

**MINUTES OF MEETING
WEST COUNTY BOARD OF ZONING ADJUSTMENTS
NOVEMBER 5, 2008
(APPROVED FEBRUARY 11, 2009)**

The Field Trip scheduled for 1:00 was cancelled. Board Members visited sites on an individual basis.

FIELD TRIP: 1:30 p.m.

1. **CAMBRA / EL SHADDI MINISTRIES, CONDITIONAL USE PERMIT, C-8762, PLN-2008-00020** - Application to allow continued operation of a church, in a R-C ABCD (Residential Commercial, Ashland Cherryland Business) District Specific Plan, located at 565 East Lewelling Boulevard, south west side, corner southwest of Wickman Court, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Numbers: 413-0031-053-00 and 413-0031-054-00. **Staff Planner: Pat Anekayuwat.**

2. **T-MOBILE, CONDITIONAL USE PERMIT, C-8774, PLN-2008-00040** - Application to allow the continued use of an existing telecommunication facility, in an M-2 (Heavy Industrial) District, located at 16520 Worthley Drive, east side, approximately .38 miles southeast of Grant Avenue, unincorporated San Lorenzo, area of Alameda County, designated Assessor's Parcel Number: 438-0010-004-19. **Staff Planner: Damien Curry.**

3. **CLIFFORD OLSON, VARIANCE, V-12129, PLN-2008-00021** – Application to allow a detached garage (accessory structure) with a building height of 17.25 feet where 15 feet is the maximum allowed, in an R-1-B-40-CSU-RV (Single Family Residence, Conditional Secondary Unit, Recreational Vehicle Parking Regulations) District, located at 5212 Wildrose Lane, east side, approximately 313 feet east of Madison Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-0895-008-00. **Staff Planner: Damien Curry.**

MEMBERS PRESENT: None.

MEMBERS EXCUSED: Chair; Dawn Clark-Montenegro; Vice Chair, Kathy Gil; Members, Jewell Spalding and Ineda Adesanya.

OTHERS PRESENT: None.

REGULAR MEETING: 6:00 p.m. Alameda County Building, 224 West Winton Avenue, Hayward, California.

MEMBERS PRESENT: Chair, Dawn Clark-Montenegro; Members, Jewell Spalding and Ineda Adesanya.

MEMBERS EXCUSED: Vice Chair, Kathy Gil.

OTHERS PRESENT: Phil Sawrey-Kubicek, Senior Planner; County Counsel, Andrea Weddle; Yvonne Bea Grundy, Recording Secretary.

There were approximately 25 people in the audience.

CALL TO ORDER:

The meeting was called to order by the Chair at 6:00 p.m.

ANNOUNCEMENTS BY THE CHAIR:

OPEN FORUM: Open forum is provided for any members of the public wishing to speak on an item not listed on the agenda. Each speaker is limited to three (3) minutes.

No one requested to be heard under open forum.

NEIGHBORHOOD PRESERVATION ORDINANCE ABATEMENT HEARING

There were no cases scheduled for the Abatement Hearing.

CONSENT CALENDAR:

1. **T-MOBILE / HARD, CONDITIONAL USE PERMIT, C-8734** – Application proposal to replace an existing 25 foot light pole with a new 35 foot pole with lights and four concealed antennas. A new equipment enclosure is also proposed to be located nearby. The subject parcel contains approximately 0.91 acres and is zoned R-1-CSU-RV (Single Family Residence, Conditional Secondary Unit, RV Parking) District, located at 18988 Lake Chabot Road, east side, north east of Keith Avenue, unincorporated Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084D-1305-012-00. (Continued from July 9 and September 10, 2008; to be continued to January 14, 2009). **Staff Planner: Jeff Bonekemper.**
2. **ANIL SINGH / BILL LANE, CONDITIONAL USE PERMIT, C-8737** – Application to allow the expansion of an auto repair facility in the CN District (Commercial Neighborhood) District. Applicant requests an existing two car canopy and a 40 foot container unit be allowed to remain on the subject property, the subject parcel contains approximately 0.24 acres and is located at 19592 Center Street, east side, corner of Edwards Lane and Center Street, unincorporated, Castro Valley area of Alameda County, designated Assessor's Parcel Number: 084C-1062-024-00. (Continued from May 28 and June 25, 2008. (Continued from July 9, September 10 and October 8, 2008; to be continued to December 17, 2008). **Staff Planner: Jeff Bonekemper.**

Member Spalding motioned to accept the Consent Calendar as submitted. Member Adesanya seconded the motion. The motion carried 3/0.

REGULAR CALENDAR

1. **JOSE & GUILLERMINA RAMIRO, CONDITIONAL USE PERMIT, C-8747** - Application to allow continued operation of a tavern (Stadium Club), in an ACBD – SP – TC (Ashland and Cherryland Business District Specific Plan-Transit Corridor) District, located at 15698 East 14th Street, east side, corner north of Plaza Drive, unincorporated Ashland area of Alameda County, designated Assessor's Parcel Number: 080-0034-007-00. (Continued from September 24, 2008). **Staff Planner: Richard Tarbell.**

Staff recommended approval of the application. The Applicant is now in compliance with prior Conditions of Approval, regarding signage. Notices were re-sent to an expanded 500 foot radius. This included notification of discussion regarding the possible extension of, Hours of Operation. A representative from the Alameda County Sheriff's Department was present to answer questions. Public testimony was opened.

Attorney, Craig K. Martin was present representing the Applicant. Mr. Martin noted the staff recommendation of approval. He then addressed the Hours of Operation in the staff report. Staff recommends Monday through Thursday, Noon to 9:00 p.m. Friday and Saturday from Noon to 1:00 a.m. and Sunday Noon to 11:00 p.m. Mr. Martin requested the Hours Monday through Thursday be extended to Midnight, Friday and Saturday hours until 2:00 a.m., and Sunday until Midnight. Customers like to come out for the evening to enjoy a beer. They prefer to stay beyond 9:00 p.m., or until 2:00 a.m. when bars generally close. When the establishment closes at 9:00 p.m. Revenue sufficient to sustain the business and pay staff is not generated. The same holds true other nights of the week. Mr. Martin provided a list of neighbors that he contacted. He asked residents if they had any complaints about the establishment. Some of the neighbors had moved in recently. Other more established neighbors had no complaints. There were no objections to the extension of hours. Absent any complaints there is no reason the Stadium Club should not remain open until 2:00 a.m., at least on a 90 day trail basis. This would be fair to the Applicant. Mr. Martin then offered further explanation of the Sheriff's Report. He said he was not allowed to do so, at the past hearing. The entry regarding a 242 is related to assault. However Mr. Martin pointed out the assault took place, at another location. The Sheriff's Department was called because someone saw the assailant in the vicinity. The officer that responded confirmed the assault did not did not take place at the Stadium Club. At the prior Hearing there was comment about loitering and prostitution. There is no police record of prostitution. Mr. Martin questioned the fact that no one called the police, to report the incident. Mr. Martin met with the Director of Comm Pre. She said that she had not been to the establishment in a number of years. It appears that the recent hearsay testimony is from years past. Not based on current information from the site. If the Board had that information, it may have given a different perspective on testimony given. Mr. Martin asked the Board to inquire as to dates, times, and if incidents were reported. The Applicant has been in the position of defending statements that do not appear to be substantiated. As they are not reflected in the Sheriff's Report.

Member Spalding asked Mr. Martin to explain his assertion that he was not allowed to explain the Sheriff's Report, at the past hearing. She recalled that he did have that opportunity. Based on her recollection Mr. Martin was unsure all of the details, surrounding the Sheriff's Report. Mr. Martin said his recollection of the past hearing was that after the Board and staff reviewed the Sheriff's Report. No one seemed to understand the meaning of a 242 which is an assault. Mr. Martin attempted to offer an explanation. However public testimony had been closed and he was not allowed to provide testimony. Mr. Martin said based on his work in Criminal Defense. He is aware of law codes. He attempted to assist. In addition he wanted to point out, further in the Sheriff's Report. It was clear the assault has taken place at another location. The assailant was seen near the Stadium Club, at a later date. Member Spalding said Mr. Martin's explanation was different that the assertion that he was not given an opportunity to testify, at the prior hearing. He had every opportunity to speak. Mr. Martin disagreed that he had been given every opportunity to speak. Member Spalding thought the point was important. She did not want the Board to be inaccurately accused. Mr. Martin stated he was not accusing the Board. In any case he did not want to belabor the point. However he wanted to offer an explanation of the Sheriff's Report, for the record. Member Spalding believed the record of the prior hearing will show otherwise. Mr. Martin said he believed the record would speak for itself. Member Spalding pointed out that although the Director of Comm Pre was not present, at the prior hearing. A staff representative was present. Regarding the conversation Mr. Martin had with the Executive Director. The fact she had not visited the site in several years, does not mean that a staff person had not recently visited the site. Based on Member

Spalding's observation, Comm Pre's staff, and Stadium Club staff were familiar with one another. Mr. Martin's clarified that the meeting with Comm Pre took place in their office. The Director raised complaints about issues at the site. However she had not been to location in 2 or 3 years. Mr. Martin said he questioned the statements since she had not been to the site, in years. He was attempting to reflect there may be a perception issue. It appears that the Applicant is being singled out, and treated unfairly. He wanted the record to reflect what he believed his client has been subjected to. Member Spalding said Mr. Martin's statement was inaccurate. A Comm Pre staff person was present at the past hearing. Mr. Martin did not dispute the testimony, review and conversations of the staff person, given at the past hearing. The fact that the Executive Director may not have knowledge independent of Comm Pre staff does not mean the Director cannot rely on her staff. Therefore it does not mean the Board must ignore testimony given by Comm Pre, staff persons. Mr. Martin said he took exception. Board Members were not present during the conversation between Mr. Martin, and the Director. He was merely conveying the conversation that had taken place, and stating his reflection of the Director's comment that she had not been to the site. Mr. Martin said he was not taking exception to the testimony of Comm Pre staff. Merely based on the tone during the conversation with Comm Pre, the information given regarding the application was, 2 to 3 years old.

Member Spalding asked Mr. Martin why he had a presumption a citizen would call the police, if the had witnessed prostitution. Mr. Martin said he thought if a citizen had concerns about the neighborhood. If a crime were witnessed, they would report that crime. In the Sheriff's Report there was no reflection of prostitution in the past year. Member Spalding said Mr. Martin may not be aware that East 14th Street had a notorious reputation for prostitution. Mr. Martin said he did not see that reflected in the Sheriff's Report. Member Spalding acknowledged there were no references in the past year, related to the business location. However the business is located on East 14th Street. Mr. Martin said there were a number of establishments on East 14th Street, including a shopping center. He did not believe it is not fair to hold the Applicant responsible for control of prostitution on East 14th Street. The East 14th Street area is expansive. If the Applicant is not encouraging, or participating in prostitution, it is unfair to Applicant responsible for activities that happen beyond his establishment boundaries. Member Spalding clarified the Applicant was not being accused, or having focus placed upon them. She wanted Mr. Martin to recognize the historical existence, history of, and present occurrence of prostitution on East 14th Street. The Board commonly receives testimony the East 14th Street environment changes after dark. Many applications have come before the Board of East 14th Street property owners that reflect this fact. Member Spalding was merely stating a judicial comment of commonly known facts. Member Spalding further clarified, the tavern is not being accused of generating, causing or participating in prostitution. She did not want Mr. Martin to take comments out of context. The Board hears many applications concerning East 14th Street. Therefore the Board has a general apparatus or knowledge of East 14th Street. If someone makes a general statement regarding general criminal issues that have taken place on East 14th Street. It is taken in a general context. The Board is entitled to review any application or business that is being proposed in that respect to that knowledge, as opposed to consideration in isolation. Mr. Martin said he believed that due process requires the Applicant be given an indication. It appears that in the past year there is no objective public evidence that prostitution has taken place in the past years on, or near the Applicant's establishment. Perhaps there are activities related to prostitution, further down East 14th Street. However Mr. Martin did not see the nexus as to why prostitution would be discussed in relation to the possible extension of the Stadium Club Hours of Operation. Member Spalding said she would agree to disagree. Mr. Martin said he respectfully accepted that. He would also agree to disagree.

The Chair asked Mr. Martin for further information regarding canvassing, of the neighborhood. Mr. Martin said he canvassed on a Saturday. The canvassing started at the building closest to the car wash. He then continued up the street toward the 580 Freeway. Some of the neighbors gave their names. He asked those he spoke with if they objected to a 2:00 a.m. tavern closing time, or if they had experienced

loitering, public urination, or loud noise after hours. There were no objections to a 2:00 a.m. closing. No complaints were voiced. Mr. Martin said he also left his contact information with persons he interviewed. Names and addresses were submitted, if the Board would like to follow-up. The Chair asked if Mr. Martin differentiated between days of the week or earlier closing times, in conversations with neighbors. Mr. Martin did not differentiate.

Member Spalding asked a follow up question regarding the July 5, 2008 incident, listed on the Police Report. Mr. Martin said the report comment states the incident took place at 2:19 a.m. at 14501 East 14th Street, which is in the San Leandro Police jurisdiction. Member Spalding clarified the report stated 15698 East 14th Street, the Stadium Club. Mr. Martin said he went to the San Leandro Police Department to obtain records. He was sent to the Sheriff's Department. The reporting party was at the Stadium Club. The Sheriff determined the incident did not take place at the bar. A Sheriff's representative is present to provide additional information. The Chair noted that the report was taken at 1:53 a.m. which is past closing time for the Stadium Club. Mr. Martin acknowledged that fact. Member Spalding said the Applicant should clarify the Hours of Operation. Member Spalding asked if Mr. Martin disputed another fighting incident, listed on the report. Mr. Martin said he disputed the interpretation, of the report entry. He believed this was also the case reporting an incident that took place elsewhere.

Sergeant Gemmell of the Alameda County Sheriff's Department provided a list of calls for service to the site. Often the codes are difficult to interpret. In April 2006, at 9:30 p.m. there was call for alleged battery. The female bartender reported that someone grabbed her. In August at 6:45 in the evening there was a call for possible burglary. The call was unfounded. In September there was a disturbance. A person delivered homicide threats against the security guard. A subject was arrested. There was an audible alarm in October for fighting, 2:30 a.m. In October a call was received about prostitution at 11:30 p.m. Sergeant Gemmell clarified that he was describing calls for service. A call could be initiated by a passerby. The caller could believe they saw a person, believed to be a prostitute or possibly witnessed an act of prostitution for any number of reasons. The disposition was that the responding unit was unable to locate anyone outside or in the bar. There was a call in November regarding disturbance of a customer. The customer reported she had been harassed by a subject. The subject was arrested for public intoxication. In December 2006 there was a report of assault, with great bodily injury. Subjects were fighting in the bar, over the victim's girlfriend. The victim was hit in the head. As far as officer contact, in 2006 a traffic stop was made. There is no additional documentation, the location was the destination intended. Calls for service in 2007 include the following: March 2007 a unit met with the San Leandro Police Department. A female customer wanted to meet with officers regarding her husband, who was at the bar. This could be as the result of a stay away order etc. In May there was an officer initiated business check. In July 2007 an audible alarm at 3:30 a.m. A walk through was conducted. In October August 2007 a vehicle was sited for a traffic violation. In 2008 there 2 calls for service, one call was referred to the San Leandro Police Department regarding a fight. Mr. Martin was correct in his interpretation of the report. If a fight had taken place on the premises, deputies would have written a report. In Sergeant Gemmell experience, he will not write a report unless there is an actual incident. A report may be written if a person is very uncooperative. In that instance, the case was referred to San Leandro Police. Since Sergeant Gemmell was not present he cannot give specifics. However when a call comes in to dispatch, the exact language used by the caller is transferred to the call for service. The disposition may be different. If a caller uses the address of a physical location to make a report, this will be recorded in the system. It does not mean an incident took place at the reporting address.

Potentially calls for service by location could be matched up, or cross referenced with calls in the area. However Sergeant Gemmell did not have that information available at the Hearing.

Alfredo Coria, a Prevention Specialist for Comm Pre stated for the record that he met with Mr. Martin. He has also visited the community. The Executive Director has been familiar with the community for

over 10 years. Any concerns and comments Comm Pre have voiced, have a foundation. Since August 2005, Mr. Ramiro has owned the Stadium Club. In May 2007 the BZA renewed a cup with 11 new Conditions of Approval. The new conditions imposed would not have been necessary, if Mr. Ramiro had been a proactive, responsible business owner. The BZA saw fit to impose the Conditions to remedy the problems, affecting the community. Additionally a month ago Mr. Ramiro was not in compliance with all Conditions. In October 2007, Mr. Coria went door to door in the community with a survey. Neighbors stated that on dance nights, especially on Fridays and Saturday the neighborhood was saturated with traffic. People were blocking driveways, and urinating on lawns. One neighbor had to move his television to rear of his home to avoid the noise. Mr. Coria surveyed some of the same the neighbors on November 3, 2008, in addition to some newer residents. Mr. Coria found that some persons living on Plaza Drive did not object to the extension of tavern hours. However residents who lived closer to the bar, prefer hours to remain the same. The neighbors overall have experienced less litter, loitering, public drunkenness, and disturbances. Street parking for residents and visitors has also increased. The Sheriff's Department report clearly indicates the decrease in incidents since 2006. Comm Pre confidently believes this is as a result of the imposed Conditions, and the yearly renewal of the permit. Member Adesanya asked for the address of residents, concerned about the possible extension of tavern hours. Mr. Coria said the first 4 homes on Plaza Drive on the left, and the first 3 homes on the right. One of the residents is present to answer questions.

Ms. Rosa Amador lives in Alameda but frequents the Stadium Club. She has never experienced a safer club environment than the one at Stadium Club. Parking is not an issue. She was under the impression that street parking was public. Ms. Amador said she is learning how to dance Salsa and Meringue as well. Ms. Amador said. She has been disrespected at other clubs. The owner of the Stadium Club ensures that the environment remains under control. She likes the neighborhood bars. She has a great time. There is Security driving around the Bayfair Mall. Chevy's is across the street. There should be no reason for people to feel fear. If there is an incident in the area, people may come to the Stadium Club for assistance. Pay phones are almost non existent. If someone does not have access to a cell phone, they logically will go to the first, well lit location. There is an adult store a few doors down. There is no proof that even patrons of the adult store are involved in prostitution on East 14th Street. Mr. Ramiro takes care of the business, and the clients. He will call cabs for persons if needed. She was surprised to see the club closes at 9:00 p.m. Some patrons do not get off work until 7:00 pm. After going home to grab dinner that does not allow time, to watch the football game or play pool.

Senada Tabakovic lives at 1465 Plaza Drive. She has lived there for 5 years. If she had been able to sell her home in the first 3 years, she would have. Ms. Tabakovic is a mother of two. She had to walk her 9 year old daughter to school. She was scared of the public drunkenness. Things have been okay the past 2 years. There are no longer persons on the street, and fighting. She has nothing against the Stadium Club, but prefers the hours are not extended. Ms. Tabakovic enjoys peace and quiet when she is at home. Her youngest daughter is 5 years old. She would like to feel safe letting her play in the yard, without being chased. In the past there were occasions when people jumped the fence. Litter was also thrown in her backyard. As a mother she does not want the hours, to be extended. Her 11 year old does not feel safe outside.

Member Spalding asked the frequency of incidents, Ms. Tabakovic experienced. Ms. Tabakovic said, 2 years ago the issues were at their height. On one occasion, a couple had sex, next to her fence. Trash was thrown in the yard on 2 occasions. Now it is better, but she does not feel safe.

Santos Mejia lives in Oakland. He has known Mr. Ramiro since he took over the establishment in 2005. He frequents the Stadium Club 3 times a week. He has never witnessed a fight, or seen prostitution. If Mr. Ramiro witnesses an intoxicated person he personally tells them, they cannot have more to drink. In

addition he tells staff to cut the person off.

Roxanna Guardado asked for a Spanish speaking interpreter. Ms. Rosa Amador volunteered to interpret. Roxanna said through the interpreter, she has been frequenting the club and known Mr. Ramiro for 3 years. She has never witnessed any violence, or prostitution. She has not had any issues with parking. Ms. Guardado lives in Oakland. The Chair asked Ms. Guardado where she parked when visiting the site. Ms. Guardado said in front of the bar.

Mr. Adonis Ramos also asked for a Spanish speaking interpreter. He lives in Oakland, too. Mr. Ramos knows Mr. Ramiro. Since he has frequented the Stadium Club he has never experienced any problems with drugs, fighting, or parking. He attends with his wife, 2 to 3 times a week. His wife is the prior speaker, Roxanna Guardado.

Pedro Aguilar lives at 1459 Plaza Drive. Ms. Rosa Amador translated from Spanish to English on his behalf. His home is near the Stadium Club. He has not had any problems with patrons, or experienced any issues. He is present to support, Mr. Ramiro. He has lived on Plaza Drive for 5 years. The Chair asked where his residence was located in relation to the bar. Mr. Aguilar said he lived 4 houses away.

Mr. Julio Acevedo also used Ms. Rosa Amador as a translator. Mr. Acevedo lives in Oakland. He has visited the bar for a period of two, and one half years. He has not experienced any parking, or violence. He visits the bar on the week-ends. Board Members asked the following questions:

- What activities does he participate in when visiting the bar
- Does he leave the Stadium Club for another site when the bar closes

Mr. Acevedo said he enjoyed the dancing. When the club closes he goes home.

Ms. Jill Cotter told the Board she lives at 1418 Plaza Drive, directly across the street. She moved in to the neighborhood in June 2008. She is new to the neighborhood. Ms. Cotter attempted to play pool at approximately 9:30 p.m. She was surprised to see the establishment closed. Ms. Cotter watches the neighborhood closely. She has never experienced any vandalism. However she has seen incidents of public urination during the daytime. Ms. Cotter did not understand why the Stadium Club had to close at 9:00 p.m. during the week, when other establishments are still open. When she was working she would have liked to go to the bar, on her day off. However the bar closes just as she would like to go out with friends. Thus far she has not witnessed any incidents that would cause a problem. The Chair asked the following:

- How frequently does Ms. Cotter witness incidents of public urination
- Does Ms. Cotter contact the Sheriff's Office when she witnesses incidents
- Where is her home in relation to the Stadium Club
- Has she witnessed any issues at the car wash

Ms. Cotter witnesses public urination everyday by persons exiting the bus, or walking down the street. She did not see the point of calling the police, and did not believe incidents can be related to the bar. They occur during the day. She has been on disability for the past 4 months. Often reads on her porch. She has never witnessed any prostitution. Ms. Cotter has been a long time Hayward resident. She is aware of the past history, of the neighborhood. The area has improved vastly. It is now family oriented. Member Spalding said she was happy to hear there had been improvement, in the area.

Gloria Casares lives in Oakland too. She and her friends are also disappointed about the hours. She does

not drive, and appreciates that Mr. Ramiro calls cabs, or offers rides to ensure that all of the ladies get home safely. She has never been harassed or witnessed any harassment. She asked why Mr. Ramiro was asked to close early when other clubs down the street are open until 2:00 a.m. Ms. Casares enjoys the dancing. She used to attend the Mambo Club down the street. The establishment may have changed the name to Club Caliente. When the Stadium Club opened she became a customer there. Board Members asked the following:

- Why does Ms. Casares prefer the Stadium Club
- How long has she frequented the Stadium Club
- Has she witnessed any of the incidents in the Sheriff's Report

Ms. Casares said she has known the Ramiro Family for 20 years. She also frequented Mr. Ramiro's Oakland establishments. She prefers the Stadium Club because she knows the people. The dance floor is also larger, and the establishment is not as loud. She has never witnessed, or experienced any of the incidents mentioned in the Sheriff's Report.

Mr. Rodolpho Ordille said he has frequented the Stadium Club for 7 years. He enjoys dancing at the Club. There is a lot of parking. He has never experienced any security problems.

Juan Zamora lives in Pittsburg. However he used to work at Chevy's across the street from the Stadium Club. He enjoyed going there to relax, and have a beer after work. He wished the hours were extended. He did not get off until 10:30 pm. He still likes to bring his wife twice a week to dance. However he does not come as often because of the Hours of Operation. Mr. Zamora liked meeting friends there as well. He likes the quieter atmosphere compared to other establishments. A DJ plays on week nights but you can still talk, comfortably. The Board asked the following:

- How many persons did Mr. Zamora observe at the Club on week-nights
- How many persons did Mr. Zamora observe at the Club on week-ends
- Is the Clientele the same as the patrons that frequent Chevy's
- How long did Mr. Zamora work at Chevy's
- Has Mr. Zamora witnessed criminal activity in the vicinity
- Is there a difference in the Clientele at the Stadium Club since the reduced hours

Mr. Zamora said on average he sees, 9 to 15 people on week nights, weekends 30 to 40 people. Often he would see a line of people outside Club Caliente. The Chair asked if he would still frequent the Stadium Club if traffic increased. Mr. Zamora said he prefers a quieter atmosphere. The noise level in most restaurants is higher than in the Stadium Club. For example, the patrons at Chevy's are a younger party, crowd. They like to drink. The patrons at the Stadium Club are more mature. When the Stadium Club had longer hours, approximately 50 to 60 people attended on week-ends. When the hours were reduced, the Chevy's staff stopped frequenting the Stadium Club. There was not enough time before closing to unwind. If patronage increased, he would try the environment to see if was still acceptable to him. Mr. Zamora worked at Chevy's for 3 years. He parked his car by the Stadium Club, and felt safe walking to his vehicle. Mr. Zamora never witnessed any crime.

Mrs. Lorena Zamora said she and her husband go to the Stadium Club twice a week. She has attended since August. They go to relax, and play pool. Mrs. Zamora said she feels safe. She is expecting, and would never put herself or her husband in danger. Parking spaces are available on the street. Mrs. Zamora has never witnessed prostitution. If she had, she would not frequent the location.

Mr. Martin said it would seem the bar is a nice family establishment. If the Applicant were allowed to

open until Midnight during the week, and 2:00 a.m. on week-ends, he would agree to a Condition requiring Board review. The Applicant should be given the opportunity to show he can comply with the Conditions. If the Applicant cannot show compliance, the Board can make a determination, they see fit. Mr. Martin received positive feedback from the neighbor that wanted to frequent her local bar. He received positive testimony from her others as well that Mr. Ramiro keeps the area swept and clean. Mr. Ramiro has also planted roses at the site. Mr. Martin respectfully asked the Board allow Mr. Ramiro to extend his Hours of Operation.

Member Adesanya asked Mr. Martin what was the Applicant's opinion of testimony presented by the neighbor at 1465 Plaza Drive and Comm Pre that the issues if not wholly, are partially directly related to the reduction of Hours of Operation. Mr. Martin said testimony may need to be more fully understood. Comm Pre spoke to neighbors 4 doors away. He spoke with neighbors directly next to the Stadium Club, who were not opposed to the extension of hours. Mr. Martin understood the concerns of the neighbor with children that experienced trespassing into her backyard. It is undetermined as to where the trespassers came from. At the hour people leave the bar, children will be inside of the home. Mr. Martin thought the concerns related to the bar were related to noise at late hours, beer bottles, urinating or driveway blockage. The complaints raised by the neighbor, did not focus on those issues. He respects the neighbor's concerns about trespassing, and her children. However it is undetermined they are directly related to activities from the bar.

Member Spalding said her understanding of the neighbor's testimony was there were many objectionable activities taking place. The first year she lived at the home. However the incidents have substantially decreased, since the reduction of hours. There was a consistency between the objectionable activity and the reduction of hours. Regarding this permit, staff is recommending a continuation of the current hours. Although the Applicant is asking for an extension of hours, based on the observation there has been a reduction in the number of calls for service. The substantial decrease occurred when, the hours were reduced. Testimony has been provided from residents that live in Oakland, Alameda, and a neighbor that has lived in the vicinity for 3 months. However testimony from a direct neighbor carries more weight. In response Mr. Martin pointed out that testimony had also been provided from a neighbor who lived down the block from the Club. He then gave an example to illustrate the challenge the Applicant had been experiencing. It was currently 8:00 p.m. The Applicant would have only 1 hour tonight, to generate revenue. For a business to succeed, it must be open for customers. Currently the hours are not sufficient. Mr. Martin requested that the Stadium Club be allowed to open Monday through Thursday until Midnight, and Friday and Saturday until 2:00 a.m. The neighbor that believed objectionable behavior had been reduced as the result of bar hours can contact Planning staff, with any problems. A hearing can be set to quickly prevent, and address issues. The permit expiration can also be set for 1 year. This will allow the Applicant an opportunity to show they can maintain the quite nature of the bar. The customers are mature, established customers. It is unlikely they will get out hand. The Applicant also has security present. Chevy's is open until 11:00 pm. It seems unfair that the Stadium Club must close at 9:00 p.m.

The Chair asked Mr. Martin if the hours were extended what was the suggested remedy if the Applicant was unable to meet required Conditions. Mr. Martin said the Applicant could return to the reduced hours. He did not expect the Applicant to be unsuccessful. The Applicant is aware that if complaints are received, and he did not comply. It will affect his use permit. The Chair asked if Mr. Ramiro would continue his policy stated at past hearings, he prefer to handle issues himself, as opposed to calling the Sheriff's Office. Mr. Martin clarified that he did not represent the Applicant during the prior cup process. However as a business owner, most take a proactive stance to prevent escalation of issues. Earlier testimony given shows that Mr. Ramiro stops serving intoxicated persons, calls cabs etc. If a situation does get out of hand, Mr. Ramiro calls the Police. Security checks people before they enter. If a patron is upset, testimony given shows they have called the police themselves. Testimony from the female clientele is that they feel safe. As a result they patronize the establishment. This is an indication that the

bar is safe. The Chair also asked if the security company keep an incident log. Mr. Martin was unsure, however if the Board would like the Applicant can adopt the practice.

Member Spalding gave Mr. Martin background information regarding the business, and permit history. He may not be aware that the reduced hours were a result of a compromise. Initially the CUP was going to be denied, in its entirety. The accusation of unfairness should be fully considered. The Applicant did enjoy hours extended to other businesses. However the business experienced substantial problems, and objectionable conduct. The Conditions were arrived at as a means to let the business continue, and not adversely affect the community. If the objectionable conduct has now been substantially reduced, the question is can the Applicant continue to maintain minimal objectionable conduct, within the establishment and the vicinity. The situation did not arise out of isolation. The reduced hours were a result of review of factual determinations, when there were a lot of earlier problems. Mr. Martin said he would have to plead ignorant. He was not told directly about all of the prior issues. He did suspect that the Applicant had his Conditions altered, as a result issues. At this juncture Mr. Martin has talked with the Applicant. He is attentive as to the seriousness, and the possible ramifications of losing his use permit. The Applicant would like an opportunity to show that he can further comply. If he cannot, Mr. Ramiro does expect ramifications imposed by the Board.

The Chair asked Sergeant Gemmell to give an overview of general policing activates in the neighborhood. Sergeant Gemmell said the East 14th Corridor is a major through fare. The Sheriff conducts vehicle, foot, plain clothes, motorcycle, and bicycle patrols. The Sheriff's Department has done a fairly good job at removing prostitution activities from the neighborhood. The nature of the business has changed as well, as the result of the internet. Sergeant Gemmell can provide more detailed reports of the area, if requested.

Member Adesanya asked if there were any specific police or community efforts that may have impacted incident reduction in past years. In addition if there had been a decrease in negative activity in the neighborhood. Sergeant Gemmell said there are no specific programs. However there are many ongoing enforcement efforts. These are highlighted between the boundaries of 150th Avenue and the intersection where Mission Boulevard becomes East 14th Street. This includes units that focus on Crime Prevention, DUI, Gang Suppression, and General Patrol. Overall this reduces crimes. There has not been a specific focus on the location surrounding the Stadium Club, but on East 14th as a whole. If a business owner is has a policy where he attempts to take care of issues, in house, in general that will reduce calls for service. Some bar owners may call for service 75 times a year. This may not be as a result of specific problems, but a proactive means to prevent problems. There is a balance when considering calls for service. Sergeant Gemmell did not have specific crime data available at the Hearing. In general, crime trends are cyclical. Crime could be considered littering, up to violent crime. When school is out and the weather is warm, there are more property crimes. Car theft may increase in colder weather. Public testimony was closed.

The Chair asked staff if the recommendation remained unchanged. Staff confirmed that was the case. Member Adesanya asked for additional information regarding first initiation of the complaint. Staff said the application was a CUP renewal. Through the hearing process issues arose regarding parking, and noise. A few neighbors came to Hearings.

Member Spalding said her recollection was that many neighbors attended multiple hearings. Another issue was that the Conditions of the prior CUP that had been in effect for 5 years, had not been met. Police reports unveiled issues. Comm Pre also brought issues, and evidence forward. In her opinion, staff may want to consider denying the present application, out right. If the hours were reduced the Applicant may believe they have been treated unfairly. The Board should remember to include the other issues that were taken into account, during consideration of the prior permit. The last CUP was granted under the condition that issues would be resolved. The application would also return for Board review.

The permit was limited to 1 year expiration due to the failure of satisfaction of past conditions, neighborhood disturbances, and lack of building maintenance. Denial may be appropriate at this juncture. Unless staff would like to require the Applicant acknowledge, they are not being treated unfairly, as the last permit was only for a short time with a required review.

Member Adesanya asked if the Applicant was currently in compliance. Staff confirmed the Applicant was now in compliance with all Conditions of Approval. Member Spalding pointed out that may be the case. However it has taken continued hearings for the Applicant to achieve compliance. Member Adesanya said based on current compliance, and testimony there has been noted improvement. There is an added security presence, and additional policing activities in the area. It also appears activities did not occur during the week. Member Adesanya was inclined to increase the Hours during the week (Monday – Thursday), however not week-end hours. As the Board of Zoning Adjustments, consideration should be given to businesses in the unincorporated County. Member Adesanya did not have issue with patrons from neighboring towns. This helps generate revenue, and benefits County tax coffers, as a whole. If the Board were not going to deny the permit, and place another business at the site, she was inclined to condition the permit, per her inclination. This would allow the business to thrive to a slightly greater extent. Based on testimony presented, business hours until 11:00 p.m. during the week, should not cause an additional negative impact. Based on the same testimony, she was not comfortable extending week-end Hours.

Member Spalding said she was only agreeable to an extension to 11:00 p.m. Monday through Thursday. She thought a 1 year permit length was acceptable. As opposed to a 3 year permit length. The Chair asked if a 6 month Board review would be appropriate. Board Members asked staff for input. Staff said they could conduct a review in 6 months. This would include complaint investigation, and police reports. The report can then be presented to the Board. If the Board would like a full public hearing, including staff report and noticing, a new application would be required. Counsel said if staff determined at the point of review a new hearing is required. A re-hearing process is initiated. This is a standard condition of all use permits. The revocation process is outlined under Section 17.54.030, of the Zoning Ordinance. The process is the same whether it results in amended condition, or revocation.

Member Spalding found a 1 year permit length acceptable, with a 6 month staff review. The Chair asked that an hourly security log be added to security responsibilities. This will ensure the entire perimeter, including restrooms are patrolled. Counsel suggested that Condition #9 be modified to indicate that the *terms of the contact be consistent with terms imposed by the Board of Zoning Adjustments*. Member Spalding then asked the Applicant's Counsel if he objected to Conditions #1 through #16. The Chair pointed out that Board only proposed changes to Conditions #3 and #9. The Chair re-opened public testimony for the limited purpose of responding to Conditions #3 and #9.

Mr. Martin said he was in agreement with the proposed modification to Condition #9. He was also in agreement with all of the proposed Conditions of Approval. Public testimony was closed.

Member Adesanya asked for additional information regarding proposed modification to Condition #9. Counsel recommended an added sentence. *The security guard shall be required to maintain an activity log for functions performed on the premises*. Board Members were in agreement with the proposed language.

Member Adesanya moved to approve, Conditional Use Permit, C-8747, per staff's recommendation. Condition #3 shall be modified. Hours of Operation shall be Monday through Thursday from Noon to 11:00 p.m. Condition #9 shall be modified. At the end of the first sentence, the following shall be added: terms of the contact are to be consistent with terms imposed by the Board of Zoning Adjustments. An additional sentence shall be added to the end of Condition #9, stating: The security guard shall be

required to maintain an activity log for functions performed on the premises. Condition #16 shall be modified. The permit shall be for a period of 1 year from the date of approval. Staff shall conduct a 6 month review. If warranted such review can result in a Hearing. Member Spalding seconded the motion. The motion to approve Conditional Use Permit, C-8747, carried 3/0.

APPROVAL OF MINUTES: Member Spalding motioned to continue the Minutes of September 24 and October 8 and 22, 2008 to the November 12, 2008 Hearing. Member Adesanya seconded the motion. Motion carried 3/0.

STAFF COMMENTS & CORRESPONDENCE: Staff announced the outcome of recent Board of Supervisors Agendas. The staff recommendation of denial of Conditional Use Permit, C-8555, Laguna was upheld. The facility was closed. The owner has 6 months to bring the site into compliance, and request reconsideration. At the November 4, 2008 BOS Meeting, Variance, V-12117, Silva was approved. The staff recommendation of denial recommendation of Parcel Map, PM-9566 was upheld.

BOARD'S ANNOUNCEMENTS, COMMENTS AND REPORTS: Member Adesanya asked staff to include site addresses on staff report graphics.

The Chair will not be present at the November 12, 2008 Hearing. The Vice Chair will conduct the Hearing. Member Spalding will depart early from the November 12, 2008 Hearing.

ADJOURNMENT: There being no further business, the hearing adjourned at 8:30 pm.

ALBERT LOPEZ - SECRETARY
WEST COUNTY BOARD OF ZONING ADJUSTMENTS