



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: February 25, 2009

- APPLICATION:** **Conditional Use Permit No. UP08-0044, Clauser Large Family Day Care Home**

- APPLICATION SUMMARY:** A request to allow for the operations of a Large Family Childcare Home within an existing 1,620 square foot single family home.

- LOCATION:** 689 Clauser Drive (APN: 028-06-045)
- APPLICANT:** Yu Ying Lai, 689 Clauser Drive, Milpitas, CA
- OWNER:** Yep Pierre and Yu Ying Lai, 689 Clauser Drive. Milpitas, CA

- RECOMMENDATION:** **Staff recommends that the Planning Commission:**
 - 1. Close the public hearing; and**
 - 2. Adopt Resolution No. 09-010 approving the project subject to conditions of approval.**

- PROJECT DATA:**
- General Plan/
Zoning Designation: Single Family Low Density/ Single Family Residential (R1-6)

- Any other pertinent info: Located within 300 feet of another Large Family Child Care Home

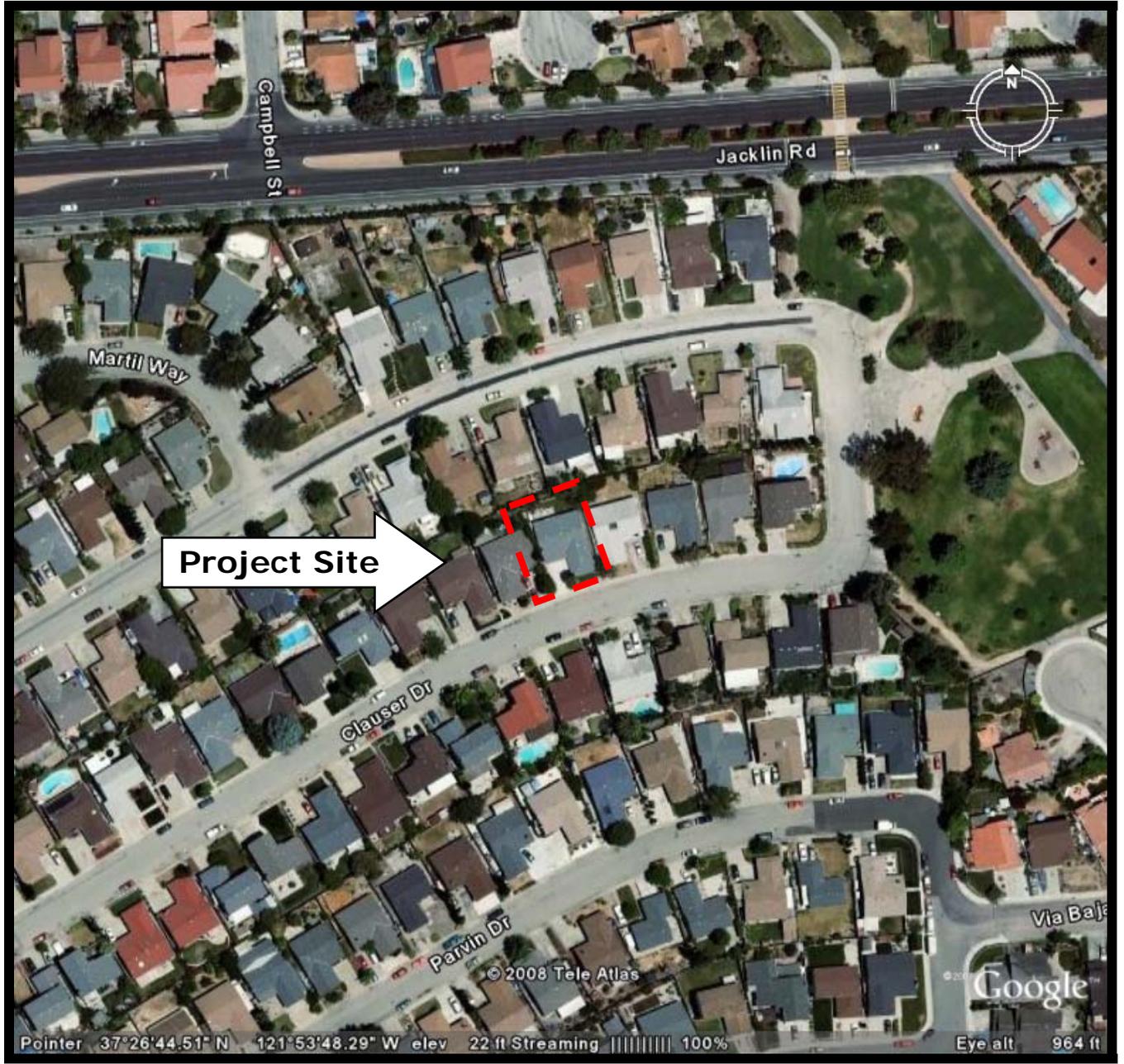
- CEQA Determination: Statutorily exempt form CEQA pursuant to Section 15274 (Family Day Care Homes)

- PLANNER:** Cindy Hom, Assistant Planner

- PJ:** N/A

- ATTACHMENTS:**
 - A. Resolution No. 09-010
 - B. Project Letter and Site Plans
 - C. Comment Letter from Fauzia Salim

LOCATION MAP

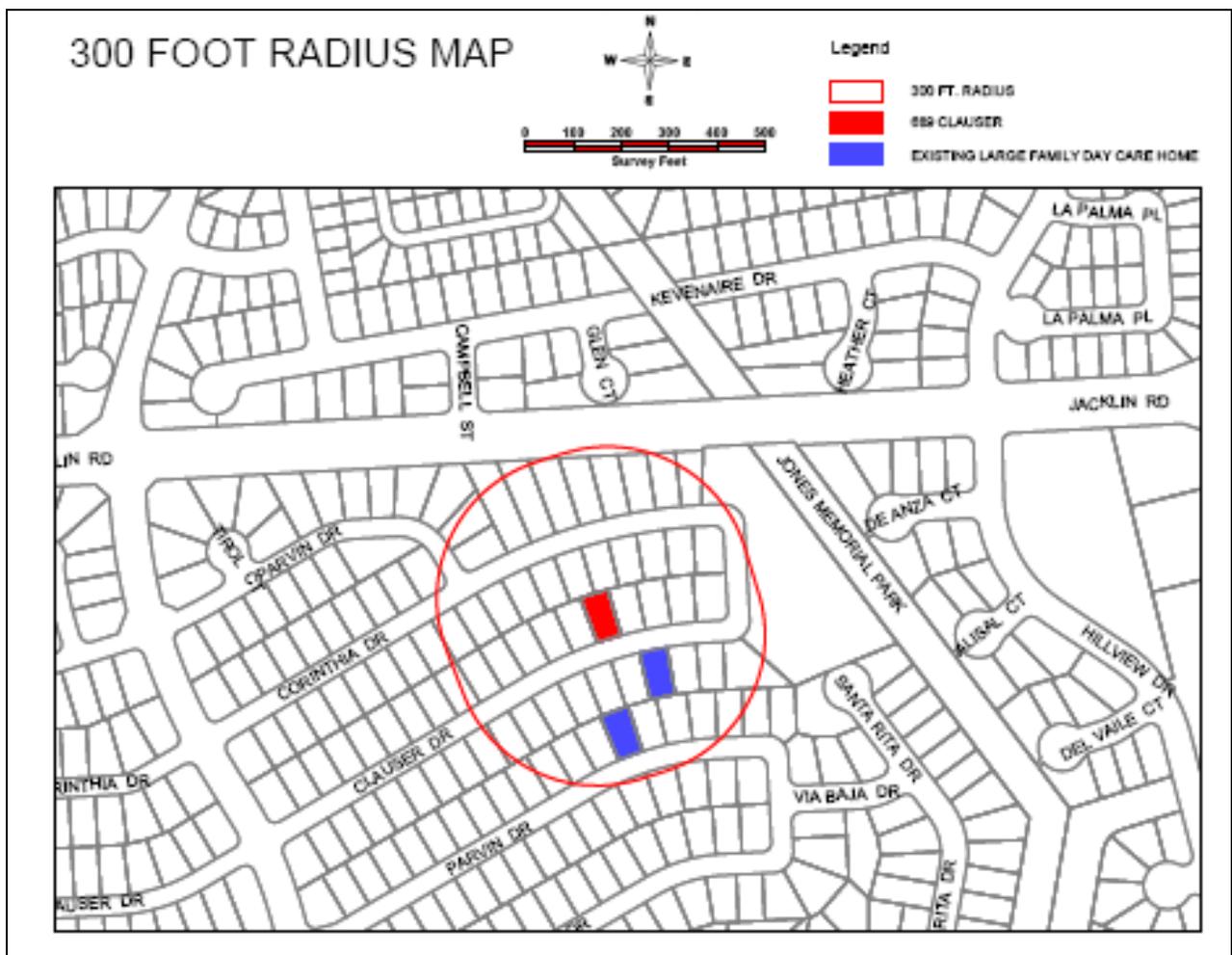


No scale

BACKGROUND

On November 18, 2008, Yu Ying Lai submitted an application to convert the existing small family child care home to a large family daycare home that would accommodate up to 14 children. Large Family daycare homes are permitted uses in the Single Family Residential District provided they meet the development standards set forth in Section 13 (Special Uses) of the Milpitas Zoning Ordinance. Since the proposed large family daycare home is located within 300 feet of two other existing large family daycare homes, a Conditional Use Permit is required. A radius map is shown in Figure 1 below. The application is submitted pursuant to the California Health & Safety Code Section 1597.46 (3) and Milpitas Municipal Code (MMC) XI-10-57.04 (C)(8)(Other Uses).

**Figure 1.
Radius Map**



PROJECT DESCRIPTION

The project site is located on a single family residential lot that is currently developed with a 1,620 square foot single-family detached home, driveway, and landscaping. The site is currently zoned for Single Residential minimum 6,000 square foot lot size (R1-6) and is located within the Eastbrook Planned Unit Development (PUD 8-A). The subject site is surrounded by other single-family homes. The project site is within walking distance to Walter Reuther Park. A vicinity map of the subject site

location is included on page 2 of this report. No site or exterior modifications are proposed with this application.

Child Care Operations

The project proposes a large family day care home that will provide care for up to 14 children between the hours of 8:30 AM to 6:30 PM. The rooms that are to be utilized for child care activities include the living room, family room, dining room, and two bedrooms. Child care programming is described in the attached project letter (Attachment B).

Drop off/Pick Up Schedule

Based on the proposed schedule children are typically dropped off between the hours of 8:30 AM and 9:30 AM and picked up between 6:00 PM and 6:30PM. The applicant is proposing to utilize the driveway for loading and unloading. The driveway is approximately 39-feet long and 29-feet wide that can accommodate four vehicles. There is also on-street parking on both sides of Clauser Drive.

Development Standards

The following table demonstrates compliance with the Zoning standards set forth in Section 10-13.06.

Table 1
Large Family Child Care Home Development Standards

Standard	Zoning Ordinance	Proposed
<u>Density</u>	Spaced at least 300’ apart from another facility	Within 300’ from two existing facilities
<u>Off-Street Parking</u>		
Employee	1 space /1.5 employees	1 1/1.5=1
Loading/Unloading	1 space /6 children up to 5 spaces and thereafter 1 space/10 children.	14 children 14/6=2.33
Total Required		1+2=3
Total Provided		4
<u>Hours of Operation</u>	Shall not occur before 6:30 AM or after 7:30 PM	8:30AM –6:30PM
<u>Fence Height</u>	6 feet min.	6 feet.
<u>Code Enforcement Procedures</u>	Operations that constitutes as a nuisance shall require the operator to work with Planning Staff to address nuisances through action such as adjusting hours of operation, staffing times for drop and pick up, outdoor play times, and the alike. Planning Commission	No reported code violation or service request at this location.

Standard	Zoning Ordinance	Proposed
	may add or change conditions of approval to address the issues. If the nuisance continues, the Planning Commission may review the CUP with a recommend to the City Council pursuant to Section 63.06	

The project is inconsistent with the density development standard in that the project is located within 300 feet from two other existing facilities that are located at 706 Clauser and 685 Parvin Drive. In the event that the development standards cannot be met, a conditional use permit is required to allow for discretionary review of the project to identify and/or mitigate potential impacts and concerns.

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
<p><i>2.a-1-24:</i> Encourage the establishment of day care facilities consistent with State standards, including the issuance of use permits for large day care facilities where compatible with surrounding neighborhoods and commercial uses, particularly in public facilities such as community centers, churches, schools and in employment centers and large housing developments.</p>	<p><i>Consistent.</i> The project proposes a large family daycare home that will accommodate 14 children. The project would provide parents with more child care opportunities within the city.</p>

Zoning Ordinance

A Large Family Childcare Homes is considered a permitted use within the Single Family Zoning District provided the facility meets all applicable development standards. Since the project is within 300-feet of two other existing facilities, a conditional use permit is required. The project complies with the Milpitas Zoning Ordinance in that it is a conditionally permitted use in the R1-6 Zoning District. The site also conforms to the development as discussed above.

The proposed use will not be injurious and detrimental to property, improvements, public health, safety and general welfare. The project currently operates as an existing small family child care home. The small family child care home has been in operation since April 2007. The applicant is requesting to upgrade to a large family child care home. Given that all three facility have been in operation and there are no reported complaints or violations, staff does not anticipate any conflicts with the operations. The project does not propose any site improvements that affect vehicular or pedestrian

circulation, safety, or impact level of service of the adjacent street system. The site is suitable and adequate for the proposed use because of the surrounding residential homes and proximity to existing school sites.

Milpitas Child Care Master Plan

The table below outlines the project’s consistency with the goals and implementation policies of the Milpitas Child Care Master Plan that was April 2, 2002.

Table 3
Milpitas Child Care Master Plan Consistency

Policy	Consistency Finding
<i>Long Range Goal: Every child and family has access to affordable, safe, quality child care</i>	<i>Consistent.</i> The project a child care facility that accommodates 14 children that will serves surrounding residential development.
<i>Accessibility Policy 2.2-G-I: The City of Milpitas promotes the retention of existing facilities and the development of new child care facilities within the city limits.</i>	<i>Consistent.</i> The project promotes retention of existing facilities in that is an upgrade from an existing small child care home to a large family child care home.

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 statutorily exempt from further environmental review pursuant to Section 15274 (Family Day Care Homes). The project proposes to upgrade an existing small family child care home to a large family child home that would accommodate up to 14 children.

Noise

According to the Milpitas General Plan, the general acceptable noise levels for child care and/or school uses is between 55 to 70 DNLs which is within the conditionally acceptable levels in the single family residential zoning district. During outdoor play, noise level may increase but would be periodic and occurring during certain hours of the day. In addition, the proposed operating hours of 8:30AM to 6:30PM would not interfere or impact the quiet and peaceful enjoyment of the surrounding neighborhood.

Traffic

Increase in traffic will be minimal. The project proposes to increase number of children from eight to fourteen. The additional six children would add approximately 30 new vehicle trips with a total of 2 new Peak AM (6:00 to 9:30 AM) trips and 3 PM Peak trips (3:00PM to 6:30PM) based on SANDAG’s Trip Generation Rates that are used to determine number of vehicle trips base on various land uses. Since the proposed use generates less than 100 new trips, a focus traffic analysis was not required. The additional vehicle trips during the peak hours are considered minimal as demonstrated in the table below:

USE	INTEN-SITY	TRIP RATE	DAILY TRIPS	AM			PM		
				%	IN	OUT	%	IN	OUT
Existing Use									
Small Child Care	8 children	5/child	40	17%	4	3	18%	4	3
Total Existing Use			40		4	3		4	3
Proposed Use									
Day Care Center	14 children	5/child	70	17%	6	6	18%	7	6
Total Proposed Use	14 children		70		6	6		7	6
Net	14 children		+30		+2	+3		+3	+3

PUBLIC COMMENT/OUTREACH

Staff publicly noticed the application in accordance with City and State law. As of the time of writing this report, staff received one public comment regarding the project and is enclosed with this staff report.

CONCLUSION

Staff’s position is that the proposed large child care facility is a compatible use with the surrounding area. Based on current operations, the large family child care does not create any neighborhood issues with noise, parking, or undue concentration of this particular use.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission adopt Resolution No. 09-010 approving Conditional Use Permit No. UP08-0044, subject to the attached Conditions of Approval.

Attachments:

- A. Resolution No. 09-010
- B. Project letter and Site Plans
- C. Comment letter from Fauzia Salim

RESOLUTION NO. 09-010

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS, CALIFORNIA, APPROVING CONDITIONAL USE PERMIT NO. UP08-044, CLAUSER LARGE FAMILY CHILD CARE HOME, A REQUEST TO OPERATE A LARGE FAMILY CHILDCARE HOME WITHIN AN EXISTING RESIDENTIAL HOME LOCATED AT 689 CLASUER DRIVE.

WHEREAS, on November 18, 2008, an application was submitted by Yu Ying Lai, 689 Clauser Drive, to convert an existing small family child care home to a large family child home. The property is located at 689 Clauser Drive (APN 028-06-045), zoned Single Family Residential (R1-6); 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 statutorily exempt from CEQA pursuant to Section 15274 (Family Day Care Homes); and

WHEREAS, on February 25, 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.

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 California Environmental Quality Act (CEQA) Section 15274 (Family Day Care Homes)

Section 3: The project is consistent with the Milpitas General Plan policy 2.a-I-24 in that the facility is compatible with surrounding residential neighborhood and provides families with more child care opportunities.

Section 4: The project is consistent with the Milpitas Child Care Master Plan goals and policies in that the project serves surrounding residential development and promotes retention of existing facilities.

Section 5: The project is consistent with the Milpitas Zoning ordinance in that use is permitted with a conditional use permit. As proposed, the project is consistent with the development standards in terms of parking spaces, hours of operations, fence height, and does not have any previous or active code enforcement violations.

Section 6: The proposed use, at the proposed location will not be detrimental or injurious to property or improvements in the vicinity nor to the public health, safety, and general welfare in that it will not add a significant number of peak trips to the roadway system, the hours of operation will not interfere with the quiet enjoyment of surrounding residence, and no reported violations or customer service requests or complaints in the neighborhood related to the operation of three child care homes within the area were submitted to staff.

Section 7: The Planning Commission of the City of Milpitas hereby approves Conditional Use Permit UP08-0044, Clauser Large Family Childcare, 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 25, 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 25, 2009, and carried by the following roll call vote:

COMMISSIONER AYES NOES OTHER

Cliff Williams			
Lawrence Ciardella			
Alexander Galang			
Sudhir Mandal			
Gurdev Sandhu			
Noella Tabladillo			
Aslam Ali			

EXHIBIT 1

**CONDITIONS OF APPROVAL
CONDITIONAL USE PERMIT NO. UP08-0044**

1. The owner or designee shall develop the approved project in conformance with the approved plans approved by the Planning Commission on February 25, 2009, in accordance with these Conditions of Approval.

Any deviation from the approved site plan, floor plans, elevations, 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)

2. Conditional Use Permit NO. UP08-0044 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 issuance. (P)

Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of UP08-044 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein. (P)

3. There shall be provided off-street parking spaces for automobiles in accordance with the requirements of Section 53. All such parking spaces shall be improved as provided for in Subsection 54.03 (P)
4. Hours of Operation shall not occur before 6:30 A.M. or after 7:30 P.M., in order to maintain compatibility with neighboring properties and limit noise during night-time hours. (P)
5. If any large family large family childcare home is operating in a manner that constitutes a nuisance, the childcare facility operator shall work with the Planning Division to address the nuisance, through such actions as adjusting hours of operation, adjusting hours of outdoor play, staggering times for child drop-off and pick-up, and the like. If any childcare center is operating in a manner which constitutes a nuisance, the Planning Commission shall reopen the Use Permit to add or change conditions of approval addressing the issue(s). If the nuisance continues, the Planning Commission may review the Use Permit with a recommendation to the City Council pursuant to Section 63.06 (Revocation Suspension and Modification.) (P)

6. Prior to operation of the Day Care, applicant shall obtain review and approval from California State DSS-Community Care Licensing. (F)
7. Fire Department will review for applicable Fire Code requirements upon receiving application from DSS Community Care Licensing. (F)
8. It is mandated to obtain Business license and Certificate of occupancy prior to start of business operation. (B)
9. Fire alarm system shall be provided as per 2007CBC sec.310.3. (B)

Legend

Planning Division = (P)

Fire Prevention Department = (F)

Building Department = (B)

RECEIVED

JAN 23 2009

**CITY OF MILPITAS
PLANNING DIVISION**

YuYing Lai
689 Clauser Dr.
Milpitas, CA 95035

Hours of Operation:

Operation hour of the Facility is 8:30am – 6:30 pm Monday - Friday.

Drop off and Pickup Procedures:

Parents have provided the list of identified persons for pick-up and drop-off. Parents/Identified persons can park their cars in the driveway for drop-off and pick-up of the children. The driveway is spacious enough to allow few cars parking at the same time. Child care provider will check the drop-off/pick-up persons to ensure they are identified persons before allowing the children on each drop-off and pick-up.

No of Employee

One employee

Enrollment Procedures:

Parents usually pay a visit to the site and discuss with the provider before engaging their children to be taken care in the facility. Once the terms are agreed between the childcare provider and parents, the children enrollment will be started. Parents need to review and complete all required childcare forms (forms provided by California Childcare Social Department). Once the forms and deposits are complete and verified, the children are enrolled.

Childcare Programming:

8:30: 9:30 Drop-off time

9:30 Breakfast

10:00 Learning

10:30 Circle Time (outdoor play time if weather is permitted)

11:30 Story Time

12:00 Lunch

1:00 Nap

4:00 Snack

4:30: Song and Dance

5:00: Circle Time

6:00-6:30pm: Pick-up time

Outdoor play time is from 10:30am -11:30am if weather is permitted.



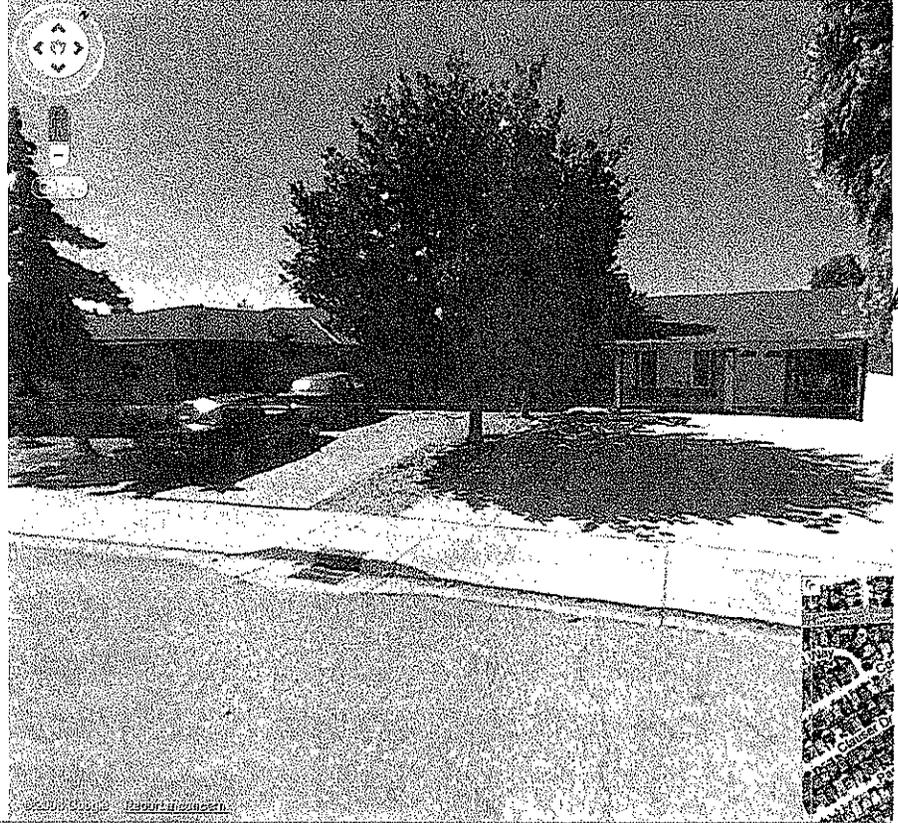
Address **689 Clauser Dr**
Milpitas, CA 95035

Get Google Maps on your phone

Text the word "GMAPS" to 466453



Google Maps Address



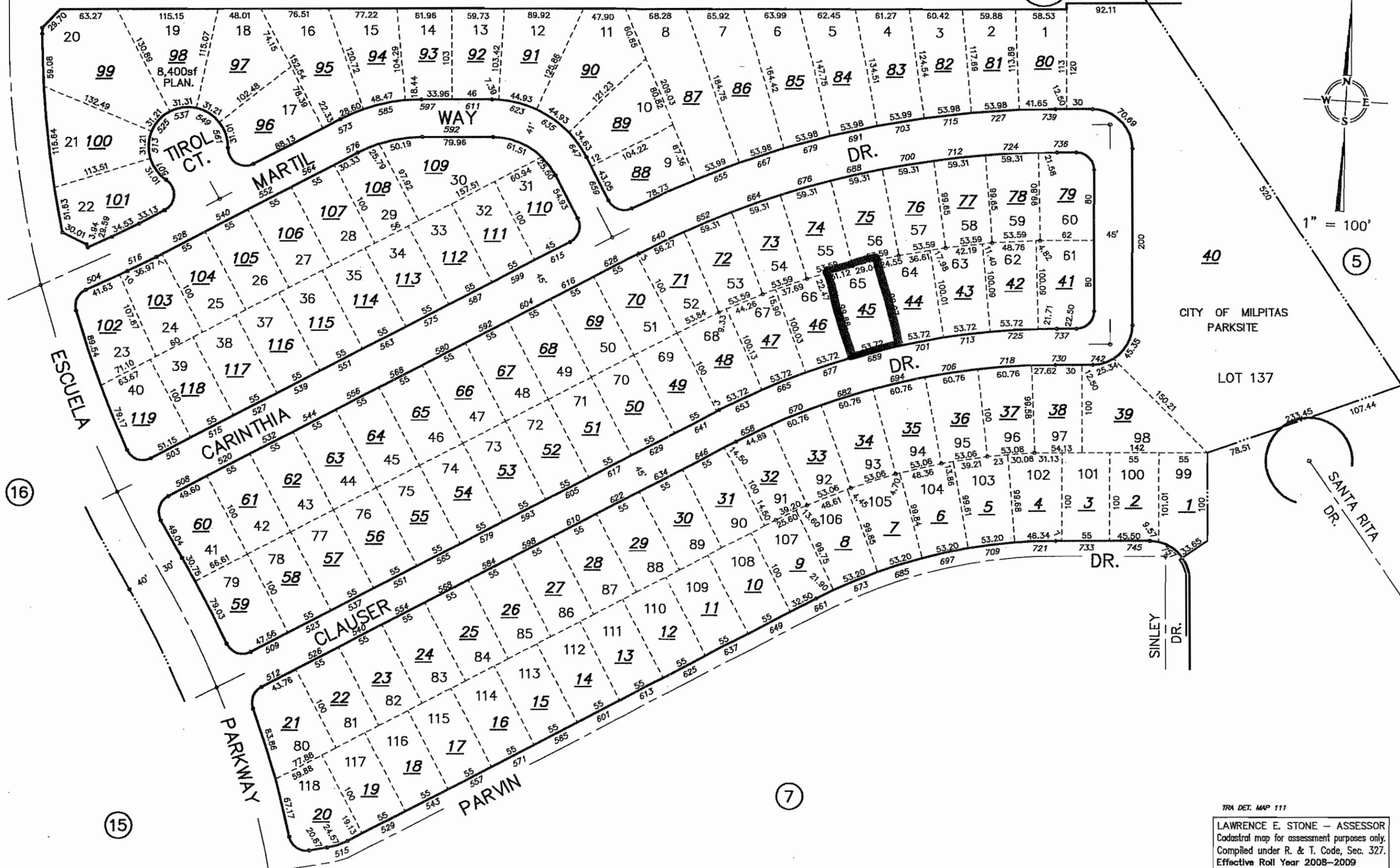
689
Clausen
Dr:

TRACT No. 4845 ... EASTBROOK ROAD

BOOK 26

BOOK 28

PAGE 6



CITY OF MILPITAS PARKSITE

LOT 137

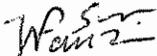
18 of February, 2009

Honorable Milpitas Planning Division,

I am submitting this notice of objection regarding the scheduled hearing set for the 25th of February at 7 pm, dealing with the application of Yu Ying Lai's request to operate a large family child care home located at 689 Clauser Drive. I have successfully operated a child-care service since 2002 from 706 Clauser Drive (License Number: 434406410), and moreover, I have been licensed to operate a large family child-care business from the City of Milpitas since 2008 (Business License Number: 31164). I was informed that another large family child-care service can not be established within a 300 feet vicinity of an already established one. This makes particular sense when considering such issues as customer flow, street traffic, inconvenience to neighbors and other similar issues. Thus with the stated information, I would like to convey my disapproval of establishing another large family child-care across the street from an existing large family child-care service. I request the commission to kindly keep this information in mind during the hearing process. I appreciate your time and concern regarding this important issue.

Sincerely,

Fauzia Salim



Fauzia Salim's Childcare

706 Clauser Dr,

Milpitas, CA, 95035

408-946-6023