



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: February 11, 2009

APPLICATION: **CONDITIONAL USE PERMIT NO. UP08-0042 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0006**

APPLICATION SUMMARY:

A request to operate a certified Farmers' Market within the Great Mall parking lot on Sundays from 8:00a.m. until 1:00p.m. during the months of April until the first Sunday prior to Thanksgiving.

LOCATION:

1100 S Main Street (APN: 86-24-060)

APPLICANT:

Chang B. Yang, 2343 South Hughes Avenue, Fresno, California 93706

OWNER:

Richard Gallagher, 477 Great Mall Drive, Milpitas, CA 95035

RECOMMENDATION:

Staff recommends that the Planning Commission:

- 1. Close the public hearing; and**
- 2. Approve the project subject to the attached Resolution and conditions of approval.**

PROJECT DATA:

General Plan/

Zoning Designation:

General Commercial / General Commercial (C2)

Overlay District:

Site and Architectural Overlay District (-S)

Related Permits:

CEQA Determination:

A negative declaration was prepared and circulated in accordance with the California Environmental Quality Act.

PLANNER:

Tiffany Brown

PJ: 2559

ATTACHMENTS:

- Resolution No. 09-009
- Letter from Applicant
- Letter from Great Mall
- January 28, 2009 Staff Report
- Meeting Minutes from the January 28, 2009 Planning Commission Meeting.

LOCATION MAP



BACKGROUND

On October 13, 2008, Chang B. Yang submitted an application requesting to operate a farmers market at the great mall. The area proposed is within the vicinity of the new Transit Area Specific Plan and existing residential. This application requires a conditional use permit per section 19.03-16.1 of the Milpitas Municipal Code with the approval of the Planning Commission.

On January 28, 2009, the Planning Commission held a duly noticed public hearing where there was public testimony received on the project and Staff's presentation for this project. The Commissioners discussed and agreed to continue the item to have the applicant discuss with the Great Mall an alternate day and time for the market. The Planning Commission had concerns that the proposed market would conflict with the date and time of the recently approved Farmers Market near Calaveras Boulevard and Los Coches. Also, the Commissioners also expressed concerns about traffic and wanted more information from staff to clarify the issue.

PROJECT DESCRIPTION

The project request is to operate a certified Farmers' Market within the parking area closest to McDonalds/Chevron. The proposed hours of operation will be on Sundays from 8:00a.m. until 1:00p.m. during the months of April through the first Sunday prior to Thanksgiving in November. For further details about the market, please refer to the project description in the attached January 28, 2009 Staff Report (*See attachment D*)

Farmers Market schedule

The applicant wrote a letter to the Great Mall management in regards to the Planning Commissions request for the day and time change of the proposed Farmers Market (*See attachment B*). In response, the Great Mall wrote a letter (*See attachment C*) and stated that the only available time for the Farmers Market to operate on the mall property is on Sundays from 8:00a.m. until 1:00p.m. because of other leasing constraints that the Mall has with Heald Collage.

Traffic

The market is a temporary use that will have a traffic control plan, as discussed under the *Pedestrian safety/Parking* section in the Staff Report for the January 28, 2009 Planning Commission Meeting. The traffic control plan shows how traffic will be controlled while the Great Mall parking area is temporarily occupied by the market. The traffic control plan was reviewed and approved by staff to provide for the safe operation that will decrease any potential hazards. During the review of the traffic control plan, staff also reviewed the project in regards to the amount of traffic that the market may create. Multiple traffic studies have been done for the Great Mall in the past and were part of the review. The review concluded that a traffic study is not required for this type of use due to the use being temporary and that the operating hours for the market are during the non-peak hours for the Great Mall.

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 1
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-10: Foster community pride and growth through beautification of existing and future development.</i>	Consistent. The farmers market will foster community pride by bringing the community together to enjoy a farmers market. The market is a temporary use that brings beauty in the form of showing the vitality of the community to the existing parking lot that on any given day would be an empty lot.
<i>2.a-I-3: Encourage Economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent. The market encourages economic pursuits which serves the existing community and future development that may emerge from the new Transit Area Specific Plan.

Zoning Ordinance

Per Chapter 10, Section 57.03-5 of the Milpitas Municipal, Conditional Use Permits May be granted by the Planning Commission if all of the following findings are made, based on the evidence in the public record:

- (a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor the public health, safety, and general welfare;
The proposed use is conducted entirely within the proposed facility, the project meets the parking requirements, the mitigations pertaining to hazardous materials lower the risk to less than significant, and the project proposal does not include exterior modifications that may take away from the industrial character of the business park.
- (b) The proposed use is consistent with the Milpitas General Plan(*As noted on the previous page under General Plan*); and
- (c) The proposed use is consistent with the Milpitas Zoning Ordinance.

The project site is located within the General Commercial Zoning District. The Farmers Market proposal is a conditionally permitted use within the General Commercial Zoning District per Milpitas Municipal Code Chapter 10, Section 19.03-16.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). A negative declaration (Environmental Assessment No. EA08-0006) was prepared and circulated from December 23, 2009 to January 23, 2009, in accordance with the California Environmental Quality Act.

PUBLIC COMMENT/OUTREACH

Comments were made at the January 28, 2009 Planning Commission meeting. Minutes of the meeting are provided as *Attachment E*. At the time of writing this report, there have been two comments

received. One is the letter from the applicant in regards to the Farmers Market schedule changes, and the second comment is a letter from the Great Mall, also in regards to the Farmers Market schedule changes. (*See attachments B and C*)

CONCLUSION

The project proposal is consistent with the Milpitas General Plan and Zoning Ordinance. The farmers market is locating directly across from existing residential and the Transit Area Specific Plan area. Staff's position is that the market will serve the existing residents and shoppers of Milpitas and will provide a pedestrian-friendly opportunity for the new High Density Residential homes that are permitted in the Transit Area Specific Plan. Staff's position is that the market, although operating on the same date and time as the recently approved farmers market for the Indian Community Center, will provide not only two convenient opportunities for residents at two different locations, but will also provide a larger variety of foods and other merchandise that may not all be displayed in one farmers market.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve UP08-0042 and adopt EA08-0006, subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 09-009
- B. Letter from Applicant
- C. Letter from Great Mall
- D. January 28, 2009 Staff Report
- E. Meeting Minutes from the January 28, 2009 Planning Commission Meeting.

RESOLUTION NO. 09-009

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP08-0042 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0006, TO ALLOW THE OPERATION OF A CERTIFIED FARMERS MARKET WITHIN THE GREAT MALL PARKING LOT ON SUNDAYS FROM 8:00A.M. UNTIL 1:00P.M. SIX MONTHS OUT OF THE YEAR LOCATED AT 1100 S MAIN STREET.

WHEREAS, on October 13, 2008, an application was submitted by Chang B. Yang, 2343 South Hughes Ave, Fresno, CA, A request to operate a certified Farmers' Market within the Great Mall parking lot on Sundays from 8:00a.m. until 1:00p.m. during the months of April until the first Sunday prior to Thanksgiving. The property is located within the General Commercial zoning district (APN: 86-24-060); and

WHEREAS, the Planning Division prepared and circulated a Negative Declaration for the Conditional Use Permit request to establish a farmers' market at the Great Mall in accordance with Article 6 of the California Environmental Quality Act Guidelines. The environmental assessment determined there would be no significant impacts related to this project. The document was circulated between December 23, 2008 through January 23, 2009; and

WHEREAS, on January 28, 2009, 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 and continued the item to the February 11, 2009 Planning Commission Meeting; and

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: A negative declaration was prepared and circulated in accordance with the California Environmental Quality Act. The project is will not have a significant impact on the environment.

Section 3: The project is consistent with the Milpitas General Plan Guidelines and Policies 2.a-I-10 and 2.a-I-3 in that the farmers market will foster community pride by bringing the community together to enjoy the market and the market is a temporary use that brings beauty in the form of showing vitality of the community to the existing parking lot that on any given day would be an empty parking lot. The market encourages economic pursuits which serves the existing community and future development.

Section 4: The project is consistent with the Milpitas Zoning Ordinance in that the farmers market is a conditionally permitted use pursuant to section 57.03-5. The proposed

project is will not be detrimental or injurious to property or improvements in the vicinity nor the public health, safety, and general welfare.

Section 5: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit No. UP08-0042 and EA08-0006 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 February 11, 2009.

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 February 11, 2009, and carried by the following roll call vote:

COMMISSIONER	AYES	NOES	ABSENT	ABSTAIN
Cliff Williams				
Aslam Ali				
Lawrence Ciardella				
Alexander Galang				
Sudhir Mandal				
Gurdev Sandhu				
Noella Tabladillo				

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP08-0042 AND EA08-0006**

General Conditions

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 February 11, 2009, in accordance with these Conditions of Approval.

Any deviation from the approved site plan or other approved submittal shall require the owner or designee to 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)

2. This Conditional Use Permit No. UP08-0042 is for the request to operate a certified Farmers' Market within the Great Mall parking lot on Sundays from 8:00a.m. until 1:00p.m. during the months of April until the first Sunday prior to Thanksgiving in November. (P)
3. There will be NO vehicles allowed to drive around within the market area during hours of operation. The only vehicles allowed within the market area will be the venders vehicles, during set up time at 6:00a.m. and after the market is closed and cleaned up around 2:00p.m. (P)
4. The applicant will provide trash bins throughout the market area during hours of operation to ensure the area will stay clean. An agreement has been set up with McDonalds/Chevron to utilize their trash and recycling facilities after the market is over. (P)
5. In accordance with the approved Traffic Control Plan, the Market operator shall install and remove Traffic control Elements for each event including R1-6 and T1-6a Signs. Signs should be mounted on Type II Barricades unless noted otherwise. Farmers Market Staff shall provide two flaggers for the first months of the event to guide Pedestrians from Parking Areas to the Event. The City shall evaluate the on-going use of flaggers for future events. Traffic Control Element shall be in place by 7:00a.m. each event day. Traffic control Elements shall be removed by 2 P.M. each event day. (P)
6. This use shall be conducted in compliance with all appropriate local, state and federal laws and regulations and in conformance with the approved conditional use permit. (P)

7. No music, performances or special event activities (i.e., cooking show, recipe contests, face painter) will be allowed within 200 feet of any residential property line unless specifically approved by the Planning Director or designee. (P)
8. The market operator is responsible for leaving the parking lot area clean and litter-free after each event. (P)
9. All foods must be produced, prepared, packaged, stored, transported and marketed in compliance with County Environmental Health Standards. The Market operator shall maintain in good standing all necessary health permit for the operations of the Market and shall be responsible for requiring all vendors to be in possession of necessary health permits for all products sold. (P)
10. The market operator shall obtain a master business license with the City of Milpitas for participating farmers and other vendors. (P)
11. The market operator shall enter into an indemnification agreement by which it agrees to defend, indemnify and hold harmless the City, its officers, agents and employees from any and all claims, damages, cost and other expense, including attorney fees, arising out of its approval of the conditional use permit, or environmental determination rendered in connection with the permit approval, or arising from or as a result of any actions by the Market pursuant to the conditional use permit. (P)
12. Applicant is advised that, per MMC V-200-7.61, *Right of Individual to Dispose of Recyclable Waste Material*, that individual vendors, or the farmers' market organization, may keep or "back haul" non-putrescible recyclable materials. (E)
13. Applicant/property owner shall be responsible for the trash collection and recycling services account. Prior to any permit issuance, the applicant shall submit evidence to the City that the following minimum refuse and recycling services have been subscribed with Allied Waste Services/BFI for commercial services:
 - a. Maintain an adequate level of service for trash collection.
 - b. Maintain an adequate level of recycling collection.
 - c. After the applicant has started its business, the applicant shall contact Allied Waste Services/BFI commercial representative to review the adequacy of the solid waste level of services. If services are determined to be inadequate, the applicant shall increase the service to the level determined by the evaluation. For general information, contact BFI at (408) 432-1234, x-264.(E)
14. The U.S. Environmental Protection Agency (EPA) has empowered the San Francisco Bay Regional Water Quality Control Board (RWQCB) to administer the National Pollution Elimination Discharge System (NPDES) permit. The NPDES permit requires all dischargers to eliminate as much as possible pollutants entering our receiving waters.

Contact the RWQCB for questions regarding your specific requirements at (800) 794-2482. For general information, contact the City of Milpitas at (408) 586-3329. (E)

15. It is the responsibility of the developer to obtain any necessary permits or approvals from affected agencies or private parties, including but not limited to the Chevron/McDonald for the use of their facilities (restrooms). Copies of any approvals or permits must be submitted to the City of Milpitas Engineering Division. (E)
16. Prior to building permit issuance, developer must pay all applicable development fees, including but not limited to plan check and inspection deposit, and 2.5% building permit automation fee. (E)

(P): Planning

(E): Engineering

Chang B. Yang
2343 S. Hughes Ave
Fresno, CA 93706
January 29, 2009

JAN 29 2009

CITY OF MILPITAS
PLANNING DIVISION

City of Milpitas Planning Division
455 E. Calaveras Blvd
Milpitas, CA 95035

Dear Planning Commissioner:

Re: Conditional Use Permit # UP 08-0042 Great Mall Certified Farmers Market

First of all, I'd like to thank you for taking time out of your busy schedule to read my letter and consider my request. As indicated in the Public Hearing on January 28, 2009, my project is going to be decided at the next Public Hearing.

I am going to contact the mall ASAP. Whether or not the mall would let me operate the farmers market on weekdays, I will let you know as soon as I have an answer. Meanwhile, I'd like to again assure you that I still prefer Sundays rather than any other days of the week because Sundays is the only day that the mall is open at 11:00 a.m. instead of 10:00 a.m. minimizing potential traffic congestion and it is the only day that is convenient to me.

As you may be aware of, there are hundreds of farmers markets through out California, many of them are as close to each other as less than a mile. Please refer to the accompanying list of farmers markets for detail. To name a few, for example, on page 20 of 24, I find that:

1. The San Jose Kaiser CFM (14) and the San Jose Santa Teresa CFM (16) are both on Saturdays and located about .32 miles away from each other only.
2. The San Jose Alameda CFM (7) and the San Jose Willow Glen (18) are both on Saturdays and are about 2.3 miles away from each other.
3. On page 1 of 24, I also find that the Oakland Fruitvale CFM (18) and the Oakland Jack London CFM (21) are both on Sundays and are about .87 miles away from each other only.

Thus two farmers markets located in the same city operating on the same day of the week are common or typical. ICC is about 2.4 miles away from the proposed site. Because of population density and the distance, competition should be minimal. Even if competition exists, it cannot be sufficient ground for denial of my application or to be forced to accept some other day.

Consider the tobacco store that was on the agenda on 1-28-09 Public Hearing. There is an existing business in the area that sells basically similar products. This one and the proposed one would certainly compete with each other, yet it had been approved. According to the city's Zoning Ordinances, there are no restrictions on the number of businesses allowed in the city, even if operated on the same day of the week.

Because of my thirteen years of experience in the farmers market industry and continuing education, I can assure you that I do have the needed knowledge and ability to operate/manage

the farmers market. I know pretty much everything there is to know about direct marketing and its rules and regulations. I will make sure it is in compliance with the guidelines, ordinances, rules and regulations of the city, county, state, and various governmental agencies.

Additionally, the issues on trash, restrooms, and security had already been dealt with. The contract and/or letter stating that the mall allows the farmers market to utilize the mall's trash and recycle bins, restrooms, and the mall's security personnel will be helping when needed are on file.

As of right now I have no idea what the mall's response will be. However, I still prefer Sundays rather than Wednesdays or Thursdays. I do appreciate your patience and consideration.

Should you have any questions and/or comments prior to the next Public Hearing, please do not hesitate to call me any time at (559) 250-2674 or email me at tubelijahyaaj@hotmail.com.

Cordially,


Chang B. Yang

c/c: Tiffany Brown, city planner
Jory Thomas-everhadt, Great Mall's leasing manager

County	Name	City	Location	Days	Times	Phone	Assoc	Manager
ALAMEDA	Alameda CFM	Concord	Taylor & Webster	Tues	9:30A-1P	800-949-FARM	PCFMA	Bill Harlow
ALAMEDA	Berkeley Sat CFM	Berkeley	Center St. & Martin Luther King	Sat	10A-3P	510-548-3333	Berkeley CFMA/ Ecology Center	Ben Feldman
ALAMEDA	Berkeley Thur CFM	Berkeley	Shattuck Ave. & Rose St.	Thurs	3P-7P	510-548-3333	Ecology Ctr / Berkeley CFMA	Ben Feldman
ALAMEDA	Berkeley Tuesday CFM	Berkeley	Derby & Martin Luther King	Tues	2P-7P	510-548-3333	Ecology Ctr / Berkeley CFMA	Ben Feldman
ALAMEDA	Castro Valley CFM	Fremont	Bart Parking Lot-Redwood & Norbridge Ave	Sat	9A-1P, May-Oct	510-745-7100	Urban Village FMA	Donna Swanson & Ron Pandini
ALAMEDA	E. Oakland CFM	Oakland	73rd Ave. & International Blvd	Fri	10A-2P, May-Nov	510-638-1742	East Oakland Faith Deliverance	Shene Bowie & Wilma Gaines
ALAMEDA	E. Oakland Senior Center CFM	Oakland	9255 Edes Ave at Jones Ave	Wednesday	10:30A-2:30P	510-562-8989		Frank Rose
ALAMEDA	Fremont Centerville CFM	Fremont	Bonde Way & Fremont Blvd	Sat	9A-1P	510-909-2067	Fremont Farmers Market Association	Bruce Young
ALAMEDA	Fremont Kaiser CFM	Concord	39400 Paseo Padre Parkway	Thurs	10A-2P	800-949-FARM	PCFMA	Chris Hanks
ALAMEDA	Fremont Nummi CFM	Fremont	Grimmer and Fremont Blvd	Fri	2P-6P, May-Nov	510-909-2067	Fremont Farmers Market Association	Bruce Young
ALAMEDA	Hayward CFM	San Rafael	Main & B St	Sat	9A-1P	800-897-FARM	MCFMA	Alpha Lewis
ALAMEDA	Hayward Kaiser	Concord	Hesperian & Tenneyson	Wed	10A-2P	800-949-FARM	PCFMA	Vidal Marga
ALAMEDA	Irvington CFM	Concord	Bay & Fremont Blvd	Sun	9A-1P	800-949-FARM	PCFMA	AJ Silveira
ALAMEDA	Livermore CFM	Concord	Carnegie Park & 3rd & J	Thurs	4P-8P, May-Oct	800-949-FARM	PCFMA	Tom Dorn
ALAMEDA	Lodi	Concord	Taylor & Webster	Thurs	4P-8P, Jun-Sep	800-949-FARM	PCFMA	Denise Hardy
ALAMEDA	Newark CFM	San Rafael	Newark Park Mall	Sun	9A-1P	800-897-FARM	MCFMA	Tyler Thayer
ALAMEDA	Oakland Claremont Ave Sun CFM	Fremont	5300 Claremont Ave (DMV parking lot)	Sun	9A-1P	510-745-7100	Urban Village FMA	James Cochrane & Ron Pandini
ALAMEDA	Oakland Fruitvale Sun CFM	Oakland	34th Ave. and E.12th St. (Near Bart)	Sun	10A-3P	510-535-6926	Unity Council	Tom Limon
ALAMEDA	Oakland Fruitvale Thurs CFM	Oakland	34th Ave. and E.12th St. (Near Bart)	Thurs	2P-7P	510-535-6926	Unity Council	Tom Limon
ALAMEDA	Oakland Grand Lake CFM	San Rafael	Grand Ave and Macarthur Blvd	Sat	9A-2P	800-897-FARM	MCFMA	Jim Ferron
ALAMEDA	Oakland Jack London CFM	Concord	Broadway & Embarcadero	Sun	10A-2P	800-949-FARM	PCFMA	Tom Dorn

ATTACHMENT B

GREAT MALL

ATTACHMENT C
RECEIVED

FEB 02 2009

CITY OF MILPITAS
PLANNING DIVISION

January 29, 2009

Re: Great Mall Farmers Market
Certified Farmers Market c/o Chang B. Yang

Location: Great Mall Parking Outlot

To Whom it May Concern:

Great Mall would like to advise the City of Milpitas Planning Commission that the presented location for the Farmers Market is only permitted on Sundays during the times of 8am through 1pm.

The reason for this allotted day and time is that Great Mall has prior arrangements with Heald College during the other days of the week. Great Mall will not be able to offer this location to Chang B. Yang's Farmers Market at any other time due to this arrangement.

Any questions in regards to this letter may be directed towards the Mall Management office, attention Richard Gallagher, General Manager.

Sincerely,



Richard Gallagher
General Manager
Great Mall
408-945-4022
Rgallagher@simon.com



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: January 28, 2009

APPLICATION: **CONDITIONAL USE PERMIT NO. UP08-0042 AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0006**

APPLICATION SUMMARY: A request to operate a certified Farmers' Market within the Great Mall parking lot on Sundays from 8:00a.m. until 1:00p.m. during the months of April until the first Sunday prior to Thanksgiving.

LOCATION: 1100 S Main Street (APN: 86-24-060)
APPLICANT: Chang B. Yang, 2343 South Hughes Avenue, Fresno, California 93706
OWNER: Richard Gallagher, 477 Great Mall Drive, Milpitas, CA 95035

RECOMMENDATION: **Staff recommends that the Planning Commission:**
1. Close the public hearing; and
2. Approve the project subject to the attached Resolution and conditions of approval.

PROJECT DATA:
General Plan/
Zoning Designation: General Commercial / General Commercial (C2)

Overlay District: Site and Architectural Overlay District (-S)
Related Permits:

CEQA Determination: A negative declaration was prepared and circulated in accordance with the California Environmental Quality Act.

PLANNER: Tiffany Brown
PJ: 2559

ATTACHMENTS: A. Resolution No. 09-009
B. Environmental Impact Assessment No. EA08-0006
C. Public Comment Letters

LOCATION MAP



BACKGROUND

In 1994 the City Council approved an application to bring a “Great Mall” to the City of Milpitas. The purpose and intent was to reuse the former Ford manufacturing plant site and create a state of the art shopping center that not only appeals to shoppers of the Bay area, but provides a large area for all types of temporary events for the community and visitors of Milpitas.

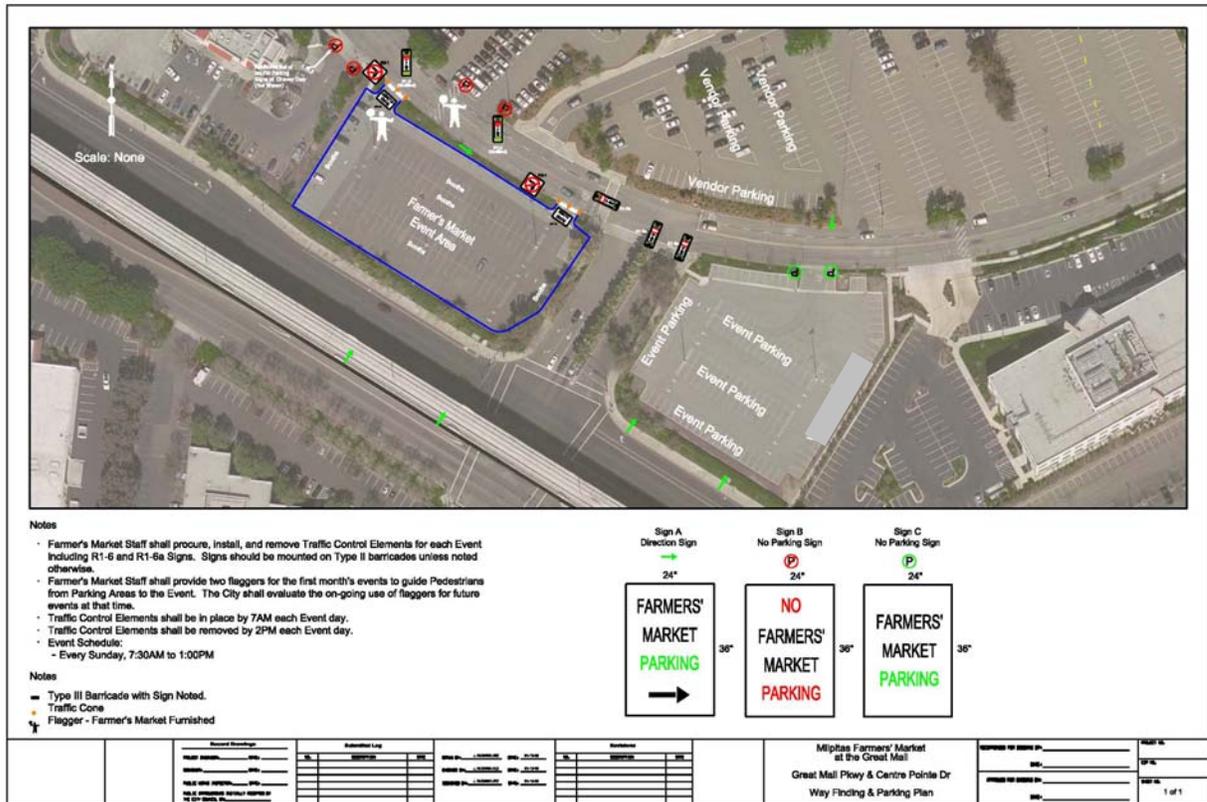
On October 13, 2008, Chang B. Yang submitted an application requesting to operate a farmers market at the great mall. The area proposed is within the vicinity of the new Transit Area Specific Plan and existing residential. This application requires a conditional use permit per section 19.03-16.1 of the Milpitas Municipal Code with the approval of the Planning Commission.

PROJECT DESCRIPTION

The project site is a flat asphalt parking lot that primarily serves the Great Mall. The section of parking is located on the southwest portion of the parking lot in-between McDonalds/Chevron and Mustang Drive. The parking lot is considered a periphery lot, since anyone parking there would have to cross Great Mall Drive and traverse through an additional field of parking to enter the mall. There are five (5) driveway entrances that provide access to the site; south entrance – Falcon Drive, west entrances – Mustang Drive, Fairlane Drive, Escort Drive, and north entrance – Spirit Walk. A vicinity map of the subject site location is included on the previous page. The property is zoned General Commercial and is surrounded by Very High Density Mixed Use within the Transit Area Specific Plan and High Density Residential.

The project request is to operate a certified Farmers’ Market within the parking area closest to McDonalds/Chevron. The proposed hours of operation will be on Sundays from 8:00a.m. until 1:00p.m. during the months of April through the first Sunday prior to Thanksgiving in November. The market will provide approximately 104 vender stalls. The vender stalls are equivalent to parking stalls in size. Prior to the Market opening, each Vender will park within their parking stall and set up their booth behind their vehicle. During hours of operation, the market area will be for pedestrians only. The only time cars will be moving within the market area will be during set up time at 6:00a.m. and after the market is closed and cleaned up around 2:00p.m. The applicant will provide trash bins throughout the market area during hours of operation. An agreement has been set up with McDonalds/Chevron to utilize their trash and recycling facilities after the market is over. There is an agreement with the Great Mall to use the parking area and also to utilize their Security if necessary. The applicant has submitted a traffic control plan with regard to parking and pedestrian pathways, see *Parking* section below.

Pedestrian Safety/Parking



Safety

The site layout demonstrates staff’s direction to the applicant regarding a safe and efficient transportation flow for both pedestrians and vehicles. As stated earlier, the Farmers Market Event Area will be for pedestrians only during the market hours. The only time vehicles will be driving within the area is to allow vendors to set up before the market begins and after the market ends to break down any tents and move merchandise. The vehicle entrances to the market area will be properly blocked off with Type II barricades and orange cones with a sign indicating “Road Closed.” Along with the entrances being blocked off, two signs will be placed along Great Mall Drive indicating “No Left Turn.” A sign will be placed at the corner of the McDonalds/Chevron parking area stating “No Farmers Market No Parking.” Signs will indicate where Farmers Market Parking is allowed. To ensure that pedestrians will cross Great Mall Drive safely, the Farmers Market Staff will have two flaggers on duty to help direct and calm traffic. For the Mustang Drive and Great Mall Drive intersection, there are currently stop signs and the Market will provide more signage that says “Stop for Pedestrians”. This will ensure the safety of pedestrians and help create a pedestrian friendly environment for the Farmers Market participants.

Parking

The project proposal is a certified farmers market operating once a week on Sundays, 6 months out of the year and is located on an existing parking lot that serves the Great Mall. The various parking lots

around mall have over 5,000 spaces to support the site. It is expected that the market would operate during an off-peak period for the mall. In addition, the market will be on hiatus during the peak holiday shopping period, thus not creating a conflict with the expected increase in patrons to the mall. It is possible that there could be an increase in patrons coming to the mall during the period that the market is operating, but the parking facilities and roadways would have sufficient capacity to accommodate the influx as they are designed for weekday AM/PM peak traffic and holiday parking demand.

The market is a temporary use that will have a traffic flow plan, as discussed under the *safety* section, showing how traffic will operate while the Great Mall parking area is temporarily occupied by the market. The traffic control plan has been reviewed and approved by staff to provide for the safe operation that will decrease any potential hazards.

The Great Mall has a surplus of parking based on the mix of uses and the requirements of the City’s Zoning Ordinance. The Great Mall was approved for a parking reduction in 1999 in conjunction with the remodel of the new entertainment zone at the north end of the Mall. A condition of approval included that the parking demand under both non-holiday and holiday seasons shall not exceed 90% of the parking capacity over a six-hour period. During the holiday season, as defined the period between Thanksgiving and Christmas, the Mall parking exceeded the 90% of parking capacity threshold and was required to secure offsite parking for employees, trained personnel directing traffic, and add informational signage during those months. Knowing that the Mall did not exceed the parking threshold for non-holiday seasons and the Farmers Market’s proposed schedule is from the first Sunday in April to the last Sunday prior to Thanksgiving in November, the market will not operate during the holiday season and therefore will not add to the holiday congestion and will have no conflict with parking demand and supply.

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 1
General Plan Consistency

Policy	Consistency Finding
<i>2.a-I-10: Foster community pride and growth through beautification of existing and future development.</i>	Consistent.
<i>2.a-I-3: Encourage Economic pursuits which will strengthen and promote development through stability and balance.</i>	Consistent.

The farmers market will foster community pride by bringing the community together to enjoy a farmers market. The market is a temporary use that brings beauty in the form of showing the vitality of the community to the existing parking lot that on any given day would be an empty lot. The market encourages economic pursuits which serves the existing community and future development that may emerge from the new Transit Area Specific Plan.

Zoning Ordinance

Per Chapter 10, Section 57.03-5 of the Milpitas Municipal, Conditional Use Permits May be granted by the Planning Commission if all of the following findings are made, based on the evidence in the public record:

- (a) The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor the public health, safety, and general welfare;
The proposed use is conducted entirely within the proposed facility, the project meets the parking requirements, the mitigations pertaining to hazardous materials lower the risk to less than significant, and the project proposal does not include exterior modifications that may take away from the industrial character of the business park.
- (b) The proposed use is consistent with the Milpitas General Plan(*As noted on the previous page under General Plan*); and
- (c) The proposed use is consistent with the Milpitas Zoning Ordinance.

The project site is located within the General Commercial Zoning District. The Farmers Market proposal is a conditionally permitted use within the General Commercial Zoning District per Milpitas Municipal Code Chapter 10, Section 19.03-16.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA). A negative declaration was prepared and circulated from December 23, 2009 to January 23, 2009, in accordance with the California Environmental Quality Act.

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 public comments. The first comment was a representative from the Indian Community Center stating that they are against the farmers market from in regards to their recently approved farmers market. The Milpitas Zoning Ordinance has no restrictions on the number of markets allowed within the City and furthermore, the Conditional Use Permit process ensures that the operation of the facility will not cause any detriment.

In addition, staff received a written comment in opposition to the project. The resident is located within the Parc Place condominiums. The resident opposes the hours of operation and the duration proposed of the market. Parc Place is approximately 3,109 feet or .59 miles away to the north from the proposed farmer's market location. The proposed market duration and hours of operation are typical for a farmers market and because of the location of the market; the traffic and noise impacts associated with the market would be minimized by the distance and the mass of the Great Mall building.
(*See Attachments C*)

CONCLUSION

The project proposal is consistent with the Milpitas General Plan and Zoning Ordinance. The farmers market is locating directly across from existing residential and the Transit Area Specific Plan area. Staff's position is that the market will serve the existing residents and shoppers of Milpitas and will provide a walkable opportunity for the new High Density Residential homes that are permitted in the

Transit Area Specific Plan. Staff's position is that the market, although operating on the same date and time as the recently approved farmers market for the Indian Community Center, will provide not only two convenient opportunities for residents at two different locations, but will also provide a larger variety of foods and other merchandise that may not all be displayed in one farmers market.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission approve UP08-0042 and EA08-0006, subject to the attached Resolution and Conditions of Approval.

Attachments:

- A. Resolution No. 09-009
- B. Environmental Impact Assessment No. EA08-0006
- C. Public Comment Letters

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UNAPPROVED

PLANNING COMMISSION SUBCOMMITTEE MINUTES

January 28, 2009

**I.
ROLL CALL**

Present: Larry Ciardella and Gurdev Sandhu
Staff: Ah Sing, Andrade, and Hom

**1. MINOR SITE
DEVELOPMENT
PERMIT NO. MS09-0001**

Cindy Hom, Assistant Planner, presented a request to install a new illuminated red light band at the top of mansard roof for the restaurant building located at 175 W. Calaveras Blvd. Ms. Hom recommended denying Minor Site Development No. MS09-0001 subject to the Conditions of Approval.

Motion to deny Minor Site Development Permit No. MS09-0001.

M/S: Ciardella, Sandhu

AYES: 2

NOES: 0

**II.
ADJOURNMENT**

This meeting was adjourned at 6:46 p.m.

UNAPPROVED

PLANNING COMMISSION MINUTES

January 28, 2009

**I.
PLEDGE OF
ALLEGIANCE**

Chair Williams called the meeting to order at 7:09 P.M. and led the Pledge of Allegiance.

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

Present: Aslam Ali, Larry Ciardella, Sudhir Mandal, Gurdev Sandhu,
Noella Tabladillo, and Cliff Williams
Absent: Alex Galang
Staff: Ah Sing, Andrade, Barnhart, Brown, Gilli, Lindsay, Oliva, and Otake

**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 agendaize the matter for a future meeting.

Syed Mohsin, CAC Commission, announced the Fourth Annual Town Hall meeting hosted by the Community Advisory Commission, Emergency Preparedness Commission, and the City of Milpitas on Thursday, February 5, 2009, at 7:00 p.m. in the Milpitas Community Center Auditorium.

Carmen Montano and Ha Phan, Library Commission, spoke about a fundraiser to provide preschool literacy, summer reading programs, story times and puppet shows, author visits and book discussion groups, music and craft programs, poetry stories and movies. They are asking for donors who would like to have their names on plaques in the library for those who donate.

**IV.
APPROVAL OF
MINUTES
January 14, 2009**

Chair Williams called for approval of the minutes of the Planning Commission meeting of January 14, 2009.

There were no changes to the minutes.

Motion to approve the minutes of January 14, 2009 as submitted.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**V.
ANNOUNCEMENTS**

Sheldon Ah Sing, Senior Planner, wanted to bring to the Commission's attention that staff has placed 3 memos on the dais for Items 1, 6, and 7.

UNAPPROVED

Planning Commission Minutes

January 28, 2009

**VI.
CONFLICT
OF INTEREST**

Assistant City Attorney Bryan Otake 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.

**VII.
APPROVAL OF AGENDA**

Chair Williams asked whether staff or the Commission have any changes to the agenda. There were no changes to the agenda.

Motion to approve the agenda as submitted.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**VIII.
CONSENT CALENDAR**

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

Sheldon Ah Sing, Senior Planner, requested to change Item No. 5 recommendation to close the public hearing, table the item, and staff will re-notice; change Item No. 6 to be removed from the consent calendar and staff will give a presentation; and Item No. 7 to continue the public hearing to February 11, 2009.

Chair Williams opened the public hearing on Item No. 5.

There were no speakers from the audience.

Motion to close the public hearing on Item No. 5

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Motion to table Item 5 and staff will re-notice.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***5 MAJOR TENTATIVE MAP NO. MT08-0002, CONDITIONAL USE PERMIT NO. UP08-0046, DEVELOPMENT AGREEMENT, OWNER PARTICIPATION AGREEMENT, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0005:** A request to subdivide a 24 acre site into nine (9) parcels for condominium purposes, establish building setbacks, improve existing roads, construction of a new local street, and create an urban plaza and public trail along Penitencia Creek. The project contemplates the future development of 1,573 dwelling units through a 10% density bonus for affordable housing over the entire project and an additional 25% transit density bonus on the properties zoned MXD2. Commercial space totaling 92,757 square feet is also contemplated on three (3) parcels within mixed use buildings. The project also includes a Development Agreement and an Owner Participation Agreement requesting financial assistance from the Redevelopment Agency. The project is located at the intersection of Great Mall Parkway and McCandless Drive (1315 McCandless Drive) (APNs: 086-33-092, 086-33-093, 086-33-094, 086-33-095, 086-33-098, 086-33-099, and 086-33-101), zoned a combination of Residential – Retail High Density Mixed Use and High Density Transit Oriented Residential with Site and Architectural Overlay (MXD2-S and R3-S). Applicant: Integral. Staff Contact: Sheldon S. Ah Sing (408) 586-3278. PJ # 3222. *(Recommendation: Open the public hearing and continue the public hearing to the February 11, 2009 meeting.)*

Motion to continue the public hearing on Item No. 7 to February 11, 2009.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***7 MAJOR TENTATIVE MAP NO. MT08-0001, SITE DEVELOPMENT PERMIT NO. SZ07-0002, CONDITIONAL USE PERMIT NO. UP08-0045, AND ENVIRONMENTAL IMPACT ASSESSMENT NO. EA08-0004:** A request to further develop an existing office campus by adding 424,814 square feet of new office space in six, five story buildings and constructing an elevated parking deck. When built out, the total square footage of the campus would be 1,415,814 square feet. Because of potential environmental impacts stemming from the project, the project is subject to an Environmental Impact Report. The project also proposes a modification to the existing Development Agreement for the site. The project is located at 205 N. McCarthy Ranch Boulevard (APNs: 022-56-005 through 009), zoned Industrial Park with Site and Architectural Overlay (MP-S). Applicant: Equity Office. Staff Contact: Sheldon S. Ah Sing (408) 586-3278. PJ # 3223. *(Recommendation: Adopt Resolution No. 08-066 recommending approval of the project, the first amendment of the Development Agreement and certification of the project EIR, subject to conditions of approval.)*

UNAPPROVED

Planning Commission Minutes

January 28, 2009

Motion to remove Item 6 from the consent calendar.

M/S: Williams, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

***6 SIX MONTH REVIEW FOR CONDITIONAL USE PERMIT AMENDMENT NO. UA08-0010:** Review of the approval which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. The review summarizes any complaints or issues raised by the public during the last six months of operation for the restaurant. (APN: 088-04-001), zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S). Applicant: Maria De Jesus Zauala. Staff Contact: Tiffany Brown (408) 586-3283. PJ # 2534.
(Recommendation: Note receipt and file; and continue until the next 6 month review.)

**IX.
PUBLIC HEARING**

**1. CONDITIONAL USE
PERMIT NO. UP08-0048**

Judi Gilli, Associate Planner, presented a request to operate a Tobacco Shop. The project is located at 1307 Jacklin Rd. Ms. Gilli recommended to Adopt Resolution No. 09-008 recommending approval of the project to the City Council subject to conditions of approval.

Commissioner Ali asked if there were any neighborhood meetings. Ms. Gilli stated there were no meetings; notices were sent out to the surrounding neighborhoods.

Commissioner Tabladillo wanted to know the distance between the tutoring center and the tobacco shop. Ms. Gilli said the tutoring center is at the other end of the complex. Commissioner Tabladillo asked if the customers can smoke in the facility. Ms. Gilli said no the facility is just for selling of retail tobacco.

Commissioner Ciardella asked if there will be video surveillance cameras. Ms. Gilli said staff could add it as a condition.

Chair Williams asked about the traffic situation. Ms. Gilli stated that the complex has about 93 parking spaces and it is at about 20% capacity; it has never been full from what she has seen.

Vice-Chair Mandal asked if there are other facilities in Milpitas of the same type. Ms. Gilli understands there are similar uses in Milpitas.

Charanjit Singh, 1462 Parkington Lane, Tracy, CA, owns a similar store in Stockton. He has visited the other stores and noticed less amount of tobacco. His store would have a greater volume of tobacco and many different varieties.

Commissioner Ciardella asked the applicant if he would be selling glass pipes and rolling paper. Mr. Singh said yes he would be selling pipes and other accessories. Commissioner Ciardella also asked Mr. Singh if he would be willing to put in video surveillance cameras. Mr. Singh said yes he would.

Commissioner Tabladillo asked if he would be selling specialty cigars. Mr. Singh said he would be selling specialty cigars.

Vice-Chair Mandal asked if Mr. Singh had properly trained staff. Mr. Singh stated he does have properly trained staff. He has safety measures to check IDs and his people go to training classes.

Commissioner Sandhu asked if any of the products were imported from other countries. Mr. Singh stated that his products are from California.

Chair Williams asked if there is a proposed sign for age limit. Mr. Singh stated he has a sign in front of the store and inside the store on the counter.

Chair Williams opened the public hearing.

Kevin, Bonfare Market, 1233 Jacklin Road, feels that it would be a conflict of interest. He sells the same type of items in his store.

Joi-Kho Chewi, Save \$ Store, 1343 Jacklin Road, strongly opposes the project. Mr. Chewi store is about 150 ft from the proposed store and he feels Mr. Singh's store would kill his business.

Motion to close the public hearing.

M/S: Tabladillo, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Commissioner Ali stated he spoke to the Police Chief earlier today regarding this matter and to his understanding Mr. Singh is not allowed to sell any type of glass pipes or rolling tobacco. Ms. Gilli stated that the applicant has always responded with the thought that he would be selling pipes and paraphernalia. Chair Williams asked if this was a recommendation or direction from the Police Department. Ms. Gilli stated that the memo that the Commission read is a summary of the conversation between the Police Department and the applicant.

Commissioner Ciardella asked if there is an age limit to buy a glass pipe. Ms. Gilli stated that no there is no age limit.

Chair Williams asked Assistant City Attorney Otake to summarize the legal rulings or understanding relative to tobacco product paraphernalia. Mr. Otake stated it is illegal to sell pipes or paraphernalia for the sole use of illegal control substances; however, the sell of paraphernalia for legal non-control substances such as tobacco or dried fruits is lawful.

Vice-Chair Mandal asked staff when the application was made was it clear what was going to be sold. Ms. Gilli stated that she spoke to the applicant and he stated smoking paraphernalia would be sold.

Chair Williams recommends selling the tobacco without the paraphernalia items for the first six months. After twelve months if there are no complaints, the applicant could then sell the paraphernalia items and it would be reviewed for another time period.

Motion to Adopt Resolution No. 09-008 approving the project subject to conditions of approval with (2) two 6-months review and video surveillance.

M/S: Mandal, Ciardella

AYES: 4

NOES: 2 (Aslam Ali, Noella Tabladillo)

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**2. CONDITIONAL USE
PERMIT NO. UP08-0042
AND ENVIRONMENTAL
IMPACT ASSESSMENT
NO. ES08-0006**

Tiffany Brown, Junior Planner, presented a request to operate a certified Farmers' Market within the Great Mall parking lot located at 1100 S. Main Street. The market's proposed hours of operation are for Sundays from 8:00 a.m. until 1:00 p.m. during the months of April until the first Sunday prior to Thanksgiving. Ms. Brown recommended to Adopt Resolution No. 09-009 approving the project subject to conditions of approval and adopting the Negative Declaration for the project.

Chair Williams stated the Great Mall falls between Parc Place and the proposed Farmers' Market.

Chang B. Yang, 2343 So. Hugh Ave, Fresno, CA, does not think that his Farmers' Market will cause any effect on the other Farmers' Market.

Commissioner Sandhu asked if the produce or products come from local farmers or from other growers in the area. Mr. Yang stated that most of the produce would be from the San Joaquin Valley and Morgan Hill.

Commissioner Tabladillo asked Mr. Yang if he operated a Farmers' Market on other days. Mr. Yang stated no, he goes to Farmers' Market in San Leandro and other cities on Saturday as a vendor. This is the first Farmers' Market he will operate. He has been in the Farmers' Market industry for 13 years.

Chair Williams has a concern with traffic flow. Mr. Yang stated he has no personal experience with traffic problems. He will have an assistant to help with traffic flow and pedestrian safety. Chair Williams asked Mr. Yang if he has personally observed the traffic going into the Great Mall at that time. Mr. Yang stated yes in the early morning the traffic would not be any problem.

Chair Williams opened the public hearing.

Anil Godhwani, India Community Center, he is proposing to have the Farmers' Market on a Wednesday or Thursday.

Tom Rainwater, Parc Place, is against on having the Farmers' Market at the Great Mall. He feels the market should only be twice a month and only 3 hours. He also stated that there is no management plan, no sanitation, or security.

Motion to close the public hearing

M/S: Ciardella, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Commissioner Tabladillo asked what the definition of a Certified Farmers' Market is. Mr. Yang stated the farmers have to sell the produce they grow themselves. They can not sell produce from other growers. Each grower has to be certified by the County. Commissioner Tabladillo asked the minimum and maximum of vendors at the site. Ms. Brown stated there is no minimum but there is a maximum of 104 vendors.

Vice-Chair Mandal asked about security. Ms. Brown stated there will be flaggers for pedestrian safety. Great Mall will provide security, no Police assistance.

Commissioner Sandhu suggested the applicant having his Farmers' Market on Wednesday which he believes would be more beneficial to the community.

Commissioner Tabladillo proposed having the market on another day. Mr. Yang stated the Mall opens every other day at 10:00 a.m. He said he could speak to the management at the Great Mall to see if it is feasible.

Chair Williams made a proposal to continue this item and have the applicant work with staff on a number of items brought force and report back to the Commission. James Lindsay, Planning Director, suggested continuing the item to the next meeting.

Motion to continue the public hearing with a report back to the Commission at the February 11th meeting.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**3. ZONING
AMENDMENT NO. ZA08-
0010, SPECIFIC PLAN
AMENDMENT NO. ST08-
0003, PARKING
ORDINANCE
AMENDMENTS**

Sheldon Ah Sing, Senior Planner, presented a request to amend the city of Milpitas Zoning Ordinance Section 53 regarding the amount of parking required, parking design standards and formatting changes to the section. The section affects parking for all zoning districts and uses within the City, including those within the Midtown and Transit Area Specific Plans. The proposed changes would affect new or remodel projects. Mr. Ah Sing recommended to Adopt Resolution No. 09-007 recommending approval of the amendments to the City Council.

Chair Williams asked if there have been any complaints. Mr. Ah Sing stated staff heard a lot from neighbors in the existing areas.

Commissioner Ciardella asked if staff could restrict restaurants from moving into buildings to solve the restaurant parking problem. Mr. Ah Sing stated that if new projects come into effect it would be up to the Commission to decide the restrictions.

Chair Williams opened the public hearing.

John Holmes, 1438 Clear Lake Avenue, stated that according to the State a restaurant is suppose to have one parking space for each employee. He is concerned about the parking capacity at the Church on Park Victoria.

E James Murar, Milpitas Station LLC, wanted to thank the Commission for bringing in the property owners and stake holders as part of the study. He is in support of staff's recommendations.

Charles McKay, Vice-President, Citation Homes Central, wanted clarification of staff's recommendation. Mr. Ah Sing said the Transit Area Specific Plan is a separate document from the Zoning Ordinance. Mr. Otake recommended accepting the Transit Area Specific Plan consistent with the staff recommendation.

Ed Mendence, State Licensed Commercial Real Estate Agent, stated that the Transit Area Specific Plan should not be exempt from the new parking requirements. Also, the guest parking space requirements should be restored to at least 20% of project parking.

Frank De Smidt, Parking Task Force, stated he also agrees that the Transit Area should not be exempt from the new parking requirements. Homeowners are disappointed with the parking problems they are having. He feels there should be little tandem parking as possible. He also feels this is a quality of life problem. He says tandem parking and the lack of guest parking is inconvenient.

Betty Johnson, 1236 So. Park Victoria, asked how the Commission can help with the parking situation at the church on So. Park Victoria.

Chair Williams directed staff to coordinate with the residents to get their input and report back to the Commission.

Motion to close the public hearing.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Chair Williams stated there are too many issues of concern. He said there is no enforcement of rules. He sees a problem out there and not a resolution.

Vice-Chair Mandal feels it is a good proposal. He said it is not a problem that will be resolved tomorrow. It will take some time.

Chair Williams asked if the Parking Task Force should look at developing some sort of progressive plan and see how Code Enforcement can get involved.

Vice-Chair Mandal stated from his perspective that there could be more things that could be more pro-active.

James Lindsay, Planning Director, suggested producing a document that would lay out the parking expectations. Chair Williams wanted this document to have a way of contacting someone in the City if needed.

Commissioner Tabladillo stated this document is more for the future. She is concerned with the parking situation in the present and past. She is concerned with the equity for the homeowner. She does not feel this document helps the parking situation at this time.

Vice-Chair Mandal stated he does not want to dictate how people should live in Milpitas.

Motion to continue the item and report back to the Commission at a later date.

M/S: Ciardella, Tabladillo

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**4. MAJOR TENTATIVE
MAP NO. MT08-0004,
SITE DEVELOPMENT
PERMIT NO. SD08-0002,
CONDITIONAL USE
PERMIT NO. UP08-0049**

Sheldon Ah Sing, Senior Planner, presented a request to create three parcels with ancillary lots for private streets; the dedication of right-of-way for public streets and a public park; and provision for utilities for the purpose of accommodating future residential development plans. The project site could accommodate up to 639 dwelling units to be located in three buildings. The proposal includes a vesting tentative map for condominium purposes. This proposal includes development plans and architectural review for the project. The project is located at 1200 Piper Drive. Mr. Ah Sing recommended to Adopt Resolution No. 08-069 approving the project to the City Council subject to conditions of approval.

Chair Williams asked if any other company utilities the rail service. Mr. Lindsay, stated there are two companies using the rail service. Chair Williams asked if the rail service was active or diminishing. Mr. Lindsay stated that VTA has completed the purchase and right-of-way necessary for the BART system.

Commissioner Ciardella asked how many parking spaces for the 639 units. Mr. Ah Sing stated there will be about 1,126 spaces provided plus 15% guest parking.

Vice-Chair Mandal asked if a school will be in that area. Mr. Ah Sing stated the school will be in the McCandless area. Vice-Chair Mandal asked who will fund the school. Mr. Lindsay stated the City will work cooperatively with the school district to look at school district funding.

Charles McKay, Citation Homes Central, stated it has been a pleasure working with staff and the other homeowners on this project. He stated in regards to the Y-situation, the alternate disposition of the existing spur line, as long as there are any paying customers on any freight line Union Pacific will continue to keep that property in use. It is likely within the near term the actual freight service may disappear, however, the line would still be available for turnaround.

Commissioner Ciardella asked if there will be a sandbox in the area. Mr. McKay stated that the large public park area will have playground equipment for kids. Commissioner Ciardella also asked about the plaza fountain. He is concerned about security and the liability of children falling in. Mr. McKay stated the fountain would not have any water at the bottom.

Commissioner Tabladillo asked if there will be a course around the park where people could walk or do exercises. Mr. McKay stated he is working with the Parks and Recreation Department and Planning to come up with a park concept that is amenity rich and activity rich. Commissioner Tabladillo asked if there is a wall along the Union Pacific railroad so it is safe enough for individuals not to have the urge to play around the train tracks. Mr. McKay stated they will provide fencing that can be attractive and provide necessary security for individuals not playing on the railroad tracks.

Chair Williams stated that he noticed the traffic is pretty aggressive on Piper Drive. He asked Mr. McKay if he has looked at the traffic pattern in that area. Mr. McKay said that the project is designed to facilitate walking instead of driving to the Great Mall.

Commissioner Sandhu asked when the project would start. Mr. McKay stated that the project would probably start in 2010.

Chair Williams opened the public hearing.

Russ Winslow, 905 Montague Expwy, stated he does have a commercial business where he does use chemicals. He does have air and water pollution permits, onsite hazardous waste treatment permits, and a few other things. He is concerned that he is within a 1,000 feet. With the air pollution permits a school would not be permitted in that area or a daycare center.

Chair Williams wanted to make sure proper notification was sent. Mr. Ah Sing stated staff uses a permit tracking system that includes geographic information and ownership information that they receive from the County.

Motion to close the public hearing.

M/S: Mandal, Tabladillo

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Motion to Adopt Resolution No. 08-069 approving the project to the City Council subject to conditions of approval.

M/S: Tabladillo, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

**6. SIX MONTH REVIEW
FOR CONDITIONAL USE
PERMIT AMENDMENT
NO. UA08-0010**

Tiffany Brown, Junior Planner, presented a review of the approval which allows seating on the dance floor during restaurant/dining hours and allows the service of a full range of alcoholic beverages for the existing restaurant located at 78 Dempsey Road. The review summarizes any complaints or issues raised by the public during the last six months of operation for the restaurant. Ms. Brown recommended having the Commission direct staff to return with a compliance report within the next 60 days. She requests that the item be a public hearing and the applicant will own the cost related to the noticing. During the 60 days staff and the Police Department will monitor the compliance of the conditions of approval. For clarification purposes, the compliance report will be in addition to the next 6 months review it will not take its place.

Commissioner Ali asked when the complaints were received. Ms. Brown stated most of the complaints and comments were received today.

Chair Williams opened the public hearing.

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Francisco Gomez, Owner of Gomez Market, stated he has no problem with the noise. His concern is with the parking.

Motion to close the public hearing.

M/S: Mandal, Ciardella

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Chair Williams asked staff to get more feedback on the restaurant. Ms. Brown stated just for clarification the parking issue is not in regards to the restaurant itself.

Vice-Chair Mandal stated he is not clear on the issue. He thought the discussion was on the dance floor and noise. Ms. Brown stated that most of the letters are focused on 78 Dempsey which is the restaurant. The reason staff does hear about the parking issues in the letters is because the parking issues are not related to the restaurant.

Commissioner Tabladillo wanted clarification on the recommendation that staff would do a compliance hearing within 60 days and report back to the Commission on the Bahia Restaurant to make sure the restaurant is in compliance. She also asked if staff could provide information on the parking situation.

Motion to direct staff to return with a compliance report in the next 60 days.

M/S: Tabladillo, Mandal

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

Motion to have staff review the parking situation in the area in the afternoon as well as over the weekend.

M/S: Tabladillo, Ali

AYES: 6

NOES: 0

ABSENT: 1 (Alex Galang)

ABSTAIN: 0

The meeting was adjourned at 11:42 p.m. to the next regular meeting of February 11, 2009.

**X.
ADJOURNMENT**

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Yvonne Andrade
Recording Secretary

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