



PLANNING COMMISSION SYNOPSIS

Wednesday, October 12, 2005

6:30 p.m. Regular Meeting
Council Chambers, City Hall

200 East Santa Clara Street
San Jose, California

Bob Dhillon, Chair
Xavier Campos, Vice-Chair

Bob Levy Jay James
Dang T. Pham
Christopher Platten James Zito

Stephen M. Haase, Director
Planning, Building and Code Enforcement

NOTE

To arrange an accommodation under the Americans with Disabilities Act to participate in this public meeting, we ask that you call (408) 535-7800 (VOICE) or (408) 998-5299 (TTY) at least two business days before the meeting. If you requested such an accommodation and have not already identified yourself to the technician seated at the staff table, please do so now. If you did not call in advance and do now need assistance, please see the technician.

NOTICE TO THE PUBLIC

Good evening, my name is **Bob Dhillon** 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, October 12, 2005**. Please remember to turn off your cell phones and pagers.

If you want to address the Commission, **fill out a speaker card (located on the table by the door or at the technician's station), and give the completed card to the technician. Please include the agenda item number for reference.**

The procedure for this hearing is as follows:

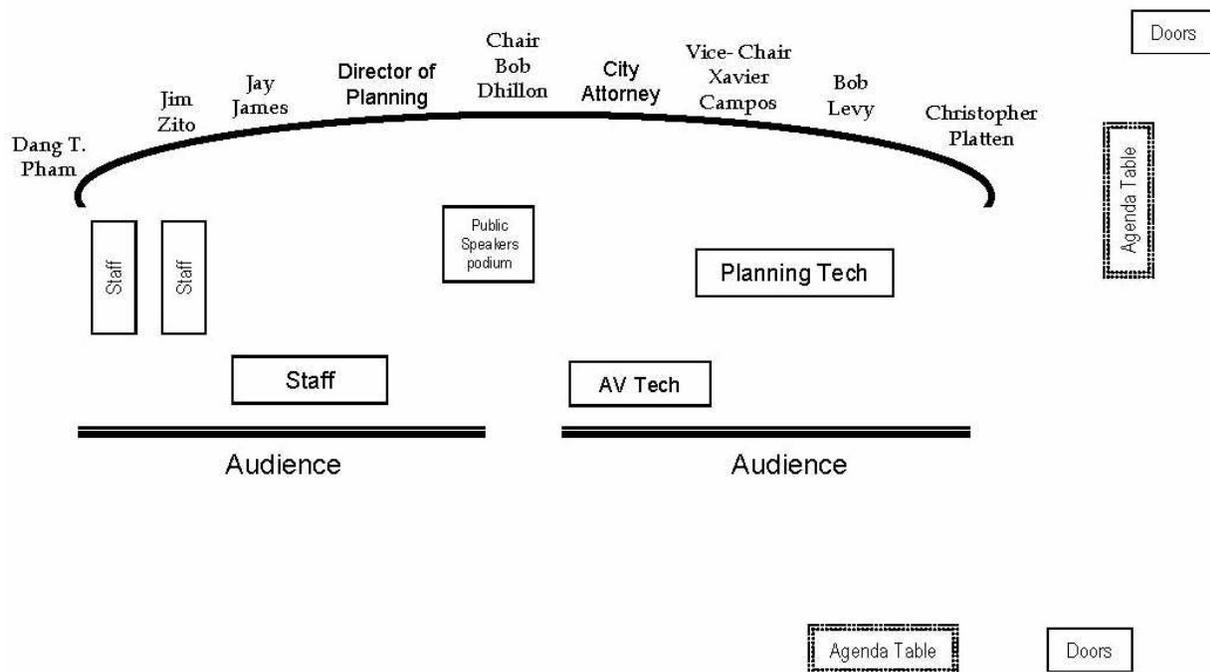
- After the staff report, applicants and appellants may make a 5-minute presentation.
- The chair will call out names on the submitted speaker cards in the order received.
- As your name is called, line up in front of the microphone at the front of the Chamber. Each speaker will have two minutes.
- After the public testimony, the applicant and appellant may make closing remarks for an additional five minutes.
- Planning Commissioners may ask questions of the speakers. These questions will not reduce the speaker's time allowance.
- The public hearing will then be closed and the Planning Commission will take action on the item. The Planning Commission may request staff to respond to the public testimony, ask staff questions, and discuss the item.

If you challenge these land use decisions in court, you may be limited to raising only those issues you or someone else raised at this public hearing or in written correspondence delivered to the City at, or prior to, the public hearing.

The Planning Commission's action on rezoning, prezonings, General Plan Amendments and Code Amendments is advisory only to the City Council. The City Council will hold public hearings on these items. Section 20.120.400 of the Municipal Code provides the procedures for legal protests to the City Council on rezonings and prezonings. The Planning Commission's action on Conditional Use Permit's is appealable to the City Council in accordance with Section 20.100.220 of the Municipal Code. Agendas and a binder of all staff reports have been placed on the table near the door for your convenience.

Note: If you have any agenda questions, please contact Olga Guzman at olga.guzman@sanjoseca.gov

The Planning Commission is a seven member body, appointed by the City Council, which makes recommendations to the City Council regarding the adoption, amendment, or repeal of general or specific plans, and regulation of the future physical land use development, redevelopment, rehabilitation or renewal of the City, including its Capital Improvement Programs. The recommendations to the Council regarding land use development regulations include, but are not limited to, zoning and subdivision recommendations. The Commission may make the ultimate decision on Conditional Use Permits, and acts as an appellate body for those persons dissatisfied with the Planning Director's decisions on land use and development matters. The Commission certifies the adequacy of Environmental Impact Reports.



The San Jose Planning Commission generally meets every 2nd and 4th Wednesday at 6:30 p.m., unless otherwise noted. The remaining meeting schedule is attached to this agenda and the annual schedule is posted on the web at <http://www.sanjoseca.gov/planning/hearings/index.htm> Staff reports, etc. are also available on-line. If you have any questions, please direct them to the Planning staff at (408) 535-7800. Thank you for taking the time to attend today's meeting. We look forward to seeing you at future meetings.

AGENDA
ORDER OF BUSINESS

1. ROLL CALL

ALL WERE PRESENT

2. 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. 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.

3. CONSENT CALENDAR

NOTICE TO THE PUBLIC

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. If anyone in the audience wishes to speak on one of these items, please come to the podium at this time.

- a. [CPA88-038-01](#). Conditional Use Permit Amendment request to allow for the 24 hour operation of the drive-thru portion of an existing fast food restaurant (McDonald's) on a 0.96 gross acre site in the CP Pedestrian Commercial Zoning District located on the northwest corner of Blossom Hill Road and Kooser Road (1360 KOOSER RD) (Pan Cal Princeton Plaza Llc, Owner). Council District 9. SNI: None. CEQA: Exempt.

APPROVED (7-0)

- b. [H00-039](#). Adoption of a Resolution to uphold the Director of Planning's decision to deny a Site Development Permit for the construction of a 78,492 square foot self-storage building and an outdoor boat and RV storage facility on a 5.02 gross acre site, in the IP Industrial Park Zoning District located on the easterly side of Tully Road, approximately 850' northerly of Quimby Road (Cindy H. Fan, Owner). Council District 8. SNI: N/A. CEQA: Capitol Storage Center EIR.

APPROVED (6-0-0-1; CAMPOS ABSTAINED)

The following items are considered individually.

4. **PUBLIC HEARINGS**

- a. **PDC04-077**. Planned Development Rezoning from A (PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow the addition of a three-story unit plan and to increase the height limit for a previously approved project that allowed 213 single-family detached residences on a 263.00 gross acres site, located on the north side of Metcalf Road approximately 100 feet easterly of Highway 101 (Metcalf Partners, Llc, Owner/ Developer). Council District 2. SNI: None. CEQA: Addendum to the Environmental Impact Report, File No. PDC 01-098.

RECOMMEND APPROVAL (7-0)

COMMISSIONER ZITO ASKED WHAT PERCENTAGE OF HOMES WOULD BE 3-STORY. APPLICANT CLARIFIED THIRD STORY IS AN OPTION, AND PERHAPS 30% WOULD BUY OPTION; AND THAT THE THIRD STORY WOULD BE LESS THAN 500 SQUARE FEET. COMMISSIONER LEVY ASKED IF ADDITIONAL CONDITIONS WOULD BE APPROPRIATE FOR BIGGER HOUSES, PARTICULARLY WHETHER MORE PARK LAND COULD BE REQUIRED. STAFF RESPONDED THAT PARK LAND DEDICATION IS BASED ON NUMBER AND TYPE OF UNIT, NOT SIZE AND THAT DESIGN GUIDELINES DO NOT SPECIFY SIZE. COMMISSIONER ZITO ASKED WHAT RESTRICTIONS APPLIED TO 2-STORY SINGLE FAMILY HOUSES NEAR HIGH PRESSURE GAS LINES AND DEPUTY DIRECTOR INDICATED NO REQUIRED SET-BACK ALTHOUGH HOMES COULD NOT BE BUILT IN PG&E EASEMENT.

COMMISSIONER JAMES ASKED FOR CLARIFICATION ON HOW WORKERS ON-SITE WOULD BE PROTECTED FROM WORKING WITH ASBESTOS. DEPUTY DIRECTOR CLARIFIED THAT ZONING CONDITION RELATIVE TO ASBESTOS CONTROL PLAN WOULD BE IMPLEMENTED AT THE PD PERMIT LEVEL AND CONDITION WOULD BE LEFT IN AS ON-SITE GRADING WOULD CONTINUE AS HOMES ARE BUILT.

COMMISSIONER ZITO ASKED WHETHER, SINCE GUIDELINES FOR LAND IN PROXIMITY TO HIGH PRESSURE GAS PIPELINES WOULD APPLY TO NURSING HOMES, WOULD IT BE APPLICABLE TO A SINGLE-FAMILY HOMEOWNER THAT WAS DISABLED. DEPUTY DIRECTOR HORWEDEL COMMENTED THAT DISCLOSURE OF PROXIMITY TO PIPELINE TO POTENTIAL BUYERS IS A CONDITION OF ZONING.

- b. **PDC04-112**. Planned Development Rezoning from R-1-8 Single Family Residence District to A(PD) Planned Development Zoning District to allow up to 19 single-family detached residences on a 3.3 gross acre site, located easterly of Hervey Lane, approximately 230 feet southerly of Padres Drive (Clemetson Don Et Al, Owner). Council District 6. SNI: None. CEQA: Mitigated Negative Declaration.

RECOMMEND APPROVAL (7-0)

STAFF CLARIFIED THAT APPLICANT IS PROPOSING TO TRANSFER PORTION OF PROPERTY TO CHURCH BUT WILL STILL PROVIDE TRAIL TO ALMA. AFTER APPLICANT'S PRESENTATION, COMMISSIONER JAMES ASKED IF SANTA

CLARA VALLEY WATER DISTRICT LETTER HAD BEEN RECEIVED. APPLICANT INDICATED APPLICANT AND STAFF COULD RESPOND TO LETTER. COMMISSIONER ZITO ASKED FOR CLARIFICATION ABOUT EASEMENTS, AND APPLICANT CLARIFIED DRAFTING ERROR HAD LED TO CONFUSION, AND THAT DISTRICT WILL GRANT UTILITY EASEMENT FOR UNDERGROUND LINES AND ULTIMATE "LOOK" OF EASEMENT AREA WILL BE AS IT IS NOW.

A CHURCH REPRESENTATIVE COMMENTED THAT CLOSE COLLABORATION OF APPLICANT AND STAFF HAD RESULTED IN A GOOD SITUATION FOR PROJECT AND CHURCH, AND COMMENDED STAFF FOR MORE THAN A YEAR OF MEETINGS AND PROJECT REFINEMENT. A NEIGHBORHOOD REPRESENTATIVE EXPRESSED THAT PROPERTY HAS BEEN AN EYESORE, AND THAT PROJECT WILL BE AN ASSET TO COMMUNITY.

COMMISSIONER ZITO ASKED FOR ADDITIONAL CLARIFICATION ON THE WATER DISTRICT SUGGESTION THAT A HOME BE ELIMINATED TO ALLOW CUL-DE-SAC BULB BE MOVED OUT TO ALLOW A RIPARIAN SETBACK OF 100 FEET. STAFF CLARIFIED THE BALANCING APPROACH AND THAT ALL STRUCTURES WERE OUT OF RIPARIAN SETBACK AND ONLY LOW INTENSITY BULB IN 100-FOOT SETBACK.

COMMISSIONER ZITO ASKED IF STAFF RECOMMENDATION IS TO EXCLUDE CHURCH LAND DEDICATION FROM THE ZONING AFFECTED APPLICANT, WHO INDICATED NO BECAUSE "SIDE DEAL" HAD ALREADY OCCURRED.

COMMISSIONER CAMPOS COMMENDED APPLICANT FOR TAKING DIFFICULT SITE ON, AND ELIMATING BLIGHT AND BLENDING WITH EXISTING COMMUNITY. COMMISSIONER JAMES SUPPORTED MOTION TO APPROVE NOTING HOMEOWNERS IN AREA ARE PLEASED PROJECT IS MOVING FORWARD. COMMISSIONER LEVY COMMENDED APPLICANT GENERALLY, BUT STILL EXPRESSED CONCERN ABOUT CUL-DE-SAC BULB BEING IN THE RIPARIAN SETBACK. COMMISSIONER ZITO EXPRESSED CONCERN ABOUT FLOODING AND ASKED FOR FURTHER CLARIFICATION. PUBLIC WORKS STAFF CLARIFIED COMMUNITY FLOODING CONCERNS INCLUDING HISTORIC FLOODING AND SPOT FLOODING DUE TO INADEQUATE STORM DRAINS, AND CLARIFIED THAT REMOVING BERM WOULD PLACE NEW PROPERTIES IN JEOPARDY AND SHOULD NOT OCCUR. IN RESPONSE TO QUESTIONS ABOUT THE HISTORIC FLOODING ISUUE, STAFF CLARIFIED THIS AREA IS LOW LYING, AND THAT THE DEVELOPER IS PUTTING IN OVER-SIZED STOM DRAIN PIPING TO PROVIDE MORE WATER STORAGE THAN JUST REQUIRED BY PROJECT, AND 1995 EVENT SHOULD NOT RECUR. STAFF CLARIFIED THAT SINCE OVER-SIZED PIPE IS SHOWN ON PLAN, IT WOULD BE A CONDITION OF REZONING.

COMMISSIONER LEVY ASKED FOR CLARIFICATION REGARDING LOCATION OF PROJECT REAR SETBACK RELATIVE TO RIPARIAN CORRIDOR AND COMMENTED THAT 67-FOOT SETBACK WOULD REPRESENT AN IMPROVEMENT. COMMISSIONER ZITO INDICATED THAT HE CONCURRED WITH COMMISSIONER LEVY REGARDING 100-FOOT SETBACK REQUIREMENT.

COMMISSIONER DHILLON NOTED THAT 67-FOOT SETBACK WILL BE AN IMPROVEMENT, AND THAT USE OF 2-ACRE RULE FOR THIS PROJECT IS APPROPRIATE. COMMISSIONER ZITO STATED HE WOULD RELUCTANTLY SUPPORT THE MOTION BUT TO FORWARD TWO CONCERNS TO CITY COUNCIL:

- 1. THE CITY SHOULD WORK TO KEEP THE RIPARIAN SETBACK TO 100 FEET*
- 2. THE CITY SHOULD TIGHTEN APPLICATION OF THE GENERAL PLAN 2-ACRE RULE AND BEWARE SETTING THE PRECEDENT TO USE WITH LARGER SITES*

- c. **PD05-040 & ABC05-002**. Uphold Planning Director's decision to approve a Planned Development Permit and Liquor License Exception to allow a drinking establishment (wine bar) with off-sale of alcoholic beverages at Santana Row on a 0.34 gross acre site in the A(PD) Planned Development Zoning District, located in the median of Santana Row (368 SANTANA ROW) (Federal Realty Trust / San Jose Town & Country LLC, Owner). Council District 6. SNI: None. CEQA: Environmental Impact Report, File No. PDC97-036.

UPHOLD DIRECTOR'S DECISION TO APPROVE (6-1-0; ZITO OPPOSED)

COMMISSIONER CAMPOS INQUIRED WHETHER EXISTING LOCATION FOR VINTAGE WINE WOULD REMAIN OPEN, AND APPLICANT INDICATED NEW FACILITY IS TO PROVIDE MORE TASTING ROOM AND EDUCATION SPACE, WHEREAS THE EXISTING SHOP IS PRIMARILY RETAIL SALES. APPLICANT EXPLAINED, IN RESPONSE TO COMMISSIONER JAMES, THAT STAFF IS TRAINED TO LOOK FOR PATRONS WHO MAY NEED A CAB RIDE HOME. COMMISSIONER ZITO ASKED FOR CLARIFICATION ON OUTDOOR SEATING AREA PROPOSED TO BE ENCLOSED BY VINES, AND FOR AMOUNT OF FOOD TO BE SERVED, AND APPLICANT RESPONDED THAT APPETIZERS WOULD BE SERVED AND AREA ABOUT 400 SQUARE FEET. COMMISSIONER ZITO ASKED FOR OPERATING HOURS AND APPLICANT RESPONDED THAT CURRENT HOURS WERE UNTIL 9:00 P.M. WEEKDAYS, 10:00 P.M. WEEKENDS AND THERE IS NO PROPOSAL TO BE OPEN AFTER MIDNIGHT. COMMISSIONER LEVY ASKED FOR CLARIFICATION ABOUT OUTDOOR AREA AND WHETHER IT WOULD BE EXCLUSIVELY FOR VINTAGE WINE BAR AND APPLICANT CONCURRED AND STATED THAT ALCOHOL SERVED AT WINE BAR WOULD STAY ON PREMISES. COMMISSIONER DHILLON ASKED WHICH ABC LICENSES WOULD BE REQUIRED AND APPLICANT STATED BOTH ON-SALE AND OFF-SALE LICENSES WOULD BE REQUIRED.

A SPEAKER WHO HAS PARTICIPATED IN WINE TASTING COMMENTED THAT CROWD AT WINE BAR NOT NOISY OR INTOXICATED, AND THAT SANTANA ROW WILL BE ENHANCED BY NEW USE. OTHER SPEAKERS SPOKE TO THE QUIETNESS OF THE TASTING ROOM WITH EDUCATION ABOUT WINE BEING THE PRIMARY GOAL, WITH MANY PATRONS RETURNING TO LEARN MORE. A TEACHER IN NEARBY SCHOOL DISTRICT SPOKE THAT VINTAGE WINE BAR HAD PROVIDED FUND RAISING OPPORTUNITIES FOR THE SCHOOLS WITH SPECIAL EVENTS. A RESIDENT FROM THE NEIGHBORHOOD COMMENTED

TOO MANY ALCOHOL LICENSES IN SANTANA ROW. APPLICANT REPRESENTATIVE CLARIFIED SMALL SCALE OF WINE BAR, AND NOTED APPELLANTS HAVE HOUSES IN COMMERCIAL AREA, AND THAT NO RESIDENTS FROM ON-SITE IN SANTANA ROW HAD PROVIDED TESTIMONY. APPLICANT FURTHER CLARIFIED THAT ABC LICENSE REQUIRES PATRONS STAY ON-SITE.

COMMISSIONER CAMPOS NOTED DIFFERENT USE OF WINE TASTING FROM A BAR, BUT THAT RESIDENTS IN COMMERCIAL AREA PRE-EXISTED BEFORE SANTANA ROW. APPLICANT'S REPRESENTATIVE EXPLAINED SECURITY PATROLS ON WEEKEND AND COMMISSIONER CAMPOS SUGGESTED THAT SECURITY BE BETTER FOCUSED TO PROBLEM AREAS, AND COMMISSIONER JAMES ADDED THAT IMPROVEMENT IS STILL NEEDED IN SECURITY RESPONSE. COMMISSIONER DHILLON ASKED IF TESTIMONY HAD ALTERED APPELLANT'S VIEW. APPELLANT INDICATED THAT EXISTING RESIDENTS INTEND TO STAY, AND THAT SECURITY LEVEL IS INADEQUATE AND AREA IS UNSAFE.

COMMISSIONER ZITO ASKED HOW LONG APPELLANT HAD LIVED THERE, AND APPELLANT RESPONDED SINCE 1999. APPLICANT COMMENTED THAT HE RESPECTED APPELLANT'S CONCERNS, BUT THAT VINTAGE WINES BACK RECORD WAS GOOD.

COMMISSIONER JAMES COMMENTED THAT TRELIS DESIGN DID NOT APPEAR TO PROVIDE CONTAINMENT AS SHOWN IN THE PHOTOGRAPH. DEPUTY DIRECTOR COMMENTED PHOTO WAS MISLABELED, AND THAT WINE AND VINE TRELIS WOULD CONNECT COLUMNS AND PRECLUDE EASY ACCESS. IN RESPONSE TO COMMISSIONER ZITO, APPLICANT EXPLAINED FULL SERVICE DINNERS WOULD NOT BE AVAILABLE, MORE LIKELY APPETIZERS, AND THAT WHILE A GLASS OF WINE WOULD BE AVAILABLE FOR PURCHASE, EMPHASIS WOULD BE ON TASTING IN SMALLER AMOUNTS. COMMISSIONER ZITO EXPLAINED HE BELIEVED APPLICANT'S INTENT, BUT THAT OTHER USERS ON SITE WERE NOT AS RESPONSIBLE.

STAFF RESPONDED THAT THE DEPARTMENT OF TRANSPORTATION STAFF HAD DONE SPEED SURVEYS IN RESIDENTIAL AREA AND SPEEDS ARE AROUND 25 MILES PER HOUR, BUT THAT VOLUMES ARE HIGH, AND THAT PD ZONING WOULD NOT BE CHANGED AND THIS PERMIT WOULD NOT ALLOW LATE NIGHT HOURS, AND THAT NO COMPLAINTS HAD BEEN RECEIVED REGARDING VINTAGE WINE MERCHANTS BY ALCOHOL BEVERAGE CONTROL STAFF. STAFF FURTHER EXPLAINED THAT CENSUS TRACT INCLUDING SANTANA ROW ALSO INCLUDES VALLEY FAIR MALL AND THAT HIGHER CRIME LEVELS, WERE TYPICAL OF SUCH A BUSY COMMERCIAL AREA, AND THAT CABLES WOULD BE INCLUDED ON TRELIS TO PRECLUDE ACCESS FROM OUTSIDE.

IN RESPONSE TO COMMISSIONER DHILLON REGARDING HOW PERMIT WOULD BE AFFECTED BY PROPOSED NEW CRITERIA IN DRAFT NEW ALCOHOL ORDINANCE, STAFF CLARIFIED THAT ONLY ONE OFF-SALE USE

WAS WITHIN 1,000 FEET, AND THAT RESIDENCES ARE LOCATED DIRECTLY ACROSS THE STREET WHICH WOULD DISALLOW NEW OFF-SALE USES UNDER PROPOSED NEW CRITERIA. IN RESPONSE TO COMMISSIONER ZITO, STAFF CLARIFIED THAT THERE IS A CONDITION IN THIS PERMITS, AND MANY OTHER PERMITS ON THE SITE, REGARDING NUISANCE ISSUES, AND THAT CODE ENFORCEMENT STAFF TAKE COMPLAINTS SERIOUSLY BUT ARE NOT ALWAYS ABLE TO CONFIRM COMPLAINTS.

COMMISSIONER LEVY COMMENTED THAT THIS SHOP SPACE NEEDS TO BE OCCUPIED BY A VENDOR, WHO CAN DRAW A CLIENTELE, AND THAT FLOWER SHOP WAS NOT IDEAL, AND THIS USE COULD STRENGTHEN RETAIL FOCUS. COMMISSIONER CAMPOS INDICATED A "CATCH 22" SITUATION THAT SANTANA ROW IS DOING A POOR JOB ON SECURITY FOR BARS IN AREA, BUT THAT WINE TASTING ROOMS ARE UNLIKELY TO CONTRIBUTE TO PROBLEMS, BUT THAT SANTANA ROW SHOULD GET ITS ACT TOGETHER WITH SECURITY. COMMISSIONER JAMES COMMENTED EXISTING BARS ARE THE PROBLEM, NOT PROPOSED WINE BAR, AND THAT SANTANA ROW NEEDS TO BE A GOOD NEIGHBOR AND PAY ATTENTION TO ISSUES. COMMISSIONER ZITO CONCURS THIS IS A TOUGH SITUATION AND STATED HE NOT SUPPORT MOTION TO SEND MESSAGE THAT SANTANA ROW NEEDS TO IMPROVE SECURITY RESPONSE GREATLY, BUT HIS OPPOSITION IS NOT DIRECTED AT WINE BAR APPLICANT WHO HAS NOT HAD ANY COMPLAINTS.

- d. **CP05-037**. Conditional Use Permit to allow an existing nightclub with late night use until 2:00 a.m. on a 0.21 gross acre site in the DC Downtown Primary Commercial Zoning District located at the northeast corner of South First Street and San Salvador Street (Studio Theatre) (396 S 1ST ST) (Berg Richard P and Made S Trustee & Et Al Richard Berg, Owner). Council District 3. SNI: None. CEQA: Exempt.

APPROVED (7-0)

COMMISSIONER ZITO EXPRESSED CONCERN THAT NO POLICE REPORT WAS ATTACHED TO REPORT PROVIDED FOR THE PROPOSAL. STAFF NOTED THAT POLICE STAFF HAD BEEN CONSULTED ABOUT PROJECT AND WOULD WORK AT ENTERTAINMENT PERMIT STAGE TO FINALIZE SECURITY STAFFING LEVELS.

- e. **CP05-027**. Conditional Use Permit to allow (1) demolition of an existing residence converted to a museum at 535 N. Fifth Street, (2) construction of an approximate 9,803 square foot museum building, (3) construction of a surface parking lot, (4) on-site relocation and conversion of an existing residence at 529 N. Fifth Street to a privately operated museum on a 0.44 gross acre site, and (5) an off-site, alternating use, and alternative parking arrangement at an adjacent church (APN 249-38-008 and -024) in the R-M Multiple Residence Zoning District, located at/on west side of N. 5th Street, approximately 280 feet northerly of E. Empire Street (Japanese-American Museum of San Jose, 535 N 5TH ST) (Japanese American Resource Ctr Museum, Iwagaki Kenneth J and Martha M, Owner). Council District 3. SNI: None. CEQA: Mitigated Negative Declaration.

APPROVED (7-0)

COMMISSIONER JAMES ASKED IF OFF-SITE PARKING ARRANGEMENT DEAL HAD BEEN COMPLETED AND APPLICANT INDICATED IT HAD. COMMISSIONER ZITO COMMENDED APPLICANT AND INDICATED GOOD PROJECT FOR CULTURAL DIVERSITY.

- f. **CP05-031.** Conditional Use Permit to allow music on the patio of an existing restaurant/nightclub on 0.19 gross acre site in the DC Downtown Primary Commercial Zoning District located at southwest corner of St. John Street and San Pedro Street (170 W. St. John Street) (Perazzo James and Eleanor, Owner). Council District 3. SNI: None. CEQA: Exempt.

APPROVED (7-0)

COMMISSIONER ZITO ASKED IF THERE WERE NOISE GUIDELINES FOR THIS DOWNTOWN SITE AND STAFF CLARIFIED THAT PERMIT CONDITIONS ALLOWED ONLY ACCOUSTIC MUSIC, AND NO AMPLIFIED MUSIC, AND THAT USE WOULD OPERATE ONLY FOR RESTRICTED HOURS.

- g. **CP04-011.** Conditional Use Permit to legalize conversion of a single-family detached residence to a private performing arts school use on a 0.14 gross acre site in the R-1-8 Single-Family Residence Zoning District, located at/on northeast corner of Garces Avenue and Santa Teresa Boulevard (5998 GARCES AV) (Fagundes Anthony D And A J Trustee, Owner). Council District 10. SNI: None. CEQA: Exempt. Deferred from 9-28-05.

APPROVED (7-0) WITH CONDITIONS:

1. *CONSTRUCT FENCE TO RESTRICT CHILDREN'S ACCESS FROM RESIDENTIAL SIDE OF BUILDING, AND*
2. *PROVIDE COMPLIANCE REVIEW IN 2 YEARS*

DEFERRED TO 10/26/05 FOR PREPARATION OF RESOLUTION

APPLICANT CLARIFIED THAT ORIGINAL SCHOOL PROPOSAL WAS REDUCED TO LIMIT IT TO FINE ARTS CLASSES WITH SMALL SIZE. SEVERAL TEACHERS FROM THE SCHOOL SPOKE IN SUPPORT FOR THE SCHOOL. NEIGHBORHOOD RESIDENTS EXPRESSED CONCERN ABOUT TRAFFIC AND PARKING FOR SCHOOL CREATING BOTTLENECK AT GARCAS AND SANTA TERESA, AND COMMENTING THAT PARKING AREA WILL NOT LIKELY BE USED AS TOO CLOSE TO LIQUOR STORE. IN RESPONSE TO COMMISSIONER JAMES, NEIGHBOR WITH DAYCARE INDICATED OFF-SITE PARKING WOULD BE INCONVENIENT AND UNAPPEALING, ALTHOUGH STATING HIS DAY-CARE TAKES EIGHT CHILDREN WHO DO NOT ALL ARRIVE AT THE SAME TIME, AND SIGNIFICANT PARKING PROBLEMS RESULT WHEN SCHOOL HOSTS EVENTS. NEIGHBORHOOD RESIDENTS INDICATED SCHOOL OPERATORS HAD NOT BEEN CONSISTENT IN HOW THEY COORDINATE WITH NIEGHBORHOOD, AND COMMENTED MEDIAN BREAK ON SANTA TERESA ALIGNS WITH GARCES, SO TRAFFIC FLOW EXCEEDS TYPICAL RESIDENTIAL STREETS.

APPLICANT RESPONDED THAT FRONT DOOR IS LOCKED AND CHILDREN DO NOT ENTER FROM FRONT DOOR, ONLY TEACHER WITH A KEY, AND THAT OTHERS COME IN FROM BACK, AND THAT ONLY EIGHT HOURS OF CLASSES WERE OPERATING PER WEEK IN BUILDING. IN RESPONSE TO COMMISSIONER

ZITO, APPLICANT INDICATED THAT THEY HAD ONLY RECENTLY BECOME AWARE OF PERMIT REQUIREMENT. IN RESPONSE TO COMMISSIONER JAMES, APPLICANT EXPLAINED THE FOUR ADDITIONAL EXITS FOR FIRE SAFETY. COMMISSIONER LEVY ASKED WHETHER LARGER EVENTS WOULD REQUIRE USE OF FRONT DOOR. APPLICANT CLARIFIED THAT THE TYPICAL PERSON COUNT AT EVENT WOULD BE EIGHT STUDENTS AND TWO-PARENTS EACH FOR ABOUT TWENTY-FOUR TOTAL, AND THAT FRONT DOOR COULD BE USED.

COMMISSIONER LEVY ASKED WHY HOURS IN PERMIT WERE SO LIMITED AND STAFF RESPONDED THAT THIS IS A NARROWLY-DEFINED PROPOSAL AND STAFF FELT APPROPRIATE TO LIMIT. COMMISSIONER ZITO ASKED FOR CLARIFICATION ON MEDIAN BREAK AND STAFF CLARIFIED LEFT-TURN-POCKET AT GARCES AND RESPONDED THAT CLOSING THE MEDIAN BREAK WOULD BE INAPPROPRIATE SINCE NEIGHBORHOOD RESIDENTS USE IT TO ACCESS NEIGHBORHOOD. STAFF FURTHER CLARIFIED INTENTION TO HAVE SITE USE ONLY ACCESS FROM REAR, AND STAFF SUGGESTED ADDITIONAL CONDITION THAT A FENCE BE INSTALLED TO RESTRICT ABILITY OF CHILDREN TO ACCESS BUILDING THROUGH THE SIDE YARD NEAR NEIGHBORHOOD. STAFF CLARIFIED 2-YEAR EXPIRATION CONDITION NOT A TIME LIMIT ON USE, BUT TIME LIMIT ON BEGINNING USE AND COMPLETING CONSTRUCTION.

COMMISSIONER ZITO MOVED THAT A 2-YEAR TIME LIMIT WITH A COMPLIANCE REVIEW WOULD BE APPROPRIATE AND THE CITY ATTORNEY CLARIFIED THAT ONLY IF THERE WERE ISSUES FOLLOWING THE 2-YEAR REVIEW OF OPERATIONS. COMMISSIONER DHILLON EXPRESSED SUPPORT FOR FINE ARTS, AND NOTED SMALL SCALE OF FACILITY.

- h. [CP04-007](#). Conditional Use Permit to allow the conversion of five existing single-family detached residences for religious assembly uses as an expansion of an existing church facility on a 2.06 gross acre site in the R-1-8 Residential Zoning District located at the southerly terminus of Pinewood Drive 310 feet southerly of Williams Road (4488 Williams Road) (Korean Baptist Church Of San Jose, Owner). Council District 1. SNI: None. CEQA: Exempt.

**APPROVED (5-2-0; CAMPOS AND LEVY OPPOSED)
DEFERRED TO 10/26/05 FOR PREPARATION OF RESOLUTION**

STAFF GAVE A BRIEF PRESENTATION REVIEWING THE BACKGROUND OF THIS PROPOSAL AND THE EFFORTS THAT HAD BEEN TAKEN DURING THE PERIOD BETWEEN THE JUNE HEARING AND THIS HEARING. STAFF ALSO CLARIFIED THE DISCUSSION RELATED TO PARKING FOR THE SITE.

MR. DE YOUNG, REPRESENTING THE APPLICANT, RECOGNIZED STAFF'S EFFORTS OVER THE PAST THREE MONTHS. HE ALSO IDENTIFIED TWO AREAS OF THE DRAFT PERMIT THAT WERE STILL A CONCERN TO THE CHURCH. HE IDENTIFIED CONDITION NO. 8 AS ONE HE FELT JUST NEEDED A CORRECTION PER DISCUSSIONS THE APPLICANT HAD WITH STAFF. THE REFERENCE TO THE LOCATION OF THE CHILDRENS' PLAY AREAS SHOULD BE THAT WHICH IS REFLECTED ON THE PLANS.

ADDITIONALLY, THE CHURCH STILL INDICATED THEY DO NOT AGREE WITH THE STAFF RECOMMENDATION TO CLOSE ACCESS FROM MARASCHINO AND CAUSE ALL ACCESS TO OCCUR FROM PINWOOD DRIVE. THE TRAFFIC REPORT CONDUCTED INDICATED THIS ACTION MAY CREATE MORE OF A PROBLEM THEN IT IS INTENDED TO FIX.

MR. DE YOUNG ALSO SPOKE TO THE ISSUE OF CONTINUED USE OF THE HOUSES FOR CHURCH PURPOSES DURING THE PERMIT PROCESS EVEN THOUGH A CITATION HAD BEEN ISSUED. HE STATED THAT IT WAS HIS EXPERIENCE THAT THE CITY "ALLOWED" SUCH USE OF THE HOMES AS LONG AS THE APPLICANT WAS PURSUING THE NECESSARY REMEDY.

MR. PAK, REPRESENTING THE CHURCH, BRIEFED THE COMMISSION ON WHAT HAD OCCURRED OVER THE PAST THREE MONTHS. HE STATED THAT TWO COMMUNITY MEETINGS HAD BEEN HELD AND THAT THE CHURCH LISTENED TO THE COMMUNITY AND BELIEVES THAT THEY HAVE TAKEN STEPS TO ADDRESS MANY OF THOSE CONCERNS.

APPROXIMATELY TWELVE MEMBERS FROM THE COMMUNITY WERE PRESENT TO SPEAK AGAINST THE PROPOSAL. MANY OF THE SPEAKERS REITERATED THE ISSUES BROUGHT OUT AT THE LAST MEETING, INCLUDING PARKING, UNSUPERVISED CHILDREN, VECTOR CONTROL (RATS) FROM THE TRASH, NOISE, TRAFFIC, AND A CONCERN THAT THE CHURCH MIGHT NOT ABIDE BY CONDITIONS IN A PERMIT SINCE THEY HAVE NOT ABIDED BY THE LAWS RELATED TO THEIR USE FOR THE PAST SEVERAL YEARS.

ONE RESIDENT SUGGESTED THAT THE COMMISSION CONSIDER CONVERSION OF JUST TWO (2) HOMES FOR NOW TO SEE IF THE CHURCH WAS A GOOD NEIGHBOR. IF AFTER 2 YEARS A REVIEW SHOWED THAT THE CHURCH WAS ABIDING BY THE REGULATIONS, THEN MAYBE CONSIDER FURTHER EXPANSION.

SEVERAL MEMBERS OF THE CHURCH COMMUNITY WERE ALSO PRESENT TO SPEAK IN FAVOR OF THE EXPANSION. MANY SPOKE TO THE INFLUENCE THE CHURCH HAS HAD ON THEM AND THEIR DESIRE TO RETURN TO THE COMMUNITY AND GIVE BACK WHAT THEY HAD RECEIVED.

IN RESPONSE TO AN EARLIER QUESTION, MR. DENNIS PAK INDICATED THAT ABOUT 1/3 OF THE PARISHONERS LIVE WITHIN 3 MILES OF THE FACILITY, 58% LIVE WITHIN 5 MILES OF THE FACILITY AND THAT THERE ARE 46 FAMILIES THAT LIVE IN COUNCIL DISTRICT 1. MR. PAK ALSO INDICATED TO THE COMMISSION THAT THEY BELIEVED THAT BECAUSE THEY WERE MAKING A GOOD FAITH EFFORT TO COMPLY WITH THE CITY CITATION, THEY COULD CONTINUE TO USE THE HOMES FOR CHURCH PURPOSES.

MR. DE YOUNG CONCLUDED THE APPLICANT'S RESPONSE INDICATING THAT THE CHURCH UNDERSTANDS THE CONDITIONS PROPOSED AND IS WILLING TO ABIDE BY THEM, WITH THE EXCEPTION OF THE TWO ISSUES IDENTIFIED

AT THE BEGINNING OF THE HEARING. MR. DE YOUNG ALSO ENCOURAGED THE COMMISSION TO SUPPORT THIS PROPOSAL AS BEING THE VEHICLE TO GET THE CHURCH TO RESPOND TO THE ISSUES IN THE NEIGHBORHOOD.

COMMISSIONER JAMES PUT ON THE RECORD THAT HE HAD ATTENDED A MEETING WITH THE CHURCH ELDERS.

COMMISSIONER LEVY INDICATED THAT HE HAD A CONCERN THAT THERE WERE THREE ADDITIONAL LOTS, ONE ON PINWOOD AND TWO ON MARASCHINO, THAT COULD BE ADDED TO THE CHURCH'S HOLDING THAT MIGHT INDICATE AN EVEN LARGER EXPANSION OF THE CHURCH IN THE FUTURE.

COMMISSIONER ZITO EXPRESSED SOME FRUSTRATION OVER THE CHURCH CONTINUING TO OCCUPY THE HOMES SINCE THE LAST PUBLIC HEARING. HE SAW THE THREE MONTHS HAD BEEN AN OPPORTUNITY FOR THE CHURCH TO SHOW A GOOD FAITH EFFORT, HOWEVER, HE ALSO RECOGNIZED THE INPRACTICALLITY OF STOPPING USE OF THE HOUSES ONLY TO REOCCUPY AFTER A SHORT PERIOD.

THE PUBLIC HEARING WAS CLOSED AND STAFF RESPONDED TO ISSUES RAISED IN THE DISCUSSION. STAFF INDICATED NO PROBLEM WITH MODIFYING THE CONDITION RELATED TO THE CHILDRENS' PLAY AREA TO REFLECT WHAT IS ON THE PLANS. STAFF ALSO INDICATED CONTINUED SUPPORT FOR THE CLOSING OF THE DRIVEWAYS AND ACCESS ON MARASCHINO, AS THERE IS NO INDICATION THAT TRAFFIC ON WILLIAMS WOULD BE AFFECTED. OFF-SITE PARKING WOULD STILL BE REQUIRED IF AN INCREASE IN OCCUPANCY WERE DESIRED. THE ALTERNATIVE POSSIBILITY WOULD BE TO HOLD MULTIPLE SERVICES. STAFF INDICATED THAT THE FENCING AROUND THE PERIMETER SHOULD BE RETAINED, REPAIRED, AND ENHANCED BY THE CHURCH AND MAINTENANCE WOULD BECOME THE FULL RESPONSIBILITY OF THE CHURCH. STAFF ALSO INDICATED THAT HANDICAP RAMPS AND IMPROVEMENTS TO THE TRASH ACCOMMODATIONS HAD BEEN INCLUDED AS CONDITIONS OF THE PERMIT.

COMMISSIONER PLATTEN MOVED TO APPROVE THE PROPOSAL CONSISTENT WITH STAFF RECOMMENDATION AND COMMENT.

COMMISSIONER JAMES HAD SOME QUESTIONS RELATED TO THE DETAILS OF THE LANDSCAPING ALONG MARASCHINO WHERE THE DRIVEWAYS WERE TO BE CLOSED. STAFF RESPONDED THAT THE EXISTING BERM WOULD BE CONTINUED AND A LOW-LYING FENCE INTEGRATED BEHIND THE LANDSCAPING TO DISCOURAGE PARKING ALONG MARASCHINO AND ENTRY ONTO THE SITE. COMMISSIONER JAMES INDICATED HE WOULD SUPPORT THE MOTION.

COMMISSIONER ZITO EXPRESSED CONCERN OVER THE CHURCH'S DISRESPECT OF THE NEIGHBORHOOD, HOWEVER, GIVEN THAT THIS

CONDITIONAL USE PERMIT WOULD PROVIDE BETTER PROTECTION FOR THE AREA RESIDENTS, HE WOULD BE SUPPORTING THE PROPOSAL.

COMMISSIONER LEVY INDICATED HE WAS NOT SUPPORTIVE OF THE FULL EXPANSION BUT OF A MUCH SMALLER ONE.

COMMISSIONER CAMPOS INDICATED HE DID NOT ACCEPT THE CHURCH'S CONTINUED USE OF THE HOMES AFTER THE FIRST HEARING, AND STATED HE COULD NOT SUPPORT THE PROPOSAL, BASED IN PRINCIPLE.

COMMISSIONER PLATTEN WAS SUPPORTIVE OF THE PROPOSAL GIVEN THE LACK OF CONTROLS CONTAINED IN THE CURRENT USE EXCEPTION FOR THE CHURCH.

COMMISSIONER DHILLON STATED HE FELT THAT PROGRESS HAD BEEN MADE AND HE HAD NOT EXPECTED MUCH IMPROVEMENT BETWEEN THE FIRST AND SECOND HEARINGS. HE STATED HE SUPPORTED THE NEW RULES.

COMMISSIONER LEVY STATED HE BELIEVED THIS WAS A SET UP FOR A MUCH LARGER EXPANSION IN THE FUTURE.

THE COMMISSION VOTED 5-2-0 (COMMISSIONERS LEVY AND CAMPOS OPPOSED) TO APPROVE THE CONDITIONAL USE PERMIT. THE FULL COMMISSION VOTED 7-0 TO CONTINUE THE ITEM FOR TWO WEEKS FOR PREPARATION OF THE RESOLUTION.

5. PETITIONS AND COMMUNICATIONS

- a. Public comments to the Planning Commission on nonagendized items. Please fill out a speaker's card and give it to the technician. Each member of the public may address the Commission for up to three minutes. The commission cannot take any formal action without the item being properly noticed and placed on an agenda. In response to public comment, the Planning Commission is limited to the following options:
 1. Responding to statements made or questions posed by members of the public; or
 2. Requesting staff to report back on a matter at a subsequent meeting; or
 3. Directing staff to place the item on a future agenda.

6. REFERRALS FROM CITY COUNCIL, BOARDS, COMMISSIONS OR OTHER AGENCIES

NONE

7. GOOD AND WELFARE

- a. Report from City Council
- b. Commissioners' reports from Committees:
 - Norman Y. Mineta San Jose International Airport Noise Advisory Committee (James).
 - Coyote Valley Specific Plan (Platten)
 - Evergreen East Hills Vision Strategy Task Force (Levy)
- c. Review of synopsis
- d. Discuss and Schedule Annual Retreat

RETREAT SET FOR DECEMBER 8, 2005

8. ADJOURNMENT

2005 PLANNING COMMISSION MEETING SCHEDULE

January 12	5:00 p.m. - 6:00 p.m.	<i>Study Session</i> <i>Discussion of Meeting Logistics</i>	Room 400
January 12	6:00 p.m.	Regular Meeting	Council Chambers
January 26	6:00 p.m.	Regular Meeting	Council Chambers
Monday, February 7	4:45 p.m.	<i>Study Session</i> <i>Discussion of Jobs/Housing Imbalance</i>	Room 400
Monday, February 7	6:00 p.m.	Regular Meeting	Council Chambers
February 23	6:00 p.m.	Regular Meeting	Council Chambers
March 9	4:45 p.m.	<i>Study Session</i> <i>Discussion of General Plan Amendments/development projects</i>	Room 400
March 9	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
March 23	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Monday, April 11	CANCELLED	<i>Study Session</i> <i>Discussion of Alcohol sales</i>	Room 400
Monday, April 11	6:00 p.m.	Regular Meeting	Council Chambers
April 27	6:00 p.m.	Regular Meeting	Council Chambers
Monday, May 2	4:00 p.m.	<i>Study Session</i> <i>Review CIP</i>	Room 216B
Monday, May 2	6:00 p.m.	Regular Meeting	Council Chambers
May 11	4:00 p.m.	<i>Study Session</i> <i>Discussion of Parks planning strategy (Joint session with Parks Commission)</i>	Room 400
May 11	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
May 25	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Thursday, June 2	5:00 p.m.	<i>Study Session</i> <i>Discussion of Jobs/Housing/Transportation Policy Update</i>	Room 106E
Thursday, June 2	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Monday, June 6	6:00 p.m.	General Plan/Regular Meeting	Council Chambers
Tuesday, June 7	6:30 p.m.	General Plan/Regular Meeting	Health Bldg. Rm. 202A/B
June 8	CANCELLED	Regular Meeting	Council Chambers
Wednesday, June 15	6:00 p.m.	Regular Meeting	Council Chambers
June 22	6:00 p.m.	Regular Meeting	Council Chambers
July 13	CANCELLED	Regular Meeting	Council Chambers
July 27	6:00 p.m.	Regular Meeting	Council Chambers (801 N. 1 ST St.)
August 10	6:00 p.m.	Regular Meeting	Council Chambers (801 N. 1 ST St.)
Meetings August 24th and subsequent located in Council Chambers on 200 East Santa Clara St.			
August 24	6:30 p.m.	Regular Meeting	Council Chambers
September 14	6:30 p.m.	Regular Meeting	Council Chambers
September 28	6:30 p.m.	General Plan/Regular Meeting	Council Chambers
October 12	6:30 p.m.	Regular Meeting	Council Chambers
October 26	5:00 p.m.	<i>Study Session</i> <i>Joint Airport Land Use/Planning Commission</i>	Room T-332
October 26	6:30 p.m.	Regular Meeting	Council Chambers
November 9	6:30 p.m.	Regular Meeting	Council Chambers
November 16	5:00 p.m.	<i>Study Session</i> <i>Joint Planning/Parks Commission</i>	Room W-120
November 16	6:30 p.m.	Regular Meeting	Council Chambers
December 7	6:30 p.m.	Regular Meeting	Council Chambers