



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 28, 2009

APPLICATION: **Six Month Review for Conditional Use Permit Amendment No. UA08-0010: Club Bahia**

APPLICATION SUMMARY: Review the approval to allow seating on the dance floor during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the existing restaurant.

LOCATION: 78 Dempsey Road (APN: 088-04-001)
APPLICANT: Maria De Jesus Zauala, 78 Dempsey Road, Milpitas CA 95035
OWNER: Joseph Levng, P.O. Box 36033, Milpitas, CA 95035

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing;
2. Note Receipt and File; and
3. Maintain six month reviews.

PROJECT DATA:
General Plan/
Zoning Designation: Retail Sub-Center / Neighborhood Commercial (C1)
Overlay District: Site and Architectural
Related Permits: Use Permit No. 1132

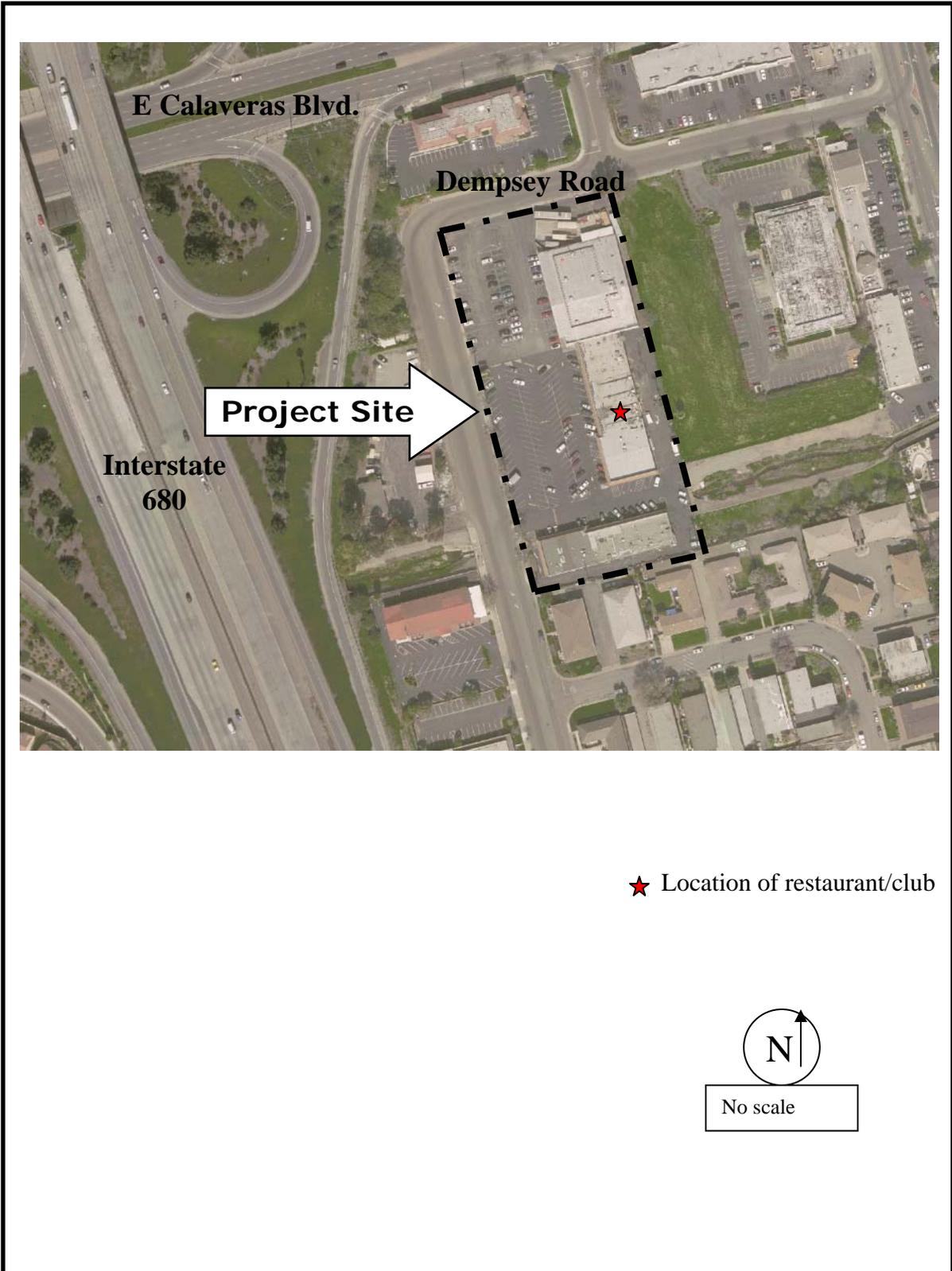
CEQA Determination: Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

PLANNER: Tiffany Brown

PJ: 2534

ATTACHMENTS: A. Staff Report for UA08-0010 from July 9, 2008
B. Resolution No. 08-32 adopted July 9, 2008
C. Minutes from July 9, 2008 Planning Commission meeting

LOCATION MAP



BACKGROUND

On July 9, 2008 the Planning Commission approved a Conditional Use Permit Amendment No. UA08-0010, for Club Bahia to allow for seating on the dance floor area during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the existing restaurant located within the Fiesta Plaza Shopping Center.

Prior to approval of the project, the Commissioners required a six and 12 month review of the permit to insure that there will be no issues with the new amendments. The condition reads as follows:

5. *Six months and 12 months after issuance of the certificate of occupancy, the applicant must return to the Planning Commission for a review on Conditional Use Permit Amendment No. UA08-0010 to address any concerns that may have occurred. (PC)*

ISSUES

For this review, staff has checked with the City of Police and Code Enforcement. To date, there has not been an abnormal amount of service calls to the Police Department for the restaurant. Code Enforcement had an issue with a Taco Truck parking in front of the store around the hours of 8:00p.m. and 2:00a.m. The applicant did not know that they were not permitted to have the taco truck. Code enforcement went out and talked to the owner about the taco truck. The owner immediately corrected the problem and the issue was resolved on October 9, 2008.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been no inquiries from the public.

CONCLUSION

During the last six months there have been some reported incidents. Staff is continuing to react and resolve issues as they are reported. As stated in the conditions of approval for the Conditional Use Permit, the next six month review would occur in July. Based on the reported issues, staff's position is to maintain the six month reviews.

STAFF RECOMMENDS THAT the Planning Commission note, receipt, and file the SIX MONTH REVIEW FOR CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010, Club Bahia and maintain the six month reviews.

ATTACHMENTS:

- A. Staff Report for UA08-0010 for July 9, 2008
- B. Resolution No. 08-32 adopted July 9, 2008
- C. Minutes from July 9, 2008



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: July 9, 2008

APPLICATION: **Conditional Use Permit Amendment No. UA08-0010: Club Bahia**

APPLICATION SUMMARY: A request to amend a condition of approval to allow seating on the dance floor during restaurant/dining hours and allow the service of a full range of alcoholic beverages for the restaurant that currently serves beer and wine. No additional changes to the operation or restaurant are requested.

LOCATION: 78 Dempsey Road (APN: 088-04-001)
APPLICANT: Maria De Jesus Zauala, 78 Dempsey Road, Milpitas CA 95035
OWNER: Joseph Levng, P.O. Box 36033, Milpitas, CA 95035

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing; and
2. Adopt Resolution No. 08-032 approving the project and conditions of approval.

PROJECT DATA:
General Plan/
Zoning Designation: Retail Sub-Center / Neighborhood Commercial (C1)
Overlay District: "S" Zone District, for Architectural Review
Related Permits: Use Permit No. 1132

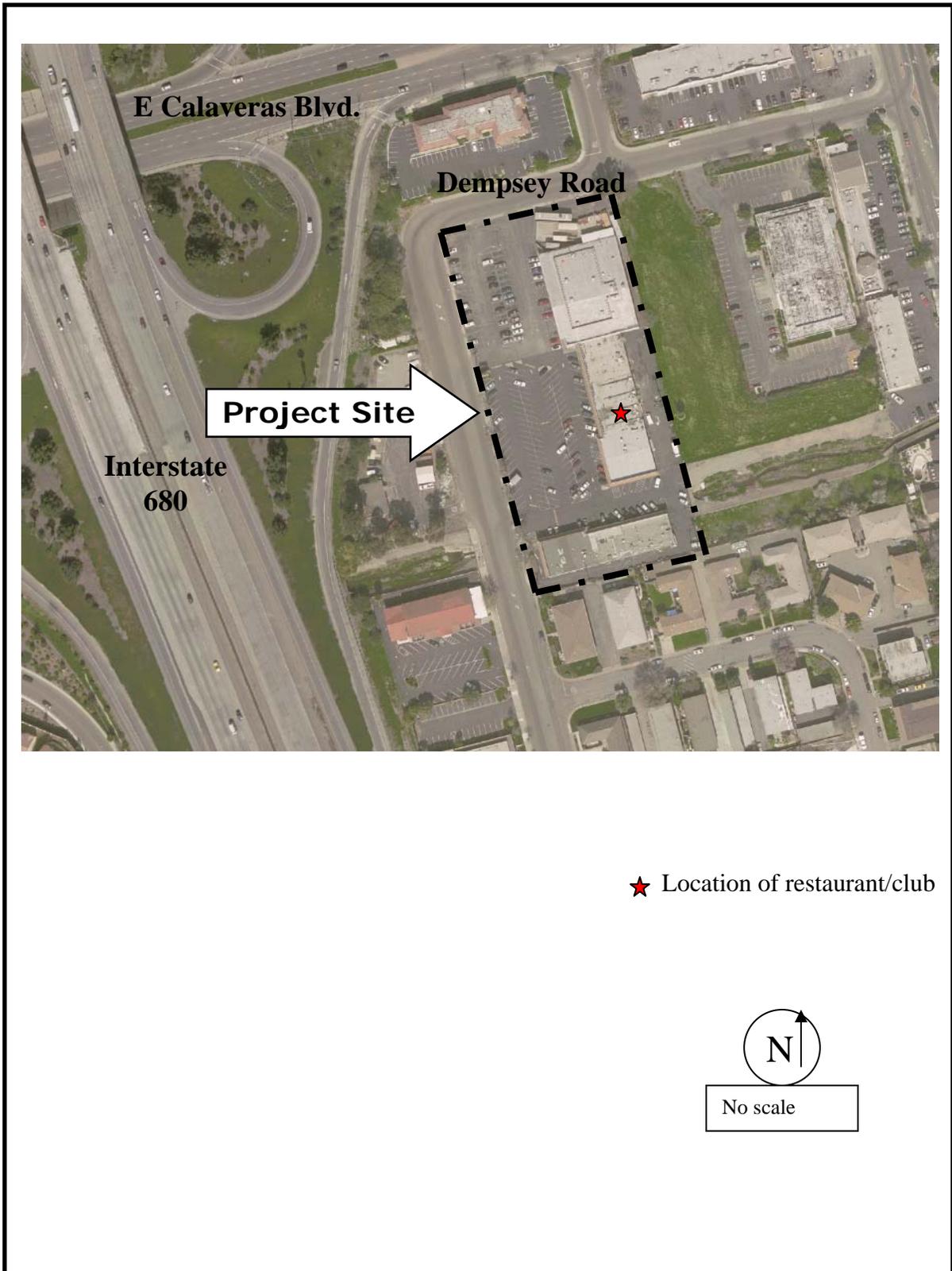
CEQA Determination: Categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities" of the California Environmental Quality Act (CEQA) guidelines.

PLANNER: Tiffany Kunsman

PJ: 2534

ATTACHMENTS: A. Resolution No. 08-032/Findings/Conditions of Approval
B. Site Plans
C. Comments from Milpitas Police Department
D. Restaurant Menu
E. Conditional Use Permit No. 1132

LOCATION MAP



BACKGROUND

On April 22, 1992 the Planning Commission approved a Use Permit for a restaurant with live entertainment, dancing , and the service of beer and wine within the Fiesta Plaza Shopping Center. On May 5, 2008, Maria De Jesus Zauala submitted an application to amend a previous condition of approval and allow the service of a full range of alcoholic beverages. According to the Milpitas Zoning Ordinance Section 57, Conditional Uses Permitted, the proposal requires a Conditional Use Permit Amendment with the approval of Planning Commission.

PROJECT DESCRIPTION

The restaurant is located within a 2,400 square foot tenant space located next to Savors, Halal Market and Gomez Market. The existing layout includes a kitchen with work area, a storeroom, two restrooms, a dining room, a dance floor, and a bar with counter area. The office hours include Sunday through Thursday 10:00 A.M. – 10:00 P.M. and on Friday and Saturday 10:00 A.M. – 2:00A.M. The restaurant menu consisting of gorditas, quesadillas, tacos, seafood, etc and the service of beer and wine. The restaurant is in compliance with the existing Conditional Use Permit approved in 1992.

The applicant would like to amend previously approved condition of approval number three to allow dinning seats on the dance floor area during the day and transition the tables off the dance floor during live entertainment hours. Live entertainment and music for dancing will start at 9:00P.M. The proposal does not include the request to allow for more dinning seats.

Condition of Approval #3

The applicant shall not expand the dining room area into the approved dance floor area. Therefore, no seating shall be allocated within the designated dance floor area.

The zoning for this site is Neighborhood Commercial (C1) and the surrounding zones are also Neighborhood Commercial. A vicinity map of the subject site location is included on the previous page.

Issues

Since 2001, several officer-initiated incidents at the 78 Dempsey Road address and parking lot have been noted and include general patrol checks and pedestrian / vehicle stops. Before 2003, police had three significant calls for service which included a vice activity, two for public disturbances, and one narcotic's violation. These activities occurred under different owners and while the restaurant was named LyLy Café.

The current owner has possessed the property since January of 2007. The only calls of service to the police department since then include five alarm calls and two disturbances where the owner reported juveniles hanging out in the parking lot. The restaurant has also been a victim of an attempted burglary.

The police department concludes given that there has only been a slight volume of calls for service for this establishment under it's current ownership, they anticipate the addition of hard liquor sales in conjunction with the restaurant not to be a problem. (*See attachment B*)

The police also recommended that the applicant install video/security cameras at the entrance, cash register, and the safe area. And suggested that the business should be equipped with a monitored burglar, robbery, and panic alarm. The applicant turned in a certificate providing proof of installation for the alarm system and video surveillance installation.

The California Department of Alcoholic Beverages Control (ABC) was contacted to confirm that the project site will not add to or create an over-concentrated area utilizing liquor licenses for the sale/consumption of alcoholic beverages. ABC confirmed that this project site is not located within an over-concentrated area and included that the Census tract (tract#5044.18) containing the project site is allowed up to seven full range of alcoholic beverage licenses and currently has a total of five alcohol licenses. The draft conditions of approval contained in the resolution include the relevant conditions from the original conditional use permit.

ADOPTED PLANS AND ORDINANCES CONSISTENCY

General Plan

The table below outlines the project’s consistency with applicable General Plan Guiding Principles and Implementing Policies:

Table 2
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-3: Encourage economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent.
<i>2.a-I-5: Maintain policies that promote a strong economy which provides economic opportunities for all Milpitas residents within existing environmental , social fiscal and land use constraints.</i>	Consistent.

Zoning Ordinance

The proposal is consistent pursuant to Section 18.03-17: *Restraints which include the on-premise consumption of alcoholic beverages when found clearly incidental to the primary food service.* The sale of alcohol is in conjunction with the restaurant and no bar is considered with this application.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). Staff determined that the project is categorically exempt from further environmental review pursuant to Section 15301, “Existing Facilities” of the California Environmental Quality Act (CEQA) guidelines.

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, there have been two inquiries from the public. The first inquiry is from a tenant within the center in regards to loud music playing throughout the day and not just during entertainment hours. The second was a message from a nearby residence and is opposed to the existing restaurant with entertainment.

CONCLUSION

The restaurant with live entertainment as is, is consistent with the previously approved Conditional Use Permit. The proposal is within the means of a restaurant and entertainment service. Since the application does not include the addition of a bar or adding more seats than what was previously approved, placing seats on the dance floor and the addition of a full range of alcoholic beverages is incidental to the primary restaurant use. Allowing Club Bahia to serve a full range of alcoholic beverages will not present a significant impact in public health or safety because the restaurant already serves beer and wine; the restaurant will not play live entertainment/amplified music for the purpose of dancing until 9:00P.M. to be courteous to the neighboring tenants, and because the close proximity to residence, Club Bahia will keep their doors closed during entertainment hours to help keep the noise level down to a non offensive level.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve **CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010, Club Bahia**, subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 08-032/Findings/Conditions of Approval
- B. Site Plans
- C. Comments from Police Department
- D. Restaurant Menu
- E. Conditional Use Permit No. 1132

RESOLUTION NO. 08-032

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010, CLUB BAHIA, TO AMEND A CONDITION OF APPROVAL, MINOR TENANT IMPROVEMENTS, AND ALLOW THE SERVICE OF A FULL RANGE OF ALCOHOLIC BEVERAGES FOR THE RESTURANT THAT CURRENTLY SERVES BEER AND WINE LOCATED AT 78 DEMPSEY ROAD.

WHEREAS, on May 5, 2008, an application was submitted by Maria De Jesus Zauala, 78 Dempsey Road, Milpitas, CA 95035, to amend a condition of approval to allow seating on the dance floor during restaurant/dinning hours, minor tenant improvements for an interior patio area, and allow the service of a full range of alcoholic beverages for the restaurant that currently serves beer and wine. The property is located within the Neighborhood Commercial zoning district (APN088-04-001); and

WHEREAS, the Planning Division completed an environmental assessment for the project in accordance with the California Environmental Quality Act (CEQA), and recommends that the Planning Commission determine this project categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities."

WHEREAS, on July 9, 2008, the Planning Commission held a duly noticed public hearing on the subject application, and considered evidence presented by City staff, the applicant, and other interested parties.

NOW THEREFORE, the Planning Commission of the City of Milpitas hereby finds, determines and resolves as follows:

Section 1: The recitals set forth above are true and correct and incorporated herein by reference.

Section 2: The project is categorically exempt from further environmental review pursuant to Section 15301, "Existing Facilities

Section 3: The proposed use, at the proposed location will not be detrimental or injurious to the property or improvements in the vicinity nor to the public health, safety, and general welfare.

Section 4: The proposed use is consistent with the Milpitas General Plan because it is ancillary to a restaurant, which promotes and encourages economic pursuits. (General Plan, Implementation Policy, 2.a-I-3 and 2.1-I-5).

Section 5: The proposed use is consistent with the Milpitas Zoning Ordinance pursuant to Title XI, Chapter 10, Section 18.03-17 (Neighborhood Commercial, Conditional Uses-Restaurants, on-premise consumption of alcoholic beverages), and Section 57

(Conditional Use Permitted by Commission) in that the proposed use is a conditionally permitted use with the approval of the Planning Commission.

Section 6: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit Amendment No. UA080010, Club Bahia, subject to the above Findings, and Conditions of Approval attached hereto as Exhibit 1.

PASSED AND ADOPTED at a regular meeting of the Planning Commission of the City of Milpitas on July 9, 2008

Chair

TO WIT:

I HEREBY CERTIFY that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on July 9, 2008, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	OTHER
Cliff Williams			
Gunawan Ali-Santosa			
Lawrence Ciardella			
Alexander Galang			
Sudhir Mandal			
Gurdev Sandhu			
Noella Tabladillo			
Aslam Ali			

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010**

General Conditions

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on July 9, 2008, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance.

- a) These conditions of approval shall supersede the previous conditions of approval.
2. Conditional Use Permit Amendment No. UA08-0010 is for a restaurant as a primary use that includes on-site dining, takeout foods, onsite consumption of a full range of alcoholic beverages, sale of cigarettes, dancing, live entertainment, amplified music, and no more than six video game tables. The tenant space is 2,400 square feet with a maximum of 59 seats total. Hours of operation are Sundays through Thursdays, 10:00A.M. – 10:00P.M., Fridays and Saturdays from 10:00A.M. – 2:00A.M.
3. Conditional Use Permit Amendment No. UA08-0010 shall become null and void if the project is not commenced within 18 months from the date of approval. Pursuant to Section 64.04-2 of the Zoning Ordinance of the City of Milpitas, since the project requires the issuance of a business license, the project shall not be deemed to have commenced until the date of the business license is issued.

Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of UA08-0010 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

4. Live entertainment and amplified sound for the purpose of dancing and entertainment shall not play until 9:00 P.M. and not go passed 2:00A.M. The restaurant shall keep doors and windows closed during those hours amplified music is played. Any amplified sound playing throughout the day shall be at a level not to disturb neighboring tenants.
5. Six months and 12 months after issuance of the certificate of occupancy, the applicant must return to the Planning Commission for a review on Conditional Use Permit Amendment No. UA08-0010 to address any concerns that may have occurred. (PC)

APPROVED

PLANNING COMMISSION SUBCOMMITTEE MINUTES

July 9, 2008

I. ROLL CALL

Present: Ali-Santosa and Williams
Absent: None
Staff: Ah Sing, Bejines and Hom

1. ADMINISTRATIVE PERMIT NO. AD08-0008

Cindy Hom, Assistant Planner, presented a request to hold a one day outdoor event for the Popular Science's Virtual Sports Tour to be held on July 18, 2008 between the hours of 10:00 a.m. to 8:00 p.m. at the Great Mall parking lot area near Falcon Drive and Great Mall Drive. Ms. Hom recommended the Commission approve the project subject to special conditions of approval.

Chair Williams asked where the portable bathrooms will be located and Ms. Hom said there will not be any.

Chair Williams requested that the applicant work with staff regarding restrooms.

Motion to approve Administrative Permit No. AD08-0008.

M/S: Williams/Ali-Santosa

AYES: 2

NOES: 0

2. SITE DEVELOPMENT PERMIT AMENDMENT NO. SA08-0015

Cindy Hom, Assistant Planner, presented a request for landscape modifications to the approved landscaping plan to accommodate installation of ground mounted photovoltaic panels to be installed on the Humane Society of Silicon Valley animal facility site located at 901 Ames Ave. Ms. Hom recommended approval subject to special conditions of approval.

Motion to approve Site Development Permit Amendment No. SA08-0015.

M/S: Williams/Ali-Santosa

AYES: 2

NOES: 0

3. MINOR SITE DEVELOPMENT PERMIT AMENDMENT NO. MA08-0002

Cindy Hom, Assistant Planner, presented a request to renovate existing landscaping and hardscape to achieve LEED standards on the Cisco campus located at 707 Tasman Ave. Ms. Hom recommended approval subject to special conditions of approval.

Motion to approve Minor Site Development Permit Amendment No. MA08-0002.

M/S: Williams/Ali-Santosa

AYES: 2

NOES: 0

II. ADJOURNMENT

This meeting was adjourned at 6:50 p.m.

APPROVED

PLANNING COMMISSION MINUTES

July 9, 2008

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL/SEATING
OF ALTERNATE**

Present: Gunawan Ali-Santosa, Larry Ciardella, Sudhir Mandal
Gurdev Sandhu and Cliff Williams

Alternate Present: Aslam Ali

Absent: Alex Galang

Tardy: Noella Tabladillo

Staff: AhSing, Bejines, Kunsman, Lindsay and Ogaz

**III.
PUBLIC FORUM**

Chair Williams invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL
MINUTES
June 11, 2008**

OF Chair Williams called for approval of the minutes of the Planning Commission meeting of June 11, 2008.

There were no changes to the minutes.

Motion to approve the minutes of June 11, 2008.

M/S: Mandal/Ali-Santosa

AYES: 5

NOES: 0

ABSTENTION: 1 (Sandhu)

**V.
ANNOUNCEMENTS**

James Lindsay, Planning and Neighborhood Services Director, announced that there will be a High Rise Development Tour sponsored by the Silicon Valley Leadership Group on Friday August 1st from 8 a.m. to 1 p.m. Please let the recording secretary if you will be attending.

**VI.
CONFLICT
OF INTEREST**

City Attorney Mike Ogaz asked if any member of the Commission has any personal or financial conflict of interest related to any of the items on tonight's agenda.

There were no Commissioners who identified a conflict of interest.

APPROVED

Planning Commission Minutes

July 9, 2008

**VII.
APPROVAL OF
AGENDA**

Commissioner Tabladillo arrived at 7:04 p.m.

James Lindsay, Planning and Neighborhood Services Director, requested that Item No. 2 (Brown Act Review) be put at the end of the agenda.

Commissioner Ali-Santosa pointed out that Agenda Item No. 8 (Specific Plan Amendment No. ST08-001) recommendation should read continue Item to July 23, 2008.

Motion to approve the agenda as modified.

M/S: Mandal/Tabladillo

AYES: 7

NOES: 0

**VIII.
CONSENT CALENDAR**

Chair Williams asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay recommended that Item No. 8 (Specific Plan Amendment No. ST08-001) be added to the consent calendar.

Vice Chair Mandal recommended that Item No. 5 (Conditional Use Permit No. UP08-0010 and Site Development Permit No. SA08-0012) and Item No. 7 (Zoning Amendment No. ZA08-005) be added to the consent calendar.

Chair Williams opened the public hearing on Item Nos. 3, 5, 7 and 8.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Sandhu/Mandal

AYES: 7

NOES: 0

Commissioner Ali-Santosa asked if staff has the Federal Communications Commission (FCC) license for Item No. 3 (Conditional Use Permit No. UA08-0009 and Site Development Permit Amendment No. SA08-0016) and Mr. Lindsay said yes.

Motion to approve Consent Item Nos. 3, 5 and 7.

M/S: Ali-Santosa/Mandal

AYES: 7

NOES: 0

Motion to Continue Item No. 8 to the July 23, 2008 Planning Commission meeting.

M/S: Mandal/Ali-Santosa

AYES: 7

NOES: 0

APPROVED
Planning Commission Minutes
July 9, 2008

- *3 **CONDITIONAL USE PERMIT NO. UA08-0009 and SITE DEVELOPMENT PERMIT AMENDMENT NO, SA08-0016:** A request to add a 15 foot extension to an existing mono-pole facility located at 1010 Ames Ave. (*Recommendation: Close the public hearing and Adopt Resolution No. 08-029 approving the project subject to Conditions of Approval.*)
- *5 **CONDITIONAL USE PERMIT NO. UP08-0010 and SITE DEVELOPMENT PERMIT NO. SA08-0012:** A request for approval of a sign program for the existing building located at 300-500 Abbott Ave. Five monument signs and 47 building signs are proposed for the site. The main monument sign along S. Abbott Ave. is approximately 25 feet in height. The remaining signs are less than 6 feet in height. (*Recommendation: Close the public hearing and Adopt Resolution No. 08-028 approving the project subject to Conditions of Approval.*)
- *7 **ZONING AMENDMENT NO. ZA08-005:** A request to amend the Zoning Ordinance, the implementing document of the City's General Plan. The amendments include reformatting sections of the code for consistency and consolidating sections to streamline the implementation of the document. Specifically, the amendments include changes to the Definitions, Applications (entitlements), General Provisions, Overlay Districts and Standards sections and the addition of a new section for Special Uses. (*Recommendation: Close the public hearing and adopt Resolution 08-031 recommending approval of amendments to the City Council.*)
- *8 **SPECIFIC PLAN AMENDMENT NO. ST08-001:** A request to amend the Midtown Specific Plan, a long range plan outlining development standards and opportunities for approximately 850-acres located in the midtown area of the City generally bounded by the Union Pacific Railroad lines to the east and north, Abel Street and Elmwood Rehabilitation Center to the west and the City Limits to the south. The amendments include removing references in the text descriptions, policies and figures to the areas now encompassed by the Transit Area Specific Plan, recently adopted by the City Council on June 3, 2008. (*Recommendation: Continue item to the July 23rd PC meeting.*)

**IX.
PRESENTATION**

**1. SOLAR ENERGY
TECHNOLOGY**

Christine Benninger, Humane Society President, and Mike Jolley, Tioga Energy Vice President, presented on solar energy technology that will be incorporated into the new Humane Society building currently under construction.

Vice Chair Mandal asked why only half of the facility will have solar energy and Mr. Jolley said it is because of limited space.

Vice Chair Mandal asked about the landscape plan. Chair Williams said they were presented the landscape plans at the subcommittee meeting.

Commissioner Sandhu asked if the rain will affect the solar panels and Mr. Jolley said it will reduce the amount of power.

Commissioner Ali asked how long will it take to complete the facility and Mr. Jolley said approximately 6 to 8 months.

Commissioner Tabladillo asked about the partnership between Humane Society and Tioga Energy and Mr. Jolley said Tioga Energy will be collecting tax credits.

Chair Williams said this project is a note receipt and file.

APPROVED
Planning Commission Minutes

July 9, 2008

**X.
PUBLIC HEARING**

**4. CONDITIONAL USE
PERMIT NO. UP07-0001
AND ENVIRONMENTAL
IMPACT ASSESSMENT
NO. EA08-0002,
CROSSPOINT CHURCH
OF SILICON VALLEY**

Tiffany Kunsman, Junior Planner, presented a request to locate a church facility within a 38,837 square foot industrial building located at 638 Gibraltar Court. Ms. Kunsman recommended to Adopt Resolution No.08-033 approving the project subject to the findings and Conditions of Approval.

Commissioner Tabladillo said she was interested in having an educational component to be able to assist church members in case of an emergency. Ms. Kunsman said it is part of the emergency action plan which is listed as conditions of approval.

Chair Williams said the Commission received a letter from a property owner against the project and asked if they wished to speak. There was no response.

Chair Williams introduced the applicant.

Pastor Chiu, Crosspoint Church, said they need clarification on condition nos. 1, 7, 8 and 11 that read below:

1. *The owner or designee shall develop the approved project in conformance with the approved plans and color and materials sample boards approved by the Planning Commission on July 9, 2008 in accordance with these Conditions of Approval.*

Any deviation from the approved site plan, floor plans, elevations, materials, colors, landscape plan, or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

7. *Warning notification signs shall be posted at all entrances to the building. The signs shall serve to advise building occupants of potential hazards within the surrounding industrial area. Proposed verbiage shall be submitted for Fire Department review. Sign may be required in multiple languages, as appropriate for occupants of the building. (P, F, Mitigation Measure 5)*
8. *The plans indicate rooms for childcare including but not limited to Sunday school room(s) and Youth Centers(s). Thus the applicant shall prepare to the satisfaction of the Fire Department and implement a parental notification process for any activities involving children. The notification shall include a description of how each parent will be notified of the nature of hazards in the area and the emergency procedures that will be in place to protect their children and what procedures the parents need to follow in the event of each type of anticipated emergency. The business owner or operator shall maintain records of notification signed by each parent, stating that they understand and accept the procedures that are in place. Records shall be updated annually and readily available for review by Fire Department when requested. (P, F, Mitigation Measure 6)*

11. *Both the Risk Assessment and The Emergency Action Plan shall be reviewed, updated and submitted to the Fire Department for review on an annual basis. This review shall incorporate any changing conditions within industry and chemical usage within the area. It shall also incorporate any engineering/administrative controls and technological advances available. An individual meeting the Fire Department requirements shall prepare the updated plans. If the review shows additional chemical hazards mitigation measures shall be implemented for the new hazards. (P, F, Mitigation Measure 9)*

Mr. Lindsay said the conditions that are on the use permit are similar conditions that the Commission has approved to similar religious facilities and a karate studio within the industrial area. These are conditions that the Fire Dept. has recommended to ensure the disclosure and safety of uses of these non-industrial businesses within the industrial areas. Regarding Condition No. 8, staff is agreeable to strike out the word and accept to the second to the last sentence. For Condition No. 1, staff would recommend striking out the words color and materials sample boards.

Regarding Condition No. 7, City Attorney Mike Ogaz said there is not a state provision that require warning notification signs. The zoning code requires that the Commission make certain findings in order to approve a conditional use permit. One of the findings is that they find that the project is consistent with the health and safety of the public. The reason for this condition is so that the commission can make that finding because there are sufficient protections in place that the public health and safety is considered. In addition, there is a CEQA document that is a mitigated negative declaration that is an approval that there are no environmental impacts but because it is a mitigated negative declaration, it requires mitigation measures to say there will be no negative effects on the environment. In this case, the conditions are necessary mitigation measures for the CEQA document so it is supportive that it will not cause any negative impacts.

Vice Chair Mandal asked if condition no. 7 needs to be updated annually. Mr. Lindsay said it does not need to be updated on an annual basis. The emergency action plan and system security monitoring system for condition no. 11 will need to be updated on an annual basis.

Vice Chair Mandal asked how would the applicant know if other companies are using hazardous materials? Mr. Lindsay said it is up to the applicant to get the information from the Fire Department.

Commissioner Ciardella asked how the monitoring system works. Mr. Lindsay said that chemical sensors detect a certain chemical and attach it to a warning system that will immediately shut down the HVAC system in the building so the occupants can shelter in place.

Commissioner Tabladillo said she supports the church however the Commission made it clear that they will be going into a heavy industrial environment and want to make sure that the occupants are protected.

After further discussion between the applicant, staff and the commission, Condition No. 1 and 8 were modified as follows with an additional special condition:

APPROVED
Planning Commission Minutes

July 9, 2008

1. *The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on July 9, 2008 in accordance with these Conditions of Approval.*

Any deviation from the approved site plan, floor plans or other approved submittal shall require that, prior to the issuance of building permits, the owner or designee shall submit modified plans and any other applicable materials as required by the City for review and obtain the approval of the Planning Director or Designee. If the Planning Director or designee determines that the deviation is significant, the owner or designee shall be required to apply for review and obtain approval of the Planning Commission, in accordance with the Zoning Ordinance. (P)

8. *The plans indicate rooms for childcare including but not limited to Sunday school room(s) and Youth Centers(s). Thus the applicant shall prepare to the satisfaction of the Fire Department and implement a parental notification process for any activities involving children. The notification shall include a description of how each parent will be notified of the nature of hazards in the area and the emergency procedures that will be in place to protect their children and what procedures the parents need to follow in the event of each type of anticipated emergency. The business owner or operator shall maintain records of notification signed by each parent, stating that they understand the procedures that are in place. Records shall be updated annually and readily available for review by Fire Department when requested. (P, F, Mitigation Measure 6)*
12. *Six months and 12 months after issuance of the certificate of occupancy, the applicant must return to the Planning Commission for a review on Conditional Use Permit No. UP07-0002 and to address any concerns that may have occurred. (PC)*

Motion to approve Conditional Use Permit No. UP07-0001 and EIA No. EA 08-0003, Crosspoint Church of Silicon Valley subject to the attached resolution, conditions of approval and modifications to Conditions Nos. 1 and 8 and new condition no. 12 stated above.

M/S: Sandhu/Mandal

AYES: 7

NOES: 0

**6. CONDITIONAL USE
PERMIT AMENDMENT
NO. UA08-0010**

Tiffany Kunsman, Junior Planner, presented a request to amend a condition of approval to allow seating on the dance floor during restaurant/dining hours and to allow the service of a full range of alcoholic beverages for the restaurant that currently serves beer and wine located at 78 Dempsey Road. No additional changes to the operation or restaurant use are requested. Ms. Kunsman recommended closing the public hearing and Adopt Resolution No. 08-032 approving the project subject to Conditions of Approval.

Chair Williams introduced the applicant.

Maria, 78 Dempsey Road, Milpitas, said she is available to answer any questions.

Commissioner Sandhu asked what is the name of the restaurant. Maria said it is called Club Bahia.

Commissioner Sandhu asked if it is next to Gomez market and Maria said yes.

Commissioner Ali suggested that the applicant rent a security guard for Friday and Saturday nights.

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Commissioner Tabladillo asked what kind of music will be played and Maria said banda music.

Commissioner Tabladillo asked how large is the facility on Story Road and the applicant said it is a little bit bigger than the Milpitas facility.

Commissioner Tabladillo asked if the applicant is extending the hours to 2 a.m. to receive more clientele and Maria said yes.

Commissioner Tabladillo asked the applicant how she will be advertising her business and Maria said she is undecided.

Commissioner Ali-Santosa suggested a six and twelve month review.

Chair Williams opened the public hearing.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Sandhu/Mandal

AYES: 7

NOES: 0

Vice Chair Mandal asked if the Commission could include a condition of approval for the security guard. Ms. Kunsman said the police department reviewed the project and they do not have any issues with the project. They did ask the applicant to put in a security alarm and video cameras and the applicant has complied.

Mr. Lindsay said the applicant has demonstrated a track record of compliance with the police department.

Commissioner Ciardella said it would be advantageous for the applicant to hire a security guard but he doesn't think it is necessary.

Motion to approve Conditional Use Permit Amendment No. UA08-0010, subject to the attached resolutions and conditions of approval and a six and twelve month review.

M/S: Mandal/Sandhu

AYES: 6

NOES: 1 (Tabladillo)

XI. PRESENTATION

2. BROWN ACT REVIEW City Attorney Mike Ogaz presented the provisions of the Ralph M. Brown Act, which govern open meetings for local government bodies.

Commissioner Tabladillo asked if the City Council Agenda is finalized eight days prior to the meeting. City Attorney Mike Ogaz said it is a draft agenda and is finalized 72 hours prior to the meeting.

Commissioner Ciardella asked if there have ever been a violation of the Brown Act where four Commissioners have a secret meeting outside of the office. City Attorney Mike Ogaz said he is not aware of any violations in the City of Milpitas.

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Commissioner Ali-Santosa asked if the Commission made a decision and the decision was found to be invalid because of a Brown Act violation, who would make the final decision. City Attorney Ogaz said he would look into it and get back to the Commission.

Commissioner Sandhu asked if it is a violation of the Brown Act if more than four members attend the Planning Commission Subcommittee meeting. City Attorney Ogaz said it is not a violation of the Brown Act. The key is not to talk about items on the agenda.

Commissioner Ciardella asked if it is a violation if a Commissioner who submits an application to the Planning Commission contacts other Commissioners about the project and City Attorney Ogaz said it would be a violation.

Vice Chair Mandal asked if it is a violation of the Brown Act, if more than four members of the Commission meet at the same time with an applicant and City Attorney Ogaz said yes.

Chair Williams said he chooses not to meet with applicants and would rather hear public testimony at the meeting.

City Attorney Ogaz said the greatest risk with meeting with an applicant is that the Commissioner gets information that the rest of the Commissioners do not have however the applicant does have the right to contact Planning Commission members and the Planning Commissioner does have the right to choose not to meet with the applicant.

Mr. Lindsay said the Planning Commission bylaws does not prohibit but discourages ex parte communication and asks the Commission to disclose it when it does occur.

Commissioner Tabladillo asked what the difference with Council members is. City Attorney Ogaz said as elected officials they feel they have the duty to meet with anyone and it is within their discretion.

Commissioner Tabladillo asked if Council members who meet with applicant's need to disclose it on the City's calendar and City Attorney Ogaz said they should be disclosing it.

Commissioner Sandhu asked if Commissioners are limited to how many questions they could ask and City Attorney Ogaz said there is no legal limits however the Chair conducts the meeting and it is his discretion to keep the meeting going.

Chair Williams thanked City Attorney Ogaz for the presentation.

XII. ADJOURNMENT

The meeting was adjourned 9:35 p.m. to the next regular meeting of July 23, 2008.

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Veronica Bejines
Recording Secretary

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