



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: August 10, 2011

APPLICATION: Permit Review No. PR11-0002, Seasons Marketplace

APPLICATION SUMMARY: A permit review of a Site Development No. SD08-0006 and Conditional Use Permit No. UP08-0028 that allows for the operations of 32,975 square foot ethnic food store located within the Seasons Marketplace Shopping Center.

LOCATION: 1535 Landess Avenue (APN 88-35-017)
APPLICANT: Dinna Bayangos, Ayafafil Management LLC, 255 Shoreline Drive, Suite 428, Mountain View, CA 954065
OWNER: Same as above.

RECOMMENDATION: Staff recommends that the Planning Commission:
1. Note receipt and File.

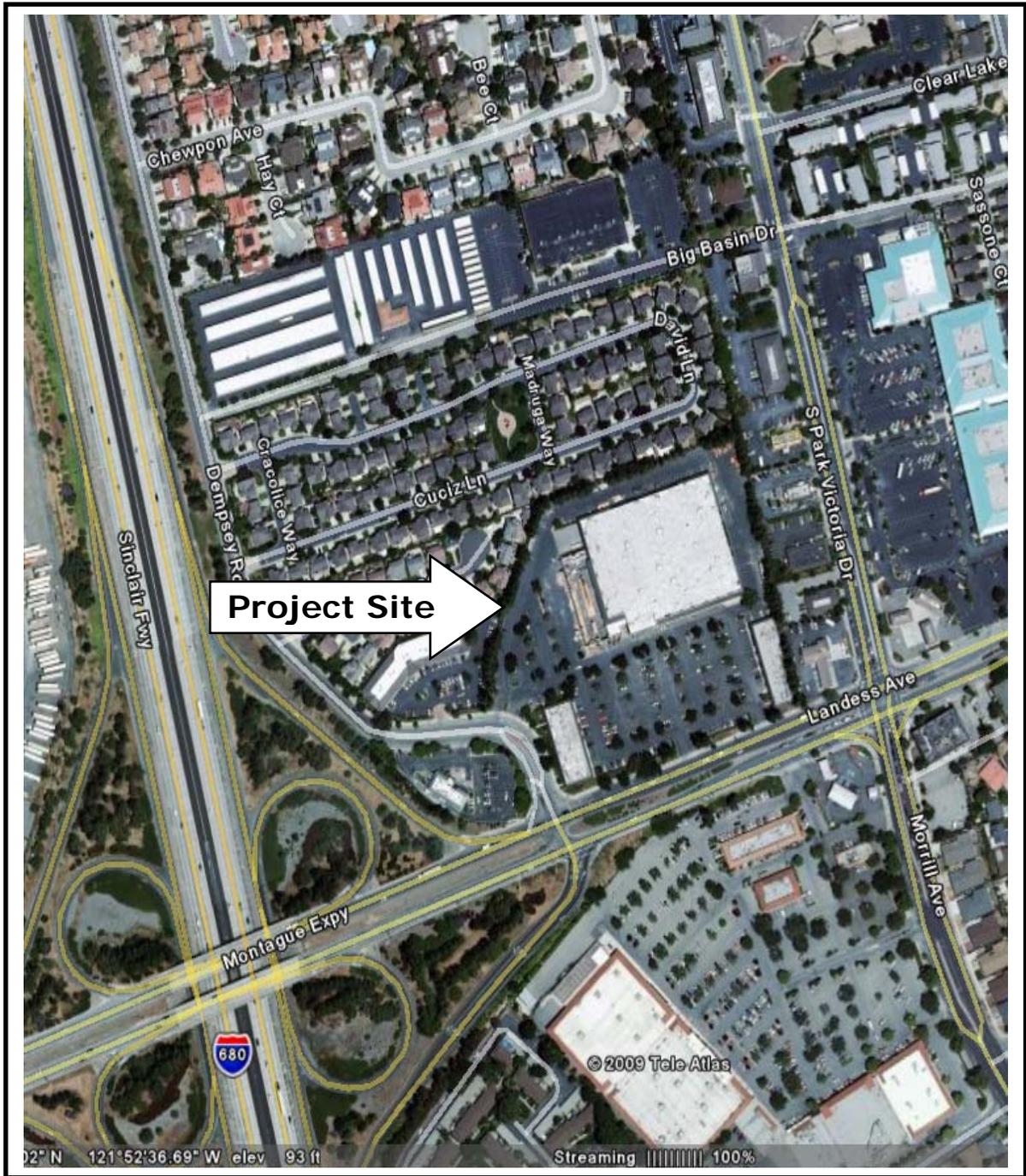
PROJECT DATA:
General Plan/
Zoning Designation: General Commercial (GNC)/General Commercial
Overlay District: Site and Architectural Overlay (C2-S)
Specific Plan: N/A
Site Area: 7.89 Acres
CEQA Determination: Categorically exempt pursuant to Class 9, Section 15309 (Inspections) of the California Environmental Quality Act.

PLANNER: Cindy Hom, Assistant Planner

PJ: 2545

ATTACHMENTS:
A. February 9, 2011 Planning Commission Staff Report
B. February 9, 2011 Planning Commission Meeting Minutes
C. Assessment of Project with Conditions of Approval

LOCATION MAP



No scale

BACKGROUND

In February 2011, the Planning Commission conducted a permit review of a Site Development Permit (SD08-0006) and Conditional Use Permit (UP08-0028) which allowed for the redevelopment of the former Home Depot building. The project was approved for approximately 107,373 square foot of mixed commercial development that included a 32,975 square feet for a food market. A copy of the Planning Commission Staff Report and Planning Commission Meeting Minutes are attached for your review.

The project site is situated on a 7.89-acre parcel located at the northeast corner of the Dempsey Road and Landess Avenue intersection. The site is zoned General Commercial with a Site and Architectural Overlay (C2-S). Neighboring land uses include the Stonegate Development PUD (89 single-family homes) and the French Court PUD (20 single-family homes) both located north of the project site. The building is located approximately 70 feet from the rear property lines of the Stonegate residences, and the existing garden center is located approximately 100 feet from the rear of the French Court residences. A six-foot high masonry wall separates the adjacent residences from the subject site. Commercial retail buildings are located to the west, south and east. A vicinity map of the project site is shown on the previous page.

PERMIT REVIEW

Pursuant to condition of approval No. 39, a twelve month permit review is required by the Planning Commission for the purpose of ensuring compliance with conditions of approval and to review any issues arising from the operation of the establishment.

Based on staff's site visits, the site is in substantial conformance with the conditions of approval. However, the shopping center is in violation of the Milpitas Sign Ordinance with regard to temporary signs. The site was cited on July 6, 2011 in accordance with Milpitas Municipal Code XI-10-63.09 (Abatement Procedures). In a recent site inspection, the shopping center is still in noncompliance. Staff continues to work with the shopping center owners to bring the businesses into compliance. Their current sign program does provide the property owner the ability to remove them at will. In staff's opinion, there is sufficient provision in place to correct the issue. Compliance with the adopted conditions of approval is included as Attachment D to this report.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA) and determined the project is categorically exempt pursuant to Class 9, Section 15309 (Inspections) of the California Environmental Quality Act. The project is a twelve month permit review of the operations of an existing retail center.

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

The project has received two permit reviews conducted at six months and twelve months. Based on staff's review the project is in substantial compliance with conditions and there are no operational

deficiencies that warrant any recommendations for changes to the conditions of approval. No further permit reviews will be required or recommended by staff.

RECOMMENDATION:

STAFF RECOMMENDS THAT the Planning Commission note and receipt and file this report.

Attachments:

- A. February 9, 2011 Planning Commission Staff Report
- B. February 9, 2011 Planning Commission Meeting Minutes
- C. Assessment of Project with Conditions of Approval



MILPITAS PLANNING COMMISSION AGENDA REPORT

PUBLIC HEARING

Meeting Date: February 9, 2011

APPLICATION:	Permit Review No. PR11-0001, Seafood City
APPLICATION SUMMARY:	A six month review of Conditional Use Permit (UP08-0028) which allows for the operations of a 32,975 square foot grocery store and installation of associate site improvements.
LOCATION:	1535 Landess Avenue (APN 88-35-017)
APPLICANT:	Dinna Bayangos, Ayafafil Management LLC, 255 Shoreline Drive, Suite 428, Mountain View, CA 954065
OWNER:	Same as above.
RECOMMENDATION:	Staff recommends that the Planning Commission: 1. Note receipt and File.
PROJECT DATA:	
General Plan/ Zoning Designation:	General Commercial (GNC)/General Commercial
Overlay District:	Site and Architectural Overlay (C2-S)
Site Area:	7.89 Acres
CEQA Determination:	Categorically exempt pursuant to Class 9, Section 15309 (Inspections) of the California Environmental Quality Act.
PLANNER:	Cindy Hom, Assistant Planner
PJ:	2545
ATTACHMENTS:	A. March 9, 2009 Planning Commission Staff Report B. March 9, 2009 Planning Commission Resolution C. March 9, 2009 Planning Commission Meeting Minutes D. Assessment of Project with Conditions of Approval

LOCATION MAP



No scale

BACKGROUND

In March 11, 2009, the Planning Commission approved a Site Development Permit and Conditional Use Permit to redevelop the former Home Depot building to allow for an approximately 107,373 square foot mixed commercial development that included a 32,975 square feet for a grocery store, various restaurants, and retail stores. The project approval also included renovation of the exterior façade and installation of various site improvements that include landscaping enhancements, creation of pedestrian walkways, and modifications to the Dempsey driveway and Dempsey Road median.

The project site is situated on a 7.89-acre parcel located at the northeast corner of the Dempsey Road and Landess Avenue intersection. The site is zoned General Commercial with a Site and Architectural Overlay (C2-S). Neighboring land uses include the Stonegate Development PUD (89 single-family homes) and the French Court PUD (20 single-family homes) both located north of the project site. The building is located approximately 70 feet from the rear property lines of the Stonegate residences, and the existing garden center is located approximately 100 feet from the rear of the French Court residences. A six-foot high masonry wall separates the adjacent residences from the subject site. Commercial retail buildings are located to the west, south and east. A vicinity map of the project site is shown on the previous page.

PERMIT REVIEW

Pursuant to Condition of Approval No. 39, a six month permit review is required by the Planning Commission for the purpose of ensuring compliance with conditions of approval and to review any issues arising from the operation of the establishment.

Staff conducted several site visits to during the construction stage to ensure consistency with approved site plan, architectural elevations, and landscaping plans. In addition, since the occupancy of the building, staff has also made additional observations. Although, there have been some minor issues associated with the operation of the facility, based on an overall assessment, the project is found to be in substantial conformance with the conditions of approval. Demonstration with compliance with the adopted conditions of approval is included as Attachment D to this report.

Code Compliance Service Request

Since the commencement of occupancy, there were two code violation cases associated with the shopping center cited in 2010. One of the code violations relate to the display of illegal temporary signs (Code Violation No. CZ1007-0002) and the second violation consist of noise complaints related to truck and maintenance operations for Seafood City (Code Violation No. CZ1007-0007). Both code compliance cases has been resolved and closed as of August 2010. However, based on recent site visit, the site continues to have illegal temporary sign displays. Code Compliance staff continues to work with Seasons Marketplace management and individual business owner to abate illegal signs through our Enforcement and Penalty Ordinance (Section 63) and with public information outreach.

ENVIRONMENTAL REVIEW

The Planning Division conducted an initial environmental assessment of the project in accordance with the California Environmental Quality Act (CEQA) and determined the project is categorically exempt pursuant to Class 9, Section 15309 (Inspections) of the California Environmental Quality Act. The project is a six month permit review of the operations of an existing retail center.

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

Based on staff's review the project is in substantial compliance with conditions and there are no operational deficiencies that warrant any changes to the conditions of approval.

RECOMMENDATION

STAFF RECOMMENDS THAT the Planning Commission note and receipt and file this report.

Attachments:

- A. March 9, 2009 Planning Commission Staff Report
- B. March 9, 2009 Planning Commission Resolution
- C. March 9, 2009 Planning Commission Meeting Minutes
- D. Assessment of Project with Conditions of Approval

APPROVED**PLANNING COMMISSION MINUTES****February 9, 2011**

- I. ROLL CALL/SEATING OF ALTERNATE**
- Present: John Luk, Sudhir Mandal, Zeya Mohsin, Gurdev Sandhu, Noella Tabladillo, and Mark Tiernan
Absent: Larry Ciardella and Steve Tao
Staff: Andrade, Brown, Hom, Lacey, Lindsay, and Otake
- Alternate Commissioner John Luk was seated as a member of the voting body.
- II. PLEDGE OF ALLEGIANCE**
- Chair Tiernan called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.
- III. PUBLIC FORUM**
- Chair Tiernan 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.
- There were no speakers from the audience.
- IV. APPROVAL OF MINUTES**
January 26, 2011
- Chair Tiernan called for approval of the minutes of the Planning Commission meeting of January 26, 2011.
- There were no changes to the minutes.
- Motion** to approve the minutes of January 26, 2011 as submitted.
- M/S: Sandhu, Mandal
- AYES: 5
NOES: 0
ABSENT: 2 (Larry Ciardella and Steve Tao)
ABSTAIN: 1 (Noella Tabladillo)
- V. ANNOUNCEMENTS**
- There were no announcements from staff or the Commission.
- 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 Tiernan 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, Tabladillo
- AYES: 6
NOES: 0
ABSENT: 2 (Larry Ciardella and Steve Tao)

ABSTAIN: 0

VIII. CONSENT CALENDAR

Chair Tiernan 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.

Motion to approve the Consent Calendar as submitted.

M/S: Mandal, Tabladillo

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Steve Tao)

ABSTAIN: 0

- 1. PERMIT REVIEW NO. PR11-0001:** A six-month permit review of Conditional Use Permit No. UP08-0028 which allows for the operations of a 32,975 square foot food store located within the Seasons Marketplace Shopping Center located at 1535 Landess Avenue (APN: 088-35-017) zoned General Commercial with Site and Architectural Overlay (C2-S). Applicant: Dinna Bayangos. Staff Contact: Cindy Hom (408) 586-3284. PJ # 2545. (*Recommendation: Note receipt and file.*)
- 2. SITE DEVELOPMENT PERMIT NO. SD10-0010:** A request to construct a six-foot tall monument sign for the Landess Center shopping center located at 1455 Landess Ave. (APN: 088-35-011) zoned General Commercial with Site and Architectural Overlay (C2-S) Applicant: Steve Peterson. Staff Contact: Tiffany Brown (408) 586-3283. PJ # 2684. (*Recommendation: Adopt Resolution No. 11-007 approving the project subject to conditions of approval.*)

IX. PUBLIC HEARING

1. SITE DEVELOPMENT PERMIT NO. SD10-0013

Tiffany Brown, Junior Planner, presented a request to construct a new 5,801 square foot single family home located within the hillside of Milpitas at 814 Calaveras Ridge Drive. Ms. brown recommended adopting Resolution No. 11-006 recommending approval to the City Council.

Vice-Chair Mandal asked for clarification on lighting restriction. Ms. Brown stated lighting is not allowed in the play court or garden area. Vice-Chair Mandal asked if a light can be installed outside of the home. Ms. Brown stated they are trying to avoid bright lights from tennis courts.

Chair Tiernan asked if this development was grandfathered in from 1981. Ms. Brown stated that it is consistent with the hillside ordinance. Chair Tiernan asked about the water supply and who would service this development. Mr. Lindsay stated the Calaveras Ridge Estates area is on City water systems.

T.C. Chen, Architect, 102 York Drive, Piedmont, stated he was available for any questions from the Commission.

Chair Tiernan opened the public hearing.

There were no speakers from the audience.

Motion to close the public hearing.

M/S: Tabladillo, Mandal

APPROVED

Planning Commission Minutes

February 9, 2011

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Steve Tao)

ABSTAIN: 0

Motion to adopt Resolution No. 11-006 recommending approval to the City Council.

M/S: Mandal, Tabladillo

AYES: 6

NOES: 0

ABSENT: 2 (Larry Ciardella and Steve Tao)

ABSTAIN: 0

**X. PRESENTATION ON
THE OPEN
GOVERNMENT
ORDINANCE**

Bronwen Lacey, Deputy City Attorney, gave a presentation on the Open Government Ordinance.

A copy of the Brown Act and the Open Government Ordinance was distributed to the Commission.

Vice-Chair Mandal asked if posting a comment on Facebook considered a meeting. Ms. Lacey stated no as long as it is a personal comment, nothing pertaining to the Planning Commission.

Commissioner Luk asked if the whole purpose of the Brown Act and Open Government Ordinance is to restrict communication among each other. Ms. Lacey stated the purpose of the Brown Act and Open Government Ordinance is to allow the public to witness and participate in the Commission's discussions and deliberations.

Chair Tiernan asked if local City politics were discussed at a social gathering what would be the guidelines. Ms. Lacey stated if the topics were going to be discussed at a future Planning Commission meeting then you would not talk about those topics with three other Planning Commissioners.

Commissioner Tabladillo asked if the Public Officials calendar has the capability to be pre-populated with the Planning Commission meetings. Mr. Lindsay stated it can be pre-populated. The Commissioners can add all the Planning Commission meetings at the beginning of the calendar year.

Chair Tiernan asked if staff update the calendars. Mr. Lindsay stated the Planning Commissioners update their own calendars.

Vice-Chair Mandal asked if the calendar is pre-populated with the meetings, it is up to the Commissioner to remove that meeting if he/she is unable to attend. Mr. Lindsay stated yes.

Commissioner Luk asked if the Open Government Ordinance applies to all cities in the Bay Area. Ms. Lacey stated the Brown Act applies to all cities within the state of California; however, the Open Government Ordinance applies only to the City of Milpitas.

**XI.
ADJOURNMENT**

The meeting was adjourned at 8:00 p.m. to the next meeting of February 23, 2011.

APPROVED
Planning Commission Minutes

February 9, 2011

Respectfully Submitted,

James Lindsay
Planning & Neighborhood
Services Director

Yvonne Andrade
Recording Secretary

APPROVED
Planning Commission Minutes
February 9, 2011

**CONDITIONS OF APPROVAL
SITE DEVELOPMENT PERMIT NO. SD08-0006, CONDITIONAL USE PERMIT
NO. UP08-0028, AND ENVIRONMENTAL ASSESSMENT NO. EA09-0003,
LANDESS RETAIL CENTER PROJECT**

Site Development Permit

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

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

Comment: The Project is in substantial conformance with approved plans.

2. Site Development Permit No. SD08-0006 and Conditional Use Permit No. UP08-0028 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 building permit, the project shall not be deemed to have commenced until the date of the building permit is issued and a foundation is completed.

Comment: The project is already vested and constructed.

3. Pursuant to Section 64.04-1, the owner or designee shall have the right to request an extension of Site Development Permit No. SD08-0006 and Conditional Use Permit No. UP08-0028 if said request is made, filed and approved by the Planning Commission prior to expiration dates set forth herein.

Comment: The project is already vested and constructed.

4. The proposed project shall be conducted in compliance with all applicable federal, state, and local regulations.

Comment: Perpetual

5. Private Job Account - If at the time of application for building permit there is a project job account balance due to the City for recovery of review fees, review of permits will not be initiated until the balance is paid in full.

Comment: Perpetual

6. Private Job Account - If at the time of application for a certificate of occupancy there is a project job account balance due to the City for recovery of review fees, a certificate of occupancy shall not be issued until the balance is paid in full.

Comment: Perpetual

7. Prior to the first building permit issuance for the site, the applicant shall submit a revised parking lot plan to the approval of the Planning Division that evenly distribute compact spaces throughout the parking area to provide opportunity of all types of cars to park without larger vehicles occupying more than one space.

Comment: Complies. Demonstrated on Site Improvement Plans (SI09-0004) approved on 9/14/09

8. At the time of adoption of these conditions of approval, the City was in the process of updating the City's Parking Ordinance. If the Ordinance amendments were not adopted by the City Council, the applicant would be obligated to ensure that the number of parking provided for the project matches the amount of parking required by the Parking Ordinance in effect. This may mean that the scope of the project would need to be reduced.

Comment: Perpetual

9. A detailed landscaping plan and irrigation shall be submitted and approved by the Planning Division prior to building permit submittal. The plan shall include details of the following:
 - a. The plan shall indicate location and type of trees, shrubs and ground cover, including plant type, plant name, container size quantities, and spacing.
 - b. The landscape plan shall comply with City Council Ordinance No. 238 (An ordinance of the City of Milpitas regulating efficient water use for new or rehabilitated landscapes and existing landscapes)
 - c. All new planter areas along the building, modified parking aisles, and revised landscaped street frontages shall incorporate the use of structural soil to ensure proper growth and prevent damage to surrounding paved areas.

- d. All mechanical equipment and boxes shall be screened from all views (public and private).
- e. All planter areas shall be serviced by an automatic system with low volume drip, spray or bubbler emitters.
- f. Planter pots installed on paving shall be provided with irrigation and be designed to drain to the storm drain.
- g. Missing or dead trees and shrubs located in the existing landscaped areas shall be replaced with an appropriate tree or plant material subject to the approval of the Planning Division.

Comment: Complies. Demonstrated on Site Improvement Plans (SI09-0004) approved on 9/14/09

- 10. Prior to building permit final, all required landscaping shall be planted and in place.

Comment: Complies. Field verified with approved landscaping plans prior to building permit final on 9/24/10.

- 11. All required landscaping shall be maintained in perpetuity to provide a permanent, attractive and effective appearance.

Comment: Perpetual

- 12. Prior to building permit issuance the applicant shall demonstrate conformance with the follow conditions for solid waste and recycling enclosures:

- a. Trash and recycling service area shall be development in accordance with the Milpitas Trash Enclosure Design Standards.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

- b. Trash and Recycling service areas shall include a roof cover element such as but not limited to roof canopy, decorative trellis, or other design for Planning Division review and approval.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

- c. If at any time there is a problem with bins outside of their enclosures and obstruct vehicle parking or on-site circulation, roll-out service through the local refuse collection company shall be required.

Comment: Perpetual.

- d. To ensure that the level of solid waste collection service is adequate, an evaluation of refuse service be done after the businesses have opened by the refuse company and the city Solid Waste Division.

Comment. Complies. See email from Nancy Clement dated 1/28/11 (Exhibit 1).

- e. All garbage or recycling bins shall be stored in enclosures.

Comment: Perpetual.

13. Prior to building permit issuance, the applicant shall revise plans to replace the existing dock railing on the north side of the dock area with screen wall to dampen noise from loading and trash service activities.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

14. Prior to building permit issuance, an exterior lighting plan shall be submitted for Planning Division review and approval. All lighting on the property shall be oriented or screened to prevent glare and light spillage onto adjacent residential areas. Plans submitted to the Planning Division shall contain sufficient detail on the illumination devices proposed so that the effect of such lighting on the adjacent areas can be evaluated. The type of lighting fixture, mounting height, intensity and direction shall be detailed on the plans. Wall mounted fixtures on the sides of the buildings shall be spaced so as to be architecturally integrated into the building design. Fixture design shall not consist of the standard wall-pack model.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

15. Exterior mounted electrical equipment and conduit shall be kept to a visible minimum, and where visible, shall be screened and installed in a neat and orderly fashion. It shall be painted to blend with its mounting background.

Comment: Perpetual

16. Prior to building permit issuance, all color permutations for all buildings shall be submitted to the Planning Division for review and approval.

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

17. Any future restaurant use shall obtain a conditional use permit prior to any tenant improvement and/or occupancy for the operations and compliance with Zoning regulations.

Comment: Complies. Received Planning Commission review and approval for multiple Conditional Use Permit for various food establishments on 3/11/09.

18. The final design of the pylon sign and associated sign program shall be submitted as a separate review prior to the erection of any signs for site and architectural review and approval to ensure high quality design and conformance with the Milpitas Sign Ordinance.

Comment: Complies. Received Planning Commission review and approval for pylon sign and associated sign program on 3/11/09.

19. Construction activities shall adhere to the following performance standards:

- a. Pursuant to the City of Milpitas Municipal Code, no person shall engage or permit others to engage in construction of any building or related road or walkway, pool or landscape improvement or in the construction operations related thereto, including delivery of construction materials, supplies, or improvements on or to a construction site except within the hours of 7:00 AM to 7:00 PM on weekdays.
- b. The contractor shall be required to use available noise suppression devices and properly maintain and muffle internal combustion engine-driven construction equipment.
- c. The contractor shall be required to use noise barriers or noise control blankets to shield stationary equipment from nearby noise-sensitive receptors.
- d. The contractor shall designate a disturbance coordinator and post the name and phone number of this person at easy reference points for the surrounding land uses. The disturbance coordinator would respond to all complaints about noise and take the necessary steps to reduce the problem.

Comment: Complies. Demonstrated on Building Permit plans (BP-09-0169) approved on 09/14/09.

20. Above ground utilities, such as those for fire service for sprinkler systems, shall be designed as architectural components or provided internal to the buildings or adequately screened.

Comment: Perpetual

21. The issuance of building permits to implement this land use development will be suspended if necessary to stay within (1) available water supplies, or (2) the safe or allocated capacity at the San Jose/Santa Clara Water Pollution Control Plant, and will remain suspended until water and sewage capacity are available. No vested right to the issuance of a Building Permit is acquired by the approval of this land development. The foregoing provisions are a material (demand/supply) condition to this approval.

Comment: Perpetual

22. Prior to issuance of any building permits, the developer shall obtain approval from the City Engineer of the water, sewer, and storm drain studies for this development. These studies shall identify the development's effect on the City's present Master Plans and the impact of this development on the trunk lines. If the results of the study indicate that this development contributes to the over-capacity of the trunk line, it is anticipated that the developer will be required to mitigate the overflow or shortage by construction of a parallel line or pay a mitigation charge, if acceptable to the City Engineer.

Comment: Perpetual

23. At the time of building permit submittal, developer shall submit a grading plan and a drainage study prepared by a registered Civil Engineer. The drainage study shall analyze the existing and ultimate conditions and facilities. The study shall be reviewed and approved by the City Engineer and the developer shall satisfy the conclusions and recommendations of the approved drainage study prior to building permit issuance.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

24. Prior to building permit issuance, the developer shall obtain design approval and bond for all necessary public improvements along Dempsey Road and Landess Avenue frontage, including but not limited to, removal and replacement of the damaged curb, gutter and sidewalk along project frontage, Dempsey Road median modification, roadway structural section and slurry seal of the street frontage and restriping of the Dempsey Road frontage. Plans for all public improvements shall be prepared on Mylar (24"x36" sheets) with City Standard Title Block and developer shall submit a digital format of the Record Drawings (AutoCAD format is preferred) upon completion of improvements. The developer shall also execute a secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials. The public facilities such as water meters, RP backflow preventers, sewer clean outs, etc., shall be placed so access is maintained and kept clear of traffic. All improvements must be in accordance with the City of Milpitas standard and specification, and all public improvements shall be constructed to the city Engineer's satisfaction and accepted by the City prior to building occupancy permit issuance/final inspection.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

25. The developer shall submit the following items with the building permit application and pay the related fees, following fees are estimates and the actual fees will be calculated at the time of building permit submittal:
- a. The water connection fee of **\$78,613**, to be collected as part of the Tennant Improvement permit submittal.
 - b. The sewer connection fee of **\$112,191**, to be collected as part of the Tennant Improvement permit submittal.
 - c. Storm water connection fee of **\$156,325** based on 7.25 acres @ \$21,562 per acre, to be paid for prior to building permit issuance.
 - d. Sewer Treatment Plant Fee of **\$136,746.62**, to be collected as part of the Tennant Improvement permit submittal.
 - e. Sewer Needs Questionnaire and/or Industrial Waste Questionnaire.
- Contact the Land Development Section of the Engineering Division at (408) 586-3329 to obtain the form(s).

Comment: Complies. Submitted payment in the amount of for utility connection fees on 10/21/09

26. The Developer shall be responsible to pay a traffic impact fee in the amount of **\$115,584.00** (based on a Montague Expressway impact fee of \$903 per peak hour trip). Prior to any building permit issuance, the developer shall pay 50% of the Traffic Impact fee. The Developer shall pay the remainder of the 50% of the traffic impact fee prior to final inspection or issuance of building certificate of occupancy.

Comment: Complies. Submitted payment for traffic impact fees on 10/21/09

27. In addition to the Montague Express way Impact fee, prior to any building permit issuance the developer shall pay for the cost of the plan line study in the amount of **\$20,000** for the Landess/Park Victoria improvements.

Comment: Complies. Submitted payment for traffic impact fees on 10/21/09

28. Prior to building permit issuance, the developer must pay all applicable development fees, including but not limited to, connection fees (water, sewer and storm), treatment plant fee, plan check and inspection deposit, and 2.5% permit automation fee. These fees are collected as part of the secured public improvement agreement. The agreement shall be secured for an amount of 100% of the engineer's estimate of the construction cost for faithful performance and 100% of the engineer's estimate of the construction cost for labor & materials.

Comment: Complies. Submitted payment for development fees on 10/21/09.

29. Prior to occupancy permit issuance, applicant/property owner shall construct a new trash enclosure or expand the existing enclosure to accommodate the required number of bins needed to serve this development. The proposed

enclosure shall be designed per the Development Guidelines for Solid Waste Services and enclosure drains must discharge to sanitary sewer line. City review/approval is required prior to construction of the enclosure.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

30. All utilities shall be properly disconnected before the building can be demolished. Show (state) how the water service(s), sewer service(s) and storm service(s) will be disconnected. The water service shall be locked off in the meter box and disconnected or capped immediately behind the water meter if it is not to be used. The sanitary sewer shall be capped off at the clean out near the property line or approved location if it is not to be used. The storm drain shall be capped off at a manhole or inlet structure or approved location if it is not to be used.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

31. Prior to demolition permit issuance, the Applicant, or Contracted Designee, shall submit Part I of a Recycling Report on business letterhead to the Building Division, for forwarding to the Engineering Section. This initial report shall be approved by the City's Utility Engineering/Solid Waste Section prior to demolition permit issuance. The report shall describe these resource recovery activities:
 - a. What materials will be salvaged.
 - b. How materials will be processed during demolition.
 - c. Intended locations or businesses for reuse or recycling.
 - d. Quantity estimates in tons (both recyclable and for landfill disposal). Estimates for recycling and disposal tonnage amounts by material type shall be included as separate items in all reports to the Building Division before demolition begins.

Applicant/Contractor shall make every effort to salvage materials for reuse and recycling.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

32. Prior to building permit issuance, applicant shall submit Part II of the Recycling Report to the Building Division, for forwarding to the City's Utility Engineering/Solid Waste Section, that confirms items 1 – 4 of the Recycling Report, especially materials generated and actual quantities of recycled materials. Part II of the Recycling Report shall be supported by copies of weight tags and/or receipts of “end dumps.” Actual reuse, recycling and disposal tonnage amounts (and estimates for “end dumps”) shall be submitted

to the Building Division for approval by the Utility Engineering/Solid Waste Section prior to inspection by the Building Division.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

33. All demolished materials including, but not limited to broken concrete and paving materials, pipe, vegetation, and other unsuitable materials, excess earth, building debris, etc., shall be removed from the job site for recycling and/or disposal by the Applicant/Contractor, all to the satisfaction of the City Engineer or designee. The Applicant/Contractor shall, to the maximum extent possible, reuse any useful construction materials generated during the demolition and construction project. The Applicant/Contractor shall recycle all building and paving materials including, but not limited to roofing materials, wood, drywall, metals, and miscellaneous and composite materials, aggregate base material, asphalt, and concrete. The Applicant/Contractor shall perform all recycling and/or disposal by removal from the job site.

Comment: Complies. Demonstrated on Site Improvement plans (SI09-0004) approved on 9/14/09.

34. At the time of building plan check submittal, the developer shall incorporate the changes and address the comments shown on Engineering Services Exhibit "S"(dated 3/2/2009).

Comment: Complies. Demonstrated on Building Permit plans (BP09-0169) approved on 9/14/09.

Conditional Use Permit

35. Planning approval is for the operations of a 32,975 square foot food market that includes the on-site sales of beer and wine and hot deli service. Any modification to the operations and use shall require a conditional use permit amendment.

Comment: Perpetual

36. The applicant shall submit a mall security plans that addressing staffing and security measures to deter people from congregating in the parking lot areas and creating nuisances. Furthermore, the applicant shall display "No Loitering" signs that state patrons or persons must vacate the premises no later than 30 minutes after closing.

Comment: Perpetual

37. Deliveries for the food market shall only occur between the hours of 8:00AM and 5:00PM.

Comment: Perpetual

38. Staffing hours for the food market shall be between the hours of 6:00AM to Midnight but opened to the public between the hours of 8:00AM to 9:00PM.

Comment: Perpetual

39. The project shall be subject to a six-month and twelve month review. (PC)

Comment: Complies. A six month review was scheduled on 2/23/11 and a twelve month review is scheduled on 7/27/11.

40. The applicant shall provide adequate cart retrieval areas near entrances subject to the approval of the Planning Staff. (PC)

Comment: Complies. Demonstrated compliance on Building Permit plans (BP09-0169) approved on 9/14/09.

41. The applicant shall ensure adequate lighting, closed circuit TV surveillance, other security or safety equipment in the rear parking areas. (PC)

Comment: Complies. Surveillance cameras are located on the north and west elevations.

42. The applicant shall work with authorized haulers of solid waste, recyclables, and other materials to ensure collection times that are compatible with neighboring uses to the extent possible. (PC)

Comment: Perpetual

43. The applicant shall work with city staff to ensure that deliveries to external restaurants and retail merchants are made in a manner that protects public safety. (PC)

Comment: Perpetual