are any questions, let me know.

SPEAKER: Commissioner Zito: Thank you. I have a couple of questions, if you would allow me to understand how the establishment works. You have a couple of small rooms, larger room and a superroom. What is the operation of those rooms? You go and record your own record, you can have up to five or six people in the room and you record your own. How does this –

SPEAKER: The one in music tunnel KTV in Richmond they have up to 13 rooms. Eight medium rooms which is about six to 11 people. And six small rooms which is about one to six people. I have the breakdowns for Gamba as well as –

COMMISSIONER ZITO: I'm talking about the one you're proposing.

SPEAKER: We're doing 17 rooms as well, that square footage in Richmond is about the same square footage proposed for San José.

COMMISSIONER ZITO: So how do people use the facility?

SPEAKER: Well they go in, they register, we are one of the few that require driver's license to be given up front. You go and if there's an availability of a room to sing with your friends. We actually will take the driver license and make you sign a waiver form and hold that on file. You go in and there's computer systems on TV. You pick songs from a binder, also binder for snacks and usually people sing two, three hours. You're pretty exhausted after that time so I don't think people will be screaming outside, they are

not drinking alcohol, they're drinking teas and juices. I've sang for three, four hours and I'm just beat. They're in this room and they sing, there's couches in the room and TVs. The lights can be dimmed for the atmosphere. That's what the karaoke is, there is a window, the staff can look in. There's not cameras because of privacy violations, there is a window so we can look in and peer what's going on inside the rooms.

COMMISSIONER ZITO: Is this thing recorded or anything like that?

SPEAKER: No.

COMMISSIONER ZITO: Purely entertainment for that time?

SPEAKER: Correct.

COMMISSIONER ZITO: Do they book the room for a certain amount of time?

SPEAKER: They book it for an hour.

COMMISSIONER ZITO: The hook comes out and away they go, right?

SPEAKER: Some people sing an hour, or four hours, whenever they come out they pay the bill and leave.

COMMISSIONER ZITO: Would people have appointments ahead of time, would they call and say I'd like 2:00 on Saturday or something like that?

SPEAKER: That's not necessary but if you want to have a bigger room, that's okay. I know for Gamba karaoke they had 100 people reserved for Saturday night.

COMMISSIONER ZITO: One of the concerns the speakers had, what do you do with the people awaiting their turn? I'm not sure of a waiting room or if they're out in the parking lot waiting their time to get in that sort of thing, how would you regulate what goes on outside the building, where they park so on, especially towards the end of the evening, most people are concerned, 9, 10, 11, 12:00 at night. Do you regulate what they bring into these rooms? Obviously you don't sell alcoholic beverages but how do you regulate what they bring in themselves or the condition they're when they come?

SPEAKER: I'll answer your second question first. The security guard will monitor that. If we smell alcohol we turn you away. If we see alcohol we turn you away. When you sign the waiver you say you're not going to be doing these things. We have a right to kick you out if we catch you. There's the windows for us to monitor and peep in. And that's been established in the Richmond location as well, they have the privacy windows where we look in. There hasn't been an issue with that because of the type of clientele.

COMMISSIONER ZITO: Explicitly state, the consumption of alcoholic beverage is prohibited and we'll eject you from the facility.

SPEAKER: If you repeat your first question?

COMMISSIONER ZITO: First question is how do you monitor or regulate whatever those who are waiting to get into the rooms?

SPEAKER: If we close at 11:00 p.m. on weekdays usually when people come they know they're going to be there for a an hour, two hours. If it's 10:00, there's not much time for them to come to sing. So if they know we close at 11:00, other places like Gamba close at 1:00 they'll probably go to another establishment. If they come and we don't have the capability to have them now, come back in an hour or two hours. So that's how you would –

COMMISSIONER ZITO: Right but does anybody monitor the parking area or surrounding area to make sure they're not huddling around to make sure, we have 35 minutes left, we'll hang out here.

SPEAKER: We'll have the security tell them to not loiter onsite.

COMMISSIONER ZITO: Is there a, for lack of a better word, a management plan that establishes that presence and monitoring immediately outside of the facility?

SPEAKER: I have to talk to my clients regarding when the police, the security officer will be on site and I'm thinking it's probably going to be after 6:00. When they close, 6:00 to 11:00.

COMMISSIONER ZITO: We have questions from other commissioners, Commissioner Do.

COMMISSIONER DO: Thank you, Mr. Chair. I'd like to clarify and confirm a few things. Number one, from a sound point of view, I assume that the facility would be very well -- will have heavy sound insulation. So I assume that the noise would not much noise or just any, would escape the building as a result of that.

SPEAKER: Correct.

COMMISSIONER DO: Secondly, as far as parking is concerned, there are two main parking areas, one parking area behind the building, in other words, between the building and the residential development. And that area is proposed to be fenced and to be used by employees only.

SPEAKER: Correct.

COMMISSIONER DO: So all the customers would park along de Anza and would exit to de Anza and leave basically?

SPEAKER: Correct.

COMMISSIONER DO: And could you give an estimate as to the number of occupants, the maximum number of occupants that would use the facility if it was fully occupied? Give a range of so many number of people per room or at the peak time?

SPEAKER: At the peak time? Is it okay with the council if I ask Stanley? You can come down? 130 maximum capacity.

COMMISSIONER DO: 130.

SPEAKER: 130 people.

COMMISSIONER DO: Thank you, that's all I have.

SPEAKER: Okay, thank you.

COMMISSIONER ZITO: Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I noted down six categories of concern. One was the closing hour, one was the park especially with the weekend visitors, one was the call for a yard, noise, separation area and the loitering. Those were the notes I took when they were giving their testimony. Regarding noise, I would imagine you would want each room to be insulated so that one room doesn't bother the next room. Otherwise, you know if I were to rent the room from you and there's noise coming from two, you know, adjacent rooms I'm not going to be happy.

SPEAKER: Yes.

COMMISSIONER KAMKAR: Not going to be back. I would imagine you would be more concerned with the noise than everybody else. What about your windows to the outside, are they triple pane?

SPEAKER: There are no windows in the rear of the building just the windows in the door in the side and the front.

COMMISSIONER KAMKAR: The lobby is facing –

SPEAKER: Lobby is facing de Anza boulevard.

COMMISSIONER KAMKAR: So in the back, okay, the drawing on page A-3.0. You know, there are some dashes in there and I'm not sure if those dark areas are windows or it would be all -- so you are telling me there are no windows in the back.

SPEAKER: There are no windows in the back.

COMMISSIONER KAMKAR: It's just stucco and sheetrock in back.

SPEAKER: That's right.

COMMISSIONER KAMKAR: That removes one item of my concern. The next item is closing hours, I know ton weekend you asked for 2:00 a.m. Would you be agreeable because you're new to the neighborhood, you would want the neighborhood to be your customers, that's probably the easiest way to get your customers, would you be agreeable to 12:00 a.m. closing, for first two years, until they realize you're a good neighbor. When you ask for additional hours, they would say, you know, he kept up what he said, kept his word, there wouldn't be much opposition, is that something you would consider?

SPEAKER: Yeah, I think it is definitely something my clients would consider.

COMMISSIONER KAMKAR: You would keep your 11:00 p.m. on the weekday but on the weekend you go only to 12:00 a.m. There is no way for the patrons keeping the ash tray and dumping it on the street. But a good operator would have somebody go and check that. And maybe clean that just to show respect to the neighborhood and then you would get the respect back. Is that something that -- and I'm not saying we should make this as a condition. Something that you would consider in your operations there?

SPEAKER: Yes, definitely.

COMMISSIONER KAMKAR: Okay, all right, thank you very much.

COMMISSIONER ZITO: Thank you, Commissioner Kamkar. Any further questions, concerns from the commission? Commissioner Do.

COMMISSIONER DO: Thank you, chair. To follow up on Commissioner Kamkar's question regarding changing the operating hours on the weekend, is that financially feasible for the operator to do that?

SPEAKER: Like I said, I'd have to discussion that with my client.

COMMISSIONER DO: Thank you.

COMMISSIONER ZITO: Thank you, Commissioner Do. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you. Not to beat a dead horse. But the issue of sound proofing came up. I didn't see anything in the staff report that indicated that the building had undergone a retrofit to incorporate sound proofing. I assume that the restaurant didn't have any such thing. But you can confirm that everything has been sound proofed?

SPEAKER: Currently, it's just a shell so it hasn't been. But if we do get an approval, do the tenant improvements it will be done.

COMMISSIONER JENSEN: Okay, great. And can I ask the director, is there any requirement for permits for that so that we don't end up in a state where –

SPEAKER: Joe Horwedel: The applicant would be required to do building permits for the work that is shown here, that would be building inspections, and part of the review, we do have a compliance review, that the building operator signs off that he has complied with that. As a new condition.

COMMISSIONER ZITO: Thank you sir. Thank you, Commissioner Jensen. I believe that concludes the commission's questions. Is there a motion to conclude public hearing? There is a motion and second. Staff, please, there's been several issues that came up, obviously lots of concerns about parking, about anonymous, emanating from the facility, noise emanating from people coming in and out or loitering waiting to get in, EIR conformance. And separation issues as well.

SPEAKER: Thank you, Mr. Chair. Couple of issues, one question was raised about environmental clearance. Not exact same type of facility was here, but there is an existing building. This doesn't involve new construction. As said before, a noise study was prepared, major environmental impact, noise study said the use would have no significant impact and it would meet the zoning code requirements for noise at property lines. And as discussed before, it just makes good business sense for this facility to be well sound-insulated. They probably wouldn't have a lot of repeat business if people are overhearing their adjacent to neighbor's songs.

COMMISSIONER ZITO: Especially if it was me singing.

SPEAKER: Yeah, especially if I'm there. Basically I guess again, as staff addressed, there's adequate parking on the site if there is sort of a kind of at the beginning, throughout the day while other businesses are open, they have a limited amount of the facility open, then once other businesses are closed then they can operate the full operation. Staff has visited the site a number of times, both during the day and in the evening. At least from my experiences, there was never shortage of parking. I never saw more than a quarter of the park spaces filled, that's largely because about a third of the commercial center is currently vacant. I think -- I mean, it is worthy to note that de Anza boulevard is a major commercial center and has been that way for quite some time. Staff believes that this use is consistent with this area, and believes that it meets the intent of the 24-hour use policy of not, by the letter, meaning that. An again, staff feels that this, I guess should point out that one of the conditions that staff recommended in their proposal is to have this, as we discussed before, with the night club, there is kind of a compliance review after two years to take a look at this and make sure that the proposed use is meeting with their -- the intent and meeting all their conditions and not causing issues. So there is an opportunity for the neighbors to get a kind of a second look at this and have somewhat of a trial run with it. And I think that covers all the issues, thank you.

COMMISSIONER ZITO: So I didn't read completely but is there a community coordinator ombudsman role being conditioned, i.e., disturbance coordinator for this facility?

SPEAKER: No, Mr. Chair, there is nothing included in the resolution as drafted but that is something that we could easily have and probably should have in the first place. While I have the mic I would like to point out.

COMMISSIONER ZITO: Please.

SPEAKER: Condition number 10, there is a concern about loitering, queuing and so forth. There is a condition prohibiting loitering. Staff's direction on the conditions proposed, queuing outside the facility is not really allowed unless we say it is. With condition 10 I think we would believe, interpret that to understand that there is no queuing allowed outside the facility. Thank you, Mr. Chair.

COMMISSIONER ZITO: Thank you, appreciate that. Item number 8, minimum of eight security guards will be on duty for a minimum of 100 patrons. Effectively control crime, drug, et cetera. Is there a provision for that security to also monitor, i.e. patrol the immediate periphery of the building again to help mitigate any loitering or, you know, partying that's going on?

SPEAKER: Yes, that's the, again, the condition attendant. Prohibited during hours of operations or after closure. The operator shall proactively work to clear this area, within half an hour of closure of their operation all days of the week.

COMMISSIONER ZITO: So away I'd like to see eventually, and I'm obviously not making a motion but just a recommendation that somehow the wording is stated such that security that's provided, and eight would also most likely monitor, you guys can do a much better job of wordsmithing that. And also, the disturbance coordinator capabilities could make comments to the facility so they can improve their working relationship with the community.

SPEAKER: Thank you, Mr. Chair. I think with regard to the community relations coordinator that we would use very much the same language that you saw previously in the permit condition for the vault.

COMMISSIONER ZITO: Thank you. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. One of the things I heard, unrelated to this particular application but it is a little disturbing, is that residents had to frequently call the police in order to get one of their neighbors across the street, the Britannia arms to turn their music down. If the police were to get the business to tush their music down, they recognized that they were perhaps out of compliance with what they should be doing. We shouldn't have residents who are repeatedly having to call the cops on a neighboring business.

SPEAKER: Yes, Mr. Chair, I think that's something planning staff could follow up on. We should pull the Britannia arms permit and just see if we believe they're in conformance with their permit conditions or not. But that's something we'll follow up on separately, Mr. Chair.

COMMISSIONER JENSEN: Thank you. I also live in a neighborhood that has businesses surrounding it and parking is always a challenge in my neighborhood, as well. I think as a policy issue going forward, we need to really reexamine permit parking in areas adjacent to business areas. We are going to continue to urbanize and continue to get denser and we want to be able to have walkable neighborhoods where you have a wide variety of diverse businesses and neighborhood-serving services available to you. But there are going to be people who drive there. And so you don't want to have to burden the surrounding neighborhood or make them incredibly angry and have them show up here when there's a proposal to bring a business in. So as a policy issue we need to consider moving forward with some sort of requirements for permit parking, in surrounding neighborhoods, to help protect them from businesses that are coming in. So what I heard tonight was that the business owner will be investing in sound proofing and there will be no alcohol served, and the doors are going to stay closed and this railroad no windows facing the neighborhood. And there's an interior capacity of 130 patrons and a park lot capacity of 111. And even if the beauty salon that does beauty work in the evenings, they won't be open as late as the karaoke. Their crowd is going to come in a little bit later than all the other businesses. So with that I'd like to make a motion. Approve a conditional use permit to allow an entertainment establishment (karaoke only) with after midnight operation -- did I hear an agreement to have it until midnight on -- okay, until 2:00 a.m. on Friday and Saturday, in a portion of a commercial building on a 2.4 gross acre site as recommended by staff. With the additional recommendations that came forward regarding an ombudsman, I'm just going to go with ombudsman. And a permit review and appropriate two-year time frame. And with that, any friendly amendment?

COMMISSIONER ZITO: First get a motion and second. There is a motion and second, Commissioner Do seconded that. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I want to propose a friendly amendment to the closing hours on the weekend. If for the first two years until the review is done, we can take it back to midnight. And after the review, you know, the applicant has the choice of applying to increasing that to 2:00 a.m. You know, I'd like to propose that as part of a friendly amendment to your motion.

COMMISSIONER JENSEN: Thank you. Director, is that something that we could roll in, to where it wouldn't be burdensome to the applicant coming in in a two-year period to make that adjustment if it works out?

SPEAKER: I think you could structure the permit condition such that the hours will be until midnight for the first two years of the permit. Staff conducts the review and if there

are no noise or other code compliance issues, that the permit hours can be extended to 2:00 a.m. with an adjustment by the director.

SPEAKER: Yep.

COMMISSIONER JENSEN: Great. Then with that I would accept the friendly amendment.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER JENSEN: I would just like to speak on this. I completely understand. I have a couple ever restaurants fear me that occasionally have live music and I want to strangle people occasionally. But the karaoke facility sounds like it will be a lot of fun. Hopefully you can enjoy it. Staff can ensure that you will not be burdened by the parking from the neighborhood businesses. I hear what you are saying about Britannia arms and hopefully when staff is able to come back with a report on that that we can provide you with some relief for that existing problem. But I think this sounds like there's going to be a nice business. There is no smoking, no drinking. As far as a night club goes, that's kind of the ideal item to have and I hope you'll be able to welcome it into your neighborhood. Thank you.

COMMISSIONER ZITO: Thank you, Commissioner Jensen. Commissioner Do.

COMMISSIONER DO: Thank you, Mr. Chair. Actually for me, it is the idea of a boring business. Because there is no alcohol. Regardless, I wanted to clarify one point about the compliance review, is that the condition number 18, in the report, actually says that the review would be done over the course of the first two years. After the issuance of this permit. And not just after two years. I want to confirm that is the case. Because if it is the case, then review is being done periodically or regularly during that course of time. Is that correct?

SPEAKER: Yes, player, probably not. Week to week certainly. But the intent would be if there were issues that arose, staff would monitor it, we wouldn't wait until the two years were up, to the extent there were issues we could always bring it back for commission review, tell you that there are problems prior to the expiration of the two years. Certainly we would be providing a formal report to the commission in two years' time but we would be monitoring it on an ongoing basis.

COMMISSIONER DO: So with that I'm wondering if there is room for a friendly amendment to the friendly amendment, in the sense of allowing the applicant a little more flexibility in terms of their business viability. I don't know how -- it appears that they already trimmed the hours back in comparison to similar establishments and to further hamper them within two years appears to me to be overly harsh. And so I'm -- since review is being done during the course of the two years, I wonder if the time frame could be reduced down to either a year or even six months.

COMMISSIONER JENSEN: What would be the time line on when this might go forward, and when they would be in business? The reason I ask is that my guess is the summertime would be probably the most popular time. And so I would want to ensure that whatever review period incorporated a full summer.

COMMISSIONER ZITO: Director.

SPEAKER: Joe Horwedel: That might be something that, at the conclusion of the first full summer, that staff would complete that review, and then forward or make a determination about whether to extend the hours to the 2:00 a.m., if there were no issues.

COMMISSIONER KAMKAR: That would be a question that I would have then, is are you recommending that after the review, if everything is fine, it goes to the 2:00 a.m. mark, is that the recommendation Commissioner Do?

COMMISSIONER DO: Yes, it is.

COMMISSIONER KAMKAR: I think that should be fine. I think that one summer would be enough period where both the residents and the business can get to know each other and see if they can find a harmony there.

COMMISSIONER ZITO: So fall of 10 then?

COMMISSIONER JENSEN: Pardon me?

COMMISSIONER ZITO: Come back in fall of 10 then with a recommendation.

COMMISSIONER JENSEN: It's a timing thing. I assume they won't get open in May of this year.

SPEAKER: Joe Horwedel: Whether July 1st, would they be open or how far would the commission allow them to be open this year.

COMMISSIONER KAMKAR: I don't think we're precluding them from starting any request.

COMMISSIONER JENSEN: Right, what I think we're struggling with is what the definition is of a complete summer.

COMMISSIONER ZITO: And my only question is can we be more specific so there is no guess, right? I'm thinking to cover all the bases, you know, if we say fall of 10 we're looking at the most 15 months. Versus two years which was the original statement. And if that's sufficient for Commissioner Do, I don't know. I mean, I'm just doing the numbers. I'm not trying to put words in anybody's mouth here.

COMMISSIONER JENSEN: Well, let's just say that the applicant is incredibly fortunate and able to open by June 1st, if they were able to open by if first week in June then perhaps September would be, the end of the first summer and when people would be leaving doors open.

COMMISSIONER DO: I think it takes them a time for getting a feel how to deal with a crowd and how to –

COMMISSIONER ZITO: Why don't we do this. The applicant is making some gestures. For this particular piece, is there any opportunity for your facility to be up and running before let's say July 1st? It's not possible.

COMMISSIONER JENSEN: Okay, then great, the end of summer, June, 2010.

COMMISSIONER ZITO: So September 1 of 2010. Would that meet the need, then? Okay, so the proposal is now that there would be a compliance review and recommendation by the director for, actually that he would have the authority to increase their hours at that point to 2:00 a.m. So that would be the –

SPEAKER: With an adjustment.

COMMISSIONER ZITO: Right, with an adjustment so it wouldn't have to come before the commission. Is that typical?

SPEAKER: Yeah, we could do that and again the presumption would be that's based on a positive review, if you will, that there's no problems.

COMMISSIONER ZITO: Right, absolutely. Right.

COMMISSIONER JENSEN: That works for me. And I just want to say both to the applicant and to the residents, especially the applicant, it's really incumbent on you to step it up and be a really good neighbor because they already have an experience that hasn't made them very happy and you're going to be a lot closer. So it's really incumbent on you to make good friends with these folks and you know these could be your best customers sitting right in your backyard, thanks.

COMMISSIONER ZITO: To restate the motion, the motion is to accept staff recommendation, with the disturbance coordinator, the security guard checking the grounds to make sure there's no disturbance. I think it's open every day, right?

SPEAKER: Mr. Chair, I believe the proposal is to close --

COMMISSIONER ZITO: 11:00 every day and midnight Friday-Saturday with the compliance review in September of 10, and the purview of the director to increase their hours with an adjustment to 2:00 a.m. for Friday and Saturday. So that's the motion as I understand it. Given that, Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Staff, you might have this answer off the top of your head. You might not. What we're doing tonight is discriminatory. We are judging this applicant based on the actions of Britannia arms and that's unfair. I think the rest of the motion is great. But requiring them to close on -- during peak business times which would be Friday, Saturday and Sunday, is, to me, putting an unjust strain on their business. I will not support this motion. I think it's unfair, and unjust.

COMMISSIONER ZITO: Thank you, Commissioner Campos. Commissioner Do.

COMMISSIONER DO: I just want to say I share Commissioner Campos's view completely in that sense. I would have supported the original motion without any of the amendments at all but I thought the amendment was a compromise. But so we'll see where this goes. Thank you.

COMMISSIONER ZITO: Uh-huh.

COMMISSIONER ZITO: This is a tough one. The fact that this is not an alcohol establishment tells me that the chance of excessive rowdiness, and the troubles we see in the downtown, but the fact that the applicant was willing to show a compromise, and is willing to prove themselves being a new business in the area, I'd like to give them that opportunity. And working on that generosity, basically also sending the message that yes, we do listen to the community and do what we can to reach that compromise, I do see this as a compromise. I think as long as the applicant is reasonably okay with what we're asking, I think we have a friendly amendment and the fact that it leaves it to the director's discretion to make the adjustment, I think that's a fair compromise as well. I do understand what commissioners Campos and Do are saying, but I believe this is a fair middle ground. From that perspective I will be supporting the motion. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I would ask the maker of the friendly amendment regarding the time, if they would be open to removing it because I think we know how to count. And we are short one commissioner this evening.

COMMISSIONER KAMKAR: I would like to take a chance, you know, with a friendly amendment and see where it goes.

COMMISSIONER JENSEN: Okay.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER ZITO: Okay, I see no further discussion. And let's vote by light. Which means we have a split decision. The motion does not carry. Commissioner Do, Platten and Campos opposed.

COMMISSIONER JENSEN: I'd like to make another motion. To approve a conditional use permit, to allow an entertainment establishment (karaoke only) with after midnight operation until 2:00 a.m. Fridays and Saturdays in a portion of a commercial building on a 2.4 gross acre site as recommended by staff. with the additional provision of the ombudsman, security and overall monitoring of the establishment.

SPEAKER: Second.

COMMISSIONER ZITO: There is a motion and second. Any further comments? I will be supporting the motion. But it isn't unheard of that we've limited other facilities' times. I don't believe that previous motion was out of whack with what we've done before. With that said, let's vote by light. That motion passes unanimously. With Commissioner Cahan absent. Okay. 3 E. PDC 07-017. Planned development rezoning to allow the demolition of existing structures and the construction of up to 41 single family attached residential units and up to 1500 square feet of commercial uses on a 1.16 gross acre site located on the west side of Lincoln avenue extending from west San Carlos Street on the south to Pacific avenue on the north excluding the Northwest corner of west San Carlos and Lincoln avenue. Staff.

SPEAKER: Thank you, Mr. Chair. This is a planned development rezoning for up to 41 residential units on 1500 square feet of commerciality uses. Four of the units would be in a two story town house form along Pacific avenue. The remainder of the units would be in a three story podium structure, the remainder of the site. The retail is proposed to be ground floor along west San Carlos. The project is in conformance with general plan plans and policies that call for high density housing and mixed use neighborhood districts and transit corridors and conforms with alternate uses of the general plan as described in the staff report. A mitigated negative declaration was prepared and staff recommends approval of the project. This concludes staff report.

COMMISSIONER ZITO: Staff, is the applicant present? Please state your name you'll have up to five minutes.

SPEAKER: Yes chair and commissioners, my name is Jim Jean and I'm the owner of the property with my wife Tina. And we've been members of the community here for over 20 years. And we're proposing this project, Jerry King's office has been handling the project and I believe they've done a very good job. I'm going to turn this over to Andy Whiting who has coordinated the project from beginning to this point. And he can answer any of your questions.

SPEAKER: Thank you. If I may commissioners I'd like to give a very quick presentation. Some slides to show the first project.

COMMISSIONER ZITO: You have about four minutes. Good that's okay. An aerial view of the site showing Pacific avenue Lincoln avenue and West San Carlos street. Wrapping around it cash 1 checks cashing establishment on the corner taking the bite out. The proposal on the site 41 market rate condominium units broken down into four three-

bedroom two-story town homes along Pacific avenue. Two residential loft condominiums on west San Carlos street with about 1500 square feet of commercial on ground floor, and the remainder of the 41 units. Along Pacific avenue residential properties, this is the section of the site that addresses Pacific avenue and here is our proposal for the four town homes, very traditional stifle architecture that we worked with planning staff and feedback from the community meeting to come up with a very traditional approach with the pitched roofs, traditional materials, and really working to adapt our previous more contemporary design, to something the community felt was more in line with the feel of Willow Glen. The floor plans, first and second floor and the elevations up above showing the varying roof lines and bay windows projections to add articulation along the elevation, whilst maintaining the rhythm of the development along Pacific avenue. There is a model of the view if anyone would like to take a look. Very changes, McDonald's across the street, auto repair and sales flanking Lincoln avenue. We have a small section there presenting the 1500 square feet of commercial on San Carlos and the live-work. I apologize. They're not live-work, they're just residential condominiums two floor, separated in isolation that we were proposing before. Previously we were proposing live-work, it met with a lot of opposition, we removed the live work aspect of it to create that separation. The elevation along west San Carlos, and then along Lincoln avenue, the remaining side where it kind of bridges the divide between the residential and the retail. And highlighted in green there shows those 35 flat condominiums there which effectively are flanked by the more articulated town homes and residential lofts on San Carlos and Pacific. Elevation there, working with planning staff their recommendation to put all vehicular access off Lincoln avenue the ramp down and trash collection here on Lincoln avenue and then a brief floor plan showing that the split level parking podium structure has all of the required park space contained below grade with essentially three floors of the type 5 construction for the condominium units above. That's my presentation. Both Jim and myself are available for questions.

COMMISSIONER ZITO: Okay, we do have some questions. Commissioner Do.

COMMISSIONER DO: Thank you. Thank you, Mr. Chair. On the elevation along Lincoln avenue, I think there was one of a previous slide you had that, it shows -- it shows buildings between San Carlos and along Lincoln even though that site is not part of this project, is that correct?

SPEAKER: That's correct.

COMMISSIONER DO: This is speculative later on, is that right?

SPEAKER: The elevation continuing along west San Carlos the other way, if anything is to be worked out, I think planning staff agrees it would further enhance this.

COMMISSIONER DO: It seems to be a deliberate attempt to create two styles, one very traditional very friendly style which is the detached residences on the podium and then the bigger mass building has a much more modern style, so on, so forth. I'm sure the

intent behind doing that is provide a transition from the residential neighborhood towards San Carlos.

SPEAKER: Exactly.

COMMISSIONER DO: I guess my feeling is I disagree with that stance, I disagree with that approach in the sense that I think that it builds in an incompatibility within the project, that for me doesn't make complete sense. I think that the traditional style of the bungalow style, or whatever name you may call it, of the detached residences facing the existing residential neighborhood, that makes sense. But I don't see the point in introducing a completely contrasting style on the same development. And myself, I would have preferred to see a completely compatible and unified, visually unified project, than what is being proposed.

SPEAKER: To answer, our initial proposal presented to the community had a -- did have it unified with an extremely contemporary development. I think a few of the NACs came, and there were quite a few of them had strong opinions for us to change our initial design to come up with a more traditional approach in the style of Willow Glen. As an architect as well I try to put the community feelings ahead of my personal feelings. Trying to base it on the community feedback as well and the idea of maybe a compromise, as well, that we get to really address the commercial side, which is starkly different from those residential homes that we achieve the best of both worlds, keep architecture and aesthetic side happy as well as the community.

COMMISSIONER DO: You only compromise halfway, which is to only change the style of the detached residences. And anyway, that was my point. And I'll make a motion later on. Thank you.

COMMISSIONER ZITO: Thank you, Commissioner Do. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. The concern that I have when I look at the portion that's fronting West San Carlos street, my concern is that we're taking something that could be, right now in our packet it's a more of a like a red band across west San Carlos, and it's called a neighborhood business district, as well as general commercial, with a portion that's the front to Pacific avenue and it says medium density residential. My concern is that we're taking something that could be commercial, retail, which is you know, fronting San Carlos, which is a busy street and we're using it as commercial. Is there something you could do to have a little bit more retail or commercial on the bottom floor for those residence behind the commercial space that you're proposing? Do you know which area I'm talking about?

SPEAKER: Yeah, it's the -- that part that we're looking at of the elevation is actually backed, the commercial part of it is immediately backed by the nature of the split level –

COMMISSIONER KAMKAR: The retail space that you're marking, there's four units and I don't have a problem with the second and the third story. I think that can be

accommodated. But the bottom floor, is there somehow you can dedicate that more to retail, to something that would help the city, rather than just making it residential?

SPEAKER: The way the plan lays out currently, there's parking directly behind that wall of the commercial which serves a lot of those residential units. To push it back further would eliminate the parking which would then reduce the number of units which then threatens the viability of the project. What we tried to do was try to develop laterally down.

COMMISSIONER KAMKAR: I'm of the impression that park would be below-grade. I'm talking about the first floor.

SPEAKER: It's the nature of the split level parking garage goes above grade and below grade. But the residential is just at great. So it butts up to that line of parking.

COMMISSIONER KAMKAR: My concern is we're taking space on west San Carlos that could be usable, especially when that corner place has been bite out of, once that develops, you know, you are taking opportunity away by making that more residential. And so I'm -- that's one of my concerns for this project. Thank you.

COMMISSIONER ZITO: Director.

SPEAKER: Joe Horwedel: Commissioner Kamkar, I would share your concern about the design of the structure on west San Carlos street. The way it is designed is in conformance with avoiding a number of building code violations, which violates just about every rule of good street design, is a way to make the building more kind of viable for residential construction. And I think not losing sight that west San Carlos street is a commercial street, not a residential street, how this building design needs to respect west San Carlos street, that is one of the things I'm going to look at the permit stage, how the exits are working out, the trash enclosures, those are all coming out of the commercial space not the residential space. Again you are asking to use the alternate building policy, you need to make the commercial work and to the extent anything is left you can put housing in it. That is the guiding rules to it. I think the basic concept of what you've got here works. It is a matter of some of the details of around how it really fills out the street or not. And so the other question that Commissioner Do, I think you were asking about the architectural fees. I think that is a really good example of how to successfully have a building that looks different on different street frontages. It is in this neighborhood on the Alameda at bush that Avalon built. One side faces a park and it's a four-story vertical wall. It has retail with I think three story of housing on top of it facing the Alameda with a brick veneer and then facing the plant 51 all Del Monte warehouse has a very modern building like you see here. It works very successfully on that building, has great transition so it hangs together but it's a masterful job that architect did in respecting each side of the neighborhood so that it really extended the neighborhood and really didn't try to dominate the neighborhood.

COMMISSIONER DO: In response to that, I think the contrast is not as startling as here. And here, it seems to me there is a night and day contrast between a very traditional style. The massing of the project, the Avalon project is largely the same all around. Where it differs is the treatment of materials and some details. But here, it's one building, very modern contemporary style and the other is essentially two centuries ago. So for me, I find that to be not a good approach. I'm not going to make an issue out of that for this purpose but thank you.

COMMISSIONER ZITO: Thank you. I find no further comments from the commission. And I believe there are no other speaker cards, correct? A motion to close public hearing would be nod. Motion and second. Seeing no discussion, all in favor? Any opposed, none, okay, thank you very much. Staff, any further comments?

SPEAKER: No additional comments, thank you.

COMMISSIONER ZITO: Okay. I'm going to start off by just saying this is a rezoning, if I understand correctly. So there's lots of room for additional work to be done on design and architecture and so on. My big concern, there's a couple. One of which we're using the alternate discretionary alternate use policy which is one of my favorites. And is a fairly what I thought was fairly high bar to meet Architectural design of exceptional quality and exceeds the design standards, to Commissioner Do's points That really needs to be adhered to. And there is a lot of opportunity to improve and expand on the architectural aspects of the project. Correct me if I'm wrong, the proposal, again this is just conceptual, the parking would be in the front, they would have to walk out of the parking and into the facility. I'm wondering how well that works as far as you know, flow, and juts having patrons understand where to go and how to get, you know, how to get to that facility. The third issue is just the fact that we're encroaching on the commercial zoning as one of the commissioners mentioned, I forget exactly, that you've got neighborhood commercial and business district on the overtime general plan diagram. But you're encroaching into that with a substantial amount of residential. As we saw in the karaoke, wasn't even a drinking establishment. You're creating a positive receptor. It is possible as those businesses develop that you're going to have potentially, how can I say, annoying businesses that are going to sandwich that residential property. And I'm wondering if it makes sense to have the residential encroach on the red. I have no problem with Pacific avenue and Lincoln avenue. I don't know how many units there are in the red there but if it makes sense to just keep that commercial as it's currently zoned. And again, something to consider and would like to get your response on that. Those are my points and there are a couple of questions from others. You want to wait to all the questions?

SPEAKER: We'll go ahead and answer the questions that you've raised. We agree, this is a rezoning permit, to give us the opportunity to look at all of these issues. We want to maximize the commercial frontage, that's the key reason the parking access was placed on Lincoln. That would otherwise take away 20 feet of valuable frontage of retail not to mention other access to the residential and even further erodes the opportunity for maximizing the width of the store front. To the extent we can widen that out at the PD

permit stage, we'll certainly attempt to do that many to maximize the amount of commercial space. I did want to speak about the parking because you had raised that as an issue. The commercial area is fairly small obviously and only requires four parking spaces. So we anticipate that while there is actually pretty good access, if you look at the parking garage plan there is an elevator and a stair towards the San Carlos and the garage that provides a pretty good short access. I would imagine the number of steps from parking space to retail frontage is probably a lot less or very equivalent to strip centers that we have that are flat. But I think in reality, probably what we envision is the employees are probably going to be the ones who will park in the garage because there is maybe a little bit more inconvenience to navigating the garage, perhaps. And with other commercial businesses along San Carlos street, they're probably the most attractive area for parking for customers is probably going to be on the street in front of the store or in the commercial properties in the public right-of-way in that area. As far as the comment about keeping the residential out of the area designated as commercial, the opportunity of having residential, however we feel it gives the opportunity to create a more significant streetscape having one-story streetscape would be the alternative with a vaulted commercial space. And given some of the other recent development proposals that we've had the commission just recently saw a fairly significant proposal a few blocks away at Meridian in San Carlos, with residential above, we think that adds a little vibrancy, so we're trying to maximize that presence out on the street. And the only way to do that really is either to do probably either office above but that would be a fairly small office or to put residential above. So all things considered, we think the residential's probably the best option.

COMMISSIONER ZITO: Bit it's follow really residential above retail, it's retail completely segregated from the building, is that correct?

SPEAKER: There is residential above that retail.

COMMISSIONER ZITO: I'm sorry, did I miss that? Two units above the retail, okay, all right. And would that be the vision for the rest of that street as it develops over time?

SPEAKER: We do envision it being taller. As far as the midtown specific plan, we've got proposals across the street, at Sunol, where there's a current proposal to have a street wall basically at 40 feet. That's what's envisioned as part of the midtown specific plan, we have a general plan amendment and a PD zoning for that that would amend that to take that even higher. So we'll see how that goes. That would be anticipated to probably come back before this body later in the year. But generally speaking we do look at probably being much taller than single story in the long run across San Carlos.

COMMISSIONER ZITO: In the long run that's commercial and industrial but again, is that meant to be commercial, right?

SPEAKER: That is meant to be commercial with probably residential above. I'm sorry, I stand corrected.

SPEAKER: Joe Horwedel: The midtown specific plan for that part of the street is combined industrial commercial. So we are anticipating commercial uses, light industrial uses that were out there today, that was part of the specific plan of protecting the businesses in that area that is a very viable small business area, and the plan while anticipates that west San Carlos street may see some street level retail coming along that edge, we are not anticipating residential moving across San Carlos street into that block.

COMMISSIONER ZITO: Yeah, and I concur with the need to keep those industrial uses in the midtown plan. I'm just a little bit concerned about having retail that close. Commissioner Campos, I'll give the other commissioners, okay, go ahead.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Staff, is there plans for bus rapid transit to go down San Carlos or is it rail or what are the modes of transportation for the future?

SPEAKER: Thank you, Mr. Chair. There had been discussions of light rail. Staff concerns, that may be considered later on in the future. Later on, there is plans to do bus rapid transit down San Carlos street. I don't know if Joe knows the exact timing. But based on the discussions we have had, bus rapid transit has been talked about a lot and was anticipated down west San Carlos Street.

COMMISSIONER CAMPOS: You are treating this as a major transportation arterial, is that correct?

SPEAKER: Yes, Mr. Chair, we are.

SPEAKER: Joe Horwedel: We are looking at where the Sunol corridor comes in. There is a light rail station that we collected a million dollars from KB homes to help fund a new station at Sunol near Auzerais, that's one of the things we're working through right now as we're redeveloping the VTA's property next door with some mid rise high rise units of the timing of that station. There would be additional contributions from VTA and others we're working on.

COMMISSIONER CAMPOS: So the densities on this property are probably more on the lower end of what what's appropriate for the planned transportation, okay, okay, then with that I'd like to make a motion. So that we can continue discussion if needed.

COMMISSIONER ZITO: Please.

COMMISSIONER CAMPOS: That we consider the mitigated negative declaration and find it complete in accordance with CEQA. Approve a planned development rezoning to allow the demolition of existing structures and the construction of up to 41 single family attached residential units and up to 1500 square feet of commercial uses on a 1.16 gross acre site as recommended by staff. and I'd like to further just -- and I know that we've talked about this in the past, that as this comes back to the director at a hearing for PD permits that you take into consideration design that it -- I know that the community

has you know, voiced what they would like to see but there would be better compatibility with the two building types. And I do -- I know that there is -- that there are some property constraints with the amount of retail space, but I'm not going to request that it go up. But if there's a way to squeeze more out of it at the PD permit stage that would probably be optimal. Thank you.

COMMISSIONER ZITO: Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I'm wondering if I'm looking at this correctly. In order to get to the parking space you need to go down Lincoln avenue roughly to the end of the block.

SPEAKER: Yes, that's correct.

COMMISSIONER JENSEN: Do we have any other configurations that are set up like this where somebody has to drive around the corner and down the block and into the neighborhood that has housing and underneath the highways and back around the corner to get to the retail space that they're trying to get to? Anything that looks like this?

SPEAKER: Mr. Chair, I think the only ones that come to my mind immediately are the ones that are more right downtown here. I mean we've got situations with paseo villas and something like that, but I don't know of any that we've got that start to come close to exactly this kind of configuration.

COMMISSIONER JENSEN: But even with the paseos, there's nothing with the paseos where people drive into what appears to be residential parking area in order to get to the commercial parking. There's no commercial parking there.

SPEAKER: There is commercial parking there.

COMMISSIONER JENSEN: Not in the residential area it's in the parking garage underneath the tall building next to San Fernando or San Carlos. And it's very clearly marked as a commercial area and it's also adjacent to the pedestrian shopping area that's right there. And I express this because I think it's going to be -- it's nonintuitive for people to try and figure out how to get to parking. And so we're going to end up aggravating the already potential parking on San Carlos, where in some places is wide and other places you feel like you're going to get run over with a truck. I don't know away you can do to resolve this, but it is problematic in the future. How does the average retail space here of roughly 847 square feet mark up against the other retail spaces that are in the area? I know there is a lot of small businesses and what are their sizes on average?

SPEAKER: I'm sorry, Mr. Chair, with regard to the actual parking space sizes?

COMMISSIONER JENSEN: No, the retail space itself is roughly 847 square feet for each unit. How does that compare with the other retail spaces?

SPEAKER: With other retail spaces along San Carlos.

SPEAKER: Joe Horwedel: I think it's a pretty wide variety up and down. I don't know the exact dimensions, that's not something we track of spaces on west San Carlos street. It's something I'd have to talk to the agency staff, they're the ones that have the ability to spend a bunch of time wandering up and down the street. Kind of the Gordian knot, our highest priority was to get retail out on the street. We talked to the applicant and they were able to deliver about 1400 square feet of space. We looked at we had the ability to park in the garage. Figured if we got the employees in the garage that would take some of the pressure off of the street and we would depend on the on-street parking of west San Carlos street. We can put a garage entrance on the west San Carlos street and cut the retail in half or we cannot have retail retail. So out of those three options we chose to essentially put a zero parking requirement on the retail, kind of go urban with it and fiduciary to make that parking work. I think it will be almost impossible to successfully put a food use into it. They can do this, I think you need to have something where it is not an impulse type business, it may be more office use, or more service, more people are scheduling an appointment, they know where they are going to go, they have dealt with the challenges of parking. But it is a dilemma, that's how we kind of grappled through that dilemma.

SPEAKER: The only thing I was going to add, I was going to say essentially the same thing as the director did. The only thing I would add is because it is such a small amount of commercial the number of spaces that are required I think are four spaces. So given it's a fairly small commercial size, was another factor, and then the only other thing I would add is, it's really a function of the narrowness of the frontage, that we have to work with and on San Carlos street. If we had that whole corner to work with certainly we would be doing something much different. Certainly it is the fair owe front an we have on west San Carlos to work with.

COMMISSIONER JENSEN: As this moves forward, I strongly encourage you to increase the number of square footage that you have. 840 square feet is really, really small and I think, I shop west San Carlos all the time. And I would doubt that there are any other retail businesses along west San Carlos that are that small. But it's two spaces. And I would really like to see it be successful. I would really like to see it be successful. And if there's any way to figure out the park a little bit better, maybe it is street improvements along west San Carlos that would accommodate that, because as Commissioner Campos pointed out, I think this is targeted for a BRT line which is going to make it as a person getting out of the car on west San Carlos even more frightening. But I applaud you for trying put retail in there and would I strongly encourage you not to go with a business tenant, you know, an office space or a Quiznos. But to find one or the other. We've got some remarkable businesses along west San Carlos which I'm sure you know and it would be really nice of continuing that theme having the wonderful eclectic interesting little spaces there but I think they're going to have more space than they have. Thank you.

SPEAKER: Staff would like to clarify. 1500 square feet could be divided into two or one retail space of 1500 square feet.

COMMISSIONER ZITO: So the number is not 800, it could be 1500.

SPEAKER: It could be 1450 square feet, two 800, whatever the market supports.

SPEAKER: Joe Horwedel: And those are all approximate spaces, the development phase will see what works.

COMMISSIONER ZITO: Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I also wanted to echo my concern. As Commissioner Jensen mentioned, as much as we are trying we are missing the mark with the retail opportunity. I don't mind going higher. On the rest of it. So they get 41 space of residential. Maybe more, I would be supportive of that. But you know, they need to do much better on the retail component of it. And you know, even if it means making a park lot for now, until the next space next to it comes on and then together, they can come up with something, you know, I think it's better than giving it up to residential right now. So if they want the number of residential units, 41, and think that they have to get into the retail space to do it, then I want to make sure they have at least one commissioner's vote that they don't have to do that. Please conserve our retail space for its best use. Thank you.

COMMISSIONER ZITO: Thank you, Commissioner Kamkar. And those are exactly my concerns. As retail along that general commercial area there, unless you're going to master plan that whole strip, and you have the residential over commercial if you will to do it in little tiny pieces like that to me is a very risky scenario. And in order to have consistency and not create sensitive receptors especially with the industrial across the street, I agree with Commissioner Kamkar that you know, I have no problem. The reason I'll support the motion is because the way it's worded and the fact that this is a rezoning, I have no problem with having the 41 units, or even a few more, on that site. Especially since it's a transit area. But increasing the commercial along west San Carlos to me makes a lot of sense and reducing the residential, unless you're going to have a bigger swath of that area that's already planned for that. Because potentially that could be the only area that has residential for many, many years to come and to me that doesn't always -- doesn't make a lot of sense so whatever that's worth. I see no other lights or comments, so we'll vote by light.

SPEAKER: That motion passes unanimously. With Commissioner Cahan absent. That brings you to the conclusion of the general hearing. Item 4, petitions and communications. If there are public comments, on the general speaker cards, please fill out a card. You'll have three cards. To discuss nonagendized items. I see no such cards. People running to the parking lots. Referral to city council, boards, commissions or other agencies. Mr. Director.

SPEAKER: Joe Horwedel: Last night the city council had a discussion regarding the 2040 general plan and the four scenarios that were selected by the task force for selection in the EIR. The council concurred with the staff recommendation to modify two of scenarios. So for those of you not on the task force, what the task force has been doing is looking at the future growth possibilities for the city, looking to the year 2040. With that we are looking at the total amount of housing that is anticipated into the future as well as the total amount of jobs. What staff did was align those onto a comparison of jobs to employed residents. The goal of the task force has been to improve the fiscal health of the city, wanting to improve it from at least to one job to employed ratio in the City of San José. The council as I said concurred with the recommendation to go with the ABAG proposals recommendation of a -- which is a very high housing growth, one job to employed resident ratio. We did move that down from a task force recommendation which was the equivalent of about 6,000 housing units a year for 30 years which he felt from staff standpoint was a very optimistic number. So we did lower that to the ABAG projection. The council also approved scenarios that would potentially allow the city to improve to a 1.5 jobs to employed resident so that would be a pretty substantial change from today, where we are about .83 jobs per employed resident. The plan fully built out allows 1.1 jobs per employed resident, because of all the work we've done in Downtown San Jose and job intensification. We'll have a meeting Monday night and council did while they approved the four scenarios as recommended by staff and generally recommended by task force, two changes, the council wanted to give the task force the opportunity to confer or discuss the staff revisions, make sure that the task force was okay with that. If the task force disagreed with the staff recommendation and wanted to retain their original recommendations the council has also agreed to accept those. So from a process standpoint, this is all aligned around preparing an environmental impact report to assess the future growth in the city and also the fiscal and economic analysis for those growth trends. The task force in their meeting Monday night and then also in their meeting in June will be talking about those growth scenarios, and starting to bring those down into away is known as the villages and corridors, and the other growth areas of the city. So it is now moving from grand kind of vision potion, policy-type statements and starting to allocate that into different parts of the city. And staff has started up some work right now for picking a couple of those villages and corridors to take the different scenarios and start applying it to land. And looking at different building types, tonight as we were talking about west San Carlos street what is the height of buildings, the density, those are the same questions the task force is going to be grappling with. And so to help the task force and the community itself, staff wants to go and make the numbers really turn into pictures. And so we're working through that right now and hoping to share that with the task force in their meeting in June, some of the first versions of that and then as we go through the process of the general plan update we would be looking to do that and more of the villages and corridors. So as we go through the EIR process we will be able to allow the community to visualize what that change would look like. The other thing that the council did yesterday was they had a discussion last night besides library filters they also talked about tree removal process. The goal in staff bringing it to the council was to looks at some streamlining opportunities. It's not our goal to rethink the fundamentals of tree preservation. We think the urban forest is a part of the health and the attractiveness of the community. The process is extremely frustrating for citizens.

Very few of the tree removal protests are appealed. The vast majority we think make sense. There are very few we will deny. We would like staff process to bring more clarity to that so there is less time spent on the nonissues and more time spent on the real issue, more mitigation replacement policy, some guidance around which types of trees we really want to preserve and which are the ones that there's more discretion around. So that will be a discussion we'll be bringing back to the council, the basic of some streamlining ordinances we're hoping before the break. There was also some conversation with the council councilmember constant put forward a memo that staff is not going to go and spend a lot of time studying at this point related to should the city regulate trees on public property. That we feel that warrants a much broader community outreach engagement process, as opposed to the streamlining efforts that don't change the fundamental assumptions of the tree preferential ordinance. So we'll keep you up to date as that moves through because you do see the appeals on tree removals.

COMMISSIONER ZITO: One piece of feedback on what you mentioned about trees and mitigation. I don't know what the policy is right now. But for the mitigation, when there is tree planting, either a on new development sites or to mitigate the removal of existing trees, I don't know if there's much about what happens when those trees die. In other words, the mitigating trees, that are planted and you might plant ten and eight will survive and and two don't. So -- and that happens I've seen fairly often. What are the requirements to get the mitigation measures you're looking for?

SPEAKER: Joe Horwedel: Couple things enter into that. One, if we're dealing with habitat restoration, there is a protocol about what replacement mitigation looks like, replacement trees, as a part of that mitigation and built into that is a recognition that not all of those plants will survive. And so it has a strategy of planting a lot of smaller trees, and assuming that there's going to be a survival rate over a two-year, five-year, ten-year time frame. We are working through right now our mitigation monitoring program to strengthen that as it relates to biotic resources, and ensure habitat, to make sure that we're living up to our promises. As a result to nondevelopment, we ask for a 4 to 1 replacement of of box size trees, again there's some expectation that thought all four of those are going to survive, that when those box trees go to full size, had they all survived, you would have obscured the world. We do take that into consideration. There is a plan that the applicants are required to replace dead and dying plant material, whether that is tree shrubs or ground cover. It is in the world of code enforcement, it is obviously complaint driven and it is something since it's not an imminent life safety issue, it's one lower down on the priority scale but it is something we will pursue.

COMMISSIONER ZITO: Sounds like there was a lot of thought put into that and I was wondering provisions sounds like it is. Commissioners reports from committees. Norman Y. Mineta San José international airport. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I don't think we've met yet. I'm trying to get them to e-mail me back or call me back.

COMMISSIONER ZITO: Is that in the last two years?

COMMISSIONER CAMPOS: No, it's been since November, seems that long. Pain if staff can help me.

SPEAKER: Actually, Mr. Chair we have an outstanding item that I'm reminded of, that we're going to talk to airport staff on Commissioner Campos's behalf and find out what's happening.

COMMISSIONER CAMPOS: Okay, thank you.

COMMISSIONER ZITO: Okay, Commissioner Kamkar, envision 2040, anything further to add to Mr. Director?

COMMISSIONER KAMKAR: No, he pretty much covered everything. Our next meeting is this coming Monday.

COMMISSIONER ZITO: Very good. Review of synopsis from April 8th. Any comments, concerns, questions or motions? Underscore motions. Motion to accept? And second on motion to accept the minutes as stated. All in favor? Any opposed? Seeing none, that's accepted. Consider study session dates and/or topics, confirm the start time of the CIP study session at 5:00 p.m, underscore 5:00 p.m. in room 1654 on May -- what's the next meeting? May 6th, right. And we all have been in receipt of this wondrous high density document with no binder. You all got that? Yes. Right. I believe there was a discussion at the current study session to add another study session on May 13th, for a continuation of the historical process.

SPEAKER: Neighborhoods of distinction I believe specifically.

COMMISSIONER ZITO: Is that what it's called? Do we have a motion to add that? Any comments? All in favor any opposed, seeing none we will accept that. And we are having our first attempt at election of chair and vice chair, which would become effective for those seats on July 1st of 2009. We will have our first attempt at an election on our May 13th meeting. So just want to raise awareness, and get our your campaign buttons. Also, setting May 13th at 5:00 p.m. for a meeting of the subcommittee for development of Planning Commission criteria and procedures for deferral of agendized items, that would be myself and Commissioner Kamkar. Assuming if one of us can't make it Commissioner Platten is the alternate. Okay? Any problems?

COMMISSIONER KAMKAR: This would be I guess 30 minutes before our duly assigned historic --

COMMISSIONER ZITO: That's right we have historic landmarks at 5:30. So we have half an hour to discuss this.

COMMISSIONER KAMKAR: This one is at 5:00, we also have a 5:30 study session.

COMMISSIONER ZITO: That means we have got to be on the ball, maybe it would make sense to pass something around in e-mail fashion.

SPEAKER: In a Brown Act manner.

COMMISSIONER ZITO: No just the two. Just a draft. Okay. I see no other items. I do -- wait wait, I see. First of all, Commissioner Jensen. Sorry.

COMMISSIONER JENSEN: Yeah, is there any word on the action that Commissioner Campos and I are supposed to be working on regarding color licenses?

SPEAKER: I do my best after every meeting, I won't give up the poor gentleman's name but I do tell the person in the office of economic development that the Commission is interested in the item.

SPEAKER: Yeah, actually --

SPEAKER: On PCRN.

SPEAKER: And Susan did leave me a note regarding this. She said that if it came up, that there had been a discussion recently regarding the planning staff's priority of this long list of pending ordinance changes that we have. And maybe Joe knows about this as well. But there was agreement that very shortly we will be moving to off-sale of alcohol so we're moving that up in the priority list to get to that sooner than maybe what we thought.

SPEAKER: I think if the planning division retook the reins on that item it probably would move faster.

SPEAKER: Joe Horwedel: Now that we went through the permit extension ordinance and the card room ordinance, we have created the next slots to move into. We are moving offsale of alcohol into that. Planning staff has it out of their to-do list and we've now started talking with a couple of the councilmembers who are interested in the issue. Going through and speaking with René.

SPEAKER: I think the reason there was another staff person who offered to take the organizational lead on the item was because Planning had such a heavy work plan. So if Planning is going to take it back we should alert that person over in the office of economic development.

SPEAKER: So noted.

COMMISSIONER JENSEN: I'm sure I speak for the both of us when I say that we're absolutely thrilled that it's moving up.

COMMISSIONER ZITO: Okay. And I resisted pulling something off of consent tonight for that same reason. Yes, and I applaud Commissioner Jensen for derailing a deferral. You get extra bonus points for that.

SPEAKER: Put it in the report.

COMMISSIONER ZITO: That's right, we've already done our work on the deferral issue on F. I'm sorry, Commissioner Platten, you were –

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. I'm informed that during the televised session that the crawl message during the consent calendar misspelled, we apology for the misspelling and we'll try to do better next meeting.

COMMISSIONER ZITO: Was that in the notes? How about the comments about the deadliest catch or nothing about that? Commissioner Kamkar.

COMMISSIONER KAMKAR: I've always referred to as "Commissioner Carla." I was referred to as "Commissioner Carla." That's all right. Are we deferring our deferral committee?

COMMISSIONER ZITO: No no no, that's still the 13th. Because of the fact that we're being so good. I don't think we get off the hook that easy. Further motions? Motion to adjourn. Second, all in favor.