APPROVED

PLANNING COMMISSION MINUTES

March 24, 2010

I. ROLL CALL/SEATING OF ALTERNATE

Present: Larry Ciardella, Erik Larsen, Sudhir Mandal, Gurdev Sandhu, Noella Tabladillo, Steve Tao, Mark Tiernan, and Cliff Williams

Staff: Ah Sing, Andrade, Barnhart, Bravo, Chan, Hom, Lindsay, and Otake

II. PLEDGE OF ALLEGIANCE

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

III. PUBLIC FORUM

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

Rob Means, 1421 Yellowstone Ave, Milpitas, spoke about the California Democracy Act, an initiative to shift back to a majority rule.

IV. APPROVAL OF MINUTES
March 10, 2010 and March 17, 2010

Chair Williams called for approval of the minutes of the Planning Commission meeting of March 10, 2010 and March 17, 2010.

There were no changes to the minutes.

Motion to approve the minutes of March 10, 2010 and March 17, 2010 as submitted.

M/S: Mandal, Tiernan

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

V. ANNOUNCEMENTS

All Commissioners made an announcement that they either met with or received e-mails and phone calls from residents regarding the Walmart project.

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, Sandhu

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

VIII. CONSENT

Chair Williams asked whether staff, the Commission, or anyone in the audience wish to

CALENDAR

remove or add any items to the consent calendar.

There were no items on the Consent Calendar and none were added.

IX. PUBLIC HEARING

1. CONDITIONAL USE PERMIT AMENDMENT NO. UA09-0002, SITE DEVELOPMENT PERMIT AMENDMENT NO. SA09-0003 AND ENVIRONMENTAL ASSESSMENT NO. EA09-0006

Cindy Hom, Assistant Planner, presented a request to allow for an 18,457 square foot expansion of an existing Walmart store, installation of associated site improvements including façade improvements to building exterior, and replacement of signage. The project also proposes grocery and alcohol sales. The project site is located at 301 Ranch Drive. **Ms. Hom** recommended adopting Resolution No. 10-016 certifying the EIR and adopting Resolution No. 10-017 approving the project subject to the conditions of approval.

Commissioner Sandhu asked what is replacing the parking spaces. **Ms. Hom** stated two aisles of parking spaces would be removed to accommodate the expansion. **Commissioner Sandhu** also asked the location of the Seasons Market Place. **Ms. Hom** stated the Seasons Market place is located at 1535 Landess Avenue. **Commissioner Sandhu** asked who would receive the $180,000 traffic mitigation fee. **Ms. Hom** stated the City would be paid the $180,000 for traffic improvements. **Mr. Lindsay** also stated there is a list of general improvements on McCarthy Blvd. **Commissioner Sandhu** asked if staff had received comments from the residents within the 1,000 ft area where the notices were sent. **Ms. Hom** stated comments were received from the residents.

Vice-Chair Mandal asked if this Walmart would be the only one in this area that would have a grocery store. **Ms. Hom** stated yes. **Vice-Chair Mandal** asked about the hours of alcohol sales. **Ms. Hom** confirmed that the Dept of Alcoholic Beverage Control restricts sales so that there are none between 2AM and 6AM. **Mr. Lindsay** stated that Safeway and 7-11 stores have the same restrictions. **Vice-Chair Mandal** asked how the City's tax base would be affected by the project. It is his understanding that grocery food is not taxed. **Mr. Lindsay** said the amount of sales tax that may or may not be generated from this project was not a consideration of the Conditional Use Permit. Food sales are non-taxable sales. Food sales can generate an increase in taxable sales in regards to a number of customers visiting not only the site where the food sales are occurring but also the surrounding businesses as well.

Vice-Chair Mandal asked about the traffic impact on some of the intersections. **Mr. Lindsay** referred this question to the traffic engineer from Kimberley Horn and Associates.

Jim West, Kimberley Horn and Associates, stated the analysis that was conducted was a conservative analysis. The study identified that there is an unacceptable level of service in some intersections and that the project creates an impact and should be responsible for mitigating the impact.

Vice-Chair Mandal stated there is going to be 87 new jobs created, do these jobs include benefits? Chair Williams reminded **Vice-Chair Mandal** that this project is regarding land use.

Alternate Commissioner Larsen asked in regards to jobs lost or jobs gained, is the City precluded from considering these practices or weighing these factors in the EIR. **Assistant City Attorney, Bryan Otake**, stated social and economic concerns cannot be considered by the Commission unless they are dealing with social and economic concerns that actual lead to physical impact on the environment. **Alternate Commissioner Larsen** asked if Walmart decides to relocate to another city what mechanism does the City have to recoup any lost monies that the City might have put into Walmart either in this project or in the original project. **Mr. Lindsay** said he was

not aware of any City funds used towards the creation of this development site.

Alternate Commissioner Larsen asked if there has been any consideration about the number of jobs being lost in Fremont as a result of NUMMI closing and how it would impact negatively future sales for this kind of market region.

Amy Herman, CBRE Consulting, stated at the time they did the study NUMMI was not in the process of closing. They based the analysis on historic trends and current tendencies in the area. The analysis does not address what might happen when the plant closes and jobs are lost.

Alternate Commissioner Larsen asked what the graffiti mitigation is. **Ms. Hom** stated that the Code Enforcement Division has a Neighborhood Beautification Ordinance that deals with graffiti. The City is pro-active in abating graffiti.

Alternate Commissioner Larsen asked if there is any potential loss of employment from this project and the resulting foreclosures that would occur within the market area that may lead to a physical condition. **Ms. Herman** stated the study did not look at job losses or gains associated with the project it would be speculation how it might affect foreclosures.

Alternate Commissioner Larsen stated a number of letters have made reference to the point that this EIR violates CEQA standards. **Mr. Otake** stated CEQA has certain guidelines to the lengths of the EIR, however, CEQA only makes suggested lengths, and the length of the EIR should be scaled to the complexity or scope of the project. There are no hard and fast absolute rules.

Alternate Commissioner Larsen asked if any Milpitas residents requested the Draft or Final EIR. **Ms. Hom** stated the EIR is on the City's website, the Milpitas Library, and City Hall. **Ms. Hom** believes only one person has requested a copy of the EIR.

Commissioner Tabladillo asked if Walmart is in the same general commercial zoning area as McCarthy Ranch Market Place and the Great Mall. **Ms. Hom** stated they are within the same zoning district.

Commissioner Ciardella asked how many cart corrals are there at the site. **Ms. Hom** said there are 28 being proposed and around 10 – 12 at the moment. **Commissioner Ciardella** asked if the cart corrals count as a parking space. Ms. Hom stated they do not count as a parking space. **Commissioner Ciardella** asked about the ADA requirements. **Ms. Hom** stated ADA requirements are in conformance with the Building Code requirements for assessable parking.

Commissioner Tao asked if staff received any questions or comments from the surrounding retail stores in the study area. **Ms. Hom** stated they did not receive any correspondence from the surrounding retail stores.

Commissioner Tao asked the projection of the peak usage hours for the store. **Mr. West** stated the peak hours would be around the noon hour and in the evening.

Commissioner Tao asked if the hours would be after people got out of work. **Mr. West** stated that is correct.

Commissioner Tiernan asked if CBRE has done many urban decay analyses on Walmart projects in the past. **Ms. Herman** stated they have done other urban decay analyses for Walmart as well as many other stores throughout California.

Commissioner Tiernan asked how many analyses has CBRE done on Walmart. **Ms. Herman** said they have done about 20 analyses.

Commissioner Tiernan asked if City staff asked CBRE what the impact of these projects were on other Cities. **Ms. Herman** stated that question was not directed to them.

Commissioner Tiernan asked CBRE if Walmart has made a good faith attempt to address issues regarding urban decay or blight. **Ms. Herman** stated she only knows what she sees and hears in the public forums she attends.

Commissioner Tiernan asked staff if Walmart and its consultants made a good faith attempt in addressing any potential urban decay or deterioration issues and does staff feel it is important to assess how Walmart projects that have been approved in other cities and how they impact those cities. **Mr. Lindsay** stated yes the economic study was very thorough and staff agrees with its conclusions. **Mr. Lindsay** stated yes it is important to view how similar projects perform in other communities but within the context of the strength of the market areas that are being served.

Commissioner Tiernan asked staff what is the track record of Walmart adhering to conditions of approval from various projects and what is their overall environmental record in addressing these issues that were part of the conditions of approval. **Mr. Lindsay** stated Walmart has performed as well as any of the other big box retailers within the City. Staff has applied some conditions of approval with this project if it is approved to address the exterior storage containers and if it is not approved they will continue to work with Walmart to be in compliance.

Commissioner Tiernan asked if there has been any discussion on the medical clinic as part of this project in the grocery store. **Ms. Hom** stated at the beginning it was contemplated as part of the proposal. It is a permitted use in the General Commercial Zoning district.

Commissioner Tiernan has a concern with the selling of alcohol late at night. He feels there might be crime. **Ms. Hom** stated the Police Department reviewed the application and recommended conditions of approval for the project.

Commissioner Tiernan requested a condition of approval for the project of a 6, 12, and 18 month review. **Chair Williams** stated the Commission usually imposes the condition of a 6, 12, 18 month review for certain projects.

Angie Stoner, Walmart Public Affairs Manager of Northern California, 889 Northpoint, San Francisco, CA., gave a brief presentation on the Walmart project. She thanked the public and staff for being here this evening.

Stan Iverson, Project Engineer, Tait and Associates, 11280 Trade Center Drive, Rancho Cordova, CA, thanked City Staff for working with them on this project and gave a brief presentation of this project. He stated Walmart is consistent with the Milpitas zoning ordinance in terms of land use, it is consistent with the general commercial zoning district, and the project does comply with City codes.

Mike Salmon, Architect, Perkowitz and Ruth Architects, Long Beach, CA, stated Walmart redesigned their basic buildings to appeal to the customers. **Mr. Salmon** gave an overview of the new appearance of the Walmart store. **Mr. Salmon** stated some of the sustainable features of Walmart are: LED lighting, super high HVAC units, water conservation fixtures, water heating, and recycling.

Vice-Chair Mandal asked about solar energy. Mr. Iverson stated that is a feature that is being reviewed. **Ms. Stoner** stated they are proposing skylights. They are currently testing a solar program. They are building their buildings to be solar ready.

Vice-Chair Mandal asked if this Walmart was one of their better sites. **Ms. Stoner**

stated one of the priorities was to match the shopping center they are in. **Mr. Salmon** stated that this Walmart was well above average.

Commissioner Sandhu asked how many Milpitas residents are employed at Walmart. **Ms. Stoner** stated about 41% employees is from Milpitas.

Commissioner Tao asked the applicant to identify the runoff areas. **Mr. Iverson** said they are proposing planters with infiltration. They are proposing to use a treatment unit itself on the system. They would be treating only the new areas. **Commissioner Tao** asked staff if this is meeting the general requirement. **Mr. Lindsay** stated they are in compliance with finding ways to treat the new areas.

Commissioner Tao is concerned with safety and wanted to know if there is sufficient lighting in the parking area. **Mr. Iverson** stated it does meet the lighting and safety requirements.

Commissioner Tao asked what the length of time of construction is. **Ms. Stoner** stated it would take 10 and 12 months to complete construction.

Commissioner Ciardella asked how the sale of alcohol is restricted after 2:00 a.m. **Ms. Stoner** said the cash register will restrict the sale of alcohol after 2:00 a.m.

Chair Williams asked what are Walmart's safety measures for pedestrians entering and exiting the store. **Mr. Iverson** stated Walmart will have pattern concrete, signage and striping, also yield signs and stop signs in front of the store. **Mr. Salmon** stated there is a distance between the driveway and the entrance and the rest of the walls so there is plenty of space for the pedestrians to see the vehicles and the vehicles to see the pedestrians.

Alternate Commissioner Larsen asked what kind of security is there currently. **Ms. Stoner** stated currently there is security inside the store during operational hours which is 7:00 a.m. to 11:00 p.m. plus half hour after the store closes. They also have cameras inside and outside of the store. They are proposing security 24 hours a day inside the store and security cameras outside the store. **Alternate Commissioner Larsen** asked if the proposal will have security 24 hours outside the store in the parking lot. **Ms. Stoner** stated currently the proposal is not requesting a security guard 24 hours a day outside the store in the parking lot.

Alternate Commissioner Larsen asked about the medical clinic and medical waste. **Ms. Stoner** stated the clinic is not operated by Walmart it is leased from a local provider. The clinic would manage the waste by a medical provider.

Alternate Commissioner Larsen brought up VTA's comments about the ADA ramps at the rear of the store area and asked would the applicant be amenable to adding the ADA ramps.

Mr. Iverson indicated there is a sidewalk along the N. McCarthy Road frontage that wraps around Ranch Drive. The existing VTA Bus stop is located in an area on Ranch Drive, where majority of the people would be exiting from the VTA bus. Regarding accessibility, the grades work well coming from the Ranch Drive access and along the store frontage to this direction (pointing south).

Mr. Iverson showed where the existing path in this area on N. McCarthy that is adjacent to Walmart's property. **Mr. Iverson** explained how and where the existing sidewalk from N. McCarthy that connects to the McCarthy Ranch Marketplace sidewalk and pathways. **Mr. Iverson** reiterated staff's recommendation requirement to work with the adjacent property to provide a pedestrian connection to the McCarthy Ranch Marketplace from Walmart's parking lot and indicated this would be the best way to

bring people up from this connected path.

Mr. Iverson stated an additional reason why another pedestrian path on the rear may not be appropriate: There is a 5-foot grade difference from the street and a 9-foot landscape berm that was built to screen the commercial property from the street. The grade would need to be cut and retained. The path would also lead customers to places where it may be unsafe, such as the truck dock area. He reiterated that the most suitable path is from the existing sidewalk.

For clarification, **Alternate Commissioner Larsen** drew attention to the area VTA was referring to in their comment. **Mr. Iverson** stated there is an existing sidewalk but it is not striped. **Alternate Commissioner Larsen** asked if the applicant would be open to a condition requiring striping of the area. **Mr. Iverson** said, it would require the applicant to work with the adjacent property owner and that process can be difficult. **Alternate Commissioner Larsen** said it would be important to have ADA accessibility back in that area. **Mr. Iverson** said the applicant would be agreeable to the condition to work with the adjoining property owner to get striping added.

Alternate Commissioner Larsen asked the minimum number of hours for a full time employee. **Ms. Stoner** stated full time employment is 34 hours.

Commissioner Tabladillo asked what kind of security is in the rear of the building. **Ms. Stoner** stated currently there are security cameras in the rear of the store.

Commissioner Tabladillo asked if there are speed bumps in front of the store. **Mr. Iverson** stated there are no speed bumps in front. **Commissioner Tabladillo** asked what will be used in the future. **Mr. Iverson** stated the change in the pavement material and texture, the yield and stop signs, and striping.

Commissioner Tabladillo asked how the trash is going to be handled. **Mr. Salmon** stated there will be more than two enclosures.

Ms. Stoner stated Walmart currently does have a third party parking security contractor that will continue.

Alternate Commissioner Larsen asked how the Milpitas Walmart might pull business from other Walmart stores in the area and how it might negatively impact other Walmart stores nearby. **Ms. Herman** stated they do have some expectation that Walmart might pull some demand away from Fremont and San Jose.

Chair Williams opened the public hearing.

Rob Means, 1421 Yellowstone, Milpitas, stated there would be 119 jobs lost and a drop in property taxes.

Eric Keaton, 439 Camille Circle, San Jose, feels the EIR does not meet CEQA requirements and urges the Commission to reject the application.

Greg Wardle, 439 Camille Circle, San Jose, stated this super center will not enhance the City's retail offerings, will cause store closures, and will have significant and unavoidable traffic impacts. He stated the City should not approve this application.

Nilesh Pathale, 2021 No. Milpitas Blvd., Milpitas, stated the EIR does not discuss the potential impact to the other Walmart stores in the area. He stated the Commission should not certify the EIR and should reject this application for a Conditional Use Permit.

Mike Strow, Walmart Operations Assistant Manager in Milpitas, stated he has been with Walmart for 5 years. It has been a great experience. It has a great atmosphere for

the customers.

Sally Lieber, Mt. View, stated Walmart has set up special arrangements for their workers to be able to get on public health care programs since benefits tend to accrue to them in a very slow manner. Walmart is a poverty wage employer.

Di Curtis, Sunnyvale, stated she works for Walmart and was not told to be there by her employer. She has been with Walmart for about 5 years. She started as a cashier and has worked her way up to Department Manager. She stated she is growing with the company. She feels having the super center would be good for the community.

Madhulika Singh, 2237 Lacey Drive, Milpitas, stated Gilroy had stores close due to the Walmart super center. She urges the Commission to reject the application.

Ricky Folks, Milpitas, stated he has been with Walmart for 12 years. He said the company gives you an opportunity to grow. They helped him with his career growth in management.

Jerry Lee, 1551 Citrus Grove Ct., San Jose, is concerned with Walmart's plans. He stated other stores would close. He feels it is not good for the community. He feels the Commission should reject the application.

Daislyn Pease, 294 Barker St., Milpitas, stated she is not happy with Walmart. She is concerned with traffic. She urges the Commission to reject the project.

Mr. Pantia, 1108 So. Abel St., Milpitas, fears his store would close due to Walmart. He stated there is no need for a larger Walmart. He urges the Commission to deny the application.

Guy Haas, 1277 Fallen Leaf Dr., Milpitas, said the EIR states a majority of stores would not compete with Walmart Super Center. The super center would cause more store closures which would ultimately result in prolong vacancies and eventually urban decay impacts. He urges the Commission not to certify the EIR and reject the application for the Conditional Use Permit.

Alton Wheeler, 34265 Cronin Terrace, Fremont, is the Co-Manager of the Milpitas Walmart store. They have about 320 associates. He asked the Commission to look at Walmart as people who live in the community who work very hard so the community can live better. He stated they have donated to many agencies and organizations in the community.

Ali Kalbali, 225 Spence Ave., Milpitas, stated his intention is for Walmart not to expand.

Marcelle Keebe, 435 Mulan Dr., San Jose, stated granting the application will take away jobs from other people. She stated area grocery stores will be impacted according to the EIR.

Carrie Hamilton, 677 Kirkland Dr., San Jose, stated blight and decay will occur. She believes this project would harm the City of San Jose ability to comply with AB32.

Lambert Lum, 1256 Creighton Ct., Milpitas, feels the shoppers should make the final decision. He is in favor of the expansion.

Nancy Mendizabal, 2225 Edsel Dr., Milpitas, stated if the expansion is granted the traffic impact will get greater. Once the three vacant tenant spaces in that shopping center get filled, then traffic will get worse.

Ivan Angeles, 864 No. Pete St., Livermore, is an assistant manager with Walmart. He stated a lot of the neighboring stores in the shopping center are in favor of the expansion.

He said he started as an hourly associate and moved his way up the ladder as a salary member of management. Walmart has paid him well to be able to live very well and comfortably.

Arthur Balangue, Lark St. in the Manor, stated the expansion would impact his lively hood because he works for SaveMart. He stated the Commission should not certify the EIR and should reject the application for the Conditional Use Permit.

Ms. Lum, 28269 Pierce St., Hayward, said she has shopped at different Walmarts in the area and likes the Milpitas store better. She is in favor of the expansion.

Speaker # 22, stated staff did not speak about the reasons for the expansion. He said there would be more traffic congestion. He stated the Commission should vote no on the expansion.

Tina Hagbe, Newark, is one of the 10 who started with Walmart 16 years ago. She is upset how people can talk about Walmart and their benefits and pay when they don't work there. She approves the expansion.

Frank De Smidt, Milpitas Chamber of Commerce, stated the Chamber of Commerce supports the expansion of Walmart; the addition will help the community, increase jobs, and also add revenue to the City budget.

Speaker # 25, said she has worked for Walmart for 12 years and chooses not to take their medical. She stated she wants this project approved because the customers want it.

Pastor Lee, Sunnyhills United Methodist Church, stated the congregation opposes the expansion of Walmart due to their values. He wants the Commission to reject the application.

Mabel Lee, Sunnyvale, is excited about the expansion. She stated it is good for the local economy and good for business. She urges the Commission to approve the project.

Tony Ha, stated he is an assistant manager for the Milpitas Walmart. He always liked Walmart and stated they take care of their customers and associates. He urges the Commission to approve the application.

Jean Marlowe, 435 Malone Dr. San Jose, stated Walmart's proposal would hurt San Jose's ability to attract retailers to north San Jose. If Walmart builds a super center it would be years before San Jose would attract a retailer. She stated the Commission should not certify the EIR and should reject the application for this project.

Phil Tucker, Project Director, Calif. Healthy Community Network, Tides Center, San Francisco, read an impact analysis report from Dr. Phil King, Associate Professor Economics San Francisco State University on the EIR.

Joyce Donahue, Alviso, stated she is a merchandiser and feels it is good for the economy. She said the people she works with at Walmart are great.

Michael Bess, 149 Marylinn Dr., Milpitas, said he lives behind Walmart. He stated Walmart saves him money. He feels it's not going to hurt anyone. He urges the Commission to approve the application.

Betty Crunk, 180 Orion Ct., Milpitas, said she lives behind SaveMart and is looking forward to Walmart coming to Milpitas as a super store. She would definitely shop at a Walmart store because they have better prices. She has all her prescriptions there. She urges the Commission to approve the application because she believes it would be a great benefit for the community.

Jim Stoneberger, 280 Tuolumne Dr., Fremont, stated he does most of his shopping in

Milpitas at the Walmart store. He said the super centers that he has been at have a great selection of items at great prices. He said additional tax dollars would accrue because more people would shop at the McCarthy Ranch shopping area such as the restaurants and other retailers in the area. He urges the Commission to approve the expansion of Walmart.

Mr. Garcia, San Jose, stated Walmart has low wages in pay. He is urging the Commission to reject the application and don't kill the businesses that are providing good paying jobs for the residents in the community.

Warren Berry, 1234 Clayton Rd., San Jose, stated when Walmart came to Gilroy it hurt the city very badly. He wants the Commission to really think this application over and deny the application.

Bret Jolly, 2291 W. March Lane #B100, Stockton, stated he is a land use attorney who is representing the Coalition For A Better Community. This project will have unavoidable impacts on traffic. He stated the issues at hand are taxes, jobs, and urban decay.

Motion to close the public hearing.

M/S: Tabladillo, Sandhu

AYES: 7

NOES: 0

ABSENT: 0

ABSTAIN: 0

Vice-Chair Mandal is concerned with the traffic impact. He feels the EIR does not address traffic enough.

Commissioner Sandhu asked if SaveMart was owned by Food Maxx. **Mr. Lindsay** stated he is not sure if Food Maxx owns SaveMart.

Commissioner Tao asked CBRE what is the confidence level of their figures. **Ms. Herman** stated their company felt confident with their figures. They had the information about the net increment in growth of space in food sales.

Chair Williams asked about classification of sales tax and what it means to the community. **Mr. Lindsay** stated retail sales are taxable sales and food sales are non-taxable sales and there has been a fair amount of discussion regarding the amount of tax revenue that would come to City. **Mr. Lindsay** restated the findings being recommended to certify the EIR one of which was strengthening the City tax base. The findings being recommended for approval of the project did not include consideration of sales tax. Sales tax revenue was not a component of the urban decay analysis.

Alternate Commissioner Larsen stated the issue of strengthening the City's tax base was not part of the EIR study. He stated by adding 85 full time jobs, Walmart is taking away potentially 100 other jobs if SaveMart or other stores close. He feels it is inconsistent with the General Plan. He said it would draw business away from the Town Center and the Midtown Plan. Rather than promoting a strong economy, this project simply diverts business from grocery stores and small business.

Commissioner Tiernan asked if there has been any analysis as to the potential sales that would be generated by the sale of alcohol and the corresponding sales tax revenues. **Ms. Stoner** stated they have not done an analysis on the additional sales from alcohol and the revenue it could generate.

Commissioner Tiernan stated people should be free to shop where they want to. There are parameters which the Commission can take a look at what are essentially land use decisions. We are not here to debate the emotional reasons. A business will succeed or fail based on how they respond to their customers based on how they respond to customer service, and ultimately that is not a function of the Planning Commission to get involved in. He cannot find a legal reason why they should not certify the EIR or why they should deny this Conditional Use Permit. Although, he feels the Commission should set some additional conditions of approval.

Commissioner Tao asked if Walmart is targeting towards the more ethnic food type of items or more general merchandize type of items. **Ms. Stoner** stated they will be targeting general merchandize type of items; they would not be in direct competition with the other ethnic markets within the community.

Commissioner Tao asked staff what is the projected time line for the build out of the Midtown Plan. **Mr. Lindsay** stated the type of commercial retail would typically be small in scale. The development in the Midtown Plan would be in the next 15-20 years.

Commissioner Tabladillo does not understand why they need a 24-hour store and if it would be a benefit to the community. She asked staff if there could be a condition to make the store open until midnight rather than 24-hours. **Mr. Otake** stated it is within the Commission's power to impose a condition of approval on hours of operation as long as there is a nexus between the restriction and a negative land use impact. It is also within the Commission's power to have a 6 month or 12 month review to check upon possible impacts of the various uses rather it is hours of operation or other aspects of the proposed use. **Mr. Lindsay** stated in consideration of the impact of the 24-hour use there were two components that went into this study with the Police Department. One was the understanding of the existing calls for service at Walmart as it exists today and also what is the City experiencing in similar projects. Safeway is open 24-hours with full alcohol sales and is the closest comparison for the types of calls of service. The City feels they are not expecting any substantial increase of calls for service as a result of a 24-hour operation in conjunction with the alcohol sales. Staff is recommending a series of conditions dealing with security plans, parking lot patrols, and education on alcohol sales. Staff believes the project would not have a significant increase in the demand of police services.

Commissioner Sandhu stated he shops at SaveMart and Nob Hill. He believes if the people want SaveMart to stay open it will, they will continue to shop at SaveMart. He has no reason to deny the project on speculation. He said it is up to the people to keep the stores open. He will support the project based on the few other conditions and he also agrees that Walmart need not be open 24 hours.

Commissioner Tao stated he thinks the store might close early if the hours are too long.

Vice-Chair Mandal stated he does not believe that the EIR has considered all the traffic impact. He believes the EIR cannot be certified and so this puts this project in jeopardy in his opinion.

Commissioner Ciardella asked who governs traffic. **Mr. Lindsay** stated guidelines for doing traffic impact analysis within Santa Clara County are set forth by VTA. This traffic impact analysis complies with those guidelines and all the mitigation measures that have come through it are in compliance with the entire fair share requirements recommended in those guidelines and as required by CEQA.

Motion to adopt Resolution No. 10-016 approving the certification of the EIR.

M/S: Ciardella, Williams

AYES: 5

NOES: 2 (Sudhir Mandal and Noella Tabladillo)

ABSENT: 0

ABSTAIN: 0

Motion to adopt Resolution No. 10-017 approving the project subject to conditions of approval with the mended changes.

M/S: Ciardella, Williams

AYES: 5

NOES: 2 (Sudhir Mandal and Noella Tabladillo)

ABSENT: 0

ABSTAIN: 0

Commissioner Tiernan stated he would like to treat Walmart like any other business in the community who has propose the sale of alcohol with a condition of a 6, 12, and 18 month review process to make sure they are in compliance.

Commissioner Tabladillo still has a concerned with this project overall. She asked what recourse the Commission has if they propose a condition that Walmart and staff are able to work out hours that are reasonable rather than a 24 hour operation. She does not believe 24 hours is appropriate right now. **Commissioner Tiernan** asked if they should be treating Walmart differently than Safeway. Safeway has the ability to open 24 hours. He feels the 6, 12, and 18 month review would be able to give the Commission insight on any public safety issues. Walmart would also have the ability to see if these hours work for them and their employees. **Commissioner Tabladillo** stated that Safeway is in the heart of the City and Walmart is not. **Chair Williams** stated typically that is the purpose of the 6, 12, and 18 month review is to be able to come back if incidents occur and staff through the Police Department would notify the Commission of any conditions that would warrant any further review or discussion. Walmart supports Alviso and other communities outside of Milpitas. **Vice-Chair Mandal** agrees with **Commissioner Tabladillo**.

Mr. Lindsay read the additional changes of Resolution No. 10-017:

- One additional condition requiring a 6, 12, and 18 month review after occupancy, which would be Condition 57;
- Condition 35 – Sweep streets daily with water sweepers to remove any visible soil material carried onto adjacent public streets; and
- Condition 37 – Prior to issuance of the final certificate of occupancy, the project applicant shall post signs in the Walmart loading docks requiring truck drivers of non-refrigerated trucks to turn off engines when not is use.

X. ADJOURNMENT

The meeting was adjourned at 1:45 a.m. to the next meeting of April 14, 2010.

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Yvonne Andrade
Recording Secretary