The following transcript is provided for your convenience, but does not represent the official record of this meeting. The transcript is provided by the firm that provides closed captioning services to the City. Because this service is created in real-time as the meeting progresses, it may contain errors and gaps, but is nevertheless very helpful in determining the gist of what occurred during this meeting.

City of San José Planning Commission meeting.

COMMISSIONER DO: Good evening. My name is Thang Do, and I am the chair of the Planning Commission. On behalf of the entire Planning Commission, I would like to welcome you to the Planning Commission public hearing of Wednesday, September 9, 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, 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. For example, 4A and not PD 06-et cetera. 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. Each speaker will have two minutes. After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes. Planning Commissioners may ask questions of the speakers. Response to commissioner questions will not reduce the speaker's time allowance. The public hearing will then be closed and the Planning Commission will take action on the item. The planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item. If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the city, at, or prior to, the public hearing. The Planning Commission's action on rezoning, prezonings, general plan amendments and code amendments is only advisory to the City Council. The City Council will hold public hearing on these items. On the first order of business is roll call. Let the record reflect that all commissioners are present. There is a matter of on the agenda, the possible switching of items 3A and 3B. Those two items are related to each other. And I wonder if staff could clarify on the reasoning for the possibility of such a switch.

SPEAKER: Thank you, Mr. Chair. Staff will certainly try. With regard to item 3A, it is for a very large, currently county unincorporated pocket that is pending with this prezoning action, would be pending consideration by the city council for annexation. Item 3B is a specific project that is located within the larger county pocket area, and late this afternoon in discussion amongst the staff and counsel, we decided that it would actually be more appropriate to consider item 2B first, because if the counsel -- if the commission and the council were to recommend approval of 2B, that would change what's being proposed for that same property on what's currently item 2A. And certainly when we get into it we can talk more about specification. It's staff's opinion that it's prudent to consider them in reverse order. Thank you.

COMMISSIONER DO: Would any commissioner like to –

COMMISSIONER ZITO: Move to change the orders of the day.

COMMISSIONER DO: All in favor, all opposed. So we will make that change. We will hear 3A and then 3B. 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 agendized items past 11:00 p.m, continue this hearing to a later date, or defer remaining items to the next regularly scheduled Planning Commission meeting date. Decisions on how to proceed will be heard by the Planning Commission no later than 11:00 p.m. Staff.

SPEAKER: Thank you, Mr. Chair. Darryl Boyd, planning staff. There is one recommended deferral, as noted on the overhead, A, PDC 09-006. Planned development rezoning. for the flea market property out on 1590 Berryessa road. Staff is recommending deferral for two weeks until September 23rd, 2009, Mr. Chair.

SPEAKER: We have an additional deferral, 08-051, staff is still completing that resolution so staff is asking for deferral of this matter.

COMMISSIONER DO: This is item 2C.

SPEAKER: Correct.

COMMISSIONER DO: Item to be deferred is item 1A and item 2C. Is there a motion for deferral? All in favor? All opposed? So deferrals have been approved. The next item is consent calendar. 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. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you thank you, Mr. Chairman. I'd like to pull item 2A, please.

COMMISSIONER DO: Staff.

SPEAKER: Thank you, Mr. Chair. Staff would like to highlight on item 2D, there was a question that arose, this item was on the previous Planning Commission agenda, and due to the lateness of the hour of that particular meeting, this item was deferred to tonight's hearing, because there were no speaker cards that were received at the last hearing, staff opted to go ahead and put this item on the consent calendar for this evening. And I also believe that the project manager Sally Zarnowitz would like to make clarifying comments on 2D, Mr. Chair.

COMMISSIONER DO: Okay, please.

SPEAKER: Thank you, Mr. Chair. Staff wanted to clarify, on this rezoning. Staff should have corrected development standard. We would like to clarify that the planned development rezoning would allow 30 attached residential units and 30 detached residential units all with the maximum height of 40 feet. And just also to point out that that 40 feet would be consistent with the Jackson Taylor residential strategy policies and design guidelines for medium high density residential and also that it would be less than 45 feet allowed in the RM multifamily zoning district. So that would be consistent with this GP designation, thank you.

COMMISSIONER DO: Thank you very much. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I had a couple of questions. In the development standards it talks about conclusionary housing and parks. If they could be answered quickly, as far as the requirements would be, I would be happy to hear those answers before bulge it.

COMMISSIONER DO: I let's try to do that.

COMMISSIONER ZITO: It says in the standards that the project shall comply with the city's inclusionary housing ordinance. How will that affect this project? And the same thing with parks?

SPEAKER: Yes, so that would just be standard language that they -- the project is complying with the memo that came from parks regarding park land dedication fees and also with inclusionary housing policies within the city.

COMMISSIONER ZITO: But do we know what this project with generate in either of those regards?

SPEAKER: Mr. Chair, excuse me. Typically that would be determined at the planned development permit stage. That's not something that we would know necessarily at this time, particularly given the fact that the inclusionary housing and so forth can always you know change between the time of the zoning and the actual effectuation of that zoning via the PD permit. And so we don't actually know of the specifics at this point, unfortunately, Mr. Chair, other than just whatever the standards -- the standard requirements are that we have in place, via, say, the parkland dedication ordinance at this time, is what would be applicable.

COMMISSIONER ZITO: I'm sorry. But by approving this we are essentially saying there will be no exemptions?

SPEAKER: Yes, that's correct, Mr. Chair.

COMMISSIONER DO: Thank you, Commissioner Zito. There are no other speaker lights. So the consent items are limited to 2B and 2D. Is there a motion on the consent calendar? All in favor? All opposed so the consent calendar has been adopted. The next item of business is public hearing. Generally, the public hearing items are considered by the Planning Commission in the order --

COMMISSIONER PLATTEN: Mr. Chair, we have pulled 2A. We need to handle that first, do we not?

COMMISSIONER DO: That is part of the public hearing.

COMMISSIONER PLATTEN: Okay.

COMMISSIONER DO: The public hearing items are considered by the Planning Commission in the order which they appear on the agenda. However, please be advised that the commission may take items out of order to facilitate the agenda such as to accommodate significant public testimony or may defer discussion of items to later agenda for public hearing time management purposes. So the first item on the public hearing agenda is item 2A. CP 08-058-01. Conditional use permit amendment to allow an entertainment establishment in an existing public eating/drinking establishment with after-midnight operation until 2:00 a.m. On a .22 gross acre site in the DC downtown primary commercial zoning districts located on the west side of north San Pedro Street, approximately 160 feet southerly of West St. John Street. Staff.

SPEAKER: Thank you, Mr. Chair. So as described, this conditional use permit permit is for the old wagon saloon and grill, above stated location. This above enterprise has a conditional use permit, which allowed the eating and drinking establishment and after midnight uses. The establishment is no requesting entertainment and so is requesting an amendment to that conditional use permit. The conditions in this amendment address the entertainment uses. The applicant is proposing entertainment in the form of amplified music limited to interior areas between the hours of 10:00 p.m. and 1:00 a.m. daily and then on the exterior patio between the hours of 10:00 p.m. and 12 midnight on Friday and Saturdays. There is a police memo attached to the staff report, and those issues have been -- conditions have been addressed in the resolution. Also of note on this project is that there's an adjacent pedestrian easement and there's a condition in the resolution that the outdoor entertainment would not operate at the same time that that exterior pedestrian easement is in place. This concludes staff report. Thank you.

COMMISSIONER DO: Thank you. Commissioner Platten would you like to speak with your questions?

COMMISSIONER PLATTEN: Yes, thank you, Mr. Chairman. I won't be long. Following issues are questions to staff as we go through this. As I read the report on page 4, the indication is that the operator has already constructed an arbor without the benefit of permits. I take that to mean they should have gotten permits and they didn't. I noted -- and I mean no disrespect to the applicant here, that we are talking about somebody whose primary residence appears to be out of state, in Park City, Utah. But what struck me also, in addition to the fact that there's been a problem of permits, is the statements made on the management and operations plan. And the assertion is that the Old Wagon Saloon and Grill is not an establishment suited for a quote restless crowd close quote. I'm kind of uncertain how we're going to know that ahead of time, since we're being asked here to approve a conditional use permit in which there's going to be a dance floor area, dancing in which we've been pretty consistent here at the commission downtown where we have dancing and drinking that we want to see some beefed-up security. So I was going to suggest as a result if I'm reading this correctly that the conditions be amended

particularly number 9 that there be a requirement of a minimum of two security officers, whenever there is operations solely as a drinking establishment, or the presentation of live music. That, to me, seems to be consistent with what we've required other establishments who engage in that activity. Not that there's anything wrong with that activity. Because it just strikes me if we're going to do that sort of thing as this location and all we're doing is having the wait staff check on the I.D.s for drinking, that we're being a little bit inconsistent with how we've treated downtown establishments who have live music and dancing. So I would suggest that and I'll put that in the form of a motion after the commission has had an opportunity to discuss that, if necessary. Thank you, Mr. Chair.

COMMISSIONER DO: Thank you, Commissioner Platten. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I'd like to go ahead and add onto that that it sounds like I.D.s that the intention was not to check I.D.s at the door. And I think that that's inconsistent with what everybody else does, which again, is part of what you wants to do, to ensure that that underage patrons are not going in there. I mean there is a curfew. And I would like to actually add that into the conditions that I.D.s are being checked at the door after a certain time, you know, when the dinner hour is over. Thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. There are no other speaker lights. So if you would like to make a motion please do so, Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. Move that we adopt the conditional use permit with the following amendment with respect to item number 9 which appears on page 8 of 10, that a minimum of two security officers be on duty for every 100 patrons using the facility while the business is open for operation between midnight and 2:00 a.m. if either operating solely as a drinking establishment or operating live music and dancing. And also, to make the change with respect to item paragraph 8, foregoing paragraph, a requirement that I.D.s will be checked at the door from 10:00 p.m. on, on those occasions in which live music and dancing is in operation at the location.

COMMISSIONER DO: Thank you, Commissioner Platten. Is there a second? There's a second. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. First of all, hope the applicant's present because I'd like to understand from them that, you know, understand their management plan a little bit better. I'd also like, if it's appropriate, to also ask that the management plan be updated to reflect those changes as well. Because they're pretty specific in saying the I.D.s will not be checked at the door and I think we need to make sure that the employee staff also understands what needs to happen here. So I will make a friendly amendment that we would ask them to update their management plan to reflect what the motion states.

COMMISSIONER PLATTEN: Agreed, agreed.

COMMISSIONER DO: And also, thank you for the reminder that we should ask the applicant. Is the applicant here? Would you like to speak on the issue? He can always come to the podium.

COMMISSIONER ZITO: I'll reserve my questions for the applicant, thank you.

COMMISSIONER DO: Please approach the microphone. State your name for the record and you have up to five minutes to speak.

SPEAKER: My name is Roger Dugala.

COMMISSIONER DO: Do you have a statement to make or do you want to answer the questions?

SPEAKER: No, I can answer the question. We already have security personnel on Thursday, Friday, Saturday, pretty much if we have any kind of event or crowds they're in place. So that's -- has already been resolved.

COMMISSIONER DO: What about the matter of checking I.D.s?

SPEAKER: They do check I.D.s at the door. They start at 9:00 and minors are not allowed in the establishment after 10:00.

COMMISSIONER DO: Commissioner Zito did you want to follow up with questions?

COMMISSIONER ZITO: Yes, thank you, Mr. Chair. Just a couple of questions so I can understand a little bit better, you know, corroborating your management and operation plan along with what you just said, okay? It's specifically stated in the plan here that I.D.s will not be checked at the door.

SPEAKER: Oh, I.D.s they are checked at the door.

COMMISSIONER ZITO: You understand that the matter that's on the floor is that management plan is to be changed to reflect that, do you understand that?

SPEAKER: Yes.

COMMISSIONER ZITO: So what I understand is you check I.D.s at 9:00 is what I heard you just mention.

SPEAKER: The wait staff and the bartenders they check I.D.s prior to 9:00 and at 9:00, we do have the door guys, security personnel over there they check the I.D.s at the door.

COMMISSIONER ZITO: At 9:00 you have security staff check the I.D.s.

SPEAKER: Yes.

COMMISSIONER ZITO: You are saying that you are not allowing miles an hour in after 9:00. What happens at steno clock?

SPEAKER: We are a family friendly establishment. If family comes in they have cocktails at 10:00 or 9:30, personnel to go there inform them that miles an hour have to leave the establishment by 10:00.

COMMISSIONER ZITO: Okay, so you remind the families that if they come in at 9:00 that their children have to be gone by ten?

SPEAKER: Yes.

COMMISSIONER ZITO: And that is stated to the customers as they come in?

SPEAKER: Yes.

COMMISSIONER ZITO: Okay. So you are also stating that at 10:00 there are no miles an hour on site?

SPEAKER: No.

COMMISSIONER ZITO: Is that correct?

SPEAKER: That's correct.

COMMISSIONER ZITO: You are essentially clearing the establishment of all miles an hour after 10:00?

SPEAKER: That's right. They're not allowed to be in the establishment after 10:00.

COMMISSIONER ZITO: I don't see that anywhere in your business plan.

SPEAKER: That's the ABC, we're not allowed to have miles an hour after 10:00 in there.

COMMISSIONER ZITO: Do you continue to serve food after 10:00?

SPEAKER: Yes, until 1:00 in the morning.

COMMISSIONER ZITO: A full menu?

SPEAKER: Yes.

COMMISSIONER ZITO: And you have a dance floor or something people can go to?

SPEAKER: Right now, we don't.

COMMISSIONER ZITO: Do you plan on doing that as part of this?

SPEAKER: No, we are not planning to build a dance floor or anything like that.

COMMISSIONER ZITO: People can enjoy the entertainment?

SPEAKER: Good they want to dance we can clear an area for dancing. To build an additional –

COMMISSIONER ZITO: I didn't mean building, but an area for –

SPEAKER: That is what we're proposing.

COMMISSIONER ZITO: Then again I'd ask if it pleases the commission to make sure that the management and operation plan reflects all that you have just mentioned as far as what your plans are regarding clearing miles an hour at 10:00 and that you will have an dance area available and that you'll serve food until 1:30?

SPEAKER: Yes, until 1:30.

COMMISSIONER ZITO: I think that makes a difference and it would be very clear here. Thank you very much.

SPEAKER: Thank you.

COMMISSIONER DO: Thank you, Commissioner Zito. I think that that request should be in the form of a friendly amendment or something like that. But there are additional questions. Sir, excuse me. There are additional questions from other commissioners. That's okay. So first, but perhaps we take questions from other commissioners. Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. Mr. Dugala, did I pronounce it correct?

SPEAKER: Yes.

COMMISSIONER PLATTEN: From what I understand you are telling us, you are already living up to the conditions we are requesting?

SPEAKER: Yes.

COMMISSIONER PLATTEN: Thank you, Mr. Dugala.

COMMISSIONER DO: Thank you, Commissioner Platten. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. Are you going around and rechecking everyone's I.D. at 10:00?

SPEAKER: Yes, ma'am.

COMMISSIONER CAHAN: Thank you.

COMMISSIONER DO: There are no other questions. Thank you.

SPEAKER: Thank you.

COMMISSIONER DO: Motion to close public hearing? All in favor, all opposed? So Commissioner Zito.

COMMISSIONER ZITO: So to make clear based on what your input in Mr. Chair my friendly amendment would read that all activities that the applicant has stated as far as rechecking I.D.s, clearing the establishment at 10:00 of all miles an hour, about having a designated dancing area, all those be part of the management and operations plan as specified.

COMMISSIONER DO: If that's okay to the maker of the motion.

COMMISSIONER PLATTEN: Absolutely.

COMMISSIONER DO: And Commissioner Campos.

COMMISSIONER CAMPOS: Yes.

COMMISSIONER DO: There is no other speaker lights, motion and friendly amendment which was accepted so let's vote by light. The motion is passed unanimously. The next item, on the public hearing agenda, is item 3B. Item 3B is PDC 08-034. Planned development prezoning from unincorporated Santa Clara County to A(PD) planned development zoning district to allow up to 117 multifamily residential studio units above a podium garage and up to 2600 square feet of commercial on a 1.32 gross acre site located on the east side of Sunol street approximately 120 feet north of West San Carlos street. Staff.

SPEAKER: Thank you, Mr. Chair. This is a privately initiated prezoning that's proposed in conjunction with the pending annexation of a county island generally bounded by the south side of Park Avenue, the west side of McEvoy Street, the north and south sides of West San Carlos Street, the east side of Meridian Avenue, and it's referred to as Sunol number 82. The prezoning of the property must occur prior to annexation. The conceptual site plan thus provided with staff's report does not meet all the guidelines of the guiding document being the midtown specific plan and the residential guidelines. However the proposed development standards and the general development plan for this prezoning do meet the plan for those documents. The plans will be refined and effectuated, per the development standards. The proposed development standards are consistent with the 2020 general plan, its goals and policies, the midtown specific plan, residential design guidelines, and the Burbank Del Monte neighborhood improvement plan. Staff will continue to work with the applicant at the planned development permit stage to ensure that the project design is designed to maximize its function and aesthetics and maintains compatibility with adjacent uses. Additionally there were numerous comment letters that you

received this evening. One of the letters was from the applicant core, the remaining letters were all in opposition to the proposed prezoning. And then another of the letters was received from Rian and Roberts, dated today and specifically an objection to the mitigated negative declaration. The letter stated that the analysis did not fully take into consideration the adjacent schools, next to the project site in terms of aesthetics, air quality, biological resources, noise, public services and traffic. Some of the items brought up were, tree removals, construction impacts such as dust, and noise, traffic in relation to the location of the driveway on Sunol street. The mitigated negative declaration does include mitigation measures that reduce any potential impact to less significant, such items such as tree replacement requirements, standard construction mitigation measures such as watering of the site to control dust and operation hours of 7:00 a.m. to 7:00 p.m. due to the adjacent residential uses which are sensitive receptors. I would also like to clarify that on page 8 of the staff report, the third paragraph, we discussed the parkland dedication ordinance. I'd like for the commission to note that this ordinance exempts payment of park fees for affordable housing units that are restricted by an affordability restriction agreement to residents at or below 80% of the median income. If the Sunol court project as proposed by the applicant is built they would be exempt by the ordinance of payment of park fees. Finally, staff recommends that the Planning Commission forward an approval to the city council. This concludes staff report.

COMMISSIONER DO: Thank you. Is the applicant here? Please come to the podium. Sir, please state your name for the record and you have up to five minutes. Thank you.

SPEAKER: Good evening. Chairman Do, planning commissioners, my name is Chris Neil, and I work for core affordable housing. We have been developing affordable rental housing in and around San José for the last 20 years and have developed over 2000 such units. I am here tonight to ask you to accept the mitigated negative declaration and to forward a recommendation for approval to the city council for PD-08-034. We have been working on this project since 2007 and submitted our application to planning staff in June of 2008. This project was a result of two policy issues of 2007. One was the blue ribbon task force to end homelessness and solve the affordable housing crisis and two, the employment land policy. After seeing 50 plus sites and working closely with planning staff to ensure consistency with the new policy we selected the Sunol courts site for the following reasons. The general plan designations is high density residential 12 units to the acre plus, allows for height of roughly 65 neat and is designed and planned for a high density type project as we've designed. It is also well located to mass transit. It's located on West Sunol which is a heavy bus route and also I believe planned to be a bus-rail route that has been contemplated that in the future. It's also close to the light rail station at Cahill and also within 2500 feet of the Diridon station. Next week, there's going to be a new study session for the Diridon area plan which is a 2500 foot radius from the Diridon station which would include this site and is contemplating more high intensity uses of transit oriented development consistent with the project as submitted or as approved by planning. The vision for this project is high density, affordable rental housing near transit. The project will meet or exceed Build It Green standards, include solar panels on the roof to provide power to the common areas and provide ecopasses to the residents to encourage transit ridership. Core has other three other studio projects in San José with incomes ranging from 30% of the area median income, which is roughly $23,000 a year for an individual, up to 50% AMI, which is roughly 38,000 per individual. The makeup of those residents are split between men and women, they

range as young as 18 years old and as up to 55 and old seniors. Their employments include artists, the retail industry, food service industry and teachers. And they also include individuals who are on fixed income like Social Security. Veterans or unemployment. Some residents need some help and we plan to include a extensive support service to provide support for these individuals and some people are just looking for an affordable place to live in San José. There have been concerns raised by neighbors and community stakeholders. These concerns are not inconsistent with those raced for other affordable high density projects we have worked on in the past. Change is hard and we understand it. We will continue to work with the community, during the PD permit process, where the architectural of the building will get further refind, during the construction where there is the most dramatic impact to the environment, it's loud, noisy and messy and we will work with the neighborhood during had a process and during the ongoing operations of the project, partnering with strong property management firms is a key to ongoing success of affordable projects. This is no exception. I've invited the property management firm to come and speak to you tonight and they're available in there are any questions. We are proud of the approval from the planning staff. We have also received an endorsement from the greenbelt Alliance as well as Affordable Housing Network.

COMMISSIONER DO: I am not seeing any lights from other commissioners. Can you explain a little bit more about the green aspect, other than the photovoltaic panels on the roof. First of all, is there a LEED goal? Is there a certain level above the basic certification that you're aiming for, and are there other green features that you're contemplating?

SPEAKER: So we're not pursuing LEED. We're pursuing Build It Green to meet or exceed it. One of the chance, since we started the project in 2007, the last year has been a dramatic shift in the financing of all sorts of projects, affordable housing projects are no different. We are working with a general contractor on affordability housing projects that unfortunately had to pull back on some of the LEED projects just to ensure that their project can go forward. We think as far as the green components, the most green component of the project is the high density nature of the project, near transit. And design it to incur residents to use mass transit. So located near the bus route, located near light rail which is not uncommon in the City of San José but will be one of the few projects also located within the Diridon area plan. So encouraging residents to use transit, building close to transit, building close to amenities, jobs downtown, we believe those are green components of the project. We have explored and are looking into perhaps, with auto uses changing, we spoke into the firm that provide electric charging stations, whether it's a more appropriate use for the retail commercial portion, or more appropriate for the residents, we're not sure. It's very preliminary. I did speak with D.O.T. who is working with other projects throughout downtown contemplating perhaps a car-share for other projects around the downtown area. I think at the minimum for the electric car, since it's not present since this project would not be occupied for four to five years out in the future that we could provide contemplate changes like that. The transit is the most green component we could really provide.

COMMISSIONER DO: Great, thank you very much. Thank you. That's all I have. There are many speaker cards on the issue. I will call three cards at a time. As your names are called please come down to the bottom of the stairs. The first three are Norman Copernick, misty Mersich. Please come to the podium and each speaker has up to two minutes to address the commission.

SPEAKER: Mr. Chair, members of the commission, Norm capernick. I'm an adjacent property other than. I'm against the project list sort of the highlights. One, I believe the project is too dense. Secondly, it's five stories. Thirdly, I just heard about providing, there's not enough parking for this structure to start with. Even if they're anticipating being associated close to transit, we are not really -- you have to consider the worst scenario. People will have cars. And so this is way below the minimum. I think it's poorly designed. It's just a big box with no real imagination. And ultimately, I think the main point here is that I think weed in to retain the present type of zoning, which is commercial/industrial. Because that's most important to help support the residential use that is surrounding this. By taking this away, that one little corner is a major significant area for that whole block, which has that zoning. I think that's important. We've taken away a lot of commercial/industrial areas throughout this city. I know that's been a question in the past. Thank you.

COMMISSIONER DO: Thank you very much. Next speaker, please.

SPEAKER: Good evening. My name is Lucy, I'm here in support of the greenbelt Alliance. The greenbelt Alliance has worked to protect 1 million acres of open space. How they have done this is to promote livable compact housing, for families of all sizes and income levels. This project will create compact development within close proximity to several public transportation options, make use of land and infrastructure and 100% affordable, make an affordable place to call home. Every new development is an opportunity to create more livable and climate friendly neighborhoods in particular ones that provide for both local and regional access via walking biking or public transit. In this case, development is within a reasonable walking distance of downtown and half mile from the Diridon CalTrans station and only steps away from three different VTA bus lines. It is clear that the location of the development will allow for easy access to many of the residents' daily needs. With 117 homes situated on 1.2 acres the development is indeed dense. Unfortunately density is often regarded in a negative sense. This did not have to be the case. Compact housing that is of high architectural quality, firmly situated within the city's existing urban footprint and featuring active ground for uses can positively contribute to the urban fabric of a community. Sunol court fits this description.

COMMISSIONER DO: Thank you very much. Next speaker, please. This is Sam Blackford. Please Thank you, Mr. Chair and you have up to two minutes.

SPEAKER: Thank you. My name is Sam Blackford for 20 years we have owned and operated a business next to the Sunol court project. We have a number of concerns about the proposed development. The proposed development first of all does not seem consistent with the midtown plan which was to be a commercial pedestrian design. The project lacks continuity with the future development of ideas for the midtown area. The original midtown plan called for a vibrant commercial active area. This plan does not define that goal. We wonder how compatible this proposed land use is, when it shares a property line with a high school. We have -- was formerly known the foundry school which addresses at risk youth and we have the potential for having residential occupants who might be also at risk residents. The development, I'm sorry, we also wonder if the development is compatible with neighboring single family residences on Sunol street. None of the concerns that I've mentioned before really address the potential for a parking disaster or the management and screening of the potential residences. We hope that the

commission will maintain the original midtown plan, and agree that this is not the best use for this property. Thank you.

COMMISSIONER DO: Thank you. Sir, there's a question from Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Sir, you made a monetize that you feel that it's possible that this project will also address at-risk residents.

SPEAKER: Yes.

COMMISSIONER ZITO: I'm curious, how do you reach that supposition?

SPEAKER: Good question. In talking to the developer, and in talking to other neighborhood activists who have been involved in projects like this, the term transitional residential units, the definition of transition seems to be very broad spectrum and could include relocation of individuals who have had community problems. I don't know if I answered that correctly.

COMMISSIONER ZITO: I understand what you're saying but I don't see how that's any different than in any other residential housing. So I'm just curious if you had anything specific but it sounds like just in general. I appreciate your answer, thank you.

COMMISSIONER DO: Thank you very much. Thank you. The next three speakers are Harry Miller, Susan Dutton and Mark Esola. Please come to the podium. Mark Esola, there are two names or multiple names here. There's mark Esola, Ray horse or Robert sanderson or something like that, maybe it's a company name. Please come down to the bottom of the stairs, and Mr. Miller, please, you have up to two minutes.

SPEAKER: You ready for me?

COMMISSIONER DO: Please, yes.

SPEAKER: Mr. Chairman, board, I'm a member of the western business association. They're claiming that they're going to have 2500 or 2600 square feet of retail in this location. First of all, the parking for this particular location would be in the podium which is around the corner, so any patron that would be participating in that retail would have to park in back, in the podium area. And the customers would also have to park in the podium area. Walk around the pizza Jack's place to get into the retail. There is no person that's going to be doing that. They're going to be parking in Sam Black's parking lot and he's going to have a horrendous nightmare just trying to police it to keep areas for his customers that would be coming to his shop. Another issue is, the fact that they have a school which is about 115 students are in it, right next to this particular piece of property. The school has been there for a good many years and like I said, had 115, these are all troubled folks that have been in trouble with the law. Either they're gang members or drug problems or something and they're trying to be rehabilitated to become righteous citizens for the United States and for San José. The possibility that the people that are going to be going into this new complex, 117 units could have not some type of record because they do a background check on these people. But these people aren't going to say, well I was a gang

member, they're not going to give you that information until after they get in and then you discover that they are or they may have a drug problem or something. You're putting like folk people against people that you're trying to train not to be that kind of a person. I don't think this is the right mix for this particular area. Especially because that school has been there for so good many years. Like 115 students. The retail is not going to work, even if it's 2,000 or 2600 square feet.

COMMISSIONER DO: Sir, your time is up.

SPEAKER: Okay.

COMMISSIONER DO: Thank you very much.

SPEAKER: Thank you.

COMMISSIONER DO: I'm sorry, Mr. Miller, please come back to the podium, Commissioner Zito has a question for you.

COMMISSIONER ZITO: Thank you, Mr. Chair. I'm sorry I'm going to have to ask you the same question. What brings you to the conclusion that this particular affordable housing project is going to attract any different folks at any other place in the city?

SPEAKER: This is what core put out that gave us that opinion.

COMMISSIONER ZITO: I mean I'm just –

SPEAKER: From my own experience I can tell that you this type of housing development is a section 8 type housing. In other words if you can't afford the rent, these people pay, the government pays for your housing. These particular types of housing projects that have been in San Francisco, San José, every place else, have been turned into ghettos. I'm not saying this is going to happen but I'm against this type of project that is trying to rehabilitate students for our community where we're putting people that have that potential to do that same thing and get a bad -- a neighbor next to them. And I don't believe that is -- that is a just cause for anybody to allow that to happen. And I am definitely against that process.

COMMISSIONER ZITO: Your colleague brought you some data.

SPEAKER: I can't hardly hear you.

COMMISSIONER ZITO: Your colleague brought you some data.

SPEAKER: Yeah, I know.

COMMISSIONER ZITO: Is the data pertinent to the answer to this question?

SPEAKER: Well, can you make copies of it and give it to them? The project will provide extensive onsite support services. Okay, that tells me right there that these are welfare people, could be, so that they need some type of help or support. They're either handicapped or they need something, assistance. And so these people are going to be there at that specific site, taking care of or trying to take care of these individuals. That's telling you right there that these people are not what we classify as normal people who walk about. That's the first sentence. And that's their wording, not ours.

COMMISSIONER DO: Sir, I mean it's fine for you to read the data. But if this is part of another speaker's comment then I think she will have time as well.

SPEAKER: I think you're probably right, it probably will be.

COMMISSIONER ZITO: If it pleases the speaker and if it pleases the chair –

SPEAKER: Do you have a thing -- (inaudible).

COMMISSIONER ZITO: It wasn't meant for an overall general discussion. I just would like to see it.

SPEAKER: Well, I have to agree with what they're saying. These are from the developer itself and can you see it's in parenthesis there.

COMMISSIONER ZITO: Okay let me get a chance to absorb this. Okay. If possible I would like this to go into the record, Mr. Chair.

SPEAKER: Yeah, it's fine because it tells you right in there that the managers are going to screen these people. But if they're having problems they're not going to tell the management they're having these problems unless they've been arrested or something. And then they won't qualify.

COMMISSIONER ZITO: I appreciate your feedback. I'm sure there will be other questions.

SPEAKER: Am I done?

COMMISSIONER ZITO: I appreciate your comments. Thank you.

COMMISSIONER DO: Next speaker, please. Susan Dutton.

SPEAKER: Good evening. I'm with the EAH housing and I'm here as a partner of core. We're the managers for all of the core properties. And we have 84 properties in 48 municipalities in two states. And we build very healthy vibrant communities. In fact, we're now managing Markham plaza, art ark, that are not far away, that are also single room occupancies and studios, and there are some really exciting things happening there. The perception of what's happening in these communities surprises me or maybe doesn't surprise me, at art ark we have everything from an emancipated foster care youth person who's got their first job to a retired vet who is on a

fixed income. And when we talk about services, every community that we focus on, we're an award winning management company and every community reflects different personalities, they reflect different needs. And yes, indeed, our service, we don't provide services but we certainly provide conduits to service. So if one of our seniors is looking for a way to get to the doctor and they no longer drive, we certainly give them the resources and the ability to call elder care transport services. There are some facilities that have childcare services. Depending on what this community needs we will craft support. I think any good management company does that. We just take the extra step because many of our folks are on fixed incomes, they're in transition. Art ark, for instance, we have students, we have a second grade teacher who has her first job, teaching job and we do find in some of our properties, but it's true across America right now, that there are some need for more food services. This may not be one of these properties. But as people are losing their jobs and living –

COMMISSIONER DO: Ma'am, your time is up.

SPEAKER: Sorry, any questions?

COMMISSIONER DO: There are questions, Commissioner Jensen first.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Thank you for the work you're doing at Markham and art arc.

SPEAKER: Thank you.

COMMISSIONER JENSEN: Mr. Neil referred to extensive support services and the paper that was provided referred to support services as well. Can you talk about what extensive support services means, in context with what the community's concerns are, which -- and I'm going to put words in your mouth -- appear to be a concern about drug and alcohol rehab, possible former jail residents, and the like. And can you talk about, is that going to be a target audience for this service?

SPEAKER: You know, we actually don't, and I need to say this so you understand. We don't provide services. We do partner with local community agencies, as I think any healthy community does. So we don't provide drug rehab, we have a very strenuous resident selection criteria. And because we want healthy communities and because they are multigenerational in many ways, we do often partner with local community service providers. But we don't provide services. So we don't see this as a service arm. We see it as a home that needs to provide healthy options, and opportunities for what's available in each community. So San José has a vibrant support community. And we would certainly make sure that residents that needed support had that kind of thing. But this is not a half-way house.

COMMISSIONER JENSEN: So then the reference by Mr. Neil and the reference in the paper that was presented –

SPEAKER: We do -- I think the term –

COMMISSIONER JENSEN: Are in error?

SPEAKER: No, I think the term services is being taken in a different way. We could say we want to serve our residents. So we will have a service coordinator, a part time service coordinator, service provider who will be able to tell the someone how to go tot food bank or how they get hold of elder care, or I could give you a list of things. And it really depends on that group, on what they need most. If we have more seniors it will reflect one thing. If there are more veterans, it will reflect something else. So I think -- I think we try to be smart, so there's not one cookie cutter or boilerplate for each community. And it will depend on the residents there, on how we help connect them.

COMMISSIONER JENSEN: Is there any intent to encourage a particular type of population onsite?

SPEAKER: Well, that's actually hard for us to do because of fair housing. The limits on income are definitely an issue. So some examples, and you've heard those before but a single person at 30%, we're talking about security guards, we're talking about coffee shop baristas, home health care aids, someone at slightly higher income, school bus drivers, medical assistants, nurses, actually not nurses but LVNs, so teaching assistants, grad school, grad school TAs.

COMMISSIONER JENSEN: Thank you.

SPEAKER: There may be a mix but we can't target any one market.

COMMISSIONER JENSEN: Thank you.

COMMISSIONER DO: There are additional questions. Thank you, Commissioner Jensen. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I want to make sure I understood you correctly. You mentioned you look at your clientele and you tailor, your -- I guess you're not calling it services to them and you mentioned childcare. Who provides that childcare?

SPEAKER: We have childcare providers that sometimes live with us. The childcare provider, teacher might live at this place. They would be within the –

COMMISSIONER KAMKAR: So how would that help residents who need childcare?

SPEAKER: This is probably going to have mostly individuals. So there won't be a lot of children in this facility. There -- in others that we have, we do that, yes.

COMMISSIONER KAMKAR: Yes, yes, that's what I'm talking about. You mention in other ones you provide childcare and then you mentioned you don't provide services.

SPEAKER: Actually what I said was after school homework clubs and we do things like that if there are a lot of students on a property, yes.

COMMISSIONER KAMKAR: Let's talk about this particular situation.

SPEAKER: Yes.

COMMISSIONER KAMKAR: The common concern that we get in our e-mails, and testimony, is the foundry school next door.

SPEAKER: Yes.

COMMISSIONER KAMKAR: What are you doing to alleviate the concerns of the neighbors about this project locating right next door? Is there any plan to alleviate the concerns of the neighbors being close to at-risk children for the residential –

SPEAKER: For the residents or for the students? I'm not sure which one.

COMMISSIONER KAMKAR: No, alleviating the concern of the residents about this density and this type clientele being so close to an at-risk school? It concerns, and how are you addressing that? That's the question.

SPEAKER: I heard that. I actually am not quite sure, because we're not targeting an at-risk constituent. Until we knew who was living there, I would be hesitant to say what to do. Because we are good neighbors across the board. Wherever we go, we've been good neighbors. Now, it doesn't mean that there aren't sometimes tricky neighborhoods. But we actually have -- we have a reputation for turning them around and have won quite a few awards. This is not a troubled neighborhood. We have actually changed troubled neighborhoods. I don't at this time see there are going to be problems, because we are good neighbors. However, if something arises we have over four decades of experience of dealing with those things and we would find a creative way to solve the problem.

COMMISSIONER DO: Commissioner Kamkar perhaps we can ask staff to clarify a question as well after questions are concluded. Do you have further questions?

COMMISSIONER KAMKAR: No, Mr. Chair.

COMMISSIONER DO: Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. First of all let me say there are a number of years that I would have qualified for this type of housing as a teacher and a paralegal. I'm not an at-risk person. There are at-risk people who will be able to qualify for this housing. I have questions for the height and parking concerns that have been raised and what your response is to the height being above the other buildings and then also the park issue.

SPEAKER: May I call the developer in to answer the question? No, I can't do that.

COMMISSIONER DO: Actually, I think these questions are better asked when either when the applicant comes back or for rebuttal or --

SPEAKER: Great.

COMMISSIONER DO: Or as of staff. Because she is not the applicant.

SPEAKER: The property manager, yes.

COMMISSIONER CAHAN: My question was really because she manages this type of facility and therefore she is familiar with what happens in the actual living of that type of facility. How as someone from a management point of view how she answers the concerns, and views the concerns.

SPEAKER: I can answer -- I think I can answer that one, thank you.

COMMISSIONER CAHAN: Thank you.

SPEAKER: In the past in properties like this what we assume is there will probably be 20% seniors. Many of them are not driving. And many, we find economically, in these days and times, that a surprising number of folks, young folks, take public transportation and are not driving. So our goal is to actually encourage a sustainable community. That's what we're trying to build, a sustainable, healthy working community. So we encourage people to take the bus, we give them incentives to take the train. And we do find, we have two properties, two direct TOD properties right now. And we're finding we're using less parking than we assumed. That's not true on every property that we have but we have every hope that this one will be a smart-growth activity. And at least that's our goal and that's what we'll encourage. So I can't -- I can't say what will happen with visits or with visitors, but we think there's been a wise allocation of parking to the type of residents we expect.

COMMISSIONER CAHAN: Thank you. I did want to get the idea of what has actually applied in other buildings.

SPEAKER: Yes.

COMMISSIONER CAHAN: Thank you.

SPEAKER: You're welcome.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Is it typical that an agreement with VTA for instance for providing either low-cost or free passes for transit in that area, considering this is the -- the parking requirements have been cut back, is that typical?

SPEAKER: There are a number of them and I think some of them are age or I think, depending what kind of training program or something that they might be going through yes indeed.

COMMISSIONER ZITO: I'll also ask the question of the applicant and staff. Thank you.

SPEAKER: Great.

COMMISSIONER DO: There are no further questions. Thank you very much.

SPEAKER: Thank you.

COMMISSIONER DO: Next speaker, Mark Isola. I will call the next three speakers, Shiloh Ballard. State your name and you have two minutes.

SPEAKER: Mark Isola Rehon and Roberts. We represent the Santa Clara valley office of education. The office education owns the neighboring property which is immediately adjacent to the project. The office of education operates the school, operated on that Sunol street. There's grade 7 to 12, 130 students plus a staff of 16 people. Both the board and the office of education are very concerned about this project both as to the construction phase and the ultimate project of the final project. We submitted a letter this afternoon discussing our concerns and requesting that the developer require to prepare a full environmental impact report. In part we only learned of this project very recently so we haven't had a full amount of time to identify and fully digest all of our concerns. But we did in the letter identify many of them, and the fact that the initial study and the MND simply failed to adequately analyze the impact of the project on the school. Some of those were mentioned previously by staff but we specifically mentioned in the letter the aesthetics, the project proposes to remove 25 trees, which will have a visual impact from the school, and also we have safety concerns back from residents of the project being able to have a bird's eye view of the school. Additionally the height of the project at 65 feet will be substantially higher than any other building in the area. We're concerned about the air quality certainly during the construction phase with all the vehicle exhaust, pollutants, dust and particles, the effect that will have on the students, in fact we do have a substantial yard area in back of the school and there are students outside, many during the daytime. We also are concerned about the effect on biological resources, sunlight could be limited by the height of the building. Where also the trees removing 25 of those trees will have an impact on those resources. Noise, certainly during the school hours this construction will be going on. And we're concerned about what the effect that will have on the learning environment.

COMMISSIONER DO: Sir, your time is up but there are questions from commissioners. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I understand, the list that you're mentioning, quite a lot of them to be honest with you I just don't understand. I mean, I -- breathing here, I have an impact on the rest, you know but to me that's not enough to, you know, make me stop breathing. So my question is, what are the safety issues that you have? I mean, removal of trees and, you know, construction, you know, exhaust, you know, those things, you know, they don't sway me. But what are your safety issues that I should know?

SPEAKER: The primary safety issue that the two driveways, the driveway for the project and the driveway for the school are I think 20 feet apart. So we're concerned, significantly concerned about the construction phase, with traffic coming and going as students are coming and going from the school and most of the students take bikes or walk. There's not a big student population

that drives themselves to the school so they're going to be on foot needing to avoid those construction traffic that's coming to the project on that same street.

COMMISSIONER KAMKAR: Okay, so construction staging, construction traffic management, you know, that's one issue, that I can understand.

SPEAKER: Correct.

COMMISSIONER KAMKAR: Any other safety issues that you know, not as far as vehicular accident but as far as safety of residents, safety of the students, that you want us to know about?

SPEAKER: I've heard the talk tonight about the possibility of the residents. We haven't had time to discuss that with our client or would take a position on when the project is completed if we have a concern about the residents. We're simply not in a position to discuss that tonight. We haven't fully like I said we just learned of the project.

COMMISSIONER KAMKAR: So you're asking for a full EIR for these things to be discussed basically?

SPEAKER: Correct.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Thank you, sir. Just curious, do your concerns have anything to do with the specific nature of this project as opposed to the construction of it? In other words, the fact that this is a 100% affordable housing project versus any other 117-unit, what is it, four-story project?

SPEAKER: That was my response to the prior questions. We haven't had time to really digest that issue and discuss that with the board and get their position on it.

COMMISSIONER ZITO: So you're essentially saying that any building of this type in that spot would raise similar concerns for you?

SPEAKER: Right, especially using the Sunol Street side as the egress and -- ingress and egress. That's our concern at this point, the building itself not what the project is proposed to be.

COMMISSIONER ZITO: Okay and more specifically the ingress and egress?

SPEAKER: And the height as well, the proposed height and that the -- not taking into account the possibility of who those people are, but that any resident will have a bird's eye view of our campus.

COMMISSIONER ZITO: Yes, the units facing that way I'm sure. Do you have concerns regarding the parking at all?

SPEAKER: We do have concerns regarding parking because as of now I'm told that Sunol Street, the school doesn't have adequate parking. There's frequently staff forced to park on Sunol Street. If this project doesn't have adequate parking for its residents they're going to be on Sunol Street. It's possible those residents don't necessarily leave in the day so those parking spaces aren't freed up for the staff when they arrive so they're going to be parking even further away from the school.

COMMISSIONER ZITO: The county school that's there, it's a high school, is that correct?

SPEAKER: Grade 7 to 12. So –

COMMISSIONER ZITO: 7 to 12?

SPEAKER: Correct.

COMMISSIONER ZITO: Would you say on the high end, the 11th and 12th graders, you might have some that are of legal age, over 18?

SPEAKER: It's possible Yes.

COMMISSIONER ZITO: Would you see that this project would have any benefit at all in the sense that it provides a -- how request I say -- a living example of what might be available for these at-risk youth, as far as their opportunity to stay in the area, to get good jobs, and have a place to live?

SPEAKER: I guess that's possible. We haven't fully considered that and evaluated that.

COMMISSIONER ZITO: I know one of the big concerns is, people don't have a lot of hope of sticking around here and invest a lot because there is not a way they feel they can afford to live here. With a school being right next to this project, would this provide any kind of a hope or an example of what might be available to them?

SPEAKER: That is possible. And one of our requests in our letter of today is, we hope to, like I say, learn that today dialogue was started between the developer and my client. But we'd like to further that dialogue and that could be part of that conversation, that communications can getting core to explain to us some of the benefits of the project and possibly getting the teachers and staff at the school to explain that they could use it in that manner.

COMMISSIONER ZITO: The other question I have is along those exact lines. Communication between the county and this project, you're saying it was, you know, pretty sparse. Would you say there was enough notice given, or was there no notice given?

SPEAKER: There was no notice given. Apparently they pulled from the taxpayer rolls and because the county doesn't pay taxes on the area they weren't aware of us.

COMMISSIONER ZITO: So from your perspective there was no attempt to contact the county to discuss the project?

SPEAKER: Correct.

COMMISSIONER ZITO: I appreciate that. Thank you for your input.

COMMISSIONER DO: Thank you, there are no further questions. Thank you. The next speaker please, Shiloh Ballard.

SPEAKER: It was a good attempt. My name is Shiloh Ballard. I work for the Silicon Valley leadership group which is a public policy trade association representing about 300 businesses in Silicon Valley. I'm here because those businesses and the CEOs who drive our agenda see housing as a choke-point for economic development. And they hire someone like me to go out and support good housing proposals. And this is one that qualifies in our criteria as a good, sound development proposal. As is the case with many developments like this, there are often community concerns some of which are very valid, some of which are perhaps not so valid and absolutely, you know, reasonable minds need to work out the details. But the reason we come before you is to remind good folks like you of the regional need for affordable housing and housing of all types, frankly. I go from city council to city council, plannings to plannings, sitting in hearings like this, and see site by site, parcel by parcel, we nitpick and we whittle back the density and the height, and collectively it all adds up to a pretty significant loss of the potential of building more homes. And that leads to a need for more and more housing. So we absolutely do support this proposal. I wanted to also inject one comment, and that is, that based on some of the comments here and the stone and the type of housing, I just wanted to highlight that we at the leadership group, through organizations like the Housing Action Coalition, the Greenbelt Alliance, the Affordable Housing Network, League of Women Voters, partner more than once a year to organize tours to take folks out and actually look at all different types of housing. Sometimes we'll do a tour only focused on affordable housing. So I wanted to bring that up and encourage the neighbors and stakeholders here to please come and attend those tours so they can meet and see this housing firsthand. Thank you.

COMMISSIONER DO: Thank you. There's a question from Commissioner Zito, please.

COMMISSIONER ZITO: Thank you, Mr. Chair. First of all, Shiloh, thank you for all your work you've been doing for the city and the county in general, appreciate all that. You did make a statement when you first started saying that some what you feel some concerns are, from your perspective, more valid than others. What concerns would you see are valid and what do you see would be ways to work through maybe SV, Silicon Valley leadership group and work with the groups to iron those out?

SPEAKER: On this particular proposal or generally what we hear from the community?

COMMISSIONER ZITO: On this proposal, I think.

SPEAKER: You know, there's -- and this falls in kind of the borderline category because people can always argue about design and frankly actually just before this hearing one of the community members who I respect a lot said, you know, I like this example of affordable housing and it's one that I personally don't like. But design is something that you can always, you know, argue about and say, you know, we as a community want to see it designed a little more with stoops and this way or shutters here or that kind of stuff.

COMMISSIONER ZITO: How about the retail component of this project and/or the parking requirements?

SPEAKER: Frankly, I -- I don't know enough about that particular issue to comment. What I can comment on, I mean in terms of the specifics, what I can comment on is, in terms of this type of home, and SRO which is targeting lower-income folks, those folks tend to be a little more transit dependent, automobile ownership tends to be lower. I think it was first community housing that did a survey of their properties to find out what impact the residential ecopass program had had for their residents. And if I'm remembering correctly, it was somewhere around 25% of the residents that they had abandoned the use of their car because they now were able to use ecopass.

COMMISSIONER ZITO: I realize I put you on the spot with those questions but I appreciate your frankness and your ability to address them. Thank you.

COMMISSIONER DO: Thank you, Commissioner Zito. There are no further questions. Thank you. The next speaker, please, Mr. Joseph Robino.

SPEAKER: Hello, my name is Joseph Robino, I'm a property owner, on West San Los and a member of the West San Carlos business association. My biggest concern is the parking. 67 parking stalls for 117 spaces, and we have commercial that has to be taken into account. There's not going to be enough parking. And there was a comment made earlier, there's going to be a lot of children in this project. People with a lot of children usually have cashes. And so I don't see where the two go hand in hand, that this is going to be transit orientated. And there's going to be children in the project. And my other concerns is the fact that we're left with shallow lots on San Los as a result of this development. And I don't see these projects ever enhancing the goals that we have on West San Carlos which were in the West San Carlos economic business strategy and also in the midtown plan. And none of this project conforms to any of what we want in that. And as far as the affordable housing goes, I think that the affordable housing should be in with mixed use development. Instead of concentrating it all in one spot. And West San Carlos ask in a redevelopment area, and it is required that a certain percentage of the housing be affordable housing. I think spreading it out over all these mixed use projects that are going in, and are proposed for West San Carlos is a better way or better avenue to approach the affordable housing. Those are my comments.

COMMISSIONER DO: Thank you. There's a question from Commissioner Zito.

COMMISSIONER ZITO: Thank you. Right here. I appreciate your comments. And my understanding, though, just, we'll get clarification from the developer but that there will be very few children because these are all single rule –

SPEAKER: The lady that spoke said there will be a lot of children in the project.

COMMISSIONER ZITO: We'll get clarification. But the question I have for you as a business owner or a member of the business community would you not see a benefit of having more residences available to frequent those businesses?

SPEAKER: No, I don't, not othis project. I think this is going to be a damper on future development in that area if you concentrate all the affordable housing in one spot. If it's spread out, you know I think it's fine. But concentrate all in one spot and then you're going to have future developers or future people that want to develop retail and they're going to look on this and they're going to say, gee, I don't know if I want to locate in that area. But definitely the commercial right around that with the shallow depths that's going to be remain the same. We're never going to see an enhancement on the street when we is a that. We have worked a long time in the West San Carlos business association to enhance the street and bring aesthetics to it and we see this as going a different direction.

COMMISSIONER ZITO: Let me ask the question in a different way then. If this project was a different density, 20% affordable and the rest market rate would you feel that would be more palatable?

SPEAKER: Yes, I would.

COMMISSIONER ZITO: Okay, thank you very much.

COMMISSIONER DO: Thank you, Commissioner Zito. There are no further questions. Thank you.

SPEAKER: Okay, thank you.

COMMISSIONER DO: The next speaker, please. I will call the next three names which are Helen Chapman, Brian Ward and Phyllis Ward. Please, ma'am.

SPEAKER: Good evening, my name is Debra Arant and I'm the vice president of Shasta Hanchett neighborhood association. As an organization we were not against development but we firmly believe that all projects undertaken must adequately address the community needs. Although this project has the potential to greatly enhance the city of San José, there are serious issues that must be addressed before it can ever realize its potential. The development is comprised of 117 units allowing a potential 234 residents within an acre of space, making the development one of the highest density projects in San José. As such, we believe there are several serious issues regarding this project that we feel need to be addressed. Despite the 234 resident capacity, this project incorporates 69 parking spaces, that are destined to serve not only the residents but guests and retail patrons as well. Furthermore the site does not have safe

bicycle access and is not located within a reasonable distance of any train or light rail station. Currently an order for the residents to use the train or light rail, they must either walk to Diridon, or to the light rail station at race and Parkmoor. Neither of those are in a very nice area, or a safe walking place. The site is not close to any public services such as library or community centers. People without any money need some place to go that doesn't cost anything and they don't have that near this area. In addition, the parking allowance will likely place a severe burden on the existing businesses as overflow parking for the proposed development will clog retail lots. Finally as there are not enough local establishments to employ potential residents of the development, the lack of sufficient transportation will hinder their economic well-being as they will face difficulty traveling to and from work in other areas of town. Compatibility. The proposed development site lies in a vital commercial area that is part of the West San Carlos business district and the area has already seen extensive residential development via the PDC process.

COMMISSIONER DO: Ma'am, your time is up, thank you very much. Next speaker please, Helen Chapman.

SPEAKER: Good evening, chair do and members of the commission. Helen Chapman president of the Shasta Hanchett naked association. I also wear another hat, I work for San José unified school district. So for clarification, the school formerly known as the foundry is not part of San José Unified but of Santa Clara County Office of Ed. And I'm glad to see them here tonight. The foundry is a school program that works with students have been expelled from their home school primarily in San José unified but other school districts also for various reasons and are willing to work at improving themselves and to complete the needed graduation requirements. Shasta Hanchett neighborhood association represents over 4,000 households and works with the NAC to support our community. The letter I gather you just received the letter from them, I'm disappointed to hear and see the comments from the division that's been created between the affordable housing community and the surrounding neighborhoods of the West San Carlos neighborhood business district and the Shasta Hanchett neighborhood association. I invite the neighbors to meet with us to hear our concerns and work with us to make this project dynamic and one to be proud of. There are many things I've heard tonight that I have not heard before. I think that says volumes. Thank you.

COMMISSIONER DO: Thank you, next speaker.

SPEAKER: Good evening, my name is Brian Ward, I'm vice president of the Buena Vista neighborhood association. I'm probably going to go relatively fast because there's a lot of tacks to cover. First off I'd like to ask how many commissioners drove 6/10 of their cars here to this meeting tonight because 69 spaces for 117 units and retail that's about how much you would be able to do so you would have to leave 4/10 of your car at home. What core and the leadership don't tell you is there are only two business along San Carlos. They also don't tell you that VTA reduced service in January, they're reducing it in October, they're also facing a $34 million shortfall in funding over the next two years. The light rail station nearest light rail station is over 2,000 feet from this site, and 1500 is the designated range for walkability. Also, while VTA has proposed rapid bus service they can get federal funding for the buses but they cannot get -- they do not have funding for the drivers, or maintenance people, to maintain those buses. Therefore

they'll have the buses but they won't have anywhere to go, because they don't have anybody to drive them. Unless they can find it out of their general funds. What core also doesn't tell you is that they will stand idly by while their contractors set up construction staging yards, in adjacent neighborhoods, not in the development, which they'd set up two in Buena Vista and they also had their construction vehicles across West San Carlos during the fiesta lanes development and they were parking on our streets and our neighborhoods and that's a semi trailer with a 30-foot low-boy trailer and they refused to do anything until the city finally forced these truck yards to be shut down.

COMMISSIONER DO: Sir, thank you. Your time is up, thank you very much. Next speaker is Phyllis Ward and I will call the next three names. Terry Babandra, Randy kinman and James Marcus or Minkis. Please ma'am.

SPEAKER: Good evening. Members of the Planning Commission, my name is Phyllis Ward, with the affordable housing network. The affordable housing network supports the proposed housing development on Sunol near West San Carlos. This development will provide housing for extremely low income and very low income households. People who earn 8 to $10 an hour, of which we have many here in this valley. This income group has the greatest need for housing that they can afford. Many are now living in overcrowded conditions, two and three families living together, to share the rent, or commuting two to four hours a day to come here to work. This proposed development is near public transportation, and also, within walking distance of employment opportunities. The Affordable Housing Network requests that you vote yes on this housing proposal. Thank you.

COMMISSIONER DO: Ma'am, there's a question from Commissioner Kamkar, please. We have a question from Commissioner Kamkar. Thank you.

COMMISSIONER KAMKAR: I have a question for you and first of all, thank you for your testimony. You mentioned that the residents will be committing two to four hours per day. Is that via their own cars or are you talking about public transit?

SPEAKER: I can't hear you very well.

COMMISSIONER KAMKAR: The commute hours that you mentioned for some of the residents, you mentioned some of these residents will be traveling two to four hours, will be commuting two to four hours per day, is that via their own vehicles or public transit?

SPEAKER: I didn't quite hear all that. But you know that people have to commute. This is a very expensive area to live in. And there are so few housings or housing developments where people can afford to live here, so they go far, far away, to find some place to live, and then have to commute here to work.

COMMISSIONER KAMKAR: I understand that. Are they driving or taking the bus?

SPEAKER: A lot of people stay the bus or the train.

COMMISSIONER KAMKAR: Okay so the two to four hours that you mentioned was mainly transit, not driving?

SPEAKER: No, they don't -- often don't have cars. And use public transportation.

COMMISSIONER KAMKAR: Okay.

SPEAKER: Buses and trains.

COMMISSIONER KAMKAR: Okay, thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Thank you, ma'am. The next speaker, please.

SPEAKER: Terry ballandra, our community worked diligently on the midtown specific plan, and this plan addresses our community's vision of the Cahill West area, it states what our community envisions for this area. Low and moderate affordable housing developments to be integrated with market rate development projects to create a diverse and heterogeneous community. The midtown specific plan also states there should be ground neighborhood serving commercial uses in this street. I understand the commercial in this development is the lounge for the new residents. New residential development should be complementary in scale and character to adjacent sing family houses within the neighborhood, and reinforce the neighborhood scale and pedestrian orientation of the district. All of this is in the midtown specific plan. Transition is a delicate process for any neighborhood. In the Sunol West Cahill neighborhood presently there is no development there that counterbalances the severe impact of this SRO. The redevelopment of this square block should start and lead the graceful transition with innovative, integrated market rate and affordable family housing with pedestrian, street level, vibrant tax-generating retail that reflects the historical nature of the surrounding area and complements the upcoming transition to the exciting Diridon area. I ask that you deny this project as it also lacks charm and appeal which this city is so desperately in need of. City planners and developers need to actively engage the surrounding community in a proposed project planning stage before the color renderings are drawn. Let's set the stage to transition from downtown into the Diridon area, along West San Los street with a vibrant historical walkable retail neighborhood leading us to Santana Row. We look forward to a partnership with city officials city officials planners and developers and community leaders to develop thoughtful well planned tax and revenue produce projects that makes sense to the surrounding community on this strategically located valuable land. Thank you.

COMMISSIONER DO: Thank you very much. There are no questions. Thank you.

SPEAKER: Thank you. Kind of weird being back here after all this time. I do want to thank my community for turning out because no matter what is said we are advocates for change and advocates for low income housing. The Burbank Del Monte NAC statistically has a higher percentage of low-income, seniors, and immigrants than San José as a whole does. I represent our county on the Metropolitan Transportation Commission's regional minority citizens advisory committee and would qualify for this housing but would not use it. I also sit on the Diridon good

neighbor committee. I have three process concerns that warrant at the very least a deferral. The documents filed in a timely manner were not included in the packet for either the public or the commissioners to read before this meeting. The staff report was issued without consideration of a NAC response, and this is in the Burbank Del Monte NAC. The staff indicates that the project meets the NAC goals and the NAC disagrees. The NAC by the way wasn't consulted. My personal concerns is every time I hear about this project the targets change and there is or is not a need for onsite services which may or may not be provided. As a parent of a child who benefited from alternative schools, I have concerns about the conflict we're building in. As a resident who uses the adjacent business, I'm concerned about the conflicts we're building into the site. As someone who works with seniors, low income and disabled, and as a transportation advocate, I don't believe that this project is appropriate. Cahill and Diridon are not accessible for transit dependent people. No rapid transit exists as has been stated, no bike or pedestrian infrastructure and the electric vehicle charging station makes no sense for people who can't afford cars and there's only 69 spots on the site. This project only qualifies as a good project on paper, not in the reality for clients, for my clients who live in the reality.

COMMISSIONER DO: Thank you, Ms. Kinman. There are questions from Commissioner Platten.

COMMISSIONER PLATTEN: Thank you, Mr. Chairman. It's nice to see you, Ms. Kinman.

SPEAKER: Thank you.

COMMISSIONER PLATTEN: Your letter is dated August 27th, 2009. When it was it delivered to the city?

SPEAKER: It was delivered at noon the day of the deadline. Physically, it was e-mailed at the same time, so they had it electronically and physically by 1:00 p.m. when the deadline was 5:00.

COMMISSIONER PLATTEN: Thank you.

COMMISSIONER DO: Thank you, Commissioner Platten. Thank you very much. Next speaker, please. And I will call the next three names. Chet, I cannot read the last three names. Lockwood, I'm sorry, Gary Olympia, and Henry court or cart. Please, sir.

SPEAKER: My name is James Marcus. I own the property. I've been there for 33 years. I ran a landscape business. We had 100 employees. We had 65 to 75 trucks leaving that property every day. We worked with the school, we work with our neighbor next door, Sam. We never had any parking problems. A lot of my employees were taking public transit. And I think the city would be to their advantage to vote for this property. I have been involved with other cities like San Diego, Long Beach, and I really admire what San José is doing with their downtown. I've been there a long time, watched them try to encourage the people to make the gateway of San Los to downtown. I know it's taken a lot longer than what they've done but you can really see the effort coming forward. And I think this type of property would be an asset to San José. And as a footnote, my daughter lived in a property on -- across from Westgate on Hamilton avenue. They gave her a G.O. pass to go to de Anza college. It took her 20 minutes to get to school. She was

24, on her own, she could afford it, there were like 16 students there. They had computers, workout rooms. I visited her and helped her move in and out. And you know, when I went down to the parking, there was like 15 parking spots not used. Most of the people in that type of property didn't have cars. She didn't have a car. And I think that the opposition that these people are going to be convicts, I never saw that. The management, it was very quiet and there was not lots of children and very well run. So I would encourage San José to have this type of property for our people. I appreciate your time.

COMMISSIONER DO: Thank you, sir. There are questions from Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. The property that you mentioned, your daughter used to live in, did it have a retail component?

SPEAKER: Um -- I don't think so, no. It was right across the street from Westgate shopping center. So they did not have a retail.

COMMISSIONER KAMKAR: So they wouldn't have the visitors during the day that might want to patronize?

SPEAKER: Right. And by the way, the gentleman mentioned about removal of trees. The school removed the trees. They were encroaching. They were on their property. They were actually damaging the buildings on my property. So that's why the trees were removed. I did not remove the trees. It was the school district.

COMMISSIONER KAMKAR: But it was on their property or it was on your property?

SPEAKER: The trees were on your property. And so they had to remove them. They did damage to our property because of just broken -- nonmaintenance.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Thank you, sir. Next speaker, please. Mr. Chet lockwood.

SPEAKER: Good evening, thank you commissioners. Chet Lockwood, fiesta lanes action group. First off, I would request a deferral of your decision on this project as there were incorrect noticing time frames on the project. The developer, and city staff, apparently notified San José unified school district, in error. And thus, resulting in a very, very short time frame for the correct school district, the Santa Clara County school district, to prepare any response to this. I think that really nullifies the purpose of public outreach. And since the intimate location to this to a school for troubled teens is key to this, that they be able to prepare and evaluate the impact on that school properly. During the public outreach phase we were told many things by the developer, not by anyone but the developer. They seem to be at odds with what has been said here tonight. We were told that this would be a, quote unquote, halfway house, that this would be a jail to jobs type of counseling situation. That there would be a full time onsite counselor available for people for drug rehabilitation, sexual abuse rehabilitation and job founding. So what's being said here tonight is totally different from what was presented in the public outreach

phase. Also contrary to what was presented in the public outreach phase by the developer in regard to groom standards, when requesting information on the photovoltaic installation the developer admitted that these buildings faced the wrong direction. They would not be appropriate for any PV type of panels on the roof. And I think if you folks checked drawings you'll see that that's correct. As far as the negative -- mitigated negative declaration, regardless of what's put on a piece of paper at this point, I personally have lived through over a year's worth of construction havoc reaked upon my home and my neighbors' homes by that developer, with total disregard for the neighborhood, total disregard for our privacy, total disregard for the vibration they caused, dirt they put on our streets, the hazards they caused in washing lead down the drains. Our City Attorney's office had to bring prosecution against this developer for their lack of consideration of the neighborhood. I request you disapprove that.

COMMISSIONER DO: Sir your time is up. You have a question Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Did the developer actually use the word, halfway house?

SPEAKER: Yes.

COMMISSIONER CAMPOS: Thank you.

COMMISSIONER DO: Next speaker, Mr. Gary Olympia.

SPEAKER: Good evening, my name is Gary Olympia. I am a resident about 150 yard from this project. I practice law in Santa Clara County for 43 years. And I have practiced in San José for 25. I support this project. This project to provide affordable housing, to low-income, the working poor, and seniors, is absolutely consistent with the historic and consistent policy of the City of San José in connection with its social policies. Those started 43 years ago, when I served or was privileged to serve, on a city committee, when I was a student body officer at Team San José. To talk about fears as opposed to facts to not sit down and talk with the developer, who I spent four hours today researching, I don't know Mr. Neil. Talked to him once on the phone. But if you research what they have done, both down South and in Northern California, if you talk to the individual who has owned and still owns the greatest number of subsidy housing in this city, Charles Davidson, this developer is sensitive to the needs of the community, the City of San José, and, if given the chance, with facts, has the ability, the knowledge and the experience to work with this city, and the local community, to produce a successful, low-income affordable housing project that this city needs and should support. Thank you.

COMMISSIONER DO: Thank you very much. Thank you. Next speaker, please. Mr. Henry court, and I will call the next three names. Tom Robinson, Jonathan Martinez and Martin Delson. Mr. Henry court is the first.

SPEAKER: Chairman, I'm on the next item.

COMMISSIONER DO: You're Mr. Court, right?

SPEAKER: Yes.

COMMISSIONER DO: Yes, please, you're next.

SPEAKER: Next item. But this has been very –

COMMISSIONER DO: Oh, I'm sorry.

SPEAKER: This has been very enjoyable.

COMMISSIONER DO: I'm sorry, I made a mistake. I made an error. We got the cards slightly mixed up. Let's see. So the next speaker is Jonathan Martinez and then Martin Delson and then Jean Dresden. Thank you.

SPEAKER: Good evening. I'm on the Shasta Hanchett board of directors, I'm also on the Georgetown homeowners association. I live on Sunol, I work doubt. I don't think really anybody's against SROs. We need them. I just don't think this is the vision for this particular neighborhood. I live in that neighborhood. I have a 16-year-old son who can't find a job because there is no retail there. We need a retail. Everybody in my neighborhood travels over there to go to a restaurant, chili's and we need more retail in this area. I want you to done be so focused on this thing. Because just beyond that you've got a proposed baseball park and we're going to need that land for, I wish we hadn't approved that we could have put this there. What we need is retail there. If you just look at the vision of that, parking is going to be a huge issue. I can give you stories about parking all day long. And the thing about it is you've got the Ohlone project going in right across the street. Which they're asking for, 800 more units right across the street from that, very little parking. Parking is going to be a disaster in that area if you move forward with this project. So what I want you to do is just think about the neighborhood that I live in, I can give you empirical stories about what it's like to live there. It's gentrifying. You'll just see it, it's just gentrifying. There are no Walmarts, if I was living in an SRO I would want away to live near a Kmart or Walmart. It's not in our neighborhood. Gosh darn it I wish there was. That's what I was asking to you do, put some more retail or more thought of what's going on here in this neighborhood. It's bigger than just that little spot right there. I think really that's what I really wanted you to just consider about that. If you have any questions about parking bring it because I'll tell you.

COMMISSIONER DO: Thank you. There are questions about Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I'm going to pose a hypothetical to you.

SPEAKER: Okay.

COMMISSIONER KAMKAR: If there was more retail on this ground floor with additional parking, with the same number of SRO units would you have supported it?

SPEAKER: I think there's just better use for that land. I mean, this is going to be an extremely valuable use of property. I promise you that. Once that ballpark goes in, even if it doesn't go in,

and you put in a corporate campus which is on the EIR for that particular area there, you are still going to talk about people that are not going to work on that campus.

COMMISSIONER KAMKAR: We have to make a decision on this tonight as to zone it or rezone it and I need your input and the community's input.

SPEAKER: You know what, I am craving for more retail, I'd love to see a chili's or Piatti's or Crema has been a success on the area walking distance from that. There are smaller stores that are doing okay, they'll do better as more residents move in. But again, this is a better, there's got to be a better fit for that in this particular area. You're going to find that that's going to become an extremely piece of valuable property, retail or residential.

COMMISSIONER KAMKAR: So, getting back to my question, if there were to be more retail, you know, hypothetically, more retail on the ground floor, more parking, subterranean parking so that parking would not be a big issue any more, retail would be provided but you would get the more residents because we need to provide for that so –

SPEAKER: I'm not opposed to high density.

COMMISSIONER DO: Yes or no would suffice.

SPEAKER: Yeah, if you could do that yeah, I'd be fine with that.

COMMISSIONER DO: Thank you very much. Thank you, Commissioner Kamkar, thank you, sir. Next speaker please, Mr. Mayor Martin Delson.

SPEAKER: Good evening, reply name is Martin Delson. I'd like to raise an issue that hasn't been brought up, I just learned of this myself. Could you show the headline? There was an article at the mercury about two weeks ago about a fire add Reed and Graham, not far away. The next slide has the Reed and Graham, that's the R & G in yellow right there, they're on Sunol right against 280 and the pink dot is the location of the proposed development, it's a thousand feet, less than a quarter of a mile, the development is about a thousand feet from the development of Reed and Graham. They had a fire and the final slide shows a few of the highlights of the article from the paper. Fortunately the fire was extinguished. But there is a risk that really has to be considered. There was a risk of a thick cloud of petroleum based products being sent over the area. And also, there was the suggestion that there might be an asbestos hazardous as well. I question the wisdom of putting more residential development into this area, where there is this potential hazard, and I would request that there be a report from the city staff about the potential to mitigate this potential hazard. Thank you very much.

COMMISSIONER DO: Thank you, next speaker please.

SPEAKER: Good evening, my name is Jean Dresden and as I listen to the speakers tonight, some things came to mind. First it was on August 2nd that I wrote the superintendent of the county schools, who is a person I've known from the past as my work in schools for San José unified, and I said, so what do you think about this, Chuck? And he wrote back and said, it's the

first I've heard of it. Let me ask staff. That was on August 2nd. So of course, the board met and talked about it but they really didn't have much information though they did ultimately meet with planning. So it's awkward for them to be in a position of considering an impact of an SRO high density and having this high number of stories right next to it. Having taught alternative education students in the past, and my work with San José unified, they're very fragile in their attachment to their education, and it doesn't take much to convince them to not come to school. Having people look out the window at them in the yard while they're necking, or not in class, is enough for them to say, "That guy gave me the evil eye, I'm not coming back tomorrow" that's all it takes. Now, you may say they shouldn't be that way, but the fact is, they are that way. And you have to be accountable for the idea that having something this high-rise, looking out over a schoolyard of alternative ed kids is going to be a problem. On a personal level I'm concerned that the commercial area is designated as a TV lounge for the residents. I was here in August when the manager from Espiranza SRO who reported about her residents drug and alcohol abusers, to consider a disapproval to the Abyssinian grocery store next door, to the ten wrap around transition residents from the shelter. I don't think this is the right project here.

COMMISSIONER DO: Thank you very much. The applicant you have up to five minutes to make a rebuttal.

SPEAKER: Thank you. I think a big issue is communication, what is said and what has been heard. Whether the notice was put up about the project description, I take great pride in the concept of an affordable housing project providing extensive services. We view that as a positive. Unfortunately, there has been a view of it with a great deal of concern and fear. The intent of extensive services are EAH who spoke earlier as an example of a property manager that we worked with in the past. They are not a service provider and not intended to be a service provider. An example of the services that we envision under the definition of an extensive services, are for example, health and nutrition programs, health insurance application assistance, capacity building for adults, employment readiness and job search, English as a second language, technology. The target audience for this project ranges from as I mentioned earlier, 30% of area median income up to 50%. This is first and foremost, a residential community, an apartment community. With a range of the income of the residents that may reside there, we believe that providing an extensive service program which includes a part time service coordinator on site as well as the other services is a positive for the community, for the longevity of the project and for the residents. It is not intended to provide intensive services at this site. Yes, there may be residents who will live at the community who may need some support with alcohol addiction, with drug addiction. The intent is for the coordinator to be able to coordinate that or those individuals with existing service providers, in the neighborhood, to pair them up offsite. It is not the intent to bring all those uses, all those services onsite within the community. When the project started, we thought very closely about the location. And the reason we specifically selected the location was, its designation for high density residential, the vast majority of the property is a high density residential. The component that has the commercial portion is roughly 6800 square feet. It has a designation of up to 65 feet in height throughout the property. Except for where it interfaces with Sunol Road to be lowered for roughly 50 feet off of the street, it's outlined in the design guidelines from the staff report to be no more than two stories in height. It is close to the foundry. We had a meeting with the superintendent and one of his staff members today, to discuss how we could proceed and work together in the future. Was there an

opportunity for improved outreach, absolutely. After further discussion, there was an early conversation with the, at that time, interim superintendent, about our project, and inquiring about his property. He has since recalled that conversation but the recollection is slightly different. Since then a new superintendent is on board. Could we have done a better job ton outreach? Absolutely. That's probably something that could be done on every project. However, within 100 feet roughly of the school a notice has been put up on the fence of the project identifying that this project is coming forward. That's been up for well over a year and that did not trigger the need, that did not trigger a response back from the foundry school. That concludes my comments. However, there were many questions and concerns that came up here and I'm available for questions.

COMMISSIONER DO: Yes, there are questions. First, Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Just yes or no. On two things. One, would you categorize this as a halfway house and did you ever describe it as a halfway house?

SPEAKER: No, and no.

COMMISSIONER CAMPOS: Thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. That was one of my questions. Several speakers said that it was portrayed that this was going to be a rehabilitation site essentially. So what I'm hearing you say is it was never intended as such.

SPEAKER: I stand by the project description that was submitted. I can appreciate how it could be read with a different point of view. Through the process planning send that to me and ask me to clarify that statement currently and I clarified that yes, that is an accurate representation generally of the project. The zoning is going forward with the PD project, and when we would go further to the housing department, I it would get further refined but I was actually proud of that description.

COMMISSIONER ZITO: Do you have any agreements or have any plans for pursuing transit agreements passes for your residents?

SPEAKER: I haven't pursued it with the transit organizations. We have looked, it would roughly cost about 10,000, at the 117 units, it would roughly cost about $10,000 a year to provide ecopasses for each unit.

COMMISSIONER ZITO: Do you typically do this with your other projects or would this be something special for this project?

SPEAKER: This is specially contemplated because of the proximity to the transit. The one I walked to was Cahill, you walk across Sunol across park and walk into a tunnel and access Diridon.

COMMISSIONER ZITO: I'll ask staff about the proximity of transit stops other than buses. So leave that to them. Have you anticipated the ballpark in any of your plans and how this would be affected by or this would affect that?

SPEAKER: When the project started back in 2007, there was no concept of the ballpark coming forward. Now that it's moving forward, we think the synergies between it is there's a very good possibility that the jobs that could be created by the ballpark could be consistent with the income of potential residents for the community. So in that sense we see there could be a positive relationship with the project and a potential ballpark.

COMMISSIONER ZITO: Okay. Had you contemplated more of a mixed use, in other words, maybe not 100% affordable, but it seems that some of the concerns that the community have is that this is 100% affordable and therefore key to a specific clientele if you will, whereas, the authority of, in dispersing affordability throughout the neighborhood and throughout additional projects as opposed to lumping it all at one site makes more sense. Have you looked into the possibility that this would be less than 100% affordable, and what was your thought in making this 100%?

SPEAKER: So the term I'm accustomed to is sort of a mixed income community because it's sort of mixed given the retail. Honestly, the challenge to it is there is a very effective sophisticated program that exists for 100% affordable projects which we know we've performed under. As far as the mixed income, that's not as defined of a program. For this project in particular, we have contemplated on trying to broaden the income ranges to include, while there would be a high percentage of 30% income levels which is roughly 20 it will 22,000, to broaden that to include 40% and 50%, a little bit of the higher income levels. So in that sense we've looked to broaden the income range within affordable. But you know, our experience with these projects is 100% affordable. I think the program, I would -- I welcome to tour people of our projects and I would welcome people to try to drive through the community and identify which one is an affordable project versus which one is not. I think it's a virtually impossible exercise because of the quality of the construction of the projects, of the design, and that's ensured by the program. A comment was raised about the architecture, about the design. Some of our most successful projects elicit an either I love it or I hate it. It's a very difficult exercise. At the most recent meeting of the community at the architecture, there was the I hate it. There would be architectural charrettes to get feedback on the architecture. The challenge is the feedback to incorporate as much and try to create a line of best fit. That doesn't mean that you adopt every piece of input that you receive.

COMMISSIONER ZITO: Two points along those lines. One of which is the true mixed use component. You've raised it from 2,000 to 2600 square feet. There's been a statement, several statements saying that's basically a cafe for the residents. So I'd like to understand a little bit more about what your intention was for the mixed use commercial component, let's put it that way. Is it meant to be community serving and is it just a single retail establishment or did you plan to have multiple retail establishments in that 2600 square feet? And the second question I have was the concern that some people mentioned as far as overlooking the schoolyard and its possible effect on the students and/or the overall, how can I say environment for the students there.

SPEAKER: First, the comment about the commercial retail. Originally, our concept did not include any retail along the front. Given strong point of view from planning staff and strong point of view from the community and the West San Carlos business district it has evolved to what has currently been recommended for approval. One of the challenges is, the midtown specific plan that has been brought up as a guideline and probably what we looked at as we selected this site was approved in 1992. Started well before that. We've been through several economic boom and bust cycles since then and despite all that activity, the retail, however you want to define it, development along West San Carlos has not started along this part of the street. A small portion of this site is designated commercial. In our discussion with Planning the challenge is once we operate the building we need to be able to rent it, day 1, in a year, in five years, 15 years, as the neighborhood evolves, and so the compromise was the designation of the retail component as commercial pedestrian. Which is intended to, as a district, intended to support pedestrian oriented retail activity at a scale compatible with surrounding residential neighborhood. So my understanding of that is, you need the foot traffic for the ultimate pedestrian retail. Which I agree will not exist the day we open. Within the commercial pedestrian zoning district allows office use. Our anticipation would be to be flexible, as design it with a potentiality use for the future as there's a vision for the street, but to meet the immediate needs of the project. And most mixed use projects have to subsidize the retail to a certain component. Would we envision it more of an office use? I do agree, oh, I cannot disagree with some of the comments about the proximity of the parking of the commercial to the space. Which was partly why originally our concept was not to approve it given the narrow width on West San Carlos it's very difficult to provide the parking in that direction.

COMMISSIONER ZITO: So again, stick to the point. I asked, is the retail component supposed to be, in your vision, strictly for the residents of this facility? Or do you see it as being community-serving?

SPEAKER: I view it to be in the short term an office community serving not for the community. Excuse me, not for the apartment community.

COMMISSIONER ZITO: For surrounding community?

SPEAKER: For general public use.

COMMISSIONER ZITO: Right. Because if I look at the general plan there's lots of single family residential across the street and what I consider within walking distance. If you're using the 2,000 foot for transit as far as walking distance then there's certainly plenty of people who could walk to whatever you would put there.

SPEAKER: In our experience we also developed a project at the intersection of bird and west San Carlos, Delmas park. Eight story project adjacent to single level and two and three stories. A good example of how a neighborhood can evolve. That has part -- a designat parking space for the commercial and that has been a challenge to lease. It has been vacant 50% vacant since we opened it.

COMMISSIONER ZITO: I think in this economic climate you'll see that a lot. How about my second question about overlooking the schoolyard.

SPEAKER: We discussed that very briefly when we met with the superintendent so yes, the unit at the -- you know the top floor will overlook the school. You know, one of the comments that came up is, what activities are going to be going on there that they don't want to be seen? So there's a different point of view or eyeballs on areas are a good thing. I've been involved in projects where they encourage that. It's part of the design. It's one of the difficulties, I admit it's a difficulty of high density small lot urban development.

COMMISSIONER ZITO: It was briefly discussed but no plan in place at this point. Do you feel that the school district saw that as a problem in your discussions?

SPEAKER: Sorry, the county office of education?

COMMISSIONER ZITO: That's right.

SPEAKER: So in my opinion, the staff did not see it as much of an issue as the board saw it as a potential issue.

COMMISSIONER ZITO: Thank you for that.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Mr. Neil, thank you for the work you're doing in terms of providing affordable housing. I also have a challenge with, as you mentioned, having the entry for parking being along Sunol while the commercial is out on West San Carlos. And I wonder if you might be open to moving the ingress and egress, just a quick little look at the rough sketch leer, there's significantly larger space available, on West San Carlos if you were to provide ingress and go underground as you do in Sunol, and since so much of this is providing underground parking, I'm sure that the understructure, the underpinning of the land is the same throughout the site. And I just wonder if you'd be open to moving your ingress and egress.

SPEAKER: The design that's in front of you is a semi subterranean off of West San Carlos then it ramps up to an at-grade podium. That's the design that's in front of you. One of the challenges on West San Carlos as well as the interface at its maximum is 75 feet. There's an easement that cuts off that space. The true frontage to West San car Los is less than 75 feet wide. If you add the space for parking you'd effectively eliminate any effective commercial on that space. In my opinion, the entrance could be moved but it would almost remove the possibility to provide commercial retail along the West San Carlos inner frontage. In addition to that, when you come off of the ramp if you are driving from downtown along West San Carlos there are already quite a few curb cuts along that frontage from when you get down. I've had experience in working with whether it's Public Works or D.O.T. with not wanting to have the curb cuts on West San Carlos and wanting to have it off on the side street. My preference would be to have it on Sunol.

COMMISSIONER JENSEN: So let me go back to what you said, and I'm sure I must have been misunderstood because this doesn't make any sense. Partially subterranean commercial on West San Carlos?

SPEAKER: From West San Los is a semi subterranean parking garage. So you go down to enter. And then at some point, roughly 50 feet it comes up –

COMMISSIONER JENSEN: I'm sorry, the drawing that I have sheet 3 doesn't have any parking on West San Carlos at all.

SPEAKER: Sorry, I apologize. Off of Sunol Street, there's one parking entrance for the whole project, it's on Sunol. Off of Sunol you go down to a semisubterranean parking garage for a portion, and then there's a ramp up, when you get deeper into the project, it's an at-grade.

COMMISSIONER JENSEN: Right, I see that. And the challenge with putting below-grade parking under West San Carlos as you have on Sunol, what is the challenge to that? Putting the low grade parking as is on Sunol.

SPEAKER: Just to clarify with a separate entrance off of West San Los?

COMMISSIONER JENSEN: Correct.

SPEAKER: The frontage of the property at its maximum is 75 feet wide from property line to property line. There's a portion of that that is an easement. So our ability to access the street is something less than the full 75 feet.

COMMISSIONER JENSEN: I just took, you know, the back of napkin drawing. And looked at the driveway width that's on Sunol and mapped it out against the available land on West San Carlos. -- excuse us, hang on a second. Here is the width of the driveway. There is lots of width there. It is on the back of the napkin drawing, there's lots of width. I just want to know if it's possible, would you be open to moving it? Because I agree with the concerns that the community expressed. Means Mr. Blackford will be supporting the parking for your retail as will the currently nonoperational building at the corner of Sunol and West San Carlos. So that's a concern for me. I did have another question for you. Would you be further open to -- the commercial that was displayed to us was the original 1300 square feet and since the staff recommendation is expanding that to 2600 square feet, does that mean putting the entire frontage being commercial?

SPEAKER: So the design guidelines allow the 26, I believe the minimum is 2600 allowing some mezzanine space. That 1300 square feet included some mezzanine space to get to a total of 2,000 at that time. So the concept for the frontage at the greater amount of commercial space would require a reduced entrance, main entrance to the project. So as part of the process in the PD permit we would have to re-look at the interface of the project on the West San Carlos because yes there will be an increased requirement of store frontage to serve the commercial portion. I don't know if that will be from edge to edge of the entire building. From an

operational point of view for apartment it's important for us to have the apartment interface with West San Carlos to have the frontage on West San Carlos.

COMMISSIONER JENSEN: Well, when I think of apartment interface I think of actual physical living spaces and it doesn't look like there's any living spaces provided on the ground floor of West San Carlos.

SPEAKER: Yes, that's correct.

COMMISSIONER JENSEN: All right, thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I want to follow up on Commissioner Jensen's I guess thoughts of parking. If we were to keep the entrance on Sunol and then do subterranean parking below the West San Los portion, if you enter onto Sunol and enter onto Sunol, but the park would be just below, take elevator or stairs to come up about is that a possibility? Because I honestly can't support a project, the way it is. I definitely believe you need more parking. Definitely believe you need more retail. And I guess my question to you is, West San Los is a major thoroughfare. Is there any doubt in your mind if you had more parking and more retail that it wouldn't be patronized?

SPEAKER: I think the challenge is, at some point in time in the future yes, I think it would be patronized, in the entrant time until that neighborhood evolves, no, I don't think it will. Again it's coming off of personal experience, just up to street where we have space, it might be the function of the economy. It's hard to tell but off of my experience, we have more retail with parking behind it, which has been unsuccessful. As part of the redesign idea, when there was a push for more retail, the concept was not to -- the thought was not to go underground to put the parking underneath the commercial portion, but could the parking come and so it backs up right behind the commercial, so there's a possibility, where you could park right adjacent to the commercial space, see it there and get in. And the discussion we've gone back with pros and cons. The pro to that is you get the park immediately adjacent to the uses. The challenge is, you have to drive through the entire parking garage to get there. So proximity I agree was much better, there were more concerns about having, you know, driving through the garage. The benefit of putting it, the commercial parking closer to Sunol at the entrance is, you could manage the parking more easily, and you don't have to, if you're a commercial user drive through the residential parking garage to access the space. So that was a plus. The challenge was, it is located further away from the commercial space.

COMMISSIONER KAMKAR: Right, you know, and to me, you know, we are asked to rezone this, you know, and I just can't see giving up potential retail space for residential, as much as we need affordable housing, you know, I'm not I want to make sure I'm clear on that I like the affordable housing component. I just feel we're taking away too much from the retail and not providing enough parking which further takes us away from providing retail goal. So if somehow you can add more parking and more retail, then again, at least one more vote.

SPEAKER: May I make a comment?

COMMISSIONER KAMKAR: Sure.

SPEAKER: We've looked at the property, it's mostly off Sunol, with the portion, the peninsula that abuts into West San Carlos. We've looked at it with, if you drew a line at the same depth of the adjacent properties, what would that commercial space be like? And it's roughly 75 feet with frontage, it represents roughly 6800 square feet. To create the most a commercial-only space, from a development point of view to be able to finance and develop it you would get something more similar to pizza Jack's where you would put the commercial retail on one corner, near the frontage, then you have a parking entrance and you have the park behind it. Our challenge here, since it's, you know, the vast majority is the residential, with a portion of it the commercial, is to find a way to blend them both together.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. I just want to make a comment, going back to your statement about trying harder with the architectural design at the PD permit stage. For me, I actually find the architecture of the project very uninspiring, and it appears to me that this is an opportunity for something truly dynamic and truly innovative in all of that. And I know this is early in the process. But it -- I don't find the design to be so thoughtful, in terms of trying to make an attempt to blend in with the neighborhood or to break down the massing or in fact, there are pretty obvious mistakes on the architectural plans, for example, mislabeling the east and west elevations and so on, so forth. But some of the examples for me of the uninspired aspect of the design are for example, it -- the highest part of the project actually faces north because of the clerestory, shed facing the foundry school and the neighborhood. So the highest part of the neighborhood actually faces the more residential area of the neighborhood. I think that the side is -- even though it's tight but it appears to be large enough to have a little bit more manipulation of massing and to break down the scale of the project, and so on and so forth. I think that the architecture for me is a little bit over the top. And again, not without any serious attempt to be friendly, to the compatible with the neighborhood. And so I strongly encourage that you -- when -- as you proceed with the design that you look at alternatives that are -- that require a lot more thought than has been presented on these plans. So you're free to comment if you like. But I'm not looking for an answer.

SPEAKER: I appreciate your input, we will take those comments seriously as we move forward. I will find the delicate way to share the information with the architect. As part of the process the architect can take it very, very personally. Your feedback is not unique to you. I've heard it from the community. We have completed some projects with some more contemporary architecture and it has received polarizing points of view. The commitment we will make is when we come through with the PD permit process we will recontemplate the architecture, whether it's the physical structure of the building, or if it's the skin that's put on it or the combination of the two together. As an interesting point about the roof line, I'm not an expert on solar. There was a direction to put solar on the project. A community meeting, at a community meeting a community member brought it to my attention that the slopes of a roof are not consistent with solar. When I checked with my architect, he said it was. Regardless, the intent is

to have solar panels. If the roof construction is not consistent with designing those, the roof will be altered to comment the solar panels.

COMMISSIONER DO: I think the roof is correctly designed, but the elevations are mislabeled. East is called west, and west is called east. I think that's where the confusion probably comes from. Thank you for your comments. Thank you very much. There are no other questions. There is an additional speaker card. Since public hearing is not closed yet, then I will advise Mr. Nick Rashkovic to speak, if he can please come to the podium.

SPEAKER: Thank you very much. I was thinking I was forgotten. My name is Nick rackovich. I'm here to speak on behalf of the Santa Clara County housing action coalition. We are a grass-roots group of housing advocates. Our members include business interests, environmental groups and labor. We consistently advocate for more dense infill developments in appropriate locations. There has been a lot of feedback from the community that this is undesirable for the neighborhood largely due of parking concerns and a fever those people. However people who benefit from affordable developments are your local coffee shop waiter and your school teacher. And right now there is a three-month to three-year wait for an affordable home in San José. This is what people in those income ranges are faced with, with affordable housing in this valley. Most people in this income range utilize mass transit as their primary means of transportation. We feel that affordability development is appropriate in this location, because it is in a established core and definitely within walking distance to major transit. Thank you.

COMMISSIONER DO: Thank you. If there are no more questions, motion to close public hearing? All in favor? All opposed? Staff, there are quite a few issues that you could shed a light on, thank you.

SPEAKER: Thank you, Mr. Chair. I'll try and touch on all of them. First in regards to the density of the proposed project, the general plan as well as the midtown specific plan designate the site as transit corridor residential 12 plus. So the site has always been envisioned for high density once it redeveloped. And the proposed project is in conformance with that high density vision. In regards to the commercial square footage the development standards recommend for a minimum of 2600 ground floor square feet of commercial uses, the development standards also include no residential lobbies on West San Carlos street, an entrance could be located on West San Los but try an maximize the amount of retail on West San Los, we put that in for the lobbies to be minimum but no lobby activity on San Carlos. In regards to the parking, the parking as proposed is .5 parking spaces for small units, and 1 parking space for the larger units. And this meets the zoning code standards for a typical single room occupancy unit if this project were to be proposed with just the site development permit conforming with a standard zoning designation, those would be the parking requirements for that. In addition the development standards provide the envelope for project, and they encourage creating a residence friendly environments with the setbacks that are proposed. There is minimum setbacks on San Carlos -- I'm sorry, maximum setback on San Carlos so that the building will be up at the street. There are minimum setbacks on Sunol Street and a requirement to step height back to Sunol Street in order to be respectful to the residential neighborhood. In regards to noticing, the discrepancies between noticing the San José unified school district versus the Santa Clara County, we did notice the tenant and the site address, obviously, the county didn't get notified as they don't pay

taxes but the site address was sent a notice. In addition, the applicant did mention that there has been an onsite notice posted for approximately a year now. And this per the public outreach policy. In regards to the driveway location on Sunol Street, hopefully, Public Works can answer the safety question more adequate than I could. But the setback requirements on Sunol Street do provide enough building setback for at least one car stacking before entering onto Sunol Street so there would be adequate vision to the left or to the right when entering or exiting the property. This concludes staff report.

SPEAKER: Mr. Chair, if I may, staff may also want to comment on the CEQA issues raised, specifically air quality, noise and shade and shadow, thank you.

COMMISSIONER DO: And then also one of the speakers spoke of the action tonight as approving the mitigated negative declaration, I don't believe that that's the case. This is not what we're doing here. If you could clarify that, as well.

SPEAKER: Thank you, Mr. Chair, that's correct. The mitigated negative declaration would be heard by the city council, as this is a prezoning. So in respect to the air quality, in the initial study, we did look at air quality and we do include standard measures mainly for construction activities which do include watering the construction site twice daily, covering trucks which are hauling dirt and loose materials, sweeping daily, installing wheel washers on trucks and to wash all tires before leaving the site, also installing any wind breaks or plant trees, vegetative wind breaks for the construction area to prevent dust from leaving the site and not to excavate during high winds. As far as tree removal, there are a number trees that are being proposed to be removed from the site, and we are -- the mitigated negative declaration includes standard tree removal requirements. Most of the trees that are going to be removed are multi-trunk tree of heaven trees, the trees that would be planted at the planned development permit stage would most likely be more adequate shade trees that would provide shade for the property. As well as growing tall enough to screen the property from the adjacent site. One of the other issues raised was noise from the construction. The mitigated negative declaration also does include noise mitigation, during construction, in the form of limiting construction hours from 7:00 a.m. to 7:00 p.m. Monday through Friday to be sensitive to the adjacent residential uses, using new technology power construction equipment with muffling devices. Staging areas 200 feet from sensitive noise receptors such as residential uses. And that the developer implement a construction management plan which would include notification to the neighborhood, designating a noise disturbance coordinator who could respond to any noise complaints. Am I missing anything?

SPEAKER: Thank you, Mr. Chair, with regard to the CEQA issues that have been raised. CEQA is about potentially significant environmental impacts. It is not if there's an issue or concern but really potentially substantial environmental impacts. Based on the letter that was provided by legal counsel for county education, in staff's opinion there's not substantial evidence for any unmitigated potentially significant environmental impacts that have been raised in that letter. All of the CEQA impact issues have been addressed in the mitigated ND. And mitigation measures that have been appropriate that are included in the development standards that are included in the staff report. So I think just as a general summary standpoint statement, with regard to the CEQA issues raised, in staff's opinion there isn't any significant evidence that there

is potentially significant environmental issues that we haven't already addressed and mitigated. Thank you, Mr. Chair.

COMMISSIONER DO: Thank you. Director.

SPEAKER: Thank you. For the record, staff may want to comment on any analysis that was done for the neighboring sensitive receptor which would be the school to the north.

SPEAKER: Thank you, Mr. Chair. I think that the question or the issue is really with regard to noise specifically. And staff may want to pull out the noise report to be able to answer more specifically in that regard. But again, when the noise analysis is done, the technical false is done, it's not like we somehow treat schools, particularly different than we would other adjoining properties. I mean, we're looking -- when we do noise analysis, we're looking at the standards, the policies that are included in the City's general plan with what -- with regard to what are acceptable noise levels. And so that's really what we're measuring against. The policies do speak to adjoining uses, whether they're sensitive receptors like residential but typically school uses would be considered along with residential uses as a sensitive receptor. That's per the general plan policies, the noise policies, that schools are in fact treated the same as residential uses, there's no distinction made. So I think probably the real point is, is that while the noise analysis or the statements that we included in the mitigated ND may not have specifically called out the school use essentially it is included under the umbrella of the residential uses. Thank you.

COMMISSIONER DO: Are there additional comments for staff to make or can we just move on to commissioner questions and we can go back to that issue later? So moving on, Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I wanted to ask staff, since this is a prezoning in anticipation of annexation from the county, assuming this would be passed tonight, what would be the next steps for this project with respect to commission input or additional community meetings to work out some of the issues that have been raised here this evening?

SPEAKER: Thank you, Mr. Chair. Once the prezoning has been heard by the Planning Commission it will then be heard by the city council who will make the decision. After that, the annexation itself is scheduled to be ordered by the city council November 17th. Once that was ordered, it would be certified by Lafco, on December 1st is the goal. After that, the annexation will become effective and the zoning will therefore become effective, and then the next step for the developer would be to apply for their planned development permit which would not come back in the normal process to the Planning Commission except on appeal. But the community meetings would be held on that planned development permit as part of the process.

COMMISSIONER JENSEN: Okay, great. And then since this is scheduled for a November hearing by city council regarding annexation, is there a timing challenge in providing opportunity for the applicant and the community to meet further, or is there a feeling that the two are at loggerheads and unable to come to any agreement?

SPEAKER: If you're speaking in terms of deferring the item, there is room for one deferral. But then, it would basically but heads with the annexation process. The annexation process could go forward without resolution to this planned development zoning. If that were to be the case the staff in the item that is to be heard next, has made a recommendation for the zoning site should that occur.

SPEAKER: Mr. Chair, if I could add a couple of comments perhaps that would be helpful. The challenge with keeping the annexation, the challenge is trying to keep all possible options open with regard to what the appropriate land uses are for this particular site. And while as staff indicated there is the possibility for one deferral with the Planning Commission, I think that that perhaps forecloses the ability for council, then, to do any sort of a deferral. And so really, the challenge is to try to keep both the plan B option that you'll hear us talk about in the next item, that option open, as well as -- not preclude this option, should the council wish to proceed. And so I think the answer is yes, there really is a timing challenge, in order to be able to keep this particular pocket annexation on schedule, because it was intended to go last year. And then was for whatever reasons, you know, oh, because, okay, I guess related to this project but it didn't go forward last year. And obviously, there's a real desire on the part of the city and the county, to be sensitive to the neighbors out there, and keeping them in limbo too long, in terms of whether they're going to be in the county or in the city with this pending annexation on so there is a certain timing challenge that we're up against. There is a little bit of time but not a lot, thank you.

COMMISSIONER JENSEN: Okay. And then with regard to ingress and egress along West San Carlos, West San Carlos is intended as a business commercial area and ingress and egress to commercial districts makes perfect sense. I happen to use the driveway to Sam's quite frequently, and it's a challenging street. But that's what commercial streets are, are challenging. And I would like staff, assuming this moves forward, to explore very thoughtfully the opportunity to move the ingress and egress for parking, to West San Los, either through use of the area where there's an easement, sharing a driveway with Sam's and providing additional parking for Sam's so people can go and get their rabbit food and have additional parking, or directly along West San Carlos. But I share the concerns about the location of parking not being optimal. And sticking it onto a narrow residential area with students may not be ideal in terms of commercial areas. And then asking commercial patrons to go either wandering through a park garage in search of an exit or to go onto a street and amble around, and while we do have many days of wonderful weather, for those days when we do not, walking almost a block to get to the commercial without any other services provided in there does not encourage the kind of urban feel that we're looking for. And I would like staff to, assuming this moves forward, to give serious consideration to the architecture. It's very boxy and I recognize that we are not in the position now of looking at actual drawing plans here, as we have been reminded on numerous occasions. But if this is even a partial vision of the intent, I think there's a lot of room for articulation, and additional designs. I'm also very concerned, and this is more to the policy, not to the specific project, because I recognize it's a policy issue, that units less than 275 square feet are not required to have any private open space. I think anybody who's living in a unit that small would really welcome the opportunity to be able to open a sliding glass door and have a small patio to step out onto or do a barbecue. And I think that would be really nice. In the interest of a full disclosure, I have spoken with Ms. Ballard and Mr. rackovich and I know I'm butchering

your name and had conversation via the blackberry with Ms. Kinman and I'd like to say Ms. Ward, I'm so delighted having I here, having you come and speak to us is a real honor for me and I see you all the time and I'm very, very happy to see you here and I thank you very much for your many years on affordable housing, it's very much appreciated. Mr. Blackford, I'm a frequent visitor and you've helped me over the years with my pets. I have many people I'd like to disclose. Thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I too would like to thank Ms. Ward for being here. We've worked together on other projects and I appreciate your involvement in the community. I concur, Commissioner Jensen and I were speaking, I believe it was yesterday on the issue of the smaller units not being required to be counted in the open space, and I think that that's a really big oversight in our policy. I have another policy question. I was concerned when you said that schools are considered in the same category as residences, for the sensitive receptor, because the students are out during the day, there are more students typically in a school than there are in a residence. And also, they're usually outside for longer periods of time than the resident, than people who live in a house would be, between the hours of 7 and 7. So I think that's a policy issue that that needs to be looked at and perhaps they should be in a different category, and considered in a different manner because of that. Now yes, go ahead.

SPEAKER: Thank you, Mr. Chair, just a quick response on that. I think perhaps to clarify what staff was intending to convey, is the standard is the same, the noise standard is the same for schools and residences as a sensitive receptor, that the noise levels, the noise threshold levels are the same for both. Because actually when you have the students outside during the day, at that point the school itself becomes a noise generator and we're kind of going the other way. But in terms of the noise standards per the general plan schools and residential are treated equally as the most sensitive receptors if you will. Just to clarify if that helps. Thank you.

COMMISSIONER CAHAN: Thank you. And I was thinking more in the air quality measurement actually. And you're right, you did discuss that as far as noise goes. And perhaps they're clearly in the most sensitive, so there isn't a more sensitive area to put them right now. But to consider the fact that they are there, from 7 to 7, outside noise issues affect them more than potentially a resident. My question for staff is, is there a difference in the effects of construction on the proposed project aside from perhaps the time it would take, because of the height of the project? But as far as noise, and air quality, and all of the different trucks that go in and such, is there a difference between this project than if they were building a new building that is completely retail?

SPEAKER: Thank you, Mr. Chair. No, there is no difference. The measures in the mitigated negative declaration are standard measures that we include in all new construction projects typically. There are some additional measures because they are near the sensitive receptors. So there would be a difference in that, that they might not -- if there was not a sensitive receptor that they might not have had to do. But if there were retail specifically on this site, the sensitive receptors would most likely do the same.

COMMISSIONER CAHAN: Thank you. And I do ask if this should be approved, that staff work with the school on a design that would not hinder the students and also parking is a big concern and that we try to get additional parking, as much as possible. I do understand that a lot of the residents will probably not have their own vehicles. But I'm concerned about the commercial issue. And I do think that a lot of them will have vehicles. Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. If I may just chime in very quickly on the noise issue that as an architect who works on school projects, schools do have an extremely sensitive noise need which is that in recent years, they require to do testing, testing of students because of state standards and so on, so forth. And on those days, they are -- the construction work really be disruptive to them in fact when we do school projects we write into the construction contract that the construction contractor must ease up on specific days. So just some thing to -- for staff to be aware of. But Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. Question for staff. My understanding of SRO used to be single residence occupancy. I understand like it's more like a single room occupancy which is more than one person can reside there, is that correct?

SPEAKER: Thank you, Mr. Chair, that is correct. I believe that the housing standard would allow in a single room occupancy up to two people maximum.

COMMISSIONER KAMKAR: Okay. Now what about for the studios, could there more than two people in the studio units in the larger units?

SPEAKER: It would be the same, two people maximum.

COMMISSIONER KAMKAR: I see, okay. So the difference between the -- you know, what we refer to as SRO unit and the studio unit is just the size, one is a little bit larger than the other, that's all?

SPEAKER: That is correct.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I'm going to go ahead and put a motion out there. And as we're deliberating then we'll have something to vote on. So then I heard a lot of deliberation from my colleagues and a lot of the concerns of the community. However, I think when you look at the big picture, we, you know, the city has a Planning Department to plan decades into the future. And when you look at this area, this area is key to the -- to the creation of a transit hub. You know, we have if Diridon station, there's light rail stations also within walking distance of this property we captain see that in terms of this generation but we're looking at the next generation that is going to start learning to live life without their vehicles and look at 2,000 feet as not as an obstacle to get to transportation but something as normal. We really need to start doing that as a society. Also for the health of our society. So that's one comment.

Another comment is, and I'll be honest with you, you know, having to bite my lip, hearing some of the fear, and out there with affordable housing. I agree with the applicant, that they could take you on tours of affordable housing developments throughout the city and you'd never know you were in an affordable housing development. Affordable housing does not constitute ghettos, as a matter of fact, I don't think our city's old enough to have had neighborhoods deteriorate to the way we've seen in some of our eastern cities. So you know, I think that when you look at affordable developments and you look at the potential users, foster care kids that are getting emancipated out of the system, they deserve a chance. You know, housing could be one of the issues that could drive them back into a downward spiral. And I don't think any of us want that. When you look at seniors, seniors that are trying to survive this bad economic time, who knows? Maybe a resident could have been a victim of a predatory practice, and have lost their life savings, and this is the only type of housing that they can get. I think the other thing is, and we as a society need to start talking about this in the open, is that I don't think there has probably been a family that has not been affected by some of the temptations that are out there. Alcoholism, drug dependency, and to be able to have resources available from a resource guide or someone that can tell you, hey, you need -- you want to know where you can get help from AA classes, go here, or there's financial assistance programs over here, you know, in this part of the neighborhood, those are the types of services that I understand, that would be available. And that should be available. Not to residences that just live in affordable housing projects, but to everybody. Because you know, families will go through things like that. So anyway, with that, I'm going to recommend approval for a planned development prezoning from unincorporated Santa Clara County, to A(PD) planned development zoning district to allow up to 117 multifamily residential studio units above a podium garage and up to 2600 square feet of commercial, on a 1.32 gross acre site as recommended by staff. And I'd like for the staff and the applicant, as -- as it gets to the PD permit stage, to continue working on design and creating a much more aesthetically pleasing project, and if my colleagues have added other -- if there are other things that you have added, please let me know. I'll wait for a second if there is one.

SPEAKER: Second.

COMMISSIONER DO: There is a motion and second. Commissioner Zito.

COMMISSIONER ZITO: Just a friendly amendment, we consider a mitigated negative declaration and we recommend that city council adopt that as well as part of the recommendation.

COMMISSIONER CAMPOS: I don't believe, is there an MND on this? Okay, accepted.

COMMISSIONER DO: The second, the person who seconded it also? Okay.

COMMISSIONER ZITO: With that, I have a couple of comments to make. I want to thank the community for coming out, because certainly made me think a lot about this project. My reading of it was very much like a lot of the other affordable housing projects that come before us. It wasn't on the surface that much different than a lot of them to come and it seemed pretty reasonable. I now see that there are a lot more concerns that the community have and I want to acknowledge those and as the maker of the motion had mentioned I think there is a lot of room

for how can I say additional dialogue especially with the school district with the community. I think there are areas where this project can be improved architecturally, possibly in the layout as far as ingress and egress. I think that they should look at the commercial aspect and see if 2600 is, in fact, the right amount of commercial, maybe a little bit more, maybe a little bit more diversity in the kinds of retail that are being contemplated for the project. I think there should be a set schedule of meetings with the community, with the school district between now and the PD stage, and to continue to talk about all the issues that are of concern. Privacy issues with the school, I appreciate the comments being made about the noise, especially during the construction phases of this project, schools trying to carry on lessons during construction, I can tell you that it's very distracting if you are hearing jackhammers going off or the backup beeps of a truck constantly all day long, it just drives me crazy personally, so I understand the sensitivity to that. And if you're trying to learn, you know, especially when you're an at-risk youth whatever you're trying to learn is that much more difficult. I will support the motion, but I would also like to ask the city kind of as a side note, one of the speakers made a comment about dispersing affordable projects throughout the city. And I think that's a real important aspect of just good city planning. I know that the inclusionary zoning hasn't been completely vetted yet and through city council but I really think that there needs to be a sharing of the affordability component throughout the city, throughout all the different neighborhoods. And there's good reason for that on all sides. One of which is a better integration and how can I say, having the village help these people, right? So clustering all single types of socioeconomic groups in one area, whether it be the upper class or the lower class or any class that you want to talk about doesn't integrate things. You don't have diversity that you need. And I think there is the potential, coming from Brooklyn I can tell you there is a potential for neglect in areas like that. I've seen in one generation a project called the Van Deveres in East Brooklyn, that went from what was supposed to be the best apartments going into a very neglected area. And it doesn't take much for that to happen, and it does happen when you have got that spiral effect with all the same type of socioeconomic group in one place, because of the fact you don't have enough economic stimulus in the area to keep it afellowship when things go bad. And that's just the fact of economics. I do want to support that notion of mixed socioeconomic development throughout the city, but that's not what we're considering tonight. We're considering this particular project and the way this project is being brought before us, there's a lot of room for improvement, although there's a lot of good things to this project, and I think it should go forward with that caution.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. Regarding the conversation about -- and I'm very grateful that the district is here, and I'm sorry there were challenges with getting information to you. And I am sure that staff is going to try and correct those challenges, moving forward. But with respect to schools and urban environments there are a lot of places where schools are in urban environments and they have tall buildings near them, for example, that little building just immediately east of us where Reneé sits every evening has direct oversight over Horace Mann Elementary School, and Horace Mann is a highly urbanized school and has oversight from a couple of apartment buildings and other places, as well. So as San José moves forward into a more urbanized development, this is more than likely to continue to occur. I agree that we need to find ways to protect the privacy of the kids. And I don't think it's a concern that kids are doing things that they're not supposed to be doing. But there is always a concern that

whatever eyes are looking into a schoolyard may not be the appropriate eyes. I am concerned about some aspects of the conversation here, this evening regarding the language used around who may or may not be residing in the project, and it makes me very uncomfortable, because throughout my entire college career, I wouldn't even have come near the minimum income, the maximum income requirements for you know, this project and through many years, growing up, I could have -- there could have been three of me living in there and still not exceeded the minimum requirements. And I think that, you know, looking at today's economic climate, it's very easy to see that there are a lot of people who are being forced out. And that's a really devastating thing. And I want to see us provide housing for folks like that. And I know that Mr. Neil is cognizant of the challenges up the block that happened. And I'm confident that core will do everything they can to prevent any such challenges from happening here. And staff, I'd like to thank you for specifically mentioning the trees of heaven will be eradicated. I'm very grateful for that. And I'm also appreciative that the street face will primarily be commercial with a small entry for the housing development. I think it's very important on West San Los to protect the commercial retail aspect of West San Carlos, I think there are amazing, amazing shops on there. Obviously Sam's and then all of the secondhand stores that are black and tan, I think it's called or black and brown which is very highly rated if you need any retail, secondhand retail it's a fabulous, fabulous place to go. And then regarding all of the people who have provided me input prior to this, I just wanted you to know I didn't get anything that we didn't hear this evening, during any of those conversations. Thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I believe I've made my position clear. You know. I like the affordable housing component of this project. I honestly feel we are lacking in parking and retail component. I feel when the neighborhood, not just any neighborhood, but the leaders of the neighborhood come out and tell us what they like happening in the neighborhoods, we need to be a little bit more listening and we need to be a little bit more attentive to that. I believe this project has excellent potential and you know, going higher doesn't bother me. I agree with Commissioner Jensen that, you know, just take a look at a tower in this site. And it's overlooking Horace Mann elementary. You know? So the height doesn't bother me. The number of units doesn't bother plea. The type of clientele, you know, I agree with Commissioner Jensen that could be any one of us. The issue I have is, with our other goals of the city, increasing tax base, increasing retail. In order to do that you have to have parking. I understand Commissioner Campos's point, in 20, 30 years we will be there but until we get there we will have better uses for those spaces. But until then to make the tax base grow I think more parking would be needed then. Unless maker of the motion accepts a friendly amendment to include more parking spaces, I would not be able to support the motion as stated. So that's -- so that's a question for a friendly amendment.

COMMISSIONER DO: Thank you, Commissioner Kamkar. Commissioner Campos has a light on anyway.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I don't think we're in a position right now to change the project design. So I would not support that friendly amendment. Thank you.

COMMISSIONER DO: Commissioner Campos, are there other comments you'd like to make?

COMMISSIONER CAMPOS: I did. I just wanted to, you know, as the whole area gets redeveloped, I would hope this would inspire the county office of education to join in, and beautify the campus and put some resources into that campus. Because you know, the kids that go to that school, you know, they've had to overcome lots of obstacles and an aesthetically pleasing environment makes them feel good about themselves. So that's just an additional comment, thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. To follow on to Commissioner Kamkar's request for parking, this is actually the opportunity that we have to modify the parking requirements, and in Commissioner Campos is open perhaps a recommendation to modify from .5 spaces per unit to .75 spaces per unit. And I think there are opportunities, staff is very creative and I know that Mr. Neil and core are very creative. There are opportunities I think to improve the parking on this.

COMMISSIONER CAMPOS: Again, I stand with my motion. I really stand on, we're looking at 30 years-plus into the future, we have to start giving people the opportunity to get used to getting out of your cars. And I think if we continue to add additional parking spaces, then, you know, we're providing a crutch. And, you know, I stand by my original motion. Thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. I understand this kind of a site kind of a use would probably cater to people who have less transportation options but given the sensitivity of the area, I'm not sure if .75 on the units that are 226 square feet or less in size I'm getting that's what Commissioner Jensen was referring to, is increasing that .5 to .75 in page 9 of the staff report, saying is that correct? Yes. How many -- I guess the question I've got is how many more park spaces is that going to yield? Is it going to be –

COMMISSIONER DO: That sounds to me like a very significant increase. That's 150% increase.

COMMISSIONER ZITO: No on just a specific number of units it goes from .5 to .75, so it's 50% of just those units. So is there a quick back of the napkin –

SPEAKER: Mr. Chair, one quick back of the napkin is you'd basically get one additional space for every four units that were 275 square feet in size.

COMMISSIONER ZITO: Okay, and how many of those? I'll do the math if you can give me that number.

COMMISSIONER DO: Actually, there was a motion that was made and it was seconded. So we're discussing the motion.

COMMISSIONER ZITO: We would take the unfriendly amendment, and that would take precedent over the motion. Seeing if there's support for the unfriendly amendment I think is fair. How many 275 unit –

SPEAKER: Mr. Chair, staff's doing math real quick over here.

COMMISSIONER ZITO: Okay, just curious.

SPEAKER: Mr. Chair, again, we don't know the precise mix of the units. While staff is make an estimate, please recognize at the PD permit stage we'll have better information in terms of how many units of each size type will actually be coming forward.

COMMISSIONER ZITO: I understand and I know there's an estimate of 117 units and I have to believe that there's some more or less guesstimate of what that mix would be.

SPEAKER: Mr. Chair, staff quickly is estimating around 29 spaces, additional spaces.

COMMISSIONER ZITO: Really, that many.

SPEAKER: If we did our math correctly.

COMMISSIONER DO: It sounds about right to me.

COMMISSIONER ZITO: That's a significant number of spaces.

SPEAKER: But Mr. Chair, that depends on the unit mix.

COMMISSIONER ZITO: Right now, they're contemplating 60, 29 is almost a 50% increase. I'm sorry, that doesn't make sense, they're almost all going to be less than 259 square feet.

SPEAKER: Thank you, Mr. Chair. That's correct. I did the calculation basing it on they'd all be the small units.

COMMISSIONER ZITO: Oh, assuming they'd all be small units, okay, that makes sense. The point I have here is 2,000 square feet. 2,000 feet to the nearest light rail is almost a half a mile. And at the average speed that the person walks, that's a fifth person, about three miles per hour, that means you're approximately taking a half an hour to walk to a light remain station, give or take, 25 minutes, something like that. No, I'm sorry, three miles an hour, you're going a half a mile, I'm sorry, ten minutes. Ten minutes. That's right, ten minutes, thank you.

COMMISSIONER DO: And that also sounds about right to me, too.

COMMISSIONER ZITO: So ten minutes isn't really that long of a walk. But okay. Given that, it seems that 26 spaces is -- or thereabouts is a lot, it would be major change to this project. Okay, I'm going to back off in my motion.

COMMISSIONER DO: Thank you, Commissioner Zito. There are no further lights. I guess I'll make a comment, at last, and very briefly. I'm in support of the project. I'm in agreement almost totally with Commissioner Campos. I think that -- I think we should drive for diversity in the community and all of that. I have many of the other points, other commissioners have already made so I won't belabor them. I do want to encourage the applicant to look more creatively at the green aspect because other than the solar panel on the roof all the other green aspects that you mentioned are things that are inherent with the nature of such a project such as close to transit and high density and so on, so forth. And I think that the solar tends to be the auto pilot mode for people to -- when they talk about green. But it's actually a -- it's actually an expensive proposition and there are many other ways to be green in terms of, you know, resource conservation, water conservation, storm runoff, daylighting air quality and so on so forth. I'm sure your architects are very well aware of that so I just wanted to encourage that in the design process. With that I guess we will vote by light. The motion pass with all commissioners voting in favor, except for Commissioner Kamkar. So moving on to the next item. Which is item 3A. C '08-023. Planning director initiated prezoning from unincorporated Santa Clara County to R-1-8 single family residence R-M multiple residence, CPcommercial pedestrian, CIC combined industrial commercial and light industrial on an approximately 42 gross acre area, county island, consisting of approximately 275 parcels located between McEvoy street and meridian Avenue south of park Avenue. Multiple owners. Staff.

SPEAKER: Thank you, Mr. Chair. This is a planning director initiated, prezoning, in connection with county island, the annexation will be considered by city council with November 6th with the order scheduled for November 17th. The subject area is one of 14 unincorporated county islands or pockets that is part of stage 3 of the county island annexation which was initiated by council in April of 2006. Of the 14, five areas have already been annexed so there are nine left in phase 3, this being one of them. The proposed prezoning districts are appropriate because the designations generally reflected the existing development pattern and are in conformance with the site and reflect existing using and or the existing county designation as shown on the map up on the screen currently. This concludes staff report.

COMMISSIONER DO: Thank you. There are two public speakers, Mr. Chet Lockwood and Gary Olympia. Would you please come down. Either one who comes down first, has the podium and you have two minutes. Please state your name.

SPEAKER: My name is Gary Olympia and I support this move. I think it's a great opportunity for the city, and if intelligently approached and addressed, will achieve the kind of things that the nationals park and Washington, D.C. that totally changed the naval shipyards there, and the China basin redevelopment that the AT&T park achieved. Camden park with regard to the waterfront in Baltimore, even Yankee has unbelievably enhanced the area around that stadium where when you went to the old Yankee stadium where there were no parks, no new office buildings, no new retail, a place where at night you had to look over your shoulder to walk, you only have to go to those places to see that San José has an opportunity to receive and benefit from this ballpark, if that's the ultimate achievement of what you're starting tonight. So I'm very much in favor of it.

COMMISSIONER DO: Thank you, sir. I think Mr. Lockwood has left the room. So is there a motion to close public hearing?

SPEAKER: Move.

COMMISSIONER DO: All in favor? All opposed? Staff.

SPEAKER: Thank you, Mr. Chair. Staff has no additional comment at this time.

COMMISSIONER DO: Are there any comments from commissioners? If not, actually, Commissioner Zito.

COMMISSIONER ZITO: I'm ready to make a motion Mr. Chair.

COMMISSIONER DO: Please do.

COMMISSIONER ZITO: I recommend that we recommend approval for a prezoning from unincorporated Santa Clara County to R-1-8 single family residence, R-M multiple residence, CPcommercial pedestrian CIC combined industrial commercial and light industrial on an approximately 42 gross acre area, county island, consisting of approximately 275 parcels at recommended by staff.

COMMISSIONER DO: There's a motion and there's a second. Do you wish to speak on your motion?

COMMISSIONER ZITO: I just have a question for staff. Looking at the front page of this staff report and you can see that until color diagram as well, there are certain lots that are how can I say curiously left out.

COMMISSIONER ZITO: Thank you for that.

COMMISSIONER DO: Thank you, Commissioner Zito. There are no other lights. So let's vote by light. The item is passed request Commissioner Cahan abstaining or not present. Absent. Thank you. So the next item is item 3 C. CP08-080. Conditional use permit to allow the demolition of an existing 1472 square foot gasoline station building, the construction of a new 3200 square foot convenience store/gas station building and other site improvements and to allow offsale of alcoholic beverages on a .51 gross acre site in the CN neighborhood commercial zoning district located on the southwest corner of South de Anza boulevard and fallenleaf lane. staff.

SPEAKER: Thank you, Mr. Chair. I guess staff would just like to point out one correction to the staff report. I think somewhere in the staff report it incorrectly notes that the number of driveways for the proposed gas station onto de Anza was going to be reduced from 2 to 1. There actually still will be two driveways along de Anza. However, the most northerly of these driveways has been shifted slightly South from the intersection to hopefully create a little less of a traffic impact where there's concerns of the people turning right from fallenleaf and the people

coming out of the gas station. Staff would also I guess would like, the Planning Commission would add an additional condition to this project to provide a small landscape island along de Anza between the two driveway cuts. Staff does have a concern that there's a potential for people to leave the site, leaving the site from the gas tanks, not really seeing that there are two driveways, rather than one big curb cut, and possibly going over the square curb causing potential damage both to their cars and to the city right-of-way. So staff would like that the Planning Commission consider that additional, as an additional condition of their approval. And this concludes the staff report. Thank you.

COMMISSIONER DO: There are two speaker cards but they both come from the applicant. The applicant you have up to five minutes to address the commission. So you, Mr. Tom Robinson and Henry court you can choose to share the five minutes or -- thank you.

SPEAKER: I'll take them all.

SPEAKER: Mr. Chairman, commissioners, thank you for the opportunity to speak. My name is Tom Robinson, I'm president of Robinson Oil. Robinson Oil is the fourth generation family-owned business headquartered in San Jose. We operate 34 rotten Robbie's gas station and convenience stores in the greater Bay Area. Ten of the Rotten Robbies are in San José. We operate all the stations with our company employees. We do not have franchisees. We do not provide any mechanical repair services at any of our locations. Our growth plans include more attractive facilities, larger fueling areas, convenience stores, and car washes where the size of the property allows. Our former partner built this station, so we have effectively owned and operated this for over 40 years. The station was originally a star and bar station, later it became Texaco star and bar, and since 1987, when Texaco left Northern California, it has been a rotten Robbie. As a star and bar, it had a premium store that sold all sorts of things: Rakes, garbage cans, peat moss, steer manure, Christmas decorations, nylon stockings, firewood, charcoal, household products and even had a plant nursery for a while. I'm here today or here tonight to ask for your permission to reinvest in this site. The premium store has been closed and not used except for storage except somewhere in the 1970s. The only investments that we've made at the site in the last 25 years was for underground tanks, fuel dispensers and a small kiosk for cashiers. As we entered the convenience store business in early 1980s, the city of San José was exiting the convenience store business. As noted in the staff report the 1985 ordinance banning the combination of gas stations and convenience stores, discouraged investment and upgrading and improving existing gas stations. It certainly discouraged us. We spent a lot of money on underground tanks during the 1990s but new acquisitions and above ground expenditures were made in other cities not San José. We welcome the 2005 ordinance repealing the store ban. We hope it will give us an opportunity to upgrade many of our existing location and possibly build some new rotten Robbies in the city. We always try to keep our locations clean and in good repair. But in dealing with a 40 year facility it's difficult to keep them attractive. We believe this will be good for our company, good for the neighborhood and good for the city. I'm available along with our architect, Robert Furloin, our consultant Henry Cord, and our construction manager, Dave Morder, to answer any questions you may have about the details of the proposed project. Before I do that though I'd like to address an issue which is somewhat controversial which is selling beer. I'm going to try to group my comments into three areas, one economics, two, competition, and three, typical issues of community concerns regarding the sale of alcohol.

Area 1, economics. We want to give customers consumers two reasons for coming to our facility, fueling and convenience food shopping. Fuel is our number one profit but selling fuel is very competitive and profit margins are thin. Having a good store along with fuel, gives us an added profit center. Having good fuel sales helps the store. The two businesses definitely complement each other well. Beer is a very important product to sell if you want to have a good market. It's an important product for two reasons. First, it is a good category. The beer category in a convenience store is almost always in the top five. The additional sales are certainly important. The second reason is beer helps other sales. Beer is a destination product not an impulse product. Consumers plan to buy beer and shop at stores that have beer. While at the store buying beer they will buy other items. So if a store does not have beer, it loses the beer sales, but it also loses all the products that would be sold with beer. Even more important, the consumer who sometimes buys beer, may never shop at a store that cannot fill his or her needs all the time. All markets of all sizes and really quite frankly for that matter all restaurants understand that not having alcohol, they may -- they not only lose the alcohol sale but even more importantly they may never get any sales from any consumers. Our store is a large convenience store, customers come into a store this large and expect a full selection ever products including beer and be surprised if we don't have it. Having beer would round out our products and give us more chance to be successful. Regarding competition, area number 2. We compete with some of the largest companies in the world, integrated oil companies, supermarket chains, big box retailers, and we also compete with many smaller but good retailers. We compete for fuel sales and food sales. Many of these competitors are allowed to sell beer. Not being able to sell beer makes it harder to be successful and harder to be competitive.

COMMISSIONER DO: Mr. Robinson, your time is up but if your comment is not much longer I'll let you finish your statement. There are no public speakers.

SPEAKER: Could I have my five minutes of rebuttal now?

COMMISSIONER DO: Normally, you would have five minutes of rebuttal if there are public speakers. I think -- how many more minutes would you like to have?

SPEAKER: I got about three or four minutes I'll be honest with you.

COMMISSIONER DO: What do the rest of the commissioners feel? They're the only public speakers and he's the only item on the agenda. He's not the only item –

SPEAKER: Henry won't speak, I promise.

COMMISSIONER DO: Okay, please go on.

SPEAKER: Thank you. I believe having successful market is good for consumers and good for the community. I've heard the point made that questions the need for us to sell beer when it's available at places like trader Joe's or 7Eleven or Costco. I agree it's not necessary. Anyone who wants to buy beer can easily go to other retailers. In fact they can buy everything we sell at another retailer. No one in San José will run out of fuel or beer if we go out of business. Let me be clear, I'm not recommending the elimination of rotten Robbie. We need to offer them

products they want in a clean friendly attractive and convenient environment. Moving to the community issues is a concern and I think these are maybe the most important. I will list the ones that I'm aware of and try to address the one of those. The issues are D.U.I.s driving under the influence of alcohol two, sales to miles an hour, three sort of the vagrant bum loitering issue four, enough places to purchase already and five having gas and beer sold at the same location is too convenient and encourages drinking and driving. First driving under the influence, D.U.I.s. Although this can occur with purchases of alcohol at a market I believe it results in consuming alcohol and then driving for example drinking at a restaurant, drinking at a bar a party or even at home and in a market alcohol is just purchased, it is not drunk before you drive. Generally the D.U.I. problem does not originate with purchases at a market. Now, sales to minors on the other hand is a very real concern to markets like ours. Alcohol is definitely the forbidden fruit to minors and some work very diligently to obtain it. As a company we work very hard on training and have a system in place to responsibly sell age sensitive products. We do not sell beer at this store but we sell cigarettes and the same training implies. We have follow up training twice a year. We use scanning equipment to verify age to make sure we don't make an arithmetic error. We card everyone who looks younger than 30. We use a shopper service shoppers over 21 to shop for alcohol and over 18 to shop for cigarettes. We award cashiers who pass and we retrain, counsel, and/or discipline those that fail. We track and monitor how we do on these age sensitive shops. It is one of our corporate balance sensitive goals. Last year when the agency sting gave recognition to the cashier's manager throughout the company and award each $100. We understand it is a privilege not a right to sell age sensitive products and we work very hard not to lose that privilege. Good employees and good training are the key and I believe we have both. I know minors will obtain alcohol we work diligently to make sure they do not buy it from us. Regarding the the vagrant problem we are on a busy retail street. This has not been a problem for us in the past and I don't think it will be one in the future. Regarding the concern that there are already enough places to buy beer, I can't dispute that, no one will run out of anything we sell if we're not there because there are alternatives. But I don't think that's the position the city wants to take restricting the number of competitors. I believe the city wants to support responsible competitors looking for business. Looking at the issue another way and understanding that beer is a destination, not an impulse product, I don't believe more beer will be purchased because we're allowed to have an ABC license. The beer buyer will buy beer. Granting us the right to obtain a license will allow us to compete for those purchases that are going to be made from some business in our area. Lastly and it is lastly, it's been argued that selling gasoline and beer at the same facility encourages drinking and driving. I don't believe statistically that this is correct. The reality is almost everyone drives where they purchase alcoholic beverages, beer is not an impulse item but a planned purchase. We are a long term San José business, we appreciate being able to do business in San José, we work hard to be a good retailer, and we have a history of being able to sell age-sensitive products responsibly. We want to upgrade and improve the facility we want to invest in San José. So now I'm done and I apologize for going over.

COMMISSIONER DO: Thank you very much. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. What is your feeling of staff's additional suggestion for landscaped areas around?

SPEAKER: It is not a problem. Interestingly, that problem has existed for 40 some odd years and it hasn't been a particular problem but I think it would be attractive, and so no problem.

COMMISSIONER ZITO: Okay. Does this site plan to sell single serving cans and bottles?

SPEAKER: We would prefer to be able to do that. And the reason is, is that if we are not allowed to do it, it's just a little bit harder. I mean it's not a big deal for us. I don't think it's a big deal for this location. If, on the other hand, we have to put up signs, it almost looks like we're trying to encourage somebody to buy a six-pack. You know when they might have just wanted to take you know a couple of cans home because they were, you know, buying a pizza or something like that. So it just is a little bit more difficult to deal with and I really don't think that it matters. From the standpoint of compliance issues or whatever. So we would prefer not to have that requirement.

COMMISSIONER ZITO: The final question I have is what percentage of your retail sales floor area will be dedicated to alcohol sales?

SPEAKER: Well, there was a requirement in here, as far as displays and stuff like that and 10% is no problem. Primarily the beer is going to be in the cooler. You know, you're going to have a few warm displays. We're not allowed to put cold displays out. So.

COMMISSIONER DO: So does that answer your question?

SPEAKER: So I guess whatever that was, I think it was 10% or something like that, that's more than adequate for us.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. First of all thank you very much for your presentation. You covered several of our concerns. I use rotten Robbie, and they are very clean. Now that I know you are a San José company I'd probably patronize you morn Arco or Chevron.

SPEAKER: Good choice.

COMMISSIONER KAMKAR: My question is, do you reserve the right to refuse service to anyone if someone walks in drunk?

SPEAKER: That is definitely one of them if we have any reason to suspect that you are have been drinking we have to decline that sale.

COMMISSIONER KAMKAR: Excellent. One final comment, the 10% is the maximum. You don't have to go up to that. 10%. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. There are no other lights. Could I entertain a motion from a commissioner? Sorry, motion to close public hearing. All in favor? All opposed, so staff.

SPEAKER: Thank you, Mr. Chair. Again, staff would like to point out that we did receive one e-mail today and that was distributed at the beginning of the commission today, and there have been a few residents around the neighborhood who have been pretty vocal in opposing the alcohol sales, I'm a little surprised that no one's here tonight. But I think staff tried to focus on the fact that this proposal that we're seeing tonight is really just a prime example of what we believe the city council's focus was when they changed -- the ordinance in 2005 to allow retail sales in conjunction with gas stations. This is a site, if you go out there it's not the most attractive looking site. And this project is really going to improve the site a lot, really going to improve the look of the site a lot so staff believes this is very in keeping with the city council's idea. Of trying to promote redevelopment of gas stations in San José. Thank you.

COMMISSIONER DO: Thank you very much. Any comments or questions from commissioners? Commissioner Zito.

COMMISSIONER ZITO: I'm going to ask the question that for some reason I ask all the time. What is the difference between this particular application and other applications that require a finding of necessity and public convenience, what triggers that, and where this is not triggered? Staff or counsel.

SPEAKER: Sorry. Basically the finding for public convenience or necessity is triggered either if the gas station is located in a police beat that has a 20% higher crime rate or if it's in a census tract that has a higher than or overconcentrated number of license he, generally four or five, in this case the census tract nor the police beat is not over so it doesn't trigger the requirement for the PC in.

COMMISSIONER ZITO: So I'm looking for the police report and it says it's unduly concentrated for the onsale not the offsale. So therefore nobody is going to be drinking in the hopefully not in the gas station itself and not in the 20%. And because of those facts we don't have to make the other findings, all right. All right, thank you.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Cahan.

COMMISSIONER KAMKAR: Thank you Mr. Chair. It says in the police report, no cans of beer must be sold in six-pack minimum so is this in the requirement? Last page.

COMMISSIONER DO: Staff.

SPEAKER: Sure, to answer that question, that is not something that the city can regulate but that is a comment that usually will get potentially included in the ABC permit that they would have to require as well, and police have an input into that as well. So it's possible that the ABC could -- ABC, state ABC board could impose those regulations upon the retailer.

COMMISSIONER KAMKAR: So why is the police department which is the San José, you know, department asking for those conditions?

SPEAKER: It's not uncommon for police department to request those conditions. They also will request those conditions from the state Department of Alcoholic beverage control. So the requested conditions from the police department they make the same request from both jurisdictions. So that the police themselves don't need to be concerned with whether or not they're making a request to the appropriate jurisdiction. They put their request into both.

COMMISSIONER KAMKAR: Sure, the way they worded it gives you the impression that that's a definitely condition, but I guess not.

SPEAKER: But I do know that our police department does coordinate with ABC and tries to obtain appropriate conditions in the ABC permit.

COMMISSIONER KAMKAR: Thank you.

COMMISSIONER DO: Thank you very much Commissioner Kamkar. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I see it's not currently overconcentrated, it's reached the maximum number of licenses. If this were approved I would assume it would make it overconcentrated.

SPEAKER: Yes, I believe if a subsequent business in the census tract were to apply for an offsale license then they would be required to go through the PCN process, yes.

COMMISSIONER JENSEN: But the fact that this one already is at the maximum number of authorized licenses doesn't trigger any additional review?

SPEAKER: No, it's only when the -- when the existing census tract already is overconcentrated that the PCN is triggered. It's not the one that causes it to be overconcentrated, it's the next one.

COMMISSIONER JENSEN: Okay. And then in order to support our police department which is neutral to the issuance of a C.U.P., is it appropriate, this is a question for counsel, I guess, to make the recommendation that is provided by PD here regarding the notes of no sale of single cans and no sale of malt alcohol.

SPEAKER: Well, since that's not really when the City's jurisdiction, what we've stated in the past is we've recommended that the police department work with ABC if the police feel it's appropriate to facilitate or, you know, have a dialogue with ABC to try and obtain that condition in the ABC license. The meetings that we've had with the ABC in the past, they've indicated that they are very sensitive to and welcome the police department's comments. And so I don't know if we've obtained feedback from the police department within the last two or three years where we've had some coordination meetings with ABC. So that they can know of our serious concerns. But the last meeting that we had with them, ABC did indicate that they're very open and willing to listen to our police department on those types of concerns.

COMMISSIONER JENSEN: Great, thank you. And then Mr. Robinson I'd like to thank you for a very entertaining, that's probably the most interesting and creative presentation we've had in a while and I want to thank you for that. But it wasn't San José deciding to get out of convenience store business. It was just San José saying, you can have a convenience store, without the benefit of alcohol. Well, that was what city council -- counsel has told me. So I'm sorry, if -- and then –

SPEAKER: I do have a history if you would like a very short –

COMMISSIONER JENSEN: Sure.

COMMISSIONER DO: And also, public hearing is closed.

SPEAKER: Okay, thank you. So the history on it is San José has historically had -- had had a ban on alcohol -- or I think it was actually you know co-locating grocery stores and gasoline stations. Because of the pedestrian vehicular conflict. So when the state put a prohibition on the concurrent sale of gasoline and alcohol the City of San José was able to obtain a grandfathering clause. Since we did not target alcohol, we simply said do not co-locate grocery stores and gas stations, that we could be grandfathered in and not subject to the state law. And it was a few years ago that the city opted to relinquish its grandfathering status and now be subject to state law.

COMMISSIONER JENSEN: Great. And then, just on a personal note with regard to drinking and driving, my entire family was nearly wiped out by a gentleman who decided to drink beer that he had purchased. So that's a personal challenge for me. And so I would just request that you perhaps not be so flippant in indicating that people don't grab a beer, just to grab and sit in the car and drink. Because I nearly lost my entire family as a result of someone who did exactly that. Thank you.

COMMISSIONER DO: Thank you, Commissioner Jensen. Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. Just a quick clarification. Reading the staff report, it says that this particular application would not result in a total of more than four establishments that provide alcoholic beverages for offsite consumption within a thousand feet radius. Whereas the police report says that census tract 597505 already have four. However, but -- so that's where a possible confusion might be. My only guess would be that the census tract is actually larger than the thousand square foot -- not square foot but thousand foot radius, would that be –

SPEAKER: Yes, that would be an accurate assessment. Actually there are no other -- within a thousand foot radius there were no other offsale locations.

COMMISSIONER ZITO: So the census tract is much larger than that. All right, thank you.

COMMISSIONER DO: Thank you, Commissioner Zito. There are no other -- Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I first want to say that I think rotten Robbie's is a fine establishment and I have frequented it and obtained gasoline from there. I just inherently have an issue with the sale of alcohol with the sale of gasoline. So if there is a motion that comes up I won't be able to support it, but it's only because of that issue and not because I don't support your establishment. Thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. There are no other speaker lights. Can I invite a motion from one of the commissioners? Commissioner Kamkar.

COMMISSIONER KAMKAR: Yes, Mr. Chair. I wanted to entertain a motion.

COMMISSIONER DO: Please do.

COMMISSIONER KAMKAR: Okay so approve the conditional use permit to -- I'm sorry, I think I'm reading the wrong one, no, it's a correct one, approve a conditional use permit to allow the demolition of an existing 1472 square foot gasoline station building, the construction of a new 3200 square foot convenience store/gas station building and other site improvements and to allow off-sale of alcoholic beverages on a 0.51 gross acre site in the CN neighborhood commercial zoning district as recommended by staff.

COMMISSIONER DO: Is there a second? There is a second to the motion and there's a second.

COMMISSIONER ZITO: And I'll offer a friendly amendment to include the recommendation by staff for the landscaped median and the driveway.

COMMISSIONER DO: Would the maker of the motion accept the amendment?

COMMISSIONER KAMKAR: Sure, but is there a second first?

COMMISSIONER ZITO: I was the second.

COMMISSIONER KAMKAR: Yes, I will accept that.

COMMISSIONER DO: There is no other speaker lights, there is a motion and second. Let's vote by light.

COMMISSIONER ZITO: Coy make one more comment?

COMMISSIONER DO: Sure, Commissioner Zito.

COMMISSIONER ZITO: I share the concerns of fellow commissioners in the alcohol gasoline mix scenario. However it's been the policy of this commission that we would have to make findings to show more or less why we shouldn't allow it and for that reason and for the sake of consistency, it's something we've been doing, since the ordinance changed, close to four years ago I'm thinking, for that reason I'm seconding and supporting the motion.

COMMISSIONER DO: Thank you, Commissioner Zito. We'll vote by lights.

COMMISSIONER DO: The item is passed with five commissioners voting in favor. Commissioner Do, Jensen, Zito, Plant, two voted in opposition, Commissioner Campos and Commissioner Cahan. The next item is idea 3D. CP 08-089. Conditional use permit to allow a public eating establishment, a billiard room and a drinking establishment, and to allow operation until 2:00 a.m. on a 2.0 gross acre site in the CG general commercial zoning district located on the south side of Burdette Drive, 380 feet westerly of south King Road. Staff.

SPEAKER: Thank you, staff would just like to reinforce what was stated in the staff report, while the applicant is asking for the opening of the establishments until 2:00 a.m., based on feedback from the police department and also feedback from the West Evergreen NAC, planning staff is recommending that to the commission that the establishment only be allowed to operate until midnight. This concludes the staff report, thank you.

COMMISSIONER DO: Thank you. Is the applicant here? Yes, please approach the podium, state your name and you have up to five minutes.

SPEAKER: Good evening, chairman do and members of the Planning Commission. My name is Alex hubris. I'm here to speak in behalf of my family to ask your assistance in our struggle against the tough economic times which we are currently all facing through the following actions: Approve the rezoning of the current facility which our family business owns on Burnette Drive to a billiard hall and drinking establishment, and approval to extend our hours until 2:00 a.m. Originally our family purchased the current property with the intent of opening the restaurant cafe which we're currently operating and releasing the remaining facility as office spaces to generate revenue from our investment. With the current economic climate we find ourselves unable to generate sufficient revenues to cover operating cost which cannot find enough tenants to fill the empty office spaces. There are competing office spaces nearby, which are just as empty as our space which makes it more difficult to lease empty office space. We are currently considering operating a billiard hall and drinking establishment. The idea originated by our patrons of our restaurant cafe who saw that such facilities do not exist in the surrounding community. After much consideration and research we find the idea of operating such facility to be potentially worthwhile for us as a business while serving the needs of the surrounding community. The billiard hall would generate additional foot traffic to our restaurant cafe as well as new revenues from the current empty space of our facility. Without extending our hours of business until 2:00 a.m. In order to basically just generate more income. As well as provide the additional benefit to our patrons of the restaurant cafe to unwind, basically after a night of leisure. We've heard from our patrons that, you know, after they have had a leisure night in downtown there are limited facilities, restaurant facilities to basically eat at. And they like our restaurant. We have provided the courtesy tea to all our patrons in the restaurant cafe and additional hours basically will allow our patrons to enjoy themselves longer before they end the evening with the tea and the extended hours will help facilitate the sobriety of our patrons when they leave the facility. College students frequent our business and have expressed that it would be even nice if our facility operated on longer hours, since we provide free internet access and we don't ask our patrons basically to leave right away. They're allowed to basically stay there and enjoy the amenities including free Internet access. There are no surrounding businesses

which offer such benefit to the community. Operating until 2:00 a.m. serves this need. As a safe gathering place for the surrounding community. One of the issues of primary concern with our position is safety. Safety of the patrons as well as the community. We've been operating our restaurant cafe since May of 2006, with beer and wine license and have had no incidents of violence or crime. Our foot traffic is unique in that it is a gated premise, therefore foot traffic is limited, and traffic can be monitored more closely. We've had no complaints registered against us by temples or religious organizations surrounding our facility, nor the senior center which is just around the corner from our restaurant cafe. The other issue of concern is crime. While we've had no incidents reported at our facility we are aware that we are in a high crime area, hence the recommendation to operate only until midnight from the police department. The extended hours may expose us to such activities. It is our intent and always been our intent to work with all law enforcement organizations to maintain the safety of our patrons and the safety of our surrounding community. Our restaurant cafe hires private security during peak hours of operation in order to maintain the safety of our patrons. We plan to continue to invest in private security for the benefit of our patrons and the surrounding community when we operate the billiard hall and drinking establishment. While we cannot control everything that occurs on our premises, we have every intention to abide by the rules and regulations of the city government, and report illegal activity, please do not deny our petition of extended hours because we are in a bad demographic area, since we seek to serve the community through measures safely enjoying a cup of coffee, then later on wine and relax with a drink after a hard day's work. We have loyally served the community by hosting functions in our facilities by religious organizations as well as organizations in the community such as the West Evergreen neighborhood association. We've asked our community to support our petition, and hopefully it will be evidenced by the fact that there's no one speaking up against the petition.

COMMISSIONER DO: Mr. Hubris your time is up. Thank you very much.

SPEAKER: I just want to briefly say –

COMMISSIONER DO: Sure.

SPEAKER: I thank you for all the kindness and assistance that basically the commission's going to show towards us and our family in our time of need with this petition. Thank you.

COMMISSIONER DO: Thank you. There are three speaker cards, I will call all three and please come to the bottom of the stairs. Ang Le Loc Chen and Nancy Chen. Each of you have up to two minutes. Please.

SPEAKER: Good evening, my name is ang Le, I'm an engineer. I come here to support my friend, because I'm a regular customer there. Enjoy there because I enjoy the good food, the good service, and nice, and very friendly people. And I -- it is very nice that they would extend the hours. If late hours to serve the people who are working late like me. So many people work late. That's about it.

COMMISSIONER DO: Thank you. Next speaker, please.

SPEAKER: Good evening, my name is Nancy Quach and I am a college student. And being a college student with no income, I try to find stuff that benefits me. And one of the things that benefit me is the light house cafe with their WiFi. I'm loud to stay later and do research and do homework. And also, it's close to my house. So I don't have to drive far and living on the Eastside there's not much and I'm very limited to if there is any other places that has WiFi for me to study with or do homework and access the Internet or anything. And around that area, I feel really safe, because there's private securities. And if I needed someone to walk me to my car, they're willing to walk me to my car. And that's not really a problem because it is on a gated premises. So that's it. Thank you.

COMMISSIONER DO: Thank you. The applicant, you have up to five minutes to -- you are Mr. An Mrs. Tran. Please.

SPEAKER: Good evening, thank you, Mr. Chair and thank you commission members. I'll take a few moments to make a statement regarding the petition CP 08-089. I think the business is not a good business, if it can't bring any customers. Clearly, in this climate, economy climate, our city as well as business owners, could use some additional sale taxes and revenues. And for the -- this location, the 1654 Burdette location, this establishment is a very well, nice, clean, safe, establishment for not only night workers but also for high tech employees or workers, or medical professionals. We definitely have some high-stress, you know, for our day jobs. And.our days sometimes don't end until 11:00 p.m. or later. So it would be nice to have a place to go and relax and unwind. So it would be very inconvenience to go there, at 11:30 and have to leave at midnight. So and also I am aware of there were eight application in 2008 that have the same very similar request. And got approved. And this request has no exception. I would like to have the commission and the city council to approve the request. And thank you for your consideration.

COMMISSIONER DO: Thank you. There's -- there are questions. Sir. Good, would you come back to the podium please. Commissioner Zito.

COMMISSIONER ZITO: Thank you, sir, you are asking for your application from beer and wine to full alcohol.

COMMISSIONER DO: My mistake, this was the last speaker, not the other than.

COMMISSIONER ZITO: I apologize, this question was not for you.

COMMISSIONER DO: Applicant, you have five minutes rebuttal.

SPEAKER: As I stated previously there are no public comment against this petition, that our public supports us. We work closely with our community on everything we do and in order to provide services to the community at the same time to benefit ourselves in the surrounding community. So we are asking the extended hours for the benefit of the community as well as our benefit because currently, operating our business with the current midnight operations, it creates a hardship for us that we're unable to basically cover, because of loss of income due to the empty spaces that exist. And I'm open to basically other ideas that the Commission or anyone else can

think of but we're just basically trying to deal with the economic hardship so we ask for your assistance in approval of this measure and not to punish us because we are in a bad demographic area and we are taking every precaution at every measure to address the concerns that are raised by the police and the surrounding community by hiring a security, have gated premises, we would look at all law enforcement agencies to make sure that there is no commission of any type of crime or gathering of, quote, suspect people who basically would patronize the establishment. That is all I have to say. And I'm ready to take questions.

COMMISSIONER DO: Great, there are questions, Commissioner Zito.

COMMISSIONER ZITO: Thank you, Mr. Chair. The size of the canopy, 925 feet or 825 feet? The staff is kind of -- do you know?

SPEAKER: I don't know the exact numbers. As I said I'm speaking on behalf of my families so I mean –

COMMISSIONER ZITO: That's not terribly important.

SPEAKER: Right.

COMMISSIONER ZITO: The staff report has one number and I see both numbers in there. Second you're applying to increase your license from beer and wine to full alcohol license, is that correct?

SPEAKER: At this time, we're not asking for that. As part of this petition. We're basically petitioning to rezone our current facility to a billiard establishment, and also allow alcohol to be served with the billiards which is currently a beer and wine permit.

COMMISSIONER ZITO: You about you want to go to 2:00.

SPEAKER: I'm sorry?

COMMISSIONER ZITO: You want to go to 2:00 a.m.

SPEAKER: We want to go to 2:00 a.m. for the reasons the community members have already addressed to the commission.

COMMISSIONER ZITO: I understand. Talking about food do you have a full service menu?

SPEAKER: We have a full service menu.

COMMISSIONER ZITO: You expect to serve food all the time to the 2:00?

SPEAKER: Basically 1:30 because it would take time for the service to clean up.

COMMISSIONER ZITO: You have no plans for music at all?

SPEAKER: Currently there are televisions for people to gather, similar to any sport establishment where they can watch games.

COMMISSIONER ZITO: But no music, no dance floor?

SPEAKER: There is no dance floor. There is no DJ, no DCA and no plans to have DJ or dancing at the establishment.

COMMISSIONER ZITO: What about patronage, would you say it's family oriented before a certain hour and then kind of going more towards adults catering afterwards?

SPEAKER: A wide variety of customers in the community basically come. We have, you know, communities during the day, we have basically high school students who come to the facility to use basically the free WiFi, they sit around and because you know, we have a gated premise, they're not disturbed, we don't -- the restaurant workers basically, you know, don't kick them out so they feel safe there and they basically use the facilities as a meeting center sometime. We don't advertise it, but we don't discourage it, either. So I know that's some of the uses that is currently, the facility is currently being used for that at the restaurant. We have seating outside which the students use also.

COMMISSIONER ZITO: And that's what the canopy is all about, right?

SPEAKER: I'm sorry?

COMMISSIONER ZITO: That's what the canopy is all about, you want to be able to cover the outside now?

SPEAKER: Yes.

COMMISSIONER ZITO: Appreciate the answers. Thank you.

COMMISSIONER DO: Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. Would you tell me about the security, how many security personnel you have and what they do?

SPEAKER: We have security during peak hours of operation. So after 9:00 we basically that's -- we've noticed during the -- through the normal operations of the business, that during those hours, there tends to be more patrons. And so we basically have anywhere from one to two security at that time to accommodate the guests that are there.

COMMISSIONER CAHAN: Currently, in what we have from staff, it has a minimum of one security officer shall be on duty for every 100 patrons. I'm wondering if you would be willing to have two security officers?

SPEAKER: We would do anything that would basically allow us to operate at the extended business, provided the economics makes sense. And safety as I said of the community and basically of our patrons is paramount to our operations. So I would not be opposed to that at all nor my family business.

COMMISSIONER CAHAN: Okay, thank you.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. I actually went out there yesterday, and it's a very nice establishment. I mean, I saw a sports cafe, you guys have done a good job there. I have a question regarding the patio. It looks like the police department has recommended that the patio be closed at 10:00. And if we did go ahead and approve this, with a 2:00 a.m. closing, and a 10:00 p.m. closing of the patio, would that be amenable to you?

SPEAKER: I don't operate the day-to-day operations of the restaurant. So I would basically have to go consult my family. But as far as my understanding, with my communications with my family already, we are willing to do whatever it takes, as I said, to work with the Planning Commission, to work with the city, you know, to facilitate the approval of this petition. And again, I mean, it's basically more to provide -- to serve the needs of the community. So if it serves the needs of the community to have the outside patio closed at 10:00 a.m –

COMMISSIONER CAMPOS: 10:00 p.m.

SPEAKER: 10:00 a.m. would cause us a lot of undue hardship. Sorry. 10:00 p.m, we would implement, yes, my family is basically consenting.

COMMISSIONER CAMPOS: The other question I would have is that in the staff report, it is asking or you are asking for a type 48 ABC license and maybe this is more a question for staff, once public hearing is closed but I think that is -- they can sell spirits with that. So you are asking for a full, you know, beyond peer and wine as part of your request here. I don't know if you -- if you –

SPEAKER: I am just made aware of that right now.

COMMISSIONER CAMPOS: Okay, just wanted to make sure that you knew nap those are all my questions, thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Kamkar.

COMMISSIONER KAMKAR: Thank you, Mr. Chair. I wanted to go back to one of the comments that you said that you said there's no community members opposed to this. Are you aware that the neighborhood has already sent the West Evergreen SNI has sent a letter in opposition.

SPEAKER: I was not aware of that. We have tried to work with every organization that we are aware of that.

COMMISSIONER KAMKAR: That's okay, I just wanted to know if you are aware of that. Second, the police department is strongly opposed to the alcohol portion and the late night portion but not to the food portion. So my question is, with you being a gated you know facility and pretty safe you know and all descriptions speak to your favor. Have there been incidents, do you have any idea why the police department speaks against your recommendation?

SPEAKER: I believe it is the bad demographics. Which I asked, in my original petition, please don't punish us because we're in a bad demographic. We're trying to serve the needs of the community.

COMMISSIONER KAMKAR: Have there been incidents?

SPEAKER: None that I'm aware of in the three years of operation that we have had our ABC license with just basically wire and beer there have been no incidents and as I said, we have the facility monitored by our own personal staff that works there. We have private security during peak hours of operation. And it is our intent to basically report any illegal activities or any type of illegal gathering at the facility.

COMMISSIONER KAMKAR: Okay. So my last question is regarding private security. I know Commissioner Cahan referred to officers and I believe she meant San José PD I guess off-duty officers and I want to make sure that that distinction is, when you said you would be open to you know anything to make this work, would that include off duty San José police officers or private security?

SPEAKER: Both.

COMMISSIONER KAMKAR: We can make that requirement?

COMMISSIONER DO: Counsel.

SPEAKER: Thanks. In the past, the commission has, where the commission has identified safety issues, and has added conditions about security, but I don't think the commission has ever gone so far as to dictate who they should hire.

COMMISSIONER KAMKAR: I see, so that means that we don't have that purview or you're saying we never done it before?

SPEAKER: You don't have that purview.

COMMISSIONER KAMKAR: Well, never mind. I know that you know, if you were to propose it, it would look better, but you know just so you know.

SPEAKER: As I said we will work with law enforcement agencies in order to mitigate whatever their concerns were, and we would work with members of our community to mitigate whatever their concerns are. Basically as I said we're looking to address everybody's concerns and need. At the same time, to provide an economic benefit to ourselves because we have an empty facility which we're not generating income. Sow I hope you all understand that.

COMMISSIONER KAMKAR: The reason I mentioned that is that was one of the recommendations I believe of the SNI, you know, that's why I brought it up. Thank you.

COMMISSIONER DO: Thank you, Commissioner Kamkar. I have one very fast question which is, would you consider stopping service of alcohol at 12:00, at midnight, if you are allowed to continue the operation until 2:00 a.m., without alcohol at all? From midnight to 2:00 a.m., without alcohol?

SPEAKER: Our patrons have -- we actually serve the professional community that work –

COMMISSIONER DO: They don't drink, do they?

SPEAKER: Yes, they do. I would welcome you to frequent our establishment at midnight, engineers that come and work until 10:00 –

COMMISSIONER DO: Excuse me. Let's go back to the question. Would you consider that possibility?

SPEAKER: Stop alcohol at 12? We are -- I -- I –

COMMISSIONER DO: So the answer is yes, right?

SPEAKER: Before I answer, because you're asking me -- we are seeking the point of this petition is basically to generate additional revenues. While at the same time serving the needs of our community. I'm answering this in a round about way.

COMMISSIONER DO: I think I want to you understand one thing which is if the police is against your application, with respect to the time –

SPEAKER: Yes.

COMMISSIONER DO: The staff is against it, and the SNI, the neighborhood organization is against it, you have an uphim battle to fight. So I just want to you know that. So the reason I ask that question is whether you -- whether you would consider that possibility, which may facilitate the application.

SPEAKER: As I said, I'm not opposed to it. I'm not opposed to considering whatever alternatives that are required. So my answer to you is not something that's off the table but I would try to find every way in order to address the concerns of the community, at the same time,

address the needs of our patrons, which you've heard. I mean a lot of them work until later hours. They'd like to be able to unwind. It's a facility that choose –

COMMISSIONER DO: Let's stay with the question please. So I'm going to turn to Commissioner Zito who has questions? No? Okay. So no -- there are no more questions from commissioners. So motion to close public hearing.

COMMISSIONER ZITO: That was my -- if it pleases the commission, I move to close public hearing.

COMMISSIONER DO: All in favor? Thank you.

COMMISSIONER ZITO: And I have a question for counsel.

COMMISSIONER DO: Commissioner Zito.

COMMISSIONER ZITO: I was curious if you could guide us and let us know what our purview is in terms of limiting alcohol sales.

SPEAKER: Thank you, Mr. Chair. So the state of California has a Department of Alcoholic beverage control and they regulate the purchase and sales of alcoholic beverages. That said, the City of San José does retain the jurisdiction to regulate the venues that sell alcoholic beverages. So there is state law that discusses when alcohol sales may be made and there is a provision that provides that no sales may be made between the hours of 2:00 a.m. and 6:00 a.m. So the city doesn't regulate the hours that alcohol may be sold. It's something that we can work, again, with the ABC to see if it would be appropriate to put additional restrictions through the ABC permit. I'm not aware of the jurisdiction of the ABC. In other words, because the -- because the provision that I'm referring to is in state law, I'm -- I couldn't opine to you or tell you what the jurisdiction of the ABC is.

COMMISSIONER ZITO: No, I was referring to because if I remember correctly, there's times we've conditioned applicants to say they can operate until 2:00 or they have to cease all alcohol or food sales, at 12:00. I see where chairman do is going, he's saying do we have an opportunity to meet in the middle and compromise, in other words, stop alcohol sales at midnight and allow them to continue eating until 2:00? Do we have the power?

SPEAKER: The way this quote unquote organization has existing, you can only sell alcohol until 10:00 or midnight. Because the state regulates that. We can regulate the hours of the business and if not operating they can't be using the sales of alcohol. But instead of targeting alcohol as separate treatment from the typical purview of the business, again that is something that the under the purview of the ABC within the last couple of years, since I've been sitting on the commission, the information coming to the Commission has been fairly consistent that the Commission can regulate the hours of the business.

COMMISSIONER ZITO: Let me ask one other question. There is a time limit of five years, is it possible for the applicant to come back say in a year and say, you know, you asked us to cut

back the hours to whatever it is, 10 and 2 or 10 and 12, we feel that we've done this for a year and we want to have you reconsider and go the full 2:00? Can they come back and ask for an amendment to this C.U.P?

SPEAKER: Yes, they can come back at any time to amend this and that would be an appropriate thing to do, this commission has done that, when there is a question of track records of the applicants in the past. If you ask operate properly, if so come back and we will provide leniency on a couple of conditions.

COMMISSIONER DO: Is it cost prohibitive when they ask for an amendment?

SPEAKER: Mr. Chair, I think yeah, the cost is essentially the same as a conditional use permit, however the advantage to the applicant in that particular case they could come back in and request an amendment to this existing perm where all they're asking to be focused on is the condition that's Ricking to hours of operation, everything else would essentially stay the same. There's some advantage in terms of narrowing the focus via an amendment application to this permit.

COMMISSIONER DO: Thank you.

COMMISSIONER ZITO: Mr. Chair, if it pleases the commission, I'm ready to make a motion that I think might strike a fair balance.

COMMISSIONER DO: Please do.

COMMISSIONER ZITO: I recommend we approve the conditional use permit to allow a public eating establishment, a billiard room, and a drinking establishment, and to allow operation of 2:00 a.m. indoors and 10:00 p.m. outdoors, and a clarification of 800 or 900 square feet on the size of the canopy.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Campos.

COMMISSIONER CAMPOS: Thank you, Mr. Chair. Actually, I just forgot to take my light off. I was going do make the same motion. But I did want to make a comment that I think that one, this will ensure that we'ring consistent as to how we've treated other projects that have come before us. You know, a number of them in the downtown core, the fiesta club is another one, the tacos el carbon, the list goes on, they have proven that they are able to be responsible and they've worked out. And I have no doubt that this one will work out as well. Thank you.

COMMISSIONER DO: Thank you, Commissioner Campos. Commissioner Cahan.

COMMISSIONER CAHAN: Thank you, Mr. Chair. I would like to add a friendly amendment on that to increase the amount of security to two officers for every 100 patrons. I think 100 patrons or even 99 patrons is a lot for one security officer to try to manage should there be an issue.

COMMISSIONER ZITO: Would that be after 10:00 p.m. or any time?

COMMISSIONER CAHAN: Yes, during peak hours.

COMMISSIONER ZITO: We have to be specific.

COMMISSIONER DO: Let's be specific.

COMMISSIONER CAHAN: I believe the applicant said 9:00 is when they have their security. So 9:00.

COMMISSIONER ZITO: I would be okay with that.

COMMISSIONER DO: Thank you, Commissioner Cahan. Commissioner Jensen.

COMMISSIONER JENSEN: Thank you, Mr. Chair. I'd like to request a one year compliance review, which is consistent with what we have done in the past, to give the operator the opportunity to demonstrate that everything is moving along just fine.

COMMISSIONER ZITO: That would be fine, uh-huh. It's not an actual review, it's a report I think we've done in the past, it's not a formal review but a compliance report.

COMMISSIONER JENSEN: That's correct, Mr. Chair.

COMMISSIONER ZITO: Works for me.

SPEAKER: The committee has done a number of compliance report-backs, the first being to have staff review it and give you an informallal memo about how it's operating. You may recall that the last, I don't know if it was the last time or the time before, but within the last year the director of planning has requested that the commission be a little bit sensitive to how frequently the commission is asking for those types of reports because of the staffing issues. But you have within the last year requested some of those compliance reports.

COMMISSIONER ZITO: Right, and I think the report is -- I think from what I understand, the report is the least burdensome on the staff. As opposed to a review and all that.

SPEAKER: Right.

COMMISSIONER ZITO: It's a quick report.

SPEAKER: The research needs to be done but it's a report to the commission.

COMMISSIONER JENSEN: The reason for asking is that the PD was very clear that they strongly oppose this and the NAC was also very clear that they opposed this as well, and so I want to be respectful of San José PD and the NAC and their concerns and give them the

opportunity to work with the owner and making sure that everything is fine, so that in a year's time, PD and the NAC are happy with how things are going.

COMMISSIONER ZITO: And in the vein of amendments, I'm going to amend my own motion. I had forgotten. I apologize for this. What we don't see in the report is a management and operation plan, which we typically have for these kinds of establishments. So what I would like to the satisfaction of the director that a management and operation plan be included as a condition. If that pleases the seconder. Okay? So that's in there, too.

COMMISSIONER DO: Thank you, Commissioner Zito. You know, I'm trying to make my own decision on the issue, and I -- if some of the commissioners may shed a light on the issue as to what justification do we have to ignore the police recommendation, in essence, on that issue? If you can just share your thoughts on that.

COMMISSIONER ZITO: If I could speak on this? In the seven years that I've sat on the commission, for better or for worse, it's not uncommon for us to do so, especially in the downtown, many times we've seen even staff recommend approval, where the PD has come out and said that they were against it, you know, with some minor changes. And I believe what we've e-done here tonight is a compromise where the outside is being shut down per staff and police, but the inside is allowed to go forward. And especially with a review that we're asking for after a year if there are problems they can certainly make themselves known and we can revoke.

COMMISSIONER DO: Thank you, Commissioner Zito. Commissioner Platten.

COMMISSIONER PLATTEN: I completely agree with Commissioner Zito. We exercise our judgment based on all the information. Statistics can be a great gauze over which we look at issues. The fact of the matter is that we're presented in this case with a business operation that has zero, zero reported incidents. And we have appropriately in the past applied the kind of restraits that Commissioner Zito has indicated in his motion and I respectfully request that we vote.

COMMISSIONER DO: My concerns remain. I probably support the project, my concerns remain because it is not the downtown area because it's the opposition is uniform among the police department, the staff, as well as the -- as well as the SNI. But with that there are no more --

SPEAKER: Mr. Chair, if I could -- visit staff question.

COMMISSIONER DO: Please.

SPEAKER: For clarification, regard to number 7, alcohol sales, staff was requesting those cease at 11:30. We need to revise the Reso.

SPEAKER: Whatever state law requires.

COMMISSIONER ZITO: The outside though would be shut down at 10:00.

SPEAKER: Commissioner Do: The motion is clear, however? There are several amendments. If there are no further comments, let's vote by lights. The motion is passed unanimously. The next item is petitions and communications. There aren't any. So moving on to item number 5, referrals from city council, boards, commissions or other agencies.

SPEAKER: There are none.

COMMISSIONER DO: Thank you. Item number 6 good and welfare, report from city council.

SPEAKER: Thank you, Mr. Chair. The probably two items of great interest to the commission, first of all the city council did approve the project on San Felipe road that the commission saw a couple of weeks ago, they approved it per staff's and the applicant's recommendation. Also, yesterday, the city council conducted a study session on the Greenprint which is our master plan for parks, it is a citywide Greenprint. We would encourage you to participate if you are interested, and that concludes staff's report. Thank you.

COMMISSIONER DO: Thank you. Commission report from committees, Norman Y. Mineta San José international airport?

COMMISSIONER CAMPOS: Thank you, Mr. Chair, we have not met yet.

COMMISSIONER DO: Envision 2040? Report?

COMMISSIONER KAMKAR: We have not met yet.

COMMISSIONER DO: Synopsis from the last meeting, August 29, 2009 meeting. Any comments? Motion to approve? Commissioner -- there is a motion from -- there's a motion, is there a second?

COMMISSIONER ZITO: I'll second with one addition, just on the did deferrals, that they specify what the deferral was for.

COMMISSIONER DO: Yes, and I was going to bring that up as well. I don't know whether that should be a procedure thing as always.

COMMISSIONER ZITO: Right.

COMMISSIONER DO: I also want to thank the staff some has nothing to do with the synopsis, for adding the sustainability to the staff report, I appreciate that. So all in favor of the approving the synopsis? All opposed? So that's passed. The consider proposed study session date and a topic, staff, potential -- okay, great.

SPEAKER: Thank you, Mr. Chair. We are distributing a draft and I with want to emphasize draft agenda for the retreat that we're just coming up September 24th. We'll be starting at about 8:15. We did take the comments from the commission and fanged it into an agenda as shown. The comments that we got were, let's talk about new urbanism, sustainability as it relates to

design and their application in San José. We also heard interest in talking about the two-acre rule. Staff is proposing that in the morning in addition to engaging with our council liaison, Councilmember Kalra, that we have a discussion with members of the development community, as well as our neighborhood leaders, to talk about how the commission is functioning, kind of get a dialogue going with the key stakeholders that do interact with you. This would also provide us an opportunity to go through some kind of best practices that we're finding from other plannings, with respect to overall effectiveness. So been, this is still draft and very much subject to your input, but we wanted to put that forward. That's kind of a new way of doing business at our retreat. But I think now this commission has kind of hit their stride, so to engage with some key stakeholders might be of interest to you. Thank you.

COMMISSIONER DO: Thank you, director. Commissioner Zito?

COMMISSIONER ZITO: It is with regret I have to say that I will be on a flight that day back East, so I will not be attending as it stands right now.

COMMISSIONER DO: Thank you. Subcommittee reports and outstanding business? None, okay, so the meeting's adjourned. Thank you.