



## MILPITAS PLANNING COMMISSION AGENDA REPORT

**PUBLIC HEARING**

Meeting Date: June 24, 2009

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

APPLICATION  
SUMMARY:

Review of 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**

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:

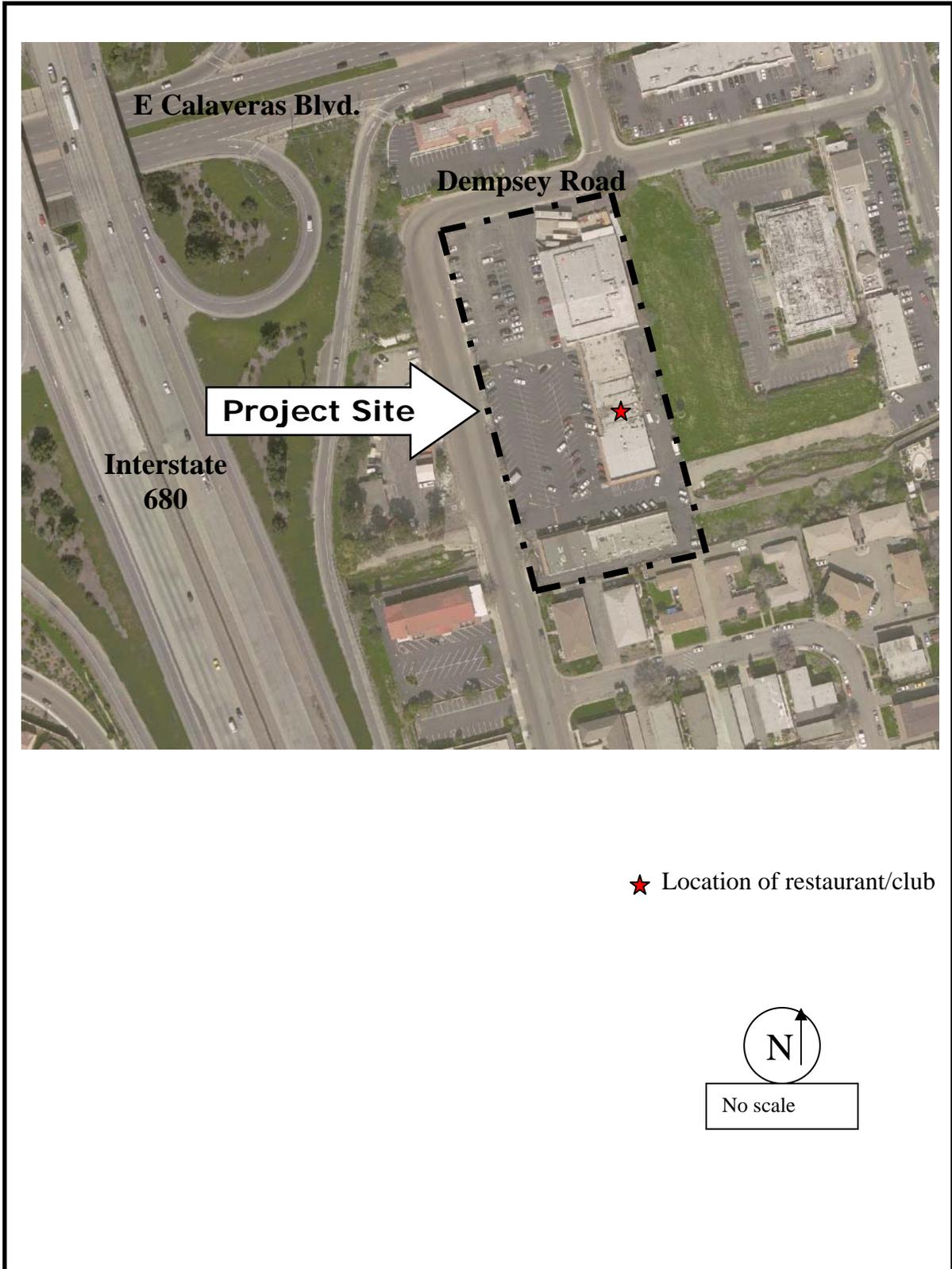
Tiffany Brown

PJ: 2534

ATTACHMENTS:

- Planning Commission Meeting Minutes from April 8, 2009
- Calls of Service Police Report

# LOCATION MAP



**BACKGROUND**

On July 9, 2008 the Planning Commission approved Conditional Use Permit Amendment No. UA08-0010, for Club Bahia to allow for seating on the dance floor area during restaurant/dining hours, where previously no seating was permitted 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 the approval of the project, the Commission required a six and 12 month review of the permit to ensure that there will be no issues with the new amendments. Staff presented the six month review at the January 28, 2009 Planning Commission meeting and recommended the Commission required an additional 60-day compliance review in order to ensure the operation of the restaurant is consistent with the conditions of approval. Staff returned to the Planning Commission on April 8, 2009 and reported that after the compliance review was complete, it was found that the restaurant is in compliance with all the conditions of approval. Staff is now returning to the Planning Commission for the 12 month review of this permit as originally required.

**ISSUES**

For this review, staff checked with the Police Department and Code Enforcement Division. Attached to this report you will find the *Calls for Service Police Report* for Club Bahia. The Calls of Service show that most services listed are protocol officer patrol checks normally performed during a shift. There are three incidents listed showing that an officer witnessed a verbal argument on May 23<sup>rd</sup>; the Police responded to a false alarm on June 5<sup>th</sup>; and an officer cited a patron for urinating in the parking lot on June 6<sup>th</sup>. To date, such calls do not constitute an abnormal amount of service calls to the Police Department for a restaurant with entertainment services venue of this type. Milpitas Code Enforcement has not received any calls or complaints regarding this venue.

**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 the amount of service calls for this type of service is considered normal and the three incidents that occurred are considered minor. No complaints or issues have been reported from the public and the restaurant is in compliance with all the conditions of approval.

**STAFF RECOMMENDS THAT** the Planning Commission close the public hearing and note, receipt, and file the Twelve Month Review for Conditional Use Permit Amendment No. UA08-0010, Club Bahia.

**ATTACHMENTS:**

- A. Planning Commission Meeting Minutes from April 8, 2009
- B. B. Calls of Service Police Report

**APPROVED**

**PLANNING COMMISSION MINUTES**

**April 8, 2009**

**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: Aslam Ali, Alex Galang (7:01 pm), Sudhir Mandal, Gurdev Sandhu, Mark Tiernan, and Cliff Williams  
Absent: Larry Ciardella and Noella Tabladillo  
Staff: Ah Sing, Andrade, Armendariz, Brown, Gilli, Lindsay, Otake and Reliford

Alternate Commissioner Mark Tiernan was seated as a member of the voting body.

**III.  
PUBLIC FORUM**

There were no speakers in the audience.

**IV.  
APPROVAL OF  
MINUTES  
March 25, 2009**

Chair Williams called for approval of the minutes of the Planning Commission meeting of March 25, 2009.

There were no changes to the minutes.

**Motion** to approve the minutes of March 25, 2009 as submitted.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**V.  
ANNOUNCEMENTS**

Commissioner Sandhu announced the Sikh celebration on April 13, 2009. Chair Williams stated he went to the new State of the Art Humane Society in Milpitas. He stated it is a fantastic facility. The City is proud that the Humane Society selected Milpitas to have their facility here.

**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: Mandal, Galang

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

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.

There were no changes to the consent calendar.

Chair Williams opened the public hearing on Item No. 4.

There were no speakers from the audience.

**Motion** to close the public hearing.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**Motion** to Adopt Resolution No. 09-018 approving the project, subject to the conditions of approval.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**\*4 CONDITIONAL USE PERMIT NO. UP09-0001:** A request to operate a martial arts studio. The project is located at 106 South Park Victoria. (APN: 088-04-078), zoned Neighborhood Commercial with Site and Architectural Overlay (C1-S). No exterior changes to the site or building are proposed. Applicant: Tony Tran. Staff Contact: Judie Gilli (408) 586-3280. PJ # 2572. *(Recommendation: Adopt Resolution No. 09-018 approving the project, subject to the conditions of approval.)*

**APPROVED**  
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Chair Williams stated Item No. 5 was a 60-Day Review and not a public hearing.

**Motion** to Note, receipt and file the report.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**X.  
OLD BUSINESS**

**\*5 SIXTY-DAY COMPLIANCE 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. (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. (*Recommendation: Note, receipt and file the report*)

**IX.  
PUBLIC HEARING**

**1. ZONING ORDINANCE  
AMENDMENT NO. ZA09-  
0001, CONVERSION OF  
MOBILE HOME PARKS  
TO OTHER USES**

Felix Reliford, Principal Housing Planner, presented a request to amend the City of Milpitas Zoning Ordinance Title XI, Chapter 20 regarding the conversion of mobilehome parks to other uses and Title XI, Chapter 10-64 establishing mobilehome park conversion permit process. The section would affect existing mobilehome parks within the City. The proposed changes would affect the requirements to convert, close or cease to use land as a mobilehome park. Mr. Reliford recommended adopting Resolution No. 09-017 recommending approval of the amendments to the City Council.

Mr. Reliford stated that State law no longer permits payment of a set monetary amount for relocation costs. The City can only require the mobilehome park owner to pay reasonable costs as it relates to relocation for residents. Since 1992 Mobilehome Parks have been govern by rent control adopted by the City Council. The City feels the property owner should pay for all reasonable costs such as dismantling, packing, moving, reassembling, rebuilding, unpacking, moving all personal property, skirting, tie downs, meals, lodging, gas, while mobilehome is dismantled, moving and reassembling to compensate the residents and making the transition as easy as possible for the residents.

Commissioner Ali asked if there is a cap, minimum or maximum, for relocating. Mr. Reliford stated there is nothing in the law in regards to minimum or maximum it only speaks in terms of reasonable costs.

Vice-Chair Mandal asked how many residents are there that need to be moved at this time. Mr. Reliford stated no one will be moving, all the City is doing is updating the ordinance from 1988 to present.

Chair Williams opened the public hearing.

There were no speakers from the audience.

**Motion** to close the public hearing.

**APPROVED**  
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M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

Chair Williams thanked staff for working on the ordinance especially in protecting the residents of Milpitas.

**Motion** to Adopt Resolution No. 09-017 recommending approval of the amendments to the City Council.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**2. CONDITIONAL USE  
PERMIT NO. UP08-0019  
and ENVIRONMENTAL  
ASSESSMENT NO. EA09-  
0007**

Judie Gilli, Associate Planner, presented a request to operate a religious services facility and to allow joint use parking. A new exit door is proposed in the rear with no other exterior changes to the site or building being proposed. An Environmental Assessment was prepared for this project. An Initial Study dated March 2, 2009; a Notice of Intent and Mitigated Negative Declaration were prepared and circulated. The proposed project, once mitigated, will not have a significant effect on the environment. The project is located at 513 Los Coches Street. Ms. Gilli recommended adopting Resolution No. 09-016 approving the project and the Mitigated Negative Declaration, subject to the conditions of approval.

Chair Williams asked if staff had any discussions with the applicant regarding worst case scenario. Ms. Gilli stated she has had discussions with the applicant. The applicant has the flexibility to host events midweek.

Vice-Chair Mandal stated the management of this facility has given him an update on the project. There are really great and nice people involved in this project.

Commissioner Ali asked how long the lease on the parking is. Ms. Gilli stated all the leases are required as part of the conditional use permit. As long as the conditional use permit is valid the parking contracts must be valid.

**Chitra Hariharan, 928 Huntington Drive, Duarte, CA**, is representing the applicant Nithyananda Dhyanaapeetam of San Jose. They intend to use the facility as a vedic temple. The temple will promote global peace and harmony.

Chair Williams asked the number of members and growth rate. Mr. Hariharan stated there are no members. It is not based on certain hours. People come to the temple to pray for a few minutes and then leave. Chair Williams asked the number of participates or occupants coming to the facility at one time. Mr. Hariharan stated about 60-70 people on the weekends. Chair Williams asked what are the facility's plans to address the parking situation. Mr. Hariharan said they would use volunteers to monitor the occupancy use and the parking use.

**APPROVED**

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Chair Williams also asked about special events at the facility. Mr. Hariharan said they would have few festivities about one every two months. The crowd would still be a rotating crowd. There would be more volunteers for those special events. They would request other people to leave before allowing others to come in.

Vice-Chair Mandal asked if there would be a carpool concept. Mr. Hariharan stated usually families would come in one car. They could post carpooling signs at the front desk and on the front door.

Chair Williams asked the applicant when the proposed time of operation would begin. Mr. Hariharan stated as soon as possible.

Chair Williams opened the public hearing.

**Speaker #1, 995 Cameron Circle, Milpitas**, stated he did his own study on parking. There is no parking problem for this facility.

**Speaker #2, 150 Valmy Way, Milpitas**, stated the temple is very useful.

**Speaker #3, 231 Dixon Landing Road, Milpitas**, stated as a physician she sees a lot of energy coming out of this temple from medication and yoga.

**Speaker #4, 60 Wilson Way, Milpitas**, stated she is concerned about the parking. It is very dangerous with people getting in and out of their cars without looking.

**Speaker #5, 954 Bellflower Street, Livermore**, feels Milpitas is very lucky to have this temple in the city.

**Speaker #6, 195 King Court, Milpitas**, stated the volunteers helping the temple encourages people to carpool. They also encourage people to keep circulating in the temple. He also stated that there is no kitchen or sound system at the facility.

**Speaker #7, 315 Rich Road, San Jose**, stated most of the special events occur at night. Most people come in one car with their families. People spend about 10 minutes at the most in the temple.

**Leticia Vargas, 489 Los Coches, Milpitas**, stated she is concerned with parking and illegal parking. It has created a lot of hazards.

**Speaker #9, 39600 Fremont Blvd, Fremont**, said he would like to attend this temple.

**Speaker #10, 853 Penitencia Street, Milpitas**, said parking is a universal problem. He hopes that the Commission would be sensitive to the community.

**Speaker #11, Fremont**, said she is a volunteer at the temple. She said she frequents the stores in Milpitas and many of the businesses. She said a lot of the events are in the evening. A little corporation from all would help. We work with them they can work with us.

**Speaker #12, 2021 No. Milpitas Blvd, Milpitas**, said he is proud to have the temple in Milpitas.

**Laura Oust, 31390 San Ardo Court, Union City**, said she has visited this temple often and haven't experienced any parking issues.

**Speaker #14, San Jose**, said he has known many of the people in this temple and is very impressed. He feels this is a good thing for Milpitas.

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**Speaker #15, 57 Parc Place, Milpitas**, said the temple plays very soft music. This organization has very trained and discipline volunteers.

**Speaker #16, 200 Cameron Court, Milpitas**, feels this is a great City for the temple.

**Speaker #17, 3695 Teresita, Newark**, said the temple will build a good community building global peace and harmony.

**Speaker #18, 2021 No. Milpitas Blvd, Milpitas**, said parking is not an issue.

**Speaker #19, 195 Kings Court, Milpitas**, said the City needs to facilitate the religious freedom of the community.

**Speaker #20, 440 Dixon Landing Road, Milpitas**, stated food is either catered or brought in from the families. Food is not eaten on the premises.

**Motion** to close the public hearing.

M/S: Sandhu, Mandal

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

Chair Williams requested staff to do an assessment on the cross walk issue and traffic. James Lindsay, Planning Director, stated Farmers Market is the only one with the 6 month review. Staff to review on Sunday with a report back to the Commission.

Vice-Chair Mandal is concerned people walking into traffic. He asked if there is a cross walk in that area. Ms. Gilli stated there is no cross walk.

Commissioner Ali stated he has seen people jaywalking in that area. He also stated ICC speaks very highly of this temple.

Commissioner Galang asked if the other property owners have an agreement with the temple. Ms. Gilli stated she has received letters of intent from the other property owners.

Commissioner Tiernan said he is concerned about the safety of the children in the area of the temple. He feels the community can work together to make sure the children are protected as they enter and exit this particular area from school.

Chair Williams stated food is a means of getting people together from different origins. He said the applicant's application is within the permit process.

Commissioner Ali asked if the applicant could work with ICC to use some of their parking and also add a 6 month review as a condition. Chair Williams requested making a 6 and 12 month review as a condition.

**Motion** to adopt Resolution No. 09-016 approving the project subject to the conditions of approval and add a 6 and 12 month review as a condition of approval.

M/S: Galang, Mandal

AYES: 6

NOES: 0

**APPROVED**  
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ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**3. PRESENTATION OF  
THE 2009-14 CAPITAL  
IMPROVEMENT  
PROGRAM (CIP)**

Greg Armendariz, Public Works Director and City Engineer, presented a presentation of the Capital Improvement Program (CIP), providing an overview of the Proposed 2009-14 CIP Annual Report. Mr. Armendariz recommended finding the proposed 2009-14 Capital Improvement Program (CIP) in conformance with the General Plan and recommend the proposed Capital Improvement Program to the City Council.

Mr. Armendariz stated the CIP Program is a comprehensive 5 year plan developed to protect and enhance the City's capital assets and infrastructure, preserve and improve the quality of life for the Milpitas residents and business community. Funding is restricted for majority of projects – no General funds are programmed.

Mr. Armendariz stated some of the accomplishments have been the new Library along with the parking garage; utilities; overall costs for all improvements are over 60 million of RDA funds. Another major accomplishment was the Main Sewage Pump Station.

Mr. Armendariz said the next 5 year plan major project is the Senior Center. Other projects for the next 5 years are parks, streets, utilities, sewer, and storm drain projects.

Chair Williams asked when the County Health Building would be completed. Mr. Armendariz stated the project would be completed in April or May 2010.

Commissioner Galang asked how the City can improve the phone service when there is an earthquake or major disaster. Mr. Armendariz stated that when there is a major disaster he and other department heads have to report to the EOC Center.

Commissioner Tiernan asked what the shelf life of rubberized asphalt is. Mr. Armendariz said the oldest resurfacing of rubberized asphalt was in 1996 on Calaveras Blvd. The City used to go and repair that road once a week but since then the City has gone out there less than 6 times. It has a longer shelf life and gives a little more.

Commissioner Tiernan also asked when the 237/I880 landscape project will begin. Mr. Armendariz said the project would begin the fall of this year.

Chair Williams wanted to know what happened to the welcome signs for Milpitas. Mr. Armendariz stated the projects have not died. He believes the Economic Development Director has gotten involved to make sure it is a comprehensive program. He will report back to the Commission on its status.

**Motion** to find the proposed 2009-14 Capital Improvement Program in conformance with the General Plan and recommend the proposed Capital Improvement Program to the City Council.

M/S: Mandal, Sandhu

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Noella Tabladillo)

ABSTAIN: 0

**APPROVED**  
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**XI.**  
**ADJOURNMENT**

The meeting was adjourned at 10:08 p.m. to the next regular meeting of April 22, 2009.

Respectfully Submitted,

James Lindsay  
Planning & Neighborhood  
Services Director

Yvonne Andrade  
Recording Secretary

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**Calls of Service**

Your Parameters - Start: 4/8/2009 12:00:36AM End: 6/8/2009 4:53:02PM Digits: 78 Street:  
Dempsey Type: rd

EVENT #	CODE	TOC	DISPO	ADDRESS
PD09157191	1096	06/06/09 22:36	26Z00R	78 DEMPSEY RD, CLUB BAHIA
PD09156046	1033A	06/05/09 10:22	27D02L	78 DEMPSEY RD, CLUB BAHIA
PD09143016	FOOT	05/23/09 01:45	19E99L	78 DEMPSEY RD, CLUB BAHIA
PD09135207	PCS	05/15/09 23:35	45G08L	78 DEMPSEY RD, CLUB BAHIA
PD09122215	PCS	05/02/09 23:31	45G08L	78 DEMPSEY RD, CLUB BAHIA
PD09115203	PCS	04/25/09 23:23	45G08L	78 DEMPSEY RD, CLUB BAHIA
PD09114005	PCS	04/24/09 00:41	45G08L	78 DEMPSEY RD, CLUB BAHIA
PD09109199	PCS	04/19/09 23:48	45G08L	78 DEMPSEY RD, CLUB BAHIA
PD09109001	PCS	04/19/09 00:07	45G08L	78 DEMPSEY RD, CLUB BAHIA
PD09101210	PCS	04/11/09 23:04	*CLOSE	78 DEMPSEY RD, CLUB BAHIA
PD09100203	PCS	04/10/09 22:58	45G08L	78 DEMPSEY RD, CLUB BAHIA
Number of Events:	<b>11</b>			